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*Kathryn Fritts
12th Grade*



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THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for April 28, 2010

Appointed to the Texas State Board of Social Worker Examiners for a term to expire February 1, 2011, Nancy Ann Pearson of Burton (replacing Kimberly Hernandez of Lakewood who resigned).

Appointed to the OneStar Foundation for a term to expire March 15, 2012, Beau Egert of Friendswood (Mr. Egert is being reappointed).

Appointed to the OneStar Foundation for a term to expire March 15, 2013, Joanie Amacker Haley of Houston (Ms. Haley is being reappointed).

Appointments for May 3, 2010

Appointed to the Grayson County Regional Mobility Authority for a term to expire February 1, 2012, Will Rich Hubbard, Jr. of Tioga (replacing Jerdy Gary of Denison whose term expired). Mr. Hubbard will serve as presiding officer of the authority.

Appointed to the Real Estate Research Advisory Committee for a term to expire January 31, 2015, Kimberly Shambley of Dallas (replacing Tony Cortes of San Antonio who resigned).

Appointed to the Alamo Area Regional Review for a term at the pleasure of the Governor, Harold Baldwin of Schertz (replacing Tony Wilenchik of Schertz)

Appointed to the Golden Crescent Regional Review for a term at the pleasure of the Governor, Jasper A. Cuellar, Jr. of Point Comfort (replacing Billy Ezell of Seadrift).

Appointed to the South Texas Regional Review for a term at the pleasure of the Governor, Tony Flores, Jr. of Hebbronville (replacing Ruben Rodriguez of Hebbronville).

Appointed to the Texoma Regional Review for a term at the pleasure of the Governor, Kevin M. Farley of Denison (replacing Tom Wilthers of Tom Bean).

Appointed to the ARK-TEX Regional Review for a term at the pleasure of the Governor, Clarence "Kelly" Blackburn of Avery (replacing James Carlow of New Boston).

Appointed to the ARK-TEX Regional Review for a term at the pleasure of the Governor, Joe E. McCarthy of Paris (replacing Curtis Fendley of Paris).

Appointed to the Heart of Texas Regional Review for a term at the pleasure of the Governor, Bill Lancaster of Valley Mills (replacing Jerry Wayne Smith of Valley Mills).

Appointed to the Heart of Texas Regional Review for a term at the pleasure of the Governor, Jacqueline "Jackie" Levingston of Groesbeck (replacing Raeford Carter of Woodway).

Appointed to the Heart of Texas Regional Review for a term at the pleasure of the Governor, Robert C. Phillips of Clifton (replacing Clark Vandergriff of Meridian).

Appointed to the Heart of Texas Regional Review for a term at the pleasure of the Governor, R. Steven Sharp of Marlin (replacing Juanita Hogg of Lott).

Appointed to the Middle Rio Grande Regional Review for a term at the pleasure of the Governor, Francisco G. Ponce of Carrizo Springs (replacing Larry Speer of Carrizo Springs).

Appointed to the Middle Rio Grande Regional Review for a term at the pleasure of the Governor, Tim Ward of Brackettville (replacing Herbert Senne of Brackettville).

Appointed to the South East Texas Regional Review for a term at the pleasure of the Governor, John Peter Dubose of Bridge City (replacing Beamon Minton of Vidor).

Appointed to the South East Texas Regional Review for a term at the pleasure of the Governor, Michael Shane Sinegal of Port Arthur (replacing Waymon Hallmark of Port Arthur).

Designating Fred W. Heldenfels, IV of Austin as chair of the Texas Higher Education Coordinating Board, effective May 1, 2010, for a term at the pleasure of the Governor. Mr. Heldenfels is replacing A.W. Riter, III of Tyler as chair.

Designating Elaine Mendoza of San Antonio as vice chair of the board, effective May 1, 2010, for a term at the pleasure of the Governor. Ms. Mendoza is replacing Fred W. Heldenfels, IV of Austin as chair.

Appointed to the Texas Medical Board District One Review Committee for a term to expire January 15, 2016, Larry V. Buehler of Angleton (reappointed).

Appointed to the Texas Medical Board District One Review Committee for a term to expire January 15, 2016, Kathy C. Flanagan of Houston (reappointed).

Appointed to the Texas Medical Board District Three Review Committee for a term to expire January 15, 2016, Jayaram B. Naidu of Odessa (reappointed).

Appointed to the Texas Medical Board District Three Review Committee for a term to expire January 15, 2016, Nancy M. Seliger of Amarillo (reappointed).

Appointed to the Texas Medical Board District Four Review Committee for a term to expire January 15, 2016, Leah Raye Mabry of San Antonio (reappointed).

Appointed to the Texas Medical Board District Four Review Committee for a term to expire January 15, 2016, Russell Parker of Austin (reappointed).

Appointed to the Texas Medical Board District Two Review Committee for a term to expire January 15, 2016, Louie Royce Hill of Carthage. Dr. Hill is being reappointed.

Appointed as the Student Regent for the Texas A&M University System, effective June 1, 2010, for a term to expire May 31, 2011, Cresencio R. Davila of San Antonio. Mr. Davila is replacing Hunter Bollman of Katy whose term expired.

Appointed as the Student Representative for the Higher Education Coordinating Board, effective June 1, 2010, for a term to expire May 31, 2011, Eric Rohne of Corpus Christi. Mr. Rohne is replacing Heather A. Morris of Lubbock whose term expired.

Appointed as the Student Regent for the University of Texas System, effective June 1, 2010, for a term to expire May 31, 2011, Kyle J. Kalkwarf of San Antonio. Mr. Kalkwarf is replacing Karim Meijer of Dallas whose term expired.

Appointed as the Student Regent for Midwestern State University, effective June 1, 2010, for a term to expire May 31, 2011, David Reyna of Wichita Falls. Mr. Reyna is replacing Leonard Benton of Wichita Falls whose term expired.

Appointed as the Student Regent for the University of North Texas System, effective June 1, 2010, for a term to expire May 31, 2011, Jonathan Sterling Gallegos of San Angelo. Mr. Gallegos is replacing Jennifer Ozan of Fort Worth whose term expired.

Appointed as the Student Regent for Stephen F. Austin State University, effective June 1, 2010, for a term to expire May 31, 2011, Sydni Mitchell of Spring. Mr. Mitchell is replacing Morgan Tomberlain of Longview whose term expired.

Appointed as the Student Regent for the Texas Tech University System, effective June 1, 2010, for a term to expire May 31, 2011, Jeffrey Harris of San Angelo. Mr. Harris is replacing Kyle R. Miller of Plainview whose term expired.

Appointed as the Student Regent for the Texas State University System, effective June 1, 2010, for a term to expire May 31, 2011, Christopher

F. Covo of San Antonio. Mr. Covo is replacing William Clayton Patterson of Richardson whose term expired.

Appointed as the Student Regent for Texas Woman's University, effective June 1, 2010, for a term to expire May 31, 2011, Sarah Adams of Whitehouse. Ms. Adams is replacing Rae Lynn McFarlin of Bonham whose term expired.

Appointed as the Student Regent for the University of Houston System, effective June 1, 2010, for a term to expire May 31, 2011, Andrew Cobos of Tomball. Mr. Cobos is replacing Kristin Lindley of Spring whose term expired.

Appointed as the Student Regent for Texas Southern University, effective June 1, 2010, for a term to expire May 31, 2011, Bianca Brock of Beaumont. Ms. Brock is replacing Patrice A. McKenzie of Houston whose term expired.

Appointments for May 5, 2010

Appointed as State Demographer for a term at the pleasure of the Governor, Lloyd B. Potter of San Antonio (replacing Karl Eschbach of San Antonio who resigned).

Appointed to the Cancer Prevention and Research Institute of Texas Oversight Committee for a term to expire January 31, 2013, Joyce King of Plano (replacing Scott Sanders of Austin who resigned).

Rick Perry, Governor

TRD-201002478



THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following:
Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from
the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <http://www.oag.state.tx.us/opinopen/opinhome.shtml>.)

Request for Opinions

RQ-0882-GA

Requestor:

The Honorable Jo Anne Bernal
El Paso County Attorney
500 East San Antonio, Room 503
El Paso, Texas 79901

Re: Whether a county clerk may issue a marriage license when one of the parties is a female and the other was born a male but subsequently underwent sex change surgery (RQ-0882-GA)

Briefs requested by June 2, 2010

RQ-0883-GA

Requestor:

The Honorable Burt R. Solomons
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Re: Whether a loss damage waiver in a rental only lease agreement constitutes the "business of insurance" as defined in section 101.051 of the Insurance Code (RQ-0883-GA)

Briefs requested by June 2, 2010

RQ-0884-GA

Requestor:

Ms. Mary Ann Williamson, Chair
c/o Ms. Kim Kiplin, General Counsel
Texas Lottery Commission
Post Office Box 16630
Austin, Texas 78761

Re: Whether bingo gift certificates and similar items constitute "non-cash merchandise prizes, toys or novelties" under section 47.01(4)(B) of the Penal Code (RQ-0884-GA)

Briefs requested by June 8, 2010

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-201002547
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: May 12, 2010

◆ ◆ ◆

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 22. SUBSTANCE ABUSE AND DEPENDENCY TREATMENT SERVICES

1 TAC §354.1311, §354.1312

The Texas Health and Human Services Commission (HHSC) proposes to amend §354.1311 and §354.1312 related to Medicaid substance abuse and dependency treatment services.

Background and Justification

Texas Medicaid currently provides coverage for certain substance abuse services for individuals under the age of 21. The Legislative Budget Board's (LBB) 2009 *Texas State Government Effectiveness and Efficiency* report found that less than a quarter of adults with a diagnosis of substance abuse received treatment in 2006. The report also found that individuals with a substance abuse disorder have twice the medical expenses (e.g., hospital emergency room costs) of those without a substance abuse disorder and that these costs can be better managed with treatment.

The 2010-11 General Appropriations Act (Article IX, §17.15, S.B. 1, 81st Legislature, Regular Session, 2009) directs HHSC to implement a comprehensive Medicaid substance abuse benefit for adults. In directing HHSC to develop Medicaid substance abuse benefits for adults, the Texas Legislature assumed the treatment of substance abuse problems will result in a savings to the Medicaid program and offset any cost associated with the new benefit. In order to implement the substance abuse benefits required in S.B. 1, HHSC proposes amending these rules.

Section-by-Section Summary

The title of Division 22 was changed from "Chemical Dependency Treatment Facility Services" to "Substance Abuse and Dependency Treatment Services."

Amended §354.1311(a) deletes the reference to persons under age 21 since Medicaid is adding substance abuse benefits for adults. The amendment also updates the reference to the Department of State Health Services (DSHS) as the agency that licenses providers and facilities that provide substance abuse and dependency treatment services.

Amended §354.1311(b) clarifies the definition of chemical dependency to include substance abuse and dependency as defined in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders. This clarified definition is reflected in the proposed revised title of Division 22 and throughout the rules.

Amended §354.1311(c) expands existing program benefits by adding assessment, outpatient detoxification, and medication assisted therapy as benefits of the Medicaid program.

Amended §354.1311(d) describes the benefit limitations for assessment and medication assisted therapy, removes the annual limit on outpatient individual counseling, and clarifies the annual limit on outpatient group counseling.

New §354.1311(e) expands program benefits by adding residential detoxification and residential treatment as benefits of the Medicaid program effective January 1, 2011.

New §354.1311(f) describes the benefit limitations for residential detoxification and residential treatment.

Amended §354.1312 updates the reference to DSHS as the licensing agency for chemical dependency treatment facilities.

Other changes are made throughout both rules for clarification and to update references to HHSC.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first 5-year period the amended rules are in effect, there will be a fiscal impact to state government of \$4,124,929 for State Fiscal Year (SFY) 2011; \$8,757,200 for SFY 2012; \$8,967,372 for SFY 2013; \$9,182,589 for SFY 2014; and \$9,182,589 for SFY 2015. The proposed rules will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

Ms. Rymal has also determined that there will be no effect on small businesses or micro businesses to comply with the amendments as they will not be required to alter their business practices as a result of the rules. There are no anticipated economic costs to persons who are required to comply with the proposed rules. There is no anticipated negative impact on local employment.

Public Benefit

Billy Millwee, Associate Commissioner for Medicaid and CHIP, has determined that for each year of the first five years the proposed amendments are in effect, the public will benefit from the adoption of the amendments. The anticipated public benefit, as a result of enforcing the sections, will be the improved access to

and quality of health care services for Medicaid enrolled individuals with substance abuse disorders.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environment exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Public Hearing

A public hearing is scheduled for June 15, 2010 from 10:00 a.m. to 11:00 a.m. (central time) in the Health and Human Services Building H, Lone Star Conference Room, located at 11209 Metric Boulevard, Austin, Texas. Persons requiring further information, special assistance, or accommodations should contact Leigh Van Kirk at (512) 491-2813.

Public Comment

Written comments on the proposal may be submitted to Tania Colon, Senior Policy Analyst, Medicaid/CHIP Division, Texas Health and Human Services Commission, P.O. Box 85200, H600, Austin, Texas 78708; by fax to (512) 491-1953; or by e-mail to tania.colon@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Statutory Authority

The amendments are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendments affect the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§354.1311. *Benefits and Limitations.*

(a) Subject to the specifications, conditions, limitations, and requirements established by the Health and Human Services Commission (HHSC) [department] or its designee, substance abuse and [chemical] dependency treatment [facility] services are those services provided by a provider or facility licensed by the Department of State Health Services to provide substance abuse and dependency treatment services [determined by a qualified credentialed professional, as defined by the Texas Commission on Alcohol and Drug Abuse (TCADA) in its Chemical Dependency Treatment Facility Licensure Standards, to be reasonable and necessary for the care of a person under 21 years of age who is chemically dependent].

(b) Substance abuse and dependency has the definition assigned [Chemical dependency is defined as meeting at least three of the diagnostic criteria for psychoactive substance dependence] in the

American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders.

(c) Covered outpatient substance abuse and [chemical] dependency treatment [facility] services shall include:

- (1) assessment; [outpatient individual counseling services; and]
- (2) outpatient detoxification; [group counseling services;]
- (3) outpatient group, individual, and family counseling; and
- (4) medication assisted therapy.

(d) Covered outpatient substance abuse and [chemical] dependency treatment [facility] services shall be limited as follows.

(1) Assessment shall be limited to one assessment per episode of care unless medically indicated. [Outpatient individual chemical dependency treatment counseling services shall be limited to a maximum of 26 hours per person per calendar year.]

(2) Outpatient group [chemical dependency treatment] counseling services shall be limited to a maximum of 135 hours per person per calendar year unless medically indicated.

(3) Medication assisted therapy shall be limited to a medically appropriate duration of treatment. In the treatment of opioid addiction, treatment must comply with federal regulations codified at 42 Code of Federal Regulations Part 8-Certification of Opioid Treatment Programs, for coverage.

(e) Covered residential substance abuse and dependency treatment services shall be effective on January 1, 2011, and include:

- (1) residential detoxification; and
- (2) residential treatment.

(f) Covered residential substance abuse and dependency treatment services shall be limited as follows.

(1) Residential detoxification shall be limited to a medically appropriate duration of service based on medical need and level of intoxication for a maximum of 21 days per episode of care.

(2) Residential treatment shall be limited to a medically appropriate duration of service based on medical need and severity of addiction for a maximum of 35 days per episode of care and no more than 2 episodes of care per a 6-month period.

§354.1312. *Conditions for Participation.*

Subject to the specifications, conditions, limitations, and requirements established by the Health and Human Services Commission (HHSC) [department] or its designee, a substance abuse and [chemical] dependency treatment facility must:

(1) be a facility that is licensed by the Department of State Health Services (DSHS) [Texas Commission on Alcohol and Drug Abuse (TCADA)], the state licensure authority, as a substance abuse and [chemical] dependency treatment facility;

(2) provide, at a minimum, the standard services required by DSHS [TCADA] for licensure (as determined by the type of substance abuse and [chemical] dependency service(s) it provides);

(3) comply with all applicable federal, state, and local laws and regulations;

(4) be enrolled and approved for participation in the Texas Medical Assistance Program;

(5) sign a written provider agreement with HHSC [~~the department~~] or its designee. By signing the agreement, the substance abuse and [chemical] dependency treatment facility agrees to comply with the terms of the agreement and all requirements of the Texas Medical Assistance Program, including regulations, rules, handbooks, standards, and guidelines published by HHSC [~~the department~~] or its designee; and

(6) bill for services covered by the Texas Medical Assistance Program in the manner and format prescribed by HHSC [~~the department~~] or its designee.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 10, 2010.

TRD-201002489

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: June 20, 2010

For further information, please call: (512) 424-6900



TITLE 10. COMMUNITY DEVELOPMENT

PART 6. TEXAS DEPARTMENT OF RURAL AFFAIRS

CHAPTER 257. STATE OFFICE OF RURAL HEALTH

SUBCHAPTER B. TEXAS OUTSTANDING RURAL SCHOLAR RECOGNITION PROGRAM

10 TAC §§257.21, 257.22, 257.25 - 257.30

The Texas Department of Rural Affairs (TDRA) proposes amendments to §§257.21, 257.22, and 257.25 - 257.30, concerning the Texas Outstanding Rural Scholar Recognition Program.

The proposed amendments change references from "Office" and "Department" throughout the rules to "TDRA" and also regard changes for the students sponsorship within the use of this program.

Charles S. (Charlie) Stone, Executive Director of TDRA, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for the state or local government as a result of enforcing or administering the amendments as proposed.

Mr. Stone has also determined that for each year of the first five-year period the amendments are in effect the public will benefit as a result of enforcing these amendments under the Texas Outstanding Rural Scholar Recognition Program. There will be no cost to small business or individuals.

Comments on the proposal may be submitted to Ms. Theresa Cruz, Director of the State Office of Rural Health and Compliance, Texas Department of Rural Affairs, P.O. Box 12877, Austin, TX 78711, telephone (512) 936-6719. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*.

The amendments are proposed under §487.052 of the Texas Government Code which authorizes TDRA to adopt rules as necessary to implement Chapter 487.

No other code, article, or statute is affected by the proposed amendments.

§257.21. *Purpose, Administration and Delegation of Powers and Duties.*

(a) (No change.)

(b) TDRA [~~The Office~~] shall administer the Outstanding Rural Scholar Recognition Program in accordance with the Texas Government Code, Chapter 487, Subchapter D [~~Health and Safety Code, Chapter 406, Subchapter C~~].

(c) The Board delegates to the executive director of TDRA [~~the Office~~] the powers and duties to administer the program.

§257.22. *Definitions.*

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (5) (No change.)

(6) Board--The Board of the Texas Department of Rural Affairs [~~Office of Rural Community Affairs~~].

(7) Executive director--The Executive Director of the Texas Department of Rural Affairs [~~Office of Rural Community Affairs~~].

(8) - (12) (No change.)

~~[(13) Office--The Office of Rural Community Affairs as created in Chapter 487 of the Texas Government Code.]~~

(13) ~~[(14)]~~ Resident of Texas--As described in Education Code, Chapter 54, Subchapter B.

(14) ~~[(15)]~~ Rural community--A municipality in a non-metropolitan county in Texas as defined by the United States Census Bureau in its most recent census.

(15) ~~[(16)]~~ Satisfactory academic progress--Maintenance of satisfactory cumulative grade point average and course load to qualify the student for placement in planned subsequent years of the degree plan.

(16) Sponsor--A rural community organization such as a local hospital or hospital auxiliary, rural health clinic, foundation, civic organization, City Council, Chamber of Commerce, Commissioners Court, or any combination of such organizations. If sponsor is a foundation, civic organization, City Council, Chamber of Commerce, Commissioners Court, the individual must practice within the rural community where this type of sponsor is located.

(17) TDRA--The Texas Department of Rural Affairs as created in Texas Government Code, Chapter 487.

§257.25. *Requirements for Forgiveness Loan.*

(a) Eligibility Criteria for Forgiveness Loan.

(1) Initial Loan. To be eligible to apply for a forgiveness loan under this program, the student shall:

(A) (No change.)

(B) receive public recognition of the student's selection as an outstanding rural scholar. Each sponsor shall send TDRA [~~the Office~~] proof of public recognition of the student. Such recognition may

include an announcement in local newspapers of the student's selection and public recognition of the student at civic gatherings or school assemblies;

(C) - (D) (No change.)

(2) Subsequent Loan. A student who has received an initial loan shall have priority for subsequent loans provided the following requirements are satisfied:

(A) - (C) (No change.)

(D) the student maintains ~~[completes]~~ the same number of credit hours for which the student enrolled at the beginning of the academic term each academic term, unless circumstances outside the student's control such as severe illness suffered by the student or a family member, or death of a family member have necessitated the student to reduce the credit load. The student shall present to TDRA ~~[the Office]~~ verification of the reason for dropping below the initial number of credit hours for which initially enrolled at the beginning of the academic term. Such verification may include a sworn affidavit from a qualified physician as to the student's or family member's health status, or a death certificate in the case of a death in the student's family. If the student repeatedly drops below the initial number of credit hours during the course of the academic program, TDRA ~~[the Office]~~ in concurrence with the sponsor shall determine whether the student is in breach of contract and whether the student should be discontinued from the program. However, the selection committee may unilaterally recommend removal of a student from the program should the selection committee determine that the student is not maintaining satisfactory academic progress to attain the prescribed degree; and

(E) (No change.)

(b) Application for Forgiveness Loan. The student shall submit the completed forgiveness loan application. The forgiveness loan application shall be in a form prescribed by TDRA ~~[the Office]~~ and may include but is not limited to:

(1) - (11) (No change.)

(c) Conditions for Forgiveness Loan.

(1) - (2) (No change.)

(3) The cost of attendance shall be determined by the academic institution's financial aid office. A student may receive other financial aid in the form of grants, scholarships and loans for which the student may be eligible. However, it is recommended that the student decline any loans other than the forgiveness loan. TDRA ~~[The Office]~~ shall reduce the amount of the forgiveness loan by the amount of other financial aid a student receives in order that the total financial aid a student receives does not exceed the allowable cost of attendance as determined by the financial aid office.

(4) The Executive Director may authorize forgiveness loans to be awarded to eligible students provided the:

(A) student has submitted a forgiveness loan agreement ~~[application]~~;

(B) sponsor has executed a Memorandum of Understanding with TDRA ~~[the Office]~~ in which the sponsor agrees to provide 50% of the student's costs of attendance for the academic year;

(C) sponsor and the student have executed a contract with TDRA ~~[the Office]~~ in which the:

(i) - (vi) (No change.)

(vii) student agrees to begin employment ~~[return to the sponsoring rural community]~~ within 60 days of attaining certifica-

tion or licensure or completing the prescribed residency program in the case of medical students;

(viii) student agrees to provide health care on a full-time basis for the sponsor ~~[in the sponsoring rural community]~~ for a period of obligated service equal to the same number of years loan support was provided;

(ix) - (x) (No change.)

(xi) student agrees to coordinate with the sponsor ~~[sponsoring community]~~ regarding rural rotations, preceptorships or other programs in the sponsoring community; and

(xii) student agrees to meet with his or her sponsoring community annually in order for the participant to receive his or her check from TDRA ~~[the Office]~~ to keep the sponsoring community and office informed of career goals, interns etc.

(d) Disbursement of Forgiveness Loan Funds. Disbursements shall be made according to a schedule determined by TDRA ~~[the Office]~~. Before a disbursement is made:

(1) the student shall execute a promissory note with TDRA ~~[the Office]~~ to pay the forgiveness loan in the event of breach of contract. The promissory note must be cosigned:

(A) - (C) (No change.)

(2) the sponsor shall remit to TDRA ~~[the Office]~~ an amount equal to 50% of the disbursement; and

(3) (No change.)

(e) Refunds.

(1) A student shall be responsible for refunding TDRA ~~[the Office]~~ an amount equal to:

(A) - (B) (No change.)

(2) TDRA ~~[The Office]~~ may:

(A) - (C) (No change.)

(f) (No change.)

§257.26. *Breach of Contract.*

A contract executed under this subchapter between TDRA ~~[the Department]~~, the sponsor and the student is a binding contract.

(1) Sponsor.

(A) (No change.)

(B) A sponsor shall notify TDRA ~~[the Department]~~, in writing within two weeks of any change in status.

(C) (No change.)

(D) If the sponsor is found to be in breach of contract, TDRA ~~[the Department]~~ may require any or all of the following:

(i) - (iii) (No change.)

(E) In the event of a sponsor breach of contract, TDRA ~~[the Department]~~ may assist the student in obtaining alternative sponsorship, employment or practice opportunity in another rural community where loan forgiveness may be granted. In such an event, the original sponsor may not seek reimbursement from either the student, another rural community sponsor nor TDRA ~~[the Department]~~.

(2) Student.

(A) (No change.)

(B) TDRA [~~The Department~~] shall hold the student who breaches a contract liable for liquidated damages equal to one time the total forgiveness loan amount plus all applicable costs, fees and interest at the highest rate allowed by law.

(C) The student shall be considered in breach of contract and shall not be eligible to receive forgiveness loan funds if the student fails to meet any of the conditions of this subchapter. The student shall notify TDRA [~~the Department~~] in writing within two weeks of any change in status. The student shall be in breach of contract if the student:

(i) - (xii) (No change.)

(D) (No change.)

§257.27. *Repayment.*

(a) In the event a student is found to be in breach of contract, the student shall remedy the breach by paying to TDRA [~~the Office~~] liquidated damages equal to one time the total forgiveness loan amount plus collection costs, fees and interest as specified in this subsection.

(b) In the event the student breaches the contract by beginning but failing to complete the obligated period of service, the student shall pay to TDRA [~~the Office~~] a prorated share of the damages based on the percent of the obligated period of service which has not been completed plus collection costs, fees and interest as specified in this subsection.

(c) (No change.)

(d) To remedy the breach of contract, the student shall remit all payments directly to TDRA [~~the Office~~] according to a schedule determined by TDRA [~~the Office~~].

(e) - (g) (No change.)

(h) TDRA [~~The Office~~] shall repay the sponsor its portion of the forgiveness loan national credit bureau to be placed on the students' credit reports plus interest, which pertains to that portion according to a schedule, determined by TDRA [~~the Office~~].

(i) TDRA [~~The Office~~] shall not be responsible for repaying to the sponsor any forgiveness loan portions or interest accrued on those portions provided by the sponsor in the event TDRA [~~the Office~~] is unsuccessful in collecting repayment from the student.

(j) TDRA [~~The Office~~] shall report all outstanding loans in repayment to a national credit bureau to be placed on the students' credit reports.

§257.28. *Enforcement of Collection.*

(a) TDRA [~~The Office~~] shall initiate collection procedures immediately against a student who fails or refuses to make as many as six payments due in accordance with the repayment schedule.

(b) TDRA [~~The Office~~] shall request the academic institution to cause the student's transcripts to be unavailable to the student or any other person outside the institution until the academic institution has been notified that the default has been corrected.

(c) (No change.)

§257.29. *Cancellations and Postponements.*

(a) TDRA [~~The Office~~] shall have the authority to cancel a student's service or repayment obligation if TDRA [~~the Office~~] determines that:

(1) - (2) (No change.)

(b) (No change.)

(c) TDRA [~~The Office~~] may postpone the repayment requirement for a student who is enrolled at least half time at an eligible aca-

ademic institution. A postponement period is not included when determining the maximum repayment period. TDRA [~~The Office~~] may also cancel or postpone repayment for a student who provides evidence of extreme financial hardship. In the case of postponement, the period of postponement will not be included in determining the maximum repayment period. TDRA [~~The Office~~] may require periodic payments on the accrued interest during the postponement period.

§257.30. *Dissemination of Program Information, Tracking and Reports.*

(a) TDRA [~~The Office~~] shall disseminate information about the program to all interested parties.

(b) TDRA [~~The Office~~] shall send post-secondary academic institutions the list of outstanding rural scholars and program rules.

(c) TDRA [~~The Office~~] shall track the academic progress of each student and report to the selection committee annually on the status of each student.

(d) TDRA [~~The Office~~] shall report a student's academic status to the sponsor at least annually.

(e) After a student begins the obligated period of service, TDRA [~~the Office~~] shall track the student and report to the Board on the student's employment or practice status at least annually.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 3, 2010.

TRD-201002162

Charles "Charlie" Stone

Executive Director

Texas Department of Rural Affairs

Earliest possible date of adoption: June 20, 2010

For further information, please call: (512) 936-6722



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 103. HEALTH AND SAFETY

SUBCHAPTER CC. COMMISSIONER'S

RULES CONCERNING SAFE SCHOOLS

19 TAC §103.1203

The Texas Education Agency (TEA) proposes new §103.1203, concerning disciplinary alternative education programs (DAEPs). The proposed new section would establish assessment requirements for students placed in DAEPs in accordance with the Texas Education Code (TEC), §37.0082.

House Bill (HB) 2532, 80th Texas Legislature, 2007, addressed the expulsion and placement of students who engage in certain activities. HB 2532 also addressed the need for identifying equal education opportunities for all students who are placed in an alternative setting for more than 90 days. HB 2532 added the TEC, §37.0082, which requires that all school districts with DAEPs complete a pre- and post-assessment on students being placed in a DAEP in order to measure the level of academic achievement prior to placement as well as measuring academic growth upon completion of placement.

Proposed new 19 TAC §103.1203 would implement the TEC, §37.0082, by establishing in rule school district responsibilities for administering a pre- and post-assessment to assess the basic skills in reading and mathematics for each student in the district's DAEP. In addition, the proposed new rule would require a school district to provide assessment results to a student's locally assigned campus. The proposal would specify that procedures for administering this assessment are to be developed and implemented in accordance with local school district policy. The proposal would also clarify that DAEP assessment requirements are in addition to the assessment requirements of the TEC, Chapter 39.

The proposed new section would have no procedural and reporting implications. The proposed new section would have locally maintained paperwork requirements. Pre- and post-assessment results may be added to the student permanent school portfolio.

Julie Harris-Lawrence, deputy associate commissioner for educator performance and student affairs, has determined that for the first five-year period the proposed new section is in effect there will be no additional costs for state or local government as a result of enforcing or administering the rule action.

Ms. Harris-Lawrence has determined that for each year of the first five years the proposed new section is in effect the public benefit anticipated as a result of enforcing the rule action will be consistent pre- and post-assessment requirements to measure academic growth for students placed in DAEPs for more than 90 days to provide an appropriate level of education. There is no anticipated economic cost to persons who are required to comply with the proposed new section.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal begins May 21, 2010, and ends June 21, 2010. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-0028. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on May 21, 2010.

The new section is proposed under the TEC, §37.0082, which authorizes the commissioner of education to adopt rules necessary to implement the assessment of academic growth of students in disciplinary alternative education programs.

The proposed new section implements §37.0082.

§103.1203. Assessment of Academic Growth of Students in Disciplinary Alternative Education Programs.

(a) Each school district shall be responsible for administering a pre- and post-assessment for each student assigned to the district's disciplinary alternative education program (DAEP) for a period of 90 school days or longer as required by the Texas Education Code (TEC), §37.0082. Released state assessments for reading and mathematics for the appropriate grade may be used. A school district may apply for approval of an assessment that includes the Texas Essential Knowledge and Skills (TEKS) for reading and mathematics for the student's assigned grade. The commissioner of education will publish on the

Texas Education Agency website a list of assessments approved for use in each school year.

(b) The grade level of an assessment shall be based upon the academic grade completed prior to the student being assigned to a DAEP if placement occurs in the fall or first semester of the academic school year. If placement occurs in the spring or second semester of the academic school year, the student shall be administered an assessment based on the current grade level.

(c) Each school district shall provide an academic report to the student's locally assigned campus, which shall include the pre- and post-assessment results of the student's basic skills in reading and mathematics, within ten days of the student completing the post-assessment.

(d) Procedures for administering the pre- and post-assessment shall be developed and implemented in accordance with local school district policy.

(e) A student in the district's DAEP must also be assessed under the requirements of the TEC, Chapter 39.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 6, 2010.

TRD-201002473

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: June 20, 2010

For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 100. GENERAL PROVISIONS

22 TAC §100.10

The State Board of Dental Examiners (Board) proposes amendments to §100.10, relating to the Executive Director. The amendments were suggested by staff and authorize the Executive Director to accept voluntary surrender orders.

Ms. Sherri Sanders Meek, Executive Director, has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of enforcing the proposal will be the protection of the public. Currently, when a dentist surrenders his or her license, the voluntary surrender does not take effect until it is ratified by the full Board at the following Board meeting, which could be months later. Under the proposed amendment, the voluntary surrender would take effect as soon as it was accepted by the Executive Director. The amendment also requires the Executive Director to report any actions taken under this section to the Board at the next regularly scheduled meeting.

Ms. Meek has also determined that for each year of the first five years the amended section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering this section. There is no anticipated economic

impact on individuals or small or micro-businesses required to comply with the rule as proposed.

Comments on the proposal may be submitted to Carey A. Olney, staff attorney, State Board of Dental Examiners, 333 Guadalupe Street, Tower 3, Suite 800, Austin, Texas 78701 (by mail), (512) 463-7452 (by fax), or carey.olney@tsbde.state.tx.us (by email). To be considered, comments must be in writing and received by the State Board of Dental Examiners no later than 30 days from the date that this section is published in the *Texas Register*.

The amendments are proposed under Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposal affects Title 3, Subtitle D of the Occupations Code and Title 22, Part 5 of the Texas Administrative Code.

§100.10. Executive Director.

(a) The Board [~~board~~] may determine qualifications for and retain an Executive Director [~~executive director~~] who shall be the chief executive officer of the agency.

(b) The Executive Director [~~executive director~~] shall have the authority and responsibility for the operations and administration of the agency and such additional powers and duties as prescribed by the Board [~~board~~]. As chief executive of the agency, the Executive Director [~~executive director~~] shall manage all aspects of the agency, including personnel, financial and other resources, in support of the Dental Practice Act, Board [~~board~~] rules and policies, the Board's [~~board's~~] mission and strategic plan.

(c) The Executive Director [~~executive director~~] shall attend all meetings of the Board [~~board~~] and may offer recommendations to the Board [~~board~~], but shall not vote on matters brought before the Board [~~board~~].

(d) The Executive Director [~~executive director~~], with the Board's [~~board's~~] consent, may employ an Assistant Executive Director [~~assistant executive director~~] to perform the Executive Director's [~~executive director's~~] duties when the Executive Director [~~executive director~~] is absent or unable to act.

(e) The Executive Director is authorized to accept the voluntary surrender of a license. Board ratification is not required. The Executive Director will report summaries of dispositions to the Board at its regular meetings.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 7, 2010.

TRD-201002479

Sherri Sanders Meek

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: June 20, 2010

For further information, please call: (512) 463-6400



CHAPTER 103. DENTAL HYGIENE LICENSURE

22 TAC §103.5

The State Board of Dental Examiners (Board) proposes an amendment to §103.5, relating to staggered dental hygiene

registrations. The amendment was proposed to update the section to reflect changes made by the 81st Legislature.

Ms. Sherri Sanders Meek, Executive Director, has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of enforcing the proposal will be to update the section to reflect changes made by Senate Bill 887, 81st Legislature, 2009 Regular Session, effective date September 1, 2009. Specifically, amendments to Dental Practice Act §257.001 require dental hygiene licensees to pay license fee within 30 days of initial licensure.

Ms. Meek has also determined that for each year of the first five years the amended section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering this section. There is no anticipated economic impact on individuals or small or micro-businesses required to comply with the rule as proposed.

Comments on the proposal may be submitted to Carey A. Olney, staff attorney, State Board of Dental Examiners, 333 Guadalupe Street, Tower 3, Suite 800, Austin, Texas 78701 (by mail), (512) 463-7452 (by fax), or carey.olney@tsbde.state.tx.us (by email). To be considered, comments must be in writing and received by the State Board of Dental Examiners no later than 30 days from the date that this section is published in the *Texas Register*.

The amendment is proposed under Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposal affects Title 3, Subtitle D of the Occupations Code and Title 22, Part 5 of the Texas Administrative Code.

§103.5. Staggered Dental Hygiene Registrations.

(a) - (f) (No change.)

(g) An initial license issued under this chapter on or after September 1, 2009 expires on the 30th day after the date the license is issued if the holder of the license fails to pay the required license fee on or before the expiration date.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 7, 2010.

TRD-201002480

Sherri Sanders Meek

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: June 20, 2010

For further information, please call: (512) 463-6400



CHAPTER 107. DENTAL BOARD PROCEDURES

SUBCHAPTER A. PROCEDURES

GOVERNING GRIEVANCES, HEARINGS, AND APPEALS

22 TAC §§107.11, 107.15, 107.17, 107.21 - 107.25, 107.47,
107.48, 107.50, 107.54, 107.55, 107.63

The State Board of Dental Examiners (Board) proposes amendments to §107.11, relating to definitions; amendments

to §107.15, relating to computation of time; amendments to §107.17, relating to service in non-rulemaking proceedings; amendments to §107.21, relating to appearances personally or by representative; new §107.22, relating to pleading; new §107.23, relating to commencement of formal disciplinary proceedings; new §107.24, relating to respondent's answer in a disciplinary matter; new §107.25, relating to formal proceedings; new §107.47, relating to depositions; amendments to §107.48, relating to subpoenas; amendments to §107.50, relating to filing of exceptions, briefs, and replies; amendments to §107.54, relating to administrative finality; amendments to §107.55, relating to motions for rehearing; and amendments to §107.63, relating to informal disposition and alternative dispute resolution. The new sections and amendments were suggested by staff and update the procedural sections of Chapter 107 that were inadequate in application.

Ms. Sherri Sanders Meek, Executive Director, has determined that for each year of the first five years the amended and new sections are in effect, the public benefit anticipated as a result of enforcing the proposal will be to update and clarify the agency's procedural rules. The proposal provides clarification and consistency in the agency's procedural process and provides licensees and registrants with a better understanding of necessary procedural requirements. In addition, the proposal implements wording that more accurately reflects current statutory provisions and integrates applicable Administrative Procedure Act statutes, State Office of Administrative Hearing rules, and Texas Rules of Civil Procedure.

Ms. Meek has also determined that for each year of the first five years the amended and new sections are in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering the sections and no anticipated economic impact on individuals or small or micro-businesses required to comply with the rules as proposed.

Comments on the proposals may be submitted to Carey A. Olney, staff attorney, State Board of Dental Examiners, 333 Guadalupe Street, Tower 3, Suite 800, Austin, Texas 78701 (by mail), (512) 463-7452 (by fax), or carey.olney@tsbde.state.tx.us (by email). To be considered, comments must be in writing and received by the State Board of Dental Examiners no later than 30 days from the date that the sections are published in the *Texas Register*.

The amendments and new sections are proposed under Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposal affects Title 3, Subtitle D of the Texas Occupations Code and Title 22, Part 5 of the Texas Administrative Code.

§107.11. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

- (1) Act--The Dental Practice Act (DPA), Texas Occupations Code Annotated §§251.001 et seq.
- (2) Address of Record--A licensee's mailing address as provided to the State Board of Dental Examiners pursuant to state law and Board rule.
- (3) Administrative Law Judge (ALJ)--An individual appointed to preside over administrative hearings pursuant to the APA.

(4) Administrative Procedure Act (APA)--Texas Government Code, Chapter 2001 as amended.

(5) [(4)] Agency--The Texas State Board of Dental Examiners, also known as the State Board of Dental Examiners, and, for brevity, the Dental Board [dental board] or the Board [board].

(6) Answer--A responsive pleading.

(7) [(2)] Applicant or petitioner--A party seeking a license, registration, or certificate from the agency [or a rule or interpretation from the agency].

(8) [(3)] Board member--One of the appointed members of the decision making body defined as the agency.

(9) [(4)] Certificate--Any annual renewal authority or permit.

(10) Complaint--Written accusation made by any person, or by the Board on its own initiative, alleging that a licensee's conduct may have violated the DPA or the Board's rules.

(11) [(5)] Contested case--A proceeding, including licensing, in which the legal rights, duties, or privileges of a party are to be determined by the agency after an opportunity for adjudicative hearing.

(12) Default Order--A Board Order in which the factual allegations against a party are deemed admitted as true upon the party's failure to file a timely Answer to a Formal Complaint or to appear at a properly noticed SOAH hearing.

(13) Default Proceeding--The issuance of a Proposal for Decision in which the factual allegations against the Respondent in a contested case are deemed admitted as true upon the Respondent's failure to appear at a properly noticed hearing or failure to file an Answer to the Formal Complaint.

(14) [(6)] Executive Director [director]--The Executive Director [executive director] of the Texas State Board of Dental Examiners.

(15) Formal Complaint--Pleading by Board staff publically alleging a violation of the Act, Board rules, or Board Order.

(16) [(7)] License--Includes the whole or part of any agency permit, certificate, approval, registration, or similar form of permission required by law.

(17) [(8)] Licensing--Includes the agency process relating to the granting, denial, renewal, revocation, cancellation, suspension, annulment, withdrawal, limitation, or amendment of a license.

(18) [(9)] Officer--Any board member elected to an office of the Texas State Board of Dental Examiners.

(19) [(10)] Party--Each person named or admitted as a party.

(20) [(11)] Person--Any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character.

(21) Petitioner--A party, including the Board who brings a request or action and assumes the burden of going forward with an administrative proceeding; e.g., the Board in an action to discipline a licensee; the person who seeks a determination of eligibility for licensure.

(22) Proposal for Decision--A statement prepared by the individual who conducted the administrative hearing that provides the findings of fact and conclusions of law necessary for the proposed decision.

(23) [(+2)] Register--The Texas Register.

(24) [(+3)] Registration--The required annual renewal of any previously issued permit or authority.

(25) Respondent--A party, including the Board, to whom a request is made or against whom an action is brought, e.g., the licensee in a disciplinary action by the Board; the Board in an action to determine eligibility for licensure.

(26) [(+4)] Rule--Any agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the agency. The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of the agency and not affecting private rights or procedures. This definition includes substantive regulations.

(27) State Office of Administrative Hearings (SOAH)--A state agency created to serve as an independent forum for the conduct of adjudicative hearings in the executive branch of state government.

~~[(15) Administrative Law Judge (ALJ)--A person who presides at an administrative hearing held before the State Office of Administrative Hearings (SOAH).]~~

~~[(16) Petitioner--A party, including the board who brings a request or action and assumes the burden of going forward with an administrative proceeding; e.g., the board in an action to discipline a licensee; the person who seeks reinstatement of a license; the person who seeks a determination of eligibility for licensure.]~~

~~[(17) Respondent--A party, including the board, to whom a request is made or against whom an action is brought, e.g., the licensee in a disciplinary action by the board; the board in a reinstatement action; the board in an action to determine eligibility for licensure.]~~

§107.15. Computation of Time.

(a) Counting Days. Unless otherwise required by statute, in computing time periods prescribed by this chapter or by a State Office of Administrative Hearings (SOAH) order, the period shall begin to run on the day after the act, event, or default in question. The day of the act, event, or default on which the designated period of time begins to run is not included in the computation. The period shall conclude on the last day of the designated period, unless that day is a day the agency is not open for business, in which case the designated period runs until the end of the next day on which the agency is open for business. When this chapter specifies a deadline or a set number of days for filing documents or taking other actions, the computation of time shall be calendar days rather than business days, unless otherwise provided in this chapter or pursuant to an order by an administrative law judge or Board Order. However, if the period to act is five days or less, the intervening Saturdays, Sundays, and legal holidays are not counted. [In computing time periods prescribed by these rules, or by order of the agency, the day of the act, event or default on which the designated period of time begins to run is not included. The last day of the period is included, unless it is a Saturday, Sunday or legal holiday, in which case the time period will end on the next day that the agency is open.]

(b) Extension. Unless otherwise provided by statute, the time for filing any document may be extended by agreement of the parties, order of the Executive Director or order of the administrative law judge (if SOAH has acquired jurisdiction), upon written request filed prior to the expiration of the applicable time period. The written request must show good cause for an extension of time and state that the need is not cause by the neglect, indifference, or lack of diligence of the movant.

§107.17. Service in Non-rulemaking Proceedings.

(a) Notification of Decisions and Orders. When the agency is required to provide service of notice to any party of a decision or order, the agency shall notify the party either personally or by first class mail. Notice must be in writing and addressed to the licensee at the licensee's address of record on file with the Board at the time of the mailing or the licensee's attorney of record. [Where service of notice by the agency is required, all parties shall be notified either personally or by first class mail, to the last known address, of any decision or order. If any party has appeared by attorney or other representative, service shall be made upon such attorney or representative.]

(b) Notification of Notice of Hearing. Notification of a Notice of Hearing shall be made to a licensee by hand delivery, regular, registered or certified mail, courier service, or otherwise in accordance with the APA and the Rules of SOAH. Notice must be in writing and addressed to the licensee at the licensee's address of record on file with the Board at the time of the mailing or addressed to the party's attorney of record. Notice of Hearing in a contested case must comply with Texas Government Code §2001.052. Service is complete when made pursuant to 1 TAC §155.103 (SOAH).

§107.21. Appearances Personally or by Representative.

~~A respondent [Any person] may appear and be represented by the respondent's attorney of record who is authorized to practice law in the State of Texas [an attorney at law authorized to practice law before the highest court of the State of Texas]. This right may be expressly waived. Any respondent [person] may appear on his own behalf. A dental laboratory as defined by Chapter 266 of the Texas Occupations Code shall be represented by the owner of record or by the attorney of record of the owner of record. [; or by a bona fide full-time employee. A corporation, partnership or association may appear and be represented by any bona fide officer, partner or full-time employee.]~~

§107.22. Pleading.

(a) In disciplinary matters, the Board's pleading shall be styled "Formal Complaint." Except in cases of temporary suspension, a Formal Complaint shall be filed only after notice of the facts or conduct alleged to warrant the intended action has been sent to the licensee's address of record and the licensee has an opportunity to show compliance with the law for retention of the license as provided in the Administrative Procedure Act (APA), Texas Government Code §2001.054(c).

(b) In non-disciplinary matters, the Board's pleading shall be styled "Petition of the State Board of Dental Examiners."

§107.23. Commencement of Formal Disciplinary Proceedings.

(a) If the Board has probable cause to believe that a violation of statute or Board rule occurred, Board staff may commence formal disciplinary proceedings by filing a public Formal Complaint against the Respondent.

(b) The Formal Complaint shall contain the following information:

(1) the name of the Respondent and his or her license, registration, or certificate number;

(2) a statement alleging with reasonable certainty the specific act or acts relied on by the Board to constitute a violation of a specific statute, Board rule, or Board Order; and

(3) a reference to the section of the Texas Occupations Code and the Board's rules which the Respondent is alleged to have violated.

(c) When a Formal Complaint is filed, the Executive Director shall serve the Respondent with a copy of the Formal Complaint. The

Notice accompanying the Formal Complaint shall state that Respondent shall file a written answer to the Formal Complaint that meets the requirements of §107.24 of this title.

(d) Board staff may amend the Formal Complaint at any time permitted by the APA. A copy of any Amendment to the Formal Complaint shall be served on the Respondent. The first complaint filed shall be entitled "Formal Complaint," the first amended complaint filed shall be entitled "First Amended Formal Complaint," and so forth.

(e) The Formal Complaint may be resolved by agreement of the parties at any time.

§107.24. Respondent's Answer in a Disciplinary Matter.

(a) The Respondent in a disciplinary matter shall file an Answer to the Formal Complaint and to any Amendment to the Formal Complaint.

(b) The Answer shall admit or deny each of the allegations in the Formal Complaint or Amendment.

(c) If the Respondent fails to file an Answer to the Formal Complaint within twenty days of the date of service, the matter shall be considered a default case.

(d) In a case of default, the Respondent will be deemed to have

(1) admitted all the factual allegations in the Formal Complaint;

(2) waived the opportunity to show compliance with the law;

(3) waived the opportunity for a hearing on the Formal Complaint; and

(4) waived objection to the recommended sanction in the Formal Complaint.

(e) If the Respondent fails to file a written Answer within the time period prescribed by these rules, the Executive Director may recommend that the Board enter a Default Order based upon a Determination of Default.

(1) If no written Answer has been filed within twenty (20) days after the date of service, the Board attorney assigned to the matter may present the administrative record of the case, including the Formal Complaint, to the General Counsel for the Board. The General Counsel shall determine whether the Complaint was properly served.

(2) In the event the General Counsel determines that the Formal Complaint was properly served and that the Respondent has failed to timely file a written Answer, as required by subsection (a) of this section, the General Counsel shall issue a Determination of Default, which shall be served on the Respondent and filed at SOAH. The Determination of Default shall specifically state the facts on which the General Counsel has based the Determination of Default, and summarize the requirements by which a Determination of Default or Default Order may be set aside, as provided in paragraphs (4) - (7) of this subsection. When the Determination of Default is issued by the General Counsel, the Board Staff attorney shall file a motion with SOAH requesting that the matter be remanded to the Board to allow consideration of the Determination of Default, and serve the motion on the Respondent.

(3) An Answer received from the Respondent after a Determination of Default has been issued by the General Counsel shall not be filed.

(4) In the event that the Respondent wishes to file an Answer after a Determination of Default has been issued, but before a Default Order has been adopted by the Board, the Respondent must file

a Motion to Set Aside the Determination of Default, which shall show the Board that:

(A) the failure to timely file a written Answer was not intentional or the result of conscious indifference but was due to a mistake or accident;

(B) the Respondent has a meritorious defense; and

(C) the setting aside of the Determination of Default will not cause any delay or injury to the Board.

(5) The Board shall consider the Formal Complaint, the Determination of Default, and any Motion to Set Aside the Determination of Default, at a meeting of the Board not less than twenty days after the date of the Determination of Default. If the Board concurs with the findings in the Determination of Default, the Board may deem the allegations in the Complaint as true and enter a Default Order.

(6) In the event that the Respondent wishes to file an Answer after a Default Order has been entered by the Board, but before the time for filing a Motion for Rehearing has expired, the Respondent must file a Motion for Rehearing to Set Aside Default Order, which shall show that:

(A) the failure to timely file a written Answer was caused by fraud, accident, or wrongful act or official mistake of the Board;

(B) the failure to timely file a written Answer was not the result of the Respondent's fault or negligence; and

(C) the Respondent has a meritorious defense.

(7) The Motion for Rehearing shall be supported by affidavits and documentary evidence that present a prima facie case for a meritorious defense.

(f) Upon consideration of the case, the Board may:

(1) enter a default order under §2001.056 of the APA; or

(2) order the matter to be set for a hearing at SOAH.

(g) The Respondent may amend his or her Answer at any time permitted by the APA or SOAH rules.

(h) The first answer filed shall be entitled "Answer," the first amended answer filed shall be entitled "First Amended Answer," and so forth.

(i) Any default judgment granted under this section will be entered on the basis of the factual allegations in the Formal Complaint contained in the Notice, and upon proof of proper notice to the Respondent. For purposes of this section, proper notice means notice sufficient to meet the provisions of the Texas Government Code §2001.054 and §107.17 of this title. Such notice shall also include the following language in capital letters in 12 point boldface type: **FAILURE TO FILE A WRITTEN ANSWER TO THE FORMAL COMPLAINT, EITHER PERSONALLY OR BY LEGAL REPRESENTATIVE, WILL RESULT IN THE ALLEGATIONS CONTAINED IN THE FORMAL COMPLAINT BEING ADMITTED AS TRUE AND THE PROPOSED RECOMMENDATION OF STAFF SHALL BE GRANTED BY DEFAULT.**

(j) A Motion for Rehearing which requests that the Board vacate its Default Order under this section shall be granted if the movant proves by the preponderance of the evidence that the failure to answer the Formal Complaint was not intentional or the result of conscious indifference, but due to accident or mistake--provided that the movant has a meritorious defense to the factual allegations contained in the For-

mal Complaint and vacating the Default Order will occasion no delay or otherwise work an injury to the Board.

§107.25. Formal Proceedings.

(a) Formal administrative hearings in contested cases shall be conducted in accordance with the APA, SOAH rules, the Texas Occupations Code, and Board rules. SOAH acquires jurisdiction over the case when the Board staff files a Request to Docket Case Form accompanied by legible copies of all pertinent documents including, but not limited to, the Formal Complaint, petition, application, or other document describing the agency action giving rise to a contested case.

(b) When a case has been docketed before SOAH, Board staff shall provide a Notice of Hearing to all parties in accordance with §2001.052, Texas Government Code, and applicable SOAH rules.

(c) In disciplinary cases, the Respondent shall enter an appearance by filing a written Answer or other responsive pleading with SOAH and provide a copy to Board staff, within twenty (20) days of the date on which the Notice of Hearing is served to the Respondent. For purposes of this section, an entry of an appearance shall mean the filing of a written Answer or other responsive pleading.

(d) The failure of the Respondent to timely enter an appearance as provided in this section shall entitle the Board staff to a continuance at the time of the hearing in the contested case for such reasonable period of time as determined by the ALJ.

(e) The Notice of Hearing provided to a Respondent for a contested case shall include the following language in capital letters in 12-point boldface type: FAILURE TO ENTER AN APPEARANCE BY FILING A WRITTEN ANSWER OR OTHER RESPONSIVE PLEADING TO THE FORMAL COMPLAINT WITHIN TWENTY (20) DAYS OF THE DATE THIS NOTICE WAS MAILED, SHALL ENTITLE THE STAFF TO A CONTINUANCE AT THE TIME OF THE HEARING.

(f) If a Respondent fails to appear in person or by attorney on the day and at the time set for hearing in a contested case, regardless of whether an appearance has been entered, the ALJ, pursuant to SOAH's rules, shall, upon adequate proof that proper notice under the APA and SOAH rules was served upon the defaulting party, enter a default judgment in the matter adverse to the Respondent. Such notice shall have included in 12-point, boldface type, the fact that upon failure of the party to appear at the hearing, the factual allegations in the notice will be deemed admitted as true and the relief sought in the proposed recommendation by the staff shall be granted by default.

(g) Any default judgment granted under this section will be entered on the basis of the factual allegations in the Formal Complaint contained in the Notice of Hearing, and upon proof of proper notice to the Respondent. For purposes of this section, proper notice means notice sufficient to meet the provisions of the Texas Government Code §§2001.051, 2001.052, and 2001.054, as well as §107.17 of this title. Such Notice of Hearing also shall include the following language in capital letters in 12-point boldface type: FAILURE TO APPEAR AT THE HEARING IN PERSON OR BY LEGAL REPRESENTATIVE, REGARDLESS OF WHETHER AN APPEARANCE HAS BEEN ENTERED, WILL RESULT IN THE ALLEGATIONS CONTAINED IN THE FORMAL COMPLAINT BEING ADMITTED AS TRUE AND THE PROPOSED RECOMMENDATION OF STAFF SHALL BE GRANTED BY DEFAULT.

(h) A Motion to Vacate the Default Judgment rendered by the ALJ must be filed within ten (10) days of service of Notice of the Default Judgment.

(1) The Motion to Vacate the Default Judgment shall be granted if movant proves by the preponderance of the evidence that the

failure to attend the hearing was not intentional or the result of conscious indifference, but due to accident or mistake, provided that the Respondent has a meritorious defense to the factual allegations contained in the Formal Complaint and granting the motion will occasion no delay or otherwise work an injury to the Board.

(2) If the Motion to Vacate the Default Judgment is granted, it shall be the responsibility of the parties to either settle the matter informally or to request a rehearing on the merits. Whenever possible, the rehearing of the case shall occur with the ALJ that heard the default matter.

(i) Because of the often voluminous nature of the records properly received into evidence by the ALJ, the party introducing such documentary evidence may paginate each such exhibit or flag pertinent pages in each such exhibit in order to expedite the hearing and the decision-making process.

(j) Within the time line set out in the SOAH rules, after the conclusion of the hearing the ALJ shall prepare and serve on the parties a Proposal for Decision that includes the ALJ's findings of fact and conclusions of law.

(k) Each hearing may be recorded by a court reporter in accordance with the APA and SOAH rules. The cost of the transcription of the statement of facts shall be borne by the party requesting the transcript and said request shall be sent directly to the court reporter and the requesting party shall notify the other party in writing of the request.

§107.47. Depositions.

(a) The deposition of any witness may be taken upon a commission issued by the executive director upon the written request of any party, a copy of which shall be served on the non-requesting party.

(b) The written request shall contain the name, address, and title, if any, of the witness; a description of the books, records, writings, or other tangible items the requesting party wishes the witness to produce at the deposition; the date and location where the requesting party wishes the deposition to be taken; and a statement of the reasons why the deposition should be taken and the items produced.

(c) Depositions may be taken by telephone and by non-stenographic recording. The recording or transcript may be used by any party to the same extent as a stenographic deposition, provided all other parties are supplied with a copy of the recording and the transcript to be used. The witness in a telephonic or non-stenographic deposition may be sworn by any notary. The transcript of such deposition shall be submitted to the witness for signature in accordance with Texas Government Code Annotated §2001.099.

(d) Notwithstanding any other provisions of these sections, the executive director may issue a commission to take a deposition prior to the filing of a formal complaint if, in the opinion of the executive director, such a commission is necessary for either party to preserve evidence and testimony or to investigate any potential violation or lack of compliance with the Act, the rules and regulations, or orders of the Board. The commission may be to compel the attendance of any person to appear for the purposes of giving sworn testimony and to compel the production of books, records, papers or other objects.

(e) A deposition in a contested case shall be taken in the county where the witness:

- (1) resides;
- (2) is employed; or
- (3) regularly transacts business in person.

(f) Cost of Expert Witnesses. When a party takes the oral deposition of an expert witness retained by the opposing party, all reason-

able fees charged by the expert for time spent in preparing for, giving, reviewing, and correcting the deposition must be paid by the party that retained the expert.

§107.48. Subpoenas.

(a) Investigative Subpoenas. Pursuant the Dental Practice Act, the Board has the authority to issue subpoenas to compel the attendance of witnesses and to issue subpoenas duces tecum to compel the production of books, records, or documents. The pendency of a SOAH proceeding does not preclude the Board from issuing an investigative subpoena at any time.

(b) SOAH Subpoenas. Subsequent to the filing of a formal Complaint, any party may request in writing that the Executive Director issue a subpoena or subpoena duces tecum in accordance with §2001.089 of the APA upon a showing of good cause.

(1) The party requesting the subpoena shall be responsible for the payment of any expense incurred in serving the subpoena, as well as reasonable and necessary expenses incurred by the witness who appears in response to the subpoena.

(2) If the subpoena is for the attendance of a witness, the written request shall contain the name, address, and title, if any, of the witness and the date and location at which the attendance of the witness is sought.

(3) If the subpoena is for the production of books, records, writings, or other tangible items, the written request shall contain a description of the item sought; the name, address, and title, if any, of the person or entity who has custody or control over the items and the date; and the location at which the items are sought to be produced.

(4) The party requesting a subpoena duces tecum shall describe and recite with clarity, specificity, and particularity the books, records, documents to be produced.

(c) Service and expenses.

(1) A subpoena issued at the request of the board's staff may be served either by a board investigator or by certified mail in accordance with the Dental Practice Act Section 263.008. The board shall pay reasonable charges for photocopies produced in response to a subpoena requested by the board's staff, but such charges may not exceed those billed by the board for producing copies of its own records.

(2) A subpoena issued at the request of any party other than the board shall be addressed to a sheriff or constable for service in accordance with the APA §2001.089.

(d) Fees and travel. A witness called at the request of the Board shall be compensated and reimbursed for travel in accordance with this title. An expert witness called at the request of the Board shall be paid a compensation fee as set by agency policy and reimbursed for travel in accordance with this title.

(e) Additional reasons for granting a subpoena. Notwithstanding any other provisions of this section, the executive director may issue a subpoena if, in the opinion of the Executive Director, such a subpoena is necessary to preserve evidence and testimony regarding any potential violation or lack of compliance with the Dental Practice Act, the rules and regulations, or orders of the Board.

~~[(a) A witness or deponent in a contested case who is not a party and who is subpoenaed or otherwise compelled to attend a hearing or proceeding to testify or give a deposition or to produce books, records, papers, or other objects that may be necessary and proper for the purpose of a proceeding at the State Office of Administrative Hearing (SOAH) is entitled to receive:]~~

~~[(1) \$.18 for each mile, or a greater amount prescribed by state agency rules, for going to and returning from the place of the hearing or deposition if the place is more than 25 miles from the person's place of residence and the person uses the person's personally owned or leased motor vehicle for the travel;]~~

~~[(2) Reimbursement of the transportation expenses of the witness or deponent for going to and returning from the place where the hearing is held or the deposition is taken, if the place is more than 25 miles from the person's place of residence and the person does not use the person's personally owned or leased motor vehicle for the travel;]~~

~~[(3) Reimbursement of the meal and lodging expenses of the witness or deponent while going to and returning from the place where the hearing is held or deposition taken, if the place is more than 25 miles from the person's place of residence;]~~

~~[(4) \$25, or a greater amount prescribed by state agency rule, for each day or part of a day that the person is necessarily present.]~~

~~[(b) A subpoena or commission requiring deposition shall be issued only after deposit with the agency of an amount sufficient to ensure payment of the expenses incident to the subpoena, the attendance of witnesses or deponents, or both.]~~

~~[(c) Requests for issuance of subpoenas or commissions requiring deposition. Requests for issuance of subpoenas or commissions requiring deposition shall be directed to the agency not later than the tenth day before the date the witness or deponent is required to appear. The parties may agree to modify the time period prescribed by this section.~~

§107.50. Filing of Exceptions, Briefs, and Replies.

Exceptions shall be filed within fifteen (15) days after the date of service of the Proposal for Decision. A reply to the exceptions shall be filed within fifteen (15) days of the filing of the exceptions. All SOAH rules regarding exceptions and replies shall govern this section. [Any party of record may, within 20 days after the date of service of a proposal for decision, file exceptions and briefs to the proposal for decision, and replies to such exceptions and briefs may be filed within 15 days after the date for filing of such exceptions and briefs. A request for extension of time within which to file exceptions, briefs, or replies shall be filed with the executive director, and a copy thereof shall be served on all other parties of record by the party making such request. The executive director shall promptly notify the parties of his action upon the same and shall allow additional time only in extraordinary circumstances where the interest of justice so require.]

§107.54. Administrative Finality.

(a) A decision in a contested case is final:

(1) if a motion for rehearing is not filed on time, on the expiration of the period for filing a motion for rehearing;

(2) if a motion for rehearing is filed on time, on the date:

(A) the order overruling the motion for rehearing is rendered; or

(B) the motion is overruled by operation of law.

(3) if the agency finds that an imminent peril to the public health, safety, or welfare requires immediate effect of a decision or order, on the date the decision is rendered, or;

(4) on the date specified in the order for a case in which all parties agree to the specified date in writing or on the record, if the specified date is not before the date the order is signed or later than the 20th day after the date the order was rendered.

(b) If a decision or order is final under subsection (a)(3)~~(4)~~ of this section, the agency must recite in the decision or order the finding made under subsection (a)~~(3)~~~~(4)~~ of this section and the fact that the decision is final and effective on the date rendered.

§107.55. Motions for Rehearing.

(a) A timely motion for rehearing is a prerequisite to an appeal in a contested case, except that a motion for rehearing of a decision or order that is final under §107.54(a)(3) or (4) of this title (relating to Administrative Finality), is not a prerequisite to an appeal.

(b) A decision that is final under §107.54(a)(2), (3), or (4) of this title (relating to Administrative Finality) is appealable.

§107.63. Informal Disposition and Alternative Dispute Resolution.

(a) (No change.)

(b) Approval. The Board Secretary or Executive Director ~~[executive director]~~ shall determine if the public interest would be served by offering to resolve a complaint or other matter pending before the Board by either informal disposition as described in Chapter 2001 et[-] seq., of the Government Code, or by a method of alternative dispute resolution under Chapter 2009 of the Government Code, in lieu of a formal disciplinary proceeding described in the Occupations Code[-] §263.003.

(c) Informal Disposition. Pursuant to Texas [the] Government Code, Chapter 2001 et[-] seq., ultimate disposition of any complaint or matter pending before the Board may be made by stipulation, agreed settlement, or consent order. Under Texas [the] Occupations Code[-] §263.007 and §263.0075, such a disposition may be reached through review at an informal settlement conference, which may take the form of a staff settlement conference or a Board settlement conference.

(1) Board Settlement Conference.

(A) The Board Secretary or Executive Director ~~[executive director]~~ may approve a matter for review at a Board settlement conference.

(B) One or more members of the Board shall represent the full Board at the Board settlement conference.

(C) The Board will provide the licensee notice in writing of the time, date, and place of the settlement conference. Such notification shall inform the licensee: of the nature of the alleged violation; that he or she may be represented by legal counsel; that the licensee may offer the testimony of such witnesses as he or she may desire; that the Board will be represented by one or more of its members and by legal counsel; and that he or she may request that the matter be considered by the Board according to procedures described in Texas Occupations Code, §263.007. The [A copy of the] Board's rules or policies relating to the informal disposition of cases shall be enclosed with the notice of the settlement conference. Notice of the settlement conference, with enclosures, shall be sent by first class United States Mail [certified mail, return receipt requested,-] to the address of record [current address] of the licensee on file with the Board or the licensee's attorney of record.

(D) The settlement conference shall be informal and will not follow the procedure established in State Office of Administrative Hearing (SOAH) rules for contested cases. The licensee, his or her attorney, ~~[and]~~ representative(s) of the Board, and Board staff may question witnesses, make relevant statements, present affidavits or statements of persons not in attendance, and may present such other evidence as may be appropriate. Any documentary evidence received by the Board less than 10 days before the scheduled dates of the settlement conference may [will] not be considered by the panel.

(E) The settlement conference will be conducted by a representative(s) of the Board. The Board's representative may call upon the Board's attorney at any time for assistance in conducting the settlement conference. The Board's representative(s) may question any witness, and shall afford each participant in the settlement conference the opportunity to make such statements as are material and relevant.

(F) The Board's representative(s) may prohibit or limit access to the Board's investigative file by the licensee, his or her attorney, and the complainant and his or her representative.

(G) The Board's representative(s) shall exclude from the settlement conference all persons except the patient or other witnesses; [during their testimony,-] the licensee and[-] his or her attorney;[-] the complainant;[-] Board members;[-] and Board [board] staff.

(H) At the conclusion of the settlement conference, the Board's representative(s) shall make recommendations ~~[to the licensee and consultant]~~ for resolution or correction of any alleged violations of the Dental Practice Act or of the Board rules. Such recommendations may include any disciplinary actions authorized by Texas [the] Occupations Code[-] §263.002. The Board's representative(s) may, on the basis that a violation of the Dental Practice Act or the Board's rules has not been established, either close the case, or refer the case to Board staff for further investigation. Closure of a case by the Board's representative(s) shall be given effect immediately without the necessity of presentation to the full Board.

(I) Board staff shall draft a proposed settlement agreement reflecting the settlement recommendations, which the licensee shall either accept or reject. To accept the settlement recommendations, the licensee must sign the proposed agreed settlement order and return it to the Board ~~[within 30 days from receipt]~~. Inaction by the licensee shall constitute rejection. If the licensee rejects the proposed agreed settlement order, the matter shall be referred to the Board Secretary and Executive Director ~~[executive director]~~ for other appropriate disposition.

(J) Following acceptance and execution of the proposed agreed settlement order by the licensee, said proposed order shall be submitted to the Board's legal counsel, and/or Executive Director ~~[executive director]~~ for review.

(K) The settlement proposal will then be submitted to the entire Board for approval.

(L) A recommendation to close a case requires no further action by the Respondent.

(2) Staff Settlement Conference.

(A) The Board Secretary or Executive Director ~~[executive director]~~ may approve a matter for review at a staff settlement conference.

(B) Staff settlement conferences shall be held by a panel of board employees consisting, at a minimum, of an attorney of the Board, and either the investigator responsible for the case or the Director of Enforcement. A Board member who is able to advise on standard of care issues must participate in any case involving such issues.

(C) The Board will provide the licensee notice in writing of the time, date, and place of the settlement conference. Such notification shall inform the licensee: of the nature of the alleged violation; that he or she may be represented by legal counsel; that the licensee may offer the testimony of such witnesses as he or she may desire; that the Board will be represented by one or more of its members and by legal counsel; and that he or she may request that the matter be considered by the Board according to procedures described in Texas Occupations Code §263.007. The Board's rules or policies relating to the informal

disposition of cases shall be enclosed with the notice of the settlement conference. Notice of the settlement conference, with enclosures, shall be sent by first class United States Mail to the address of record of the licensee on file with the Board or the licensee's attorney of record.

(D) The settlement conference shall be informal and will not follow the procedure established in State Office of Administrative Hearing (SOAH) rules for contested cases. The licensee, his or her attorney, representative(s) of the Board, and Board staff may question witnesses, make relevant statements, present affidavits or statements of persons not in attendance, and may present such other evidence as may be appropriate. Any documentary evidence received by the Board less than 10 days before the scheduled dates of the settlement conference may not be considered by the panel.

(E) The settlement conference will be conducted by a representative(s) of the Board. The Board's representative may call upon the Board's attorney at any time for assistance in conducting the settlement conference. The Board's representative(s) may question any witness, and shall afford each participant in the settlement conference the opportunity to make such statements as are material and relevant.

(F) The Board's representative(s) may prohibit or limit access to the Board's investigative file by the licensee, his or her attorney, and the complainant and his or her representative.

(G) The Board's representative(s) shall exclude from the settlement conference all persons except patients and other witnesses during their testimony, the licensee, his or her attorney, the complainant, Board members, and Board staff.

(H) [~~C~~] At the conclusion of the staff settlement conference, the panel shall make recommendations for resolution or correction of any alleged violations of the Dental Practice Act or of the Board rules. Such recommendations may include any disciplinary actions authorized by Texas [~~the~~] Occupations Code[~~;~~] §263.002. The panel may, on the basis that a violation of the Dental Practice Act or the Board's rules has not been established, either close the case, or refer the case to Board staff for further investigation. Closure of a case by a staff settlement conference shall be given effect immediately without the necessity of presentation to the full Board.

(I) [~~D~~] Board staff shall draft a proposed settlement agreement reflecting the settlement recommendations, which the licensee shall either accept or reject. To accept the settlement recommendations, the licensee must sign a proposed settlement agreement and return it to the Board [~~within 30 days from receipt~~]. Inaction by the licensee shall constitute rejection. If the licensee rejects the proposed agreed settlement order, the matter shall be referred to the Board Secretary and Executive Director [~~executive director~~] for other appropriate disposition.

(J) [~~E~~] Following acceptance and execution of the proposed agreed settlement order by the licensee, said proposed order shall be submitted to the Board's legal counsel, and/or executive director for review.

(K) [~~F~~] A recommendation to close a case requires no further action by the Respondent.

(d) Alternative Dispute Resolution (ADR).

(1) Any ADR procedure used to resolve an internal or external dispute before the Board shall comply with the requirements of Chapter 2009, Texas Government Code, and shall, to the extent possible, comply with any model guidelines issued by the State Office of Administrative Hearings for the use of ADR by state agencies.

(2) Use of ADR In Contested Disciplinary Matters.

(A) The Board Secretary or the Executive Director [~~executive director~~] may refer a contested disciplinary matter to an ADR process to seek resolution or correction of any alleged violations of the Dental Practice Act or of the Board rules. Such ADR processes may include:

(i) any procedure described by Chapter 154, Texas Civil Practice and Remedies Code; or,

(ii) a combination of the procedures described by Chapter 154, Texas Civil Practice and Remedies Code.

(B) Any agreement or recommendation resulting from the application of an ADR process to a contested disciplinary matter shall be documented in written form and signed by the licensee, and legal counsel for the Board and/or the executive director or Board Secretary. Such an agreement or recommendation may include any disciplinary actions authorized by Texas [~~the~~] Occupations Code[~~;~~] §263.002.

(C) If the ADR process results in no agreement or recommendation, the matter shall be referred to the Board Secretary and executive director for other appropriate disposition.

(e) Consideration by the Board.

(1) All proposed agreed settlement orders, agreements or other recommendations shall be reviewed by the full Board for approval.

(2) Upon an affirmative majority vote, the Board shall enter an order approving the proposed agreed settlement order, agreement, or recommendation. Said order shall bear the signature of the Presiding Officer and Board Secretary, or of the officer presiding at such meeting and shall be included in the minutes of the Board.

(3) If the Board does not approve a proposed settlement order, agreement, or recommendation, the licensee shall be so informed. The matter shall be referred by the Board to the Board Secretary and Executive Director for consideration of appropriate action.

(f) Restitution.

(1) Pursuant to Texas [~~the~~] Occupations Code[~~;~~] §263.0075, the Board [~~board~~] may order a licensee to pay restitution to a patient as provided in a proposed agreed settlement order or other agreement or recommendation, instead of or in addition to any administrative penalty.

(2) The amount of restitution ordered may not exceed the amount the patient paid to the licensee for the service or services from which the complaint arose. The Board [~~board~~] shall not require payment of other damages or make an estimation of harm in any order for restitution.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 7, 2010.

TRD-201002481

Sherri Sanders Meek

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: June 20, 2010

For further information, please call: (512) 463-6400

◆ ◆ ◆
22 TAC §107.59

The State Board of Dental Examiners (Board) proposes amendments to §107.59, relating to ex parte consultations. The amendments were suggested by staff and update the section to reflect current law.

Ms. Sherri Sanders Meek, Executive Director, has determined that for each year of the first five years the new section is in effect, the public benefit anticipated as a result of enforcing the proposal will be clarification and accuracy as the amendments implement wording that more accurately reflects current statutory provisions of the Texas Government Code.

Ms. Meek has also determined that for each year of the first five years the amended section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering this section. There is no anticipated economic impact on individuals or small or micro-businesses required to comply with the rules as proposed.

Comments on the proposal may be submitted to Carey A. Olney, staff attorney, State Board of Dental Examiners, 333 Guadalupe Street, Tower 3, Suite 800, Austin, Texas 78701 (by mail), (512) 463-7452 (by fax), or carey.olney@tsbde.state.tx.us (by email). To be considered, comments must be in writing and received by the State Board of Dental Examiners no later than 30 days from the date that this section is published in the *Texas Register*.

The amendment is proposed under Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposal affects Title 3, Subtitle D of the Texas Occupations Code and Title 22, Part 5 of the Texas Administrative Code.

§107.59. Ex Parte Consultations.

(a) Unless required for the disposition of ex parte matters authorized by law, Board members or Board employees [of an agency] assigned to render a decision or to make findings of fact and conclusions of law in a contested case may not communicate, directly or indirectly, in connection with any issue of fact or law with any party or his representative, except on notice and opportunity for all parties to participate.

(b) A Board member or Board employee may communicate ex parte with another Board member or Board employee unless prohibited by other law.

(c) Under the APA, Texas Government Code §2001.090, a Board member or Board employee assigned to render a decision or make findings of fact and conclusions of law in a contested case may communicate ex parte with a Board employee who has not participated in a hearing in the case for the purpose of using the special skills or knowledge of the agency and its staff in evaluating the evidence.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 10, 2010.

TRD-201002482

Sherri Sanders Meek

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: June 20, 2010

For further information, please call: (512) 463-6400



SUBCHAPTER B. PROCEDURES FOR INVESTIGATING COMPLAINTS

22 TAC §107.102

The State Board of Dental Examiners (Board) proposes an amendment to §107.102, relating to procedures for investigating complaints. The amendment was suggested by staff and aligns the wording of the rule with agency process and statutory requirements.

Ms. Sherri Sanders Meek, Executive Director, has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of enforcing the proposal will be clarification, efficiency, and consistency in the agency's investigation process and a more accurate reflection of current statutory provisions in the language of the section.

Ms. Meek has also determined that for each year of the first five years the amended section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering this section. There is no anticipated economic impact on individuals or small or micro-businesses required to comply with the rules as proposed.

Comments on the proposal may be submitted to Carey A. Olney, staff attorney, State Board of Dental Examiners, 333 Guadalupe Street, Tower 3, Suite 800, Austin, Texas 78701 (by mail), (512) 463-7452 (by fax), or carey.olney@tsbde.state.tx.us (by email). To be considered, comments must be in writing and received by the State Board of Dental Examiners no later than 30 days from the date that this section is published in the *Texas Register*.

The amendment is proposed under Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposal affects Title 3, Subtitle D of the Texas Occupations Code and Title 22, Part 5 of the Texas Administrative Code.

§107.102. Procedures for Investigating Complaints.

(a) - (d) (No change.)

(e) The person who filed the complaint and each licensee or registrant who is a subject of the complaint [The parties to the complaint] shall receive notice of the complaint's status, at least quarterly, until final disposition of the complaint, unless such notice would jeopardize an investigation.

(f) - (g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 10, 2010.

TRD-201002483

Sherri Sanders Meek

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: June 20, 2010

For further information, please call: (512) 463-6400



SUBCHAPTER C. ADMINISTRATIVE PENALTIES

22 TAC §107.203

The State Board of Dental Examiners (Board) proposes new §107.203, relating to aggravating and mitigating factors. The new section was suggested by staff and formalizes the process under which aggravating and mitigating factors are considered when the Board considers formal disciplinary action against a licensee or registrant.

Ms. Sherri Sanders Meek, Executive Director, has determined that for each year of the first five years the new section is in effect, the public benefit anticipated as a result of enforcing the proposal will be clarification, efficiency, and consistency in the agency's complaint resolution process. The section will also provide licensees and registrants with a better understanding of the process.

Ms. Meek has also determined that for each year of the first five years the new section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering this section. There is no anticipated economic impact on individuals or small or micro-businesses required to comply with the rules as proposed.

Comments on the proposal may be submitted to Carey A. Olney, staff attorney, State Board of Dental Examiners, 333 Guadalupe Street, Tower 3, Suite 800, Austin, Texas 78701 (by mail), (512) 463-7452 (by fax), or carey.olney@tsbde.state.tx.us (by email). To be considered, comments must be in writing and received by the State Board of Dental Examiners no later than 30 days from the date that this section is published in the *Texas Register*.

The new rule is proposed under Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposal affects Title 3, Subtitle D of the Texas Occupations Code and Title 22, Part 5 of the Texas Administrative Code.

§107.203. Aggravating and Mitigating Factors.

(a) Aggravating Factors. In any disciplinary action, the following may be considered as aggravating factors that warrant more severe or restrictive action by the Board. A Board Order may include a finding of fact on each applicable aggravating factor. Aggravating factors may include:

- (1) harm to one or more patients;
- (2) the severity of patient harm;
- (3) one or more violations that involve more than one patient;
- (4) economic harm to any individual or entity and the severity of such harm;
- (5) increased potential for harm to the public;
- (6) attempted concealment of the act constituting a violation;
- (7) intentional, premeditated, knowing, or grossly negligent act constituting a violation;
- (8) prior similar violations;
- (9) previous disciplinary action by the Board, any government agency, peer review organization, or health care entity;
- (10) violation of a Board Order; or
- (11) other relevant circumstances increasing the seriousness of the misconduct.

(b) Mitigating Factors. In any disciplinary action, the following may be considered as mitigating factors that warrant less severe or restrictive action by the Board. The licensee shall have the burden to present evidence regarding any mitigating factors that may apply in the particular case. A Board Order may include a finding of fact on each applicable mitigating factor:

- (1) self-reported and voluntary admissions of violation(s);
- (2) implementation of remedial measures to correct or mitigate harm from the violation(s);
- (3) acknowledgment of wrongdoing and willingness to cooperate with the Board, as evidenced by acceptance of an Agreed Order;
- (4) rehabilitative potential;
- (5) prior community service and present value to the community;
- (6) other relevant circumstances reducing the seriousness of the misconduct; or
- (7) other relevant circumstances lessening responsibility for the misconduct.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sherri Sanders Meek

Executive Director

State Board of Dental Examiners

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For further information, please call: (512) 463-6400



CHAPTER 108. PROFESSIONAL CONDUCT

SUBCHAPTER A. PROFESSIONAL RESPONSIBILITY

22 TAC §§108.7 - 108.9

The State Board of Dental Examiners (Board or SBDE) proposes amendments to §108.7, relating to the minimum standard of care in the practice of dentistry; §108.8, relating to records of the dentist; and §108.9, relating to dishonorable conduct. The amendments were suggested by staff to clarify provisions relating to standard of care, records of the dentist, and dishonorable conduct.

Ms. Sherri Sanders Meek, Executive Director, has determined that for each year of the first five years the amended sections are in effect, the public benefit anticipated as a result of enforcing the proposals will be that licensees will have a better understanding of these professional requirements. Amendments to §108.7 provide an expanded, though not exhaustive, list of standard of care violations. Amendments to §108.8 clarify requirements regarding records transfer agreements and records maintenance agreements. The amendments also specifically require dentists to provide diagnostic quality x-rays and legible records in response to requests from patients and the SBDE. The amendments do not substantively change the records requirements for dentists, but integrate language that better reflects current in-

terpretation of the section. Amendments to §108.9 implement wording that reflect current statutory provisions.

Ms. Meek has also determined that for each year of the first five years the amended sections are in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering these sections. There is no anticipated economic impact on individuals or small or micro-businesses required to comply with the rules as proposed.

Comments on the proposal may be submitted to Carey A. Olney, staff attorney, State Board of Dental Examiners, 333 Guadalupe Street, Tower 3, Suite 800, Austin, Texas 78701 (by mail), (512) 463-7452 (by fax), or carey.olney@tsbde.state.tx.us (by email). To be considered, comments must be in writing and received by the State Board of Dental Examiners no later than 30 days from the date that these sections are published in the *Texas Register*.

The amendments are proposed under Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The amendments affect Title 3, Subtitle D of the Texas Occupations Code and Title 22, Part 5 of the Texas Administrative Code.

§108.7. *Minimum Standard of Care, General.*

Each dentist licensed by the State Board of Dental Examiners and practicing in Texas shall conduct his/her practice in a manner consistent with that of a reasonable and prudent dentist under the same or similar circumstance. Further, each dentist:

(1) - (6) (No change.)

(7) Shall safeguard patients against avoidable infections as required by this chapter.

(8) Shall not be negligent in the provision of dental services.

(9) Shall use proper diligence in the dentist's practice.

(10) Shall maintain a centralized inventory of drugs.

(11) Shall report patient death or hospitalization as required by this chapter.

(12) Shall abide by sanitation requirements as required by this chapter.

(13) Shall abide by patient termination requirements as required by this chapter.

§108.8. *Records of the Dentist.*

(a) - (c) (No change.)

(d) Dental records are the sole property of the dentist who performs the dental service. However, ownership of original dental records may be transferred as provided in this section. Copies of dental records shall be made available to a dental patient in accordance with this section. [Such records shall be available for inspection by the patient after and upon appointment with a dentist. This shall not prohibit the transfer of a copy of records to the patient, or to an agreed designated consultant for ascertainment of facts, nor transfer of original records to another Texas dental licensee who will provide treatment to the patient. The transferring dentist shall retain a copy of the written record if such original transfer is made.]

(e) A dentist who leaves a location or practice, whether by retirement, sale, transfer, termination of employment or otherwise, shall [either] maintain all dental records belonging to him or her, make a written transfer of records to the succeeding dentist, or make a written

agreement for the maintenance of records. ~~and the State Board of Dental Examiners shall be notified within 15 days of any such event, giving full information concerning the dentists and location(s) involved. A maintenance of records agreement shall not transfer ownership of the dental records, but shall require: that the dental records be maintained in accordance with the laws of the State of Texas and the Rules of the State Board of Dental Examiners; and that the dentist(s) performing the service(s) recorded shall have access to and control of the records for purposes of inspection and copying. A transfer of records may be made by agreement at any time in an employment or other working relationship between a dentist and another entity. Such transfer of records may apply to all or any part of the dental records generated in the course of the relationship, including future dental records.]~~

(1) A dentist who continues to maintain the dental records belonging to him or her shall personally maintain the dental records in accordance with the laws of the State of Texas and this chapter.

(2) A dentist who enters into a written transfer of records agreement shall notify the State Board of Dental Examiners in writing within fifteen (15) days of a records transfer agreement. The notification shall include, at a minimum, the full names of the dentists involved in the agreement, include the locations involved in the agreement, and specifically identify what records are involved in the agreement. The agreement shall transfer ownership of the records. A transfer of records agreement may be made by agreement at any time in an employment or other working relationship between a dentist and another entity. Such transfer of records may apply to all or any part of the dental records generated in the course of the relationship, including future dental records.

(3) A dentist who enters into a records maintenance agreement shall notify the State Board of Dental Examiners within fifteen (15) days of such event. The notification shall include the full names of the dentists involved in the agreement, the locations involved in the agreement, and shall identify what records are involved in the agreement. A maintenance agreement shall not transfer ownership of the dental records, but shall require that the dental records be maintained in accordance with the laws of the State of Texas and the Rules of the State Board of Dental Examiners. The agreement shall require that the dentist(s) performing the dental service(s) recorded in the records have access to and control of the records for purposes of copying and recording. The dentist transferring the records in a records maintenance agreement shall maintain a copy of the records involved in the records maintenance agreement. Such an agreement may be made by written agreement by the parties at any time in an employment or other working relationship between a dentist and another entity. A records maintenance agreement may apply to all or any part of the dental records generated in the course of the relationship, including future dental records.

(f) Dental records shall be made available for inspection and reproduction on demand by the officers, agents, or employees of the State Board of Dental Examiners. The patient's privilege against disclosure does not apply to the Board in a disciplinary investigation or proceeding under the Dental Practice Act. Copies of dental records submitted to the Board on demand of the officers, agents, or employees of the Board shall be legible and all copies of dental x-rays shall be of diagnostic quality. Non-diagnostic quality copies of dental x-rays and illegible copies of patient records submitted to the Board shall not fulfill the requirements of this section.

(g) A dentist shall furnish copies of dental records to a patient who requests his or her dental records. At the patient's option, the copies may be submitted to the patient directly or to another Texas dental licensee who will provide treatment to the patient. Requested copies, including radiographs, shall be furnished within 30 days of the date of the request. The copies may be withheld until copying costs

have been paid. Records shall not be ~~provided however, that copies need not be released until payment of copying costs has been made. Records may not be~~ withheld based on a past due account for dental care or treatment previously rendered to the patient. Copies of dental records submitted in accordance with a request under this section shall be legible and all copies of dental x-rays shall be of diagnostic quality. Non-diagnostic quality copies of dental x-rays shall not fulfill the requirements of this section.

(1) - (4) (No change.)

§108.9. Dishonorable Conduct.

The dishonorable conduct section is intended to protect the public from dangerous, unethical, and illegal conduct of licensees. The purpose of this section is to identify unprofessional or dishonorable behaviors of a licensee which the Board believes are likely to pose a threat to the public. Actual injury to a patient need not be established for a licensee to be in violation of this section. Behavior constituting dishonorable conduct includes, but is not limited to ~~[A licensee is in violation of this rule if he or she]:~~

(1) Criminal conduct--including but not limited to conviction of a misdemeanor involving fraud or a felony under federal law or the law of any state as outlined in Chapter 101 of this title.

~~[(1) Aids or abets in the violation of a criminal statute or participates in a conspiracy to procure (by corruption, fraud, misrepresentation, or bribery, or both) a dental license for an unqualified person.]~~

(2) Deception or misrepresentation--engages in deception or misrepresentation:

(A) in soliciting or obtaining patronage; or

(B) in obtaining a fee.

(3) Fraud in obtaining a license--obtains a license by fraud or misrepresentation or participates in a conspiracy to procure a license, registration, or certification for an unqualified person.

(4) Misconduct involving drugs or alcohol--actions or conduct that include, but are not limited to:

(A) ~~[(2)]~~ providing ~~[Provides]~~ dental services to a patient while the licensee is impaired through the use of drugs, narcotics, or alcohol;[-]

(B) addicted to or habitually intemperate in the use of alcoholic beverages or drugs;

(C) improperly obtained, possessed, or used habit-forming drugs or narcotics including self-prescription of drugs;

(D) ~~[(3)]~~ grossly ~~[Grossly]~~ over prescribes, dispenses, or administers narcotic drugs, dangerous drugs, or controlled substances;[-]

(E) ~~[(4)]~~ prescribes ~~[Prescribes]~~, dispenses, or administers narcotic drugs, dangerous drugs, or controlled substances to or for a person who is not his or her dental patient;[-] or ~~[not for a dental purpose.]~~

(F) prescribes, dispenses, or administers narcotic drugs, dangerous drugs, or controlled substances to a person for a non-dental purpose, whether or not the person is a dental patient.

(5) Assisting another in engaging in the unauthorized practice of dentistry or dental hygiene--holds a dental license and employs, permits, or has employed or permitted a person not licensed to practice dentistry to practice dentistry in an office of the dentist that is under the dentist's control or management.

(6) Failure to comply with applicable laws, rules, regulations, and orders--violates or refuses to comply with a law relating to the regulation of dentists, dental hygienists, or dental assistants; fails to cooperate with a Board investigation; or fails to comply with the terms of a Board Order.

(7) Inability to practice safely--is physically or mentally incapable of practicing in a manner that is safe for the person's dental patients.

(8) Discipline of a licensee by another state board--holds a license or certificate to practice dentistry or dental hygiene in another state and the examining board of that state:

(A) reprimands the person;

(B) suspends or revokes the person's license or certificate or places the person on probation; or

(C) imposes another restriction on the person's practice.

(9) Failure to comply with Medicaid, insurance, or other regulatory laws--knowingly provides or agrees to provide dental care in a manner that violates a federal or state law that:

(A) regulates a plan to provide, arrange for, pay for, or reimburse any part of the cost of dental care services; or

(B) regulates the business of insurance.

(10) Improper delegation--improperly delegates any task to any individual who is not permitted to perform the task by law, this chapter, or practice restrictions imposed by Board Order.

~~[(5) Indicates a fee for dental services on an insurance or other third party reimbursement claim form which is other than the fee which the dentist expects to collect for services rendered.]~~

(11) ~~[(6)]~~ Unprofessional conduct engages ~~[Engages]~~ in conduct that has become established through professional experience as likely to disgrace, degrade, or bring discredit upon the licensee or the dental profession.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sherri Sanders Meek

Executive Director

State Board of Dental Examiners

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For further information, please call: (512) 463-6400



CHAPTER 114. EXTENSION OF DUTIES OF AUXILIARY PERSONNEL--DENTAL ASSISTANTS

22 TAC §114.10

The State Board of Dental Examiners (Board) proposes new §114.10, relating to dishonorable conduct. The new section was suggested by staff to clearly delineate the professional conduct requirements of dental assistants.

Ms. Sherri Sanders Meek, Executive Director, has determined that for each year of the first five years the new section is in effect,

the public benefit anticipated as a result of enforcing the proposal will be that dental assistants will have a better understanding of their professional responsibility requirements.

Ms. Meek has also determined that for each year of the first five years the new section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering this section. There is no anticipated economic impact on individuals or small or micro-businesses required to comply with the rule as proposed.

Comments on the proposal may be submitted to Carey A. Olney, staff attorney, State Board of Dental Examiners, 333 Guadalupe Street, Tower 3, Suite 800, Austin, Texas 78701 (by mail), (512) 463-7452 (by fax), or carey.olney@tsbde.state.tx.us (by email). To be considered, comments must be in writing and received by the State Board of Dental Examiners no later than 30 days from the date that this section is published in the *Texas Register*.

The new section is proposed under Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The new section affects Title 3, Subtitle D of the Texas Occupations Code and Title 22, Part 5 of the Texas Administrative Code.

§114.10. Dishonorable Conduct.

The dishonorable conduct section is intended to protect the public from dangerous, unethical, and illegal conduct of licensees and registrants. The purpose of this section is to identify unprofessional or dishonorable behaviors of a dental assistant which the Board believes are likely to pose a threat to the public. Actual injury to a patient need not be established for a dental assistant to be in violation of this section. Behavior constituting dishonorable conduct includes, but is not limited to:

(1) Criminal conduct--including but not limited to conviction of a misdemeanor involving fraud or a felony under federal law or the law of any state as outlined in Chapter 101 of this title.

(2) Deception or misrepresentation--engages in deception or misrepresentation:

(A) in soliciting or obtaining patronage; or

(B) in obtaining a fee.

(3) Fraud in obtaining a license, registration, or certification--obtains a registration or certification by fraud or misrepresentation or participates in a conspiracy to procure a license, registration, or certification for an unqualified person.

(4) Misconduct involving drugs or alcohol--actions or conduct that include, but are not limited to:

(A) providing dental services to a patient while the dental assistant is impaired through the use of drugs, narcotics, or alcohol;

(B) addicted to or habitually intemperate in the use of alcoholic beverages or drugs; or

(C) improperly obtained, possessed, or used habit-forming drugs or narcotics.

(5) Failure to comply with applicable laws, rules, regulations, and orders--violates or refuses to comply with a law relating to the regulation of dentists, dental hygienists, or dental assistants; fails to cooperate with a Board investigation; or fails to comply with the terms of a Board Order.

(6) Inability to practice safely--is physically or mentally incapable of practicing in a manner that is safe for the person's dental patients.

(7) Discipline of a licensee by another state board--holds a license or certificate to practice dentistry or dental hygiene in another state and the examining board of that state:

(A) reprimands the person;

(B) suspends or revokes the person's license or certificate or places the person on probation; or

(C) imposes another restriction on the person's practice.

(8) Unprofessional conduct--engages in conduct that has become established through professional experience as likely to disgrace, degrade, or bring discredit upon the licensee or the dental profession.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sherri Sanders Meek

Executive Director

State Board of Dental Examiners

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For further information, please call: (512) 463-6400



CHAPTER 115. EXTENSION OF DUTIES OF AUXILIARY PERSONNEL--DENTAL HYGIENE

22 TAC §115.9

The State Board of Dental Examiners (Board) proposes new §115.9, relating to dishonorable conduct. The new section was suggested by staff to clearly delineate the professional conduct requirements of dental hygienists.

Ms. Sherri Sanders Meek, Executive Director, has determined that for each year of the first five years the new section is in effect, the public benefit anticipated as a result of enforcing the proposal will be that licensees will have a better understanding of their professional responsibility requirements.

Ms. Meek has also determined that for each year of the first five years the new section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering this section. There is no anticipated economic impact on individuals or small or micro-businesses required to comply with the rule as proposed.

Comments on the proposal may be submitted to Carey A. Olney, staff attorney, State Board of Dental Examiners, 333 Guadalupe Street, Tower 3, Suite 800, Austin, Texas 78701 (by mail), (512) 463-7452 (by fax), or carey.olney@tsbde.state.tx.us (by email). To be considered, comments must be in writing and received by the State Board of Dental Examiners no later than 30 days from the date that this section is published in the *Texas Register*.

The new section is proposed under Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The new section affects Title 3, Subtitle D of the Texas Occupations Code and Title 22, Part 5 of the Texas Administrative Code.

§115.9. Dishonorable Conduct.

The dishonorable conduct section is intended to protect the public from dangerous, unethical, and illegal conduct of licensees. The purpose of this section is to identify unprofessional or dishonorable behaviors of a licensee which the Board believes are likely to pose a threat to the public. Actual injury to a patient need not be established for a licensee to be in violation of this section. Behavior constituting dishonorable conduct includes, but is not limited to:

(1) Criminal conduct--including but not limited to conviction of a misdemeanor involving fraud or a felony under federal law or the law of any state as outlined in Chapter 101 of this title.

(2) Deception or misrepresentation--engages in deception or misrepresentation:

(A) in soliciting or obtaining patronage; or

(B) in obtaining a fee.

(3) Fraud in obtaining a license--obtains a license by fraud or misrepresentation or participates in a conspiracy to procure a license, registration, or certification for an unqualified person.

(4) Misconduct involving drugs or alcohol--actions or conduct that include, but are not limited to:

(A) providing dental services to a patient while the licensee is impaired through the use of drugs, narcotics, or alcohol;

(B) addicted to or habitually intemperate in the use of alcoholic beverages or drugs; or

(C) improperly obtained, possessed, or used habit-forming drugs or narcotics.

(5) Failure to comply with applicable laws, rules, regulations, and orders--violates or refuses to comply with a law relating to the regulation of dentists, dental hygienists, or dental assistants; fails to cooperate with a Board investigation; or fails to comply with the terms of a Board Order.

(6) Inability to practice safely--is physically or mentally incapable of practicing in a manner that is safe for the person's dental patients.

(7) Discipline of a licensee by another state board--holds a license or certificate to practice dentistry or dental hygiene in another state and the examining board of that state:

(A) reprimands the person;

(B) suspends or revokes the person's license or certificate or places the person on probation; or

(C) imposes another restriction on the person's practice.

(8) Unprofessional conduct--engages in conduct that has become established through professional experience as likely to disgrace, degrade, or bring discredit upon the licensee or the dental profession.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sherri Sanders Meek

Executive Director

State Board of Dental Examiners

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For further information, please call: (512) 463-6400

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PART 11. TEXAS BOARD OF NURSING

CHAPTER 211. GENERAL PROVISIONS

22 TAC §211.6

INTRODUCTION. The Texas Board of Nursing (Board) proposes an amendment §211.6 (relating to Committees of the Board). The proposed amendment is necessary to implement Senate Bill (SB) 1415, enacted by the 81st Legislature, Regular Session, effective September 1, 2009, which adds new §301.1607 to the Occupations Code Chapter 301.

SB 1415 enacts a significant change to the Nursing Practice Act (Chapter 301) that affects the regulation of individuals subject to Chapter 301. SB 1415 adds new §301.1607 to Chapter 301. This new section authorizes the deferral of final disciplinary actions against individuals as an alternative method of resolving certain violations of the Nursing Practice Act and Board rules. Specifically, SB 1415 directs the Board to determine the feasibility of conducting a pilot program to evaluate the efficacy and effect of deferring a final disciplinary action against an individual for minor violations of the Nursing Practice Act and Board rules. Further, if the Board determines that such a pilot program is feasible, SB 1415 requires the Board to develop and implement the pilot program no later than February 1, 2011. SB 1415 also establishes several parameters for the pilot program. Additionally, SB 1415 requires the Board to appoint an advisory committee to assist the Board in overseeing the pilot program and its evaluation. The advisory committee must include representatives of public advocacy organizations.

The Board reviewed the requirements of SB 1415 at its October, 2009, and January, 2010, meetings. At that time, the Board identified several factors that were relevant to its determination of the feasibility of a pilot program under SB 1415. First, the Board reviewed the results of a nationwide survey of other state boards of nursing. The survey was conducted to determine if any other state nursing board had implemented a program similar to the pilot program contemplated by SB 1415. The Board also considered the expungement programs of other state boards of nursing for comparison. Second, the Board considered the mandatory reporting requirements of the Nurse Licensure Compact, authorized under the Occupations Code Chapter 304, and the rules regarding membership of the Compact, as set forth in Chapter 220 of this title (relating to Nurse Licensure Compact), in conjunction with the confidentiality requirements of SB 1415. Third, the Board considered the mandatory reporting requirements of the national Healthcare Integrity and Protection Data Bank (HIPDB), in conjunction with the confidentiality provisions of SB 1415. Finally, the Board considered the recommendations of the Eligibility and Disciplinary Advisory Committee, who convened on September 17, 2009, and December 7, 2009, to consider the provisions of SB 1415 and to discuss the feasibility of a deferred disciplinary action pilot program. After carefully considering these factors, the Board determined that the pilot program would be feasible. The Board approved the feasibility of the pilot program at its January, 2010, meeting. Further, the Board approved the adoption of new rules to implement the pilot program at its April, 2010, meeting. The Board is proposing new §213.34 of this title (relating to Deferred Disciplinary Action Pilot Program) to establish the parameters and limitations of the pilot program, as determined necessary by the Board. New §213.34 is being proposed elsewhere in this issue of the *Texas Register*.

The Board is proposing new §211.6(f)(1)(E) in order to implement the oversight requirements of SB 1415. SB 1415 requires the Board to appoint an advisory committee to assist the Board in overseeing the pilot program and its evaluation. Pursuant to the requirements of SB 1415, proposed new §211.6(f)(1)(E) creates the Deferred Disciplinary Action Pilot Program Advisory Committee (Committee). This new advisory committee is being created to assist the Board in overseeing and evaluating the pilot program under §213.34 of this title. The new advisory committee under proposed new §211.6(f)(1)(E) will be abolished when the pilot program under SB 1415 comes to an end, but in no event later than January 1, 2014. This proposed new requirement is consistent with the provisions of SB 1415, which provide that the pilot program shall conclude no later than January 1, 2014. The proposed new subparagraph also prescribes the members of the new advisory committee. Specifically, proposed new §211.6(f)(1)(E) provides that the new advisory committee will be comprised of representatives from the following stakeholder groups: (i) Texas Association of Vocational Nurse Educators (TAVNE); (ii) Licensed Vocational Nurses Association of Texas (LVNAT); (iii) Texas League of Vocational Nurses (TLVN); (iv) Texas Organization of Associate Degree Nursing (TOADN); (v) Texas Organization of Baccalaureate and Graduate Nurse Educators (TOBGNE); (vi) Texas Nurses Association (TNA); (vii) Texas Organization of Nurse Executives (TONE); and (viii) Coalition for Nurses in Advanced Practice. Additionally, the new advisory committee will be comprised of members of public advocacy organizations and other members as approved by the Board. The proposed membership of the new advisory committee generally mirrors the membership of the Board's existing Eligibility and Disciplinary Advisory Committee. The Eligibility and Disciplinary Advisory Committee was originally formed to develop recommendations for the Board concerning matters of nursing eligibility and discipline. Over time, the Eligibility and Disciplinary Advisory Committee has served to educate stakeholders as to the unique value of the Board in the protection of the public health and welfare through its discussions regarding nursing eligibility and discipline. The pilot program under SB 1415 is a new concept in nursing discipline. To the Board's knowledge, no other state board of nursing has implemented such a program. As such, the obstacles associated with implementing such a program have yet to be encountered and the success of such a program has yet to be measured. Because the pilot program will involve similar issues to those that are reviewed and considered regularly by the Eligibility and Disciplinary Advisory Committee, the Board has determined that the members of the Eligibility and Disciplinary Advisory Committee are in a unique position to provide valuable insight into the pilot program. Further, the members of the Eligibility and Disciplinary Advisory Committee are familiar with the requirements of SB 1415 and the pilot program, as the Eligibility and Disciplinary Advisory Committee considered the feasibility of the pilot program at its September 17, 2009, and December 7, 2009, meetings and made recommendations to the Board regarding its implementation. As such, the Board has determined that the membership of both advisory committees should overlap, thereby ensuring a continuing discussion and exchange of ideas and concepts involving deferred nursing discipline. The proposed new advisory committee will also include members of public advocacy organizations, which is required by SB 1415. These members will bring a new perspective to nursing discipline and will add value to the discussions and recommendations of the new advisory committee. Finally, the Board may appoint members to the new advisory committee as needed. Because advisory committee members serve in a

voluntary role, situations commonly arise in which members are unable to continue their service on a committee. In such situations, the Board must be able to appoint additional members so that the work of a committee can continue. Additionally, as the work of advisory committees become more specialized and technical, the Board finds it helpful, at times, to appoint additional members that have specialized knowledge that is relevant to the work of a committee. Maintaining the flexibility to appoint additional committee members provides the Board the opportunity to grow the expertise of its advisory committees, which should result in more informed committee recommendations and more effective regulation.

Section-by-Section Overview. Proposed new §211.6(f)(1)(E) creates the Deferred Disciplinary Action Pilot Program Advisory Committee to assist the Board in overseeing and evaluating the deferred disciplinary action pilot program under §213.34 of this title. Further, proposed new §211.6(f)(1)(E) provides that the Committee shall be abolished when the deferred disciplinary action pilot program under §213.34 of this title comes to an end, but in no event later than January 1, 2014. Finally, proposed new §211.6(f)(1)(E) states that the Committee will be comprised of representatives from the following: (i) Texas Association of Vocational Nurse Educators (TAVNE); (ii) Licensed Vocational Nurses Association of Texas (LVNAT); (iii) Texas League of Vocational Nurses (TLVN); (iv) Texas Organization of Associate Degree Nursing (TOADN); (v) Texas Organization of Baccalaureate and Graduate Nurse Educators (TOBGNE); (vi) Texas Nurses Association (TNA); (vii) Texas Organization of Nurse Executives (TONE); (viii) Coalition for Nurses in Advanced Practice; and (ix) other members approved by the Board, including members of public advocacy organizations.

FISCAL NOTE. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposal will be in effect, there will be no additional fiscal implications for state or local government as a result of implementing the proposal.

PUBLIC BENEFIT/COST NOTE. Ms. Thomas has also determined that for each year of the first five years the proposal is in effect, the anticipated public benefit will be the adoption of requirements that: (i) implement SB 1415; (ii) provide the Board with assistance in overseeing and evaluating the pilot program; and (iii) ensure the protection of the public health, safety, and welfare.

SB 1415 provides individuals with an opportunity to resolve certain violations of the Nursing Practice Act and Board rules through a less punitive process than traditional Board discipline. Under SB 1415, individuals will be able to resolve minor violations of the Nursing Practice Act and Board rules through a deferred disciplinary action. The Board is proposing new §213.34 of this title to establish the parameters and limitations of the deferred disciplinary action pilot program. The Board is proposing new §211.6(f)(1)(E) to establish a new advisory committee to assist the Board in overseeing and evaluating the pilot program under new §213.34 of this title.

A deferred disciplinary action pilot program is a new concept in nursing discipline. To the Board's knowledge, no other state board of nursing has implemented such a program. As such, the Board may encounter complications or obstacles associated with the implementation, evaluation, and oversight of the pilot program. The new advisory committee is designed to assist the Board in its task of overseeing and evaluating the pilot program. The new advisory committee will be comprised of members with experience and expertise in nursing practice, education, and dis-

cipline. Several of the members of the new advisory committee may also have additional technical and subject matter expertise in areas relevant to the pilot program, such as the remediation of nursing practice errors. The Board anticipates relying on the expertise of these members to identify goals for the pilot program; to identify potential complications; to create benchmarks for measuring the effectiveness of the program; to identify the successes and failures of the pilot program; and to formulate new ideas for improving the success of the pilot program. By working in collaboration with the new advisory committee, the Board anticipates that it will be better able to respond to unanticipated complications; identify areas that require change; monitor the effectiveness of the pilot program; and facilitate the success of the pilot program.

Under the Occupations Code §301.1607 and proposed new §211.6(f)(1)(E), an individual may be appointed to serve on the Committee as a representative of one of the following stakeholder groups: (i) Texas Association of Vocational Nurse Educators (TAVNE); (ii) Licensed Vocational Nurses Association of Texas (LVNAT); (iii) Texas League of Vocational Nurses (TLVN); (iv) Texas Organization of Associate Degree Nursing (TOADN); (v) Texas Organization of Baccalaureate and Graduate Nurse Educators (TOBGNE); (vi) Texas Nurses Association (TNA); (vii) Texas Organization of Nurse Executives (TONE); and (viii) Coalition for Nurses in Advanced Practice. Additionally, an individual may be appointed to serve on the Committee as the representative of a public advocacy organization. Additional individuals may also be appointed to serve on the Committee as deemed necessary by the Board. No individual, however, is required by law to serve on the Committee. Rather, an individual who is appointed to serve on the Committee does so on a purely voluntary basis. There may be costs, however, associated with serving as a member of the Committee. The total probable costs associated with proposed new §211.6(f)(1)(E) may vary substantially among Committee members depending upon the following factors: (i) a member's proximity to Austin, Texas, where the Committee meetings will be held; (ii) a member's travel costs, including costs for lodging, meals, airfare or mileage; (iii) the frequency and duration of the Committee meetings; and (iv) whether a Committee member is reimbursed by his or her sponsoring organization for his or her incurred expenses. The Board anticipates that the Committee will meet in Austin, Texas, at least twice a year. Further, the Board anticipates that each Committee meeting will only last one day. Committee members that reside outside of Austin, Texas, can be expected to incur higher travel costs than those Committee members residing in Austin, Texas, or in the surrounding areas. Committee members are not compensated or reimbursed by the Board for their incurred costs in serving on the Committee. However, an individual's sponsoring organization may reimburse a Committee member for his or her incurred costs as it deems necessary. Further, each Committee member has the information necessary to estimate his or her own costs. Any other costs associated with proposed new §211.6(f)(1)(E) result from the legislative enactment of §301.1607 and are not a result of the adoption, enforcement, or administration of the proposal.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposal will not have an adverse economic effect on any person required to comply with the proposal because no person required to comply with the requirements of the proposal meets the definition of a small or

micro business under the Government Code §2006.001(1) or §2006.001(2). The Government Code §2006.001(1) defines a micro business as a legal entity, including a corporation, partnership, or sole proprietorship that: (i) is formed for the purpose of making a profit; (ii) is independently owned and operated; and (iii) has not more than 20 employees. The Government Code §2006.001(2) defines a small business as a legal entity, including a corporation, partnership, or sole proprietorship, that: (i) is formed for the purpose of making a profit; (ii) is independently owned and operated; and (iii) has fewer than 100 employees or less than \$6 million in annual gross receipts. Each of the elements in §2006.001(1) and §2006.001(2) must be met in order for an entity to qualify as a micro business or small business. The proposal establishes a new advisory committee to provide assistance to the Board. The Committee will be comprised of individuals who represent specified stakeholder organizations. An individual's participation in the Committee is purely voluntary. Further, as has been stated in the Public Benefit/Cost Note section of this proposal, any costs associated with the proposal may be incurred by the individual members of the Committee. Because individuals are not independently owned and operated legal entities that are formed for the purpose of making a profit, no individual qualifies as a micro business or small business under the Government Code §2006.001(1) or §2006.001(2). Therefore, in accordance with the Government Code §2006.002(c) and (f), the Board is not required to prepare a regulatory flexibility analysis.

TAKINGS IMPACT ASSESSMENT. The Board has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 5:00 p.m. on June 21, 2010, to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.state.tx.us, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

STATUTORY AUTHORITY. The amendment is proposed under the Occupations Code §301.1607 and §301.151.

Section 301.1607(a) defines "deferred disciplinary action" as a final disciplinary action against a person licensed or regulated under the Occupations Code Chapter 301 that is deferred by the Board as provided by §301.1607.

Section 301.1607(b) requires the Board, not later than February 1, 2010, to determine the feasibility of conducting a pilot program designed to evaluate the efficacy and effect on the public's protection of Board deferral of disciplinary action against a person licensed or regulated under Chapter 301 in cases in which the Board proposes to impose a sanction other than a reprimand or a denial, suspension, or revocation of a license. Further, if the Board determines the pilot program is feasible, §301.1607(b) requires the Board to develop and implement the pilot program not later than February 1, 2011. Additionally, the pilot program must conclude not later than January 1, 2014.

Section 301.1607(c) states that the pilot program may not include cases in which the Board proposes to issue a reprimand or to deny, suspend, or revoke a license.

Section 301.1607(d) states that, during the time the pilot program is implemented and for any action or complaint for which the Board proposes to impose a sanction other than a reprimand or a denial, suspension, or revocation of a license, the Board may: (i) defer final disciplinary action the Board has proposed against a person licensed or regulated under Chapter 301 if the person conforms to conditions imposed by the Board, including any condition the Board could impose as a condition of probation under §301.468; and (ii) if the person successfully meets the imposed conditions, dismiss the complaint.

Section 301.1607(e) states that, except as otherwise provided by §301.1607(e), a deferred disciplinary action by the Board under the pilot program is not confidential and is subject to disclosure in accordance with the Government Code Chapter 552. If the person successfully meets the conditions imposed by the Board in deferring final disciplinary action and the Board dismisses the action or complaint, the deferred disciplinary action of the Board is confidential to the same extent as a complaint filed under §301.466.

Section 301.1607(f) provides that the Board may treat a deferred disciplinary action taken against a nurse under §301.1607 as a prior disciplinary action against the nurse when considering the imposition of a sanction for a subsequent violation of Chapter 301 or a rule or order adopted under Chapter 301.

Section 301.1607(g) states that the Board may contract with a third party to evaluate the pilot program established under §301.1607.

Section 301.1607(h) states that the Board shall appoint an advisory committee to assist the Board in overseeing the pilot program and its evaluation. Further, the committee must include representatives of public advocacy organizations.

Finally, §301.1607(i) states that §301.1607 expires September 1, 2014.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Rule §211.6, Statute §301.1607 and §301.151.

§211.6. *Committees of the Board.*

(a) - (e) (No change.)

(f) *Advisory Committees.* The president may appoint, with the authorization of the board, advisory committees for the performance of such activities as may be appropriate or required by law.

(1) The board has established the following committees that advise the board on a continuous basis or as charged by the Board:

(A) - (D) (No change.)

(E) the Deferred Disciplinary Action Pilot Program Advisory Committee (DDAPPAC) assists the Board in overseeing and evaluating the deferred disciplinary action pilot program under §213.34 of this title (relating to Deferred Disciplinary Action Pilot Program). The DDAPPAC shall be abolished when the deferred disciplinary action pilot program under §213.34 of this title comes to an end, but in

no event later than January 1, 2014. The DDAPPAC is comprised of representatives from the following:

(i) Texas Association of Vocational Nurse Educators (TAVNE);

(ii) Licensed Vocational Nurses Association of Texas (LVNAT);

(iii) Texas League of Vocational Nurses (TLVN);

(iv) Texas Organization of Associate Degree Nursing (TOADN);

(v) Texas Organization of Baccalaureate and Graduate Nurse Educators (TOBGNE);

(vi) Texas Nurses Association (TNA);

(vii) Texas Organization of Nurse Executives (TONE);

(viii) Coalition for Nurses in Advanced Practice;

and

(ix) other members approved by the Board, including members of public advocacy organizations.

(2) - (12) (No change).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 4, 2010.

TRD-201002346

Jena Abel

Assistant General Counsel

Texas Board of Nursing

Earliest possible date of adoption: June 20, 2010

For further information, please call: (512) 305-6822



CHAPTER 213. PRACTICE AND PROCEDURE

22 TAC §213.30

INTRODUCTION. The Texas Board of Nursing (Board) proposes amendments to §213.30 (relating to Declaratory Order of Eligibility for Licensure). The amendments are proposed under the Occupations Code §§53.101 - 53.105, 301.257, and 301.151 and are necessary to: (i) implement House Bill (HB) 963, enacted by the 81st Legislature, Regular Session, effective June 19, 2009, which adds new Subchapter D to the Occupations Code Chapter 53; and (ii) enhance consistency among Board rules related to eligibility determinations.

Background

HB 963 enacts a significant change to the Occupations Code Chapter 53 that affects occupational license eligibility. HB 963 adds new Subchapter D, §53.101 - §53.105, to Chapter 53. This new subchapter authorizes an individual to request a "criminal history evaluation letter" from a licensing authority if the individual is enrolled, or plans to enroll, in an educational program that prepares the individual for initial licensure, or is planning to take an examination for initial licensure, and has reason to believe he or she is ineligible for licensure due to a conviction or a deferred adjudication for a felony or misdemeanor offense. Pursuant to HB 963, an individual's request must state the basis for the po-

tential ineligibility. HB 963 also prescribes certain requirements that a licensing authority must meet once it receives a request for a criminal history evaluation letter from an individual. First, if a licensing authority determines that a ground for ineligibility does not exist, the authority must notify the individual in writing of the authority's determination on each ground of potential ineligibility. Second, if a licensing authority determines that an individual is ineligible for a license, the licensing authority must issue a letter setting out each basis for potential ineligibility and the authority's determination as to the individual's eligibility. Third, a licensing authority must issue an eligibility determination no later than 90 days after the date the authority first receives the individual's request. These new provisions were modeled after the Occupations Code §301.257, which has been part of the Nursing Practice Act (the Occupations Code Chapter 301) since 1999 (added by HB 3155, 76th Legislature, Regular Session, effective September 1, 1999). Unlike the Nursing Practice Act, however, Chapter 53 applies to all occupational licensing agencies.

Although similar in nature, a few substantive differences exist between new Subchapter D, added by HB 963, and §301.257. First, §301.257 contemplates the issuance of a final eligibility order, while new Subchapter D references a "criminal history evaluation letter". Second, an individual may request an eligibility determination from the Board under §301.257 for any reason, including an individual's mental health status, prior criminal history, or chemical dependency. However, an individual may only request an eligibility determination from a licensing authority under new Subchapter D for an individual's prior criminal history. Third, if the Board proposes to find that an individual is ineligible for licensure under §301.257, the individual is entitled to a formal hearing at the State Office of Administrative Hearings. New Subchapter D provides no such right for an individual seeking an eligibility determination pursuant to its provisions. Finally, §301.257 does not require the Board to issue an eligibility determination within a specified period of time. However, new Subchapter D requires a licensing authority to issue an eligibility determination within 90 days after the receipt of an individual's request.

The Board is subject to the requirements of both §301.257 and new Subchapter D. The Board considered the requirements of HB 963 at its April, 2010, meeting. At that time, the Board compared the provisions of new Subchapter D to the provisions of §301.257. The Board also reviewed its internal procedures for investigating and resolving requests for eligibility determinations under §301.257. The Board determined that the provisions of §301.257 were generally more stringent than those of new Subchapter D. As a result, the Board determined that its existing procedures and requirements for investigating and resolving requests for eligibility determinations under §301.257 would meet the provisions of new Subchapter D, with one exception. New Subchapter D imposes a 90 day deadline in which a licensing authority must render an eligibility determination. Section 301.257 contains no such comparable provision. As a result, the Board determined that it would need to implement new procedures to ensure compliance with this provision of new Subchapter D.

The Board estimates that it should be able to issue a final eligibility determination within 4 - 6 weeks after receiving an individual's request and supporting documentation. Currently, it takes the Board substantially longer to issue final eligibility determinations. This is primarily because individuals submit incomplete information to the Board, and the Board must request additional documentation before being able to complete the investigation of the individual's eligibility. For example, the Board requires an

individual seeking an eligibility determination related to the individual's prior criminal history to submit copies of indictments, orders of deferred adjudication, judgments, probation records, and evidence of completion of probation, as applicable. Without these documents, the Board cannot make an informed decision regarding the individual's eligibility for licensure. If an individual does not timely submit these documents to the Board, the Board must postpone its investigation and eligibility determination until it receives the required documentation from the individual. This sometimes causes additional delay in the issuance of a final eligibility determination. As a result, the Board is proposing amended §213.30(d) to clarify that the Board's investigation of an individual's eligibility will not begin until an individual has provided all the necessary information and documentation to the Board. Once the Board receives the required information from the individual, the Board will promptly begin its investigation of the individual's eligibility for licensure. This proposed amendment is important for several reasons.

First, the proposed amendment ensures that the Board will be able to consistently meet the 90-day time requirement of new Subchapter D. Second, the proposed amendment ensures that eligibility determinations will only be made following a thorough investigation of an individual's eligibility. Providing the Board with time to collect all of the necessary information regarding an individual's potential ineligibility ensures that each of the Board's decisions are informed and based upon objective, verifiable facts. Careful, deliberative decision making enables the Board to ensure that each individual seeking licensure is safe to practice nursing upon licensure, which is vital in protecting the public safety and welfare.

The Board is proposing amended §213.30(l) to make clear that the provisions of §213.30 implement the statutory requirements of both §301.257 and new Subchapter D.

Consistency Among Board Rules

The Board is proposing amendments to §213.30(a) and (k) in order to promote internal consistency among Board rules regarding eligibility determinations. Specifically, the proposed amendments to §213.30(a) and (k) are necessary for consistency with §217.2(b) (relating to Licensure by Examination for Graduates of Nursing Education Programs Within the United States, its Territories, or Possessions), §217.4(d) (relating to Requirements for Initial Licensure by Examination for Nurses Who Graduate From Nursing Education Programs Outside of United States' Jurisdiction), and §217.5(e) (relating to Temporary License and Endorsement). These rules provide that all individuals who require eligibility determinations from the Board will be subject to the provisions of §213.30, regardless of whether the individual has submitted an application for licensure to the Board under §§217.2(b), 217.4(d), or 217.5(e) or a petition for a declaratory order of eligibility under §213.30. These rules were originally adopted by the Board in order to ensure a fair and balanced process for all individuals requiring eligibility determinations from the Board. Since their enactment, these rules have ensured that all eligibility issues are reviewed by the Board through a single, unified process and that all similarly situated individuals are treated equally by the Board. The proposed amendments to §213.30(a) are necessary to reinforce the provisions of §§217.2(b), 217.4(d), and 217.5(e) by defining a "petitioner" under §213.30 to include those individuals filing an application for licensure under §§217.2(b), 217.4(d), and 217.5(e). The proposed amendments to §213.30(k) also serve a similar purpose. Proposed amended §213.30(k) reiterates that an applicant for

licensure under §§217.2(b), 217.4(d), and 217.5(e) who should have had an eligibility issue determined under §301.257 will be treated as a "petitioner" under §213.30 and will be required to comply with the requirements of that section. The Board has centrally located the specific procedures and requirements related to eligibility determinations in §213.30. As such, every individual who requires an eligibility determination from the Board will be required to meet the requirements of §213.30 and will be treated equally under that section. The proposed amendments to §213.30(a) and (k) serve to bolster the clarity of the Board's rules in this regard. Further, the proposal replaces certain references to the term "applicant" throughout §213.30 with references to the term "petitioner" in an effort to provide consistency and cohesiveness within the section.

Remaining Amendments

The remaining proposed amendments to §213.30(b), (c), (e), (f), (g), (h), (i) and (j) are necessary to re-designate the existing subsections of §213.30 and to increase the overall organization and readability of the section. These proposed amendments do not substantively alter the existing provisions of the section, nor do they impose any new or additional requirements or restrictions upon individuals required to comply with the section. Proposed amended §213.30(b), (c), (e), (f), (g), (h), (i) and (j) set forth requirements and procedures that an individual must meet prior to receiving an eligibility determination from the Board. For example, these subsections prescribe the types of documentation that must be submitted to the Board during an investigation of an individual's eligibility. The proposed amendments also address an individual's options for re-petitioning the Board after receiving a final eligibility determination. Each of the provisions in proposed amended §213.30(b), (c), (e), (f), (g), (h), (i) and (j), however, already exist within the current text of §213.30. The Board is not proposing to alter or eliminate any of these existing requirements or procedures. Rather, these provisions have only been relocated throughout the section as necessary. The mere rearrangement of these provisions within the section will not alter the Board's historical interpretation or application of these provisions or affect the Board's interpretation or application of these requirements in the future.

Section-by-Section Overview. Proposed amended §213.30(a) defines "petitioner" under §213.30 as an individual who: (1) is enrolled or planning to enroll in an educational nursing program that prepares individuals for initial licensure as a registered or vocational nurse; (2) seeks licensure by endorsement pursuant to §217.5; or (3) seeks licensure by examination pursuant to §217.2 or §217.4.

Proposed amended §213.30(b) provides that an individual who has reason to believe that he or she may be ineligible for initial licensure or licensure by endorsement may petition the Board for a declaratory order as to his or her eligibility.

Proposed §213.30(c) states that a petitioner must submit a petition on forms provided by the Board, which includes: (i) a statement by the petitioner indicating the reason(s) and basis of potential ineligibility; (ii) if the potential ineligibility is due to criminal conduct and/or conviction, any court documents including, but not limited to indictments, orders of deferred adjudication, judgments, probation records, and evidence of completion of probation, if applicable; (iii) if the potential ineligibility is due to mental illness, evidence of an evaluation that meets the criteria of §213.33 of this chapter (relating to Factors Considered for Imposition of Penalties/Sanctions) and evidence of treatment; (iv) if the potential ineligibility is due to chemical dependency, in-

cluding alcohol, evidence of an evaluation that meets the criteria of §213.33 and treatment, after care, and support group attendance; and (v) the required fee, which is not refundable.

Proposed amended §213.30(d) states that, once the Board has received all necessary information, including the information required by §213.30(c), an investigation of the petition and the petitioner's eligibility shall be conducted.

Proposed amended §213.30(e) states that the petitioner or the Board may amend the petition to include additional grounds for potential ineligibility at any time before a final determination is made.

Proposed amended §213.30(f) provides that, if an individual seeking licensure by endorsement pursuant to §217.5 has been licensed to practice professional or vocational nursing in any jurisdiction and has been disciplined in that jurisdiction or allowed to surrender in lieu of discipline in that jurisdiction, the following provisions shall govern the eligibility of the petitioner with regard to §213.27 of this chapter (relating to Good Professional Character): (i) a certified copy of the order or judgment of discipline from the jurisdiction is prima facie evidence of the matters contained in such order or judgment, and a final adjudication in the jurisdiction that the individual has committed professional misconduct is conclusive of the professional misconduct alleged in such order or judgment; and (ii) an individual who is disciplined for professional misconduct in the course of nursing in any jurisdiction or who resigned in lieu of disciplinary action is deemed to not have present good professional character under §213.27, and is therefore ineligible to seek licensure by endorsement under §217.5 during the period of discipline imposed by such jurisdiction, and in the case of revocation or surrender in lieu of disciplinary action, until the individual has filed a petition for reinstatement in the disciplining jurisdiction and obtained a final determination on that petition.

Proposed amended §213.30(g) states that, if a petitioner's potential ineligibility is due to criminal conduct and/or conviction, including deferred adjudication, the following provisions shall govern the eligibility of the petitioner with regard to §213.28 of this chapter (relating to Licensure of Persons with Criminal Convictions): (i) the record of conviction, guilty plea, or order of deferred adjudication is conclusive evidence of guilt; and (ii) upon proof that a felony conviction or felony order of probation, with or without adjudication of guilt, has been set aside or reversed, the petitioner shall be entitled to a new hearing before the Board for the purpose of determining whether, absent the record of conclusive evidence of guilt, the petitioner possesses present good professional character and fitness.

Proposed amended §213.30(h) states that, if the Executive Director proposes to find the petitioner ineligible for licensure, the petitioner may obtain a hearing before the State Office of Administrative Hearings (SOAH). Further, the Executive Director shall have discretion to set a hearing and give notice of the hearing to the petitioner. Additionally, the hearing shall be conducted in accordance with §213.22 of this chapter (relating to Formal Proceedings) and the rules of SOAH. When in conflict, SOAH's rules of procedure will prevail. Further, the decision of the Board shall be rendered in accordance with §213.23 of this chapter (relating to Decision of the Board).

Proposed amended §213.30(i) states that a final Board order is issued after an appeal results in a Proposal for Decision from SOAH. Further, the Board's final order must set out each basis for potential ineligibility and the Board's determination as to

eligibility. Additionally, in the absence of new evidence not disclosed by the petitioner or not reasonably available to the Board at the time the order is issued, the Board's ruling determines the petitioner's eligibility with respect to the grounds for potential ineligibility as set out in the order. An individual whose petition is denied by final order of the Board may not file another petition or seek licensure by endorsement or examination until after the expiration of three years from the date of the Board's order denying the petition. Further, if the petitioner does not appeal or request a formal hearing at SOAH after a letter proposal to deny eligibility made by the Eligibility and Disciplinary Committee of the Board or the Executive Director, the petitioner may re-petition or seek licensure by endorsement or examination after the expiration of one year from the date of the proposal to deny eligibility, in accordance with this section and the Occupations Code §301.257.

Proposed amended §213.30(j) provides that the Disciplinary Matrix and factors set forth in §213.33(b) and (c) and the following disciplinary and eligibility sanction policies and guidelines shall be used by the Executive Director and SOAH when recommending a declaratory order of eligibility, and the Board in determining the appropriate declaratory order in eligibility matters: (i) Disciplinary Sanctions for Fraud, Theft and Deception approved by the Board and published on February 22, 2008 in the *Texas Register* (33 TexReg 1646) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>; (ii) Disciplinary Sanctions for Lying and Falsification approved by the Board and published on February 22, 2008 in the *Texas Register* (33 TexReg 1647) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>; (iii) Disciplinary Sanctions for Sexual Misconduct approved by the Board and published on February 22, 2008 in the *Texas Register* (33 TexReg 1649) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>; (iv) Eligibility and Disciplinary Sanctions for Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder and published on February 22, 2008 in the *Texas Register* (33 TexReg 1651) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>; and (v) Disciplinary Guidelines for Criminal Conduct approved by the Board and published on March 9, 2007 in the *Texas Register* at (32 TexReg 1409) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/discp-guide.html>.

Proposed amended §213.30(k) states that, if an individual seeking licensure by endorsement under §217.5 or licensure by examination under §217.2 or §217.4 should have had an eligibility issue settled pursuant to the Occupations Code §301.257, the filed application will be treated and processed as a petition for declaratory order under §213.30, and the individual will be treated as a petitioner under §213.30, and will be required to pay the non-refundable fee required by §213.30.

Finally, proposed amended §213.30(l) states that §213.30 implements the requirements of the Occupations Code Chapter 53 Subchapter D and the Occupations Code §301.257.

FISCAL NOTE. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no additional fiscal implications for state or local government as a result of implementing the proposal.

PUBLIC BENEFIT/COST NOTE. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be the adoption of requirements that: (i) implement HB 963; and (ii)

promote consistency among Board rules regarding eligibility determinations.

HB 963, which was enacted by the 81st Legislature, authorizes an individual to request a "criminal history evaluation letter" from a licensing authority. Section 301.257 also addresses an individual's right to petition the Board for an eligibility determination. The provisions of HB 963 were modeled after the provisions of §301.257. While all licensing authorities are subject to the requirements of HB 963, the Board is also subject to the requirements of §301.257. The Board has carefully evaluated its current procedures and requirements for investigating and issuing final eligibility determinations under §301.257, and has determined that its existing procedures and requirements meet the new requirements of HB 963, with one exception. Unlike §301.257, HB 963 prescribes a specific time period in which a licensing authority must issue a final eligibility determination. As such, the Board is proposing amendments to §213.30, in part, to ensure compliance with this statutory deadline. Under the proposed amendments, the Board is not required to begin an investigation of an individual's eligibility until the Board has received all necessary and required documentation from the individual. Once all the necessary documentation has been received by the Board, the Board will then promptly begin its investigation of the individual's eligibility for licensure. This proposed requirement is important for several reasons. Currently, the Board must postpone an eligibility investigation once it determines that certain, necessary documentation has not been submitted for the Board's review. This can significantly delay the completion of the Board's investigation and final eligibility determination. The proposed amendments, however, do not require the Board to even begin an eligibility investigation until all necessary documentation has been provided to the Board for its review. The proposed amendments allow an eligibility investigation to be completed in a more timely and efficient manner. Once the investigation has been completed, the Board can then issue its final eligibility determination. The Board anticipates that the proposed amendments will greatly reduce the amount of time it takes to issue a final eligibility determination, which benefits both the Board and those individuals seeking determinations from the Board. Further, the proposed amendments are designed to ensure that the Board has reviewed all the relevant information regarding an individual's eligibility before making a final eligibility determination. The Board has a duty to ensure that all individuals seeking licensure are safe to practice nursing upon licensure. In order to do so, the Board must base its eligibility determinations on complete sets of verifiable facts and evidence. Sometimes, additional time is required in order to obtain all necessary documentation for review, such as copies of older criminal indictments or convictions or mental health or chemical dependency evaluations. The Board must be able to review such documentation, however, before making its final eligibility determination, in order to ensure that its determination is informed and deliberative. The proposed amendments provide the Board the opportunity to receive all necessary information before being required to issue a final eligibility determination. As a result, the Board will be able to make timely, but appropriate eligibility determinations, which should result in more efficient and effective regulation.

Finally, the proposed amendments are designed to promote consistency among Board rules regarding eligibility determinations. Specifically, the proposed amendments reiterate and reinforce the provisions of §§217.2(b), 217.4(d), and 217.5(e) as they relate to eligibility determinations. While the specific requirements and procedures regarding eligibility determinations are centrally

located in §213.30, the provisions of §§217.2(b), 217.4(d), and 217.5(e) ensure that all individuals who require eligibility determinations from the Board will be treated equally under the provisions of §213.30. By ensuring that its rules are organized and consistent, the Board furthers a clearer understanding of its expectations and requirements. Such consistency also facilitates fair and balanced regulation. There are no anticipated economic costs to persons who are required to comply with the proposal. None of the proposed amendments substantively alter the existing requirements of §213.30 or impose new or additional requirements or restrictions upon individuals required to comply with §213.30. Proposed amended §213.30(d) implements a procedure for ensuring that eligibility determinations are issued in accordance with the time limits prescribed by HB 963. Proposed amended §213.30(a) and (k) reiterate the provisions of §§217.2(b), 217.4(d), and §217.5(e) for consistency and cohesiveness among Board rules. Proposed amended §213.30(b), (c), (e), (f), (g), (h), (i) and (j) re-designate the existing subsections of §213.30. The Board does not anticipate that the proposed amendments will subject any new individuals to the provisions of §213.30. Further, the proposed amendments do not substantively alter the existing provisions of §213.30, nor do they impose any new or additional requirements or restrictions upon individuals required to comply with the section. As a result, the Board does not anticipate that the proposed amendments will impose any new costs on individuals required to comply with the proposal. Further, the Board does not anticipate altering its historical interpretation or application of the requirements of §213.30, nor does it anticipate that an individual's method of compliance with these requirements will be altered due to the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed amendments will not have an adverse economic effect on any small or micro business because no small or micro business is subject to the requirements of the proposal. The Government Code §2006.001(1) defines a micro business as a legal entity, including a corporation, partnership, or sole proprietorship that: (i) is formed for the purpose of making a profit; (ii) is independently owned and operated; and (iii) has not more than 20 employees. The Government Code §2006.001(2) defines a small business as a legal entity, including a corporation, partnership, or sole proprietorship, that: (i) is formed for the purpose of making a profit; (ii) is independently owned and operated; and (iii) has fewer than 100 employees or less than \$6 million in annual gross receipts. Each of the elements in §2006.001(1) and §2006.001(2) must be met in order for an entity to qualify as a micro business or small business. The only entities subject to the proposed amendments are individuals. Because individuals are not independently owned and operated legal entities that are formed for the purpose of making a profit, no individual qualifies as a micro business or small business under the Government Code §2006.001(1) or §2006.001(2). Therefore, in accordance with the Government Code §2006.002(c) and (f), the Board is not required to prepare a regulatory flexibility analysis.

TAKINGS IMPACT ASSESSMENT. The Board has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or re-

quire a takings impact assessment under the Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 5:00 p.m. on June 21, 2010, to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.state.tx.us, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

STATUTORY AUTHORITY. The amendments are proposed under the Occupations Code §§53.101 - 53.105, 301.257, and 301.151. Section 53.101(1) defines "license" as a license, certificate, registration, permit, or other authorization that is issued by a licensing authority and a person must obtain to practice or engage in a particular business, occupation, or profession. Section 53.101(2) defines "licensing authority" as a department, commission, board, office, or other agency of the state that issues a license.

Section 53.102(a) states that a person may request a licensing authority to issue a criminal history evaluation letter regarding the person's eligibility for a license issued by that authority if the person is enrolled, or planning to enroll, in an educational program that prepares a person for an initial license or is planning to take an examination for an initial license and has reason to believe that the person is ineligible for the license due to a conviction or deferred adjudication for a felony or misdemeanor offense.

Section 53.102(b) states that the request must state the basis for the person's potential ineligibility.

Section 53.103 provides that a licensing authority has the same powers to investigate a request submitted under the Occupations Code Chapter 53 Subchapter D and the requestor's eligibility that the authority has to investigate a person applying for a license.

Section 53.104(a) states that, if a licensing authority determines that a ground for ineligibility does not exist, the authority shall notify the requestor in writing of the authority's determination on each ground of potential ineligibility.

Section 53.104(b) provides that, if a licensing authority determines that the requestor is ineligible for a license, the licensing authority shall issue a letter setting out each basis for potential ineligibility and the authority's determination as to eligibility. Further, in the absence of new evidence known to but not disclosed by the requestor, or not reasonably available to the licensing authority at the time the letter is issued, the authority's ruling on the request determines the requestor's eligibility with respect to the grounds for potential ineligibility set out in the letter.

Section 53.104(c) states that a licensing authority must provide notice under §53.104(a) or issue a letter under §53.104(b) not later than the 90th day after the date the authority receives the request.

Section 53.105 provides that a licensing authority may charge a person requesting an evaluation under the Occupations Code Chapter 53 Subchapter D, a fee adopted by the authority. Fees adopted by a licensing authority under Subchapter D must be in an amount sufficient to cover the cost of administering Subchapter D.

Section 301.257(a) states that a person may petition the Board for a declaratory order as to the person's eligibility for a license

under the Occupations Code Chapter 301 if the person has reason to believe that the person is ineligible for the license and is enrolled or planning to enroll in an educational program that prepares a person for an initial license as a registered nurse or vocational nurse or is an applicant for a license.

Section 301.257(b) provides that the petition must state the basis for the person's potential ineligibility.

Section 301.257(c) states that the Board has the same powers to investigate the petition and the person's eligibility that it has to investigate a person applying for a license.

Section 301.257(d) provides that the petitioner or the Board may amend the petition to include additional grounds for potential ineligibility at any time before a final determination is made.

Section 301.257(e) states that, if the Board determines that a ground for ineligibility does not exist, instead of issuing an order, the Board shall notify the petitioner in writing of the Board's determination on each ground of potential ineligibility. If the Board proposes to find that the petitioner is ineligible for a license, the petitioner is entitled to a hearing before the State Office of Administrative Hearings.

Section 301.257(f) provides that the Board's order must set out each basis for potential ineligibility and the Board's determination as to eligibility. In the absence of new evidence known to but not disclosed by the petitioner or not reasonably available to the Board at the time the order is issued, the Board's ruling on the petition determines the person's eligibility with respect to the grounds for potential ineligibility set out in the written notice or order.

Section 301.257(g) states that the Board may require an individual accepted for enrollment or enrolled in an educational program preparing a student for initial licensure as a registered nurse or vocational nurse to submit information to the Board to permit the Board to determine whether the person is aware of the conditions that may disqualify the person from licensure as a registered nurse or vocational nurse on graduation and of the person's right to petition the Board for a declaratory order under §301.257. Instead of requiring the person to submit the information, the Board may require the educational program to collect and submit the information on each person accepted for enrollment or enrolled in the program.

Section 301.257(h) provides that the information required under §301.257(g) must be submitted in a form approved by the Board.

Section 301.257(i) states that, if, as a result of information provided under §301.257(g) the Board determines that a person may not be eligible for a license on graduation, the Board shall notify the educational program of its determination.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with the Occupations Code Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Rule §213.30, Statute Occupations Code §§53.101 - 53.105, 301.257, and 301.151.

§213.30. *Declaratory Order of Eligibility for Licensure.*

(a) For purposes of this section only, "petitioner" means an individual who:

(1) is enrolled or planning to enroll in an educational nursing program that prepares individuals for initial licensure as a registered or vocational nurse;

(2) seeks licensure by endorsement pursuant to §217.5 of this title (relating to Temporary License and Endorsement); or

(3) seeks licensure by examination pursuant to §217.2 (relating to Licensure by Examination for Graduates of Nursing Education Programs Within the United States, its Territories, or Possessions) or §217.4 (relating to Requirements for Initial Licensure by Examination for Nurses Who Graduate from Nursing Education Programs Outside of United States' Jurisdiction) of this title.

~~[(a) A person enrolled or planning to enroll in an educational nursing program that prepares a person for an initial license as a registered or vocational nurse or an applicant who seeks licensure by endorsement pursuant to §217.5 of this title (relating to Temporary License and Endorsement) who has reason to believe that he or she may be ineligible for licensure, may petition the Board for a declaratory order or apply for a license by endorsement as to his or her eligibility.]~~

(b) An individual who has reason to believe that he or she may be ineligible for initial licensure or licensure by endorsement may petition the Board for a declaratory order as to his or her eligibility.

~~[(b) The person must submit a petition or application on forms provided by the Board which includes:]~~

~~[(1) a statement by the petitioner or applicant indicating the reason(s) and basis of potential ineligibility:]~~

~~[(2) if the potential ineligibility is due to criminal conduct and/or conviction, any court documents including, but not limited to, indictments, orders of deferred adjudication, judgments, probation records and evidence of completion of probation, if applicable:]~~

~~[(3) if the potential ineligibility is due to mental illness, evidence of an evaluation that meets the criteria of §213.33 of this chapter (relating to Factors Considered for Imposition of Penalties/Sanctions and/or Fines) and evidence of treatment:]~~

~~[(4) if the potential ineligibility is due to chemical dependency including alcohol, evidence of an evaluation that meets the criteria of §213.33 of this chapter and treatment, after care and support group attendance; and]~~

~~[(5) the required fee which is not refundable.]~~

(c) A petitioner must submit a petition on forms provided by the Board, which includes:

(1) a statement by the petitioner indicating the reason(s) and basis of potential ineligibility;

(2) if the potential ineligibility is due to criminal conduct and/or conviction, any court documents including, but not limited to: indictments, orders of deferred adjudication, judgments, probation records, and evidence of completion of probation, if applicable;

(3) if the potential ineligibility is due to mental illness, evidence of an evaluation that meets the criteria of §213.33 of this chapter (relating to Factors Considered for Imposition of Penalties/Sanctions) and evidence of treatment;

(4) if the potential ineligibility is due to chemical dependency, including alcohol, evidence of an evaluation that meets the criteria of §213.33 of this chapter and treatment, after care, and support group attendance; and

(5) the required fee, which is not refundable.

~~[(e) An investigation of the petition/application and the petitioner's/applicant's eligibility shall be conducted.]~~

(d) Once the Board has received all necessary information, including the information required by subsection (c) of this section, an investigation of the petition and the petitioner's eligibility shall be conducted.

~~[(d) The petitioner/applicant or the Board may amend the petition/application to include additional grounds for potential ineligibility at any time before a final determination is made.]~~

~~(e) The petitioner or the Board may amend the petition to include additional grounds for potential ineligibility at any time before a final determination is made.~~

~~[(e) If an applicant under §217.5 of this title has been licensed to practice professional or vocational nursing in any jurisdiction and has been disciplined, or allowed to surrender in lieu of discipline, in that jurisdiction, the following provisions shall govern the eligibility of the applicant under §213.27 of this title (relating to Good Professional Character).]~~

~~[(1) A certified copy of the order or judgment of discipline from the jurisdiction is prima facie evidence of the matters contained in such order or judgment, and a final adjudication in the other jurisdiction that the applicant has committed professional misconduct is conclusive of the professional misconduct alleged in such order or judgment.]~~

~~[(2) An applicant disciplined for professional misconduct in the course of nursing in any jurisdiction or an applicant who resigned in lieu of disciplinary action is deemed to not have present good professional character under §213.27 of this title and is therefore ineligible to file an application under §217.5 of this title during the period of such discipline imposed by such jurisdiction, and in the case of revocation or surrender in lieu of disciplinary action, until the applicant has filed an application for reinstatement in the disciplining jurisdiction and obtained a final determination on that application.]~~

(f) If an individual seeking licensure by endorsement pursuant to §217.5 of this title has been licensed to practice professional or vocational nursing in any jurisdiction and has been disciplined in that jurisdiction or allowed to surrender in lieu of discipline in that jurisdiction, the following provisions shall govern the eligibility of the petitioner with regard to §213.27 of this chapter (relating to Good Professional Character).

(1) A certified copy of the order or judgment of discipline from the jurisdiction is prima facie evidence of the matters contained in such order or judgment, and a final adjudication in the jurisdiction that the individual has committed professional misconduct is conclusive of the professional misconduct alleged in such order or judgment.

(2) An individual who is disciplined for professional misconduct in the course of nursing in any jurisdiction or who resigned in lieu of disciplinary action is deemed to not have present good professional character under §213.27 of this chapter, and is therefore ineligible to seek licensure by endorsement under §217.5 of this title during the period of discipline imposed by such jurisdiction, and in the case of revocation or surrender in lieu of disciplinary action, until the individual has filed a petition for reinstatement in the disciplining jurisdiction and obtained a final determination on that petition.

~~[(f) If a petitioner's/applicant's potential ineligibility is due to criminal conduct and/or conviction, the following provisions shall govern the eligibility of the applicant under §213.28 of this title (relating to Licensure of Persons with Criminal Convictions).]~~

~~[(1) The record of conviction or order of deferred adjudication is conclusive evidence of guilt.]~~

~~[(2) Upon proof that a felony conviction or felony order of probation with or without adjudication of guilt has been set aside or reversed, the petitioner or applicant shall be entitled to a new hearing before the Board for the purpose of determining whether, absent the record of conclusive evidence of guilt, the petitioner or applicant possesses present good professional character and fitness.]~~

(g) If a petitioner's potential ineligibility is due to criminal conduct and/or conviction, including deferred adjudication, the following provisions shall govern the eligibility of the petitioner with regard to §213.28 of this chapter (relating to Licensure of Persons with Criminal Convictions).

(1) The record of conviction, guilty plea, or order of deferred adjudication is conclusive evidence of guilt.

(2) Upon proof that a felony conviction or felony order of probation, with or without adjudication of guilt, has been set aside or reversed, the petitioner shall be entitled to a new hearing before the Board for the purpose of determining whether, absent the record of conclusive evidence of guilt, the petitioner possesses present good professional character and fitness.

~~[(g) If the executive director proposes to find the petitioner or applicant ineligible for licensure, the petitioner or applicant may obtain a hearing before the State Office of Administrative Hearings. The Executive Director shall have discretion to set a hearing and give notice of the hearing to the petitioner or applicant. The hearing shall be conducted in accordance with §213.22 of this title (relating to Formal Proceedings) and the rules of SOAH. When in conflict, SOAH's rules of procedure will prevail. The decision of the Board shall be rendered in accordance with §213.23 of this title (relating to Decision of the Board).]~~

(h) If the Executive Director proposes to find the petitioner ineligible for licensure, the petitioner may obtain a hearing before the State Office of Administrative Hearings (SOAH). The Executive Director shall have discretion to set a hearing and give notice of the hearing to the petitioner. The hearing shall be conducted in accordance with §213.22 of this chapter (relating to Formal Proceedings) and the rules of SOAH. When in conflict, SOAH's rules of procedure will prevail. The decision of the Board shall be rendered in accordance with §213.23 of this chapter (relating to Decision of the Board).

~~[(h) A final Board order is issued after an appeal results in a Proposal for Decision from SOAH. The Board's final order must set out each basis for potential ineligibility and the Board's determination as to eligibility. In the absence of new evidence not disclosed by the petitioner or not reasonably available to the Board at the time the order is issued, the Board's ruling determines the person's eligibility with respect to the grounds for potential ineligibility as set out in the order. An individual whose petition is denied by final order of the Board may not file another petition or application for licensure until after the expiration of three years from the date of the Board's order denying the petition or application for licensure. If the applicant or petitioner does not appeal or request a formal hearing at SOAH after a letter proposal to deny eligibility made by the E&D Committee or the executive director, the applicant or petitioner may re-petition after the expiration of one year from the date of the proposal to deny eligibility, in accordance with this rule and §301.257, Texas Occupations Code.]~~

(i) A final Board order is issued after an appeal results in a Proposal for Decision from SOAH. The Board's final order must set out each basis for potential ineligibility and the Board's determination as to eligibility. In the absence of new evidence not disclosed by the pe-

itioner or not reasonably available to the Board at the time the order is issued, the Board's ruling determines the petitioner's eligibility with respect to the grounds for potential ineligibility as set out in the order. An individual whose petition is denied by final order of the Board may not file another petition or seek licensure by endorsement or examination until after the expiration of three years from the date of the Board's order denying the petition. If the petitioner does not appeal or request a formal hearing at SOAH after a letter proposal to deny eligibility made by the Eligibility and Disciplinary Committee of the Board or the Executive Director, the petitioner may re-petition or seek licensure by endorsement or examination after the expiration of one year from the date of the proposal to deny eligibility, in accordance with this section and the Occupations Code §301.257.

{(i) The following disciplinary and eligibility sanction policies and guidelines shall be used by the Executive Director, the State Office of Administrative Hearings (SOAH), when recommending a declaratory order of eligibility; and the Board in determining the appropriate declaratory order in eligibility matters:}

{(1) Disciplinary Sanctions for Fraud, Theft and Deception approved by the Board and published on February 22, 2008 in the *Texas Register* (33 TexReg 1646) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.}

{(2) Disciplinary Sanctions for Lying and Falsification approved by the Board and published on February 22, 2008 in the *Texas Register* (33 TexReg 1647) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.}

{(3) Disciplinary Sanctions for Sexual Misconduct approved by the Board and published on February 22, 2008 in the *Texas Register* (33 TexReg 1649) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.}

{(4) Eligibility and Disciplinary Sanctions for Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder and published on February 22, 2008 in the *Texas Register* (33 TexReg 1651) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.}

{(5) Disciplinary Guidelines for Criminal Conduct approved by the Board and published on March 9, 2007 in the *Texas Register* at (32 TexReg 1409) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/discp-guide.html>.}

(j) The Disciplinary Matrix and factors set forth in §213.33(b) and (c) of this chapter and the following disciplinary and eligibility sanction policies and guidelines shall be used by the Executive Director and SOAH when recommending a declaratory order of eligibility, and the Board in determining the appropriate declaratory order in eligibility matters:

(1) Disciplinary Sanctions for Fraud, Theft and Deception approved by the Board and published on February 22, 2008 in the *Texas Register* (33 TexReg 1646) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(2) Disciplinary Sanctions for Lying and Falsification approved by the Board and published on February 22, 2008 in the *Texas Register* (33 TexReg 1647) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(3) Disciplinary Sanctions for Sexual Misconduct approved by the Board and published on February 22, 2008 in the *Texas Register* (33 TexReg 1649) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(4) Eligibility and Disciplinary Sanctions for Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance

Use Disorder and published on February 22, 2008 in the *Texas Register* (33 TexReg 1651) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/dsp.html>.

(5) Disciplinary Guidelines for Criminal Conduct approved by the Board and published on March 9, 2007 in the *Texas Register* at (32 TexReg 1409) and available on the Board's website at <http://www.bon.state.tx.us/disciplinaryaction/discp-guide.html>.

(k) If an individual seeking licensure by endorsement under §217.5 of this title or licensure by examination under §217.2 or §217.4 of this title should have had an eligibility issue settled pursuant to the Occupations Code §301.257, the filed application will be treated and processed as a petition for declaratory order under this section, and the individual will be treated as a petitioner under this section and will be required to pay the non-refundable fee required by this section.

(l) This section implements the requirements of the Occupations Code Chapter 53 Subchapter D and the Occupations Code §301.257.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 10, 2010.

TRD-201002488

Jena Abel

Assistant General Counsel

Texas Board of Nursing

Earliest possible date of adoption: June 20, 2010

For further information, please call: (512) 305-6822



22 TAC §213.34

INTRODUCTION. The Texas Board of Nursing (Board) proposes new §213.34 (relating to Deferred Disciplinary Action Pilot Program). The proposed new section is necessary to implement Senate Bill (SB) 1415, enacted by the 81st Legislature, Regular Session, effective September 1, 2009, which adds new §301.1607 to the Occupations Code Chapter 301.

Background

The 80th Texas Legislature enacted SB 993, Regular Session, effective September 1, 2007, in order to promote a less punitive regulatory environment for individuals who commit minor violations of the Nursing Practice Act (the Occupations Code Chapter 301) and Board rules. SB 1415 was intended to build upon the principles established in SB 993 by authorizing the deferral of final disciplinary actions against individuals as an alternative method of resolving certain violations of the Nursing Practice Act and Board rules. (TEXAS SENATE STATE AFFAIRS COMMITTEE, BILL ANALYSIS (Enrolled), SB 1415, 81st Legislature, Regular Session (October 8, 2009)). Specifically, SB 1415 directs the Board to determine the feasibility of conducting a pilot program to evaluate the efficacy and effect of deferring a final disciplinary action against an individual for minor violations of the Nursing Practice Act and Board rules. Further, if the Board determines that such a pilot program is feasible, SB 1415 requires the Board to develop and implement the pilot program no later than February 1, 2011. SB 1415 also establishes several parameters for the pilot program.

First, SB 1415 authorizes the Board to defer a final disciplinary action against an individual for a violation of the Nursing Prac-

tice Act and Board rules. If the individual successfully completes all of the conditions of the deferred disciplinary action, SB 1415 authorizes the Board to dismiss the originating complaint filed against the individual. Second, SB 1415 prohibits the pilot program from including any disciplinary case that is serious enough to warrant resolution through the issuance of a reprimand or the denial, suspension, or revocation of an individual's nursing license. The Board has developed and adopted a range of disciplinary actions that may be imposed against an individual for violations of the Nursing Practice Act and Board rules. These disciplinary actions range from less serious actions, such as the issuance of a remedial education order, to more serious actions, such as the issuance of a reprimand or the suspension or revocation of an individual's nursing license. SB 1415 limits the types of disciplinary cases that may be included in the pilot program to those in which the Board proposes to issue a disciplinary action that is less serious than a reprimand. Such disciplinary actions include the issuance of a fine, remedial education, remedial education with a fine, a warning, a warning with a fine, a warning with stipulations, or a warning with stipulations and a fine. These disciplinary actions are less serious in nature than those resulting in the issuance of a reprimand or the suspension, revocation, or denial of a nursing license. Further, the Board utilizes these types of disciplinary actions to resolve violations of the Nursing Practice Act and Board rules that involve a relatively low risk of harm to the public. Third, SB 1415 makes clear that a deferred disciplinary action under the pilot program is not confidential *until such time* as an individual completes all of the conditions of the deferred disciplinary action and the originating complaint filed against the individual is dismissed by the Board. At that time, the deferred disciplinary action becomes confidential by law, to the same extent that a complaint is confidential under the Occupations Code §301.466. Pursuant to §301.466, a complaint is confidential and generally not subject to public disclosure, except that a complaint may be disclosed to: (i) a person involved with the Board in a disciplinary action against a nurse; (ii) a nursing licensing or disciplinary board in another jurisdiction; (iii) a peer assistance program approved by the Board under the Health and Safety Code Chapter 467; (iv) a law enforcement agency; and (v) a person engaged in bona fide research, if all information identifying a specific individual has been deleted from the complaint. Fourth, SB 1415 authorizes the Board to treat a deferred disciplinary action under the pilot program as prior disciplinary history if an individual commits a subsequent violation of the Nursing Practice Act and Board rules and is subject to Board discipline. Finally, SB 14 requires the Board to appoint an advisory committee to assist the Board in overseeing the pilot program and its evaluation.

Feasibility

SB 1415 requires the Board to determine the feasibility of conducting a deferred disciplinary action pilot program no later than February 1, 2010. The Board reviewed the requirements of SB 1415 at its October, 2009, and January, 2010, meetings. At that time, the Board identified several factors that were relevant to its determination of the feasibility of a pilot program under SB 1415.

First, the Board reviewed the results of a nationwide survey of other state boards of nursing. The survey was conducted to determine if any other state nursing board had implemented a program similar to the pilot program contemplated by SB 1415. Nine other state boards responded to the survey, including Kentucky, Ohio, North Carolina, Massachusetts, Minnesota, Mississippi, Vermont, Louisiana, and North Dakota. Massachusetts also provided additional information to the Board

regarding 26 other state boards of nursing that had responded to a similar survey conducted by Massachusetts in 2006. These states included Alabama, Arizona, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Iowa, Kansas, Maine, Missouri, Montana, Nevada, New Hampshire, New Jersey, New York, Oklahoma, South Dakota, Tennessee, Utah, West Virginia, Wyoming, and Washington, D.C. While several states reported the implementation of expungement programs in their states, no other state nursing board reported the implementation of a deferred disciplinary action program. SB 1415 does not require the expungement of a deferred disciplinary action under the pilot program. However, SB 1415 does address the confidentiality of a deferred disciplinary action once an individual successfully completes the terms of the deferred disciplinary action. As such, the Board determined that it was necessary to review the expungement programs of the responding state boards.

In reviewing the expungement programs of other states, the Board identified the following commonalities: (i) the types of orders that were eligible for expungement were limited, either by the seriousness of the violation or the specific type of violation; (ii) generally, disciplinary orders could not be expunged until a specified period of time had passed; (iii) the terms of a disciplinary order must have been fully completed prior to the expungement of the order; and (iv) no additional disciplinary history could exist prior to the expungement of a disciplinary order. The Board also noted that the majority of state nursing boards responding to the survey reported having no statutory authorization to expunge final disciplinary actions.

The Board also considered the mandatory reporting requirements of the Nurse Licensure Compact (Compact), authorized under the Occupations Code Chapter 304, and the rules regarding membership of the Compact, as set forth in Chapter 220 of this title (relating to Nurse Licensure Compact), in conjunction with the confidentiality requirements of SB 1415. Texas is a member (party state) of the Compact. The Compact was formed to facilitate cooperation among state nursing boards in the areas of nurse regulation, investigation, and disciplinary action. As a member of the Compact, the Board is required to promptly report any action against an individual's nursing license to the National Council of State Boards of Nursing (NCSBN). Party states utilize this investigatory and disciplinary information to make decisions about the licensure status of individuals in their states. While party states are required to timely report such information to NCSBN, the Compact recognizes state expungement statutes and permits information subject to such statutes to be removed from the database. SB 1415 does not require the expungement of deferred disciplinary actions. Even after a deferred disciplinary action becomes confidential under the provisions of SB 1415, the Board is authorized to share information about the deferred disciplinary action with other nursing licensing or disciplinary boards, in accordance with the provisions of §301.466. The Board carefully considered the potential complications associated with doing so, however. For example, the Board determined that if it continued to share information concerning a deferred disciplinary action with other state boards of nursing through the NCSBN database, it might not be able to fully control the dissemination of the information beyond the NCSBN database. The Board did not find that such a risk, however, would make the pilot program infeasible. Rather, after further consultation with NCSBN, the Board determined that it would be possible to continue to share information with other state boards of nursing while simultaneously safeguarding the

inadvertent disclosure of any confidential information beyond the NCSBN database.

The Board also considered the mandatory reporting requirements of the national Healthcare Integrity and Protection Data Bank (HIPDB), in conjunction with the confidentiality provisions of SB 1415. HIPDB is a national database that was created by the Secretary of the U.S. Department of Health and Human Services, in accordance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), to combat fraud and abuse in health insurance and health care delivery. Federal and state licensing and certification agencies are required to report final adverse licensure actions (revocations, suspensions, and censures) taken against health care practitioners, providers, and suppliers to HIPDB. Although the information reported to HIPDB is not available to the general public, it is viewable by federal and state agencies and certain employers. Further, once a disciplinary action has been reported to HIPDB, it may only be expunged under very limited circumstances, such as where an agency made an error in the original report to HIPDB or where a disciplinary action against an individual was appealed and overturned. After consultation with HIPDB, the Board determined that information regarding a deferred disciplinary action could not be removed or expunged from HIPDB, despite becoming confidential under Texas law. In its discussions with the Board, HIPDB indicated that such removal or expungement would be inconsistent with the purpose of the federal database. Further, HIPDB stated that its federal enabling legislation would pre-empt any confidentiality requirements of SB 1415. As a result, the Board determined that, although the general public would not be able to view information regarding a completed deferred disciplinary action in HIPDB, the Board would be unable to prevent the disclosure of such information to other federal and state agencies and employers utilizing the database. The Board further determined that the disclosure of this information, although completely outside of the Board's control, could be inconsistent with the confidentiality provisions of SB 1415. The Board ultimately determined, however, that such disclosure would not make the pilot program infeasible.

Finally, the Board considered the recommendations of the Eligibility and Disciplinary Advisory Committee (Committee). The Committee convened on September 17, 2009, and December 7, 2009, to consider the provisions of SB 1415 and to discuss the feasibility of a deferred disciplinary action pilot program. While the Committee generally agreed that such a program was feasible, the Committee was concerned about the implementation of such a program, particularly regarding the confidentiality of a completed deferred disciplinary action. Pursuant to the Occupations Code §301.469 and §301.466(c), final disciplinary actions that are imposed against individuals for violations of the Nursing Practice Act and Board rules are subject to public disclosure. The dissemination of this information serves an important purpose, as it alerts employers, potential employers, and consumers of nursing services of the disciplinary actions taken against individuals for violations of the Nursing Practice Act and Board rules. Currently, final disciplinary actions imposed against individuals for violations of the Nursing Practice Act and Board rules remain a permanent part of an individual's licensing history and are available to the public upon request. SB 1415 alters this arrangement by making a deferred disciplinary action confidential once an individual successfully completes all of the conditions required by the deferred disciplinary action. Several committee members expressed concern over this aspect of the program for several reasons. Final disciplinary actions contain

specific findings of fact, conclusions of law, and probationary requirements that are designed to remediate an individual's conduct, if possible, or monitor an individual's practice to ensure the safe delivery of nursing care. Information regarding an individual's conduct and the specific violations of the Nursing Practice Act and Board rules are contained within these final disciplinary actions. Such conduct could include practice errors, such as medication administration or nursing documentation errors, or could relate to instances of fraudulent conduct or prior criminal history. It is vital that employers, potential employers, and consumers of nursing services are aware of an individual's conduct in order to make informed decisions about employing an individual with a disciplinary history or receiving nursing care from an individual with a disciplinary history. Under the pilot program, however, the details surrounding a deferred disciplinary action, including the related findings of fact, will no longer be available for public review once the action has been successfully completed by the individual and the originating complaint is dismissed by the Board. Therefore, it may be more difficult for employers to identify problematic patterns of conduct. It may also make it more difficult for consumers to make informed choices regarding their nursing care. This is especially true in the area of home health, where an individual's prior criminal history is especially relevant.

In an effort to address these concerns, the Committee recommended that the Board establish certain limitations for the pilot program. First, the Committee recommended that the pilot program only be available to individuals with no prior disciplinary history. Second, the Committee recommended that the pilot program only include disciplinary cases that were capable of being resolved through a remedial education order or the issuance of a warning with stipulations. Third, the Committee recommended that an individual be eligible to participate in the pilot program only if the individual demonstrated that a program of remediation could address the individual's practice deficit, knowledge deficit, or situational awareness. Fourth, the Committee recommended that a deferred disciplinary action be available to the public for a minimum of five years. Finally, the Committee recommended that violations of the Nursing Practice Act and Board rules that involved certain intentional acts, falsification, deception, and chemical dependency or substance abuse not be included in the pilot program.

The Board reviewed the recommendations of the Committee at its January, 2010, meeting. After carefully considering the results of the survey of other state boards of nursing, the mandatory reporting requirements of the Compact and HIPDB, and the recommendations of the Committee, the Board determined that the pilot program would be feasible. However, the Board agreed with the concerns of the Committee and also determined that the pilot program should be limited to protect the safety of the public. In addition to approving and adopting the limitations recommended by the Committee, the Board also determined that additional limitations were necessary to adequately balance the private interests of individuals eligible for the pilot program with the interests of the general public. First, the Board determined that the pilot program should only be available to individuals as a condition of settlement by agreement prior to initiating proceedings in a contested case matter before the State Office of Administrative Hearings (SOAH). Second, the Board determined that the pilot program should not include violations of the Nursing Practice Act or Board rules that involve sexual misconduct or criminal conduct. Third, the Board determined that a deferred disciplinary action should be treated as prior disciplinary history

if an individual commits a subsequent violation of the Nursing Practice Act and Board rules. Finally, the Board determined that an action should no longer be treated as a deferred disciplinary action under the pilot program if an individual violates or fails to meet one of the conditions of a deferred disciplinary action.

Proposed Rule

The Board approved the feasibility of the pilot program at its January, 2010, meeting. Further, the Board approved the adoption of new rules to implement the pilot program at its April, 2010, meeting. Proposed new §213.34 establishes the parameters and limitations of the pilot program, as determined necessary by the Board.

Proposed new §213.34(a) and (b) specify the purpose of the new rules and prescribe when the pilot program will begin and end. Pursuant to SB 1415, the pilot program will begin on February 1, 2011, and will end no later than January 1, 2014. Further, although SB 1415 was effective on September 1, 2009, its provisions apply to actions for violations of Chapter 301 that were pending on September 1, 2009, or commenced on or after September 1, 2009. As such, the Board has determined that the pilot program will include certain violations of the Nursing Practice Act and Board rules that were pending with the Board on or after September 1, 2009.

Proposed new §213.34(c), (d), and (e) establish the eligibility criteria for the pilot program. First, proposed new §213.34(c) clarifies that the opportunity to participate in the pilot program is at the sole discretion of the Executive Director of the Board. Second, proposed new §213.34(d) and (e) prescribe the specific limitations and restrictions of the pilot program. These proposed new subsections are important for several reasons. First, a deferred disciplinary action pilot program is a new concept in nursing discipline. To the Board's knowledge, no other state board of nursing has ever implemented such a program. Therefore, the success of such a program has yet to be measured. While the Board recognizes the value in a less punitive, alternative method of resolving minor violations of the Nursing Practice Act and Board rules, the Board remains committed to protect the public from the incompetent, unethical, and illegal conduct of its licensees. The Board fulfills this obligation, in part, by notifying the public of final disciplinary actions taken against individuals for violations of the Nursing Practice Act and Board rules. Because SB 1415 makes a deferred disciplinary action confidential once an individual successfully completes the conditions of the action and the Board dismisses the originating complaint, the Board has determined that only certain violations of the Nursing Practice Act and Board rules are appropriate for resolution through the pilot program. Only minor violations of the Nursing Practice Act and Board rules that involve a low risk of harm to the public will be eligible for resolution through the pilot program. Violations of the Nursing Practice Act and Board rules that involve sexual misconduct, criminal conduct, intentional conduct, falsification, deception, and substance abuse or chemical dependency will not be included in the pilot program because such conduct involves a higher risk of harm to the public and carries a higher risk of recidivism. The Board has determined that any disciplinary action for such conduct should be available for public disclosure indefinitely. Violations of the Nursing Practice Act and Board rules that include minor practice errors, such as medication administration or documentation errors, however, are less likely to require public notification for as lengthy a period of time. The Board has determined that these types of violations are more apt to be successfully remediated through additional education and

minimal Board monitoring. As such, the Board has limited the pilot program to include only those minor violations of the Nursing Practice Act and Board rules that are appropriate for resolution through the issuance of a warning, a warning with stipulations, a warning with stipulations and a fine, a warning with a fine, remedial education, remedial education with a fine, or a fine. These specific disciplinary actions are reserved for minor violations of the Nursing Practice Act and Board rules that involve a low risk of harm to the public.

Second, the Board has determined that an individual's participation in the pilot program must be on a voluntary basis. That is, an individual must agree to meet all of the conditions of a deferred disciplinary action as required by the Board. The conditions that will be imposed by the Board as part of a deferred disciplinary action will be designed to remediate an individual's practice or knowledge deficiencies. In order to be able to remediate such deficiencies, an individual must first be willing to accept responsibility for his or her conduct. The pilot program provides individuals with a less punitive method of resolving violations of the Nursing Practice Act and Board rules. Its success depends, in part, on an individual's willingness to participate in the program, regardless of the specific probationary conditions required by the Board. If an individual is unwilling to abide by the prescribed requirements of the pilot program, there is little likelihood that the individual will be able to successfully complete the program. Further, the Board has determined that an individual must be willing to accept the conditions associated with participating in the pilot program when the Board first offers the individual the opportunity to do so. While an individual is entitled to request a hearing at SOAH regarding disputed disciplinary matters, the Board has determined that participation in the pilot program will not be available as a remedy at a SOAH proceeding. As such, the pilot program will be reserved for only those individuals who accept responsibility for their conduct and agree to the terms of a deferred disciplinary action prior to initiating a formal proceeding at SOAH.

Proposed new §213.34(f) further limits the pilot program to individuals who are licensed to practice nursing in the State of Texas. This proposed new subsection excludes individuals who have filed: (i) a petition for a declaratory order of eligibility under §213.30 of this title (relating to Declaratory Order of Eligibility for Licensure); or (ii) an application for licensure under §217.2 (relating to Licensure by Examination for Graduates of Nursing Education Programs Within the United States, its Territories, or Possessions), §217.4 (relating to Requirements for Initial Licensure by Examination for Nurses Who Graduate From Nursing Education Programs Outside of United States' Jurisdiction), or §217.5 of this title (relating to Temporary License and Endorsement) that is treated as a petition for a declaratory order of eligibility under §213.30. Pursuant to the Occupations Code §301.257, an individual may seek an eligibility determination from the Board if the individual is enrolled in a nursing education program, plans to enroll in a nursing education program, or is an applicant for licensure. Individuals with significant criminal history, issues regarding mental health status, or issues involving substance abuse or chemical dependency may be ineligible for licensure. The Board considers such eligibility issues to be serious in nature and highly relevant to an individual's ability to safely practice nursing. As such, the Board reviews requests for eligibility determinations carefully. Even if an individual is deemed eligible for licensure, the Board usually requires the individual to undergo Board monitoring and supervision for a specified period of time to ensure the individual is capable of practicing nursing safely. Individu-

als who seek eligibility determinations from the Board have yet to be employed as nurses in the State of Texas. As such, it is of the utmost importance that potential employers are notified of an individual's eligibility issues and any Board-required conditions of employment in order to make safe and appropriate hiring decisions. Further, consumers of nursing care should be made aware of an individual's eligibility issues in order to make safe and appropriate nursing care choices for themselves and their loved ones. In the interest of public safety, the Board has determined that all final eligibility determinations should be available for public disclosure indefinitely, and must be excluded from the pilot program.

Proposed new §213.34(f) also excludes individuals who are practicing nursing in Texas on a nurse licensure compact privilege from participating in the pilot program. As previously stated, the Board has carefully considered the mandatory reporting requirements of the Compact, in conjunction with the confidentiality requirements of SB 1415. As a member of the Compact, the Board, as a remote state, may take disciplinary action against an individual's nurse licensure compact privilege to practice nursing in Texas for a violation of the Nursing Practice Act and Board rules. Under the Compact, the individual's home state then has the option of taking a consistent disciplinary action against the individual's nursing license for the same conduct. However, to the Board's knowledge, no other state board of nursing has implemented a deferred disciplinary action pilot program. Thus, if the Board proposes to take a disciplinary action against an individual's nurse licensure compact privilege to practice nursing in Texas for a violation of the Nursing Practice Act and Board rules, and offers the individual a deferred disciplinary action, the individual's home state may be unable to take a consistent disciplinary action against the individual's nursing license. In order to ensure that all other state boards of nursing are able to take appropriate disciplinary actions against nurses licensed in their states, the Board has determined that the pilot program should exclude individuals practicing nursing in the state of Texas on a nurse licensure compact privilege.

Proposed new §213.34(g) and (h) are necessary to clarify the confidentiality provisions of SB 1415 and to address an individual's failure to successfully complete the required conditions of a deferred disciplinary action. First, proposed new §213.34(g) makes clear that a deferred disciplinary action will be available to the public: (i) for a minimum of five years; (ii) until such time as an individual successfully completes all of the conditions of the deferred disciplinary action; and (iii) until the Board dismisses the original complaint filed against the individual. Once all of these conditions are met, the deferred disciplinary action will become confidential and will not be available to the general public. These proposed new requirements are consistent with the confidentiality provisions of SB 1415 and strike an appropriate balance between the interests of individual licensees eligible for the pilot program and the interests of the general public. Because all violations of the Nursing Practice Act and Board rules merit Board review and remediation, where possible, the Board has determined that there should be a minimal amount of time in which a deferred disciplinary action is available for public disclosure, even for minor violations of the Nursing Practice Act and Board rules. Further, the Board has determined that it is reasonable and appropriate for a deferred disciplinary action to be available to the public for at least a five year time period. During this time, an individual will be required to complete all of the conditions of the deferred disciplinary action. Further, the individual will be required not to commit any other violations of the Nursing Practice

Act and Board rules. This minimal amount of time should allow sufficient opportunity for the Board to determine if an individual's deficiencies have been successfully remediated. If an individual is able to demonstrate the successful completion of the conditions of the deferred disciplinary action, including no further violations of the Nursing Practice Act and Board rules, the Board will dismiss the originating complaint against the individual and the deferred disciplinary action will become confidential. While the Board agrees that the public should always be notified of a final disciplinary action taken against an individual, the Board recognizes that some minor violations of the Nursing Practice Act and Board rules can be successfully remediated. In cases where an individual has shown such successful remediation, the Board's concern that the individual will repeat the problematic conduct is minimized. In these cases, the individual's successful remediation justifies the removal of the final deferred disciplinary action from the public realm.

The Board retains its authority, however, to stay the dismissal of a complaint against an individual in cases where the individual fails to meet the requirements of the deferred disciplinary action or commits a subsequent violation of the Nursing Practice Act and Board rules during the pendency of the deferred disciplinary action. Proposed new §213.34(h) clarifies that an originating complaint will not be dismissed until a subsequent complaint for a violation of the Nursing Practice Act and Board rules has been resolved. Proposed new §213.34(h) further clarifies that the Board may treat a deferred disciplinary action as prior disciplinary history when considering the appropriate sanction for a subsequent violation of the Nursing Practice Act and Board rules. These proposed new requirements are necessary to ensure that the Board is able to take action in cases where an individual is unable to demonstrate his or her successful remediation. In such cases, the Board must be able to evaluate the seriousness of the individual's conduct and the corresponding danger to the public. Further, the Board must be able to provide notification to the public if the Board determines that the individual's behavior warrants such reporting. The pilot program provides individuals with a unique opportunity to resolve minor violations of the Nursing Practice Act and Board rules through a less punitive alternative to traditional discipline. The pilot program, however, is not intended to provide sanctuary to repeat offenders or to reduce the Board's ability to protect the safety of the public. As such, proposed new §213.34(h) is necessary to ensure that only those complaints that involve conduct that has been fully remediated are dismissed and made confidential under SB 1415.

Finally, proposed new §213.34(i) provides that the outcome and effectiveness of the pilot program will be evaluated by the Board on a regular basis. This proposed new requirement is necessary to implement the oversight requirements of SB 1415 and to ensure that the pilot program is reviewed on a regular basis to identify the program's strengths, weaknesses, successes, and failures, if any.

Section-by-Section Overview. The proposed new title of §213.34 is "Deferred Disciplinary Action Pilot Program".

Proposed new §213.34(a) states that the section implements the deferred disciplinary action pilot program authorized by the Occupations Code §301.1607. Further, proposed new §213.34(a) provides that the pilot program will commence on February 1, 2011, and will conclude no later than January 1, 2014.

Proposed new §213.34(b) states that the purpose of the pilot program is to evaluate the efficacy and effect of Board deferral

of final disciplinary actions against individuals for violations of the Nursing Practice Act and/or Board rules.

Proposed new §213.34(c) provides that the opportunity to enter into a deferred disciplinary order under the pilot program is at the sole discretion of the Executive Director.

Proposed new §213.34(d) states that a deferred disciplinary action under the pilot program will be available: (i) for individuals with no prior disciplinary history with the Board; (ii) for violations of the Nursing Practice Act and/or Board rules that are proposed for resolution through the issuance of a warning, a warning with stipulations, a warning with stipulations and a fine, a warning with a fine, remedial education, remedial education with a fine, or a fine; (iii) only as a condition of settlement by agreement prior to the initiation of proceedings before SOAH; (iv) only if the probationary stipulations outlined in the deferred disciplinary order are designed to address an individual's practice deficit, knowledge deficit, or lack of situational awareness; and (v) for violations of the Nursing Practice Act and/or Board rules that were pending with the Board on September 1, 2009, or after.

Proposed new §213.34(e) states that violations involving sexual misconduct, criminal conduct, intentional acts, falsification, deception, chemical dependency, or substance abuse will not be eligible for resolution through a deferred disciplinary action under the pilot program.

Proposed new §213.34(f) states that a deferred disciplinary action under the pilot program will not be available to: (i) an individual who files a petition for declaratory order under §213.30 of this title (relating to Declaratory Order of Eligibility for Licensure); (ii) an individual whose application under §217.2 (relating to Licensure by Examination for Graduates of Nursing Education Programs Within the United States, its Territories, or Possessions), §217.4 (relating to Requirements for Initial Licensure by Examination for Nurses Who Graduate From Nursing Education Programs Outside of United States' Jurisdiction), or §217.5 of this title (relating to Temporary License and Endorsement) is treated as a petition for declaratory order under §213.30 of this title; or (iii) an individual who is practicing nursing in Texas on a nurse licensure compact privilege.

Proposed new §213.34(g) provides that a deferred disciplinary order will be available to the public for a minimum of five years and until such time as an individual successfully completes all of the probationary stipulations required by the deferred disciplinary order and the originating complaint is dismissed by the Board. Further, proposed new §213.34(g) provides that, after such time, the deferred disciplinary order will not be available to the public.

Proposed new §213.34(h) states that, if an individual fails to comply with a probationary stipulation required by a deferred disciplinary order or if a subsequent complaint is filed against an individual during the pendency of the deferred disciplinary order, the Board will stay the dismissal of the originating complaint pending the resolution of the subsequent complaint. Proposed new §213.34(h) further states that, if the subsequent complaint is proposed for resolution through a disciplinary action under the Occupations Code Subchapter J, the Board will not dismiss the originating complaint, and the Board may treat the deferred disciplinary action as prior disciplinary action when considering the imposition of a disciplinary sanction.

Finally, proposed new §213.34(i) states that the outcome and effectiveness of the pilot program will be evaluated by the Board on a regular basis.

FISCAL NOTE. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed new section will be in effect, there will be no additional fiscal implications for state or local government as a result of implementing the proposal.

PUBLIC BENEFIT/COST NOTE. Ms. Thomas has also determined that for each year of the first five years the proposed new section is in effect, the anticipated public benefits will be the adoption of requirements that: (i) implement SB 1415; (ii) provide individuals with a less punitive alternative for resolving minor violations of the Nursing Practice Act and Board rules; and (iii) ensure the protection of the public health, safety, and welfare.

SB 1415 and the proposed new section provide individuals with an opportunity to resolve certain violations of the Nursing Practice Act and Board rules through a less punitive process than traditional Board discipline. This new option is beneficial to both the Board and eligible individuals. Under SB 1415 and the proposed new section, individuals will be able to resolve minor violations of the Nursing Practice Act and Board rules through a deferred disciplinary action. This is beneficial to individual licensees because a deferred disciplinary action, once successfully completed, may become confidential and will not be available for public disclosure. Prior to the enactment of SB 1415, an individual who committed a violation of the Nursing Practice Act and Board rules was limited to resolving the matter through a public, disciplinary action, even in situations where the violation was relatively minor and resulted in the issuance of a remedial education order or the imposition of a fine. The Board believes that serious violations of the Nursing Practice Act and Board rules warrant public reporting and monitoring. However, the Board recognizes that some minor violations of the Nursing Practice Act and Board rules may be successfully remediated and should not result in indefinite public disclosure. As a result, proposed new §213.34 establishes a deferred disciplinary action pilot program that allows certain, minor violations of the Nursing Practice Act and Board rules to become confidential once an individual has successfully completed all of the conditions of the deferred disciplinary action. The pilot program is only available for violations of the Nursing Practice Act and Board rules that are minor in nature and involve a low risk of harm to the public. Serious violations of the Nursing Practice Act and Board rules, such as conduct involving sexual misconduct, criminal conduct, falsification, deception, and substance abuse or chemical dependency, are excluded from the pilot program. Additionally, the Board is proposing that individuals with prior disciplinary history not be eligible to participate in the pilot program. These safeguards are necessary to protect the public from patterns of repeated conduct that could result in harm. Further, the pilot program will exclude individuals who have requested eligibility determinations from the Board and individuals who are practicing nursing in Texas on a nurse licensure compact privilege. These proposed exclusions are necessary to ensure that the public is appropriately notified of all eligibility determinations, which often relate to an individual's prior criminal history. Further, the proposed requirements are necessary to encourage the issuance of consistent disciplinary actions against individuals in Compact states. In these ways, the proposed new section strikes an appropriate balance between the private interests of regulated individuals who are eligible to participate in the pilot program and the protection of the public health, safety, and welfare.

There are no anticipated economic costs to persons who are required to comply with the proposal. The proposed new section

establishes the parameters and limitations of the pilot program. Only those individuals that are eligible to participate in the pilot program will be subject to the requirements of the proposal. However, no provision of the proposal imposes costs upon the individuals required to comply with the proposal. First, the proposed new section establishes the purpose of the rules. However, this statement of purpose does not impose costs upon any individual required to comply with the proposal. The proposed new section also establishes the beginning and end of the pilot program. However, this proposed provision does not impose costs upon any individual required to comply with the proposal. The proposed new section also prescribes the eligibility criteria for the pilot program. Specifically, the proposed new section provides that the pilot program will only be available: (i) to individuals with no prior disciplinary history with the Board; (ii) for minor violations of the Nursing Practice Act and Board rules that may be resolved through the issuance of a warning, a warning with stipulations, a warning with stipulations and a fine; a warning with a fine; remedial education; remedial education with a fine, or a fine; (iii) as a condition of settlement by agreement prior to initiating proceedings before SOAH; (iv) if an individual's practice deficit, knowledge deficit, or lack of situational awareness is able to be addressed through the conditions of a deferred disciplinary action; and (v) for violations of the Nursing Practice Act and Board rules that were pending with the Board on September 1, 2009, or after. While these proposed provisions limit the availability of the pilot program to certain, qualifying individuals, the proposal does not impose any costs upon the individuals who are required to comply with the proposal. The issuance of a disciplinary action against an individual may result in the imposition of costs upon the individual, such as the cost of a required fine or the cost of required remedial education courses. The proposal, however, does not address the requirements of a particular disciplinary action against an individual. Rather, the proposal references the types of disciplinary actions that may be included in the pilot program. The specific requirements of these disciplinary actions, such as the specific amount of a fine that may be incurred or the specific probationary conditions that may be imposed, have already been addressed in other Board rules, and the proposal does not address, alter, or supplement the requirements of those rules or the Board's application of those rules. Further, the Board does not anticipate that its application or interpretation of those rules will change as a result of this proposal. The proposed new section limits the availability of the pilot program to certain individuals. However, these proposed limitations do not impose costs on any individual required to comply with the proposal. The proposal also addresses the confidential nature of a deferred disciplinary action once successfully completed. However, these proposed provisions do not impose any costs on an individual required to comply with the proposal. Further, the proposed new section addresses the failure of an individual to successfully complete the conditions of a deferred disciplinary action. While the proposed new section authorizes the Board to treat the deferred disciplinary action as prior disciplinary action when considering the imposition of a new sanction, the proposal does not address the specific requirements of the sanction to be imposed or establish requirements for such a sanction. As previously stated, the specific requirements of a disciplinary action available to the Board, including the specific amount of a fine that may be imposed upon an individual or the specific probationary conditions that may be imposed upon an individual, have already been addressed in other Board rules, and the proposal does not address or alter the requirements of those rules. Further, the Board does not anticipate that its application or interpretation of

those rules will change as a result of this proposal. Finally, the proposed new section requires the Board to periodically review the outcome and effectiveness of the pilot program, but this proposed new provision does not impose any costs on an individual required to comply with the proposal.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposal will not have an adverse economic effect on any small or micro business because there are no anticipated economic costs to any person who is required to comply with the proposal.

TAKINGS IMPACT ASSESSMENT. The Board has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 5:00 p.m. on June 21, 2010, to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.state.tx.us, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

STATUTORY AUTHORITY. The new section is proposed under the Occupations Code §301.1607 and §301.151.

Section 301.1607(a) defines "deferred disciplinary action" as a final disciplinary action against a person licensed or regulated under the Occupations Code Chapter 301 that is deferred by the Board as provided by §301.1607.

Section 301.1607(b) requires the Board, not later than February 1, 2010, to determine the feasibility of conducting a pilot program designed to evaluate the efficacy and effect on the public's protection of Board deferral of disciplinary action against a person licensed or regulated under Chapter 301 in cases in which the Board proposes to impose a sanction other than a reprimand or a denial, suspension, or revocation of a license. Further, if the Board determines the pilot program is feasible, §301.1607(b) requires the Board to develop and implement the pilot program not later than February 1, 2011. Additionally, the pilot program must conclude not later than January 1, 2014.

Section 301.1607(c) states that the pilot program may not include cases in which the Board proposes to issue a reprimand or to deny, suspend, or revoke a license.

Section 301.1607(d) states that, during the time the pilot program is implemented and for any action or complaint for which the Board proposes to impose a sanction other than a reprimand or a denial, suspension, or revocation of a license, the Board may: (i) defer final disciplinary action the Board has proposed against a person licensed or regulated under Chapter 301 if the person conforms to conditions imposed by the Board, including any condition the Board could impose as a condition of probation under §301.468; and (ii) if the person successfully meets the imposed conditions, dismiss the complaint.

Section 301.1607(e) states that, except as otherwise provided by §301.1607(e), a deferred disciplinary action by the Board under the pilot program is not confidential and is subject to dis-

closure in accordance with the Government Code Chapter 552. If the person successfully meets the conditions imposed by the Board in deferring final disciplinary action and the Board dismisses the action or complaint, the deferred disciplinary action of the Board is confidential to the same extent as a complaint filed under §301.466.

Section 301.1607(f) provides that the Board may treat a deferred disciplinary action taken against a nurse under §301.1607 as a prior disciplinary action against the nurse when considering the imposition of a sanction for a subsequent violation of Chapter 301 or a rule or order adopted under Chapter 301.

Section 301.1607(g) states that the Board may contract with a third party to evaluate the pilot program established under §301.1607.

Section 301.1607(h) states that the Board shall appoint an advisory committee to assist the Board in overseeing the pilot program and its evaluation. Further, the committee must include representatives of public advocacy organizations.

Finally, §301.1607(i) states that §301.1607 expires September 1, 2014.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Rule §213.34, Statute §301.1607 and §301.151.

§213.34. Deferred Disciplinary Action Pilot Program.

(a) This section implements the deferred disciplinary action pilot program authorized by the Occupations Code §301.1607. The pilot program will commence on February 1, 2011, and will conclude no later than January 1, 2014.

(b) The purpose of the pilot program is to evaluate the efficacy and effect of Board deferral of final disciplinary actions against individuals for violations of the Nursing Practice Act and/or Board rules.

(c) The opportunity to enter into a deferred disciplinary order under the pilot program is at the sole discretion of the Executive Director.

(d) A deferred disciplinary action under the pilot program will be available:

(1) for individuals with no prior disciplinary history with the Board;

(2) for violations of the Nursing Practice Act and/or Board rules that are proposed for resolution through the issuance of a Warning, a Warning with Stipulations, a Warning with Stipulations and a Fine, a Warning with a Fine, Remedial Education, Remedial Education with a Fine, or a Fine;

(3) only as a condition of settlement by agreement prior to the initiation of proceedings before the State Office of Administrative Hearings;

(4) only if the probationary stipulations outlined in the deferred disciplinary order are designed to address an individual's practice deficit, knowledge deficit, or lack of situational awareness; and

(5) for violations of the Nursing Practice Act and/or Board rules that were pending with the Board on September 1, 2009, or after.

(e) Violations involving sexual misconduct, criminal conduct, intentional acts, falsification, deception, chemical dependency, or substance abuse will not be eligible for resolution through a deferred disciplinary action under the pilot program.

(f) A deferred disciplinary action under the pilot program will not be available to:

(1) an individual who files a petition for declaratory order under §213.30 of this title (relating to Declaratory Order of Eligibility for Licensure);

(2) an individual whose application under §217.2 (relating to Licensure by Examination for Graduates of Nursing Education Programs Within the United States, its Territories, or Possessions), §217.4 (relating to Requirements for Initial Licensure by Examination for Nurses Who Graduate from Nursing Education Programs Outside of United States' Jurisdiction), or §217.5 of this title (relating to Temporary License and Endorsement) is treated as a petition for declaratory order under §213.30 of this title; or

(3) an individual who is practicing nursing in Texas on a nurse licensure compact privilege.

(g) A deferred disciplinary order will be available to the public for a minimum of five years and until such time as an individual successfully completes all of the probationary stipulations required by the deferred disciplinary order and the originating complaint is dismissed by the Board. After such time, the deferred disciplinary order will not be available to the public.

(h) If an individual fails to comply with a probationary stipulation required by a deferred disciplinary order or if a subsequent complaint is filed against an individual during the pendency of the deferred disciplinary order, the Board will stay the dismissal of the originating complaint pending the resolution of the subsequent complaint. If the subsequent complaint is proposed for resolution through a disciplinary action under the Occupations Code Subchapter J, the Board will not dismiss the originating complaint, and the Board may treat the deferred disciplinary action as prior disciplinary action when considering the imposition of a disciplinary sanction.

(i) The outcome and effectiveness of the pilot program will be evaluated by the Board on a regular basis.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 3, 2010.

TRD-201002160

Jena Abel

Assistant General Counsel

Texas Board of Nursing

Earliest possible date of adoption: June 20, 2010

For further information, please call: (512) 305-6822



CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §§217.2, 217.4, 217.5

INTRODUCTION. The Texas Board of Nursing (Board) proposes amendments to §217.2, relating to Licensure by Examination

for Graduates of Nursing Education Programs Within the United States, its Territories, or Possessions; §217.4, relating to Requirements for Initial Licensure by Examination for Nurses Who Graduate from Nursing Education Programs Outside of United States' Jurisdiction; and §217.5, relating to Temporary License and Endorsement. These amendments are proposed under the Occupations Code §§53.101 - 53.105, 301.257, and 301.151 and are necessary to clarify existing language within the sections and to enhance consistency among Board rules related to eligibility determinations. Specifically, the proposed amendments eliminate: (i) minor inconsistencies among the sections; and (ii) redundant requirements that are more appropriately addressed in §213.30 of this title (relating to Declaratory Order of Eligibility for Licensure).

The Occupations Code §301.257 authorizes an individual to petition the Board for a declaratory order regarding the individual's eligibility for licensure under Chapter 301 if the individual is enrolled, or is planning to enroll, in a nursing education program or is an applicant for licensure, and has reason to believe he or she is ineligible for licensure. The Board adopted requirements for evaluating an individual's eligibility for licensure under §301.257 in 1998. The Board has consistently evaluated an individual's eligibility for licensure pursuant to those requirements since that time.

Section 213.30 sets forth the Board's specific procedures and requirements for evaluating an individual's eligibility for licensure. Pursuant to §213.30, an individual who has reason to believe that he or she may be ineligible for licensure may petition the Board for a declaratory order of eligibility. An individual may be ineligible for licensure for a variety of reasons, including prior criminal or disciplinary history, mental illness, or chemical dependency. The Board considers eligibility determinations to be serious in nature and highly relevant to an individual's ability to safely practice nursing. As such, the Board diligently investigates every request for an eligibility determination pursuant to the requirements of §213.30.

Currently, individuals may seek licensure from the Board in a variety of ways, depending upon the unique set of factors applicable to the particular individual seeking licensure. For example, an individual may submit an application for licensure by examination to the Board under §217.2 if the individual graduated from a nursing education program within the United States. An individual may submit an application for licensure to the Board under §217.4 if the individual graduated from a nursing education program outside of the United States. An individual may submit an application for licensure by endorsement to the Board under §217.5 if the individual has been licensed in another jurisdiction prior to applying for licensure in Texas. Finally, an individual may submit a petition for a declaratory order to the Board under §213.30. Regardless of the particular document filed by an individual, however, the Board reviews all eligibility issues in accordance with the requirements of §213.30 and requires all individuals seeking an eligibility determination from the Board to comply with its requirements.

The Board originally adopted §§217.2(b), 217.4(d), and 217.5(e) to ensure a fair and balanced process for all individuals requiring eligibility determinations from the Board. Since their enactment, these rules have ensured that all eligibility issues are reviewed by the Board through a single, unified process and that all similarly situated individuals are treated equally by the Board. The proposed amendments to §§217.2(b), 217.4(d), and 217.5(e) do not add new requirements to these sections or substantively alter

the existing provisions of these sections. Further, the proposed amendments do not alter the Board's historic interpretation or application of the provisions of these rules. Rather, the Board is proposing amendments to these sections in order to ensure continuing consistency and clarity in the interpretation and application of these rules.

Currently, all eligibility cases are categorized as "applicant" cases or "petitioner" cases. "Applicant" cases are those cases in which an eligibility determination is required for an individual who has filed an application with the Board pursuant to §§217.2(b), 217.4(d), or 217.5(e). "Petitioner" cases, on the other hand, are those cases in which an eligibility determination is required for an individual who has filed a petition for a declaratory order with the Board pursuant to §213.30. Despite these differences in terminology, there are no substantive differences in the investigation of an eligibility case or the Board's evaluation of an individual's eligibility. "Applicant" and "petitioner" cases are reviewed under the same eligibility processes. All eligibility determinations are made pursuant to the same eligibility criteria. Further, "applicants" and "petitioners" are required to submit the same fee to the Board for an eligibility determination. Further, if the Board determines that an individual is eligible for licensure, the Board imposes the same probationary requirements on all similarly situated individuals, regardless of their status as an "applicant" or "petitioner". Because "applicants" and "petitioners" are treated equally for purposes of eligibility determinations, the Board has determined that any distinction in terminology should be eliminated from its eligibility processes and final eligibility orders. This change should promote consistency among the Board's final eligibility orders and reduce any confusion among members of the public regarding final eligibility orders.

The Board is also proposing amendments to §§217.2(b), 217.4(d), and 217.5(e) to eliminate redundant provisions that are more appropriately addressed in §213.30. The existing provisions of §213.30 include the requirements that are being proposed for elimination in §§217.2(b), 217.4(d), and 217.5(e). Section 213.30 prescribes the specific procedures and requirements that apply to eligibility determinations, including provisions regarding the Board's final eligibility determination and an individual's options for re-petitioning the Board. The Board has determined that all provisions addressing the specific procedures and requirements relating to an eligibility determination should be centrally located in §213.30 instead of being scattered throughout the Board's rules. Locating these provisions in a central rule promotes clarity, consistency, and better understanding of the Board's requirements. Further, the proposed amendments to §§217.2(b), 217.4(d), and 217.5(e) do not specifically relate to an eligibility determination. Rather, these sections clarify that an applicant who should have had an eligibility issue determined by way of a petition for declaratory order under §301.257 will be treated as a petitioner under §213.30 and will be required to pay the fee required by that section. This clarification does not alter the existing language of these sections, but reiterates that "applicants" under §§217.2(b), 217.4(d), and 217.5(e) who require eligibility determinations will be treated the same as "petitioners" under §213.30 and that the procedures and requirements of §213.30 will apply equally to both.

Finally, the Board has determined that clarifying the existing language of §§217.2(b), 217.4(d), and 217.5(e) will not alter the Board's historical interpretation or application of these sections. The proposed changes are designed to remove any ambiguity or confusion surrounding the applicability of these sections and

are not anticipated to result in a change in Board application or interpretation of these requirements in the future.

FISCAL NOTE. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no additional fiscal implications for state or local government as a result of implementing the proposal.

PUBLIC BENEFIT/COST NOTE. Ms. Thomas has also determined that for each year of the first five years the proposed amendments will be in effect, the anticipated public benefit will be the adoption of clear and consistent requirements and the elimination of redundant provisions, which should result in more effective and efficient regulation.

There are no anticipated economic costs to persons who are required to comply with the proposal. None of the proposed amendments substantively alter the existing requirements of §§217.2, 217.4, or 217.5 or impose new or additional requirements or restrictions upon individuals required to comply with the proposal. Rather, the proposed amendments clarify the existing provisions related to an eligibility determination for an individual filing an application under §§217.2, 217.4, and 217.5. The Board does not anticipate altering its historical interpretation or application of these requirements nor does it anticipate that an individual's method of compliance with these requirements will be altered due to the proposed amendments. Further, the proposed amendments eliminate redundant provisions from §§217.2, 217.4, or 217.5 that are more appropriately addressed in §213.30. However, these proposed amendments do not substantively affect the requirements of the sections nor do they impose any new or additional requirements or restrictions upon individuals required to comply with the proposal.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed amendments will not have an adverse economic effect on any small or micro business because there are no anticipated economic costs to any person who is required to comply with the proposal.

TAKINGS IMPACT ASSESSMENT. The Board has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 5:00 p.m. on June 21, 2010, to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.state.tx.us, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

STATUTORY AUTHORITY. The amendments are proposed under the Occupations Code §§53.101 - 53.105, 301.257, and 301.151. Section 53.101(1) defines "license" as a license, certificate, registration, permit, or other authorization that is issued by a licensing authority and a person must obtain to practice or engage in a particular business, occupation, or profession. Section 53.101(2) defines "licensing authority" as a department,

commission, board, office, or other agency of the state that issues a license.

Section 53.102(a) states that a person may request a licensing authority to issue a criminal history evaluation letter regarding the person's eligibility for a license issued by that authority if the person is enrolled, or planning to enroll, in an educational program that prepares a person for an initial license or is planning to take an examination for an initial license and has reason to believe that the person is ineligible for the license due to a conviction or deferred adjudication for a felony or misdemeanor offense.

Section 53.102(b) states that the request must state the basis for the person's potential ineligibility.

Section 53.103 provides that a licensing authority has the same powers to investigate a request submitted under the Occupations Code Chapter 53, Subchapter D, and the requestor's eligibility that the authority has to investigate a person applying for a license.

Section 53.104(a) states that, if a licensing authority determines that a ground for ineligibility does not exist, the authority shall notify the requestor in writing of the authority's determination on each ground of potential ineligibility.

Section 53.104(b) provides that, if a licensing authority determines that the requestor is ineligible for a license, the licensing authority shall issue a letter setting out each basis for potential ineligibility and the authority's determination as to eligibility. Further, in the absence of new evidence known to but not disclosed by the requestor, or not reasonably available to the licensing authority at the time the letter is issued, the authority's ruling on the request determines the requestor's eligibility with respect to the grounds for potential ineligibility set out in the letter.

Section 53.104(c) states that a licensing authority must provide notice under §53.104(a) or issue a letter under §53.104(b) not later than the 90th day after the date the authority receives the request.

Section 53.105 provides that a licensing authority may charge a person requesting an evaluation under the Occupations Code Chapter 53, Subchapter D, a fee adopted by the authority. Fees adopted by a licensing authority under Subchapter D must be in an amount sufficient to cover the cost of administering Subchapter D.

Section 301.257(a) states that a person may petition the Board for a declaratory order as to the person's eligibility for a license under the Occupations Code Chapter 301 if the person has reason to believe that the person is ineligible for the license and is enrolled or planning to enroll in an educational program that prepares a person for an initial license as a registered nurse or vocational nurse or is an applicant for a license.

Section 301.257(b) provides that the petition must state the basis for the person's potential ineligibility.

Section 301.257(c) states that the Board has the same powers to investigate the petition and the person's eligibility that it has to investigate a person applying for a license.

Section 301.257(d) provides that the petitioner or the Board may amend the petition to include additional grounds for potential ineligibility at any time before a final determination is made.

Section 301.257(e) states that, if the Board determines that a ground for ineligibility does not exist, instead of issuing an order, the Board shall notify the petitioner in writing of the Board's de-

termination on each ground of potential ineligibility. If the Board proposes to find that the petitioner is ineligible for a license, the petitioner is entitled to a hearing before the State Office of Administrative Hearings.

Section 301.257(f) provides that the Board's order must set out each basis for potential ineligibility and the Board's determination as to eligibility. In the absence of new evidence known to but not disclosed by the petitioner or not reasonably available to the Board at the time the order is issued, the Board's ruling on the petition determines the person's eligibility with respect to the grounds for potential ineligibility set out in the written notice or order.

Section 301.257(g) states that the Board may require an individual accepted for enrollment or enrolled in an educational program preparing a student for initial licensure as a registered nurse or vocational nurse to submit information to the Board to permit the Board to determine whether the person is aware of the conditions that may disqualify the person from licensure as a registered nurse or vocational nurse on graduation and of the person's right to petition the Board for a declaratory order under §301.257. Instead of requiring the person to submit the information, the Board may require the educational program to collect and submit the information on each person accepted for enrollment or enrolled in the program.

Section 301.257(h) provides that the information required under §301.257(g) must be submitted in a form approved by the Board.

Section 301.257(i) states that, if, as a result of information provided under §301.257(g) the Board determines that a person may not be eligible for a license on graduation, the Board shall notify the educational program of its determination.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with the Occupations Code Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Occupations Code §§53.101 - 53.105, 301.257, and 301.151

§217.2. *Licensure by Examination for Graduates of Nursing Education Programs Within the United States, its Territories, or Possessions.*

(a) (No change.)

(b) Should it be ascertained from the application filed, or from other sources, that the applicant should have had an eligibility issue determined by way of a petition for declaratory order pursuant to the Occupations Code §301.257, then the application will be treated and processed as a petition for declaratory order under §213.30 of this title (relating to Declaratory Order of Eligibility for Licensure), and the applicant will be treated as a petitioner under that section and will be required to pay the non-refundable fee required by that section.

{(b) Should it be ascertained from the application filed, or from other sources, that the applicant should have had an eligibility issue determined by way of a Petition for Declaratory Order, (see §213.30 of this title relating to Declaratory Order of Eligibility for Licensure and Texas Occupations Code §301.257 relating to Declaratory Order of License Eligibility) then the application will be treated and processed as a Petition for Declaratory Order and the applicant will be required to pay the appropriate non-refundable fees for determination of eligibility.

Should the Board in its final determination find that the individual is not eligible for licensure, then that individual is precluded from again petitioning, or applying to the Board for admission to the examination except when the impediment to eligibility has been removed. In no event, may an applicant re-petition for a declaratory order before the first anniversary of the date of the Board's determination to deny eligibility. Any subsequent petition must be made in the manner and form the Board requires.}]

(c) - (f) (No change.)

§217.4. *Requirements for Initial Licensure by Examination for Nurses Who Graduate from Nursing Education Programs Outside of United States' Jurisdiction.*

(a) - (c) (No change.)

(d) Should it be ascertained from the application filed, or from other sources, that the applicant should have had an eligibility issue determined by way of a petition for declaratory order pursuant to the Occupations Code §301.257, then the application will be treated and processed as a petition for declaratory order under §213.30 of this title (relating to Declaratory Order of Eligibility for Licensure), and the applicant will be treated as a petitioner under that section and will be required to pay the non-refundable fee required by that section.

{(d) Should it be ascertained from the application filed, or from other sources, that the applicant should have had an eligibility issue settled by way of a Petition for Declaratory Order, (see §213.30 of this title relating to Declaratory Order of Eligibility for Licensure and Texas Occupations Code §301.257 relating to Declaratory Order of License Eligibility) then the application will be treated and processed as a Petition for Declaratory Order and the applicant will be required to pay the appropriate non-refundable processing fees. Should the Board finally determine that the individual is not eligible to be admitted to the examination, then that individual is precluded from again petitioning, or applying to the Board for admission to the examination except when the impediment to eligibility for licensure has been removed. In no event, may an applicant re-petition for a declaratory order before the first anniversary of the date of the Board's determination to deny eligibility. Any subsequent petition must be made in the manner and form the Board requires.}]

(e) - (f) (No change.)

§217.5. *Temporary License and Endorsement.*

(a) - (d) (No change.)

(e) Should it be ascertained from the application filed, or from other sources, that the applicant should have had an eligibility issue determined by way of a petition for declaratory order pursuant to the Occupations Code §301.257, then the application will be treated and processed as a petition for declaratory order under §213.30 of this title (relating to Declaratory Order of Eligibility for Licensure), and the applicant will be treated as a petitioner under that section and will be required to pay the non-refundable fee required by that section.

{(e) Should it be ascertained from the application filed, or from other sources, that the applicant should have had an eligibility issue settled in accordance with Texas Occupations Code §301.257 (Declaratory Order of License Eligibility) and §§213.27, 213.28 and 213.29 (relating to Good Professional Character, Licensure of Persons with Criminal Convictions, and Eligibility and Disciplinary Criteria Regarding Intemperate Use and Lack of Fitness), then the application will be treated and processed as a Petition for Eligibility Order for LVN or RN Endorsement and the applicant will be required to pay the appropriate processing fees which are not refundable.}]

{(f) Should the Board in its final determination find that the individual is not eligible for licensure as a nurse in Texas, then that

individual is precluded from again petitioning, or applying to the Board for licensure until the impediment to eligibility for licensure has been removed.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 6, 2010.

TRD-201002475

Jena Abel

Assistant General Counsel

Texas Board of Nursing

Earliest possible date of adoption: June 20, 2010

For further information, please call: (512) 305-6822



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER N. MIGRATORY GAME BIRD PROCLAMATION

31 TAC §§65.315, 65.318 - 65.321

The Texas Parks and Wildlife Department (the department) proposes amendments to §65.315 and §§65.318 - 65.321, concerning the Migratory Game Bird Proclamation.

The proposed amendment to §65.315, concerning Open Seasons and Bag and Possession Limits--Early Season, would retain the season structure and bag limits from last year and adjust the season dates for early-season species of migratory game birds to account for calendar shift (i.e., to ensure that seasons open on the desired day of the week, since dates from a previous year do not fall on the same days in following years).

The proposed amendment to §65.315 also would implement a 16-day statewide teal season to run from September 11 - 26, 2010, which must be approved by the U.S. Fish and Wildlife Service (Service) before it can be implemented. If the Service does not approve a 16-day season, the department proposes to adopt a 9-day season to run September 18 - 26, 2010. The department cautions that the federal frameworks could close the season on teal if population data warrant. By federal law, the number of days in the September teal season count against the 107 days of total hunting opportunity allowed for ducks, coots, and mergansers.

The proposed amendment to 65.318, concerning Open Seasons and Bag and Possession Limits--Late Season, also would retain the basic season structure and bag limits from last year and adjust the season dates for late-season species of migratory game birds (ducks, coots, mergansers, geese, and sandhill cranes) to account for calendar shift. The proposed amendment also changes the references to mottled ducks with a reference to "dusky ducks." The Service is concerned about perceived instability in mottled duck populations in Texas and last year directed Texas to reduce mottled duck harvest by at least 20 percent. Although the concern is for mottled ducks, the department believes

that it is best to include all ducks that are similar in appearance to dusky ducks (mottled duck, Mexican-like duck, black duck and their hybrids), in order to prevent accidental harvest of mottled ducks.

The proposed amendment to §65.319, concerning Extended Falconry Season--Early Season Species, adjusts season dates for the take of early-season species of migratory game birds by means of falconry to reflect calendar shift.

The proposed amendment to §65.320, concerning Extended Falconry Season--Late Season Species, adjusts season dates for the take of early-season species of migratory game birds by means of falconry to reflect calendar shift.

The proposed amendment to §65.321, concerning Special Management Provisions, would adjust the dates for the conservation season on light geese to account for calendar shift.

The proposed amendments are generally necessary to implement commission policy to provide the greatest hunter opportunity possible, consistent with hunter and landowner preference for starting dates and segment lengths, under frameworks issued by the Service. The Service has not issued regulatory frameworks for the 2010-2011 hunting seasons for migratory game birds; thus, the department cautions that the proposed regulations are tentative and may change significantly, depending on federal actions prior to the release of the early-season frameworks in late June and the late-season frameworks in August. However, it is the policy of the commission to adopt the most liberal provisions possible, consistent with hunter preference, under the frameworks in order to provide maximum hunter opportunity.

Robert Macdonald, regulations coordinator, has determined that for the first five years that the amendments as proposed are in effect, there will be no additional fiscal implications to state or local governments as a result of enforcing or administering the rules as proposed.

Mr. Macdonald also has determined that for each of the first five years the proposed rules are in effect, the public benefit anticipated as a result of enforcing the rules as proposed will be the department's discharge of its statutory obligation to manage and conserve the state's populations of migratory game birds for the use and enjoyment of the public, consistent with the principles of sound biological management.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic affect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. The department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposed rules regulate various aspects of recreational license privileges that allow individual persons to pursue and harvest migratory game

bird resources in this state and therefore do not directly affect small businesses or micro-businesses. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

There also will be no adverse economic effect on persons required to comply with the rules as proposed.

The department has not filed a local impact statement with the Texas Workforce Commission as required by Government Code, §2001.022, as the department has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2008, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Robert Macdonald, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4775 or 1-800-792-1112 (e-mail: robert.macdonald@tpwd.state.tx.us).

The amendments are proposed under Parks and Wildlife Code, Chapter 64, which authorizes the Commission and the Executive Director to provide the open season and means, methods, and devices for the hunting and possessing of migratory game birds.

The proposed amendments affect Parks and Wildlife Code, Chapter 64.

§65.315. *Open Seasons and Bag and Possession Limits--Early Season.*

(a) Rails.

(1) Dates: September 11 - 26, 2010 and October 30 - December 22, 2010 [~~September 12 - 27, 2009 and October 31 - December 23, 2009~~].

(2) Daily bag and possession limits:

(A) king and clapper rails: 15 in the aggregate per day; 30 in the aggregate in possession.

(B) sora and Virginia rails: 25 in the aggregate per day; 25 in the aggregate in possession.

(b) Dove seasons.

(1) North Zone.

(A) Dates: September 1 - October 24, 2010 and December 25, 2010 - January 9, 2011 [~~September 1 - October 25, 2009 and December 26, 2009 - January 9, 2010~~].

(B) Daily bag limit: 15 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped doves per day;

(C) Possession limit: 30 mourning doves, white-winged doves, and white-tipped doves in the aggregate, including no more than four white-tipped doves in possession.

(2) Central Zone.

(A) Dates: September 1 - October 24, 2010 and December 25, 2010 - January 9, 2011 [~~September 1 - October 25, 2009 and December 26, 2009 - January 9, 2010~~].

(B) Daily bag limit: 15 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped doves per day;

(C) Possession limit: 30 mourning doves, white-winged doves, and white-tipped doves in the aggregate, including no more than four white-tipped doves in possession.

(3) South Zone.

(A) Dates: Except in the special white-winged dove area as defined in §65.314 of this title (relating to Zones and Boundaries for Early Season Species), September 17 - October 31, 2010 and December 25, 2010 - January 18, 2011 [~~September 18 - November 3, 2009 and December 26, 2009 - January 17, 2010~~].

(B) Daily bag limit: 15 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped doves per day;

(C) Possession limit: 30 mourning doves, white-winged doves, and white-tipped doves in the aggregate, including no more than four white-tipped doves in possession.

(4) Special white-winged dove area.

(A) Dates: September 4, 5, 11, and 12, 2010 [~~September 5, 6, 12, and 13, 2009~~].

(i) Daily bag limit: 15 white-winged doves, mourning doves, and white-tipped (white-fronted) doves, in the aggregate to include no more than four mourning doves and two white-tipped doves per day;

(ii) Possession limit: 30 white-winged doves, mourning doves, and white-tipped doves in the aggregate to include no more than eight mourning doves and four white-tipped doves in possession.

(B) Dates: September 17 - October 31, 2010 and December 25, 2010 - January 14, 2011 [~~September 18 - November 3, 2009 and December 26, 2009 - January 13, 2010~~].

(i) Daily bag limit: 15 white-winged doves, mourning doves, and white-tipped (white-fronted) doves, in the aggregate to include no more than two white-tipped doves per day;

(ii) Possession limit: 30 white-winged doves, mourning doves, and white-tipped doves in the aggregate to include no more than four white-tipped doves in possession.

(c) Gallinules.

(1) Dates: September 11 - 26, 2010 and October 30 - December 22, 2010 [~~September 12 - 27, 2009 and October 31 - December 23, 2009~~].

(2) Daily bag and possession limits: 15 in the aggregate per day; 30 in the aggregate in possession.

(d) September teal-only season.

(1) Dates: September 11 - 26, 2010 [~~September 12 - 27, 2009~~].

(2) Daily bag and possession limits: four in the aggregate per day; eight in the aggregate in possession.

(e) Red-billed pigeons, and band-tailed pigeons. No open season.

(f) Shorebirds. No open season.

(g) Woodcock: December 18, 2010 - January 31, 2011 [~~December 18, 2009 - January 31, 2010~~]. The daily bag limit is three. The possession limit is six.

(h) Wilson's snipe (Common snipe): October 30, 2010 - February 13, 2011 [~~October 31, 2009 - February 14, 2010~~]. The daily bag limit is eight. The possession limit is 16.

§65.318. *Open Seasons and Bag and Possession Limits--Late Season.*

Except as specifically provided in this section, the possession limit for all species listed in this section shall be twice the daily bag limit.

(1) Ducks, mergansers, and coots. The daily bag limit for ducks is six, which may include no more than five mallards (only two of which may be hens); three wood ducks; two scaup (lesser scaup and greater scaup in the aggregate); two redheads; one pintail; one canvasback; and one "dusky" duck (mottled duck, Mexican like duck, black duck and their hybrids). For all other species not listed, the bag limit shall be six. The daily bag limit for coots is 15. The daily bag limit for mergansers is five, which may include no more than two hooded mergansers.

(A) High Plains Mallard Management Unit:

(i) all species other than "dusky ducks" [~~mottled ducks~~]: October 23 - 24, 2010 and October 29, 2010 - January 23, 2011 [~~October 24 - 25, 2009 and October 30, 2009 - January 24, 2010~~].

(ii) "dusky ducks" [~~mottled ducks~~]: November 1, 2010 - January 23, 2011 [~~November 2, 2009 - January 24, 2010~~].

(B) North Zone:

(i) all species other than "dusky ducks": October 30 - November 28, 2010 and December 11, 2010 - January 23, 2011 [~~mottled ducks - October 31 - November 29, 2009 and December 12, 2009 - January 24, 2010~~].

(ii) "dusky ducks" [~~mottled ducks~~]: November 4 - 28, 2010 and December 11, 2010 - January 23, 2011 [~~November 5 - 29, 2009 and December 12, 2009 - January 24, 2010~~].

(C) South Zone:

(i) all species other than "dusky ducks" [~~mottled ducks~~]: October 30 - November 28, 2010 and December 11, 2010 - January 23, 2011 [~~October 31 - November 29, 2009 and December 12, 2009 - January 24, 2010~~].

(ii) "dusky ducks" [~~mottled ducks~~]: November 4 - 28, 2010 and December 11, 2010 - January 23, 2011 [~~November 5 - 29, 2009 and December 12, 2009 - January 24, 2010~~].

(2) Geese.

(A) Western Zone.

(i) Light geese: November 6, 2010 - February 6, 2011 [~~November 7, 2009 - February 7, 2010~~]. The daily bag limit for light geese is 20, and there is no possession limit.

(ii) Dark geese: November 6, 2010 - February 6, 2011 [~~November 7, 2009 - February 7, 2010~~]. The daily bag limit for dark geese is five, which may not include more than four Canada geese or more than one white-fronted goose.

(B) Eastern Zone.

(i) Light geese: October 30, 2010 - January 23, 2011 [~~October 31, 2009 - January 24, 2010~~]. The daily bag limit for light geese is 20, and there is no possession limit.

(ii) Dark geese:

(I) White-fronted geese: October 30, 2010 - January 9, 2011 [~~October 31, 2009 - January 10, 2010~~]. The daily bag limit for white-fronted geese is two.

(II) Canada geese: October 30, 2010 - January 23, 2011 [~~October 31, 2009 - January 24, 2010~~]. The daily bag limit for Canada geese is three.

(3) Sandhill cranes. A free permit is required of any person to hunt sandhill cranes in areas where an open season is provided under this proclamation. Permits will be issued on an impartial basis with no limitation on the number of permits that may be issued.

(A) Zone A: November 6, 2010 - February 6, 2011 [~~November 7, 2009 - February 7, 2010~~]. The daily bag limit is three. The possession limit is six.

(B) Zone B: November 26, 2010 - February 6, 2011 [~~November 27, 2009 - February 7, 2010~~]. The daily bag limit is three. The possession limit is six.

(C) Zone C: December 18, 2010 - January 23, 2011 [~~December 19, 2009 - January 24, 2010~~]. The daily bag limit is two. The possession limit is four.

(4) Special Youth-Only Season. There shall be a special youth-only waterfowl season during which the hunting, taking, and possession of geese, ducks, mergansers, and coots is restricted to licensed hunters 15 years of age and younger accompanied by a person 18 years of age or older, except for persons hunting by means of falconry under the provisions of §65.320 of this chapter (relating to Extended Falconry Season--Late Season Species). Bag and possession limits in any given zone during the season established by this paragraph shall be as provided for that zone by paragraph (1) of this section. Season dates are as follows:

(A) High Plains Mallard Management Unit: October 16 - 17, 2010 [~~October 17 - 18, 2009~~];

(B) North Zone: October 23 - 24, 2010 [~~October 24 - 25, 2009~~]; and

(C) South Zone: October 23 - 24, 2010 [~~October 24 - 25, 2009~~].

§65.319. *Extended Falconry Season--Early Season Species.*

(a) It is lawful to take the species of migratory birds listed in this section by means of falconry during the following Extended Falconry Seasons:

(1) mourning doves and white-winged doves: November 18 - December 24, 2010 [~~November 19 - December 25, 2009~~].

(2) rails and gallinules: December 25, 2010 - January 30, 2011 [~~December 26, 2009 - January 31, 2010~~].

(3) woodcock: November 23 - December 16, 2010 [~~November 24 - December 17, 2009~~].

(b) The daily bag and possession limits for migratory game birds under this section shall not exceed three and six birds respectively, singly or in the aggregate.

§65.320. *Extended Falconry Season--Late Season Species.*

It is lawful to take the species of migratory birds listed in this section by means of falconry during the following Extended Falconry Seasons.

(1) Ducks, coots, and mergansers:

(A) High Plains Mallard Management Unit: no extended season;

(B) North Duck Zone: January 24 - February 7, 2011 [~~January 25 - February 8, 2010~~];

(C) South Duck Zone: January 24 - February 7, 2011 [~~January 25 - February 8, 2010~~].

(2) The daily bag and possession limits for migratory game birds under this section shall not exceed three and six birds, respectively, singly or in the aggregate.

§65.321. *Special Management Provisions.*

The provisions of paragraphs (1) - (3) of this section apply only to the hunting of light geese. All provisions of this subchapter continue in effect unless specifically provided otherwise in this section; however, where this section conflicts with the provisions of this subchapter, this section prevails.

(1) Means and methods. The following means and methods are lawful during the time periods set forth in paragraph (4) of this section:

- (A) shotguns capable of holding more than three shells; and
- (B) electronic calling devices.

(2) Possession. During the time periods set forth in paragraph (4) of this section:

- (A) there shall be no bag or possession limits; and
- (B) the provisions of §65.312 of this title (relating to Possession of Migratory Game Birds) do not apply; and

(C) a person may give, leave, receive, or possess legally taken light geese or their parts, provided the birds are accompanied by a wildlife resource document (WRD) from the person who killed the birds. A properly executed WRD satisfies the tagging requirements of 50 CFR Part 20. The WRD is not required if the possessor lawfully killed the birds; the birds are transferred at the personal residence of the donor or donee; or the possessor also possesses a valid hunting license, a valid waterfowl stamp, and is HIP certified. The WRD shall accompany the birds until the birds reach their final destination, and must contain the following information:

- (i) the name, signature, address, and hunting license number of the person who killed the birds;
- (ii) the name of the person receiving the birds;
- (iii) the number and species of birds or parts;
- (iv) the date the birds were killed; and
- (v) the location where the birds were killed (e.g., name of ranch; area; lake, bay, or stream; county).

(3) Shooting hours. During the time periods set forth in paragraph (4) of this section, shooting hours are from one half-hour before sunrise until one half-hour after sunset.

(4) Special Light Goose Conservation Period.

(A) From ~~January 24 - March 27, 2011~~ ~~[January 25 - March 28, 2010]~~, the take of light geese is lawful in Eastern Zone as defined in §65.317 of this title (relating to Zones and Boundaries for Late Season Species).

(B) From ~~February 7 - March 27, 2011~~ ~~[February 8 - March 28, 2010]~~, the take of light geese is lawful in the Western Zone as defined in §65.317 of this title ~~[(relating to Zones and Boundaries for Late Season Species)].~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 7, 2010.
TRD-201002477

Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: June 20, 2010
For further information, please call: (512) 389-4775

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

**CHAPTER 35. PRIVATE SECURITY
SUBCHAPTER A. DEFINITIONS**

37 TAC §35.1

The Texas Department of Public Safety (the department) proposes amendments to §35.1, concerning Definitions. The amendments are necessary to clarify the meaning of the statutory phrase "television camera or still camera system" occurring in Texas Occupations Code, §1702.002(1)(C). This amendment will provide guidance to the Private Security Board's investigators, staff, and the security industry regarding the scope of the licensing requirements for those who sell or install such systems.

Cheryl MacBride, Assistant Director, Finance, has determined that for each year of the first five-year period the amendments are in effect there will be no fiscal implications for state or local government or local economies.

Ms. MacBride also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the amendment. There are no economic costs to individuals who are required to comply with the amendment. There is no anticipated negative impact on local employment.

In addition, Ms. MacBride has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of the amendment will be greater clarity and efficiency in the Private Security Bureau's enforcement of Chapter 1702. There should be no economic costs resulting from the amendment of this rule.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce the risks to human health from environmental exposure.

The department has determined that Texas Government Code, Chapter 2007, does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding the amendment.

Written comments on the proposed amendments may be sent to Steve Moninger, Legal Staff, Regulatory Licensing Service-Pri-

vate Security Bureau, P.O. Box 4143, MSC-0242, Austin, Texas 78765-0242, (512) 424-5842.

The amendments are proposed under Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

Texas Government Code, §411.004(3), Texas Occupations Code, §1702.061, and §1702.002 are affected by this proposal.

§35.1. *Definitions.*

The following words or terms, when used in this chapter, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **Client**--Any person, individual, firm, association, company, partnership, corporation, nonprofit organization, institution, or similar entity, having a contract which authorizes services to be provided in return for financial or other considerations.

(2) **Conflict of interest**--A conflict or the appearance thereof, between the private interests and public obligations of an individual, organization, or other legal entity authorized to conduct business pursuant to the Act.

(3) **Board**--Means the members appointed by the Governor of Texas to serve as the governing body of the Texas Private Security Board or the staff serving the administration/enforcement needs of that entity.

(4) **Contract**--An agreement between a person or company licensed under this Act and a client. Such contracts may be oral or written, or in any combination thereof.

(5) **Conviction**--Any final adjudication of guilt, whether pursuant to a plea of guilty or nolo contendere, or pronouncement of guilt by judge or jury, and any suspended sentence, judgment, or community supervision, including those judgments of community supervision that have been dismissed or convictions that have been set aside.

(6) **Curriculum**--The collective, written documentation of the material content of a training course, or any particular phase of training prescribed by the Act, minimally consisting of course objectives, student objectives, lesson plans, training aids, and examinations.

(7) **Licensee**--Any person defined in the Act that has been granted a license, registration or security officer commission or has filed an application for a license, registration or security officer commissioned by or with the Texas Private Security Board.

(8) **Act**--Title 10, Chapter 1702, Texas Occupations Code as amended by the Texas Legislature.

(9) **Shareholder**--Means any individual holding stock in a licensee who is actively involved in the normal course of operation and business of the licensee and shall not include those individuals who hold stock in the licensee solely for the purposes of investment.

(10) **Advertisement**--For purposes of §35.37 of this title (relating to Information Shown in Advertisements), an advertisement is any printed, digital, or electronic media created or used for the purpose of promoting the regulated business of the licensee.

(11) **Undercover Agent**--A person as defined under §1702.240 of the Act, requiring protected identity, during the course and scope of a specific, ongoing, investigation.

(12) **State**--means the State of Texas or any political subdivision thereof.

(13) **Maintenance of supervisory position on a daily basis**--For purposes of §1702.120, Texas Occupations Code, this phrase requires that the manager have continuous oversight of no more than three (3) companies and two (2) schools, the supervised individuals, or their intermediate level supervisors, in a manner sufficient to ensure that all supervised individuals are complying with these rules and with the Act.

(14) **Employment, Business Activity**--These terms, or similar terms or phrases used in the Act or in these rules, are not limited in their meaning to "for profit" enterprises or to work performed for remuneration, but include any provision of services regulated by the bureau [Bureau], such as services provided on a volunteer or unpaid basis.

(15) **Application**--For purposes under Chapter 1702, "application" includes an application for the renewal of any registration, commission, or license issued under the Act.

(16) **Due Diligence**--For purposes of §35.204 of this title (relating to Pre-Employment Check), the exercise of due diligence may be satisfied through the review of the applicant's non-confidential criminal history on the Department of Public Safety's public website or other commercial website, or by obtaining a criminal history clearance letter from the District Clerk and County Clerk Offices in the applicant's county of residence. This does not prevent an employer from using a more stringent method of determining an applicant's eligibility.

(17) **Television camera or still camera system**--For purposes of §1702.002(1)(C) of the Texas Occupations Code, a television camera or still camera system refers to any device or system of devices that produces a visual image or series of images that are either recorded, transmitted through an intranet or internet protocol based device, or monitored or viewed by security personnel, for the purposes of private security or surveillance. The phrase does not refer to a television camera or still camera system that is used exclusively:

(A) for the purpose of viewing and monitoring traffic conditions on public roads;

(B) to detect motor vehicle violations on public roads;

(C) for telephone or video conferencing;

(D) to monitor a manufacturing process;

(E) for medical purposes, by medical practitioners;

(F) by a courtroom reporter or videographer for the purposes of recording depositions or testimony; or

(G) by a licensed private investigator who installs, operates and maintains ownership of the system for the purposes of an ongoing investigation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 5, 2010.

TRD-201002354

Stuart Platt

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



SUBCHAPTER E. GENERAL ADMINISTRATION AND EXAMINATIONS

37 TAC §35.70

The Texas Department of Public Safety (the department) proposes amendments to §35.70, concerning Fees.

In compliance with the 81st Legislature's amendment of Texas Occupations Code, §1702.062, the proposal of this rule will provide an additional opportunity for public and industry input on fees, and its adoption will provide guidance to Private Security Bureau staff, the regulated industry, and prospective applicants regarding the fees charged for the various services provided by the department under the Private Security Act (Texas Occupations Code, Chapter 1702).

Cheryl MacBride, Assistant Director, Finance, has determined that for each year of the first five-year period the amendments are in effect there will be no fiscal implications for state or local government or local economies.

Ms. MacBride also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the amendment. There are no economic costs to individuals who are required to comply with the amendment. There is no anticipated negative impact on local employment.

In addition, Ms. MacBride, has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of the amendment will be greater flexibility and efficiency in the bureau's enforcement of Chapter 1702. There should be no economic costs resulting from the amendment of this rule.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce the risks to human health from environmental exposure.

The department has determined that Texas Government Code, Chapter 2007, does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding the amendment.

Written comments on the proposed amendments may be sent to Steve Moninger, Legal Staff, Regulatory Licensing Service-Private Security Bureau, P.O. Box 4143, MSC-0242, Austin, Texas 78765-0242, (512) 424-5842.

The amendment is proposed under Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

The proposed amendments affect Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061 and §1702.062.

§35.70. Fees.

(a) Pursuant to §1702.0062 of the Act, the Private Security Board adopts the following fee schedule:

- (1) Class A license (original and renewal) \$350;
- (2) Class B license (original and renewal) \$400;
- (3) Class C license (original and renewal) \$540;
- (4) Class T license (original and renewal) \$2,500;
- (5) Assignment of license \$150;
- (6) Branch office certificate and renewal \$300;
- (7) Change name of license \$75;
- (8) Delinquency fee (post-expiration renewal penalty) \$30;
- (9) Duplicate pocket card \$10;
- (10) Employee information update fee \$15;
- (11) FBI fingerprint check \$25;
- (12) Letter of authority fee for private business and political subdivision \$400;
- (13) Letter of authority renewal fee for private business and political subdivision \$225;
- (14) Personal protection officer authorization \$50;
- (15) Preliminary Background Check and Evaluation Letter \$100;
- (16) Pocket Card Endorsement (add or delete) \$20;
- (17) Reinstate suspended license \$150;
- (18) Registration fee for alarm systems monitor \$30;
- (19) Registration fee for dog trainer \$30;
- (20) Registration fee for employee of license holder \$30;
- (21) Registration fee for noncommissioned security officer (original and renewal) \$30;
- (22) Registration fee for owner, officer, partner, or shareholder of a license holder \$50;
- (23) Registration fee for private investigator, manager, branch office manager, locksmith, electronic access control device installer, and alarm systems installer (original and renewal) \$30;
- (24) Registration fee for security consultant \$30;
- (25) Registration fee for security salesperson \$30;
- (26) School instructor fee (original and renewal) \$100;
- (27) Security officer commission fee (original and renewal) \$50; and
- (28) Training School and CE School approval fee (original and renewal) \$350.

(b) ~~[(a)]~~ The fees submitted to the board shall be the same as subsection (a) of this section ~~[provided in §1702.062 of the Texas Occupations Code]~~ unless otherwise specified in Article V of the General Appropriations Act in accordance with §316.043 of the Texas Government Code, whether for an original application, renewal, reciprocal or provisional license, registration, endorsement, or security officer commission.

(c) ~~[(b)]~~ Fees collected by the board are neither ~~[not]~~ refundable nor ~~[or]~~ transferable.

(d) [(e)] Payment of fees shall be made by licensed company check, cashier's check, or money order or by an attorney on behalf of his client paid on the attorney's trust fund account. Should the company check be returned for insufficient funds, the applicant must promptly make payment by cashier's check or money order. If prompt payment is not made in this manner, the application will be abandoned as "incomplete." If the license was issued prior to notification of the insufficiency of funds, and proper payment is not promptly made, revocation proceedings will be initiated under §1702.361 of the Texas Occupations Code.

(e) [(d)] Original fees shall not be prorated. The full license fee shall accompany all applications for original license.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Stuart Platt

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



37 TAC §35.76

The Texas Department of Public Safety (the department) proposes new §35.76, concerning Electronic Access Control Device Company License in response to the 81st Legislature's amendment of §1702.103 of the Texas Occupations Code. The latter amendment eliminated the license classification previously associated with the license for Electronic Access Control Device companies (Class "D"), but failed to make a corresponding change to the definition of a "Security Services Contractor" (defined in §1702.102 of the Texas Occupations Code). As a result, there is no statutory classification for an Electronic Access Control Device company license.

However, §1702.103(e) grants to the Private Security Board the authority to establish new classifications by rule. This new section establishes such licenses as within the Class B classification, i.e., as Security Services Contractors. The adoption of this section will address the results of a legislative drafting error, simplify the administration of the licensing process, and enhance administrative efficiency.

Cheryl MacBride, Assistant Director, Finance, has determined that for each year of the first five-year period the proposal is in effect there will be no fiscal implications for state or local government or local economies.

Ms. MacBride also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the proposal. There are no economic costs to individuals who are required to comply with the proposal. There is no anticipated negative impact on local employment.

In addition, Ms. MacBride has determined that for each year of the first five years the proposal in effect, the public benefit anticipated as a result of the proposal will be greater efficiency in the bureau's administration of Chapter 1702. There should be no economic costs resulting from the proposal of this rule.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce the risks to human health from environmental exposure.

The department has determined that Texas Government Code, Chapter 2007, does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding the proposal.

Written comments on the proposal may be sent to Steve Moninger, Legal Staff, Regulatory Licensing Service-Private Security Bureau, P.O. Box 4143, MSC-0242, Austin, Texas 78765-0242, (512) 424-5842.

The new section is proposed under Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

The proposed new section affects Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061 and §1702.103.

§35.76. Electronic Access Control Device Company License.

Pursuant to §1702.103(e) of the Act, the board has established that the Electronic Access Control Device Company license will be classified as a Class B, Security Services Contractor license.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Stuart Platt

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



SUBCHAPTER M. COMPANY RECORDS

37 TAC §35.203

The Texas Department of Public Safety (the department) proposes amendments to §35.203, concerning Records to be Available for Inspection, in order to articulate the department's current policy regarding records inspections of licensed companies, and specifically to clarify the circumstances under which electronic records are adequate.

Cheryl MacBride, Assistant Director, Finance, has determined that for each year of the first five-year period the amendments are in effect there will be no fiscal implications for state or local government or local economies.

Ms. MacBride also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the amendment. There are no economic costs to individuals who are required to comply with the amendment. There is no anticipated negative impact on local employment.

In addition, Ms. MacBride has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of the amendment will be greater clarity and efficiency in the Private Security Bureau's enforcement of Chapter 1702. There should be no economic costs resulting from the amendment of this rule.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce the risks to human health from environmental exposure.

The department has determined that Texas Government Code, Chapter 2007, does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding the amendment.

Written comments on the proposed amendments may be sent to Steve Moninger, Legal Staff, Regulatory Licensing Service-Private Security Bureau, P.O. Box 4143, MSC-0242, Austin, Texas 78765-0242, (512) 424-5842.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

The proposed amendments affect Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061.

§35.203. *Records to be Available for Inspection.*

(a) All records required to be kept under the provisions of the Act and this subchapter [~~these rules~~] shall be made available for inspection by bureau staff during normal business hours.

(b) Records may be kept in an electronic reproducible form, if such electronic records are immediately reproducible into hard copy upon the request of bureau staff.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Stuart Platt

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



SUBCHAPTER N. INVESTIGATIONS COMPANY

37 TAC §35.221

The Texas Department of Public Safety (the department) proposes to new Subchapter N, §35.221, concerning Investigations Company, in order to establish the qualifications for a license as a private investigator, as authorized by Texas Occupations Code, §1702.104.

Cheryl MacBride, Assistant Director, Finance, has determined that for each year of the first five-year period the proposal is in effect there will be no fiscal implications for state or local government or local economies.

Ms. MacBride also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with this proposal. There are no economic costs to individuals who are required to comply with this proposal. There is no anticipated negative impact on local employment.

In addition, Ms. MacBride has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of the proposal will be greater clarity and fairness in the department's licensing determinations relating to private investigators. There should be no economic costs resulting from this new section.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce the risks to human health from environmental exposure.

The department has determined that Texas Government Code, Chapter 2007, does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding the proposal.

Written comments on the proposal may be sent to Steve Moninger, Legal Staff, Regulatory Licensing Service-Private Security Bureau, P.O. Box 4143, MSC-0242, Austin, Texas 78765-0242, (512) 424-5842.

The new section is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

The new section affects Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061 and §1702.114.

§35.221. *Qualifications for Investigations Company License.*

(a) Pursuant to §1702.114 of the Act, the board has determined that an applicant for licensure as a private investigations company (as owner), or the prospective manager of the applicant company, must have met one of the following qualifications:

(1) Three consecutive years of investigation-related experience;

(2) A bachelor's degree in criminal justice;

(3) A bachelor's degree, with an additional six months of investigation-related experience;

(4) An associate degree in criminal justice or related course of study, with an additional 12 months of investigation-related experience; or

(5) A specialized course of study directly designed for and related to the private investigations profession, taught and presented through affiliation with a four-year college or university accredited and recognized by the State of Texas. This course of study must be endorsed by the four year college or university's department of criminal justice program and include a departmental faculty member(s) on its instructional faculty. This course of study must consist of a minimum of two hundred face-to-face classroom hours including coverage of ethics, Private Security Board administrative rules, the Private Security Act, and related statutes.

(b) Other combinations of education and investigation-related experience may be substituted for the above at the discretion of the bureau manager.

(c) The bachelor's degrees, associate degrees and specialized courses referenced in subsection (a) of this section must be affiliated with a college or university recognized by the Texas Higher Education Coordinating Board, Southern Association of Colleges and Schools or other accreditation organization recognized by the State of Texas.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Stuart Platt

General Counsel

Texas Department of Public Safety

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SUBCHAPTER S. CONTINUING EDUCATION

37 TAC §35.291

The Texas Department of Public Safety (the department) proposes amendments to §35.291, concerning Mandatory Continuing Education Courses, in order to modify the continuing education requirement for licensed locksmiths.

Cheryl MacBride, Assistant Director, Finance, has determined that for each year of the first five-year period the amendments are in effect there will be no fiscal implications for state or local government or local economies.

Ms. MacBride also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the amendment. There are no economic costs to individuals who are required to comply with the amendment. There is no anticipated negative impact on local employment.

In addition, Ms. MacBride has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of the amendment will be greater confidence in the competence of licensed locksmiths.

There should be no economic costs resulting from the amendment of this rule.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce the risks to human health from environmental exposure.

The department has determined that Texas Government Code, Chapter 2007, does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding the amendment.

Written comments on the proposed amendments may be sent to Steve Moninger, Legal Staff, Regulatory Licensing Service-Private Security Bureau, P.O. Box 4143, MSC-0242, Austin, Texas 78765-0242, (512) 424-5842.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

The proposed amendments affect Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061.

§35.291. Mandatory Continuing Education Courses.

(a) A license may not be renewed until the required minimum hours of board approved continuing education credits have been obtained in accordance with the Act and board rules. Proof of the required continuing education must be maintained by the employer and contained in the personnel file of the registrant's employing company.

(1) All registrants not specifically addressed in this section shall complete a total of eight (8) hours of continuing education, seven hours of which must be in subject matter that relates to the type of registration held, and one (1) hour of which must cover ethics. Following the initial registration period, Qualified Managers of Class B licensed companies may take a one (1) hour course devoted to changes in laws and rules applicable to the security industry, as a substitute for the above ethics requirement.

(2) Non-participating owners, partners, shareholders, non-commissioned security officers and administrative support personnel are specifically exempted from the continuing education requirements.

(3) Private investigators and managers of Class A and Class C licenses with more than fifteen (15) years of continued registration as a private investigator or manager of a Class A or Class C license shall complete a total of twelve (12) hours of continuing education, eight (8) hours of which must be in subject matter that relates to the type of registration held, two (2) hours of which must be over ethics, and two (2) hours of which must involve the review of Texas Occupations Code, Chapter 1702, and the Board's Administrative Rules, Tex. Admin. Code, 37 TAC 35. Private Investigators and managers of Class A and Class C licenses with less than fifteen (15) years of continued registration as a private investigator or manager of a Class A or Class C license shall complete a total of eighteen (18) hours of continuing education, fourteen (14) of which must be in subject matter that relates to the type of registration held, two (2)

hours of which must be over ethics, and two (2) hours of which must involve the review of Texas Occupations Code, Chapter 1702 and the Board's Administrative Rules, Tex. Admin. Code, 37 TAC 35.

(4) Any person registered as a private investigator who fails to complete the required continuing education during the twenty-four (24) months of an initial registration is not eligible to make new or renewal application until such time as the training requirement for the previous registration period has been satisfied.

(5) Commissioned security officers and personal protection officers shall complete six (6) hours of continuing education. Continuing education for commissioned security officers and personal protection officers must be taught by schools and instructors approved by the board to instruct commissioned security officers as defined in §1702.1685 of the Act. Commissioned security officers shall submit a firearms proficiency certificate along with their renewal application.

(6) All registrants shall indicate they have completed the required minimum hours of board-approved continuing education credits on their application for renewal. A renewal application shall also include name of school, school number, seminar number, seminar date, and credits earned.

(7) During the first (1st) twelve (12) months of initial registration each person employed as an alarm system installer or alarm systems salesperson must complete sixteen (16) hours of classroom instruction, as described in Chapter 1702, Texas Occupation Code, with two (2) hours covering the National Electrical Code (NEC) as it applies to low voltage. Any person employed as an alarm systems installer or alarm systems salesperson must obtain eight (8) hours of continuing education credits in alarm related field, with one (1) hour covering the National Electrical Code (NEC) as it applies to low voltage, during each subsequent twenty-four (24) month period preceding the expiration date of registration in order to renew the registration.

(8) For the protection of the installer and the general public, the work of an alarm system installer who has not completed the required sixteen (16) hours of instruction must be overseen by an installer who has completed the required sixteen (16) hours of instruction. The oversight required under this section need not involve direct, physical supervision, but the overseeing installer is responsible for ensuring that the installation complies with all applicable requirements and regulations.

(9) Any person licensed as an alarm systems installer or alarm systems salesperson who fails to complete sixteen (16) hours of training during the twenty-four (24) months of initial licensure or who fails to complete eight (8) hours of continuing education during any subsequent licensing period is not eligible to make new or renewal application until such time as all training requirements for the previous license period have been satisfied.

(10) Alarm monitors shall complete four (4) hours of continuing education in subject matter that relates to the duties and responsibilities of an alarm monitor.

(11) The manager or his designee shall approve classes for continuing education that are determined to meet the qualifications of the Act and board rules.

(12) Any person licensed by the board as an alarm instructor shall be authorized to instruct all alarm continuing education courses approved by the board.

(13) Any person licensed by the board as a Level III or Level IV Instructor shall be authorized to instruct all continuing education courses approved by the board excluding alarm continuing education.

(14) All persons registered or licensed as locksmiths must complete sixteen (16) hours of continuing education every two (2) years.

(b) To receive board approval, a continuing education course shall contain instruction relating to one or more of the following:

(1) investigative procedures and practices;

(2) business practices;

(3) legal aspects of private investigation or private security;

(4) ethical aspects of private investigation or private security;

(5) handgun proficiency as defined under §1702.168 of the Act; and/or

(6) any other course of instruction approved by the manager.

(c) To receive board approval, a continuing education course shall contain at least one (1) clock hour of instruction.

(d) The manager shall approve courses for continuing education that are determined to meet the qualifications of this section [~~these rules~~] and the Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 5, 2010.

TRD-201002359

Stuart Platt

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: June 20, 2010

For further information, please call: (512) 424-5848



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER P. PREPARATION FOR ADULT LIVING

DIVISION 2. EDUCATION AND TRAINING VOUCHER PROGRAM

40 TAC §700.1613

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §700.1613, concerning who is eligible for the Education and Training Voucher (ETV) Program, in its chapter governing Child Protective Services. The federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (Fostering Connections Act), P.L. 110-351, §101(e)(2), amended Title IV-E of the Social Security Act, §477(i)(2) regarding a state's ETV program. The change authorizes states

to provide ETV benefits to youth who are at least 16 years old at the time they leave foster care for subsidized kinship guardianship (Permanency Care Assistance (PCA) in Texas). This proposal authorizes DFPS to provide ETV benefits to youth over age 16 who exit foster care for a PCA arrangement.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. The ETV benefit is funded by the federal government under the Chafee program, which requires a 20% state match that is supplied through the Texas tuition waiver statute. There is only a negligible anticipated increase in ETV expenditures since the overwhelming majority of children who will be in the PCA program starting at age 16 or older would have been eligible under the previous ETV rule.

Ms. Brown also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that youth exiting foster care to the PCA program will have additional supports in addressing education and training needs. There will be no effect on large, small, or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed section.

HHSC has determined that the proposed amendment does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Larry Burgess at (512) 438-5320 in DFPS's Child Protective Services Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-420, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements §101 of Fostering Connections to Success and Increasing Adoptions Act of 2008, P.L. 110-351.

§700.1613. *Who can be eligible for the ETV Program?*

(a) Youth in one of the following categories can be eligible to participate in the ETV Program:

(1) - (2) (No change.)

(3) not yet age 21 and was adopted or exited to the Permanency Care Assistance Program from DFPS foster care after turning age 16.

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 3, 2010.

TRD-201002227

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: June 20, 2010

For further information, please call: (512) 438-3437



CHAPTER 711. INVESTIGATIONS IN DADS MENTAL RETARDATION AND DSHS MENTAL HEALTH FACILITIES AND RELATED PROGRAMS

SUBCHAPTER O. EMPLOYEE MISCONDUCT REGISTRY

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§711.1401, 711.1403, 711.1407, 711.1413, 711.1415, 711.1417, 711.1419, 711.1421, 711.1423, 711.1425, 711.1427, 711.1429, and 711.1431; new §§711.1402, 711.1404, 711.1406, 711.1408, 711.1414, 711.1426, 711.1432, and 711.1434; and the repeal of §§711.1405, 711.1409, 711.1433, and 711.1435, in its Employee Misconduct Registry, Subchapter O, Chapter 711, Title 40, Texas Administrative Code. The purpose of the changes is to implement requirements in Senate Bills (SB) 643 and 806, 81st Legislature, Regular Session, 2009, and to further explain the procedures involved in Employee Misconduct Registry (EMR) appeals. SB 806 expands the types of employees who are eligible to be reported to the EMR if found responsible for abuse, neglect or exploitation that meets the definition of reportable conduct, to include employees of state supported living centers operated by the Department of Aging and Disability Services (DADS), state mental health hospitals operated by the Department of State Health Services (DSHS) and employees of local authorities including mental health authorities and mental retardation authorities, effective September 1, 2010. SB 643 transfers the responsibility to investigate abuse, neglect and exploitation for private, licensed intermediate care facilities for the mentally retarded (ICFs-MR) from DADS to DFPS. This transfer includes the responsibility to forward the name of an employee designated as a perpetrator of reportable conduct to the Employee Misconduct Registry (EMR) after offering an EMR hearing.

The rules being amended concern the notice and appeal rights that must be afforded to all persons who are subject to listing in the Employee Misconduct Registry. The rules are amended to add the new employee types that are subject to EMR listing, and to clarify DFPS's EMR notice and appeal procedures. The applicable definitions for abuse, neglect, and exploitation in-home and mental health and mental retardation investigations are also repeated in this subchapter for the convenience of the user.

A summary of the changes follows:

The amendment to §711.1401 clarifies the source of the laws for the EMR.

New §711.1402 replaces definitions previously listed in §700.1405 of this title (relating to How are some of the terms in this subchapter defined?), and adds definitions for new terms applicable to the added employees, including In-home investigations, MH&MR investigations, intermediate care facilities for the mentally retarded, and state supported living centers. As a result of adding new §711.1402, existing §711.1405 is repealed.

The amendment to §711.1403 clarifies who is eligible for the EMR, to include employees added by SB 806 and SB 643, and clarifies that certified nurse aides are eligible for the EMR, as required by SB 806.

New §711.1404 states the definitions applicable in In-home investigations for abuse, sexual abuse, neglect, and financial exploitation. The definitions mirror the definitions in statute and rules relating to In-home investigations, but are restated here for the convenience of users of this subchapter.

New §711.1406 states the definitions applicable in MH&MR investigations for abuse, sexual abuse, neglect and financial exploitation. The definitions mirror the definitions contained elsewhere in this chapter for use in these types of investigations, but are restated here for the convenience of users of this subchapter.

New §711.1408 defines what is considered reportable conduct, formerly stated in §711.1409 of this title (relating to What is reportable conduct?) and adds definitions for harm in cases of abuse or neglect for both In-home investigations and MH&MR investigations. The section also defines substantial harm for reportable emotional or verbal abuse, which had not previously been defined in rule. Section 711.1409 is repealed.

The amendment to §711.1413 revises rule language to clarify what must be included in the notice sent to an employee who has been designated as the perpetrator of abuse, neglect or exploitation that meets the definition of reportable conduct, including notifying the employee of his responsibility to keep DFPS notified of any change of address and of the consequences of failing to timely request an EMR hearing.

New §711.1414 states that the Notice of Finding will be mailed by both certified mail return receipt requested and first class mail to the employee's last known address and provides for hand delivery, if necessary. The notice by posting in an APS office is deleted because it is no longer necessary. The section also advises the employee that the employee has the responsibility to keep DFPS informed of any change of address.

The amendment to §711.1415 clarifies how an employee may appeal a finding of reportable conduct, the consequences of failing to timely file an appeal and when a claim of failure to timely file an appeal may be contested at a hearing.

The amendment to §711.1417 clarifies the language to be consistent with other changes in this subchapter, and deletes references to notice by posting.

The amendment to §711.1421 explains that a hearings examiner from HHSC will set and conduct the hearing. In addition the hearings examiner may choose to conduct a telephonic pre-hearing conference.

New §711.1426 sets forth the effect of failure to appear at a hearing by either party, how a default judgment may be taken, and how a failure to appear may be challenged for good cause.

The amendment to §711.1429 clarifies that the hearings examiner may reverse, modify or uphold any finding made by DFPS including whether abuse, neglect, or exploitation was committed and, if so, whether it met the definition of reportable conduct. It also provides that a proposal for decision (PFD) must be sent to each party. Each party has 10 business days from the receipt to file written objections with the hearings examiner. After taking into account the objections, the hearings examiner sends a final PFD to the commissioner. The commissioner may review all of the evidence and the PFD. Also, agency names are updated.

The amendment to §711.1431 clarifies how an employee may seek a judicial review of a finding.

New §711.1432 clarifies actions DFPS must take when appeal rights have been exhausted, including steps DFPS takes to notify others of the outcome. Also, §711.1433 is repealed as a result of this change.

New §711.1434 explains that for employees of state-operated facilities, who are eligible to be reported to the EMR and may also be eligible to request an employee disciplinary grievance for the same incident from the employer, each is a separate action, requiring separate hearings, and that the EMR hearing will occur first. The EMR finding will not be affected by the outcome of the grievance hearing.

Section 711.1435, which listed the types of information that must be submitted with an employee's name to the EMR, is repealed because that information is already clearly stated in statute.

In addition, DFPS is making agency name corrections and minor wording changes in §§711.1407, 711.1419, 711.1423, 711.1425, and 711.1427.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that persons who are found to have committed reportable conduct and are subject to being listed on the EMR Registry will have clear rules setting the procedures for receipt of notice and the opportunity for appeal before being so listed. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

HHSC has determined that the proposed amendments, repeals, and new sections do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Jean Wallace at (512) 438-3803 in DFPS's Legal Services Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-422, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

40 TAC §§711.1401 - 711.1404, 711.1406 - 711.1408, 711.1413 - 711.1415, 711.1417, 711.1419, 711.1421, 711.1423, 711.1425 - 711.1427, 711.1429, 711.1431, 711.1432, 711.1434

The amendments and new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new sections implement Human Resources Code, §48.151, which provides APS authority to investigate allegations of abuse, neglect and exploitation for persons living in the community, Human Resources Code, §48.252 and Family Code §261.404, which provides APS authority to investigate allegations of abuse, neglect, and exploitation of persons receiving services from state operated facilities including State Supported Living Centers and Human Resources Code §48.401, which lists the employees investigated by APS that are subject to the EMR, and §48.402, which authorizes DFPS to adopt rules to define reportable conduct.

§711.1401. What is the purpose of this subchapter?

The purpose of this subchapter is to implement Subchapter I, Chapter 48, Human Resources Code, [Chapter 48, Subchapter I] relating to the Employee Misconduct Registry, established under Chapter 253, Health and Safety Code, and maintained by the [Texas] Department of Aging and Disability Services.

§711.1402. Definitions.

The following words and phrases have the following meanings when used in this subchapter, unless the context clearly indicates otherwise:

- (1) Agency--An entity, person or facility as defined in §48.401(1), Human Resources Code;
- (2) APS--The Adult Protective Services division within the Department of Family and Protective Services, which is authorized to conduct investigations of alleged abuse, neglect, or exploitation of certain adults under Chapter 48, Human Resources Code, and certain children under §261.401, Family Code;
- (3) Commissioner--The commissioner of the Department of Family and Protective Services (DFPS) or the commissioner's designee;
- (4) Department--The Department of Family and Protective Services;
- (5) Designated perpetrator--A person determined by APS to have committed abuse, neglect, or exploitation who may be eligible for inclusion on the Employee Misconduct Registry, when the abuse, neglect or exploitation meets the definition of reportable conduct;
- (6) Employee--A person who performs services for an agency, whether as an employee, contractor, volunteer, or agent;
- (7) EMR--The Employee Misconduct Registry;
- (8) EMR hearing--An administrative hearing offered to a person who has been found to have committed reportable conduct for the purpose of appealing the finding of reportable conduct as well as the underlying finding of abuse, neglect, or exploitation;

(9) Hearings examiner--An attorney who conducts an EMR hearing, as provided under this subchapter;

(10) HCSSA--A home and community support services agency, sometimes referred to as a home health agency, licensed under Chapter 142, Health and Safety Code;

(11) HCS or HCSW--A person or an agency exempt from licensure under §142.003(a)(19), Health and Safety Code, that provides home and community-based services to persons with mental retardation or related conditions;

(12) ICF-MR--An intermediate care facility for individuals with mental retardation and related conditions. A licensed ICF-MR is a privately owned and operated facility licensed by the Department of Aging and Disabled Services under Chapter 252, Health and Safety Code. A state supported living center operated by DADS or DSHS is also an ICF-MR. A mental retardation authority may also operate an ICF-MR;

(13) In-home investigation--An investigation conducted by APS under §48.151, Human Resources Code, that involves an employee of a home and community support services agency (HCSSA);

(14) MH&MR investigation--An investigation conducted by APS under Subchapters F and H, Chapter 48, Human Resources Code, that involves an employee of one of the following agency types:

(A) a home and community-based services provider (HCS);

(B) a community center as defined in §531.002, Health and Safety Code;

(C) a licensed intermediate care facility (ICF-MR) for persons with mental retardation and related conditions;

(D) a local authority as defined in this chapter, including a mental health authority (MHA) and a mental retardation authority (MRA);

(E) the Rio Grande State Center;

(F) a state-supported living center; or

(G) a state hospital;

(15) Person served--An adult or child receiving services from an agency as defined in this subchapter;

(16) Reportable conduct--A confirmed or validated finding of abuse, neglect or exploitation that meets the definition in §48.401(5), Human Resources Code, and as further defined in §711.1408 of this title (relating to What is reportable conduct?);

(17) Rio Grande State Center--A facility operated by the Department of State Health Services that provides in-patient mental health services and services through an ICF-MR;

(18) State hospital--A hospital operated by the Department of State Health Services that provides in-patient mental health services; and

(19) State supported living center--An ICF-MR operated by the Department of Aging and Disability Services.

§711.1403. To which investigations does this subchapter apply?

(a) This subchapter applies to APS investigations involving a person who:

(1) is an employee of an agency [involving a person who works for a Home and Community Support Services Agency (HCSSA) licensed under Health and Safety Code, Chapter 142];

(2) provides personal care services, active treatment, or any other personal services to a person served by the agency [at HSCW's as defined in this chapter]; and

(3) is not licensed by the state to perform the services the employee performs for the agency [at a community center or local authority only if the investigation involves an employee who performs services under the auspices of an HCSW].

(b) Notwithstanding subsection (a)(3) of this section, a certified nurse aide who commits reportable conduct while working for an agency is eligible to be reported to the EMR, as provided by §253.001(3), Health and Safety Code.

§711.1404. How are the terms abuse, sexual abuse, neglect, and financial exploitation defined for In-home investigations?

For In-home investigations, the following definitions apply:

(1) Abuse, as defined in §48.002(a)(2)(A), Human Resources Code, means:

(A) the negligent or willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to an elderly or disabled person by the person's caretaker, family member or other individual with an on-going relationship with the person; or

(B) sexual abuse, as defined in paragraph (3) of this section.

(2) Neglect, as defined in §48.002(a)(4), Human Resources Code, means the failure to provide for one's self the goods or services, including medical services, which are necessary to avoid physical or emotional harm or pain or the failure of a caretaker to provide such goods or services.

(3) Sexual abuse, as defined in §48.002(a)(2)(B), Human Resources Code, means any involuntary or nonconsensual sexual conduct that would constitute an offense under §21.08, Penal Code (indecent exposure), or Chapter 22, Penal Code (assaultive offenses), committed by the person's caretaker, family member or other individual who has an on-going relationship with the person.

(4) Financial exploitation, as defined in §48.002(a)(3), Human Resources Code, means the illegal or improper act or process of a caretaker, family member or other individual who has an on-going relationship with the elderly or disabled person using the resources of an elderly or disabled person for monetary or personal benefit, profit or gain without the informed consent of the elderly or disabled person.

(5) Emotional or verbal abuse, as defined in §705.1001 of this title (relating to Definitions), means any use of verbal communication or other behavior to humiliate, intimidate, vilify, degrade or threaten with harm by the person's caretaker, family member or other individual who has an on-going relationship with the person.

§711.1406. How are the terms abuse, neglect, and financial exploitation defined for MH&MR investigations?

For MH&MR investigations, the definitions of abuse, neglect, and exploitation are contained in rules adopted pursuant to §48.251, Human Resources Code, and §261.404, Family Code. The following definitions apply:

(1) "Abuse" includes physical abuse, sexual abuse, sexual exploitation, and emotional or verbal abuse, as those terms are defined in this section.

(2) "Physical abuse" means:

(A) an act or failure to act performed knowingly, recklessly, or intentionally, including incitement to act, which caused or may have caused physical injury or death to a person served;

(B) an act of inappropriate or excessive force or corporal punishment, regardless of whether the act results in a physical injury to a person served; or

(C) the use of chemical or bodily restraints on a person served not in compliance with federal and state laws and regulations (including the laws and regulations listed in §711.11(3) of this title (relating to How is physical abuse defined?).

(3) "Neglect" means a negligent act or omission by any individual responsible for providing services to a person served, which caused or may have caused physical or emotional injury or death to a person served or which placed a person served at risk of physical or emotional injury or death. Examples of neglect are listed in §711.19(1) - (3) of this title (relating to How is neglect defined?).

(4) "Sexual" abuse means any sexual activity, including but not limited to:

(A) kissing a person served with sexual intent;

(B) hugging a person served with sexual intent;

(C) stroking a person served with sexual intent;

(D) fondling a person served with sexual intent;

(E) engaging in with a person served:

(i) sexual conduct as defined in §43.01, Penal Code;

or

(ii) any activity that is obscene as defined in §43.21,

Penal Code;

(F) requesting, soliciting or compelling a person served to engage in:

(i) sexual conduct as defined in §43.01, Penal Code;

or

(ii) any activity that is obscene as defined in §43.21,

Penal Code;

(G) in the presence of the person served:

(i) engaging in or displaying an activity that is obscene as defined in §43.21, Penal Code; or

(ii) requesting, soliciting or compelling another person to engage in any activity that is obscene as defined in §43.21, Penal Code;

(H) committing sexual exploitation against a person served;

(I) committing sexual assault as defined in §22.011, Penal Code, against a person served;

(J) committing aggravated sexual assault as defined in §22.021, Penal Code, against a person served; and

(K) causing, permitting, encouraging, engaging in, or allowing the photographing, filming, videotaping or depicting of a person served if the employee agent or contractor knew or should have known that the resulting photograph, film, videotape, or depiction of the person served is obscene as defined in §43.21, Penal Code, or is pornographic.

(5) "Sexual exploitation" means a pattern, practice or scheme of conduct against a person served, which may include sexual

contact, that can reasonably be construed as being for the purposes of sexual arousal or gratification or sexual abuse of any person; the term does not include obtaining information about a patient's sexual history within standard accepted clinical practice.

(6) "Financial exploitation" means the illegal or improper act or process of using a person served or the resources of a person served for monetary or personal benefit, profit or gain.

(7) "Verbal or emotional abuse" means any act or use of verbal or other communication, including gestures, to curse, vilify, or degrade a person served; or threaten a person served with physical or emotional harm. The act or communication must result in observable distress or harm to the person served or be of such a serious nature that a reasonable person would consider it harmful or causing distress.

§711.1407. What is the Employee Misconduct Registry?

The Employee Misconduct Registry is a database maintained by the [Texas] Department of Aging and Disability Services that contains the names of persons who have committed reportable conduct. A person whose name is recorded in the registry is prohibited by law from working for certain facilities or agencies, as provided under Chapter 253, Health and Safety Code, and Health and Safety Code, §250.003(e).

§711.1408. What is reportable conduct?

(a) Reportable conduct is defined in §48.401, Human Resources Code, as:

(1) abuse or neglect that causes or may cause death or harm to an individual receiving agency services;

(2) sexual abuse of an individual receiving agency services;

(3) financial exploitation of an individual receiving agency services in an amount of \$25 or more; and

(4) emotional, verbal, or psychological abuse that causes harm to an individual receiving agency services.

(b) For purposes of subsection (a) of this section, the terms abuse, neglect, sexual abuse, and financial exploitation have the meanings provided in §711.1404 of this title (relating to How are the terms abuse, sexual abuse, neglect, and financial exploitation defined for In-home investigations?) and §711.1406 of this title (relating to How are the terms abuse, neglect, and financial exploitation defined for MH&MR investigations?), depending upon the type of agency for which the employee worked.

(c) For purposes of subsection (a)(1) of this section the term harm means serious injury that required or would have required medical intervention, hospitalization or any injury determined to be serious by a physician or advanced practice nurse or other appropriate medical personnel, including a fracture, dislocation of any joint, internal injury, a contusion larger than 2 and 1/2 inches, concussion, second or third degree burn, or any laceration requiring sutures. Medical intervention does not include routine first aid, an examination, diagnostics or the prescribing of oral or topical medication.

(d) For purposes of subsection (a)(4) of this section, reportable conduct means emotional or verbal abuse that results in substantial harm to the person served, as evidenced by observable signs of substantial physical or emotional distress or as diagnosed by the appropriate medical professional.

§711.1413. What notice must DFPS give to an [Is DFPS required to give notice of finding of reportable conduct to the] employee before the employee's name is submitted to the Employee Misconduct Registry?

[(a)] [Yes.] When DFPS [APS] determines that an employee committed reportable conduct, DFPS [APS] must provide [mail] a writ-

ten "Notice of Finding" to the employee [employee's last known address by both certified mail, return receipt requested, and by regular mail]. The notice must include:

(1) a brief summary of the incident that resulted in a confirmed or validated finding of abuse, neglect, or exploitation and a brief explanation of why the finding meets the definition of reportable conduct;

(2) a statement of the employee's right to appeal the finding by filing a "Request for EMR Hearing" and the instructions for doing so;

(3) a statement that DFPS will submit the employee's name for inclusion in the Employee Misconduct Registry if the employee accepts the finding of reportable conduct [or fails to file a timely Request for Hearing];

(4) an explanation of how the employee may obtain [a statement of the employee's right to obtain] a copy of the investigation records; [and]

(5) a statement that a person whose name is recorded in the registry is prohibited by law from working for certain facilities or agencies, as provided under Chapters 250 and 253, Health and Safety Code; [Chapter 253, and Health and Safety Code, §250.003(e).]

(6) a statement that DFPS deems this situation an emergency and that the case information and/or finding will be released immediately to the agency where the employee is or was employed so that the agency may take any precautions it determines necessary to protect clients or persons served;

(7) a statement that DFPS reserves the right to make an emergency release of the findings to any subsequent employer of the employee if the employee has access to similar clients or persons served while the appeal is pending;

(8) a statement that the employee is responsible for keeping DFPS timely informed of the employee's current address pending the outcome of any appeal filed by the employee; and

(9) a statement that if the employee fails, without good cause, to file a timely appeal of the Notice of Finding, the employee will be deemed to have waived the employee's rights to appeal and the employee's name will be submitted to the EMR.

[(b) If APS knows the employee's last known address is incorrect, or if the employee fails to provide an address, APS may give the employee the written notice in person or by posting the notice. The affidavit of the person delivering or posting the notice is proof of such notice.]

[(c) For posted notice, APS must post the written notice at the local APS office in or around the place where public notices customarily are posted for 10 calendar days. The posted notice shall not identify the alleged victim of the reportable conduct. If after receiving notice by posting, the employee requests a hearing before the deadline, APS shall provide the employee an amended written notice that identifies the alleged victim.]

§711.1414. How will the Notice of Finding be provided to an employee and who is responsible for ensuring that the department has a valid mailing address for an employee?

(a) The "Notice of Finding" will be mailed to the employee's last known address by first class mail and by certified mail, return receipt requested.

(b) If DFPS knows the employee's last known address is incorrect, or if the employee fails to provide an address, DFPS may hand-de-

liver the Notice of Finding to the employee. The affidavit of the person delivering the notice is proof of such notice.

(c) It is the responsibility of the employee who is investigated for alleged abuse, neglect, or exploitation of a client or person served by an agency subject to this subchapter to provide the department with a valid address where notice can be mailed or, if no address is available, with valid contact information. It is also the responsibility of the employee to immediately notify DFPS of any change of address or contact information throughout the investigation and any period of time during which an appeal is pending.

§711.1415. How does an employee appeal a finding of reportable conduct [file a Request for Hearing] and what happens if the appeal [a request] is not filed or not filed properly?

(a) An employee may appeal a finding of reportable conduct by submitting a Request for EMR Hearing. The Notice of Finding will contain instructions for filing the Request for EMR Hearing, including the following:

- {(1) a description of the information that must be included in the request;}
- {(2) the address to which the request must be mailed; and}
- {(3) the deadline for filing the request.}

(b) The employee will be deemed to have accepted the finding of reportable conduct and DFPS will submit the employee's name for inclusion in the Employee Misconduct Registry if the employee:

- (1) does not file a Request for EMR Hearing; {or}
- (2) fails to file the Request for EMR Hearing before the deadline has passed, as provided under §711.1417 of this title (relating to What is the deadline for filing the Request for EMR Hearing?); or
- (3) {(2)} files a Request for EMR Hearing, but fails to follow the filing instructions and, as a result, DFPS does not receive the Request for EMR Hearing in a timely manner or cannot determine the matter being appealed.

§711.1417. What is the deadline for filing the Request for EMR Hearing?

(a) The employee must file the Request for EMR Hearing no later than 30 calendar days from the date the employee receives the Notice of Finding.

(b) A Notice of Finding is presumed received by the employee on the date of delivery as indicated on the certified mail return receipt. If the certified mailing is returned unclaimed, but the regular mailing is not returned, the Notice of Finding will be presumed received on the third business day following the date the notice was mailed to the employee's last known address. A personally delivered Notice of Finding is presumed received on the date of delivery as indicated on the affidavit of the person delivering the notice. [A posted Notice of Finding is presumed received on the 10th calendar day of posting as indicated on the affidavit of the person posting the notice.]

(c) If the Request for EMR Hearing is submitted by mail, the envelope must be postmarked no later than 30 days after the date the employee received the Notice of Finding. If the Request for EMR Hearing is hand-delivered or submitted by fax, the request must be received in the appropriate DFPS office by 5:00 p.m., no later than 30 days from the date the employee received the Notice of Finding.

(d) If an employee files the Request for EMR Hearing after the deadline, DFPS will notify the employee that the request was not filed by the deadline, no appeal hearing will be granted, and [that] the employee's name will be submitted for inclusion in the Employee Misconduct Registry.

(e) If an employee disputes the fact that the Request for EMR Hearing was filed late, the employee may file a request for a telephonic hearing, to be conducted by a hearings examiner, and [DFPS will grant, a hearing that is] limited solely to the issue of whether the Request for EMR Hearing was filed on time. If, as a result of that hearing, the employee proves [can prove] that the original Request for EMR Hearing was filed on or before the deadline, a separate hearing will be scheduled as soon as possible on the issue of whether the employee committed reportable conduct.

§711.1419. Is a finding of reportable conduct ever reversed without conducting a hearing?

Prior to a hearing, DFPS [APS], in its sole discretion, may designate a person to conduct a review of the investigation records. If a review of the records results in a reversal of the finding of reportable conduct, DFPS [APS] will send the employee a new Notice of Finding, which will indicate that the employee's name will not be submitted to the Employee Misconduct Registry. If the review does not result in a reversal of the finding of reportable conduct [DFPS will designate a hearings examiner to schedule and conduct] a hearing will be scheduled, as described in this subchapter.

§711.1421. When and where will the EMR hearing take place and who conducts the hearing?

(a) An EMR hearing will be conducted by a hearings examiner with the Health and Human Services Commission. The hearings examiner is responsible for scheduling the date, time, and location for the hearing. At the discretion of the hearings examiner, a pre-hearing conference may be conducted in person or by phone prior to the scheduling or conduct of the EMR hearing. [DFPS will schedule a hearing as soon as possible and will send a "Notice of Hearing" to the employee and to APS within 45 days of when DFPS receives a timely Request for Hearing.]

(b) The hearings examiner will send the parties a Notice of EMR Hearing providing [will provide] the date, time, and location for the hearing, as well as the name of the hearings examiner, and how to contact the hearings examiner.

(c) (No change.)

§711.1423. May an employee or DFPS [APS] request that the EMR hearing be rescheduled?

Yes. Both the employee and DFPS [APS] may request that the hearings examiner reschedule the hearing for good cause. Except in cases of emergency, the request to reschedule the hearing must be made no later than three working days prior to the hearing date. The hearings examiner must grant the request if good cause is shown.

§711.1425. May an employee withdraw a Request for EMR Hearing after it is filed?

Yes. An employee may withdraw a Request for EMR Hearing any time before the hearing is conducted. An employee who withdraws a Request for EMR Hearing will be deemed to have accepted the finding of reportable conduct and DFPS will submit the employee's name for inclusion in the Employee Misconduct Registry.

§711.1426. What happens if a party fails to appear at a pre-hearing conference or a hearing on the merits?

(a) If either party fails, without good cause, to appear at a scheduled pre-hearing conference or a hearing on the merits, the hearings examiner may issue a default judgment against the party that failed to appear.

(b) A party against whom a default judgment is rendered may, within 10 calendar days of receipt of the default judgment, request a hearing on the issue of whether good cause existed for failing to appear.

(c) The hearings examiner may make a determination on the issues of good cause based on a review of the assertions and evidence submitted with the party's request for a good cause hearing, or may schedule the matter for a hearing if additional testimony and evidence are deemed necessary for making the good cause finding. If a hearing is scheduled on the issue of good cause for failure to appear, the hearings examiner may limit the hearing solely to the issue of good cause, or may combine the hearing with other pre-hearing conference matters or with the hearing on the merits, at the discretion of the hearings examiner.

(d) Unless a default judgment for failure to appeal is challenged and reversed, as described in subsections (b) and (c) of this section, the default judgment shall be considered the final Hearing Order of DFPS and may not be further appealed except as provided under §711.1431 of this title (relating to How is judicial review requested and what is the deadline?).

(e) If a default judgment rendered against an employee becomes the final Hearing Order, DFPS will submit the employee's name for inclusion in the Employee Misconduct Registry in the same manner as it would following any other final Hearing Order that affirms the finding of reportable conduct, as provided in this subchapter.

(f) If a default judgment rendered against DFPS becomes the final Hearing Order, DFPS shall amend its records to reverse the findings at issue in the EMR hearing and shall issue and amended Notice of Finding to the employee reflecting that change.

§711.1427. *How is the EMR hearing conducted?*

(a) The hearing is similar to a civil court trial, but is less formal. The parties to the hearing are the employee and DFPS [APS].

(b) (No change.)

(c) Prior to the hearing the employee may request a copy of the investigation record, edited to remove the identity of the reporter and any other confidential information to which the employee is not entitled~~;~~ in order to prepare for the hearing. The hearings examiner will only issue subpoenas or order additional discovery upon request of a party and a finding of good cause for the issuance or order.

(d) Both parties [the employee and APS] will be given the opportunity to present their own testimony and evidence, as well as the testimony and evidence of witnesses. Any person who provides testimony at the hearing will be sworn under oath.

(e) Both parties [the employee and APS] will be given the opportunity to examine the evidence presented by the other party, to cross-examine any witnesses presented by the other party, and to rebut or respond to the evidence presented by the other party.

(f) Testimony of a witness may be presented by written affidavit, but may [will] be given less weight than the credible testimony of a witness who testifies in person, under oath, subject to cross-examination.

(g) - (j) (No change.)

(k) The hearing will be recorded by audio or video tape in order to preserve a record of the hearing. A [DFPS will not prepare a] transcription of the hearing tape will not be made or provided unless an employee seeks judicial review, as provided in this subchapter.

~~[(t) If the employee fails to appear for the hearing to offer testimony and evidence, the employee will be deemed to have accepted the finding of reportable conduct and DFPS will submit the employee's name for inclusion in the Employee Misconduct Registry.]~~

§711.1429. *How and when is the decision made after the EMR [appeal] hearing?*

(a) The hearings examiner will prepare a proposed decision which includes findings of fact and conclusions of law based on a preponderance of the evidence presented at the hearing. The proposal for decision must recommend whether to affirm, reverse, or modify DFPS's findings as to whether: [The proposed decision will be forwarded to the commissioner for review.]

(1) the employee committed abuse, neglect, or financial exploitation of a client or person served; and

(2) the abuse, neglect, or financial exploitation committed by the employee meets the definition of reportable conduct.

(b) A copy of the proposed decision will be sent to both parties and both parties will be given an opportunity to submit written exceptions to the hearings examiner stating why the party disagrees with any finding of fact or conclusion of law contained in the proposed decision. If a party chooses to submit written exceptions, they must be submitted within 10 business days of receipt of the proposed decision.

(c) Upon expiration of the deadline for receipt of written exceptions, and taking into consideration any written exceptions submitted, the hearings examiner will issue a final proposed decision to the commissioner, with or without modification to the findings of facts and conclusions of law contained in the original proposed decision sent to the parties.

(d) ~~[(b)]~~ The commissioner may accept or reject the final proposed decision in whole or in part. If deemed necessary for a proper decision, the commissioner may ~~[question the hearings examiner regarding the testimony and evidence presented at the hearing, may]~~ review all or part of the hearing record, and may direct the hearings examiner to take such additional testimony or evidence as the commissioner deems necessary.

(e) ~~[(e)]~~ After review of the proposed decision and any evidence described in subsection (d) ~~[(b)]~~ of this section, the commissioner must issue a written "Hearing Order" which will be mailed to the employee at the employee's last known mailing address. The Hearing Order must contain the following:

(1) separate statements of the findings of fact and conclusions of law that uphold, reverse, or modify the findings as to whether:[:]

(A) the employee committed abuse, neglect, or financial exploitation of a client or person served; and

(B) the abuse, neglect, or financial exploitation committed by the employee meets the definition of reportable conduct; and

(2) if reportable conduct is found to have occurred:

(A) ~~[(2)]~~ a statement of the right of the employee to seek judicial review of the order; and

(B) ~~[(3)]~~ a statement that the finding of reportable conduct will be forwarded to the ~~[Texas]~~ Department of Aging and Disability Services to be recorded in the Employee Misconduct Registry unless the employee makes a timely request for judicial review and the court reverses the finding of reportable conduct.

(f) ~~[(f)]~~ The commissioner may designate a Hearing Order to be published in an Index of Hearing Orders that are deemed to have precedential authority for guiding future decisions and DFPS policy. A Hearing Order must be edited to remove all personal identifying information before publication in the Index of Hearing Orders.

§711.1431. *How is judicial review requested and what is the deadline?*

(a) - (b) (No change.)

(c) Judicial review by the court is under the substantial evidence rule, as provided by §48.406, Human Resources Code [Government Code, Chapter 2001, Subchapter G].

(d) Unless citation for a ~~notice of~~ petition for judicial review is served on DFPS within 45 days after the date on which the Hearing Order is mailed to the employee, DFPS will submit the employee's name for inclusion in the Employee Misconduct Registry. If valid service of citation is received after the employee's name has been recorded in the registry, DFPS will determine whether the lawsuit was timely filed and, if so, immediately request that the employee's name be removed from the registry pending the outcome of the judicial review.

§711.1432. What action does DFPS take when all appeal rights have been exhausted?

In any case in which an employee filed a timely appeal, DFPS will take the following actions once the appeal has been finally resolved:

(1) modify DFPS's internal records to reflect the outcome of the appeal;

(2) provide notice of the final outcome of the appeal to any person or entity that was previously notified of DFPS's findings; and

(3) send the employee's name and required information to the Employee Misconduct Registry if the finding of reportable conduct was upheld.

§711.1434. What special considerations apply to employees of state-operated facilities?

(a) The sole way to appeal a finding of reportable conduct and submission of the employee's name to the Employee Misconduct Registry is provided by the procedures in this subchapter. An appeal filed under this subchapter is not a request for a grievance on disciplinary action from an employer.

(b) If an employee of a state-operated facility is notified by the employer that the employee is entitled to a grievance on disciplinary action based on a finding of reportable conduct by DFPS, the employee makes a separate request for a grievance hearing in accordance with the employment policies of the employer. A request for a grievance on disciplinary action will not be considered a request for an EMR hearing under this subchapter.

(c) When an employee files both an appeal of reportable conduct under this subchapter and a grievance on disciplinary action based on DFPS's finding of reportable conduct, the EMR appeal hearing will take place prior to the grievance hearing.

(d) The outcome of a grievance on disciplinary action will not change DFPS's finding of reportable conduct.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 3, 2010.

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Gerry Williams

General Counsel

Department of Family and Protective Services

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For further information, please call: (512) 438-3437



40 TAC §§711.1405, 711.1409, 711.1433, 711.1435

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the

Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement Human Resources Code §48.151, which provides APS authority to investigate allegations of abuse, neglect and exploitation for persons living in the community, Human Resources Code §48.252 and Family Code §261.404, which provides APS authority to investigate allegations of abuse, neglect, and exploitation of persons receiving services from state operated facilities including State Supported Living Centers and Human Resources Code §48.401, which lists the employees investigated by APS that are subject to the EMR, and §48.402, which authorizes DFPS to adopt rules to define reportable conduct.

§711.1405. How are some of the terms in this subchapter defined?

§711.1409. What is reportable conduct?

§711.1433. Must DFPS provide notice to anyone else if a finding is modified or reversed as the result of a review, a hearing, or judicial review?

§711.1435. If an employee accepts a finding of reportable conduct or the finding is upheld on appeal, what information is forwarded to the Texas Department of Aging and Disability Services for recording in the Employee Misconduct Registry?

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams

General Counsel

Department of Family and Protective Services

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CHAPTER 720. 24-HOUR CARE LICENSING

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), the repeal of §§720.206, 720.236, 720.308, 720.320, 720.321, 720.369, 720.373, 720.602, and 720.604, concerning admission standards for therapeutic family homes, intake study, health and safety, intake study in the independent foster group home, emergency placement in an independent foster group home, admission policies for independent habilitative group homes, admission policies for independent therapeutic group homes, administration of assessment services, and staffing for assessment services, in its 24-Hour Care Licensing. These are the remaining rules in Chapter 720. Most of the rules in Chapter 720 were repealed effective March 1, 2000. These remaining

rules are either being repealed because they are no longer needed, already have comparable requirements in Chapter 750, Independent Foster Homes, or are being proposed as new rules in Chapter 750 in this issue of the *Texas Register*.

Section 720.206 is repealed because it is being proposed in §750.501 of this title (relating to What are the requirements for admission?).

Section 720.236 is repealed because Chapter 750 already contains requirements for some portions of the rule and the remaining portions of the rule are being proposed in §750.501 and §750.503 of this title (relating to Who must develop the admission assessment?).

Section 720.308 is repealed because Chapter 750 already contains comparable requirements.

Section 720.320 is repealed because Chapter 750 already contains requirements for some portions of the rule and the remaining portions of the rule are being proposed in §750.501 and §750.503 of this title.

Section 720.321 is repealed because it is being proposed in §750.501 of this title.

Section 720.369 is repealed because Chapter 750 already contains comparable requirements.

Section 720.373 is repealed because it is being proposed in §750.501 of this title.

Section 720.602 is repealed because Chapter 750 already contains comparable requirements.

Section 720.604 is repealed because Chapter 750 already contains comparable requirements.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed repeals will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Ms. Brown also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be that licensed operations will have a clearer understanding of which rules apply to them, which will increase the likelihood that the operations will comply with the rules. There will be no effect on large, small, or micro-businesses because the proposed repeals do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed repeals.

HHSC has determined that the proposed repeals do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Leslie Reid at (512) 438-4666 in DFPS's Child Care Licensing Division. Electronic comments may be submitted to the RCCL Minimum Standards Comments mailbox at rclstandards@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-413, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

SUBCHAPTER D. STANDARDS FOR HABILITATIVE AND THERAPEUTIC FAMILY HOMES

40 TAC §720.206

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §42.042.

§720.206. *Admission Standards for Therapeutic Family Homes.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams

General Counsel

Department of Family and Protective Services

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SUBCHAPTER E. STANDARDS FOR FOSTER FAMILY HOMES

40 TAC §720.236

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §42.042.

§720.236. *Intake Study.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams

General Counsel

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SUBCHAPTER F. STANDARDS FOR FOSTER GROUP HOMES

40 TAC §§720.308, 720.320, 720.321

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC §42.042.

§720.308. *Health and Safety.*

§720.320. *Intake Study in the Independent Foster Group Home.*

§720.321. *Emergency Placement in an Independent Foster Group Home.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams

General Counsel

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SUBCHAPTER G. STANDARDS FOR HABILITATIVE AND THERAPEUTIC GROUP HOMES RESPONSIBLE TO A CHILD-PLACING AGENCY AND FOR INDEPENDENT HABILITATIVE AND THERAPEUTIC GROUP HOMES

40 TAC §720.369, §720.373

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC §42.042.

§720.369. *Admission Policies for Independent Habilitative Group Homes.*

§720.373. *Admission Policies for Independent Therapeutic Group Homes.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams

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SUBCHAPTER I. STANDARDS FOR ASSESSMENT SERVICES

40 TAC §720.602, §720.604

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC §42.042.

§720.602. *Administration of Assessment Services.*

§720.604. *Staffing for Assessment Services.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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For further information, please call: (512) 438-3437



CHAPTER 743. MINIMUM STANDARDS FOR SHELTER CARE

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), new Chapter 743, Minimum Standards for Shelter Care, consisting of Subchapter A, Definitions and Services, §§743.1, 743.3, 743.5, 743.7, 743.9; Subchapter B, Personnel and Training, §§743.101, 743.103, 743.105, 743.107; Subchapter C, Serious Incident Reporting, §743.201 and §743.203; Subchapter D, Program Requirements, §§743.301, 743.303, 743.305, 743.307, 743.309; Subchapter E, Health, §§743.401, 743.403, 743.405, 743.407, 743.409, 743.411; Subchapter F, Safety, §§743.501, 743.503, 743.505, 743.507, 743.509, 743.511, 743.513, 743.515, 743.517, 743.519; Subchapter G, Space and Equipment, §§743.601, 743.603, 743.605, 743.607; and Subchapter H, Infant and Toddler Care, §743.701 and §743.703. Section 6 of Senate Bill 68, 81st Legislature, added Human Resources Code §42.042(g-2), which requires the adoption of specific rules and minimum standards regulating child care offered to children residing in a temporary shelter. This chapter will primarily impact family violence shelters that provide child day-care, although they may also impact homeless shelters or other temporary shelters. Child Care Licensing staff met with the Texas Council on Family Violence and their members on multiple occasions, so they could actively participate in the rules development process. These rules ensure the health and safety of children, while also recognizing the uniqueness of the temporary shelter environment and the limited resources of those who provide temporary shelter to persons in need. A summary of the rules follows:

Section 743.1 defines the pronouns for the chapter.

Section 743.3 defines the key terms for the chapter.

Section 743.5 outlines under what circumstances child care is regulated under this chapter. A license obtained under this chapter is only for the care of children residing at a temporary shelter while the child's parent is away from the shelter. If child care is also offered to children of shelter employees or children from the general public, then the child-care center would be licensed under Chapter 746 of this title (relating to Minimum Standards for Child-Care Centers), instead of this chapter.

Section 743.7 outlines the operational responsibilities for a shelter care operation, such as maintaining records, maintaining liability insurance, and posting the license.

Section 743.9 clarifies that Licensing will not regulate shelter residents caring for each other's children.

Section 743.101 outlines the minimum qualifications for caregivers in a shelter care operation. Minimum qualifications vary based on whether the person is a primary caregiver, caregiver, or supplemental caregiver.

Section 743.103 outlines the training requirements for caregivers in a shelter care operation. Training requirements vary based on whether the person is a primary caregiver, caregiver, or supplemental caregiver. All caregivers must complete initial training. Primary caregivers must obtain 15 hours of annual training. At least one person counted in the child/caregiver ratio must have CPR and first-aid training.

Section 743.105 addresses required background checks for shelter care operations. All employees of the child-care operation must have a name-based background check. Primary caregivers and persons who have lived outside of Texas any time in the last five years must also have a fingerprint-based criminal history check.

Section 743.107 lists what must be included in personnel records for a shelter care operation, such as training and background check records.

Section 743.201 lists the requirements for serious incident reporting for a shelter care operation, including reports to Child Care Licensing, the child's parent, and law enforcement. Serious incidents include those involving the child, the operation, or an employee of the operation. Examples of reportable serious incidents include child death, critical injury of a child, a lost or missing child, a fire or tornado at the operation, or an arrest of an employee for certain crimes.

Section 743.203 reinforces the legal requirement to report suspected child abuse, neglect, or exploitation.

Section 743.301 includes the child/caregiver ratios for shelter care and when a child is not included in the child-to-caregiver ratio. Ratios vary based on the ages of the children in each group.

Section 743.303 sets a limit of 12 consecutive hours for shelter care.

Section 743.305 outlines the requirements for a shelter care operation's activity plan, including requirements for supervised naptime, meals and snacks, and indoor and outdoor play.

Section 743.307 lists the different types of activities required for children in shelter care, including activities that promote language development and social/emotional development.

Section 743.309 outlines the requirements for discipline in a shelter care operation, including a prohibition on corporal punishment.

Section 743.401 addresses separating children with a contagious illness at a shelter care operation.

Section 743.403 requires a shelter care operation to offer a meal or snack every three hours and to make drinking water available to children at all times.

Section 743.405 outlines the requirements for ensuring a healthy environment at a shelter care operation, including requirements to wash or sanitize toys, linens, table tops, etc.

Section 743.407 describes the four-step sanitizing process.

Section 743.409 contains requirements for disinfecting solution.

Section 743.411 describes when a washer may be used to sanitize items.

Section 743.501 lists safety requirements for shelter care operations, including having a first-aid kit, being free of rodents and

insects, having poisonous substances stored out of children's reach, etc.

Section 743.503 outlines emergency procedure requirements for shelter care operations, including the requirement for an evacuation plan and sharing emergency procedures with caregivers and parents.

Section 743.505 requires each shelter care operation to have an annual fire inspection conducted by a local or state fire authority or to comply with the requirements of §§743.507, 743.509, 743.511, 743.513, 743.515, 743.517, and 743.519 of this chapter, which are described later in this preamble.

Section 743.507 requires a fire-extinguishing system in a shelter care operation.

Section 743.509 contains the requirements for mounting a fire extinguisher on the wall of a shelter care operation.

Section 743.511 requires shelter care operations to inspect fire extinguishers monthly and have them serviced as required by the manufacturer or a fire official.

Section 743.513 requires a shelter care operation to have a smoke-detection system.

Section 743.515 requires a shelter care operation to have an electronic smoke alarm system tested annually.

Section 743.517 requires a shelter care operation to install smoke detectors according to the manufacturer's or a fire official's instructions.

Section 743.519 requires a shelter care operation to test smoke detectors monthly.

Section 743.601 requires a shelter care operation to have age appropriate equipment and furniture.

Section 743.603 requires a shelter care operation to have one toilet and one sink for every 17 children.

Section 743.605 requires a shelter care operation to have reasonable indoor and outdoor activity space for children.

Section 743.607 outlines the safety requirements for outdoor play equipment at a shelter care operation.

Section 743.701 lists the requirements for feeding infants at a shelter care operation, such as holding infants while feeding them and sanitizing high chairs before each use.

Section 743.703 outlines the diaper changing requirements for a shelter care operation.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that temporary shelters providing child-care services to their residents will be regulated according to minimum standards that seek to ensure child health and safety. There will be no effect on large, small, or micro-businesses because none of the entities to be regulated under Chapter 743 are for-profit businesses. Temporary shelters, by their nature, are not for-profit entities, and therefore do not meet the definition of a small or micro-business under Chapter 2006, Government Code. No regulatory flexibility analysis is required for these rules because it is not anticipated that any of the entities

regulated under this chapter will meet the definition of a small or micro-business.

There is an anticipated economic cost to persons, specifically to non-profit temporary shelters, that are required to comply with the proposed sections. It is anticipated that most temporary shelters subject to regulation under Chapter 743 will be family violence shelters. Although some family violence shelters that provide child-care are currently licensed as a child-care center under Chapter 746 of this title, there are a few others that are not currently licensed. Family violence shelters were previously exempt from licensing requirements based on a Health and Human Services Commission rule. However, the Attorney General issued an opinion that state agencies do not have the authority to exempt operations beyond those exemptions specified in law. This was the impetus for specifically addressing temporary shelters in Human Resources Code §42.042(g-2). While that section also refers to homeless shelters, it is not anticipated that homeless shelters will seek a child day-care operation license. When contacted by Licensing, the Texas Homeless Network (THN) indicated that the vast majority of homeless shelters close during the day. THN is not aware of any homeless shelters that currently provide, or are planning to provide, child day-care services to their clients.

Licensing staff met with Texas Council on Family Violence (TCFV) and their members on multiple occasions, and used this input to design standards that would adequately protect children while satisfying the legislative mandate to take into consideration the special circumstances and needs of families served by these shelters, as well as the role of these shelters in assisting and supporting families in crisis. TCFV members expressed multiple concerns about financial impact, stating that they are non-profits and do not have additional funds to comply with new requirements. Licensing responded by revising originally drafted rules to be more flexible in areas such as staffing, equipment, and space.

The cost to an individual shelter to achieve compliance with this chapter will vary based on the size of the shelter (shelters reported serving anywhere from a handful of children to almost 100 children), as well as the current operational environment and staffing at each shelter. Based on input received from shelters, a few shelters will experience a negative fiscal impact as a result of the following rules:

(1) §743.103, What training is required?: The average cost of training, based on review of training offered by local resource and referral agencies, is estimated to be \$20 an hour. The cost of in-house training is estimated to be 50% less than the cost per hour of training that is outsourced, or \$10 an hour, on average. All caregivers require pre-service training, which is largely shelter-specific and will most likely be conducted in-house. Primary caregivers need 15 hours of training per year. At least one caregiver in the ratio must also have CPR and first-aid certification. Additional training costs will vary based on the extent to which a shelter is already training persons who care for children, whether additional caregivers are needed, and the turnover in staff at the shelter;

(2) §743.105, What are the background check requirements?: The cost of conducting a name-based criminal history background check is \$2.00 per employee. Select employees will be required to have a finger-print based check, at an additional \$44.20 per employee. Shelters indicated that they are not currently conducting these checks;

(3) §743.301, How many caregivers are required?: Some shelters may need to hire additional child-care staff. To estimate the average salary per employee, Licensing gathered data from the Texas Workforce Commission Occupational Employment Statistics (OES) program, which conducts a semi-annual survey of Texas employers. The average salary of a child-care worker is \$7.52 per hour; and the average salary of a child-care program director is \$14.64 per hour. Family violence shelters may wish to hire staff with more training or experience in family violence or trauma, which may require a higher salary base than other child-care operations; and

(4) §743.601, What furnishings and equipment must I provide?: The financial impact of this rule will depend on what furnishings and equipment the shelter already has, since most are already providing child-care services. Some may need to obtain additional equipment, such as cubbies for the children. Equipment costs vary greatly, depending on the type of equipment. For example, a set of 20 pre-made cubbies may be \$300, if purchased new, but a mat to use for changing diapers is only \$40.

HHSC has determined that the proposed new sections do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Amy Chandler at (512) 438-3134 in DFPS's Child Care Licensing Division. Electronic comments may be submitted to the RCCL Minimum Standards Comments mailbox at rcclstandards@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-416, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

SUBCHAPTER A. DEFINITIONS AND SERVICES

40 TAC §§743.1, 743.3, 743.5, 743.7, 743.9

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement Section 6 of Senate Bill 68, 81st Legislature, codified in Human Resources Code §42.042(g-2).

§743.1. What do certain pronouns mean as used in this chapter?

The following words have the following meanings when used in this chapter:

(1) I, my, you, and your--An applicant or permit holder, unless otherwise stated.

(2) We, us, our, and Licensing--The Licensing Division of the Department of Family and Protective Services (DFPS).

§743.3. What do certain words and terms mean in this chapter?

The following words have the following meanings in this chapter:

(1) Caregiver--A person counted in the child/caregiver ratio whose duties include direct care, supervision, guidance, and protection of a child in your care. Caregivers may be employees, contractors, or volunteers.

(2) Child--A child 13 years old or younger who is in your care.

(3) Infant--A child in your care from birth through 17 months.

(4) Primary Caregiver--A caregiver that is also responsible for being available to other caregivers during any child-care hours of operation and for ensuring that all children in care are adequately supervised per §743.301 of this title (relating to How many caregivers are required?).

(5) Resident--An adult resident of your operation.

(6) Supplemental caregiver--A person who is not counted in the child/caregiver ratio but provides direct care, supervision, guidance, or protection of a child in your care.

§743.5. What child care is regulated under this chapter?

(a) Child care is regulated under this chapter if it is provided:

(1) At a temporary shelter, such as a family violence or homeless shelter;

(2) Only for children temporarily residing with a parent at the shelter;

(3) While the child's resident parent is away from the shelter;

(4) On a recurring and scheduled basis; and

(5) For at least four hours per day and three or more days per week.

(b) If you also offer care for the children of employees, the children of non-resident clients, or any other non-resident children, your entire child-care program is regulated as a child-care center and must follow the requirements in Chapter 746 of this title (relating to Minimum Standards for Child-Care Centers).

(c) If you only offer care for children while the resident parent is on the shelter premises and the program meets the requirements of §745.117(1) of this title (relating to Which programs of limited duration are exempt from Licensing regulation?), then the program is exempt from regulation. If you provide care for both children whose parents are on the premises and children whose parents are away from the shelter, all of the child care is regulated under this chapter unless the two groups of children are separated.

§743.7. What are my operational responsibilities?

You must:

(1) Provide the location of your operation, so that we may conduct inspections and investigations, by giving us:

(A) Your location address; or

(B) A method to immediately contact your operation that allows our staff to obtain your location address within 30 minutes;

(2) Provide in writing to Licensing any change in location of the shelter care operation, or change in the method to contact your operation for location purposes, at least 30 days before the change occurs;

(3) Provide in writing to Licensing any changes to your correspondence address or telephone number before the change occurs;

(4) Allow us to inspect your operation during its hours of operation, as outlined in §745.8407(3) of this title (relating to When will Licensing inspect and/or investigate an operation?);

(5) Post at your operation:

(A) Your license;

(B) The letter or form from the most recent Licensing inspection or investigation;

(C) The Licensing notice *Keeping Children Safe*; and

(D) Emergency and evacuation relocation plans;

(6) Observe the conditions and restrictions of your permit;

(7) Maintain true, current, accurate, and complete records at your operation for us to review, as required by this chapter and any other applicable law or rule;

(8) Maintain liability insurance as required by the Human Resources Code, §42.049; and

(9) Comply with the applicable Child Care Licensing laws found in Chapter 42 of the Human Resources Code, the applicable minimum standards, and other rules in this chapter.

§743.9. If residents provide care for other residents' children, is this subject to regulation?

Residents providing care for the children of other residents are not regulated by Licensing.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 3, 2010.

TRD-201002216

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: June 20, 2010

For further information, please call: (512) 438-3437



SUBCHAPTER B. PERSONNEL AND TRAINING

40 TAC §§743.101, 743.103, 743.105, 743.107

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement Section 6 of Senate Bill 68, 81st Legislature, codified in Human Resources Code §42.042(g-2).

§743.101. What are the minimum qualifications?

(a) Primary caregivers must:

(1) Be at least 18 years of age;

(2) Have a high school diploma or its equivalent; and

(3) Meet the background check requirements in this subchapter.

(b) Caregivers must:

(1) Be at least 14 years of age and at least two years older than the oldest child in their care; and

(2) Meet the background check requirements in this subchapter.

(c) Supplemental caregivers must meet the background check requirements in this subchapter.

§743.103. What training is required?

(a) Within 30 days after beginning duties, primary caregivers, caregivers, and supplemental caregivers must complete the following training:

(1) A presentation on your applicable operational policies, including discipline;

(2) An overview of signs of child abuse, neglect, and sexual abuse and the responsibility for reporting these;

(3) Emergency procedures, including fire, severe weather, volatile person on the premises, and severe injury or illness of a child;

(4) Prevention and spread of communicable disease; and

(5) The use and location of fire extinguishers and first-aid equipment.

(b) Primary caregivers must, within 30 days after hire and annually thereafter, have at least one hour of training regarding the following topics:

(1) Recognizing and preventing shaken baby syndrome;

(2) Preventing sudden infant death syndrome; and

(3) Understanding early childhood brain development.

(c) Each year, primary caregivers must obtain at least 15 clock hours of training relevant to child care, such as child development.

(d) At all times, at least one caregiver counted in the child-to-caregiver ratio must have CPR certification.

(e) At all times, at least one caregiver counted in the child-to-caregiver ratio must have first-aid certification.

§743.105. What are the background check requirements?

(a) You must request a name-based criminal history check and a DFPS central registry check for:

(1) The directors, owners, operators, or administrators of the child-care operation;

(2) Employees and applicants you intend to hire for the child-care operation;

(3) Any person who is counted in the child/caregiver ratio; and

(4) Any person who has unsupervised access to children in the child-care operation.

(b) You must request a fingerprint-based criminal history check for:

(1) Primary caregivers; and

(2) Any person who requires a background check under subsection (a) of this section, if that person has lived outside of Texas

any time during the previous five years or there is reason to believe other criminal history exists.

(c) You are not required to request a background check on licensed professionals who have currently cleared a background check in compliance with another governmental entity's requirements, if you do not employ or contract with the professional.

(d) You must request required background checks based on the following rules:

(1) §745.623 of this title (relating to How do I request a background check?);

(2) §745.625 of this title (relating to When must I submit a request for a background check?) other than §745.625(a)(6) of this title;

(3) §745.629 of this title (relating to How do I submit fingerprints for a fingerprint-based criminal history check?); and

(4) §745.630 of this title (relating to If a fingerprint-based criminal history check has already been completed on a person, is a new fingerprint-based criminal history check required for that person every 24 months?).

(e) You may allow the person to provide direct care or have direct access to a child in care after you request a background check unless or until DFPS notifies you that the person may not be present at your operation.

(f) Background check results will be addressed based on the rules found in the following divisions of Chapter 745, Subchapter F of this title (relating to Background Checks):

(1) Division 3 (relating to Criminal Convictions and Central Registry Findings of Child Abuse or Neglect);

(2) Division 4 (relating to Evaluation of Risk Because of a Criminal Conviction or a Central Registry Finding of Child Abuse or Neglect);

(3) Division 5 (relating to Designated and Sustained Perpetrators of Child Abuse or Neglect); and

(4) Division 6 (relating to Immediate Threat or Danger to the Health or Safety of Children).

§743.107. What personnel records are required?

(a) For primary caregivers, caregivers, and supplemental caregivers, you must have a record at the operation that includes at least:

(1) Proof that the person meets the age and education requirements in §743.101 of this title (relating to What are the minimum qualifications?);

(2) Proof of required background check(s); and

(3) Documentation that training requirements have been met.

(b) If the person is also an employee of your operation, the person's record must include the affidavit required by the Human Resources Code, §42.059.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 3, 2010.

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Gerry Williams

General Counsel

Department of Family and Protective Services

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For further information, please call: (512) 438-3437



SUBCHAPTER C. SERIOUS INCIDENT REPORTING

40 TAC §743.201, §743.203

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement Section 6 of Senate Bill 68, 81st Legislature, codified in Human Resources Code §42.042(g-2).

§743.201. When must I report a serious incident to Licensing?

(a) You must report the following types of serious incidents if they occur when the child is in your child-care program. The reports must be made to the following entities, and the reporting must be within the specified time frames:

Figure: 40 TAC §743.201(a)

(b) You must report the following types of serious incidents involving your operation or an employee to the following entities within the specified time frame:

Figure: 40 TAC §743.201(b)

§743.203. What are my responsibilities regarding the report of abuse, neglect, or exploitation?

In addition to reporting serious incidents, you must inform your employees of the duty to report suspected abuse, neglect, or exploitation as required by the Texas Family Code, §261.101.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams

General Counsel

Department of Family and Protective Services

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SUBCHAPTER D. PROGRAM REQUIREMENTS

40 TAC §§743.301, 743.303, 743.305, 743.307, 743.309

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which

provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement Section 6 of Senate Bill 68, 81st Legislature, codified in Human Resources Code §42.042(g-2).

§743.301. How many caregivers are required?

(a) At least one primary caregiver must be on duty and available to other caregivers during all child-care hours of operation.

(b) Each primary caregiver or caregiver may not be responsible for more than 12 children five years old or younger. Children under one year old count as two children.

(c) Each primary caregiver or caregiver may not be responsible for more than 28 children six years old and older.

(d) When age groups are mixed, there must be at least one primary caregiver or caregiver per 20 children, with no more than 12 children in the group five years old or younger.

(e) The primary caregiver is responsible for ensuring that all children in care are adequately supervised.

(f) If a child is attending a therapeutic activity, which the child would attend whether or not he was in your child-care program, the child is not considered to be in the child-care program for the duration of the therapeutic activity.

(g) If a child is attending an activity sponsored by a volunteer organization, which the child would attend whether or not he was in your child-care program, the child is not considered to be in the child-care program for the duration of the activity sponsored by the volunteer organization.

§743.303. Is there a limit on the number of hours a child may be in my care?

Except in an emergency, each child may be in your care for a maximum of 12 consecutive hours.

§743.305. Are there activity plan requirements?

(a) Yes, there must be a written activity plan, which must be consistently implemented and must include at least the following:

(1) The group of children the activity plan is designed for and dates (daily, weekly, or monthly) the plan covers;

(2) A variety of activities daily;

(3) Outdoor play, when weather permits, in which the children make use of both small and large muscles, both in the morning and afternoon;

(4) A balance of active and quiet play, including group and individual activities both indoors and outdoors;

(5) Regular meal and snack times;

(6) Supervised naptimes, or a period of rest for those children too old to nap;

(7) Both child-initiated and caregiver-initiated activities;

(8) Sufficient time for activities and routines so that children can progress at their own developmental rate; and

(9) No long waiting periods between activities or prolonged periods during which children stand or sit.

(b) The written activity plan may include screen time activities (T.V., videos, computer, or video games) if you also include alternative activities for children that do not want to participate.

(c) Outdoor play may be substituted with comparable indoor play for an individual child if the child's safety is deemed to be at risk.

§743.307. What activities must I provide for children?

(a) Activities for children must include opportunities for:

(1) Thinking skills and sensory development;

(2) Small-muscle development;

(3) Large-muscle development;

(4) Language development;

(5) Social/emotional development; and

(6) Developing self-help skills.

(b) School-age children must have study time for those children who choose to work on homework assignments.

§743.309. What discipline techniques may be used with children in care?

(a) You must have written policies and procedures describing any disciplinary techniques you may use with children in care. Each disciplinary measure must:

(1) Be consistent with your policies and procedures;

(2) Not be physically or emotionally damaging to the child;

(3) Be appropriate to the child's age and level of understanding; and

(4) Be appropriate to the incident and severity of the behavior demonstrated.

(b) The caregiver must explain the reason for the disciplinary measure when the caregiver imposes the measure.

(c) There must be no harsh, cruel, or unusual treatment of any child. The following types of discipline and guidance are prohibited:

(1) Corporal punishment or threats of corporal punishment;

(2) Punishment associated with food, naps, or toilet training;

(3) Pinching, shaking, or biting a child;

(4) Hitting a child with a hand or instrument;

(5) Putting anything in or on a child's mouth;

(6) Humiliating, ridiculing, rejecting, or yelling at a child;

(7) Subjecting a child to harsh, abusive, or profane language;

(8) Placing a child in a locked or dark room, bathroom, or closet with the door closed; and

(9) Requiring a child to remain silent or inactive for inappropriately long periods of time for the child's age.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 3, 2010.



SUBCHAPTER E. HEALTH

40 TAC §§743.401, 743.403, 743.405, 743.407, 743.409, 743.411

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement Section 6 of Senate Bill 68, 81st Legislature, codified in Human Resources Code §42.042(g-2).

§743.401. What must I do if a child has a contagious illness?

(a) Children with a contagious illness must be separated from other children in your care.

(b) Caregivers must either be separately assigned to sick children, or must wash their hands after each interaction with a sick child.

§743.403. What are the nutrition and hydration requirements for children?

(a) Drinking water must be available to children at all times.

(b) Children must be offered a meal or snack every three hours.

§743.405. What steps must I take to ensure a healthy environment?

You must clean, repair, and maintain the building, grounds, and equipment to protect the health of the children. This includes, but is not limited to:

(1) Setting aside toys and equipment that are placed in children's mouths, or are otherwise contaminated by body secretion or excrement, to be sanitized before handling by another child;

(2) Machine washing used cloth toys at least weekly and when contaminated;

(3) Machine washing used linens at least weekly, and when soiled or before a different child uses them;

(4) Sanitizing sleeping equipment before a different child uses it and when soiled;

(5) Sanitizing potty-chairs after each child's use;

(6) Emptying water play tables and toys used in water tables daily, sanitizing, and ensuring children and caregivers wash their hands before using the water table;

(7) Maintaining sand boxes and sand tables in a sanitary manner;

(8) Making all garbage inaccessible to children and managing it to keep the operation inside and outside free of insects, rodents,

and offensive odors, and disposing of it according to local and state requirements;

(9) Keeping all floors, ceilings, and walls in good repair and clean;

(10) Keeping all areas used by children well heated, lighted, and ventilated;

(11) Sanitizing table tops, furniture, and other similar equipment used by children when soiled or contaminated with matter such as food, body secretions, or excrement; and

(12) Clearly marking cleaning supplies and other toxic materials and keeping them separate from food and inaccessible to children.

§743.407. What does Licensing mean when it refers to "sanitizing"?

Sanitizing requires a four-step process. For the sanitizing process to be effective, you must follow these steps in order:

(1) Washing with water and soap;

(2) Rinsing with clear water;

(3) Soaking in or spraying on a disinfecting solution (at least two minutes). Rinsing with cool water only those items that children are likely to place in their mouths; and

(4) Allowing the surface or article to air-dry.

§743.409. What is a disinfecting solution?

A disinfecting solution may be:

(1) A self-made solution, prepared as follows:

(A) One tablespoon of regular strength liquid household bleach to each gallon of water used for disinfecting such items as toys and eating utensils; or

(B) One-fourth cup of regular strength liquid household bleach to each gallon of water used for disinfecting surfaces such as bathrooms, crib rails, and diaper-changing tables; and

(C) You must prepare each solution daily and place it in a closed and labeled container; or

(2) A commercial product that is registered with the Environmental Protection Agency as an antimicrobial product and includes directions for use in a hospital as a disinfectant. You must use the product according to label directions. Commercial products must not be toxic on surfaces likely to be mouthed by children, like crib rails and toys.

§743.411. May I use a dishwasher or washing machine to sanitize items?

Items that may be washed in a dishwasher or hot cycle of a washing machine which runs at a temperature of 160 degrees Fahrenheit or higher for five or more minutes do not need additional disinfecting because these machines use water that is hot enough, for long enough, to kill most germs.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER F. SAFETY

40 TAC §§743.501, 743.503, 743.505, 743.507, 743.509, 743.511, 743.513, 743.515, 743.517, 743.519

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement Section 6 of Senate Bill 68, 81st Legislature, codified in Human Resources Code §42.042(g-2).

§743.501. What are the safety requirements?

The operation must:

- (1) Be safe for children and kept in good repair, including outdoor areas;
- (2) Have equipment and furniture that are safe for children and kept in good repair;
- (3) Have flammable or poisonous substances stored out of the reach of children;
- (4) Be free of rodents and insects;
- (5) Have a first-aid kit that is:
 - (A) Stored out of the reach of children; and
 - (B) Immediately available to caregivers;
- (6) Not use bean bags, waterbeds, or foam pads as sleeping equipment;
- (7) Not use soft bedding such as stuffed toys, quilts, pillows, bumper pads, or comforters in cribs for children six months old and younger; and
- (8) Not cover infants' heads, faces, or cribs by items such as blankets, linens, or clothing at any time.

§743.503. What are the requirements for emergency procedures?

- (a) You must have written procedures for caregivers to follow in an emergency, including:
 - (1) Fire;
 - (2) Severe weather;
 - (3) Volatile person on the premises; and
 - (4) Medical emergency involving a child in your care.
- (b) You must have an evacuation plan.
- (c) A copy of your emergency procedures must be available to caregivers at all times.

(d) Parents must be informed of your emergency procedures; and upon request, the procedures must be available for review by parents.

§743.505. What are the fire safety requirements?

(a) You must either have fire inspections that comply with subsection (b) of this section, or you must comply with §§743.507, 743.509, 743.511, 743.513, 743.515, 743.517, and 743.519 of this title (relating to Must I have a fire-extinguishing system?, Where must I mount fire extinguishers?, How often must I inspect and service the fire extinguisher(s)?, Must I have a smoke-detection system?, How often must I have an electronic smoke alarm system tested?, How must smoke detectors be installed?, and How often must the smoke detectors be tested?).

(b) You must:

(1) Have a fire inspection conducted by a local or state fire authority before we issue your initial permit and at least once every 12 months from the date of the last fire inspection;

(2) Keep the most recent fire inspection report, letter, or checklist at the operation to verify the inspection date and findings. The documentation must include the inspector's name and telephone number; and

(3) Comply with the applicable fire code and all corrections, restrictions, or conditions specified by the inspector in the fire inspection report, letter, or checklist.

§743.507. Must I have a fire-extinguishing system?

(a) You must have a fire-extinguishing system. This may be a sprinkler system and/or fire extinguishers.

(b) The state or local fire marshal must approve your sprinkler system and/or fire extinguishers. If an inspection is not available, you must have at least one fire extinguisher rated 3A-40BC.

§743.509. Where must I mount fire extinguishers?

You must mount the fire extinguisher on the wall by a hanger or bracket. The top of the extinguisher must be no higher than five feet above the floor and the bottom at least four inches above the floor or any other surface. If the state or local fire marshal has different mounting instructions, you may follow those instructions. The fire extinguisher must be readily available for immediate use by employees and caregivers.

§743.511. How often must I inspect and service the fire extinguisher(s)?

(a) You must inspect them monthly. The date of the inspection and the name of the employee must be recorded.

(b) Fire extinguishers must be serviced as required by manufacturer's instructions, or as required by the state or local fire marshal.

§743.513. Must I have a smoke-detection system?

(a) You must have a working smoke-detection system. This may be an electronic alarm and smoke-detection system, or individual electric or battery-operated smoke detectors located in each room used by children, or both.

(b) The state or local fire marshal must approve electronic alarm and smoke-detection systems. If an inspection is not available, you must have at least one working smoke detector in each room used by children.

§743.515. How often must I have an electronic smoke alarm system tested?

The monitoring company or the state or local fire marshal must test an electronic smoke alarm system at least annually. You must keep

documentation of the inspection for review during hours of operation. The documentation must indicate the date of the inspection and the inspector's name and telephone number.

§743.517. How must smoke detectors be installed?

If you use smoke detectors, they must be installed and maintained according to the manufacturer's instructions or in compliance with the state or local fire marshal's instructions.

§743.519. How often must the smoke detectors be tested?

You must test all smoke detectors monthly. The date of the test and the name of the employee who does the testing must be documented and kept for review during hours of operation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams

General Counsel

Department of Family and Protective Services

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SUBCHAPTER G. SPACE AND EQUIPMENT

40 TAC §§743.601, 743.603, 743.605, 743.607

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement Section 6 of Senate Bill 68, 81st Legislature, codified in Human Resources Code §42.042(g-2).

§743.601. What furnishings and equipment must I provide?

Furnishings and equipment must include at least the following:

- (1) Age-appropriate seating, tables, and nap or rest equipment; and
- (2) Containers or low shelving so items children can safely use without direct supervision are accessible to children.

§743.603. What are the requirements for toilets and sinks?

- (a) You must have at least one toilet for every 17 children in care who use the toilets.
- (b) You must have at least one hand-washing sink for every 17 children in care who use the hand-washing sinks. These sinks must:
 - (1) Be easily accessible to the children; and
 - (2) Have hot and cold running water under pressure.

§743.605. How much activity space must I have for children?

- (a) You must have reasonable indoor activity space for each child that you are licensed to serve.

- (b) You must have reasonable outdoor activity space for each child using the outdoor activity area at one time.

§743.607. What are the requirements for outdoor recreation space and equipment?

- (a) Equipment must not have openings, angles, or protrusions that can entangle a child's clothing or entrap a child's body or body parts.
- (b) Equipment must be securely anchored according to manufacturer's specifications to prevent collapsing, tipping, sliding, moving, or overturning.
- (c) Climbing equipment, swings, and slides must not be installed over asphalt or concrete.
- (d) Equipment must be appropriate, cleaned, maintained, and repaired.
- (e) Trampolines may not be used as play or recreational equipment.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER H. INFANT AND TODDLER CARE

40 TAC §743.701, §743.703

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement Section 6 of Senate Bill 68, 81st Legislature, codified in Human Resources Code §42.042(g-2).

§743.701. Are there specific requirements for feeding infants?

Yes. You must:

- (1) Hold infants birth through six months while feeding them;
- (2) Hold infants over six months who are unable to sit unassisted in a high chair or other seating equipment while feeding them;
- (3) Never prop bottles. The child or an adult must hold the bottle;
- (4) Provide regular snack and meal times for infants who eat table food;

(5) Ensure children no longer being held for feeding are fed in a safe manner;

(6) Label bottles and training cups with the child's first name and initial of last name;

(7) Never allow children to walk around with or sleep with a bottle or training cup;

(8) Never use the hand-washing sink or diaper-changing surface for food preparation, or for washing food service/preparation equipment, bottles, pacifiers, or toys; and

(9) Sanitize high chair trays before each use.

§743.703. What equipment must I have for diaper changing?

(a) You must have a diaper-changing table or surface that is smooth, non-absorbent, and easy to clean.

(b) You must not use areas that children come in close contact with during play or eating, such as dining tables, sofas, or floor play areas, for diaper changing.

(c) A diaper-changing surface that is above the floor level must have a safety mechanism that prevents the child from falling from the surface and that is used at all times when a child is on the surface.

(d) You must have a hand-washing sink in or easily accessible from the diaper-changing area. A person must be able to access the sink while still providing adequate supervision, if the person is counted in the child/caregiver ratio and needed to maintain the required ratio.

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CHAPTER 744. MINIMUM STANDARDS FOR SCHOOL-AGE AND BEFORE OR AFTER-SCHOOL PROGRAMS

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), new Chapter 744, Minimum Standards for School-Age and Before or After-School Programs, consisting of Subchapter A, Purpose and Definitions, §§744.101, 744.103, 744.105, 744.107, 744.109; Subchapter B, Administration and Communication, Division 1, Permit Holder Responsibilities, §744.201; Division 2, Required Notifications, §§744.301, 744.303, 744.305, 744.307; Division 3, Required Postings, §§744.401, 744.403, 744.405; Division 4, Operational Policies, §§744.501, 744.503, 744.505, 744.507; Subchapter C, Record Keeping, Division 1, Records of Children, §§744.601, 744.603, 744.605, 744.607, 744.609, 744.611, 744.613, 744.615, 744.617, 744.619, 744.621, 744.623, 744.625, 744.627; Division 2, Records of Accidents and Incidents, §§744.701, 744.703, 744.705, 744.707, 744.709; Division 3, Records That Must be Kept on File at the Operation, §§744.801, 744.803, 744.805; Division 4, Personnel Records, §§744.901, 744.903, 744.905, 744.907, 744.909;

Subchapter D, Personnel, Division 1, Director, §§744.1001, 744.1003, 744.1005, 744.1007, 744.1009, 744.1011, 744.1013, 744.1015, 744.1017, 744.1019, 744.1021, 744.1023, 744.1025, 744.1027, 744.1029, 744.1031, 744.1033, 744.1035, 744.1037, 744.1039, 744.1041, 744.1043, 744.1045, 744.1047, 744.1049, 744.1051, 744.1053, 744.1055, 744.1057, 744.1059, 744.1061; Division 2, Employees and Caregivers, §§744.1101, 744.1103, 744.1105, 744.1107, 744.1109, 744.1111; Division 3, General Responsibilities for Personnel, §§744.1201, 744.1203, 744.1205; Division 4, Professional Development, §§744.1301, 744.1303, 744.1305, 744.1307, 744.1309, 744.1311, 744.1313, 744.1315, 744.1317, 744.1319, 744.1321, 744.1323, 744.1325, 744.1327, 744.1329, 744.1331; Division 5, Volunteers, Substitutes, and Persons Under Contract, §744.1401, §744.1403; Subchapter E, Child/Caregiver Ratios and Group Sizes, Division 1, Ratios and Group Sizes at the Operation, §§744.1501, 744.1503, 744.1505, 744.1507; Division 2, Classroom Ratios and Group Sizes, §§744.1601, 744.1603, 744.1605, 744.1607, 744.1609, 744.1611, 744.1613; Division 3, Ratios for Field Trips, §§744.1701, 744.1703, 744.1705; Division 4, Ratios for Nighttime Care, §744.1801; Division 5, Ratios for Water Activities, §§744.1901, 744.1903, 744.1905, 744.1907, 744.1909, 744.1911, 744.1913, 744.1915; Subchapter F, Developmental Activities and Equipment, Division 1, Activities and Activity Plans, §§744.2001, 744.2003, 744.2005, 744.2007; Division 2, Physical Space and Equipment, §744.2051; Subchapter G, Discipline and Guidance, §§744.2101, 744.2103, 744.2105, 744.2107, 744.2109, 744.2111, 744.2113, 744.2115; Subchapter H, Naptime, Division 1, Naptime, §§744.2201, 744.2203, 744.2205, 744.2207, 744.2209, 744.2211; Division 2, Nighttime Care, §744.2251; Subchapter I, Field Trips, §§744.2301, 744.2303, 744.2305; Subchapter J, Nutrition and Food Service, §§744.2401, 744.2403, 744.2405, 744.2407, 744.2409, 744.2411, 744.2413, 744.2415, 744.2417, 744.2419, 744.2421, 744.2423; Subchapter K, Health Practices, Division 1, Environmental Health, §§744.2501, 744.2503, 744.2505, 744.2507, 744.2509, 744.2511, 744.2513, 744.2515, 744.2517, 744.2519, 744.2521, 744.2523, 744.2525, 744.2527, 744.2529, 744.2531; Division 2, Toileting, §744.2551; Division 3, Illness and Injury, §§744.2571, 744.2573, 744.2575, 744.2577; Subchapter L, Safety Practices, Division 1, Safety Precautions, §§744.2601, 744.2603, 744.2605, 744.2607, 744.2609; Division 2, Medication, §§744.2651, 744.2653, 744.2655, 744.2657, 744.2659, 744.2661; Division 3, Animals at the Operation, §§744.2701, 744.2703, 744.2705; Division 4, First-Aid Kits, §744.2751, §744.2753; Division 5, Release of Children, §744.2801, §744.2803; Subchapter M, Physical Facilities, Division 1, Indoor Space Requirements, §§744.2901, 744.2903, 744.2905, 744.2907, 744.2909, 744.2911; Division 2, Outdoor Space Requirements, §§744.2951, 744.2953, 744.2955, 744.2957, 744.2959, 744.2961, 744.2963; Division 3, Toilets and Sinks, §§744.3001, 744.3003, 744.3005, 744.3007, 744.3009, 744.3011, 744.3013, 744.3015; Division 4, Telephone, §744.3051; Division 5, Indoor Lofts, §744.3071; Subchapter N, Indoor and Outdoor Active Play Space and Equipment, Division 1, Minimum Safety Requirements, §§744.3101, 744.3103, 744.3105, 744.3107, 744.3109, 744.3111, 744.3113; Division 2, Swings, §744.3151, §744.3153; Division 3, Use Zones, §§744.3201, 744.3203, 744.3205, 744.3207, 744.3209, 744.3211, 744.3213, 744.3215; Division 4, Surfacing, §§744.3251, 744.3253, 744.3255, 744.3257, 744.3259, 744.3261, 744.3263; Division 5, Soft Contained Play Equipment, §§744.3301, 744.3303, 744.3305; Division 6, Inflatables, §744.3351; Subchapter O, Swimming Pools and

Wading/Splashing Pools, §§744.3401, 744.3403, 744.3405, 744.3407, 744.3409, 744.3411, 744.3413, 744.3415; Subchapter P, Fire Safety and Emergency Practices, Division 1, Fire Inspection, §§744.3501, 744.3503, 744.3505; Division 2, Emergency Preparedness, §§744.3551, 744.3553, 744.3555, 744.3557, 744.3559, 744.3561, 744.3563, 744.3565; Division 3, Fire Extinguishing and Smoke Detection Systems, §§744.3601, 744.3603, 744.3605, 744.3607, 744.3609, 744.3611, 744.3613, 744.3615, 744.3617, 744.3619; Division 4, Gas and Propane Tanks, §§744.3651, 744.3653, 744.3655, 744.3657; Division 5, Heating Devices, §744.3701; Division 6, Carbon Monoxide Detection Systems, §§744.3751, 744.3753, 744.3755, 744.3757; and Subchapter Q, Transportation, §§744.3801, 744.3803, 744.3805, 744.3807, 744.3809, 744.3811, 744.3813, 744.3815, 744.3817, 744.3819, and 744.3821.

The creation of this new chapter and the recommended rules are to support and implement new legislation passed during the 81st Legislature, Regular Session, 2009. Through the passage of Senate Bill (S.B.) 68 those operations offering care to school-age children only (School-Age Programs) and those providing care before or after the customary school day (Before or After-School Programs) are now subject to regulation by the Child Care Licensing Division of DFPS. As a result, Child Care Licensing is proposing this chapter to develop for enforcement minimum standards for these new operations. A majority of operations that will be regulated under new Chapter 744 are currently regulated under Chapter 746, Minimum Standards for Child Care Centers. Accordingly, the proposed rules include rules similar to those found in Chapter 746, although some rules were tailored specifically to the types of operations regulated under Chapter 744.

Subchapter A, Purpose and Definitions, clarifies to whom these rules apply and provides definitions of terminology used in this chapter.

Subchapter B, Administration and Communication, consists of four divisions. Division 1, Permit Holder Responsibilities, outlines the responsibilities for the permit holder, such as designating a director, developing policies, and ensuring compliance with other rules and law. Division 2, Required Notifications, outlines the situations that require a notification to Licensing, including: (1) changes that affect the validity of an operation's license; (2) changes that affect the governing body, a director; and (3) other situations that either place or may place children at risk. This division also requires parents to be notified of certain emergency or medical situations involving children in care. Division 3, Required Postings, outlines what items must be posted in the operation, including where and when the information must be posted. Division 4, Operational Policies, outlines what must be included in written operational policies, as well as how and when to share these policies with parents and employees.

Subchapter C, Record Keeping, consists of four divisions. Division 1, Records of Children, outlines who has the right to access children's records, what a child's record must include, and how long operations are required to keep children's records. This division also specifies what information must be obtained before a child is admitted and requires the operation to develop a policy on updating the admission information. This new division also requires operations to have a tracking system for each child coming and leaving the operation throughout the day. Caregivers must have access to the system and the operation must keep a tracking record for the previous three months for Licensing's review. Division 2, Records of Accidents and Incidents,

outlines the types of accidents and incident reports operations must keep on file. This division also specifies the information must be shared with parents and must be kept on file for at least three months after the child's last day in care. Division 3, Records That Must be Kept on File at the Operation, outlines which records must be maintained and available for Licensing's review, including: (1) documentation of required inspections; (2) attendance and training records for employees; (3) medication records; (4) playground maintenance check lists; and (5) proof of liability insurance, or notice of unavailability. Division 4, Personnel Records, outlines what information must be maintained for personnel and directors. This division also specifies the length of time these records must be kept at the operation and that the records must be available for Licensing's review.

Subchapter D, Personnel, consists of five divisions. Division 1, Director, requires a director be responsible for daily, on-site responsibility for the operation, addresses how often the director must be present at the operation, and outlines director qualifications based on experience and education. Division 2, Employees and Caregivers, outlines the difference between employees and caregivers and includes the different qualifications for each position. This new division also: (1) requires certain conditions be met if an operation hires a caregiver who is under 18 years old and without a high school diploma; (2) allows for education obtained outside the United States to be used to meet education requirements; and (3) defines the term "high school equivalent." Division 3, General Responsibilities for Personnel, outlines general responsibilities for personnel, including demonstrating competency and good judgment, relating to children with respect, and not abusing or neglecting children. This new division requires all personnel to report suspected abuse/neglect and exploitation to DFPS and law enforcement. This new division also outlines additional responsibilities for caregivers counted in the child/caregiver ratio and clarifies what is meant by "supervised at all times." Division 4, Professional Development, outlines the training expectations for caregivers and directors, including orientation, pre-service training, annual training, and CPR and first-aid training. These requirements include training in certain areas of child development. Also addressed in this division are the training documentation requirements and the methods training may be obtained, including self-instructional, conferences, or workshops. Division 5, Volunteers, Substitutes, and Persons Under Contract, requires substitutes, volunteers, and contractors who are counted in the child/caregiver ratio and are frequently or regularly present at the operation to meet the qualifications of employees. Volunteers or contractors who do not meet the requirements for caregivers must not be left alone with children.

Subchapter E, Child/Caregiver Ratios and Group Sizes, consists of five divisions. Division 1, Ratios and Group Sizes at the Operation, defines child/caregiver ratio and what is considered a "group" of children. This division outlines how to determine the child/caregiver ratio requirements and how to determine the maximum number of children allowed in a group. Division 2, Classroom Ratios and Group Sizes, also outlines child/caregiver and group size standards based on ages of the children. This division addresses the different requirements for naptimes and how to mix children of different age ranges. The division contains a grandfather clause for those licensed before September 1, 2010. Division 3, Ratios for Field Trips, sets forth the requirements for child/caregiver ratio and group sizes while on field trips, including ratios during transportation to and from the location of the field trip. This new division contains a grandfather

clause for those licensed before September 1, 2010. Division 4, Ratios for Nighttime Care, clarifies that the lower naptime ratios are not used during nighttime care. Division 5, Ratios for Water Activities, specifies the child/caregiver ratios and group sizes during water activities, including when a lifeguard must be present. Ratios and group sizes vary based on the use of a wading/splashing pool (two feet of water or less) versus a swimming pool.

Subchapter F, Developmental Activities and Equipment, contains two divisions. Division 1, Activities and Activity Plans, requires planned activities for children in care. There are specific, additional requirements for children in care for more than five consecutive hours, as well as for children under five years old. If children are in care more than five consecutive hours, the activity plan must be in writing and posted in a prominent place. A written activity plan must be inclusive for all children in the group, regardless of disabling or limiting conditions. Division 2, Physical Space and Equipment, requires that physical space and equipment for children include adequate space for furnishings, group activities, individual activities, and a place for children to do homework. This division also requires furnishings that meet the needs of children in care, such as age-appropriate nap or rest equipment.

Subchapter G, Discipline and Guidance, outlines the methods of discipline and guidance a caregiver may use and which forms are prohibited. This division does not require a written discipline plan, as long as the operation provides parents with a copy of this subchapter.

Subchapter H, Naptime, consists of two divisions. Division 1, Naptime, outlines requirements for naptime including: (1) opportunity for sleep or a rest period if children are in care longer than five consecutive hours; (2) sleep or rest time must not last longer than three hours; (3) children must not be required to sleep during the rest or nap period; (4) alternative activities must be provided for those children who are awake; and (5) napping equipment must be arranged in such a way that it does not block doors or exits and caregivers must be able to see children in the group. Division 2, Nighttime Care, references Chapter 746, Minimum Standards for Child-Care Centers, Subchapter P (relating to Nighttime Care), for requirements related to nighttime care.

Subchapter I, Field Trips, outlines the requirements for taking children on field trips, such as having: (1) signed permission from the parent; (2) a written list of all children on the field trip and checking the list frequently to account for the presence of all children; (3) a first-aid kit immediately available on field trips; (4) each child wear a shirt, nametag, or other identification listing the name of the operation and the operation's telephone number; and (5) each caregiver be easily identifiable by wearing a hat, operation shirt, or other easily spotted identification.

Subchapter J, Nutrition and Food Service, addresses nutrition and food service requirements. This includes how often children must be offered a meal or snack, meeting children's daily food needs (portions of each food group), and ensuring sanitary conditions for food service.

Subchapter K, Health Practices, contains three divisions. Division 1, Environmental Health, outlines the requirements for sanitation inspections, insect extermination, hand-washing, and ensuring a healthy environment at the operation. Ensuring a healthy environment includes requirements such as washing cloth toys and linens, proper storage of garbage, maintaining sand boxes and sand tables in a sanitary manner, and generally

keeping the operation clean and in good repair. Division 2, Toileting, outlines what caregivers must do in order to assist children with toileting practices and to change diapers in a sanitary manner. Division 3, Illness and Injury, describes the types of illnesses that would prohibit a child from being admitted into care, who should be notified when a child becomes ill while in care, and how caregivers should respond to a critical illness or injury (such as contacting the parents and the child's physician).

Subchapter L, Safety Practices, contains five divisions. Division 1, Safety Precautions, outlines the safety precautions providers must take to protect children in care. Such precautions include ensuring equipment and the environment is safe based on the age of the group, ensuring firearms and weapons are inaccessible to children unless being used as part of a martial arts class, and ensuring persons whose health or behavior presents a risk to children are not present while children are in care. Division 2, Medication, addresses the administration of medication, medication storage, how medication records must be kept, and that caregivers notify parents whenever "as needed" medication is administered. Division 3, Animals at the Operation, outlines what steps providers must take if animals are kept at the operation. This includes notifying parents if pets are on the premises, keeping vaccinations up to date and on file, health and hygiene precautions related to animals, and prohibiting contact between children and certain animals (such as stray animals or animals that could be dangerous). Division 4, First-Aid Kits, stipulates the items that must be included in a first-aid kit, which must be available in each building at the operation. Division 5, Release of Children, requires operations to develop policies for the release of children, including a plan to verify the identity of the person authorized to pick up the child.

Subchapter M, Physical Facilities, consists of five divisions. Division 1, Indoor Space Requirements, outlines the indoor physical space requirements for operations, including specific information on how Licensing determines the amount of indoor activity space. This division requires children be cared for on the ground level of the building, unless there is written approval from the state or local fire marshal to use another level of the building. Division 2, Outdoor Space Requirements, outlines the requirements for outdoor space requirements for operations, including the amount of space, fences, and the use of gates leading to an outdoor activity space. Division 3, Toilets and Sinks, stipulates how many sinks and toilets operations must have, depending on the number of children served. This division also addresses where toilets and sinks must be located. Division 4, Telephone, requires operations to have a telephone with a listed phone number. The telephone must be readily available in an emergency. Division 5, Indoor Lofts, allows an indoor loft if caregivers are able to adequately supervise children at all times, stairs and steps have handrails, and platforms over 20 inches high are equipped with protective barriers.

Subchapter N, Indoor and Outdoor Active Play Space and Equipment, consists of six divisions. Division 1, Minimum Safety Requirements, outlines the minimum safety requirements for play equipment, prohibits the use of certain equipment based on the age(s) of the children in care, and includes height restrictions for play equipment. This division also includes maintenance requirements for play spaces. Division 2, Swings, lists the safety requirements for swings, including special requirements for tire swings. Division 3, Use Zones, defines the term "use zone," and outlines the various required measurements for use zones, depending on the type of equipment being used. Division 4, Surfacing, defines the types of surfacing allowed under play equip-

ment and specifies installation and maintenance requirements. For example, all play equipment support posts must be marked to indicate the depth at which loose-fill surfacing material must be maintained under and around the equipment. The operation must ensure the loose-fill materials are maintained at the proper depth at all times. Division 5, Soft Contained Play Equipment, includes the safety and supervision requirements for soft contained play equipment and specifies the use zone for this equipment. Division 6, Inflatables, requires that enclosed inflatables (such as bounce houses or moon walks) be used by only one child at a time, open inflatables (such as obstacle courses or slides) be used according to the manufacturer's instructions, and inflatables that include water activity comply with all applicable requirements in this chapter for water activities.

Subchapter O, Swimming Pools and Wading/Splashing Pools, outlines the safety requirements for swimming activities. This includes having a fence around a swimming pool with gates that must be locked when the pool is not in use. Wading pools must be drained daily and sanitized. This subchapter also outlines requirements for sprinkler play and prohibits the use of natural bodies of water for swimming activities.

Subchapter P, Fire Safety and Emergency Practices, has six divisions. Division 1, Fire Inspections, requires annual fire inspections and specifies that operations must make corrections indicated by the fire inspection report, letter, or checklist. Documentation of the inspection is also required. Division 2, Emergency Preparedness, defines an emergency preparedness plan and specifies the contents for each operation's plan. The plan must be shared with parents and employees. Operations must practice a fire drill every month and a severe weather drill every three months. Operations must also have a source of emergency lighting in each classroom. Division 3, Fire Extinguishing and Smoke Detection Systems, requires a sprinkler system and/or fire extinguishers, which must be inspected regularly approved for the operation by the state or local fire marshal. A smoke detection system, tested regularly, is also required. Division 4, Gas and Propane Tanks, requires a gas leak test every two years for each operation that uses gas, including documentation requirements and who can conduct the inspection. Division 5, Heating Devices, lists the safety precautions which must be taken regarding heating devices do not present hazards to children. For example, open flame heaters are prohibited; liquid fuel heaters are prohibited; and gas fuel heaters, fireplaces, and wood-burning stoves must be properly vented to the outside. Division 6, Carbon Monoxide Detection Systems, requires carbon monoxide detection systems, specifies installation requirements, and lists inspection and service requirements (including documentation of regular testing).

Subchapter Q, Transportation, outlines safety precautions for loading and unloading children, requires child safety restraint system based on the age and weight/height of the child and the type of vehicle, lists specific equipment that must be in the vehicle (such as a first aid kit and a fire extinguisher), and requires the operation to have a plan for transportation emergencies.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. Child Care Licensing estimates that the program's administrative workload may increase to provide technical assistance in response to provider inquiries at the regional level. Providing

technical assistance and enforcing amended rules can be absorbed within existing resources.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that the risk to children will be reduced and the quality of care will be improved.

Operations that may experience a negative fiscal impact as a result of the rules being promulgated under Chapter 744 fall into two broad categories: (1) operations currently licensed as child-care centers under Chapter 746, and (2) operations that were previously considered exempt from licensing. The impact to these two broad categories is discussed separately, below.

Estimated Cost for Child Care Centers Licensed under Chapter 746 - Some of the proposed standards in Chapter 744 may increase the cost of doing business for operations currently regulated under Chapter 746, because they differ from the current standards in Chapter 746 (although they are consistent with changes being simultaneously proposed to Chapter 746). Proposed rules that may have a negative economic impact on operations are: §744.1601 (relating to How many children may one caregiver supervise?), which lowers child-to-caregiver ratios for certain age groups; §744.1607 (relating to What is the maximum group size?), which lowers the group size for three year olds; §744.3255 (relating to How should outdoor loose-fill surfacing be installed?), which increases the depth of loose-fill materials when used on a playground; and §744.3807 (relating to What child safety restraint system must I use when I transport children?), which imposes new requirements relating to child safety restraint systems. As these same changes are being proposed in Chapter 746, any operation that is currently subject to a less stringent standard would have been affected by these changes regardless of whether Chapter 744 was being proposed.

All other rules in Chapter 744 will either have the same impact on operations as the impact of the comparable rules under Chapter 746, or they will have a lesser fiscal impact because they impose more flexible requirements than standards in Chapter 746. Specifically, §744.1003 (relating to If I have multiple operations, must I designate a director for each operation?) allows operations the option of having a single designated operation director for each site (as required under Chapter 746), or to have a single program director with separate site directors for each location. Because the qualifications for a site director are not as stringent as those for a director/operation director, this is expected to make it easier for providers to hire staff to fill these positions, at a lower cost. In addition, §744.4301 (relating to How many square feet of outdoor activity space must I have?) provides greater flexibility for requirements relating to outdoor activity space.

Economic Impact Survey and Analysis Methodology - Licensing sent a survey to licensed child-care centers to determine the fiscal impact of proposed rule changes under Chapter 746 and the proposed new rules under Chapter 744. The survey was sent to all licensed child-care centers with a valid e-mail address on file with Licensing, including operations that will be subject to regulation under Chapter 744. The survey was available online and notification of the survey was e-mailed to all child-care center operations across the state, for a total of 7,345 operations surveyed. In fiscal year 2009, there were 9,342 licensed child-care centers operating in Texas. The survey was open from January 16th through January 30th of 2010, and 1,614 surveys were completed by the deadline. Economic impact of the rules in Chapter 744 was calculated using a combination of survey data

from questions relevant to the operations covered under Chapter 744, cost research conducted by Licensing staff, and assumptions made in conjunction with former and current operations.

Survey questions also solicited information needed to estimate the numbers of small and micro-businesses that may be impacted by these proposed rules. Survey results indicate that roughly 55% of child-care centers are for-profit businesses, and roughly 70% are independently owned. Roughly 98% of child-care centers have fewer than 100 employees, and roughly 68% have no more than 20 employees. Based on this survey data, Licensing estimates that a majority of operations regulated under Chapter 744 are small businesses, and that many also meet the definition of a micro-business.

Operations currently licensed as child-care centers under Chapter 746 may experience a negative fiscal impact by rules proposed in Chapter 744, as discussed under the following headings: Ratios, Group Sizes, Playground Surfacing, and Transportation.

Ratios - Proposed §744.1601 will reduce child-to-caregiver ratios for certain age groups, as compared to current standards under Chapter 746. The term "ratio" refers to the maximum number of children one caregiver may supervise in the classroom. Although proposed changes to ratios and group size may each have an economic impact when viewed in isolation, the impact when viewed together is not cumulative. For example, Licensing is proposing a lower ratio and group size for three year olds, as compared to current standards under Chapter 746. The proposed ratio is 14:1 and the proposed group size is 28 (double the proposed ratio). So for a provider that follows the current ratio in Chapter 746 of 15:1 and has two classrooms of three year olds, the impact is a total of two fewer children. For a provider who follows the current group size of 30 three year olds in a classroom with two caregivers, the impact is also two fewer children. The proposed changes vary by age group as follows:

Figure 1: 40 TAC Chapter 744--Preamble

The proposed rule allows operations that are licensed under Chapter 746 as a child-care center immediately prior to the effective date of rule to have three years from the rule's effective date to comply.

A total of 1,483 operations answered some or all survey questions on classroom ratios. Results indicate that at least 75% of child-care centers already comply with the proposed ratios in all age groups, and therefore it is anticipated that a majority of operations currently regulated under Chapter 746 will not be affected by the proposed ratios in §744.1601. Of operations that will be impacted, many indicated they will be forced to pass the increased costs of compliance on to consumers. To help project the impact to consumers, Licensing calculated an average rate for the cost of care at a licensed child-care center in Texas by contacting a wide variety of centers, including for-profit, non-profit, and faith-based operations in all regions across the state. Rates vary depending on the age of children in care.

Survey results indicate that the average yearly and monthly rates at a licensed child-care center in Texas are:

For children 3 years of age = \$5,770/year or \$481/month*

For children 5 years of age = \$5,353/year or \$446/month*

For children 6-8 years of age years = \$4,133/year or \$344/month*

For children 9-13 years of age years = \$4,263/year or \$355/month*

*Note: These average tuition rates are based on a survey of child-centers that operate full-day programs, and therefore likely exceed the average tuition rates for operations that will be regulated under Chapter 744, which, by definition, do not serve children of any age during the customary school day.

For purposes of the impact projection, it is assumed that operations will compensate for any lost revenue in tuition rates for the fewer number of children served in a classroom by spreading the cost equally to all remaining children in the classroom. The following chart shows the potential lost revenue that would result from reduced ratios in different classrooms, based on average child-care tuition rates per age group, and assuming only one caregiver per classroom.

Figure 2: 40 TAC Chapter 744--Preamble

For impacted operations that pass this cost on to the remaining children in the classroom, the maximum monthly tuition increase per child in a class is estimated in the next chart.

Figure 3: 40 TAC Chapter 744--Preamble

Group Size - Proposed §744.1607 allows a maximum group size for the three-year-old age group that is two children less than the maximum group size for this same age group under current standards in Chapter 746. The proposed rule allows operations that are licensed under Chapter 746 as a child-care center immediately prior to the effective date of the rule to have three years from the rule's effective date to comply.

A total of 1,407 operations answered some or all survey questions on group sizes. Results indicate that almost 80% of respondents already meet the proposed group sizes for three-year-olds and therefore will not experience a negative economic as a result of this rule. As with changes to ratios, many operations who will experience a negative economic impact indicate they will pass this impact on to consumers.

Licensing estimates that the average yearly and monthly tuition rates at a licensed child care center for three-year-olds is \$5,770/year or \$481/month (this average was obtained from full-day child-care centers and may be high). The potential lost annual revenue per group that would result from reducing group sizes for three year olds by two children per group is \$11,540 (\$5,770 x 2). For operations that pass the loss in revenues on to consumers Licensing estimates that the maximum tuition increase per child in a group will be \$34 per child, per month (\$11,540 divided by 28 children = \$412 additional tuition per child annually, or \$34.34 per child monthly).

Playground Surfacing and Physical Space Requirements - Operations moving from regulation under Chapter 746 to Chapter 744 will have greater flexibility in the type of physical space requirements they must provide for children. Proposed rules under Chapter 744, for example, do not require operations to have outdoor space if children are in care for less than five consecutive hours per day. Outdoor play space is also not required for operations operating five or more consecutive hours a day if they have indoor activity space and equipment that allow children the opportunity to engage in age-appropriate, active play. Furthermore, operations offering only indoor instruction that is fundamental to the core development of a skill or talent are not required to have outdoor activity space. If an operation does not have adequate indoor activity space, it must have 80 square feet of outdoor activity space per child; however, the outdoor space is not required

to be a playground. As a result, many of operations regulated under Chapter 744 will not be required to comply with new playground surfacing requirements.

For operations that will have an outdoor playground, proposed §744.3255 requires a minimum required depth of loose-fill surfacing material of nine inches (an increase over the current six inch depth required under playground "use-zone" rules in Chapter 746); the rule also clarifies that loose-fill materials cannot be used indoors. There is a five-year "grandfather" clause for operations licensed under Chapter 746 immediately prior to the effective date of the proposed rule.

To estimate the cost to operations that will have to apply loose-fill materials to their playgrounds, Licensing obtained three quotes for each type of loose-fill surfacing materials.

The average cost to purchase sand is \$26.66 per cubic yard.

The average cost to purchase pea gravel is \$37.72 per cubic yard.

The average cost to purchase shredded wood is \$34.72 per cubic yard.

The cost to purchase shredded rubber ranges from \$490 to \$618 for 2000 lbs, depending upon the type and quality of the material.

The total cost to the operation of installing or increasing the depth of loose-fill materials will vary depending on the size of the use zone, the material used, and the depth of material needed to achieve nine inches. One cubic yard of material will cover approximately 104 square feet of area at a depth of 3 inches. Thus, for example, a provider who needs to add three additional inches of sand in a 10x10 square foot area in order to increase the material depth from 6 to 9 inches will need to purchase approximately 1 cubic yard of sand, at an estimated cost of \$26.66. Additional variables may increase the total costs - including labor to install the material, minimum purchase and/or delivery requirements, and ongoing maintenance costs.

Transportation - Proposed §744.3807 specifies the child safety restraint systems that must be used when transporting children, based on the age and weight of children being transported and the vehicle type used. For all vehicles except those with a gross vehicular weight rating (GVWR) of at least 10,000 pounds, the proposed rule requires the use of safety restraint systems for children younger than eight years of age who have not yet reached four feet, nine inches in height. This change is required to conform to changes in the Transportation Code, enacted under SB 61 in the 81st Regular Legislative Session, which went into effect September 1, 2009, and which apply to all "passenger vehicles" as defined in the Transportation Code. Vehicles with GVWR of at least 10,000 pounds are excluded from the definition of a passenger vehicle for purposes of the new Transportation Code requirement. Proposed §744.3807 also requires that children under the age of five be secured in an appropriate child-safety restraint system when transported in a bus with a GVWR of at least 10,000 pounds (the comparable rule in Chapter 746 does not currently impose this requirement on vehicles of this type). There is no proposed grandfathering for this rule change; it is anticipated that the rule change will be effective September 1, 2010.

A total of 1,420 survey respondents answered one or more questions on transportation and the type of vehicle they use to transport children. Over 65% of respondents indicated that they provide transportation to children. Proposed §744.3807 of this title

may impact operations that transport children five to 13 years of age when operating a "passenger vehicle" - although the impact will be the same as the impact of the change to the Transportation Code. Based on cost information obtained from major retailers such as Wal-Mart and Sears, Licensing projects that the cost to providers of purchasing new booster seats in order to comply with the Transportation Code and these rules is less than \$50 per seat. Proposed §744.3811 of this title (relating to May parents provide the safety seat equipment required for their child?) states that parents may provide the safety restraint system for use in transporting their child, provided the equipment is appropriate and can be properly secured in the vehicle. This rule provides flexibility to operations and may reduce the economic impact of §744.3807.

Proposed §744.3807(1) also requires that children under the age of five be properly restrained when transported in a large bus (i.e., a bus with a GVWR of greater than 10,000 pounds). Licensing proposes this rule (and the comparable amendment to rules in Chapter 746) to ensure that children under the age of five have the same level of protection regardless of whether they are being transported in a large bus or a smaller vehicle. Survey respondents indicated that most providers use smaller vehicles to transport young children, while an estimated 22% of providers transport children under five years of age in large buses.

Not all large buses are equipped with the anchorage systems/seat belts needed to properly secure a child safety seat or booster and Licensing is aware that some operations use large buses without the necessary anchorage systems/seat belts. The cost to install lap belts in buses that are equipped to support them is relatively low, at approximately \$25 a seat. Other buses may use add-on restraint systems or select to retrofit their bus or buses.

To determine additional options for compliance, Licensing consulted with bus dealers that build and retrofit buses, a lead distributor of restraint systems for children, and the manufacturer of STAR add-on restraint systems. Operations may purchase student transportation add-on restraint systems, which do not require belts because they adjust to existing seats. This technology has a five-point restraint that adjusts to the child, has an optional chest strap available, and fits an average large bus. The estimated cost of the system is \$106 per seat for a child 25 to 65 pounds and up to 47 inches tall; and, the upgraded version is \$152 per seat for a child 25 to 90 pounds. The cost for a system to transport a child with special needs is \$324 and supports children 25-105 pounds. These systems meet existing Head Start transportation requirements in 45 CFR §1310.11, Child Restraint Systems.

Another option is to implement the use of safety vests that have a rigid back for attachment to the vehicle belt and use a five-point harness to distribute crash forces across a child's body. Most travel vests are for children who weigh 25 to 40 pounds. They are often used on school buses to restrain children. The cost is \$65 per seat. Seat-belt ready buses that do not currently have belts installed will have the additional cost of \$25 per seat to add belts. If both seat belts and vests are needed, the estimated cost per seat is \$90.

Some operations have indicated they may need to retrofit their bus or buses in order to properly secure children under the age of five. The cost to retrofit a large bus with capacity for 72 seats is approximately \$11,000 per bus, roughly 10% of the cost of the bus depending on the model.

Estimated Cost to Operations Previously Exempt Under Chapter 745 - Some operations that will be regulated under Chapter 744 were previously exempt from regulation under DFPS rules relating to "short duration" programs. Whereas Licensing previously exempted day-care operations that serve school-age children from regulation if the operation operated for no more than 11 weeks in a year, changes to Chapter 42 of the Human Resources Code made by SB 68 now require these operations to be regulated if they operate either: (1) for at least four hours per day, three or more days per week, and three or more consecutive weeks; or (2) at least four hours a day for 40 or more days in a 12-month period. In addition, operations that teach a specialized skill may have previously been operating without a license because they believed they did not meet the statutory and rule definitions for a child-care provider subject to regulation. Amendments to Chapter 42, Human Resources Code, made by SB 68 will require some skills-training operations to become regulated under Chapter 744 if they no longer qualify for a skills-based exemption. Most skills-based programs that were previously exempt remain exempt, as SB 68 actually removed a limit on the number of hours that these programs could teach skills. Operations not previously licensed under Chapter 746 may experience a negative fiscal impact under the minimum standards being imposed in Chapter 744 - to the extent that the current practices of their operations do not meet the minimum standards.

For previously unlicensed operations, it is not possible to project an average cost of compliance with applicable standards under Chapter 744, due to wide variations among operations in areas such as: numbers and ages of children in care; total operating hours per day and per week; whether the operation operates during summers and, if so, for how many weeks per summer; whether the operation offers specialized skill instruction or training and the type of instruction/training provided; whether the operation operates in a rent-free environment, such as public school or church; and whether the operation must make any structural changes to its indoor or outdoor environment in order to comply with standards. In addition, some previously exempt entities may be operating in such a way as to meet or exceed the minimum standards in Chapter 744 in some or most respects, whereas others may be required to make significant changes in their business models in order to meet minimum standards.

Wide variation among operations is reflected in sample annual operating cost data gathered by Licensing from operations currently licensed as child-care centers under Chapter 746. Sampled operations that will meet the definition of a before-school or after-school program under Chapter 744 included single-site operations - that employ an average of three-to-five staff, serve a range of 30-65 children, and have annual operating costs ranging from a low of \$1,140 per child in care, to a high of \$5,538 per child in care - and multi-site operations that employ an average of three-to-nine staff per site, serve an average of 27-54 children per site, and have annual operating costs ranging from a low of \$554 per child in care, to a high of \$2,267 per child in care. Sampled operations that will meet the definition of a school-age program under Chapter 744 included single-site operations - that employ an average of three-to-nine staff, serve a range of 34-65 children, and have annual operating costs ranging from a low of \$5,882 per child in care, to a high of \$7,231 per child in care - and multi-site operations that employ an average of five-to-six staff per site, serve an average of 53-62 children per site, and have annual operating costs ranging from a low of \$957 per child in care, to a high of \$1,891 per child in care. As discussed in the earlier portion of this economic impact analysis

concerning operations that are currently licensed under Chapter 746, the standards relating to loose-fill materials on playgrounds (if the operation decides to use existing playgrounds or decide to build one) ratios, group sizes, and transportation may result in increased costs of operations above the sample costs listed above.

To assist previously exempt operations in estimating identifiable costs of becoming regulated under Chapter 744, Licensing has determined the following:

Background checks: For operations that previously did not conduct name-based pre-employment criminal history background checks on their staff, the average cost of conducting a pre-employment name-based check is \$2.00 per employee (which cost may be paid by the employer or passed on to the employee, at the employer's option). Additionally, some employees will be required to have a finger-print based check, for example, if they have lived out of state within the past five years. Finger-print based checks cost an additional \$44.20 per employee (again, this cost may be paid by the employer or passed on to the employee, at the employer's option).

Child/caregiver ratios and group sizes: Some operations will need to hire additional staff to meet child/caregiver ratios or standards relating to group-size. Operations will also need to take into consideration the types of services offered, in addition to the ages of children being served, when determining how many caregivers they might need to hire. For example, child/caregiver ratios for swimming related activities are lower than ratios required during other activities. As a result, operations that provide swimming-related activities will need to ensure they have additional staff to cover during these events. To estimate the average salary per employee, Licensing gathered data from the Texas Workforce Commission Occupational Employment Statistics (OES) program, which conducts a semi-annual survey of Texas employers. Using this information, the average salary of a child-care worker is \$7.52 per hour; and the average salary of a program/operation director is \$14.64 per hour. The estimated cost per hour for a site-director is \$11.08 per hour, which is mid-range between a typical child-care worker and a program director or operation director.

Training requirements: Another anticipated expense for previously exempt operations will be in the area of training. To estimate this cost, Licensing took the average cost of training based on review of similar training offered by local resource and referral agencies. The average cost for training that is outsourced is estimated to be \$20 an hour. Program directors and operation directors will need 20 hours of annual training, at a cost of \$400 a year. Site directors and caregivers need 15 hours a year, at a cost of \$300 per employee. Operations needing to hire additional staff to meet child/caregiver ratios will have the added expense of pre-service training for staff that do not have at least six months experience in a child-care operation. These caregivers will be required to have an additional eight hours of pre-service training. Pre-service training may be conducted in-house to reduce costs. The overall cost of training may be lower than \$20 an hour if the training is conducting in-house, is self-instructional, or web-based. The cost of in-house training is estimated to be 50% less than the cost per hour of training that is outsourced, or \$10 an hour, on average. Training might not be an additional expense, however, if an operation already requires pre-service or annual training hours that are consistent with the proposed requirements in Chapter 744.

Regulatory Flexibility Analysis - Section 2006.002 of the Government Code requires a Regulatory Flexibility Analysis (RFA) for proposed rules that may have an adverse economic impact on small or micro-businesses. Licensing estimates 1,470 child-care centers currently operating under Chapter 746 are now subject to regulation under Chapter 744. To estimate the number of operations currently exempt from regulation, Licensing averaged the number of short-term and skills exemptions approved over the last three years. Licensing assumes approximately 86 operations that were once previously exempt may now be subject to regulation under Chapter 744. This number may vary, as Licensing does not keep data as to whether or not exempt operations are still operating. Furthermore, currently exempt operations have time to alter their current practices in order to remain exempt from regulation. Licensing estimates that a majority of operations to be regulated under Chapter 744 meet the definition of a small or micro-business.

For proposed minimum standards that may have an adverse economic impact on operations that are small and micro-businesses, Licensing reviewed minimum standards in other states, relevant published research, and guidelines or recommendations from a variety of other governmental agencies or industry specialists to determine appropriate minimum protections for the health, safety, and welfare of children in child care. In addition, Licensing gathered extensive input from child-care operations in Texas to determine how the entities regulated by these minimum standards view the costs and benefits of the proposed rules. As noted in the foregoing Economic Impact Analysis section, Licensing learned that many operations already meet or exceed the proposed standards and, for some standards, overwhelmingly so. Moreover, many child-care providers who attended stakeholder meetings convened by Licensing across the state concurred that minimum standards in Chapter 746 should be raised to better protect the health, safety, and welfare of children, but requested that some changes be phased-in over a several-year period to minimize economic impact. Licensing weighed all of this input and considered several options for each proposed standard, as detailed below, before arriving at the proposed minimum standards.

Ratios: In §744.1601 of this title, Licensing chose to decrease ratios for the following age groups (as compared to the current ratios in Chapter 746): three years, five years, six years and older, which moves the standards closer to nationally recommended ratio guidelines. Survey data indicates that most operations will meet or exceed the proposed ratio standards.

Other options considered: (1) Licensing considered making the ratio standards the same as they are currently for child-care centers under Chapter 746, but determined that the current ratios do not adequately protect the health, safety, and welfare of children in some age ranges. Moreover, Licensing determined that a majority of operations already meet or exceed the proposed ratios and will not be negatively impacted by the changes; (2) Licensing considered adopting the even lower ratios recommended by *Caring for Our Children* and the National Association for the Education of Young Children, but rejected these options because of their greater cost; (3) Licensing considered making the changes in ratios immediately effective, but decided to allow already licensed providers two years in which to reach compliance with the proposed ratios to help minimize the significant cost that the proposed ratios will have on some providers.

Group Size: In proposing §744.1607, Licensing chose to decrease group sizes for three-year-olds, as compared to the group size standards currently in Chapter 746.

Other options considered: (1) Licensing considered making group size standards for three-year-olds the same as those currently required under Chapter 746, but determined that the current standards do not adequately protect the health, safety, and welfare of children in this age range. Moreover, Licensing determined that a majority of providers licensed under Chapter 746 already meet or exceed the proposed changes to group size and will not be negatively impacted by the proposed standard; (2) Licensing considered proposing the even lower group size recommended by *Caring for Our Children* and the National Association for the Education of Young Children, but rejected this option because of the greater cost; (3) Licensing considered making the change in group size immediately effective, but decided to allow currently licensed operations two years in which to reach compliance with the proposed group sizes to help minimize the significant cost that the proposed standard will have on some operations.

Playground Surfacing: The purpose of proposed rule §744.3255 is to better protect the health and safety of children by increasing the depth of loose-fill materials in the use-zone around certain playground equipment (as compared to current standards in Chapter 746), thereby decreasing the severity of injuries sustained when a child falls while using an operation's playground equipment. Licensing chose to require operations using playgrounds to increase the minimum required amount of loose-fill surfacing material from six to nine inches, with a five-year period allowed for existing licensed operations to achieve compliance.

Other options considered: (1) Licensing considered proposing this rule to meet the Consumer Product Safety Commission guidelines of 12 or more inches of loose-fill materials. This option would have provided even greater protection for children's health and safety, but would have further increased costs to operations; (2) Licensing considered making this rule consistent with the current standards in Chapter 746 of six-inches depth of material, but determined that the current standard of six inches does not adequately protect the health, safety, and welfare of children; (3) Licensing considered making the change immediately effective, but decided to allow licensed operations five years in which to reach compliance with the required depth of nine inches in order to minimize negative economic impact.

Transportation: Proposed §744.3807 contains more stringent requirements than those imposed under the current comparable rule in Chapter 746, and serves two distinct purposes. The first change, as previously stated, makes the standards consistent with changes in the Transportation Code requiring the use of safety restraint systems for children younger than eight years of age who are not yet at least four feet, nine inches tall, when transported in a passenger vehicle. No alternatives were considered to this change and an RFA is not required for this change, since it is mandated by statute and therefore presumptively necessary to protect the health, safety, and welfare of children in care.

The second increased requirement adds large buses with a GVWR of greater than 10,000 pounds to the type of vehicles in which children under the age of five must be secured in an appropriate child safety restraint system. Other options considered: (1) Licensing considered not imposing the requirement to properly restrain children under five who are transported in large buses, but determined that failure to impose such a requirement

does not adequately protect the health, safety, and welfare of young children transported in large buses; (2) Licensing also considered not allowing children under the age of five to be transported in large buses; however, it was determined that the impact of such a rule would have been even greater than the rule as it is being proposed, since this alternative would have required providers to either purchase an alternative vehicle in order to continue to transport children or discontinue transportation of children.

Overall Impact of Chapter 744 on Previously Exempt Operations: Section 42.042(g) of the Human Resources Code mandates that certain entities previously exempt from regulation now become licensed under Chapter 744, presumptively because the legislature has determined that regulation is necessary to protect the health, safety, and welfare of children cared for by these entities. That same law authorizes Licensing to "recognize and treat differently" the types of services provided by "before-school or after-school programs" and "school-age programs," as compared to other types of child day-care operations. In developing the minimum standards in Chapter 744 for these two operation types, Licensing examined commonly accepted practices in operations offering skills training, before- and after-school services, and school-age care, including summer care. Due to the many similarities between child-care centers regulated under Chapter 746 and the operations to be regulated under Chapter 744, Licensing determined that a majority of the standards applicable to three-year olds and above that are required under Chapter 746 for child-care centers (including amendments to those standards being proposed simultaneously with these rules) are equally necessary to protect the health, safety, and welfare of children in the operations to be regulated under Chapter 744.

Licensing identified some standards in Chapter 746 that could be modified in Chapter 744 without sacrificing adequate protections for children in care - both to minimize costs to providers and to provide greater flexibility for some of the unique characteristics of the operations regulated under Chapter 744. The proposed rules in Chapter 744 recognize that many of these operations hire staff qualified to provide direct instruction of specialized skills, as well as other recreational and youth activities. Accordingly, Licensing proposes to recognize training in skill-based instruction, for example, as one of the ways to comply with some of the training and qualification requirements for directors. Licensing also recognized that operations subject to Chapter 744 often have multi-site operations under the same governing body, operating for less than a full year or less than a full day, and serving only school-age children. Accordingly, the standards in Chapter 744 concerning Director's Responsibilities allow a single Program Director to supervise up to nine before- and after-school care sites, and up to five school-age program sites, provided each site has a Site Director, which may be a person with less training and experience than that required for the Program Director. This flexibility will be less costly to entities regulated under Chapter 744, than the director presence requirements under Chapter 746. The rules in Chapter 744 also allow for greater flexibility with respect to indoor and outdoor activity play space, as compared to entities regulated under Chapter 746, in that operations subject to Chapter 744 will have the ability to operate without outdoor activity space if the indoor activity space allows for room and equipment that permits children the opportunity to engage in active, age-appropriate play. As a result, many of the operations regulated under Chapter 744 will not be impacted by standards requiring the use of outdoor activity space and/or the use

of loose-fill materials around certain outdoor playground equipment. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

HHSC has determined that the proposed sections do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Lee Roberts at (512) 438-3246 in DFPS's Child Care Licensing Division. Electronic comments may be submitted to the Minimum Standards Comments mailbox at MSC@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-418, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

SUBCHAPTER A. PURPOSE AND DEFINITIONS

40 TAC §§744.101, 744.103, 744.105, 744.107, 744.109

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042 and Acts 2009, 81st R.S., ch. 720 §22.

§744.101. What is the purpose of this chapter?

The purpose of this chapter is to set forth the minimum standards that apply to operations exclusively providing before and after-school care services as defined by the Human Resources Code (HRC) §42.002(20) and school-age program services as defined by the HRC §42.002(22).

§744.103. What do certain pronouns mean in this chapter?

The following words have the following meanings in this chapter:

(1) I, my, you, and your--An applicant or permit holder, unless otherwise stated.

(2) We, us, our, and Licensing--The Licensing Division of the Texas Department of Family and Protective Services (DFPS).

§744.105. What do certain words and terms mean in this chapter?

The words and terms used in this chapter have the meanings assigned to them under §745.21 of this title (relating to What do the following words and terms mean when used in this chapter?), unless another meaning is assigned in this section or unless the context clearly indicates otherwise. In addition, the following words and terms have the following meanings unless the context clearly indicates otherwise:

(1) Activity space--An area or room used for children's activities, including areas separate from a group's classroom.

(2) Administrative and clerical duties--Duties that involve the management of an operation, such as bookkeeping, enrolling children, answering the telephone, and collecting fees.

(3) Admission--The process of enrolling a child in an operation. The date of admission is the first day the child is physically present at the operation.

(4) Adult--A person 18 years old and older.

(5) Age-appropriate--Activities, materials, curriculum, and environment that are developmentally consistent with the chronological age of the child being served.

(6) Attendance--When referring to a child's attendance, the physical presence of a child at the operation on any given day or at any given time, as distinct from the child's enrollment in the operation.

(7) Before or After-school program--An operation that provides care before and after or before or after the customary school day and during school holidays, for at least two hours a day, three days a week, to children who attend pre-kindergarten through grade six.

(8) Caregiver--A person whose duties include the supervision, guidance, and protection of a child. As used in this chapter, the term means a person who meets the minimum education, work experience, and training qualifications required under Subchapter D of this chapter (relating to Personnel).

(9) Caregiver-initiated activities--Activities that are directed by or chosen by the caregiver.

(10) Certified Child-Care Professional Credential--A credential given to a person working directly with children based on his assessed competency in several areas of child care and child development.

(11) Certified lifeguard--A person who has been trained in life saving and water safety by a qualified instructor, from a recognized organization which awards a certificate upon successful completion of the training. The certificate is not required to use the term "lifeguard," but the permit holder must be able to document that the certificate represents the type of training described.

(12) Child Development Associate Credential--A credential given to staff working directly with children based on his assessed competency in several areas of child care and child development.

(13) Child-initiated activities--Activities that a child chooses on the child's own initiative and that foster the child's independence. Child-initiated activities require equipment, materials, and supplies to be within a child's reach.

(14) Child passenger safety seat system--A child passenger restraint system that meets the federal standards for crash-tested restraint systems as set by the National Highway Traffic Safety Administration.

(15) Corporal punishment--The infliction of physical pain on a child as a means of controlling behavior. This includes, but is not limited to, spanking, hitting, slapping, thumping, or rapping a child.

(16) Creative activities--Activities that encourage a child to use his imagination. Creative activities include, but are not limited to, dramatic play, stories and books, science and nature activities, and music and art activities.

(17) Critical illness--An illness requiring the immediate attention of a health-care professional.

(18) Days--Calendar days, unless otherwise stated.

(19) Director--An adult you designate to have daily, on-site responsibility for your operation, including maintaining compliance with the minimum standards and Licensing laws. As this term is used

in this chapter, a director may be an operation director, program director, or site director, unless the context clearly indicates otherwise.

(20) Enrollment--The list of names or number of children who have been admitted to attend an operation for any given period of time. The number of children enrolled in an operation may vary from the number of children in attendance on any given day.

(21) Entrapping equipment--A component or group of components on equipment that forms angles or openings that could trap a child's head by being too small to allow the child's body to pass through or large enough for the child's body to pass through, but too small to allow the child's head to pass through.

(22) Field trips--Activities conducted away from the operation.

(23) Food service--The preparation or serving of meals or snacks.

(24) Frequently--More than two times in a 30-day period.

(25) Garbage--Waste food or items that when deteriorating cause offensive odors and attract rodents, insects, and other pests.

(26) Group activities--Activities that allow children to interact with others in large or small groups. Group activities include, but are not limited to, storytelling, show and tell, organized games, and singing.

(27) Health-care professional--A licensed physician, licensed or registered nurse, or other licensed medical personnel providing comprehensive preventive, diagnostic, or therapeutic medical care to the child. This does not include medical doctors or medical personnel where immunizations and contraindications to immunizations are outside the scope of the licensed practice, such as chiropractors, homeopaths, podiatrists; or medical practitioners not licensed to practice in the United States.

(28) Individual activities--Opportunities for the child to work independently or to be away from the group, but supervised.

(29) Inflatable--An amusement ride or device, consisting of air-filled structures designed for use, as specified by the manufacturer, that may include but not be limited to bounce, climb, slide, or interactive play. They are made of flexible fabric, are kept inflated by continuous air flow by one or more blowers, and rely upon air pressure to maintain their shape.

(30) Janitorial duties--Those services that involve cleaning and maintenance above that which is required for the continuation of the child-care operation. Cleaning and maintenance include such duties as cleansing carpets, washing cots, sweeping, vacuuming, or mopping a classroom.

(31) Multi-site operations--Child-care facilities with separate permits that share the same governing body, and may have centralized business functions, record keeping, and leadership.

(32) Natural environment--Settings that are natural or normal for all children of an age group without regard to ability or disability. For example, the primary natural group setting for a school-age child with a disability would be a play group or program, or whatever setting exists for school-age children without disabilities.

(33) Operation director--A director at your operation who is not supervised by a program director. An operation that has an operation director cannot have a program director or a site director.

(34) Operation location--The street address of the operation and the lot or lots on which the building or buildings are located.

(35) Pre-service training--Training given to a person who has no previous experience in regulated child-care operations, and relevant training in specified skills development offered by the operation.

(36) Program--The services and activities provided by an operation.

(37) Program director--A director who oversees your program at multiple operations and supervises a site director at each operation.

(38) Regularly--On a recurring, scheduled basis.

(39) Safety belt--A lap belt and any shoulder straps included as original equipment on or added to a vehicle.

(40) School-age child--A child who is five years of age and older, and who will attend school at or away from the operation in August or September of that year.

(41) School-age program--An operation that provides supervision and recreation, skills instruction, or skills training for at least two hours a day and three days a week to children who attend pre-kindergarten through grade six. A school-age program operates before or after the customary school day and may also operate during school holidays, the summer period, or any other time when school is not in session.

(42) Single-use area--Area not routinely used for children's activities, such as a bathroom, hallway, storage room, cooking area of a kitchen, swimming pool, and storage building.

(43) Site director--A director who has on-site responsibility at a specific operation but who is supervised by a program director.

(44) Special care needs--A child with special care needs is a child who has a chronic physical, developmental, behavioral, or emotional condition and who also requires assistance beyond that required by a child generally to perform tasks that are within the typical chronological range of development, including but not limited to, movement of large and/or small muscles, learning, talking, communicating, self-help, social, emotional, seeing, hearing, and breathing.

(45) State or local fire marshal--A fire official designated by the city, county, or state government.

(46) State or local sanitation official--A sanitation official designated by the city, county, or state government.

(47) Universal precautions--An approach to infection control where all human blood and certain human body fluids are treated as if known to be infectious for HIV, HBV, and other blood-borne pathogens.

(48) Water activities--Related to the use of splashing pools, wading pools, swimming pools, or other similar bodies of water.

§744.107. What types of operations do these minimum standards apply to?

The minimum standards in this chapter apply to the following types of operations:

(1) All child-care facilities licensed on or after September 1, 2010, to provide before and after-school care program services exclusively;

(2) All child-care facilities licensed on or after September 1, 2010, to provide school-age program services exclusively; and

(3) All child-care facilities licensed before September 1, 2010, as a licensed child-care center exclusively providing before-school and after-school program services or school-age program

services on or after September 1, 2010, will be required to amend their permit to reflect that they are subject to the minimum standards in this chapter. This must be completed no later than September 1, 2011.

§744.109. Who is responsible for complying with these minimum standards?

You, the permit holder, must ensure compliance with all minimum standards in this chapter at all times, with the exception of those minimum standards identified for specific types of child-care programs or activities that your operation does not offer. For example, if we license you to provide care for school-age children exclusively, you would not be responsible for complying with rules regarding pre-kindergarten children; however, you must comply with all other minimum standards.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams

General Counsel

Department of Family and Protective Services

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For further information, please call: (512) 438-3437



SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION

DIVISION 1. PERMIT HOLDER RESPONSIBILITIES

40 TAC §744.201

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC §42.042 and Acts 2009, 81st R.S., ch. 720 §22.

§744.201. What are my responsibilities as the permit holder?

You are responsible for the following:

(1) Developing and implementing your operational policies, which must comply with or exceed the minimum standards specified in this subchapter;

(2) Developing written personnel policies, including job descriptions, job responsibilities and requirements, and making provisions for training;

(3) Designating an operation director, program director, or site director, as applicable, who meets minimum standard qualifications as specified in Subchapter D of this chapter (relating to Personnel);

(4) Reporting and ensuring your employees and volunteers report suspected abuse, neglect, or exploitation directly to DFPS and

may not delegate this responsibility, as required by the Texas Family Code §261.101;

(5) Ensuring all information related to background checks is kept confidential as required by the Human Resources Code §40.005(d) and (e);

(6) Ensuring parents have the opportunity to visit the operation any time during your hours of operation to observe their child, program activities, the building, grounds, and the equipment without having to secure prior approval;

(7) Maintaining liability insurance as required by the Human Resources Code, §42.049, if we license you to care for 13 or more children;

(8) Complying with the child-care licensing law found in Chapter 42 of the Human Resources Code, the applicable minimum standards, and other applicable rules in the Texas Administrative Code; and

(9) Reporting to DFPS any Department of Justice substantiated complaints related to Title III of the American with Disabilities Act, which applies to commercial public accommodations.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 2. REQUIRED NOTIFICATIONS

40 TAC §§744.301, 744.303, 744.305, 744.307

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042 and Acts 2009, 81st R.S., ch. 720 §22.

§744.301. What changes regarding my operation must I notify Licensing about before making the change?

You must notify us in writing before:

- (1) Changing location;
- (2) Adding to or reducing indoor or outdoor space;
- (3) Reducing the number of toilets or sinks;
- (4) Adding a swimming pool or other permanent body of

water;

(5) Changing the age range of children to be cared for;

(6) Changing the hours, days, or months of operation;

(7) Offering new services relating to minimum standards found in this chapter, such as transportation or field trips;

(8) Planned closure of five consecutive days or more, during designated hours of operation, when the operation is not caring for children, with the exception of nationally recognized holidays; or

(9) Going out of business.

§744.303. What changes must I notify Licensing of regarding the governing body, a director, or the program at my operation?

You must notify us in writing no later than five days after a change is made regarding:

(1) Sale or transfer of the operation's ownership (including but not limited to incorporation of an existing operation);

(2) The governing body designee;

(3) The board chair for a corporate facility or other executive officer of the governing body;

(4) The address of the governing body or its designee; and

(5) A director.

§744.305. What other situations require notification to Licensing?

(a) You must notify us as soon as possible, but no later than two days after:

(1) Any occurrence that renders all or part of your operation unsafe or unsanitary for a child, for example loss of electricity or water, or weather related damage that prevents the safe use of the operation;

(2) Injury to a child in your care that requires treatment by a health-care professional;

(3) You become aware that an employee or child in your care contracts an illness deemed notifiable by the Department of State Health Services (DSHS) as specified in 25 TAC Chapter 97, Subchapter A (relating to Control of Communicable Diseases);

(4) A county or district attorney accepts an indictment or information regarding an official complaint against an employee alleging commission of any crime noted in §745.651 of this title (relating to What types of criminal convictions may preclude a person from being present in an operation?); and

(5) The occurrence of any other situation which places a child at risk, such as forgetting a child in an operation vehicle or on the playground or not preventing a child from wandering away from the operation unsupervised.

(b) You must notify us immediately if a child dies while in your care.

§744.307. What emergency or medical situations must I notify parents about?

(a) After you ensure the safety of the child, you must notify the parent immediately after a child:

(1) Is injured and the injury requires medical attention by a health-care professional;

(2) Has a sign or symptom requiring exclusion from the operation as specified in Subchapter K of this chapter (relating to Health Practices);

(3) Has been involved in any situation that placed the child at risk. For example, a caregiver forgetting a child in an operation

vehicle or on the playground or not preventing a child from wandering away from the operation unsupervised; or

(4) Has been involved in any situation that renders the operation unsafe, such as a fire, flood, or damage to the operation as a result of severe weather.

(b) You must notify the parent of less serious injuries when the parent picks the child up from the operation. Less serious injuries include, but are not limited to, minor cuts, scratches, and contusions requiring first-aid treatment by employees.

(c) You must notify all parents of children in the operation in writing and within 48 hours of becoming aware that a child in your care or an employee has contracted a communicable disease deemed notifiable by the Department of State Health Services as specified in 25 TAC Chapter 97, Subchapter A (relating to Control of Communicable Diseases).

(d) You must provide written notice within 48 hours to the parents of all children in a group when there is an outbreak of lice or other infestation in the group. You must either post this notice in a prominent and publicly accessible place where parents can easily view it or send an individual note to each parent.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 3. REQUIRED POSTINGS

40 TAC §§744.401, 744.403, 744.405

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042 and §42.055 and Acts 2009, 81st R.S., ch. 720 §22.

§744.401. What items must I post at my operation at all times?

You must post the following items:

- (1) Your license;
- (2) The letter or form from the most recent Licensing inspection or investigation;
- (3) The Licensing notice *Keeping Children Safe*;
- (4) Emergency and evacuation relocation plans;

(5) The daily menu, including all snacks and meals served by the operation;

(6) Licensing *Notice of Availability for Review* of:

- (A) The most recent fire inspection report, if applicable;
- (B) The most recent sanitation inspection report, if applicable;

(C) The most recent gas inspection report, if applicable;
and

(D) The applicable Licensing minimum standards;

(7) Telephone numbers specified in §744.405 of this title (relating to What telephone numbers must I post and where must I post them?); and

(8) Any other Licensing notices with specific instructions to post the notice.

§744.403. When and where must these items be posted?

(a) Unless otherwise specified, the items specified in §744.401 of this title (relating to What items must I post at my operation at all times?) must be available by posting or placing in a binder, in a prominent and publicly accessible place where employees, parents, and others may easily view them at all times.

(b) Emergency and evacuation relocation plans must be posted in each room used by children.

§744.405. What telephone numbers must I post and where must I post them?

(a) You must post the following telephone numbers:

(1) 911 or, if 911 is not available in your area, the numbers
for:

- (A) Emergency medical services;
- (B) Law enforcement; and
- (C) Fire department;

(2) Poison control;

(3) DFPS child abuse hotline;

(4) Nearest Licensing office telephone number and address; and

(5) The operation name, address, and telephone number.

(b) You must post the telephone numbers next to each telephone in the operation. If the operation uses cordless or cellular phones, these same numbers must be posted in a prominent place on the wall near the doorway in each room of the operation, or on the phone handset.

(c) If you use cellular phone service at your operation, you must ensure dialing 911 directs emergency personnel to your operation location.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 4. OPERATIONAL POLICIES

40 TAC §§744.501, 744.503, 744.505, 744.507

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042 and Acts 2009, 81st R.S., ch. 720 §22.

§744.501. What written operational policies must I have?

You must develop written policies that at a minimum address each of the following:

- (1) Hours, days, and months of operation;
- (2) Procedures for release of children;
- (3) Illness and exclusion criteria;
- (4) Procedures for dispensing medication or a statement that medication is not given;
- (5) Procedures for handling medical emergencies;
- (6) Procedures for parental notifications;
- (7) Discipline and guidance practices;
- (8) Meals and food service practices;
- (9) Immunization requirements;
- (10) Tuberculin testing requirements;
- (11) Enrollment procedures, including how and when parents will be notified of policy changes;
- (12) Transportation, if applicable;
- (13) Water activities, if applicable;
- (14) Field trips, if applicable;
- (15) Animals, if applicable;
- (16) The procedures for parents to review and discuss with the director any questions or concerns about the policies and procedures of the operation;
- (17) The procedures for parents to visit the operation at any time during your hours of operation to observe their child, program activities, and the building, grounds, and equipment without having to secure prior approval;
- (18) The procedures for parents to participate in the operation's activities;

(19) The procedures for parents to review a copy of the minimum standards and the operation's most recent Licensing inspection report;

(20) Instructions on how a parent may contact the local Licensing office, DFPS child abuse hotline, and DFPS website; and

(21) Emergency preparedness plan.

§744.503. Must I provide parents with a copy of my operational policies?

Yes. Parents must sign an enrollment agreement or other similar document that includes at least the operational policies listed in this division on or before the date of admission. You must keep this signed document in the child's record or at least one for each family, if siblings are enrolled at the same time.

§744.505. What must I do when I change an operational policy or an item in the child-care enrollment agreement?

You must notify parents in writing of any changes to your operational policies and enrollment agreement. At least one copy of the updated operational policies must be signed and dated for each family. You must keep the updated information in the child's record.

§744.507. Must I provide a copy of my operational policies to my employees?

Yes. You must share a copy of your operational policies with all employees as specified in Subchapter C of this chapter (relating to Record Keeping).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER C. RECORD KEEPING

DIVISION 1. RECORDS OF CHILDREN

40 TAC §§744.601, 744.603, 744.605, 744.607, 744.609, 744.611, 744.613, 744.615, 744.617, 744.619, 744.621, 744.623, 744.625, 744.627

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042 and Acts 2009, 81st R.S., ch. 720 §22.

§744.601. Who has the right to access children's records?

(a) All children's records must be immediately accessible to caregivers during your hours of operation for use in an emergency.

(b) Parents have the right to access their own child's record during a parent conference with the caregiver or director.

(c) All children's records are subject to review and/or reproduction by Licensing upon request during your hours of operation.

§744.603. What records must I have for children in my care and how long must I keep them?

(a) You must maintain the following records for each child enrolled in your operation:

(1) An enrollment agreement specified in §744.503 of this title (relating to Must I provide parents with a copy of my operational policies?);

(2) Admission information;

(3) Immunization records;

(4) Tuberculin testing information, if applicable;

(5) Licensing Incident/Illness Report form; and

(6) Sign-in and sign-out tracking information as specified in §744.627 of this title (relating to Must I have a system for signing children in and out of my care?).

(b) These records must be kept at the operation and must be available during your hours of operation for at least three months after the child's last day in care.

§744.605. What admission information must I obtain for each child?

You must obtain at least the following information before admitting a child to the operation:

(1) The child's name and birth date;

(2) The child's home address and telephone number;

(3) Date of the child's admission to the operation;

(4) Name and address of parent(s);

(5) Telephone numbers at which parent(s) can be reached while the child is in care;

(6) Name, address, and telephone number of another responsible individual (friend or relative) who should be contacted in an emergency when the parent cannot be reached;

(7) Names and telephone numbers of persons other than a parent to whom the child may be released;

(8) Permission for transportation, if provided;

(9) Permission for field trips, if provided;

(10) Permission for participation in water activities, if provided;

(11) Name, address, and telephone number of the child's physician or an emergency-care facility;

(12) Authorization to obtain emergency medical care and to transport the child for emergency medical treatment;

(13) A statement of the child's special problems or special care needs. This includes, but is not limited to, allergies, existing illness, previous serious illness and injuries, hospitalizations during the past 12 months, and any medications prescribed for continuous, long-term use;

(14) The name and telephone number of the school that a school-age child attends, unless the operation is located at the child's school; and

(15) Permission for a school-age child to ride a bus or walk to or from school or home or to be released to the care of a sibling under 18 years old, if applicable.

§744.607. Must the child's parent sign the admission information?

Yes. The parent must sign the admission information before you admit the child to your care.

§744.609. Must I update the admission information?

(a) Yes. You must develop a procedure for regularly updating the admission information, including information on special care needs.

(b) The parent must sign and date the updated information. You may use a new form or have the parent initial and date amendments to a previously signed form. You must keep the updated information in the child's record.

§744.611. Must I have a health statement for children in my care?

No. Since your operation exclusively serves children that attend pre-kindergarten or school, you are not required to have a health statement for children in your care.

§744.613. What immunizations are children in my care required to have?

(a) Each child enrolled or admitted to your operation must meet applicable immunization requirements specified by the Texas Department of State Health Services as specified in 25 TAC Chapter 97, Subchapter B (relating to Immunization Requirements in Texas Elementary and Secondary Schools and Institutions of Higher Education).

(b) Except as otherwise provided in this division, all immunizations required for the child's age must be completed by the date of admission.

§744.615. Are there exemptions for immunization requirements?

Yes; however, exemptions for immunization requirements must meet criteria specified by the Department of State Health Services rules in 25 TAC §97.62 (relating to Exclusions from Compliance).

§744.617. Where can I find more information on immunizations?

You can find more information in the Department of State Health Service's rules at 25 TAC Chapter 97, Subchapter B (relating to Immunization Requirements in Texas Elementary and Secondary Schools and Institutions of Higher Education). You can access it on the Department of State Health Services Internet website at: www.dshs.state.tx.us/immunize, or you may obtain a copy from Licensing or your local or state health department.

§744.619. When must I have the child's immunization record on file?

You must have a copy of the child's completed immunization record by the date of admission, except as otherwise provided in this division.

§744.621. May I admit a child who is not current on immunizations?

Yes; however, you must comply with the rules for provisional admittance established by the Department of State Health Services rules in 25 TAC §97.66 (relating to Provisional Enrollment for (Non-Higher Education; Non-Veterinary) Students).

§744.623. What documentation is acceptable for immunization records?

Acceptable documentation includes:

(1) A signed statement from the child's parent that the child's immunization record is current and on file at the pre-kindergarten or school that the child attends. The statement must be dated and include the name, address, and telephone number of the pre-kindergarten or school listed in the statement; or

(2) An official immunization record generated from a state or local health authority, such as a registry, or a record received from school officials including a record from another state, that includes the child's name and birth date; the number of doses and vaccine type; the month, day, and year the child received each vaccination; and the signature or stamp of the physician or other health-care professional who administered the vaccine.

§744.625. Must children in my care have a tuberculosis (TB) examination?

Requirements for tuberculosis screening and testing vary across the state. If the Texas Department of State Health Services (DSHS) or local health authority requires tuberculosis testing for children in your operation, then you must have documentation to indicate that each child in your care is free of active tuberculosis. Documentation of a TB screening is not required to be on file. If you are unsure of the requirements for your area, contact the TB manager at the DSHS regional office nearest you.

§744.627. Must I have a system for signing children in and out of my care?

(a) Yes. You must have a system for tracking each child coming and going from your operation throughout the day. This tracking system must include the name of each child, the date, time of arrival and time of departure, and employee or parent's initials or other unique identification code.

(b) All caregivers must have access to the tracking system to determine which children are in care during their work shift, changes in caregivers, and emergency evacuations.

(c) You must keep tracking information for the previous three months and make it available to Licensing for review upon request.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams

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For further information, please call: (512) 438-3437



DIVISION 2. RECORDS OF ACCIDENTS AND INCIDENTS

40 TAC §§744.701, 744.703, 744.705, 744.707, 744.709

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the

Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042 and Acts 2009, 81st R.S., ch. 720 §22.

§744.701. Must I keep a written record of accidents and incidents that occur at my operation?

Yes. You must use a Licensing Incident/Illness Report form, or other form containing at least the same information, to record information regarding:

(1) Injuries or illness that required medical attention by a health-care professional while the child is in care; and

(2) Any other situation that placed a child at risk, such as forgetting a child in an operation's vehicle or not preventing a child from wandering away from the operation unsupervised.

§744.703. Where can I get a copy of Licensing's Incident/Illness Report form?

You may obtain a copy of the form from Licensing staff or on the DFPS website at: http://www.dfps.state.tx.us/Child_Care/Information_for_Providers/cclforms-dc.asp.

§744.705. Must someone from my operation sign the Incident/Illness Report form?

Yes. The director or person in charge must sign and date the completed report.

§744.707. Must I share a copy of the Incident/Illness Report form with the child's parent?

Yes. You must share a copy of the report with the child's parent and obtain the parent's signature on the report indicating the parent has reviewed it or received a copy of the report within 48 hours of when the incident occurred.

§744.709. Where must I file the Incident/Illness Report form and how long must I keep it?

You must keep the Incident/Illness Report form with the child's record at the operation while the child is in care, and for at least three months after the child's last day in care.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 3. RECORDS THAT MUST BE KEPT ON FILE AT THE OPERATION

40 TAC §§744.801, 744.803, 744.805

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of

services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042 and Acts 2009, 81st R.S., ch. 720 §22.

§744.801. What records must I keep at my operation?

You must maintain and make the following records available for our review upon request, during your hours of operation. Paragraphs (18), (19), and (20) of this section are optional, but if provided, allow Licensing to avoid duplicating the evaluation of standards that have been evaluated by other state agencies within the past year:

- (1) Children's records, as specified in Division 1 of this subchapter (relating to Records of Children);
- (2) Personnel and training records, unless on file at a central administrative location;
- (3) Licensing Director's Certificate;
- (4) Attendance records for employees;
- (5) Children's program activity plans for each age group in care for more than four hours per day;
- (6) Verification of liability insurance or notice of unavailability, if applicable;
- (7) Proof of request for all background checks required by Chapter 745, Subchapter F of this title (relating to Background Checks);
- (8) Daily menus for food prepared or served by the operation;
- (9) Medication records;
- (10) Playground maintenance checklists;
- (11) Pet vaccination records, if applicable;
- (12) Fire safety documentation for emergency drills, fire extinguishers, and smoke detectors;
- (13) Most recent Licensing inspection report, letter, or notice requiring posting;
- (14) Most recent fire inspection report, if applicable;
- (15) Most recent sanitation inspection report, if applicable;
- (16) Most recent gas inspection report, if applicable;
- (17) Most recent Department of State Health Services immunization compliance review form, if applicable;
- (18) Most recent Department of Agriculture Child and Adult Care Food Program (CACFP) report, if applicable;
- (19) Most recent local workforce board Child-Care Services contractor inspection report, if applicable;
- (20) Record of pest extermination, if applicable;
- (21) Written approval from the fire marshal to provide care above or below ground level, if applicable; and
- (22) System to track when a child's care begins and ends daily.

§744.803. How long must I keep these records at my operation?

(a) You must keep records at the operation for at least three months from the date the record was created, unless otherwise stated in this chapter.

(b) You must keep training records for each current director and caregiver for at least the current and last full training year.

§744.805. May I keep electronic records or a combination of paper and electronic records?

Yes, you may keep electronic records or a combination of paper and electronic records.

(1) If you keep a combination of paper and electronic records, you must develop procedures that address what must be in the external paper file and what can be in the electronic file;

(2) Children's records must be accessible to all caregivers during their work shift, changes in caregivers, and emergency evacuations; and

(3) All records must be available during your hours of operation for review by Licensing upon request.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 4. PERSONNEL RECORDS

40 TAC §§744.901, 744.903, 744.905, 744.907, 744.909

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042 and Acts 2009, 81st R.S., ch. 720 §22.

§744.901. What information must I maintain in my personnel records?

You must have the following records at the operation and available for review during your hours of operation for each employee, caregiver, substitute, and volunteer as specified in this chapter:

(1) Documentation showing the dates of the first and last day on the job;

(2) Documentation showing how the employee meets the minimum age and education qualifications, if applicable;

(3) A copy of a health card or physician's statement verifying the employee is free of active tuberculosis, if required by the regional Department of State Health Services TB program or local health authority;

(4) A notarized Licensing Affidavit for Applicants for Employment form as specified in Human Resources Code, §42.059;

(5) A record of training hours;

(6) A statement signed and dated by the employee showing he has received a copy of the operation's:

(A) Operational policies; and

(B) Personnel policies;

(7) Proof of request for DFPS background checks;

(8) A copy of a photo identification; and

(9) A copy of a current driver's license for each person who transports a child in care.

§744.903. What additional personnel records must I maintain for a director?

In addition to the personnel records that must be maintained for all operation personnel, you must have the original Licensing Director's Certificate for your director. If a director is also the permit holder, a statement showing the director has received a copy of the operational policies and personnel policies is not required.

§744.905. Must I maintain attendance records or record of hours worked on my employees?

Yes. You must maintain a record of attendance or other record indicating all days and hours worked for each director, employee, caregiver, substitute, and volunteer who is regularly or frequently at the operation during your hours of operation.

§744.907. How long and where must I keep the required personnel records?

(a) You must keep all records for at least three months after an employee's last day on the job, with the exception of annual training records.

(b) You must maintain annual training records for current personnel for the last full training year and current training year.

(c) You must keep personnel records at the operation or in a central administrative location, provided they are immediately available for review during your hours of operation.

§744.909. May Licensing access my personnel records?

Yes. Licensing staff must be given immediate access to all personnel records that document compliance with minimum standards. You must allow Licensing to photocopy these records if requested.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER D. PERSONNEL

DIVISION 1. DIRECTOR

40 TAC §§744.1001, 744.1003, 744.1005, 744.1007, 744.1009, 744.1011, 744.1013, 744.1015, 744.1017, 744.1019, 744.1021, 744.1023, 744.1025, 744.1027, 744.1029, 744.1031, 744.1033, 744.1035, 744.1037, 744.1039, 744.1041, 744.1043, 744.1045, 744.1047, 744.1049, 744.1051, 744.1053, 744.1055, 744.1057, 744.1059, 744.1061

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042 and Acts 2009, 81st R.S., ch. 720 §22.

§744.1001. Am I required to have a director for my operation?

(a) You are required to designate an adult that has the daily, on-site responsibility for your operation, including maintaining compliance with the minimum standards and Licensing laws. You must notify Licensing of changes in directors as specified in §744.303 of this title (relating to What changes must I notify Licensing of regarding the governing body, a director, or the program at my operation?).

(b) There are three types of recognized directors in a before and after-school or school-age program:

(1) An operation director, who is responsible for your operation without the supervision of a program director;

(2) A program director, who oversees your program at multiple operations and supervises a site director at each operation;

(3) A site director, who has the daily responsibility for a specific operation but is supervised by a program director.

(c) In this subchapter, the term director applies to all types of directors listed in subsection (b) of this section, unless otherwise specified.

§744.1003. If I have multiple operations, must I designate a director for each operation?

(a) If you have multiple operations under the same governing body, you must designate a director at each operation. However, a site director may share his responsibilities at an operation with a program director, provided the operation maintains substantial compliance with minimum standards and other relevant law.

(b) A program director may supervise no more than:

(1) Nine site directors at multiple before and after-school care programs operated by the same governing body.

(2) Five site directors at multiple school age programs or at a combination of school-age programs and before and after-school programs operated by the same governing body.

§744.1005. What are the director's responsibilities?

(a) Your director must ensure:

(1) Your operation complies with the minimum standards specified in this chapter;

(2) All employees comply with the minimum standards;

(3) All employees have assignments that match their skills, abilities, and training;

(4) All employees are supervised. Supervision includes, but is not limited to, knowing what the employees are doing and ensuring that they fulfill their assignments and responsibilities;

(5) Caregivers are not regularly scheduled for more than ten hours of direct child care during a 24-hour period; and

(6) Qualified substitutes are called as necessary to meet minimum standards.

(b) If a program director and a site director share the director's responsibilities at an operation, you must provide Licensing with a written plan designating which responsibilities specified in subsection (a) of this section the site director and program director are responsible for on a daily basis. You must follow your plan and submit revisions to Licensing upon request.

§744.1007. May I be a director of my own operation?

You may be both the director and permit holder of an operation if you meet all of the required qualifications and are able to fulfill the responsibilities of a director.

§744.1009. May I have more than one operation director?

You may designate more than one operation director if each director:

(1) Meets the qualifications specified in this division; and

(2) Receives a written job description that includes his job responsibilities.

§744.1011. For how many hours must a director be at my operation?

A director must be present a minimum of 75% of the program's operating hours each week or a minimum of 30 hours per week, whichever is less, to ensure the operation complies with all minimum standards.

§744.1013. Must someone else be designated to be in charge of my operation in the director's absence?

(a) Yes. You or your director must designate a qualified caregiver to be in charge of the operation anytime the director is away from the operation during your hours of operation. If your operation has a program director and a site director, the written plan designating their responsibilities must address whether either or both directors may designate a qualified caregiver to be in charge of your operation in the site director's absence.

(b) Designated individuals must:

(1) Know they are in charge and for how long;

(2) Know their responsibilities while in charge;

(3) Have access to all essential information to communicate with parents and state and local authorities as needed; and

(4) Have the authority to direct the operation in compliance with minimum standards.

(c) You or your director must ensure that all other employees know who is in charge in the director's absence.

§744.1015. What qualifications must an operation director or a program director meet?

(a) Except as otherwise provided in this division, an operation director or program director must be at least 21 years of age, have a high school diploma or its equivalent, and meet one of the following combinations of education and experience:

Figure: 40 TAC §744.1015(a)

(b) Options (4) and (6) in subsection (a) of this section require periodic renewal for the director to remain qualified.

§744.1017. What qualifications must a site director meet?

(a) The qualifications for education and experience that a site director must meet depend in part on how many site directors are supervised by a program director. Except as otherwise provided in this division, the site director of an operation must have a high school diploma or its equivalent, and meet one of the following combinations of education and experience:

Figure: 40 TAC §744.1017(a)

(b) Except as otherwise provided in this division, a site director of an operation that provides care exclusively for children five years old and older must be at least 18 years of age, while the site director of an operation that also provides care for children younger than five years must be at least 21 years of age.

(c) A site director may complete the required education during his first 90 days of employment, if:

(1) The site director completed at least half of the required education prior to his current employment as site director; and

(2) The written plan required in §744.1005 (b) of this title (relating to What are the director's responsibilities?) includes appropriate program director oversight until the required education is completed.

§744.1019. Are any directors exempt from the qualifications?

(a) A current director who was a designated director of a DFPS licensed group day-care home before May 1, 1985, is not required to have a high school diploma or its equivalent, and is exempt from the requirements specified in §744.1015 of this title (relating to What qualifications must an operation director or a program director meet?) and §744.1017 of this title (relating to What qualifications must a site director meet?).

(b) A current director who was a designated director before September 1, 2003, of a DFPS licensed group day care home, school: grades kindergarten and above, kindergarten and nursery school, or drop-in care center is exempt from the requirements specified in specified in §744.1015 and §744.1017 of this title.

(c) If a current director under exemption changes jobs after September 1, 2010, he must meet director qualifications specified in this subchapter before being designated as a director in a new position.

§744.1021. What types of experience may count towards meeting director qualifications?

(a) The following types of experience may be counted as experience:

(1) Experience as a director, assistant director, or caregiver working directly with children, obtained in any operation regulated by DFPS, whether paid or unpaid;

(2) Experience as a director, assistant director, or caregiver working directly with children in a licensed or certified operation in another state;

(3) One year experience providing skill-based instruction or as a caregiver in a recreational or youth development program, where children in pre-kindergarten through grade six are in care for at least two hours a day, three days a week;

(4) One year of full-time classroom teaching in a public or private accredited school in grades pre-kindergarten through third, during a customary school year;

(5) Substitute or part-time classroom teaching in a public or private accredited school in grades pre-kindergarten through third, if the total length of time adds up to one year of full-time teaching during a customary school year; or

(6) One year of post-graduate study in child development, early childhood education, or a closely related field.

(b) You must have obtained all work experience in a full-time capacity or its equivalent in a part-time capacity. Full-time is defined as 30 hours per week.

§744.1023. Can Licensing verify whether someone has sufficient experience?

Yes. To determine whether a person has sufficient experience to qualify as a director, we may, at our own discretion, verify your experience and substitute child-care experience via the Internet, telephone or mail contact with previous employer(s), or through our records.

§744.1025. What credit courses does Licensing recognize as child development?

Due to a large variation in credit course titles and content, it is impossible to list all courses that may be counted toward the child development requirement. Courses in early childhood education, child growth and development, psychology, sociology, classroom management, child psychology, health and safety of children, elementary education related to pre-kindergarten through third grade, youth development, and other similar courses may be counted, provided the course content relates to child development or the topics specified in §744.1309 of this title (relating to How many clock hours of annual training must be obtained by caregivers and site directors?). Abnormal psychology and secondary education courses are not recognized as child development.

§744.1027. What credit courses does Licensing recognize as management?

Due to a large variation in credit course titles and content, it is impossible to list all courses that may be counted toward the management requirement. Management courses may include administration of a child-care facility, recreational leadership, accounting, goal and objective setting, performance planning and evaluation, management techniques, risk management and other administrative, management, or supervisory-related courses. Courses in office machines or computer training are not recognized as management.

§744.1029. What are clock hours?

Clock hours may consist of documented attendance at:

- (1) Seminars, workshops, conferences, and early childhood classes;
- (2) Self-instructional programs; or
- (3) Planned learning opportunities provided by consultants, a qualified director, or by a child-care association.

§744.1031. Must the trainer or provider of clock hours meet specific criteria?

We do not have specific criteria established for someone to be a trainer or provider of clock hours.

§744.1033. What are CEUs?

Continuing education units (CEUs) provide a standard unit of measure for adult education and training activities. One CEU equals ten clock hours of participation in an organized, continuing-education experience, under responsible, qualified direction and instruction. Although you may obtain a CEU in many of the same settings as clock hours, the CEU provider must meet the criteria established by the International Association for Continuing Education and Training to be able to offer the CEU.

§744.1035. May clock hours or continuing education units (CEUs) be substituted for educational requirements in any of the options specified in this division?

You may only substitute clock hours or CEUs for required credit hours in child development and management. You may substitute 50 clock hours or five CEUs for each three college credit hours required in child development and/or management.

§744.1037. What kind of documentation must I submit to Licensing to show my director is qualified and when must I submit it?

(a) You must submit the following for each director at your operation:

(1) A completed Licensing Personal History Statement form specifying the education and experience of each designated director;

(2) A completed Licensing Request for Criminal History and Central Registry Check form or proof a background check request was made online;

(3) A notarized Licensing Affidavit for Applicants for Employment form;

(4) A completed Licensing Governing Body/Director Designation form; and

(5) An original and current Licensing Director's Certificate form, or an original college transcript or original training certificates which verify the educational requirements; and complete dates, names, addresses, and telephone numbers which support the required experience. Original letters may be substituted for training certificates, provided they include the same information as specified in §744.1331 of this title (relating to What documentation must I provide to Licensing to verify that training requirements have been met?).

(b) You must submit the information to us:

(1) As part of a new application for a permit; and

(2) Within ten days of designating a new operation director, program director, or site director.

§744.1039. What documentation must I have to prove that the person received the clock hours or CEUs?

You must have documentation specified in §744.1331 of this title (relating to What documentation must I provide to Licensing to verify that training requirements have been met?).

§744.1041. What documentation must I provide to Licensing to show that my director has acceptable child development and management education?

If requested by Licensing, you must provide original transcripts or training certificates. Supporting documentation, such as credit course catalog descriptions, or a course syllabus or outline may also be requested by Licensing to assist in determining whether the course is recognized as child development or management.

§744.1043. Does education received outside of the United States substitute for the education requirements for a child-care director?

Yes. However, you must provide supporting information such as a copy of the diploma or transcript or letter from the school to indicate that the education is equivalent to a program in the United States. Documents written in a foreign language must be translated into English.

§744.1045. Will Licensing keep the original training certificates and college transcripts I submit to obtain a Licensing director's certificate?

No. After we evaluate this information and issue a director's certificate, we will return the original documents to you along with the certificate or if a certificate is not issued, along with the letter notifying you of the decision.

§744.1047. What happens if Licensing determines that a director for my operation does not meet minimum standard qualifications?

We will notify you that your director is in violation of minimum standards for failure to meet director qualifications as soon as possible, but no later than ten days after a determination is made. We will give you a deadline to submit additional paperwork or to designate another director and submit new paperwork.

§744.1049. Will my director receive a certificate verifying that director qualifications have been met?

Yes. After we determine that your director meets minimum standard qualifications, we will issue a Licensing *Director's Certificate*. The certificate verifies only that the named person meets minimum standard qualifications specified in §744.1015 of this title (relating to What qualifications must an operation director or a program director meet?) or §744.1017 of this title (What qualifications must a site director meet?).

§744.1051. Will the director's certificate expire?

The director's certificate will have an expiration date, if the director was qualified under §744.1015(a), options (4) or (6) of this title (relating to What qualifications must an operation director or a program director meet?). Otherwise, the Licensing *Director's Certificate* will not expire.

§744.1053. How often must an expiring certificate be renewed?

If you qualify under §744.1015(a), options (4) or (6) of this title (relating to What qualifications must the director or program director meet?), you must maintain your credential according to the issuing organization's or educational institution's requirements. You must submit to us a copy of a letter or other documentation confirming the credential is current before we can renew your *Director's Certificate*.

§744.1055. What happens if I do not submit the documentation confirming the credential is current?

We will give you a deadline to submit the required documentation or to designate another qualified director. If your director allows the certificate to expire without submitting the required documentation and no longer meets requirements for a center director, you violate minimum standards.

§744.1057. If I hire someone who was qualified as a director at another licensed operation in Texas, must I resubmit all of the information to Licensing staff for review?

(a) If you can provide an original and current Licensing *Director's Certificate*, you will not be required to resubmit the information establishing qualifications.

(b) If an original and current Licensing *Director's Certificate* is not available, or Licensing cannot verify the director is qualified, you must resubmit the information to us to determine if your designated director meets minimum director qualifications.

§744.1059. Does Licensing charge a fee for issuing the director's certificate?

No. We do not charge a fee for processing a director's certificate.

§744.1061. Can my director get a replacement Director's Certificate?

Yes. We will issue a replacement *Director's Certificate*, if you submit your request to us in writing, specifying:

(1) The name and address of your operation;

(2) The name of the director for whom the replacement certificate is needed;

(3) The date we issued the original certificate; and

(4) The reason a replacement certificate is needed.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 2. EMPLOYEES AND CAREGIVERS

40 TAC §§744.1101, 744.1103, 744.1105, 744.1107, 744.1109, 744.1111

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042 and Acts 2009, 81st R.S., ch. 720 §22.

§744.1101. What is the difference between an employee and a caregiver?

(a) An employee is any person employed by the operation, including caregivers, kitchen, office, or maintenance personnel; other personnel; a director.

(b) A caregiver is an employee counted in the child/caregiver ratio, whose duties include direct care, supervision, guidance, training, and the protection of children in care.

§744.1103. What minimum qualifications must each of my employees meet?

Each employee who is regularly or frequently present while children are in care must:

(1) Meet the requirements in Chapter 745, Subchapter F of this title (relating to Background Checks);

(2) Have a current record of a tuberculosis (TB) examination, showing he is free of contagious TB, if required by the Texas Department of State Health Services or local health authority;

(3) Complete a notarized Licensing *Affidavit for Applicants for Employment* form as specified in Human Resources Code, §42.059; and

(4) Complete orientation to your operation as specified in Division 4 of this subchapter (relating to Professional Development).

§744.1105. What additional minimum qualifications must each of my caregivers meet?

Except as otherwise provided in this division, each employee counted in the child/caregiver ratio must comply with minimum standards for employees and must:

- (1) Be at least 18 years of age;
- (2) Have a:
 - (A) High school diploma;
 - (B) High school equivalent; or
 - (C) High school certificate of coursework completion as defined in Texas Education Code, §28.025(d); and

(3) Complete pre-service training, as specified in Division 4 of this subchapter (relating to Professional Development).

§744.1107. Under what circumstances may I employ a person under the age of 18 or a person who does not have a high school diploma or equivalent as a caregiver?

(a) You may employ a 16 or 17-year-old who has a high school diploma or its equivalent and count the person in the child/caregiver ratio, provided that:

- (1) You don't leave the person alone with or in charge of the operation or a group of children;
- (2) The person works in the same room with and is supervised by a caregiver qualified under §744.1105 of this title (relating to What additional minimum qualifications must each of my caregivers meet?); and
- (3) The person has completed a child-care-related career program, which the Texas Education Agency or another state or federal agency approves.

(b) You may employ a 16-, 17-, or 18-year old who attends high school but has not graduated and count the person in the child/caregiver ratio, provided that:

- (1) You do not leave the person alone with or in charge of a group of children or the operation;
- (2) The person works in the same room with and is supervised by a caregiver qualified under §744.1105 of this title;
- (3) The person is currently enrolled in or has completed a child-care-related career program that the Texas Education Agency or another state or federal agency approves; and
- (4) The person is expected to obtain a high school diploma.

§744.1109. Does education received outside of the United States count toward caregiver qualifications?

Yes. However, you must provide supporting information such as a copy of the diploma or letter from the school district to indicate that the education is equivalent to a high school diploma program in the United States. Documents written in a foreign language must be translated into English.

§744.1111. What does Licensing mean by the term "high school equivalent"?

(a) A high school equivalent is a program recognized by the Texas Education Agency or other public educational entity outside of Texas, which offers training similar to reading, writing, and problem-solving skills taught at the high school level, such as a General Educational Development certificate.

(b) You must provide original documentation to us to verify completion of any high school equivalency program.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 3. GENERAL RESPONSIBILITIES FOR PERSONNEL

40 TAC §§744.1201, 744.1203, 744.1205

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042 and Acts 2009, 81st R.S., ch. 720 §22.

§744.1201. What general responsibilities do my employees have?

All employees, including persons not counted in the child/caregiver ratio, must:

- (1) Demonstrate competency, good judgment, and self-control in the presence of children and when performing assigned responsibilities;
- (2) Relate to children with courtesy, respect, acceptance, and patience;
- (3) Recognize and respect the uniqueness and potential of all children, their families, and their cultures;
- (4) Ensure that no child is abused, neglected, or exploited while in the care of the operation; and
- (5) Report suspected abuse, neglect, and exploitation to DFPS or to law enforcement, as specified in the Texas Family Code §261.101.

§744.1203. What additional responsibilities do my caregivers counted in the child/caregiver ratio have?

In addition to the responsibilities for employees specified in this division, caregivers counted in the child/caregiver ratio must:

- (1) Know and comply with the minimum standards in this chapter;
- (2) Know which children they are responsible for;
- (3) Know each child's name and have information showing each child's age;

(4) Supervise children at all times, as specified in §744.1205 of this title (relating to What does Licensing mean by "supervise children at all times?");

(5) Ensure the children are not out of control;

(6) Be free from activities not directly involving the teaching, care, and supervision of children, such as:

(A) Administrative and clerical functions that take the caregiver's attention away from the children;

(B) Meal preparation, except when 12 or fewer children are in care;

(C) Janitorial duties, such as mopping, vacuuming, and cleaning restrooms. Sweeping up after an activity or mopping up spills may be necessary for the children's safety and are not considered janitorial duties; and

(D) Personal use of electronic devices, such as cell phones, MP3 players, and video games;

(7) Interact routinely with children in a positive manner;

(8) Foster developmentally appropriate independence in children through planned but flexible program activities;

(9) Foster a cooperative rather than a competitive atmosphere;

(10) Show appreciation of children's efforts and accomplishments; and

(11) Ensure continuity of care for children by sharing with incoming caregivers information about each child's activities during the previous shift and any verbal or written instructions given by the parent.

§744.1205. What does Licensing mean by "supervise children at all times"?

Supervising children at all times means that the assigned caregiver is accountable for each child's care. This includes responsibility for the ongoing activity of each child, appropriate visual and/or auditory awareness, physical proximity, and knowledge of activity requirements and each child's needs. The caregiver must intervene when necessary to ensure children's safety. In deciding how closely to supervise children, the caregiver must take into account:

(1) Ages of the children;

(2) Individual differences and abilities;

(3) Indoor and outdoor layout of the operation; and

(4) Neighborhood circumstances, hazards, and risks.

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DIVISION 4. PROFESSIONAL DEVELOPMENT

40 TAC §§744.1301, 744.1303, 744.1305, 744.1307, 744.1309, 744.1311, 744.1313, 744.1315, 744.1317, 744.1319, 744.1321, 744.1323, 744.1325, 744.1327, 744.1329, 744.1331

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042 and §42.0421 and Acts 2009, 81st R.S., ch. 720 §22.

§744.1301. What training must I ensure that my employees have? You must make sure that each employee has the following training, as specified in this division:

(1) Orientation to the operation for all employees;

(2) Eight clock hours of pre-service training, or documentation of exemption, for caregivers;

(3) 15 clock hours of annual training for caregivers and site directors;

(4) 20 clock hours of annual training for the operation director and program director; and

(5) CPR and first-aid certification.

§744.1303. What should orientation to my operation include?

Your orientation for employees must include at least the following:

(1) An overview of the minimum standards found in this chapter;

(2) Your operation's policies including discipline, guidance, and the release of children;

(3) An overview of symptoms of child abuse, neglect, and sexual abuse and the responsibility for reporting these;

(4) The procedures to follow in handling emergencies. Emergencies may include, but are not limited to, fire, explosion, tornado, toxic fumes, volatile persons, and severe injury or illness of a child or adult; and

(5) The use and location of fire extinguishers and first-aid equipment.

§744.1305. What must be covered in the eight clock hours of pre-service training for caregivers?

Before a caregiver can be counted in the child/caregiver ratio, the caregiver must complete eight clock hours of pre-service training that covers the following areas:

(1) Developmental stages of children;

(2) Age-appropriate activities for children;

(3) Positive guidance and discipline of children;

(4) Fostering children's self-esteem;

(5) Supervision and safety practices in the care of children;

- (6) Positive interaction with children; and
- (7) Preventing the spread of communicable diseases.

§744.1307. Are any caregivers exempt from the pre-service training? Yes. Caregivers with at least six months prior experience in a regulated operation or with documentation of equivalent child-care training are exempt from the pre-service training requirements.

§744.1309. How many clock hours of annual training must be obtained by caregivers and site directors?

(a) Each caregiver and site director must obtain at least 15 clock hours of training each year. The 15 clock hours of annual training are exclusive of orientation, pre-service training requirements, CPR and first aid, transportation safety training, and high school child-care work-study classes.

(b) At least six clock hours of annual training must be in one or more of the following topics:

- (1) Child growth and development;
- (2) Guidance and discipline;
- (3) Age-appropriate curriculum; and
- (4) Teacher-child interaction.

(c) The remaining clock hours of annual training must be in one or more of the following topics:

- (1) Care of children with special needs;
- (2) Child health (for example, nutrition or physical activity);
- (3) Safety;
- (4) Risk management;
- (5) Identification and care of ill children;
- (6) Cultural diversity for children and families;
- (7) Professional development (for example, effective communication with families, time and stress management);
- (8) Preventing the spread of communicable diseases;
- (9) Topics relevant to the particular age group the caregiver is assigned;
- (10) Planning developmentally appropriate learning activities; and
- (11) Minimum standards and how they apply to the caregiver.

(d) A caregiver who transports a child whose chronological or developmental age is younger than nine years old must meet additional training requirements as outlined in §744.1317 of this title (relating to What additional training must a person have in order to transport a child in care?).

§744.1311. How many clock hours of training must an operation director or a program director obtain each year?

(a) An operation director and or a program director must obtain at least 20 clock hours of training each year. The 20 clock hours of annual training are exclusive of CPR and first aid, orientation, pre-service, and transportation safety training requirements.

(b) At least six clock hours of the annual training must be in one or more of the following topics:

- (1) Child growth and development;
- (2) Guidance and discipline;

- (3) Age-appropriate curriculum;
- (4) Teacher-child interaction; and
- (5) Serving children with special care needs.

(c) An operation director or program director with five or fewer years of experience as a designated director of an operation or as a program director must also complete at least six clock hours of the annual training in management techniques, leadership, or staff supervision.

(d) A director with more than five years of experience as a designated director of an operation or as a program director must complete at least three clock hours of the annual training in management techniques, leadership, or staff supervision.

(e) The remainder of the 20 clock hours of annual training must be selected from the training topics specified in §744.1309(c) of this title (relating to How many clock hours of annual training must be obtained by caregivers and site directors?).

(f) If the operation transports a child whose chronological or developmental age is younger than nine years old, the director must complete two hours of annual training on transportation safety, as outlined in §744.1317 of this title (relating to What additional training must a person have in order to transport a child in care?).

(g) The director may obtain clock hours or CEUs from the same sources as caregivers, with the following exceptions:

(1) Training hours may not be earned for presenting training to others, with the exception of up to two hours of training on transportation safety; and

(2) No more than 10 of the required 20 clock hours of annual training may be obtained through self-instructional training.

§744.1313. When must annual training for my caregivers and director be obtained?

Each caregiver and director must obtain their annual training within 12 months from the date of their employment and during each subsequent 12-month period, unless otherwise specified in this division. If they obtain more than the minimum number of annual training clock hours required, they may not carry the additional clock hours over to the next year.

§744.1315. Who must have first-aid and CPR training?

(a) One caregiver per group of children must have current training in first aid with rescue breathing and choking. Pediatric first aid is preferred, but not required.

(b) One caregiver or employee per operation, and one caregiver or employee for each group of children away from the operation, must have current training in Cardiopulmonary resuscitation (CPR) for children and adults.

(c) CPR training and re-certification must adhere to the guidelines for CPR for laypersons established by the American Heart Association, and consist of a curriculum that includes use of a CPR manikin and both written and hands-on skill-based instruction, practice, and testing.

(d) CPR and first-aid training must not be obtained through self-instructional training.

§744.1317. What additional training must a person have in order to transport a child in care?

(a) An employee or owner must complete two hours of annual training on transportation safety in order to transport a child whose chronological or development age is younger than nine years old. This training is in addition to other required training hours.

(b) The person must obtain these two hours of transportation safety training prior to transporting children.

§744.1319. Must the training for my caregivers and the director meet certain criteria?

(a) Training may include clock hours or CEUs obtained through:

(1) Workshops or courses offered by local school districts, colleges or universities, or Licensing;

(2) Conferences;

(3) Self-instructional materials, excluding CPR and first aid;

(4) Planned learning opportunities provided by child-care associations or Licensing; or

(5) Planned learning opportunities provided by professional consultants, such as those listed on the Texas Trainer Registry, or by a director or caregiver with specialized training or knowledge on the subject matter that meets minimum standard qualifications.

(b) All training must include:

(1) Specifically stated learning objectives;

(2) A curriculum, which includes experiential or applied activities;

(3) An evaluation/assessment tool to determine whether the person has obtained the information necessary to meet the stated objectives; and

(4) A certificate of successful completion from the training source.

§744.1321. Does Licensing approve training resources or trainers for training hours?

No. We do not approve or endorse training resources or trainers for training hours. You should, however, ensure you and your employees receive relevant training from reliable resources, in topics specified in this division, and that participants receive original documentation of completion, as specified in this division.

§744.1323. If I have a caregiver who attends college or a Child Development Associate/Certified Child-Care Professional credential program, may I count these clock hours toward the annual training requirement?

Yes. If the training is in a topic specified in this division and the caregiver can provide documentation of completion as specified in this division, then you may count this training toward the annual training requirement.

§744.1325. If I hire a caregiver or a director that received training at another operation, may these hours count towards the annual training requirement at my operation?

If the caregiver or director is able to provide documentation of training, as specified in §744.1331 of this title (relating to What documentation must I provide to Licensing to verify that training requirements have been met?), obtained from another child-day care operation that we regulate within two months before coming to work for your operation, this training may apply toward the annual training requirement. If you apply this training to the annual training requirement, you must adjust the annual training year due dates for this person accordingly.

§744.1327. What is self-instructional and instructor-led training?

(a) Self-instructional training is designed to be used by one individual working alone and at their own pace to complete the lessons

or modules. Lessons or modules commonly include questions with clear right and wrong answers. Examples include, but are not limited to, self-paced web-based training, written materials, or a combination of video or web-based and written materials.

(b) Instructor-led training is characterized by the communication and interaction that takes place between the learner and the instructor and must include an opportunity for the learner to interact with the instructor to obtain information beyond the scope of the training materials. The instructor must be able to communicate with the learner in a timely and organized fashion, including but not limited to the instructor answering questions, providing feedback on skills practice, providing guidance or information on additional resources, and proactively contacting learners. Examples include, but are not limited to, classroom training, web-based on-line facilitated learning, video-conferencing, or other group learning experiences.

(c) Both self-instructional and instructor-led training must also include the components listed in §744.1319(b) of this title (relating to Must the training for my caregivers and the director meet certain criteria?).

§744.1329. How many annual training clock hours may caregivers obtain from self-instructional materials?

A caregiver may obtain no more than one-half of the required 15 clock hours of annual training from self-instructional materials. We may ask to review self-instructional materials to ensure self-instructional training criteria are met.

§744.1331. What documentation must I provide to Licensing to verify that training requirements have been met?

(a) Except as provided in this section, you must maintain original certificates documenting CPR/first-aid and annual training in each employee's personnel record at the operation. To be counted toward compliance with the minimum standards, the trainer or training source must provide the participant with an original certificate or letter showing:

(1) The participant's name;

(2) Date of the training;

(3) Title/subject of the training;

(4) The trainer's name, or the source of the training for self-instructional training; and

(5) Length of the training specified in clock hours, CEUs, or college credit hours, as appropriate.

(b) Documentation of CPR/first-aid training must include the same information in subsection (a) of this section, and must also include the expiration date of the training, as determined by the organization providing the training. A photocopy of the original CPR/first-aid certificate or letter may be maintained in the personnel record, as long as the employee can provide an original document upon request by Licensing.

(c) You must obtain a signed and dated statement from the employee and the person providing the orientation and pre-service training stating the employee has received the orientation and pre-service training, or you may obtain documentation as specified in subsection (a) of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 5. VOLUNTEERS, SUBSTITUTES, AND PERSONS UNDER CONTRACT

40 TAC §744.1401, §744.1403

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042 and Acts 2009, 81st R.S., ch. 720 §22.

§744.1401. With what minimum standards must substitutes comply?

(a) Substitutes counted in the child/caregiver ratio, whether paid or unpaid, are considered caregivers and must comply with minimum standards that apply to employees and caregivers, except as otherwise provided in this division.

(b) Substitutes not counted in the child/caregiver ratio, whether paid or unpaid, must comply with minimum standards that apply to employees, except as otherwise provided in this division.

§744.1403. With what minimum standards must volunteers or any person under contract with the operation comply?

(a) Volunteers and any person under contract with the operation, whether paid or unpaid, who are regularly or frequently present at the operation but not counted in the child/caregiver ratio, must comply with minimum standards that apply to employees.

(b) Volunteers and any person under contract with the operation, whether paid or unpaid, who are regularly or frequently present at the operation and counted in the child/caregiver ratio, must comply with minimum standards that apply to employees and caregivers.

(c) Volunteers and any person under contract with the operation that do not meet caregiver qualifications, whether paid or unpaid, must never be left alone with children.

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SUBCHAPTER E. CHILD/CAREGIVER RATIOS AND GROUP SIZES DIVISION 1. RATIOS AND GROUP SIZES AT THE OPERATION

40 TAC §§744.1501, 744.1503, 744.1505, 744.1507

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042 and Acts 2009, 81st R.S., ch. 720 §22.

§744.1501. What is child/caregiver ratio?

(a) The child/caregiver ratio is the maximum number of children one caregiver can be responsible for.

(b) Each child must have a caregiver who is responsible for the child and who is aware of details of the child's habits, interests, and any special needs.

§744.1503. What is considered a group?

A group of children is defined by the number of children assigned to a specific caregiver or group of caregivers, occupying an individual classroom or well-defined physical space within a larger room. Each child in any group has two things in common with every other child in his group: the same caregiver(s) responsible for the child's basic needs and the same classroom or activity space. Generally, the group stays with the assigned caregiver(s) throughout the day and may move to different areas throughout the operation, indoors and out. The group may not mix freely with other children, unless specific criteria are met as specified in this subchapter. The number of children who may be in a group varies according to the age of the children and the number of caregivers as specified in this subchapter.

§744.1505. May I place more than one group of children in a large room?

Yes. More than one group of children may occupy a room, provided the following conditions are met:

(1) The room is divided so that groups are separated. For example, a group of 25 children and another group of 10 children may be cared for in the same room if the placement of shelves, accordion doors, or low movable walls divide the area so that children in one group do not freely mix with children in another group;

(2) Groups may move from one activity area to another within the room during the day, but individual children may not freely mingle between groups; and

(3) The total number of children must not routinely exceed the room capacity based on activity space.

§744.1507. How do I determine the child/caregiver ratio?

In determining child/caregiver ratio, the following apply:

(1) Child/caregiver ratio is based on the specified age of the children in the caregiver's group or the age of the youngest child in

the group, depending on the activity and the number of children at the operation.

(2) You may use the developmental or emotional age, rather than the chronological age, of a child with special care needs, if this is recommended by a health-care professional or other qualified professional and is documented in the child's record.

(3) You must consider the skills of the caregiver and the needs of the individual children and the group when assigning a caregiver to a group of children.

(4) You must include all children in care, including children related to the director and employees.

(5) In emergency situations, you may use employees of the operation who do not meet caregiver qualifications for a limited time while a substitute caregiver is being secured. The time must be no longer than is reasonably necessary to secure a qualified substitute caregiver. Emergency situations include, but are not limited to, illness, accident, or death.

(6) The total number of children in care at the operation and in care away from the operation, such as during a field trip, must never exceed the licensed capacity of the operation.

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DIVISION 2. CLASSROOM RATIOS AND GROUP SIZES

40 TAC §§744.1601, 744.1603, 744.1605, 744.1607, 744.1609, 744.1611, 744.1613

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042 and Acts 2009, 81st R.S., ch. 720 §22.

§744.1601. How many children may one caregiver supervise?

The classroom ratio is the number of children one caregiver may supervise and is shown in the following chart. The classroom ratio is based on the specified age of the children in the group, unless otherwise stated in this subchapter:

Figure: 40 TAC §744.1601

§744.1603. How do I determine the specified age of the children in each group?

Identify the specified age of the children in each group using this formula:

(1) List all of the children in the group in order of their ages from youngest to oldest;

(2) Determine the total number of children in the group and divide this number by two. If the result is not a whole number but is .5, such as 6.5, round up to the next number, which is 7. This will be the core number of the group; and

(3) Begin counting at the first or youngest child on your list and count down the list from youngest to oldest, until you reach the core number. The age of this child is the specified age of the children in this group.

§744.1605. If I have two or more caregivers with each group, what is the maximum number of children each caregiver may supervise?

The maximum number of children two or more caregivers may supervise is limited by the maximum group size.

§744.1607. What is the maximum group size?

The maximum group size and the number of children two or more caregivers may supervise is specified in the following chart and is based on the specified age of the children in the group:

Figure: 40 TAC §744.1607

§744.1609. Are there times when I may mix groups of children and exceed the maximum group size?

(a) Yes. When 13 or more children are in care, you may mix groups for joint activities and exceed the maximum group size for limited times under the following conditions:

(1) For children three years through four years old, for a maximum of 30 minutes;

(2) For children five years old and older, for a maximum of 1 1/2 hours; and

(3) For mealtimes, field trips, outdoor play, and naptimes, for the length of that activity.

(b) The child/caregiver ratio must be met for each group and activity.

§744.1611. May I reduce the number of caregivers supervising children during naptime?

(a) Yes. If 13 or more children are in care, you may reduce the child/caregiver ratio for children by 50% during naptime under the following conditions:

(1) Groups of children using reduced ratio must be combined in a central sleeping location that safely accommodates naptime equipment;

(2) Groups of children that cannot be combined in a central location due to space limitations must not use reduced ratios;

(3) Caregivers with groups that cannot be combined must not be counted as additional caregivers in the building or in the naptime ratio;

(4) If only one caregiver is required to supervise the naptime group, at least one other employee or caregiver must be present in the building;

(5) If more than one caregiver(s) must supervise the naptime group, one additional employee or caregiver must be present in the building for every two caregivers supervising the naptime group;

(6) Caregivers supervising during naptime must be physically present in the room or area in which children are napping and must be able to summon the additional employee(s) without leaving the room or area; and

(7) Other employees, such as the director or cook, who are not supervising a group of children may be counted as additional adults required in the building during naptime.

(b) The following chart shows the 50% naptime ratio and the number of additional caregivers required in the building:
Figure: 40 TAC §744.1611(b)

§744.1613. Will I be given an opportunity to comply, if my operation was licensed before September 1, 2010?

(a) If your operation was licensed before September 1, 2010, you have two years from September 1, 2010, to comply with classroom ratios and group sizes specified in this division, unless stated otherwise.

(b) You must maintain at least the following classroom ratios during the two-year period beginning September 1, 2010:
Figure: 40 TAC §744.1613(b)

(c) You must maintain at least the following maximum group size during the two-year period beginning September 1, 2010.
Figure: 40 TAC §744.1613(c)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 3. RATIOS FOR FIELD TRIPS

40 TAC §§744.1701, 744.1703, 744.1705

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042 and Acts 2009, 81st R.S., ch. 720 §22.

§744.1701. Do I need additional caregivers when I take children away from the operation for field trips or walks?

(a) When children are on a field trip and are mixing with children and adults who are not from your operation, including but not

limited to, trips to the skating rink, shopping center, or public or amusement park, you must meet the following child/caregiver ratio:
Figure: 40 TAC §744.1701(a)

(b) The child/caregiver ratio for field trips may include adult volunteers or employees who are not qualified as caregivers only for trips when children are mixing with non-operation children and adults, as long as you maintain at least the classroom child/caregiver ratio with qualified caregivers.

(c) When children are on a walk or field trip in an enclosed, controlled area, including but not limited to, specially arranged trips to the fire station, library, or museum class for children in your operation only, you must maintain at least the classroom child/caregiver ratio. Refer to §744.1901 of this title (relating to Must I have additional caregivers for splashing/wading activities?) and §744.1905 of this title (relating to What are the child/caregiver ratios for swimming activities?) for child/caregiver ratios for splashing/wading and swimming activities when children are not mixing with other children and adults.

§744.1703. Will I be given an opportunity to comply if my operation was licensed before September 1, 2010?

If your operation was licensed before September 1, 2010, you have two years from September 1, 2010, to comply with ratios and group sizes for field trips as specified in §744.1701(c) of this title (relating to Do I need additional caregivers when I take children away from the operation for field trips or walks?), unless stated otherwise. You must maintain at least the classroom ratios and group sizes outlined in §744.1613 of this title (relating to Will I be given an opportunity to comply, if my operation was licensed before September 1, 2010?) when children are on a walk or field trip in an enclosed area.

§744.1705. If I provide transportation, how many caregivers must I have in the vehicle to supervise the children?

You must comply with classroom child/caregiver ratios when transporting children. The driver may be counted in this ratio if the driver meets caregiver qualifications.

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DIVISION 4. RATIOS FOR NIGHTTIME CARE

40 TAC §744.1801

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules

governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC §42.042 and Acts 2009, 81st R.S., ch. 720 §22.

§744.1801. Must I have additional caregivers during nighttime care? No. Additional caregivers are not needed for the child/caregiver ratio for nighttime care, although naptime ratios must not be used during nighttime care.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 5. RATIOS FOR WATER ACTIVITIES

40 TAC §§744.1901, 744.1903, 744.1905, 744.1907, 744.1909, 744.1911, 744.1913, 744.1915

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042 and Acts 2009, 81st R.S., ch. 720 §22.

§744.1901. Must I have additional caregivers for splashing/wading activities?

(a) The maximum number of children one caregiver can supervise while children use a splashing or wading pool (two feet of water or less) is based on the age of the youngest child in the group and is specified in the following chart:
Figure: 40 TAC §744.1901(a)

(b) When children are mixing with children and adults who are not from your operation during splashing or wading activities, the child/caregiver ratios for field trips as specified in §744.1701 of this title (relating to Do I need additional caregivers when I take children away from the operation for field trips or walks?) must be followed.

§744.1903. Will I be given an opportunity to comply with the minimum standards for splashing/wading activities, if my operation was licensed before September 1, 2010?

(a) If your operation was licensed before September 1, 2010, you have two years from September 1, 2010, to comply with child/caregiver ratios for splashing/wading activities as specified in §744.1901 of this title (relating to Must I have additional caregivers for splashing/wading activities?), unless stated otherwise. You must maintain at

least the following ratios when children use a splashing/wading pool (two feet of water or less) at or away from your operation during the two-year period beginning September 1, 2010.

Figure: 40 TAC §744.1903(a)

(b) When children are mixing with children and adults who are not from your operation during splashing or wading activities, the child/caregiver ratios for field trips as specified in §744.1701 of this title (relating to Do I need additional caregivers when I take children away from the operation for field trips or walks?) must be followed.

§744.1905. What are the child/caregiver ratios for swimming activities?

(a) When your operation uses a swimming pool (more than two feet of water), there must be at least two caregivers supervising the children if four or more children are swimming.

(b) The maximum number of children one caregiver can supervise while children are swimming is based on the age of the youngest child in the group and is specified in the following chart:

Figure: 40 TAC §744.1905(b)

§744.1907. Must a certified lifeguard be on duty when children are swimming in more than two feet of water?

Yes. When children are swimming in more than two feet of water, a certified lifeguard must be on duty at all times.

§744.1909. May I count the certified lifeguard in the child/caregiver ratio?

(a) You must not count the certified lifeguard in the child/caregiver ratio when people other than the children from your operation are swimming.

(b) If only children from your operation are swimming, you may count the certified lifeguard in the child/caregiver ratio, although the lifeguard must never be left alone with any of the children unless the lifeguard is also a qualified caregiver you employ at your operation.

§744.1911. Must persons who are counted in the child/caregiver ratio during swimming activities know how to swim?

Yes. Each person included in the child/caregiver ratio for swimming in two feet or more of water must be able to swim and must be prepared to do so in an emergency.

§744.1913. May I include volunteers or child-care employees who do not meet minimum qualifications for caregivers in the child/caregiver ratio for water activities?

Yes. To meet the child/caregiver ratio for splashing/wading and swimming activities, you may include adult volunteers and employees of your operation who do not meet the minimum qualifications for caregivers specified in Subchapter D of this chapter (relating to Personnel), provided that:

(1) You maintain at least the classroom child/caregiver ratios required in this subchapter with caregivers who do meet the minimum qualifications for caregivers;

(2) All persons included in the ratios for water activities must be able to swim and must be prepared to do so in an emergency; and

(3) You ensure compliance with all other minimum standards, including, but not limited to, standards relating to supervision, discipline, and guidance.

§744.1915. Must I have additional caregivers for sprinkler play?

We do not require additional caregivers for sprinkler play; however, you must not leave a child alone with the sprinkler equipment.

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SUBCHAPTER F. DEVELOPMENTAL ACTIVITIES AND EQUIPMENT DIVISION 1. ACTIVITIES AND ACTIVITY PLANS

40 TAC §§744.2001, 744.2003, 744.2005, 744.2007

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042 and Acts 2009, 81st R.S., ch. 720 §22.

§744.2001. Must caregivers provide planned activities for the children in their care?

(a) Yes. Caregivers must ensure children receive individual attention and care including:

(1) Flexible programming according to each child's age, interest, and abilities;

(2) Encouraging communication and expression of feelings in appropriate ways;

(3) Study time for those children who choose to work on homework assignments;

(4) Physical care routines appropriate to each child's developmental needs; and

(5) A caregiver who is aware of the arrival and departure of each child, including dismissing children who ride the bus or walk home.

(b) In addition, the following activities must be included for children who are in care five or more consecutive hours in a day:

(1) Outdoor play in which the children make use of both small and large muscles, both in the morning and afternoon, when weather permits;

(2) A balance of active and quiet play, including group and individual activities;

(3) Opportunities for active play both indoors and outdoors. Examples include active games such as tag and Simon says,

dancing and creative movement to music and singing, simple games and dramatic or imaginary play that encourages running, stretching, climbing, and walking;

(4) Regular meal and snack times as specified in §744.2403 of this title (relating to How often must I feed children in my care?);

(5) Supervised naptimes, or a period of rest for those children too old to nap;

(6) Both child-initiated and caregiver-initiated activities;

(7) Sufficient time for activities and routines so that children can progress at their own developmental rate; and

(8) No long waiting periods between activities or prolonged periods during which children stand or sit.

(c) You must ensure that children who need special care due to disabling or limiting conditions receive the care recommended by a health-care professional or qualified professionals affiliated with the local school district or early childhood intervention program. These basic care requirements must be documented and on file for review at the operation during your hours of operation. Activities must integrate all children with or without special care needs. You may need to adapt equipment and vary methods to ensure that you care for children with special needs in a natural environment.

§744.2003. Are there additional requirements if my operation cares for children under the age of five?

Yes. If your operation cares for children under the age of five, you must:

(1) Have a written plan that includes the following:

(A) How children under the age of five will be supervised while transitioning to and from restrooms, indoor and outdoor activity spaces, and spaces shared by other persons outside of the operation;

(B) How caregivers will meet the unique care needs of children younger than five years old;

(C) Under what circumstances children under five years old will be mixing with older children in the operation; and

(D) Any modifications to space or equipment that will be made to accommodate children under five years old.

(2) Follow the plan and make the plan available for review by Licensing and parents upon request during your hours of operation.

§744.2005. Must caregivers have written activity plans?

(a) You must have a written activity plan for children who are in care for five or more consecutive hours. The plan must outline the daily routines and specific activities for each group and the plan must be followed by the caregiver(s) responsible for that group.

(b) The activity plan must be inclusive for all children in the group regardless of disabling or limiting conditions.

(c) The plan must indicate the age group it is designed for and dates (daily, weekly, or monthly) the plan covers.

(d) You must post the written activity plan for each group of children as specified in §744.403 of this title (relating to When and where must these items be posted?).

(e) You must keep a written activity plan at your operation for at least three months. You must make them available for review by Licensing and parents upon request during your hours of operation.

§744.2007. May I use TV/video, computer, or video games for activities with children?

(a) TV/video, computer, or video games may be used to supplement, but may not be used to replace, the activities for children described in §744.2001 of this title (relating to Must caregivers provide planned activities for the children in their care?).

(b) If you use TV/video, computer, or video games as an activity for children, you must ensure that they:

(1) Are age-appropriate; and

(2) Do not exceed two hours per day.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 2. PHYSICAL SPACE AND EQUIPMENT

40 TAC §744.2051

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC §42.042 and Acts 2009, 81st R.S., ch. 720 §22.

§744.2051. What physical space and equipment must I provide for children in my care?

Physical space and equipment for children must include:

(1) Space for furnishings and activities without limiting children's movement;

(2) Space where children can be supervised while they participate in individual activities;

(3) Space for quiet time to do homework, if applicable;

(4) Workspace to do homework and table-top activities, if applicable;

(5) Tables and chairs that are safe, easy to clean, and of a height and size appropriate for each age group in care;

(6) Age-appropriate nap or rest equipment for children who are in care more than five consecutive hours per day or whose physical needs otherwise require nap or rest;

(7) Containers or low shelving available so items children can safely use without direct supervision are accessible to children; and

(8) A system for storing each child's belongings, which allows a child to easily recognize and retrieve his belongings.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER G. DISCIPLINE AND GUIDANCE

40 TAC §§744.2101, 744.2103, 744.2105, 744.2107, 744.2109, 744.2111, 744.2113, 744.2115

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042 and Acts 2009, 81st R.S., ch. 720 §22.

§744.2101. What discipline techniques may be used with children in care?

(a) Each disciplinary measure must:

(1) Be consistent with your policies and procedures;

(2) Not be physically or emotionally damaging to the child;

(3) Be appropriate to the child's age and level of understanding; and

(4) Be appropriate to the incident and severity of the behavior demonstrated.

(b) The caregiver must explain the reason for the disciplinary measure when the caregiver imposes the measure.

§744.2103. What methods of discipline and guidance may a caregiver use?

A caregiver may only use positive methods of discipline and guidance that encourage self-esteem, self-control, and self-direction, which include at least the following:

(1) Using praise and encouragement of good behavior instead of focusing only upon unacceptable behavior;

(2) Reminding a child of behavior expectations daily by using clear, positive statements;

(3) Redirecting behavior using positive statements; and

(4) Using brief supervised separation or time out from the group, when appropriate for the child's age and development, which is limited to no more than one minute per year of the child's age.

§744.2105. What types of discipline and guidance or punishment are prohibited?

There must be no harsh, cruel, or unusual treatment of any child. The following types of discipline and guidance are prohibited:

- (1) Corporal punishment or threats of corporal punishment;
- (2) Punishment associated with food, naps, or toilet training;
- (3) Pinching, shaking, or biting a child;
- (4) Hitting a child with a hand or instrument;
- (5) Putting anything in or on a child's mouth;
- (6) Humiliating, ridiculing, rejecting, or yelling at a child;
- (7) Subjecting a child to harsh, abusive, or profane language;
- (8) Placing a child in a locked or dark room, bathroom, or closet with the door closed; and

(9) Requiring a child to remain silent or inactive for inappropriately long periods of time for the child's age.

§744.2107. May my employees discipline their own children who are in care at my operation?

Yes, during operating hours an employee may discipline the employee's own child as long as the employee does not violate the requirements specified in this subchapter.

§744.2109. May I use disciplinary measures that are fundamental to teaching a skill, talent, ability, expertise, or proficiency?

You may use disciplinary measures for teaching a skill, talent, ability, expertise, or proficiency that is the goal of skill instruction or training that is a core component of your operation's program so long as:

(1) The measures are considered commonly accepted teaching or training techniques;

(2) You provide a description of the training and disciplinary measures in writing to parents and employees and include the following information:

(A) The disciplinary measures that may be used, such as physical exercise or sparring used in martial arts programs;

(B) What behaviors would warrant the use of these measures; and

(C) The maximum amount of time the measures would be imposed;

(3) Inform parents that they have the right to ask for additional information; and

(4) Ensure that the disciplinary measures used are not considered abuse, neglect, or exploitation as specified in the Texas Family Code §261.401 and Chapter 745, Subchapter K, Division 5 of this title (relating to Abuse and Neglect).

§744.2111. Must I have a written discipline and guidance policy?

(a) You are required to have a written discipline and guidance policy that complies with the rules in this subchapter. You may use a copy of this subchapter for your written discipline and guidance policy, unless you use disciplinary and training measures specific to a skills-based program, as specified in §744.2109 of this title (relating to May

I use disciplinary measures that are fundamental to teaching a skill, talent, ability, expertise, or proficiency?).

(b) You must provide a copy of your written discipline and guidance policy to parents and employees.

§744.2113. Must I give a copy of my written discipline and guidance policy to parents and my employees?

(a) You must give a copy of your written discipline and guidance policy or a copy of this subchapter to parents and operation employees as specified in Subchapter B of this chapter (relating to Administration and Communication).

(b) You must keep documentation showing that all parents and employees have received a copy of your written discipline and guidance policy or a copy of this subchapter. You may do this as a part of your operation's policies or in a separate document.

§744.2115. How often must I update my written discipline and guidance policy?

You must update your written discipline and guidance policy each time you make changes. You must keep documentation at your operation showing that all parents and employees have received a copy of your revised discipline and guidance policy.

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SUBCHAPTER H. NAPTIME

DIVISION 1. NAPTIME

40 TAC §§744.2201, 744.2203, 744.2205, 744.2207, 744.2209, 744.2211

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042 and Acts 2009, 81st R.S., ch. 720 §22.

§744.2201. Must children have a naptime every day?

You must provide a supervised nap, or a period of rest for those children too old to nap, for all children who are in care five or more consecutive hours, or according to the child's individual physical needs. You may provide a sleep or rest period for each child who attends the program for fewer than five hours and whose individual physical needs call for a rest period while the child is in care.

§744.2203. How long may the nap and rest time last each day?

The nap or rest period must not exceed three hours.

§744.2205. Are children required to sleep during this time?

No. You must not force a child to sleep or put anything in or on a child's head or body to force the child to rest or sleep.

§744.2207. Must I provide an alternative activity for those children who cannot sleep?

Yes. You must allow each child who is awake after resting or sleeping for one hour to participate in an alternative, quiet activity until the nap/rest time is over for the other children.

§744.2209. Must I arrange the napping equipment in a specific manner?

Napping equipment must:

- (1) Not block entrances or exits to the area;
- (2) Not be set up during other activities or left in place to interfere with children's activity space;
- (3) Be arranged so that each child and caregiver has access to a walkway without having to walk on or over the sleep or rest equipment of other children; and
- (4) Be arranged so the caregiver can adequately supervise all of the children in the group as specified in §744.1205 of this title (relating to What does Licensing mean by "supervise children at all times"?).

§744.2211. May I darken the room while children are sleeping?

Yes. You may lower the lighting, provided there is adequate lighting to allow visual supervision of all children in the group at all times.

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DIVISION 2. NIGHTTIME CARE

40 TAC §744.2251

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC §42.042 and Acts 2009, 81st R.S., ch. 720 §22.

§744.2251. May I provide nighttime care to children at my operation?

If your operation offers nighttime care, you must follow the rules specified in Chapter 746, Subchapter P of this title (relating to Nighttime Care).

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SUBCHAPTER I. FIELD TRIPS

40 TAC §§744.2301, 744.2303, 744.2305

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042 and Acts 2009, 81st R.S., ch. 720 §22.

§744.2301. May I take children away from my operation for field trips?

Yes. You must ensure the safety of all children on field trips or excursions and during any transportation provided by the operation. Anytime you take a child away from the operation for a field trip, you must comply with each of the following requirements:

- (1) You must have signed permission from the parent to take a child on a field trip, including permission to transport the child, if applicable;
- (2) One or more caregivers must carry emergency medical consent forms and emergency contact information for each child on the field trip;
- (3) Caregivers must have a written list of all children on the field trip and must check the list frequently to account for the presence of all children;
- (4) Caregivers must have a first-aid kit immediately available on field trips;
- (5) Each child must wear a shirt, nametag, or other identification listing the name of the operation and the operation's telephone number;
- (6) Each caregiver must be easily identifiable by all children on the field trip by wearing a hat, operation tee-shirt, brightly-colored clothes, or other easily spotted identification;

(7) Each caregiver supervising a field trip must have transportation available, or a communication device such as a cellular phone, message pager, or two-way radio available or an alternate plan for transportation at the field-trip location in case of emergency; and

(8) Caregivers with training in CPR and first aid with rescue breathing and choking must be present on the field trip.

§744.2303. Must I notify parents before I take children away from the operation on a field trip?

Yes. You must notify the parent of each child who will be on the field trip, indicating when and where the child will be going, and when the child is expected to return to the operation. The notice must be posted at least 48 hours in advance of a field trip. You must post the field trip notice in a prominent place where parents and others may view it. The notice must remain posted until all children on the field trip have returned to the operation.

§744.2305. Must I have additional caregivers present to take children on a field trip?

Refer to Subchapter E of this chapter (relating to Child/Caregiver Ratios and Group Sizes) for child/caregiver ratios relating to field trips.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER J. NUTRITION AND FOOD SERVICE

40 TAC §§744.2401, 744.2403, 744.2405, 744.2407, 744.2409, 744.2411, 744.2413, 744.2415, 744.2417, 744.2419, 744.2421, 744.2423

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042 and Acts 2009, 81st R.S., ch. 720 §22.

§744.2401. What are the basic requirements for snack and meal-times?

(a) You must serve all children regular meals and morning and afternoon snacks as specified in this subchapter.

(1) If breakfast is served, a morning snack is not required.

(2) A child must not go more than three hours without a meal or snack being offered, unless the child is sleeping.

(3) If your operation is participating in the Child and Adult Care Food Program (CACFP) administered by the Texas Department of Agriculture, you may elect to meet those requirements rather than those specified in this subsection.

(b) You must ensure a supply of drinking water is readily available to each child and is served at every snack, mealtime, and after active play in a safe and sanitary manner.

(c) You must not serve beverages with added sugars, such as carbonated beverages, fruit punch, or sweetened milk.

(d) You must not use food as a reward or punishment.

§744.2403. How often must I feed children in my care?

(a) You must offer each child in care for less than four hours at least one snack as specified in §744.2407 of this title (relating to What kind of foods must I serve for snacks?).

(b) You must offer each child in care for four to seven hours one meal, or one meal and one snack, equal to 1/3 of their daily food needs.

(c) You must offer each child in care for more than seven hours two meals and one snack, or two snacks and one meal, equal to 1/2 of their daily food needs.

(d) You must offer an evening meal and/or bedtime snack and breakfast to each child who receives nighttime care. The amount you offer will vary with the time the child arrives and leaves.

(e) If your operation is participating in the Child and Adult Care Food Program administered by the Texas Department of Agriculture, you may elect to meet those requirements rather than those specified in this section.

§744.2405. How do I know what a child's daily food needs are?

(a) The daily food needs for children three years through five years old are included in the following chart: Figure: 40 TAC §744.2405(a)

(b) The daily food needs for children six years old and older are included in the following chart: Figure: 40 TAC §744.2405(b)

(c) You must serve enough food to allow children second servings from the vegetable, fruit, grain, and milk groups.

(d) If your operation is participating in the Child and Adult Care Food Program (CACFP) administered by the Texas Department of Agriculture, you may elect to meet those requirements rather than those specified in this section.

§744.2407. What kind of foods must I serve for snacks?

Morning, afternoon, and nighttime snacks must be nutritious and include at least one of the following, which can be included in the child's daily food needs:

(1) One serving from the fruit or vegetable group;

(2) One serving from the milk group;

(3) One serving from the whole grains group; or

(4) One serving from the meat or meat alternative group.

§744.2409. May parents provide meals and/or snacks for their children instead of my operation providing these?

(a) Yes; however, your enrollment agreement signed by the parent must include a statement that the parent is choosing to provide the child's meals and/or snacks from home, and the parent understands the operation is not responsible for its nutritional value or for meeting the child's daily food needs.

(b) If the parent provides a meal but not a snack, you are responsible for providing a snack as specified in §744.2407 of this title (relating to What kind of foods must I serve for snacks?).

(c) You must provide safe and proper storage and service of the individual meals and snacks provided by parents.

(d) You must ensure meals and snacks provided by a parent and shared with other children meet the needs of children who require special diets.

§744.2411. How should my operation meet the needs of children who require special diets or do not want to eat foods we serve?

(a) You must have written approval from a physician or a registered or licensed dietician in the child's records to serve a child a therapeutic or special diet. You must give this information to all employees preparing and serving food.

(b) You must discuss recurring eating problems with the child's parent.

(c) You may encourage but must not force children to eat.

(d) You must not serve nutrient concentrates and supplements such as protein powders, liquid protein, vitamins, minerals, and other nonfood substances without written instructions from a physician.

§744.2413. Must I post and maintain daily menus?

Yes. When children are in care for five or more consecutive hours per day, you must:

(1) Post daily menus showing all meals and snacks prepared and served by the operation where parents and others can see them as specified in §744.403 of this title (relating to When and where must these items be posted?);

(2) Keep a record of any substitutions made. Substitutions must be of comparable food value;

(3) Date menus and keep copies for review at least the previous three months; and

(4) If you rotate menus, keep a record of which menu was used for each date.

§744.2415. May I serve powdered milk?

Yes, you may serve powdered milk if you mix the powdered milk according to label directions, and prepare, store, and serve the milk in a safe and sanitary manner.

§744.2417. May I serve fruit or vegetable juices?

Yes, you may serve fruit or vegetable juices if you:

(1) Serve only 100% fruit or vegetable juice; and

(2) Only serve up to four ounces for children ages three years through five years old and six ounces for children ages six years old and older per day, when using to meet daily food needs.

§744.2419. What general requirements apply to food service and preparation?

All food and drinks must be of safe quality and must be stored, prepared, distributed, and served under sanitary and safe conditions, including but not limited to the following:

(1) You must sanitize food service equipment, dishes, and utensils after each use;

(2) If your operation lacks adequate facilities for sanitizing dishes and utensils, you must use only disposable, single-use items;

(3) You must wash re-useable napkins and tablecloths after each use;

(4) You must discard single-service napkins, dishes, and utensils after use;

(5) Caregivers with open wounds and/or any injury that inhibits hand washing, such as casts, bandages, or braces, must not prepare food;

(6) You must serve children's food on plates or napkins, and you must not place food on a bare table or eating surface, which includes the floor;

(7) You must cover all food stored in the refrigerator;

(8) When meals are prepared at the operation, the food preparation area must be separated from the eating, play, and bathroom areas. You must not use the food preparation area as a passageway while food is being prepared; and

(9) You must not store poisonous or toxic materials and cleaning supplies with food.

§744.2421. Must I serve meals family style?

(a) No, you do not have to use family-style meal service, although all meals and snack times must:

(1) Be unhurried; and

(2) Include adult supervision of children.

(b) If meals and snacks are served family style, caregivers must supervise children to prevent cross-contamination of the food.

§744.2423. Are children allowed to use toothbrushes after meal and snack times?

(a) Yes, although toothbrushes and tooth powders or pastes provided for each child's individual use must be:

(1) Labeled with the child's full name;

(2) Stored out of children's reach when not in use; and

(3) Stored in a manner that prevents the toothbrushes from touching each other during storage.

(b) Children must have adult supervision while brushing their teeth.

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**SUBCHAPTER K. HEALTH PRACTICES
DIVISION 1. ENVIRONMENTAL HEALTH**

**40 TAC §§744.2501, 744.2503, 744.2505, 744.2507,
744.2509, 744.2511, 744.2513, 744.2515, 744.2517, 744.2519,
744.2521, 744.2523, 744.2525, 744.2527, 744.2529, 744.2531**

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042 and Acts 2009, 81st R.S., ch. 720 §22.

§744.2501. Must my operation have an annual sanitation inspection?

(a) Your operation must have a sanitation inspection before we issue your initial permit and at least once every 12 months, unless your operation is located in a public school facility operated by the local independent school district.

(b) If an inspection is required, a state or local sanitation official must conduct the inspection. If an inspection is not available, you must provide documentation of this from a state or local sanitation official or county judge.

§744.2503. How do I document that a sanitation inspection has been completed?

If required, you must keep a copy of the most recent sanitation report, letter, or checklist at the operation during hours of operation to verify the inspection date and findings. The report must include the name and telephone number of the inspector.

§744.2505. Do I have to make corrections called for in the report?

If required, you must comply with corrections, restrictions, or conditions specified by the inspector in the sanitation report, letter, or checklist.

§744.2507. What steps must I take to ensure a healthy environment for children at my operation?

You must clean, repair, and maintain the building, grounds, and equipment to protect the health of the children. This includes, but is not limited to:

- (1) Machine washing used cloth toys at least weekly and when contaminated;
- (2) Machine washing used linens at least weekly, and when soiled or before a different child uses them;
- (3) Sanitizing sleeping and rest equipment before a different child uses it and when soiled;
- (4) Maintaining sand boxes and sand tables in a sanitary manner;
- (5) Making all garbage inaccessible to children and managing it to keep the operation inside and outside, free of insects, rodents, and offensive odors, and disposing of it according to local and state requirements;
- (6) Keeping all floors, ceilings, and walls in good repair and clean;
- (7) Ensuring that all paints used at the operation are lead-free;
- (8) Keeping all parts of the operation used by children well heated, lighted, and ventilated;

(9) Sanitizing table tops, furniture, and other similar equipment used by children when soiled or contaminated with matter such as food or body secretions; and

(10) Clearly marking cleaning supplies and other toxic materials and keeping them separate from food and inaccessible to children.

§744.2509. What does Licensing mean when it refers to "sanitizing"?

Sanitizing requires a four-step process. For the sanitizing process to be effective, you must follow these steps in order:

- (1) Washing with water and soap;
- (2) Rinsing with clear water;
- (3) Soaking in or spraying on a disinfecting solution (at least two minutes). Rinsing with cool water only those items that children are likely to place in their mouths; and
- (4) Allowing the surface or article to air-dry.

§744.2511. What is a disinfecting solution?

A disinfecting solution may be:

- (1) A self-made solution, prepared as follows:
 - (A) One tablespoon of regular strength liquid household bleach to each gallon of water used for disinfecting such items as toys and eating utensils; or
 - (B) One-fourth cup of regular strength liquid household bleach to each gallon of water used for disinfecting surfaces; and
 - (C) You must prepare each solution daily and place it in a closed and labeled container; or
- (2) A commercial product that is registered with the Environmental Protection Agency (EPA) as an antimicrobial product and includes directions for use in a hospital as a disinfectant. You must use the product according to label directions. Commercial products must not be toxic on surfaces likely to be mouthed by children.

§744.2513. May I use a dishwasher or washing machine to sanitize items at my operation?

Items that may be washed in a dishwasher or hot cycle of a washing machine which runs at a temperature of 160 degrees Fahrenheit or higher for five or more minutes do not need additional disinfecting, because these machines use water that is hot enough, for long enough, to kill most germs.

§744.2515. When must employees wash their hands?

Employees must wash their hands:

- (1) Before eating or handling food or medication;
- (2) Before feeding a child;
- (3) After arriving at the operation;
- (4) After assisting a child with toileting;
- (5) After personal toileting;
- (6) After handling or cleaning body fluids, such as after wiping noses, mouths, or bottoms, and tending sores;
- (7) After handling or feeding animals;
- (8) After outdoor activities;
- (9) After handling raw food products;
- (10) After eating, drinking, or smoking; and

(11) After using any cleaners or toxic chemicals.

§744.2517. When must children wash their hands?

Children must wash their hands:

- (1) Before eating;
- (2) Before playing in a water play table;
- (3) After toileting;
- (4) After outdoor activities;
- (5) After playing in sand;
- (6) After feeding or touching animals; and
- (7) Any other time that the caregiver has reason to believe the child has come in contact with substances that could be harmful to the child.

§744.2519. How must children and employees wash their hands?

Children and employees must wash their hands with soap and running water. Pre-moistened towelettes or wipes and waterless hand cleaners are not a substitute for soap and running water.

§744.2521. Must my operation have hot water for hand washing?

No. We do not require you to have hot water for hand washing. However, if hot water is accessible to the children, a thermostat must control it so that the water temperature is no higher than 120 degrees Fahrenheit.

§744.2523. Must caregivers wear gloves when handling bodily fluids?

Yes. Caregivers must follow universal precautions outlined by the Centers for Disease Control (CDC) when handling blood, vomit, or other bodily fluids that may contain blood including:

- (1) Use of disposable, nonporous gloves;
- (2) Discarding the gloves immediately after one use; and
- (3) Washing hands after using and disposing of the gloves.

§744.2525. Must I use a licensed exterminator to treat my operation for insects, rodents, and other pests?

You may treat your operation for pests only if you are certified as a non-commercial applicator by the Texas Department of Agriculture. Otherwise, you must use a pest control operator licensed by the Texas Department of Agriculture to prevent, control, or eliminate pest infestations at your operation, including the use of over-the-counter products designed for controlling insects, rodents, and other pests.

§744.2527. Are there general precautions I must take when my operation is being treated for insects, rodents, and other pests?

(a) Children must not be allowed in areas where there is pesticide residue that may be harmful to them. Follow written instructions from the licensed pest control operator or label directions in order to determine whether the residue may be harmful to children.

(b) Areas where children are present may be treated with chemicals only when permissible under the label directions.

§744.2529. May I use water from a private water supply instead of a public water supply for my operation?

Yes, you may use water from a private water supply, although you must:

- (1) Maintain the water supply in a safe and sanitary manner; and
- (2) Maintain written records indicating the private water supply meets the requirements of the Texas Commission on Environmental Quality, if applicable.

§744.2531. May I use a septic system for sewage disposal?

Yes, if the septic system is sanitary and meets the standards of the Texas Commission on Environmental Quality, including any routine inspections required by law.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 2. TOILETING

40 TAC §744.2551

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC §42.042 and Acts 2009, 81st R.S., ch. 720 §22.

§744.2551. What steps must caregivers follow for assisting children with toileting?

Caregivers must:

- (1) Promptly change soiled or wet clothing;
- (2) Thoroughly cleanse and dry children with individual cloths or disposable towels. You must discard the disposable towels after use and launder any cloths before using them again;
- (3) Not change children in or on areas that children come in close contact with during play or eating, such as dining tables, sofas, or floor play areas;
- (4) Wash their hands after assisting with toileting. Refer to §744.2519 of this title (relating to How must children and employees wash their hands?); and
- (5) Place soiled and wet clothing in individual sealed bags.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 3. ILLNESS AND INJURY

40 TAC §§744.2571, 744.2573, 744.2575, 744.2577

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042 and Acts 2009, 81st R.S., ch. 720 §22.

§744.2571. What type of illness would prohibit a child from being admitted for care?

You must not admit an ill child for care if one or more of the following exists:

(1) The illness prevents the child from participating comfortably in program activities, including outdoor play;

(2) The illness results in a greater need for care than caregivers can provide without compromising the health, safety, and supervision of the other children in care;

(3) The child has one of the following, unless medical evaluation by a health-care professional indicates that you can include the child in the program's activities:

(A) Oral temperature above 101 degrees and accompanied by behavior changes or other signs or symptoms of illness;

(B) Rectal temperature above 102 degrees and accompanied by behavior changes or other signs or symptoms of illness;

(C) Armpit temperature above 101 degrees and accompanied by behavior changes or other signs or symptoms of illness; or

(D) Symptoms and signs of possible severe illness such as lethargy, abnormal breathing, uncontrolled diarrhea, two or more vomiting episodes in 24 hours, rash with fever, mouth sores with drooling, behavior changes, or other signs that the child may be severely ill; or

(4) A health-care professional has diagnosed the child with a communicable disease, and the child does not have medical documentation to indicate that the child is no longer contagious.

§744.2573. What communicable diseases would exclude a child from attending my operation?

You must follow the communicable disease exclusions required for schools as defined by the Texas Department of State Health Services (DSHS) in 25 TAC §97.7 (relating to Diseases Requiring Exclusion from Schools). You can access this information from the Department of State Health Services or Licensing staff.

§744.2575. What if a child becomes ill while in care?

If a child becomes ill while in your care, you must:

(1) Contact the parent to pick up the child;

(2) Care for the child apart from other children;

(3) Give appropriate attention and supervision until the parent picks the child up; and

(4) Give extra attention to hand washing and sanitation if the child has diarrhea or vomiting.

§744.2577. How should caregivers respond to critical illness or injury?

If critical illness or injury requires immediate attention of a physician, you must:

(1) Contact emergency medical services or take the child to the nearest emergency room;

(2) Give the child first-aid treatment or CPR when needed;

(3) Contact the physician identified in the child's record;

(4) Contact the child's parent; and

(5) Ensure supervision of other children in the group.

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SUBCHAPTER L. SAFETY PRACTICES

DIVISION 1. SAFETY PRECAUTIONS

40 TAC §§744.2601, 744.2603, 744.2605, 744.2607, 744.2609

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042 and Acts 2009, 81st R.S., ch. 720 §22.

§744.2601. What safety precautions must I take to protect children in my operation?

All areas accessible to a child must be free from hazards including, but not limited to, the following:

(1) Electrical outlets accessible to a child younger than five years old must have childproof covers or safety outlets;

(2) 220-volt electrical connections within a child's reach must be covered with a screen or guard;

(3) Air conditioners, electric fans, and heaters must be mounted out of all children's reach or have safeguards that keep any child from being injured;

(4) Glass in sliding doors must be clearly marked with decals or other materials placed at children's eye level;

(5) Play materials and equipment must be safe and free from sharp or rough edges and toxic paints;

(6) Poisonous or potentially harmful plants must be inaccessible to all children;

(7) All storage chests, boxes, trunks, or similar items with hinged lids must be equipped with a lid support designed to hold the lid open in any position, be equipped with ventilation holes, and must not have a latch that might close and trap a child inside; and

(8) All bodies of water such as pools, hot tubs, ponds, creeks, birdbaths, fountains, buckets, and rain barrels must be inaccessible to all children.

§744.2603. How can I ensure the safety of the children from other persons?

(a) People whose behavior and/or health status poses an immediate threat or danger to the health or safety of the children must not be present when children are in care.

(b) People must not consume alcohol or controlled substances without a prescription in the operation, during transportation, or on field trips.

(c) People must not be under the influence of or impaired by alcohol or controlled substances in the operation, during transportation, or on field trips.

(d) People must not smoke or use tobacco products at the operation, on the premises, on the playground, in transportation vehicles, or during field trips.

§744.2605. Am I required to have a video or audio monitoring system?

Although permissible, you are not required to have a video or audio monitoring system.

§744.2607. Are firearms or other weapons allowed at my operation?

(a) Law enforcement officials who are trained and certified to carry a firearm on duty may have firearms or ammunition on the premises of the operation.

(b) For all other persons, firearms, hunting knives, bows and arrows, and other weapons are prohibited on the premises of the operation, unless the operation is also your residence and except as allowed under subsection (e) of this section.

(c) Firearms, hunting knives, bows and arrows, and other weapons kept on the premises of an operation located in your home must remain in a locked cabinet inaccessible to children during your hours of operation.

(d) Ammunition must be kept in a separate locked cabinet and inaccessible to children during your hours of operation.

(e) If your operation uses specialized equipment or weapons that are fundamental to teaching a skill, talent, ability, expertise, or proficiency that is the goal of skill instruction or training that is a core component of your operation's program, such as batons and sticks used in martial arts programs:

(1) The equipment must be used according to manufacturer's instructions and supervised by trained personnel;

(2) The safety practices employed by the operation and the risks associated with the use of the equipment must be outlined in your policies and procedures; and

(3) Parents must provide written consent before children may use the equipment. Written consent must be kept on file at the

operation in the child's record and available for review by Licensing during your hours of operation.

§744.2609. May I have other toys or equipment that explodes or shoots things?

No. Toys that explode or that shoot things, such as caps, BB guns, darts, or fireworks are prohibited as toys for children in both residential and non-residential locations. Toys that explode or shoot things kept on the premises of an operation located in your home must remain in a locked cabinet inaccessible to any child during your hours of operation.

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DIVISION 2. MEDICATION

40 TAC §§744.2651, 744.2653, 744.2655, 744.2657, 744.2659, 744.2661

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042 and Acts 2009, 81st R.S., ch. 720 §22.

§744.2651. May I administer medication to children at my operation?

Yes, but you must ensure the following:

(1) Parents sign an authorization form and include the times caregivers are to administer each medication according to label directions;

(2) Medication is in the original container labeled with the child's full name and the date brought to the operation;

(3) Medication is administered according to the label directions or as amended by a physician;

(4) Medication is administered only to the child for whom it is intended; and

(5) Medication is not administered after its expiration date.

§744.2653. If a child has a recurring medical problem, who may sign an authorization to administer the medication as needed?

(a) If a child has a periodic and recurring medical problem, such as headaches, asthma attacks, or allergic reactions, the parent or the child's health-care professional may sign a medication authorization allowing you to administer the medication when symptoms occur

for up to a six-month period. The authorization must include information on symptoms to watch for.

(b) You must notify the parent immediately after administering the medication and document this in the child's record.

§744.2655. What records must I keep when I administer medication to a child in my care?

(a) When you administer medication to a child in your care, you must record the following:

- (1) Full name of the child to whom the medication was given;
- (2) Name of the medication;
- (3) Date, time, and amount of medication given; and
- (4) Full name of the employee administering the medication.

(b) You must keep all medication records for three months after administering the medication.

§744.2657. How must I store medication that I administer to a child? You must store medications as follows:

- (1) Keep it out of the reach of children or in locked storage;
- (2) Store it in a manner that does not contaminate food; and
- (3) Refrigerate it, if refrigeration is required, and keep it separate from food.

§744.2659. How long may I keep the medication that I administer to a child?

You must dispose of the medication or return it to the parent when the child withdraws from the operation, or when the medication is out-of-date or is no longer required for the child.

§744.2661. Do I have to notify parents if I do not want to administer medications?

Yes. If you choose not to administer medication to children, you must inform the parents of this policy in writing before the child's enrollment.

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DIVISION 3. ANIMALS AT THE OPERATION

40 TAC §§744.2701, 744.2703, 744.2705

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the

Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042 and Acts 2009, 81st R.S., ch. 720 §22.

§744.2701. What steps must I take to have animals at my operation? If you choose to have animals on the premises, you must:

- (1) Notify parents in writing when animals are or will be present;
- (2) Ensure the animals do not create unsafe or unsanitary conditions;
- (3) Ensure that children do not handle any animal that shows signs of illness, such as lethargy or diarrhea; and
- (4) Ensure that caregivers and children practice good hygiene and hand washing after handling or coming into contact with an animal and items used by an animal, such as water bowls, food bowls, and cages.

§744.2703. Must I keep documentation of vaccinations on file for the animals?

(a) Yes. You must have documentation at your operation showing dogs and cats have been vaccinated as required by Texas Health and Safety Code, Chapter 826.

(b) You must have a statement of health from a local veterinarian at your operation for dogs, cats, ferrets, and other animals other than small rodents, such as guinea pigs, mice, and hamsters.

§744.2705. Must I prevent children from having contact with certain animals while at my operation?

(a) Yes. Children must not have contact with chickens, ducks, and reptiles, such as snakes, turtles, lizards, iguanas, and amphibians, such as frogs and toads.

(b) You must keep the operation and playground free of animals unfamiliar to you.

(c) You must not allow children to play with animals unfamiliar to you or other animals that could be dangerous, including exotic animals such as monkeys.

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DIVISION 4. FIRST-AID KITS

40 TAC §744.2751, §744.2753

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC

§40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042 and Acts 2009, 81st R.S., ch. 720 §22.

§744.2751. Must I have a first-aid kit at my operation?

Yes. You must have a complete first-aid kit available in each building at the operation, during all field trips, and while transporting children. Each first-aid kit must be:

- (1) Clearly labeled;
 - (2) Kept in a clean and sanitary condition;
 - (3) Easily accessible to all employees;
 - (4) Stored in a designated location known to all employees;
- and
- (5) Kept out of the reach of children.

§744.2753. What items must each first-aid kit contain?

(a) Each first-aid kit must contain the following supplies:

- (1) A guide to first aid and emergency care;
- (2) Adhesive tape;
- (3) Antiseptic solution or wipes;
- (4) Cotton balls;
- (5) Multi-size adhesive bandages;
- (6) Scissors;
- (7) Sterile gauze pads;
- (8) Thermometer, preferably non-glass;
- (9) Tweezers; and
- (10) Waterproof, disposable gloves.

(b) The first-aid supplies must not have expired.

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DIVISION 5. RELEASE OF CHILDREN

40 TAC §744.2801, §744.2803

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC

§40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042 and Acts 2009, 81st R.S., ch. 720 §22.

§744.2801. To whom may I release children?

You must release children only to a parent or a person designated by the parent.

§744.2803. How do my employees verify the identity of a parent or a person a parent has designated to pick up the child?

(a) You must develop operation policies for the release of children, including a plan to verify the identity of a person authorized to pick up a child but whom the caregiver does not know. If your operation transports children, the plan must include verifying the identity of a person to whom you release a child from an operation transportation vehicle.

(b) Your policies must include a reasonable means to record the identity of the individual, such as a copy of valid photo identification, an instant photograph of the individual, or recording the driver's license number and car license plate numbers. You must retain this information in the child's records for at least three months.

(c) You must instruct all employees in the operation's policies for the release of children, including the verification plan.

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SUBCHAPTER M. PHYSICAL FACILITIES

DIVISION 1. INDOOR SPACE REQUIREMENTS

40 TAC §§744.2901, 744.2903, 744.2905, 744.2907, 744.2909, 744.2911

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042 and Acts 2009, 81st R.S., ch. 720 §22.

§744.2901. How many square feet of indoor activity space must I have for children?

You must have at least 30 square feet of indoor activity space for each child that you are licensed to serve, unless the operation is exempt based on criteria specified in this division.

§744.2903. Must I limit the number of children in each room based on the indoor activity space measurements for that room?

The number of children in each room must not routinely exceed what the room measurement will accommodate. However the number of children may exceed what the room measurement will accommodate if it is appropriate given the age of the children using the space, and whether the equipment and furnishings allow the children to safely participate in the activities.

§744.2905. Do these indoor activity space requirements apply to my operation if it was licensed before September 1, 2010?

(a) Indoor activity space requirements for operations licensed before September 1, 2010, vary based on the following:

(1) Operations licensed as a day-care center before August 31, 1997, must have at least 30 square feet of indoor activity space for each child you are licensed to serve;

(2) Operations licensed as a day-care center or child-care center between August 31, 1997, and September 1, 2010, must have at least 30 square feet of indoor activity space for each child you are licensed to serve;

(3) Operations licensed as kindergarten and nursery schools, or schools: grades kindergarten and above, before September 1, 2003, must have at least 20 square feet of indoor activity space for each child you are licensed to serve; and

(4) Operations licensed as a drop-in center or group day-care home before September 1, 2003, must have at least 30 square feet of indoor activity space for each child you are licensed to serve.

(b) The exemptions specified in subsection (a) of this section remain in effect until a permit issued prior to September 1, 2010, is no longer valid.

§744.2907. How does Licensing determine the indoor activity space?

(a) We determine indoor activity space by:

(1) Measuring all indoor activity space wall to wall on the inside at floor level;

(2) Rounding all measurements to the nearest inch;

(3) Excluding single-use areas. See §744.105(42) of this title (relating to What do certain words and terms mean in this chapter?) for a definition of single-use areas; and

(4) Excluding floor space occupied by permanent and stationary fixtures, such as bookcases, shelving, and storage/counter space, that is not intended for use by the children.

(b) We use the sum of the measurements to calculate the indoor activity space and to determine the maximum number of children you may care for.

§744.2909. May other programs use my indoor activity space at the same time I have children in care?

(a) You may share the indoor activity space that is not classroom space with other programs at the same time you have children in care, if you have a written plan specifying how caregivers will supervise and account for children in your care. The plan must address the following:

(1) The ages of the children;

(2) The proximity of restroom facilities and the operation entrances and exits to the children's area; and

(3) The nature of other activities and persons who may be sharing the space.

(b) You must follow your written plan and submit a copy to Licensing upon request.

§744.2911. May I care for children above or below ground level?

You must not care for children on any level above or below ground level without written approval from the state or local fire marshal.

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DIVISION 2. OUTDOOR SPACE REQUIREMENTS

40 TAC §§744.2951, 744.2953, 744.2955, 744.2957, 744.2959, 744.2961, 744.2963

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042 and Acts 2009, 81st R.S., ch. 720 §22.

§744.2951. How many square feet of outdoor activity space must I have?

(a) If children are in care for five or more consecutive hours, you must have 80 square feet of outdoor activity space for each child using the outdoor activity area at one time, or the indoor activity space must allow for room and equipment that permits children the opportunity to engage in age appropriate active play.

(b) If you were licensed before September 1, 2003, you do not have to comply with the outdoor activity space requirements specified in subsection (a) of this section unless the permit issued prior to September 1, 2003, is no longer valid.

(c) As long as children are in care for less than five consecutive hours, you are not required to have outdoor activity space if your program provides only indoor instruction that is fundamental to the core development of a skill, talent, ability, expertise, or proficiency that requires physical activity.

§744.2953. Must I fence the outdoor activity space?

Yes. A fence or wall at least four feet high must enclose the outdoor activity space unless you meet one of the following:

- (1) Your operation is located at a public school facility operated by the local independent school district; or
- (2) The only children using the outdoor activity space are five years old or older.

§744.2955. How many exits must I have from my fenced outdoor activity space?

Each fenced yard must have at least two exits. An entrance to the building may count as one exit, but one exit must be away from the building.

§744.2957. May I keep the gates leading into my outdoor activity space locked while children are in care?

Yes, however the locking mechanism must be accessible to all employees at all times. Employees must be able to open the gates immediately in an emergency and satisfactorily demonstrate this ability to Licensing staff upon request.

§744.2959. Must the outdoor activity space be connected to the operation?

No; however, all outdoor activity areas used by children must be accessible from the operation by a safe route. We must approve a plan to use an outdoor activity space that is not connected to the operation, such as a near-by park, schoolyard, or other alternative. We will consider the following criteria before approving the plan:

- (1) Traffic patterns of vehicles and people in the area;
- (2) Ages of children in the groups;
- (3) Availability of appropriate equipment;
- (4) Usage of the location by other persons when the children would be most likely to use it;
- (5) Neighborhood circumstances, hazards, and risks;
- (6) Accessibility to children and caregivers on foot;
- (7) Reasonable accessibility of restroom facilities; and
- (8) Ability to obtain assistance if needed when injury or illness occurs.

§744.2961. Must I comply with additional requirements if my plan to use an outdoor activity space not connected to my operation is approved by Licensing?

Yes. If we approve the outdoor activity space, you must:

- (1) Give parents written notification of the location of the outdoor activity area, upon their child's enrollment;
- (2) Develop a written plan to supervise children, both during play and while traveling to and from the outdoor activity space; and
- (3) Meet other conditions specified by Licensing staff, if applicable.

§744.2963. May other programs use my outdoor activity space at the same time I have children in care?

(a) You may share the outdoor activity space with other programs at the same time you have children in care if you have a written plan specifying how caregivers will supervise and account for children in your care. The plan must address the following:

- (1) The ages of the children;
- (2) The proximity of restroom facilities and the operation entrances and exits to the children's area; and

(3) The nature of other activities and persons who may be sharing the space.

(b) You must follow your written plan and submit a copy to Licensing upon request.

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DIVISION 3. TOILETS AND SINKS

40 TAC §§744.3001, 744.3003, 744.3005, 744.3007, 744.3009, 744.3011, 744.3013, 744.3015

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042 and Acts 2009, 81st R.S., ch. 720 §22.

§744.3001. How many hand-washing sinks must I have in my operation for children's use?

(a) If you are licensed to serve 13 or more children ages five years old and older, unless otherwise specified in this division, you must have one sink for every 20 children.

(b) If you are licensed to serve 13 or more children, and have children younger than five years of age in care, unless otherwise specified in this division, you must have one sink for every 17 children.

(c) If you are licensed to serve 12 or fewer children, unless otherwise specified in this division, you must have at least one sink available for the children's use.

(d) If you were licensed as a kindergarten and nursery school, or school: grades kindergarten and above, before September 1, 2003, you must have one sink for every 20 children.

(e) If you were licensed as a drop-in center before September 1, 2003, you must have at least one sink for every 25 children.

(f) A kindergarten and nursery school, school: grades kindergarten and above, and drop-in center must comply with the requirements specified in subsection (a) or (b) of this section if the permit issued prior to September 1, 2003, is no longer valid.

§744.3003. Where must I locate the hand-washing sinks for children's use?

Hand-washing sinks must be inside the operation. Children must be able to safely and independently access the sink. Hand-washing sinks

must be equipped with soap, running water, and single-use disposable towels or hot-air hand dryers. Refer to Subchapter K of this chapter (relating to Health Practices) for further information on hand washing.

§744.3005. How many toilets am I required to have in my operation?

(a) If you are licensed to serve 13 or more children ages five years and older, you must have one flush toilet for every 20 children.

(b) If you are licensed to serve 13 or more children, and have children younger than five years of age in care, unless otherwise specified in this division, you must have one flush toilet for every 17 children.

(c) If you are licensed to serve 12 or fewer children, you must have at least one flush toilet available for the children's use.

(d) If you were licensed as a kindergarten and nursery school, or school: grades kindergarten and above, before September 1, 2003, you must have one flush toilet for every 20 children.

(e) If you were licensed as a drop-in center before September 1, 2003, you must have at least one flush toilet for every 25 children.

(f) An operation licensed before September 1, 2003, must comply with the requirements specified in subsection (a) or (b) of this section if the permit issued prior to September 1, 2003, is no longer valid.

§744.3007. Where must the toilets be located?

Toilets must be inside the operation. Children must be able to safely and independently access the toilet. Toilets must be equipped for independent use by children and allow supervision by caregivers, as needed.

§744.3009. May I count urinals in the ratio of children to toilets?

(a) Urinals may be counted in the ratio of children to toilets, but may not exceed 50% of the total number of toilets.

(b) Restrooms containing urinals must also have flush toilets.

§744.3011. Do I have to use toilets, sinks and fountains that are child sized?

No. However if you use a sink, urinal, toilet, or drinking fountain that is too high for children to use safely and independently, you must equip it with anchored steps and/or a broad-based platform with a non-slip surface.

§744.3013. May the doors to the restroom or toilets have locks on them?

Yes. Doors on restrooms and toilets used by children may have locks, although:

(1) Locks must be out of children's reach; or

(2) If locks are within children's reach there must be a way to immediately open the door from the outside in an emergency, and:

(A) The unlocking mechanism must be accessible to all employees at all times and must be demonstrated satisfactorily to Licensing staff upon request; and

(B) An adult must be present in the restroom area when children younger than five years old are using restrooms with door locks within children's reach.

§744.3015. May other programs use the toilets and hand washing sinks counted in my indoor activity space at the same time I have children in care?

(a) Yes. You may share the toilets and hand washing sinks counted in your indoor activity space with other programs at the same time you have children in care, provided you:

(1) Ensure adequate facilities are available to children when needed; and

(2) Have a written plan specifying how caregivers will supervise and account for children in your care that addresses:

(A) The ages of the children;

(B) The proximity of restroom facilities, and operation entrances and exits to the children's area; and

(C) The nature of other activities and persons who may be sharing the toilet and hand washing sinks.

(b) You must follow your written plan, and submit a copy to Licensing upon request.

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DIVISION 4. TELEPHONE

40 TAC §744.3051

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC §42.042 and Acts 2009, 81st R.S., ch. 720 §22.

§744.3051. Must I have a telephone at my operation?

(a) Yes. You must have:

(1) A telephone at your operation with a listed telephone number; or

(2) Access to a telephone located in the same building for use in an emergency and where a person is available to:

(A) Receive incoming calls to the operation;

(B) Immediately transmit messages regarding children in care to operation caregivers; and

(C) Make outgoing calls for the operation as necessary.

(b) The telephone must not be a coin-operated pay phone.

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DIVISION 5. INDOOR LOFTS

40 TAC §744.3071

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC §42.042 and Acts 2009, 81st R.S., ch. 720 §22.

§744.3071. May I have indoor lofts?

(a) You may have an indoor loft that is designed and used as an extension of the classroom if you comply with the following safety standards:

(1) Caregivers must be able to adequately supervise children at all times;

(2) Stairs and steps, regardless of height, must have handrails the children can reach. Rung ladders do not require handrails; and

(3) Platforms over 20 inches in height must be equipped with protective barriers that prevent children from crawling over or falling through the barrier, or becoming entrapped.

(b) If a loft is used as indoor active play space, it must comply with minimum standards as specified in Subchapter N of this chapter (relating to Indoor and Outdoor Active Play Space and Equipment).

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SUBCHAPTER N. INDOOR AND OUTDOOR ACTIVE PLAY SPACE AND EQUIPMENT

DIVISION 1. MINIMUM SAFETY REQUIREMENTS

40 TAC §§744.3101, 744.3103, 744.3105, 744.3107, 744.3109, 744.3111, 744.3113

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042 and Acts 2009, 81st R.S., ch. 720 §22.

§744.3101. What minimum safety requirements must my active play equipment meet?

Indoor and outdoor active play equipment used both at and away from the operation must be safe for the children as follows:

(1) The indoor and outdoor active play equipment must be arranged so that caregivers can adequately supervise children at all times;

(2) The design, scale, and location of the equipment must be appropriate for the body size and ability of the children using the equipment;

(3) Equipment must not have openings or angles that can entrap a child's body or body part that has penetrated the opening;

(4) Equipment must not have protrusions or openings that can entangle something around a child's neck or a child's clothing;

(5) Equipment must be securely anchored according to manufacturer's specifications to prevent collapsing, tipping, sliding, moving, or overturning;

(6) All anchoring devices must be placed below the level of the playing surface to prevent tripping or injury resulting from a fall;

(7) Equipment must not have exposed pinch, crush, or shear points, on or underneath it;

(8) Climbing equipment, swings, or inflatables must not be installed over asphalt or concrete unless the asphalt or concrete is covered with properly installed unitary surfacing materials as specified in §744.3259 of this title (relating to What are unitary surfacing materials?) and §744.3261 of this title (relating to How should unitary surfacing materials be installed?);

(9) Porches or platforms more than 20 inches in height for pre-kindergarten and younger children, and more than 30 inches in height for school-age children, must be equipped with protective barriers that surround the elevated surface except for entrances and exits and that prevent children from crawling over or through the barrier;

(10) Stairs and steps on climbing equipment, regardless of height, must have handrails the children can reach. Rung ladders do not require handrails; and

(11) If you are licensed to provide only care in a public school facility operated by the local independent school district, you must inform parents in writing at the time they enroll their child if the active play equipment or space you plan to use at the public school

facility does not meet Licensing standards specified in this subchapter. Otherwise, children must not be allowed to use equipment that does not meet Licensing standards.

§744.3103. What additional safety requirements must my indoor equipment meet?

Indoor equipment used both at and away from the operation must be safe for the children as follows:

(1) Floor surfaces under indoor equipment designed for climbing must have a unitary shock-absorbing surface that will effectively cushion the fall of a child. The surface must be installed in the use zone and maintained according to the manufacturer's directions. See §744.3201 of this title (relating to What does Licensing mean by the term "use zone?"). Carpeting alone, even if it is installed over thick padding, is not an acceptable resilient surface under indoor climbing equipment;

(2) Platforms over 20 inches in height for pre-kindergarten and younger children, and more than 30 inches in height for school-age children, must be equipped with protective barriers that prevent children from crawling over or falling through the barrier, or becoming entrapped; and

(3) If your program uses specialized equipment that is fundamental to the core development of a skill, talent, ability, expertise, or proficiency, such as parallel bars and trampolines used in gymnastics programs:

(A) The equipment must be installed and used according to manufacturer's instructions and supervised by trained personnel;

(B) The safety practices employed by the operation and the risks associated with the use of each type of equipment must be thoroughly outlined in your policies and procedures; and

(C) Parents must provide written consent before children may use the equipment. Written consent must be kept on file at the operation in the child's record.

§744.3105. Are there some types of equipment that children must not use?

Yes. Children must not use the following types of equipment at or away from the operation:

(1) Heavy swings made of metal or that have metal components, such as animal figure swings;

(2) Equipment that allows children to fall inside the structure and onto other parts of the structure, such as certain styles of monkey bars or jungle gyms;

(3) Trampolines, except those:

(A) Less than four feet in diameter that are no higher than 12 inches above a properly installed and maintained resilient surface; or

(B) That are fundamental to the core development of a skill, talent, ability, expertise, or proficiency that is the goal of skill instruction or training that is a core component of your operation's program;

(4) Swinging exercise rings and trapeze bars on long chains or swinging rope;

(5) Multiple occupancy swings, such as teeter-totters, gliders, or chair swings (other than tire swings); or

(6) Swinging gates and giant strides.

§744.3107. Are there additional equipment restrictions for children younger than five years of age?

(a) Yes. Children younger than five years of age must not be allowed to use the following pieces of equipment at or away from the operation:

(1) Free standing arch climbers;

(2) Free standing climbing pieces with flexible parts;

(3) Fulcrum seesaws;

(4) Log rolls;

(5) Spiral slides with more than one 360 degree turn; or

(6) Track rides.

(b) In addition, children younger than four years of age must not be allowed to use the following pieces of equipment at or away from the operation:

(1) Chain or cable walks;

(2) Horizontal ladders;

(3) Vertical slide poles; or

(4) Over-head swinging rings and parallel bars, unless they are fundamental to the core development of a skill, talent, ability, expertise, or proficiency that is the goal of skill instruction or training that is a core component of your operation's program.

§744.3109. What is the maximum height of the highest designated play surface allowed?

(a) The maximum height of the highest designated play surface on active play equipment is based on the age of children who will be using the equipment.

(b) The maximum height allowed is:

(1) Five feet for equipment designed to be used by children younger than five years old; or

(2) Seven feet for equipment designed to be used by children who are at least five years old.

(c) Equipment that is fundamental to the core development of a skill, talent, ability, expertise, or proficiency, such as parallel bars and trampolines used in gymnastics programs, may exceed the maximum height allowed if:

(1) The equipment is installed and used according to manufacturer's instructions;

(2) A child's use of the equipment is supervised by trained personnel;

(3) The safety practices employed by the operation and the risks associated with the use of each type of equipment are outlined in your policies and procedures; and

(4) Parents provide written consent before children use the equipment. Written consent must be kept on file at the operation in the child's record.

§744.3111. Do the height requirements apply to my operation if it was licensed before September 1, 2010?

(a) If you were licensed after September 1, 2003, and before September 1, 2010, and unless you meet one of the conditions specified in subsection (b) of this section, the maximum height of active play equipment allowed is:

(1) Six feet for equipment designed to be used by children under the age of five years old; or

(2) Eight feet for equipment designed to be used by children ages five years old and older.

(b) An operation licensed before September 1, 2010, must comply with the equipment height requirements specified in this division if the operation re-designs the existing playground or adds new playground equipment. The permit holder must meet equipment height requirements specified in this division as the changes are made. You must submit a written plan for compliance to us upon request.

§744.3113. What special maintenance procedures must I follow for my active play space and equipment?

(a) The director or designee must inspect the active play space and equipment daily before children begin to play to ensure there are no hazards present.

(b) The director or designee must conduct at least monthly inspections of the active play space and equipment, utilizing a general maintenance checklist or safety checklist that includes checking the equipment and surfacing material for normal wear and tear, broken or missing parts, debris or foreign objects, drainage problems, or other hazards.

(c) The director or designee must ensure hazards or defects identified during inspections are removed or repaired promptly, and must arrange for protection of the children or prohibit use of hazardous equipment until the hazards can be removed or repairs can be made.

(d) You must keep maintenance inspections and repair records at the operation for review during your hours of operation for at least the previous three months.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 2. SWINGS

40 TAC §744.3151, §744.3153

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042 and Acts 2009, 81st R.S., ch. 720 §22.

§744.3151. What are the safety requirements for swings?

(a) All swing seats must be constructed of durable, lightweight, rubber, or plastic material.

(b) Edges of all swing seats must be smooth or rounded and have no protrusions.

(c) Swings must not be attached to a composite play structure.

§744.3153. Are there additional safety requirements for tire swings or other multi-axis swings?

Yes. Tire swings must:

(1) Not be made from heavy truck tires, or tires with exposed steel-belted radials;

(2) Not be suspended from a composite structure or with other swings in the same swing bay;

(3) Have drainage holes drilled in the underside of the tire and maintained to facilitate water drainage; and

(4) Have a minimum clearance between the seating surface of a tire swing and the uprights of the supporting structure of 30 inches or more when the tire is in a position closest to the support structure.

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DIVISION 3. USE ZONES

40 TAC §§744.3201, 744.3203, 744.3205, 744.3207, 744.3209, 744.3211, 744.3213, 744.3215

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042 and Acts 2009, 81st R.S., ch. 720 §22.

§744.3201. What does Licensing mean by the term "use zone"?

The use zone is the surface area under and around a piece of equipment onto which a child falling from or exiting from the equipment would be expected to land. Other than the equipment itself, the use zone must be free of obstacles that a child could run into or fall on top of and be injured.

§744.3203. How do I measure the use zone for stationary equipment?

The use zone for stationary equipment, excluding slides and soft contained play equipment, must extend a minimum of six feet in all directions from the perimeter of the equipment. Use zones for stationary equipment must not overlap other use zones.

§744.3205. How do I measure the use zone for slides?

(a) The use zone in front of the access and to the sides of a slide must extend a minimum of six feet from the perimeter of the equipment.

(b) For slides six feet high or less, the use zone in front of the exit of a slide must extend at least six feet.

(c) For slides greater than six feet high, the use zone in front of the exit of a slide must be equal to the distance from the slide platform to the protective surfacing up to a maximum of eight feet.

(d) The use zone in front of the slide exit must not overlap the use zone of any other equipment.

§744.3207. How do I measure the use zone for to-fro swings?

(a) The use zone to the front and rear of to-fro swings (single-axis swings) must extend twice the height of the vertical distance from the swing beam to the protective surfacing below.

(b) The use zone to the front and rear of the to-fro swing must not overlap any other use zone.

(c) The use zone around the sides of the to-fro swing structure (frame which supports the swings) must be at least six feet and may overlap the use zone of an adjacent swing structure.

§744.3209. How do I measure the use zone for tire swings?

(a) The use zone for tire swings or other multi-axis swings must extend in all directions for a distance equal to the distance from the swing beam to the top of the sitting surface of the tire, plus six feet.

(b) The use zone specified in subsection (a) of this section must not overlap any other use zone.

(c) The use zone on the sides of the tire swing support structure must be at least six feet and may overlap the use zone on the sides of an adjacent swing support structure.

§744.3211. How do I measure the use zone for bucket swings?

(a) The use zone to the front and rear of the bucket swing must be at least two times the vertical distance from the swing beam to the top of the swing-sitting surface.

(b) The use zone specified in subsection (a) of this section must not overlap any other use zone.

(c) The use zone on the sides of the bucket swing structure must be at least six feet and may overlap the use zone on the sides of an adjacent swing support structure.

§744.3213. How do I measure the use zone for rotating or rocking equipment?

(a) The use zone for rotating or rocking equipment on which the child sits must be at least six feet from the perimeter when not in use.

(b) The use zone for rotating or rocking equipment or track rides on which the child stands or rides must be at least seven feet from the perimeter of the equipment when not in use.

(c) The use zone for rocking and rotating equipment must not overlap any other use zone.

§744.3215. Do the use zone requirements apply to my operation if it was licensed before September 1, 2003?

(a) If you were licensed before September 1, 2003, you must at least maintain the following use zones, unless you meet one of the conditions specified in subsection (b) of this section:

(1) Four feet from climbing structures;

(2) Five feet from the bottom of a slide. The other parts of the slide are considered a climbing structure;

(3) Seven feet plus the length of a swing's chain from the point of suspension; and

(4) Seven feet from a merry-go-round or other revolving devices.

(b) An operation licensed before September 1, 2003, must comply with the use zone requirements specified in this division, under the following circumstances:

(1) An operation re-designs the existing playground or adds new playground equipment. The permit holder must meet use zone requirements specified in this division as the changes are made. You must submit a written plan for compliance to us upon request; or

(2) Your existing permit is no longer valid.

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DIVISION 4. SURFACING

40 TAC §§744.3251, 744.3253, 744.3255, 744.3257, 744.3259, 744.3261, 744.3263

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042 and Acts 2009, 81st R.S., ch. 720 §22.

§744.3251. What type of surfacing must I have under my active play equipment?

(a) There must be loose-fill surfacing material or unitary surfacing material in the use zones for all climbing, rocking, rotating, bouncing, or moving equipment, slides, and swings.

(b) The height of the highest designated play surface on the equipment will determine the type and depth of loose materials or the attenuation rating (thickness) of the unitary materials.

§744.3253. What are acceptable loose-fill surfacing materials?

Loose-fill surfacing materials include, but are not limited to, loose particles such as sand, pea gravel, shredded wood products, and shredded rubber.

§744.3255. How should outdoor loose-fill surfacing materials be installed?

(a) If you use loose-fill surfacing materials in your outdoor active play space, you must install nine inches or more of uncompressed loose-fill material in the use zones.

(b) You must not install loose-fill surfacing materials over concrete or asphalt.

(c) You must mark all equipment support posts to indicate the depth at which the loose-fill surfacing material must be maintained under and around the equipment.

(d) You must ensure the loose-fill materials are maintained at the proper depth at all times.

(e) Loose-fill surfacing materials must not be used indoors.

§744.3257. If my outdoor surfacing does not currently meet the requirements in this division, will I be given additional time to comply?

Yes. Operations that were licensed before September 1, 2010, have five years from September 1, 2010, to comply with the surfacing requirements specified in this division.

§744.3259. What are unitary surfacing materials?

Unitary surfacing materials are manufactured materials including rubber tiles, mats, or poured-in-place materials cured to form a unitary shock-absorbing surface.

§744.3261. How should unitary surfacing materials be installed?

(a) If you use unitary materials, they must be installed and maintained according to manufacturer's specifications.

(b) Unitary materials may be installed over concrete or asphalt only if recommended by the manufacturer.

§744.3263. What documentation must I keep at the operation if I use unitary surfacing materials?

If you use unitary surfacing materials, you must have test data from the manufacturer showing the impact rating of the material (the maximum height of equipment that may be installed over the surfacing material), and installation and maintenance requirements. This documentation must be at the operation and made available for review by parents and Licensing staff upon request during your hours of operation.

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DIVISION 5. SOFT CONTAINED PLAY EQUIPMENT

40 TAC §§744.3301, 744.3303, 744.3305

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC

§40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042 and Acts 2009, 81st R.S., ch. 720 §22.

§744.3301. What is soft contained play equipment?

Soft contained play equipment is a play structure that:

(1) Is fully enclosed with pliable material such as net, plastic, or fabric;

(2) The user enters to access one or more play components; and

(3) Allows caregivers to supervise children as specified in §744.1205 of this title (relating to What does Licensing mean by "supervise children at all times"?)

§744.3303. Are there additional safety requirements for soft contained play equipment?

Yes. Soft contained play equipment must:

(1) Not have to-fro, bucket, or tire swings attached inside or outside of the structure;

(2) Have no more than a 24-inch difference in height between two connecting platforms;

(3) Have use zones as outlined in §744.3305 of this title (relating to How do I measure the use zone for soft contained play equipment?) that are free of obstacles and covered with unitary surfacing material;

(4) Be installed, maintained and cleaned according to manufacturer's instructions; and

(5) Include closer supervision when in use by requiring at least one caregiver to be positioned at each level of the play area.

§744.3305. How do I measure the use zone for soft contained play equipment?

(a) The use zone for entrances and exits to the soft contained play equipment, excluding slide exits, is a minimum of five feet from all portions of the entrance and exit which are outside of the contained area of the equipment.

(b) The use zone in front of slide exits must extend a minimum of five feet if the slide run-out is 36 inches or greater. If the slide run-out is less than 36 inches, the use zone at the end of the slide must be six feet. In addition, this use zone may not overlap with any other use zones.

(c) Entrances and exits that terminate inside of the soft contained play equipment are exempt from use zone requirements.

(d) External portions of the soft contained play equipment that contain no designated play surfaces and serve only to enclose the equipment are exempt from use zone requirements.

(e) The critical height of resilient surfacing material must be equal to the highest designated play surface outside of the contained area of the equipment or for one foot, whichever is greater.

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DIVISION 6. INFLATABLES

40 TAC §744.3351

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC §42.042 and Acts 2009, 81st R.S., ch. 720 §22.

§744.3351. May I use inflatable active play equipment?

Yes, you may use inflatable equipment both at and away from your operation as long as:

- (1) Enclosed inflatables (such as bounce houses or moon walks) are used by one child at a time;
- (2) Open inflatables (such as obstacle courses, slides, or games) are used according to the manufacturer's instructions; and
- (3) Inflatables that include water activity also comply with all applicable requirements in Subchapter O of this title (relating to Swimming Pools and Wading/Splashing Pools).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER O. SWIMMING POOLS AND WADING/SPLASHING POOLS

40 TAC §§744.3401, 744.3403, 744.3405, 744.3407, 744.3409, 744.3411, 744.3413, 744.3415

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including

the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042 and Acts 2009, 81st R.S., ch. 720 §22.

§744.3401. What safety precautions must I follow when children in my care use a swimming pool?

In addition to complying with the child/caregiver ratios specified in §744.1905 of this title (relating to What are the child/caregiver ratios for swimming activities?) and other safety requirements specified in §744.1907 of this title (relating to Must a certified lifeguard be on duty when children are swimming in more than two feet of water?) and §744.1911 of this title (relating to Must persons who are counted in the child/caregiver ratio during swimming know how to swim?), you must comply with the following safety precautions when any child uses a swimming pool (more than two feet of water) both at and away from your operation:

- (1) A minimum of two life-saving devices must be available;
- (2) One additional life-saving device must be available for each 2,000 square feet of water surface;
- (3) Drain grates must be in place, in good repair, and must not be able to be removed without using tools;
- (4) Pool chemicals and pumps must be inaccessible to any child;
- (5) Machinery rooms must be locked when any child is present;
- (6) Employees must be able to clearly see all parts of the swimming area;
- (7) The bottom of the pool must be visible at all times;
- (8) An adult must be present who is able to immediately turn off the pump and filtering system when any child is in a pool; and
- (9) All indoor/outdoor areas must be free of furniture and equipment that any child could use to scale a fence or barrier or release a lock.

§744.3403. How should the swimming pool be built and maintained?
Swimming pools used both at and away from the operation must be built and maintained according to the standards of the Department of State Health Services for public pools and any other applicable state or local regulations.

§744.3405. Do the same safety precautions apply for above-ground pools?

Yes. Above-ground pools must meet all pool safety requirements specified in this subchapter and must have a barrier that prevents a child's access to the pool.

§744.3407. Must I have a fence around a swimming pool at my operation?

- (a) You must enclose a swimming pool at your operation with a six-foot fence or wall that prevents children's access to the pool.
- (b) Fence gates leading to the pool area must have self-closing and self-latching hardware out of children's reach. Gates must be locked when the pool is not in use.

(c) Doors from the operation leading to the pool area must have a lock out of children's reach that can only be opened by an adult.

(d) These doors and gates must not be designated as fire and emergency evacuation exits.

§744.3409. Does having a fence relieve me of the duty to supervise children's access to the pool?

No. Although a fence and locked access provides a layer of protection for a child who strays from supervision and may deter some children from entering the pool area, these do not replace the need for constant adult supervision and monitoring of safety features to protect children from unsupervised access to the pool.

§744.3411. What are the safety requirements for wading pools?

(a) Wading/splashing pools (two feet of water or less) at your operation must be:

- (1) Stored out of children's reach when not in use;
- (2) Drained at least daily and sanitized; and
- (3) Stored so they do not hold water.

(b) You must comply with the safety precautions specified in §744.3401 of this title (relating to What safety precautions must I follow when children in my care use a swimming pool?) when using wading/splashing pools away from your operation.

§744.3413. Are there specific safety requirements for sprinkler play? You must ensure that no child uses sprinkler equipment on or near a hard, slippery surface, such as a driveway, sidewalk, or patio. You must store sprinkler equipment and water hoses out of children's reach when not in use.

§744.3415. Can children in my care swim in a body of water other than a swimming pool, such as a lake, pond, or river?

No, you must not allow children to swim in a lake, pond, river, or a body of water other than a swimming pool or wading pool that complies with the rules specified in this subchapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER P. FIRE SAFETY AND EMERGENCY PRACTICES

DIVISION 1. FIRE INSPECTION

40 TAC §§744.3501, 744.3503, 744.3505

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the

Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042 and Acts 2009, 81st R.S., ch. 720 §22.

§744.3501. Must my operation have an annual fire inspection?

(a) Your operation must have a fire inspection before we issue your initial permit and at least once every 12 months, unless your operation is in a public school facility operated by the local independent school district.

(b) If an inspection is required, a state or local fire marshal must conduct the inspection. If an inspection is not available, you must provide documentation of this from a state or local fire marshal or county judge.

§744.3503. How do I document that a fire inspection has been completed?

If required, you must keep a copy of the most recent fire-inspection report, letter, or checklist at the operation during your hours of operation to verify the inspection date and findings. The report must include the name and telephone number of the inspector.

§744.3505. Must I make all corrections specified in the fire-inspection report?

If required, you must comply with all corrections, restrictions, or conditions specified by the inspector in the fire inspection report, letter, or checklist.

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DIVISION 2. EMERGENCY PREPAREDNESS

40 TAC §§744.3551, 744.3553, 744.3555, 744.3557, 744.3559, 744.3561, 744.3563, 744.3565

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042 and Acts 2009, 81st R.S., ch. 720 §22.

§744.3551. What is an emergency preparedness plan?

An emergency preparedness plan is designed to ensure the safety of children during an emergency by addressing staff responsibility and facility readiness with respect to emergency evacuation and relocation.

The plan addresses the types of emergencies most likely to occur in your area including but not limited to natural events such as tornadoes, floods or hurricanes, health events such as medical emergencies, communicable disease outbreak, and human-caused events such as intruder with weapon, explosion, or chemical spill.

§744.3553. What must my emergency preparedness plan include?

Your emergency preparedness plan must include written procedures for:

(1) Evacuation, including:

(A) That in an emergency, the first responsibility of staff is to move the children to a designated safe area or alternate shelter known to all employees, caregivers, and volunteers;

(B) How children will be relocated to the designated safe area or alternate shelter;

(C) An emergency evacuation and relocation diagram as outlined in §744.3561 of this title (relating to Must I have an emergency evacuation and relocation diagram?);

(D) Name and address of the alternate shelter away from the operation you will use as needed; and

(E) How children in attendance at the time of the emergency will be accounted for at the designated safe area or alternate shelter.

(2) Communication, including:

(A) The emergency telephone number that is on file with us;

(B) How you will communicate with local authorities (such as fire, law enforcement, emergency medical services, health department), parents and us; and

(3) How your staff will evacuate with the essential documentation including:

(A) Parent and emergency contact telephone numbers for each child in care;

(B) Authorization for emergency care for each child in care; and

(C) The child tracking system information for children in care.

§744.3555. With whom must I share this plan?

(a) You must share the emergency preparedness plan with employees during orientation as outlined in §744.1303 of this title (relating to What should orientation to my operation include?).

(b) Parents must be generally informed of your emergency procedures; and upon request, the emergency preparedness plan must be available for review by parents.

§744.3557. Who must coordinate the implementation of an emergency preparedness plan?

(a) The director is responsible for implementing the emergency preparedness plan.

(b) The director may also designate additional employees to be in charge during an emergency evacuation and relocation that occurs when the director is not at the operation.

§744.3559. Must I practice my emergency preparedness plans?

The following components of your operation's emergency preparedness plans must be practiced as specified below:

(1) You must practice a fire drill every month. The children must be able to safely exit the building within three minutes;

(2) You must practice a severe weather drill at least once every three months; and

(3) You must document these drills, including the date of the drill, time of the drill, and length of time for the evacuation or relocation to take place.

§744.3561. Must I have an emergency evacuation and relocation diagram?

(a) Yes. Your emergency evacuation and relocation diagram must be on file at the operation and must show the following:

(1) A floor plan of your operation;

(2) Two exit paths from each room, unless a room opens directly to the outdoors at ground level;

(3) The designated location outside of the operation where all caregivers and children meet to ensure everyone has exited the operation safely; and

(4) The designated location inside the operation where all caregivers and children take shelter from threatening weather.

(b) You must post an emergency evacuation and relocation plan in each room the children use. You must post the plan in a prominent place near the entrance and/or exit of the room.

§744.3563. How many exits must my operation have?

(a) The operation must have at least two exits to the outside that are located in distant parts of each building.

(b) If any doors open into a fenced yard, the children must be able to open the doors easily from the inside.

(c) You may not count doors that are blocked or locked as exits.

(d) An exit through a kitchen or other hazardous area may not be one of the required exits unless the state or local fire marshal specifically approves in writing.

(e) Doors and gates leading into a pool area may not be counted as an exit.

(f) A window may be used as a designated fire exit only if all children and caregivers are physically able to exit through the window to the ground outside safely and quickly.

§744.3565. Must I have emergency lighting in case of an emergency evacuation?

Yes. You must have a source of emergency lighting that is approved by the state or local fire marshal, or battery-powered lighting, available in each classroom in case of electrical failure.

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DIVISION 3. FIRE EXTINGUISHING AND SMOKE DETECTION SYSTEMS

40 TAC §§744.3601, 744.3603, 744.3605, 744.3607, 744.3609, 744.3611, 744.3613, 744.3615, 744.3617, 744.3619

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042 and Acts 2009, 81st R.S., ch. 720 §22.

§744.3601. Must my operation have a fire-extinguishing system?

Your operation must have a fire-extinguishing system. This may be a sprinkler system and/or fire extinguishers. If your program is located in a public school facility operated by the local school district, the fire-extinguishing system utilized by the school complies with this standard.

§744.3603. Who must approve my fire-extinguishing system?

The state or local fire marshal must approve a sprinkler system and/or fire extinguishers in your operation. If an inspection is not available, you must have at least one fire extinguisher rated 3A-40BC in the operation.

§744.3605. Where must I mount fire extinguishers?

You must mount the fire extinguisher on the wall by a hanger or bracket. The top of the extinguisher must be no higher than five feet above the floor and the bottom at least four inches above the floor or any other surface. If the state or local fire marshal has different mounting instructions, you may follow those instructions. The fire extinguisher must be readily available for immediate use by employees and caregivers.

§744.3607. How often must I inspect and service the fire extinguisher(s)?

(a) The director or designee must inspect fire extinguisher(s) monthly. The date of the inspection and the name of the employee must be recorded.

(b) Fire extinguishers must be serviced as required by manufacturer's instructions, or as required by the state or local fire marshal.

§744.3609. How often must I inspect a sprinkler system?

The system monitoring company or the state or local fire marshal must test sprinkler systems at least annually. You must keep the most recent inspection report at the operation for review during your hours of operation. The documentation must indicate the date of the inspection and the inspector's name and telephone number.

§744.3611. Must my operation have a smoke-detection system?

(a) Your operation must have a working smoke-detection system. This may be an electronic alarm and smoke-detection system, or individual electric or battery-operated smoke detectors located in each room used by children, or both.

(b) If your operation is located in a public school facility operated by the local independent school district, the smoke-detection system utilized by the school complies with this standard.

§744.3613. Who must approve my operation's smoke-detection system?

The state or local fire marshal must approve electronic alarm and smoke-detection systems. If an inspection is not available, you must have at least one working smoke detector in each room used by children.

§744.3615. How often must I have an electronic smoke alarm system tested?

The monitoring company or the state or local fire marshal must test an electronic smoke alarm system at least annually. You must keep documentation of the inspection at the operation for review during your hours of operation. The documentation must indicate the date of the inspection and the inspector's name and telephone number.

§744.3617. How must smoke detectors be installed at my operation?

If you use smoke detectors, they must be installed and maintained according to the manufacturer's instructions or in compliance with the state or local fire marshal's instructions.

§744.3619. How often must the smoke detectors at my operation be tested?

The director or designee must test all smoke detectors monthly. The date of the test and the name of the employee who does the testing must be documented and kept at the operation for review during your hours of operation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams

General Counsel

Department of Family and Protective Services

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For further information, please call: (512) 438-3437



DIVISION 4. GAS AND PROPANE TANKS

40 TAC §§744.3651, 744.3653, 744.3655, 744.3657

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042 and Acts 2009, 81st R.S., ch. 720 §22.

§744.3651. Must my operation be inspected for gas leaks?

If your operation uses natural or liquid propane (LP) gas, your operation must be inspected for gas leaks before we issue your initial permit, and once every two years after your permit is issued, unless your operation is located in a public school building operated by the local independent school district.

§744.3653. Who must conduct the inspection for gas leaks?

(a) If your operation uses natural gas, you must have your operation inspected for gas leaks by a licensed plumber or a gas company official.

(b) If your operation uses liquid propane (LP)-gas, you must have your LP-gas system inspected for proper installation and leaks by a licensed LP-gas servicing company or licensed plumber who is also licensed with the LP-gas section of the Texas Railroad Commission.

§744.3655. How do I document that a gas leak inspection has been completed?

A written gas inspection report must show your gas system is free of leaks and must indicate the date of the inspection, as well as the name and telephone number of the inspector. You must keep the most recent inspection report on file at your operation.

§744.3657. Must I make all corrections specified in the gas inspection report?

You must comply with all corrections, conditions, or restrictions specified in the gas inspection report within the timeframes specified by the inspector.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 5. HEATING DEVICES

40 TAC §744.3701

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC §42.042 and Acts 2009, 81st R.S., ch. 720 §22.

§744.3701. What steps must I take to ensure that heating devices do not present hazards to children?

(a) Gas appliances must have metal tubing and connections, be in good repair, and be free from leaks.

(b) Open flame heaters (heaters where the flame can be easily touched or accessed) are prohibited.

(c) Space heaters must be enclosed and have the seal of approval of a United States test laboratory or be approved by the state or local fire marshal.

(d) You must safeguard floor and wall furnace grates, steam and hot water pipes, and electric space heaters so that children do not have access to them.

(e) Liquid fuel heaters are prohibited.

(f) Gas fuel heaters, fireplaces, and wood-burning stoves must be properly vented to the outside.

(g) If you use a fireplace, wood-burning stove, or space heater, you must install a screen or guard with sufficient strength to prevent children from falling into the fire or against the stove or heater.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 6. CARBON MONOXIDE DETECTION SYSTEMS

40 TAC §§744.3751, 744.3753, 744.3755, 744.3757

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042 and §42.060 and Acts 2009, 81st R.S., ch. 720 §22.

§744.3751. Must my operation have a carbon monoxide detection system?

Your operation must be equipped with a working carbon monoxide detection system, unless it is located in a school facility that complies:

(1) With the school facility standards adopted by the commissioner of education under the Education Code, §46.008; or

(2) With standards adopted by the board of a local school district that are similar to those described in paragraph (1) of this section.

§744.3753. What type of carbon monoxide detection system must I install?

You must install:

(1) Individual electric (plug-in or hardwire) or battery-operated carbon monoxide detectors that meet Underwriters Laboratories Inc. requirements (UL-Listed); or

(2) An electronic carbon monoxide detection system connected to an electronic alarm/smoke detection system that is UL-Listed.

§744.3755. How many carbon monoxide detectors must be installed in my operation?

(a) If you use electric or battery-operated carbon monoxide detectors:

(1) At least one detector must be installed on every level of each building in the child-care operation; and

(2) The detector(s) must be installed in compliance with the state or local fire marshal's instructions.

(b) If you use an electronic carbon monoxide detection system connected to an alarm/smoke detection system, the system must be installed according to the state or local fire marshal's instructions.

§744.3757. How often must I inspect and service the carbon monoxide detection system?

(a) If you use electric or battery-operated carbon monoxide detectors, you must:

(1) Install a new battery in each battery-operated detector at least annually;

(2) Test all detectors monthly;

(3) Document the date of each monthly test, date of each installation of new batteries, and the name of the employee who does each testing or installment of new batteries; and

(4) Keep this documentation at the operation for review during your hours of operation.

(b) If you use an electronic carbon monoxide detection system connected to an alarm/smoke detection system, you must:

(1) Ensure the system monitoring company or the state or local fire marshal tests the system at least annually;

(2) Keep the most recent inspection report at the operation for review during your hours of operation;

(3) Ensure the report includes the date of the inspection and the inspector's name and telephone number; and

(4) Make any corrections required in the report.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER Q. TRANSPORTATION

40 TAC §§744.3801, 744.3803, 744.3805, 744.3807, 744.3809, 744.3811, 744.3813, 744.3815, 744.3817, 744.3819, 744.3821

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including

the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042, Texas Transportation Code §545.412, and Acts 2009, 81st R.S., ch. 720 §22.

§744.3801. What types of transportation does Licensing regulate?

We regulate any transportation provided by or for the operation, including but not limited to, transportation between home and school, between school and the operation, the operation and home, the operation or school and field trip locations or other drop off locations, authorized by the parent.

§744.3803. What type of vehicle may I use to transport children?

(a) We do not regulate the type of vehicle you use to transport children, although we recommend that you check with the Texas Department of Motor Vehicles or refer to the federal motor vehicle safety standards regulating transportation to and from school and your operation.

(b) For the purpose of this chapter, we categorize vehicle types as:

(1) General purpose vehicle--passenger vehicles as defined in the Texas Transportation Code §545.412, and buses that do not meet the federal motor vehicle safety standards for school buses or multi-function school activity buses (MFSAB);

(2) Small school bus--school buses and MFSABs that meet federal motor vehicle safety standards for school buses and MFSABs respectively and have a gross vehicle weight rating (GVWR) of 10,000 pounds or less; and

(3) Large school bus--school buses and MFSABs that meet federal motor vehicle safety standards for school buses and MFSABs respectively and have a GVWR of greater than 10,000 pounds.

(c) All vehicles must be maintained in safe operating condition at all times.

§744.3805. What safety precautions must I take when loading and unloading children from the vehicle?

You must take the following precautions when loading and unloading children from any vehicle, including any type of bus:

(1) You must load and unload children at the curbside of the vehicle or in a protected parking area or driveway;

(2) You must not allow a child to cross a street unless the child is accompanied by an adult anytime before entering or after leaving a vehicle;

(3) You must account for all children exiting the vehicle before leaving the vehicle unattended; and

(4) You must never leave a child unattended in a vehicle.

§744.3807. What child safety restraint system must I use when I transport children?

(a) You must secure each child in a rear-facing convertible child safety seat, forward-facing child safety seat, child booster seat, safety vest, harness, or a safety belt, as appropriate to the child's age, height, and weight according to manufacturer's instructions for all vehicles specified in subsection (d) of this section, unless otherwise noted in this subchapter.

(b) All child passenger safety restraint systems must meet federal standards for crash-tested restraint systems as set by the National

Highway Traffic Safety Administration, and must be properly secured in the vehicle according to manufacturer's instructions.

(c) A child 12 years old or younger must not ride in the front seat of a vehicle.

(d) The following safety restraint devices for a child must be used when the vehicle is on and during all times when the vehicle is in motion:

Figure: 40 TAC §744.3807(d)

§744.3809. Must caregivers and/or the driver wear a safety belt?

(a) The driver must be properly restrained by a safety belt before starting the vehicle and at all times the vehicle is in motion.

(b) All adult passengers in a vehicle transporting children, other than a large school bus, must be properly restrained by safety belts.

§744.3811. May parents provide the safety seat equipment required for their child?

Parents may provide the safety seat system for use in transporting their child, provided the equipment is appropriate and can be properly secured in the vehicle. You must use the equipment according to manufacturer's instructions.

§744.3813. May I place more than one person in each safety belt?

No; only one person may use each safety belt.

§744.3815. May a child ride in a safety belt with a shoulder harness?

A child may ride in a safety belt with a shoulder harness if the shoulder harness goes across the child's chest and not across the child's face or neck. The lap belt should fit low across the child's thighs or top of the legs and not across the child's stomach area. Never put a shoulder belt under the child's arm or behind the child's back. If the lap belt and shoulder harness do not fit properly, a booster seat must be used.

§744.3817. Must I carry specific equipment in vehicles used to transport children in my care?

(a) You must have the following in each vehicle you use to transport children:

(1) A list of the children being transported;

(2) Emergency medical transport and treatment authorization forms for each child being transported;

(3) The operation's name, director or permit holder's name, and operation telephone number in the glove compartment or clearly visible inside the passenger compartment, or the operation's name and telephone number must be clearly visible on the outside of the vehicle;

(4) Parent's names and telephone numbers and emergency telephone numbers for each child being transported;

(5) A fire extinguisher approved by the local or state fire marshal, secured in the passenger compartment and accessible to the adult occupants; and

(6) A first-aid kit as specified in §744.2753 of this title (relating to What items must each first-aid kit contain?).

(b) The driver must have a current driver's license.

§744.3819. What plan must I have for transportation emergencies?

You must ensure the driver/caregivers have clear instructions in handling emergency breakdowns and accidents, including vehicle evacuation procedures, supervision of the children, and contacting emergency help. The director or designee in charge of the operation must know what action to take in responding to a transportation emergency call.

§744.3821. What communications device must I have in a vehicle used for transporting children?

You must have one of the following:

(1) A communications device such as a cellular phone, message pager, or two-way radio; or

(2) A caregiver at the operation that knows the routine arrival and departure times of the vehicle and takes action if the vehicle does not return to the operation at a scheduled time. The driver must travel a known fixed route within an approximate timeframe.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams

General Counsel

Department of Family and Protective Services

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CHAPTER 745. LICENSING

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§745.37, 745.243, 745.8481, 745.8485, 745.8487, and 745.8493, concerning shelter care, in its Licensing chapter. The purpose of the amendments is to add information regarding child care offered to children residing in a temporary shelter. Section 6 of Senate Bill 68, 81st Legislature, added Human Resources Code §42.042(g-2), which requires the adoption of specific rules and minimum standards regulating child care offered to children residing in a temporary shelter. New Chapter 743, Minimum Standards for Shelter Care, is proposed in this issue of the *Texas Register*.

Section 745.37 lists all operation types regulated by Child Care Licensing. The proposal adds shelter care, before or after-school program, and school-age program as additional types of Child Day-Care Operations. The proposal also deletes a residential treatment center (RTC) as an operation type, because new legislation defined General Residential Operation as including an RTC.

Section 745.243 lists what must be included in a child-care application. A new subsection is added regarding shelter care. Some family violence shelters are required by law to keep their shelter location confidential. For these shelters, the proposed additions to the rule require an application for shelter care to include a valid correspondence address and telephone number, including the ability to immediately obtain the location address.

Sections 745.8481, 745.8485, 745.8487, and 745.8493 outline which information from Licensing inspections and abuse and neglect investigations is confidential. The rules state that the location of a family violence shelter and information regarding an individual receiving services at a family violence shelter will be kept confidential by DFPS. This language is added primarily in regards to the family violence shelters which may obtain shelter care licenses for their day care programs.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in

effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that temporary shelters providing child-care services to their residents will be regulated according to minimum standards that seek to ensure child health and safety. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

HHSC has determined that the proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Amy Chandler at (512) 438-3134 in DFPS's Child Care Licensing Division. Electronic comments may be submitted to the RCCL Minimum Standards Comments mailbox at rcclstandards@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-416, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

SUBCHAPTER B. CHILD CARE AND OTHER OPERATIONS THAT WE REGULATE

40 TAC §745.37

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Section 6 of Senate Bill 68, 81st Legislature, codified in Human Resources Code §42.042(g-2).

§745.37. *What specific types of operations does Licensing regulate?*

The charts in paragraphs (1), (2), and (3) of this section list the types of operations for child day care and residential child care that we regulate. Maternity homes, child-placing agencies, and foster homes verified by a child-placing agency are included in the residential child-care chart.

(1) (No change.)

(2) Types of Child Day-Care Operations on and after September 1, 2003.

Figure: 40 TAC §745.37(2)

(3) Types of Residential Child-Care Operations.

Figure: 40 TAC §745.37(3)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams

General Counsel

Department of Family and Protective Services

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SUBCHAPTER D. APPLICATION PROCESS

DIVISION 3. SUBMITTING THE APPLICATION MATERIALS

40 TAC §745.243

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Section 6 of Senate Bill 68, 81st Legislature, codified in Human Resources Code §42.042(g-2).

§745.243. *What does a completed application for a permit include?*

Application forms vary according to the type of permit. We will provide you with the required forms. Contact your local Licensing office for additional information. The following table outlines the requirements for a completed application:

Figure: 40 TAC §745.243

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER K. INSPECTIONS AND INVESTIGATIONS

DIVISION 3. CONFIDENTIALITY

40 TAC §§745.8481, 745.8485, 745.8487, 745.8493

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Ser-

vices Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement Section 6 of Senate Bill 68, 81st Legislature, codified in Human Resources Code §42.042(g-2).

§745.8481. *Are routine inspections of my operation confidential?*

No, we keep this information in your operation's monitoring file and it is for the most part available to the general public. We will not release some information in these files because of other state and federal laws that make the information confidential. For example, the results of an HIV test, certain medical information, the location of a family violence shelter, or information pertaining to an individual who was provided family violence services will not be released [~~or information that is private~~].

§745.8485. *Are investigations confidential?*

(a) - (b) (No change.)

(c) The following information relating to a completed investigation of child abuse or neglect is confidential and not available to the general public, except as provided under this chapter and applicable federal or state law:

(1) (No change.)

(2) The identity of the person making the allegation; [~~and~~]

(3) The files, reports, records, communications, audiotapes, videotapes, and working papers used or developed during an investigation; [-]

(4) The location of a family violence shelter; and

(5) Information pertaining to an individual who was provided family violence services.

(d) (No change.)

§745.8487. *What information can Licensing release to the public after the completion of the abuse or neglect investigation?*

We may release to the public only those portions of the abuse or neglect investigation record that we must file in the operation's monitoring file under §745.8489 of this title (relating to What portions of the child abuse or neglect investigation must Licensing keep in the operation's monitoring file?), provided that we remove the identity of any alleged victims or their families, any other children involved in the investigation, the reporter, the alleged perpetrator, and any other individual whose life or safety might be endangered by the release, including the location of a family violence shelter or information pertaining to an individual who was provided family violence services.

§745.8493. *Are there any portions of a child abuse or neglect investigation file that Licensing may not release to anyone?*

We may not release the following portions of an abuse or neglect investigation file to anyone:

(1) (No change.)

(2) Any information that would interfere with an ongoing law enforcement investigation or prosecution; [~~and~~]

(3) Information about the person who made the report, unless law enforcement requests the information under Texas Family Code, §261.107; [-]

(4) The location of a family violence shelter; and

(5) Information pertaining to an individual who was provided family violence services.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 745. LICENSING

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §745.375; and the repeal of Subchapter H, Residential Child-Care: Drug Testing and Law Enforcement Admissions, Division 2, Child-Placing Agency Standards for Conducting a Foster Home Screening, Pre-Adoptive Home Screening, and Post-Placement Adoptive Report, §§745.4025, 745.4031, 745.4033, 745.4035, 745.4037, 745.4039, 745.4041, 745.4043; Division 3, Additional Child-Placing Agency Standards for Conducting a Pre-Adoptive Home Screening, §§745.4063, 745.4065, 745.4067, 745.4075; and Division 5, Additional Child-Placing Agency Standards for Conducting a Post-Placement Adoptive Report, §§745.4121, 745.4123, 745.4125, and 745.4127, in its Licensing chapter. These rules are either being repealed because they are no longer needed, or they are being proposed as new rules in Chapter 749, Child-Placing Agencies, in this issue of the *Texas Register*. As a result of the repeal of Divisions 2, 3, and 5, the only remaining divisions in Subchapter H with rules in them are Division 6, Drug Testing, and Division 7, Taking Possession of a Child through Law Enforcement or a Juvenile Probation Officer. On adoption of these rules, DFPS is changing Division 6 to Division 1, and Division 7 to Division 2, without any changes to the rules currently in those divisions.

The amendment to §745.375 outlines the requirements for providing both foster care and day care in a home. The proposed revision adds a reference to children receiving respite care in the home, in order to be consistent with rules in Chapter 749, Child-Placing Agencies.

Section 745.4025 is repealed because it is being proposed in §749.3741 of this title (relating to What is a post-placement adoptive report?).

Section 745.4031 is repealed because Chapter 749 already contains comparable requirements.

Section 745.4033 is repealed because the portions of the rule relating to a foster home screening and a pre-adoptive home screening have previously been adopted in §749.2449 of this title (relating to Whom must I interview when conducting a foster home screening) and §749.3625 of this title (relating to Whom must I interview when conducting an adoptive home screening) respectively, and the portion of the rule relating to a post-placement adoptive report is being proposed in §749.3743 of this title (relating to Whom must I interview when developing a post-placement adoptive report?).

Section 745.4035 is repealed because the portions of the rule relating to a foster home screening and a pre-adoptive home

screening have previously been adopted in §749.2451 of this title (relating to What must I document regarding interviews for a foster home screening) and §749.3627 of this title (relating to What must I document regarding interviews for an adoptive home screening) respectively, and the portion of the rule relating to a post-placement adoptive report is being proposed in §749.3745 of this title (relating to What must I document regarding interviews for a post-placement adoptive report?).

Section 745.4037 is repealed because the portions of the rule relating to a foster home screening and a pre-adoptive home screening have previously been adopted in §749.2449 of this title (relating to Whom must I interview when conducting a foster home screening) and §749.3629 of this title (relating to What are the requirements for visiting the home during an adoptive home screening) respectively, and the portion of the rule relating to a post-placement adoptive report is being proposed in §749.3747 of this title (relating to Is a visit to the home required when developing a post-placement adoptive report?).

Section 745.4039 is repealed because it is no longer needed. Licensing rules no longer allow fully staffed foster homes to be verified, so this rule is no longer necessary.

Section 745.4041 is repealed because it is being proposed in §749.681 of this title (relating to What ethical requirements must I follow when conducting a foster home screening, a adoptive home screening, or a post-placement adoptive report?).

Section 745.4043 is repealed because it is being proposed in §749.423 of this title (relating to What rights do my adult clients have?).

Sections 745.4063 and 745.4065 are repealed because they are no longer needed. DFPS does not require birth parent information as part of an adoptive home screening.

Section 745.4067 is repealed because it is being proposed in §749.3375 of this title (relating to May I place a child in the home of a prospective adoptive parent before I complete the adoptive home screening?).

Section 745.4075 is repealed because Chapter 749 already contains comparable requirements.

Section 745.4121 is repealed because it is no longer needed. DFPS no longer requires a Post-Placement Adoptive Report Registration form.

Section 745.4123 is repealed because it is being proposed in §749.3749 of this title (relating to When must I develop a post-placement adoptive report?).

Section 745.4125 is repealed because it is being proposed in §749.3751 of this title (relating to What issues should an interview for a post-placement adoptive report address?).

Section 745.4127 repealed because it is being proposed in §749.3753 of this title (relating to What information must the post-placement adoptive report include?).

Additionally, DFPS is repealing the titles of Division 1, Immunizations, and Division 4, Additional Child-Placing Agency Standards for Foster Homes and for Conducting Foster Home Screenings, in Subchapter H. No rules are currently in these divisions.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that licensed operations will have a clearer understanding of which rules apply to them, which will increase the likelihood that the operations will comply with the rules. There will be no effect on large, small, or micro-businesses because the proposed sections do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

HHSC has determined that the proposed sections do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Leslie Reid at (512) 438-4666 in DFPS's Child Care Licensing Division. Electronic comments may be submitted to the RCCL Minimum Standards Comments mailbox at rcclstandards@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-413, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

SUBCHAPTER D. APPLICATION PROCESS

DIVISION 8. DUAL AND MULTIPLE PERMITS

40 TAC §745.375

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Texas Family Code, Chapter 107, Subchapter D, and HRC §42.042.

§745.375. May I offer child day care at my agency foster home or independent foster home?

You may do so only under the following conditions:

- (1) (No change.)
- (2) The total number of children in care does not exceed six, including your own children, your foster children, children receiving respite care at your foster home, and the children to whom you provide child day care; and
- (3) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 4, 2010.

TRD-201002261

Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: June 20, 2010
For further information, please call: (512) 438-3437



**SUBCHAPTER H. RESIDENTIAL
CHILD-CARE: DRUG TESTING AND
LAW ENFORCEMENT ADMISSIONS
DIVISION 2. CHILD-PLACING AGENCY
STANDARDS FOR CONDUCTING A FOSTER
HOME SCREENING, PRE-ADOPTIVE HOME
SCREENING, AND POST-PLACEMENT
ADOPTIVE REPORT**

**40 TAC §§745.4025, 745.4031, 745.4033, 745.4035,
745.4037, 745.4039, 745.4041, 745.4043**

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement Texas Family Code, Chapter 107, Subchapter D, and HRC §42.042.

§745.4025. *What is a post-placement adoptive report?*

§745.4031. *What must occur if another person reviews and approves a portion of the foster home screening, pre-adoptive home screening, or post-placement adoptive report?*

§745.4033. *Whom must I interview when conducting a foster home screening, a pre-adoptive home screening, or a post-placement adoptive report?*

§745.4035. *Must I document the interviews for a foster home screening, a pre-adoptive home screening, and a post-placement adoptive report?*

§745.4037. *Is a visit to the home required when conducting a foster home screening, a pre-adoptive home screening, or a post-placement adoptive report?*

§745.4039. *Do the interviews in §745.4033 of this title (relating to Whom must I interview when conducting a foster home screening, a pre-adoptive home screening, or a post-placement adoptive report?) apply to foster homes that are staffed with employees?*

§745.4041. *What ethical requirements must I follow when conducting a foster home screening, a pre-adoptive home screening, or a post-placement adoptive report?*

§745.4043. *Whom must I contact with a complaint about how a pre-adoptive home screening or post-placement adoptive report was conducted?*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 4, 2010.

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Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: June 20, 2010
For further information, please call: (512) 438-3437



**DIVISION 3. ADDITIONAL CHILD-PLACING
AGENCY STANDARDS FOR CONDUCTING A
PRE-ADOPTIVE HOME SCREENING**

40 TAC §§745.4063, 745.4065, 745.4067, 745.4075

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement Texas Family Code, Chapter 107, Subchapter D, and HRC §42.042.

§745.4063. *Must the pre-adoptive home screening include information about birth parents?*

§745.4065. *How do I obtain information about the birth parents?*

§745.4067. *May I place a child in a home of a prospective adoptive parent before I complete the pre-adoptive home screening?*

§745.4075. *Must I complete a pre-adoptive home screening if the prospective adoptive family is a licensed or verified foster home?*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: June 20, 2010
For further information, please call: (512) 438-3437



DIVISION 5. ADDITIONAL CHILD-PLACING AGENCY STANDARDS FOR CONDUCTING A POST-PLACEMENT ADOPTIVE REPORT

40 TAC §§745.4121, 745.4123, 745.4125, 745.4127

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement Texas Family Code, Chapter 107, Subchapter D, and HRC §42.042.

§745.4121. *Are there requirements in addition to meeting the qualifications listed in §745.4027 of this title (relating to What qualifications must I meet to review and approve a foster home screening, a pre-adoptive home screening, or a post-placement adoptive report)?*

§745.4123. *When must I conduct a post-placement adoptive report?*

§745.4125. *What issues should an interview for a post-placement adoptive report address?*

§745.4127. *What information must the post-placement adoptive report include?*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 4, 2010.

TRD-201002264

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: June 20, 2010

For further information, please call: (512) 438-3437



CHAPTER 748. GENERAL RESIDENTIAL OPERATIONS

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), new §§748.5, 748.365, 748.1003, 748.1007, 748.1583, and 748.3445; amendments to §§748.43, 748.61, 748.103, 748.105, 748.109, 748.163, 748.191, 748.233, 748.235, 748.237, 748.303, 748.305, 748.361, 748.363, 748.393, 748.433, 748.507, 748.531, 748.533, 748.535, 748.563, 748.569, 748.573, 748.601, 748.685, 748.721, 748.861, 748.863, 748.903, 748.931, 748.935, 748.937, 748.941, 748.943, 748.945, 748.949, 748.981, 748.983, 748.1005, 748.1109, 748.1111, 748.1113, 748.1117, 748.1201, 748.1203, 748.1205, 748.1209, 748.1217, 748.1219, 748.1223,

748.1225, 748.1271, 748.1337, 748.1431, 748.1437, 748.1439, 748.1501, 748.1531, 748.1539, 748.1543, 748.1545, 748.1611, 748.1703, 748.1821, 748.1931, 748.1933, 748.1937, 748.2003, 748.2051, 748.2101, 748.2151, 748.2401, 748.2451, 748.2455, 748.2459, 748.2553, 748.2605, 748.2705, 748.2751, 748.2755, 748.2807, 748.2853, 748.2855, 748.3009, 748.3017, 748.3117, 748.3161, 748.3361, 748.3363, 748.3365, 748.3393, 748.3441, 748.3443, 748.3471, 748.3475, 748.3607, 748.3713, 748.3751, 748.3759, 748.3763, 748.3765, 748.3801, 748.3803, 748.3841, 748.3845, 748.3931, 748.4231, and 748.4393; and the repeal of §§748.1003, 748.1007, 748.1441, 748.1445, 748.1583, 748.3011, 748.3715, 748.3717, 748.3761, 748.3859, and 748.3937, in Chapter 748, General Residential Operations. This chapter was effective January 1, 2007. Since three years have passed since this compete overhaul of the residential child care minimum standards, Child Care Licensing (CCL) has recently made an effort to: (1) identify minimum standards that require clarification; (2) identify minimum standards that are not having the intended outcome; and (3) identify unintended consequences of minimum standards. To initiate this evaluation process, CCL posted an online survey open to residential child care operations and other stakeholders, including foster parents and CCL field staff. CCL also hosted regional public meetings, during which operations and stakeholders could offer verbal comments/suggestions. CCL also hosted temporary workgroups through the Committee on Licensing Standards in order to seek input and guidance from operations and other stakeholders. While the majority of the proposed revisions clarify requirements or modify them based on stakeholder input, a few also implement changes in the law from the 81st Legislative Session: (1) Senate Bill (SB) 68 replaced the term "child care institution" with the term "general residential operation;" (2) House Bill 1912 relates to assisting children in residential child care to transition successfully to independent living; and (3) HB 3137 relates to foster parent rights. A summary of the changes is described below.

The current title of this chapter is "General Residential Operations and Residential Treatment Centers." SB 68 of the 81st Legislative Session revised Human Resources Code (HRC) Chapter 42 to use the term "general residential operations" rather than "child care institutions". Consequently, all residential facilities are now "general residential operations". For that reason, the title of this chapter is revised to "General Residential Operations." Residential treatment centers will now be a subset of general residential operations rather than a separate license type.

New §748.5 clarifies that residential treatment centers, due to the nature of their license, must comply with all rules of this chapter as if 100% of the children in their care require treatment services, regardless of whether all of the children in their care meet the criteria for needing treatment services.

Section 748.43 lists the definitions for this chapter. The revision adds definitions for cottage home, high-risk behavior, and parent, and clarifies several definitions already included in the rule.

Section 748.61 clarifies the description of a child requiring treatment services for an emotional disorder. Self-harm is currently referenced twice in the description, so one of the references is deleted.

Section 748.103 clarifies that Licensing only intends to enforce a facility operating according to its policies required by this chapter, as opposed to any and all of the facility's policies. Licensing will also limit regulation to any specific requirements of the rules of this chapter. For example, Licensing will regulate an

employee training policy but not an employee leave time policy, since minimum standards require a training policy but do not address employee leave. Additionally, if the employee training policy requires more than the specific training content and amount outlined in minimum standards, Licensing will only cite a facility if the employees were not obtaining the training required by minimum standards. Licensing will not cite if employees were obtaining more than the minimum, but less than the operation's policy required.

Section 748.105 adds the requirement that an employee must report suspected abuse, neglect, or exploitation directly to DFPS per TFC §261.101(b).

Section 748.109 changes "children" to "children and young adults" so that the rule will apply equally to both children and adults in care.

Section 748.163 requires an annual professional audit. There has been some confusion about who qualifies as a "professional" and what constitutes an "audit", so the proposal clarifies the expectation by requiring "an annual review of your financial records conducted by an independent Certified Public Accountant in accordance with the Generally Accepted Accounting Principles."

Section 748.191 removes the requirement to post a daily schedule. Although a daily schedule is still required, operations are not required to post it. This allows for a less institutional environment for children in care.

Section 748.233 is reorganized to make it easier to understand - no requirements are added or deleted.

Section 748.235, which lists required child-care policies adds the requirement for a general daily schedule, since it is proposed for repeal as a required posting in §748.191, but Licensing still intends to require that operations have a daily schedule.

Section 748.237 outlines emergency behavior intervention policy requirements. The revisions make the requirements for orientation upon admission consistent with other orientation requirements in this chapter.

Section 748.303, which lists the serious incident reporting requirements clarifies that tickets issued to children at school are not reportable, nor are any law enforcement citations that do not result in the child being detained (such as a traffic ticket).

Section 748.305 clarifies the definition of suicide attempt as not including suicidal thoughts or gestures.

Section 748.361 clarifies that personnel records may include electronic records maintained by the operation.

Section 748.363: (1) gives an option of either having a copy of the person's valid driver's license (already in the rule) or a recent driver's license check through DPS (proposed new) in the personnel record; and (2) clarifies language regarding documentation of background checks.

New §748.365 clarifies that background check results are, by law, confidential and must be protected from unauthorized access or release.

Section 748.393 lists the information which must be included in a child's record. The revision clarifies that: (1) child records may include electronic records maintained by the operation; and (2) a notation of "no known allergies" must be documented rather than simply omitting allergy information from a child's record.

Section 748.433 clarifies that a child's record only needs to be maintained due to an unresolved investigation if the investigation involves the child (rather than any investigation of an incident that occurred while the child was at the operation).

Section 748.507 clarifies that: (1) the subsection on "competency, prudent judgment, and self-control" will only be cited by Licensing when no other, more specific minimum standard addresses the nature of the situation; and (2) employees are only responsible for knowing the law and rules that are relevant to their duties, not every law and rule relevant to the operation as a whole.

Section 748.531 clarifies that an administrator for two operations must split a full-time schedule between the operations as described in the professional staffing plans for both operations.

Section 748.533: (1) eliminates the requirement to identify a separate administrator for an assessment services program; and (2) makes an exception to the requirement to identify a separate administrator for an emergency care services program if the emergency care services program has a capacity of not more than 30 children.

Section 748.563, which lists the options for qualifying to act as a professional level service provider: (1) differentiates the special qualifications required for serving children needing treatment services for emotional disorders versus the special qualifications required for serving children needing treatment services for primary medical needs; and (2) proposes the number/percentage of children receiving treatment services in order to be consistent with the number/percentage in Chapter 749, Child-Placing Agencies. Currently, this chapter requires the facility to have a treatment director if the facility serves 25 or more children requiring treatment services, or if more than 30% of the children in care require treatment services. This same formula is used for other requirements in the minimum standards, including professional staffing and staff training. The formula used for child-placing agencies is 30 children or more than 50% of children. At the request of stakeholders, Licensing is making these formulas consistent by changing this chapter to be consistent with Chapter 749.

Section 748.569: (1) clarifies that "during the day" means "full-time;" and (2) changes the number/percentage of children receiving treatment services to be consistent with the number/percentage in Chapter 749.

In §748.573, regarding nursing personnel for children requiring treatment services for primary medical needs, the number/percentage of children receiving treatment services is revised to be consistent with the number/percentage in Chapter 749.

In §748.601, regarding the need for a treatment director, the number/percentage of children receiving treatment services is revised to be consistent with the number/percentage in Chapter 749.

Section 748.685 clarifies that children may be away from the operation and caregivers to participate in an unsupervised activity, and provides some requirements for doing this (such as giving the child a specific time to return).

Section 748.721 clarifies that an internal abuse/neglect reporting policy may not require the delegation of the person's responsibility to report suspected abuse/neglect directly to DFPS.

In §748.861, the number/percentage of children receiving treatment services is revised to be consistent with the number/percentage in Chapter 749.

Section 748.863, which outlines the pre-service training requirements for caregivers and professional staff: (1) exempts caregivers providing care only for children receiving treatment services for primary medical needs from the requirement to receive pre-service emergency behavior intervention (EBI) training. EBI is not used with children who have primary medical needs, so there is no reason to require the training; (2) lowers pre-service EBI training requirements for caregivers who only care for children receiving child-care services or programmatic services (not treatment services). This is generally consistent with the needs of the children being served and is consistent with the requirements in Chapter 749; (3) allows professional staff 90 days (after beginning job duties) to complete EBI training, and allows caregivers to complete half of the required EBI training before beginning job duties and the other half within 90 days of being responsible for a child in care. Facilities requested this additional time to train staff, as some may be new to residential child care and may not have a frame of reference for training on this type of crisis management. (Note that other rules in this chapter require a person to be qualified in EBI before performing a restraint or seclusion, except short personal restraint. So, this flexibility in obtaining the required training should not put children at risk.); and (4) exempts professional staff from pre-service EBI training if they are exclusively working with children who have primary medical needs.

Section 748.903 is revised to correct an error. One portion of the rule requires at least 75% of the training to focus on prevention of EBI. Another portion of the rule refers to the "other four hours" instead of the "other 25%." As pre-service EBI may be a minimum of either 8 or 16 hours, the rule should refer only to percentages rather than actual hours.

Section 748.931, which outlines the annual training requirements for caregivers and professional staff: (1) separates cottage home caregivers from other caregivers and lowers the required annual emergency behavior intervention (EBI) training for cottage home caregivers. This change is more consistent with what is required for foster parents in Chapter 749; (2) clarifies that professional staff are not required to receive annual EBI training unless there is a substantial change at the operation that would necessitate re-training, which is consistent with existing rule in Chapter 749; and (3) exempts caregivers exclusively caring for children with primary medical needs from receiving annual EBI training, since EBI is not used with this population of children; and proposes the number/percentage of children receiving treatment services for revision, in order to be consistent with the number/percentage in Chapter 749.

Section 748.935 clarifies that the operation has the option to track annual training based on either the calendar year or each person's date of employment, and that the method chosen must be consistent throughout the operation.

Section 748.937 clarifies that three college credit hours are considered equivalent to 50 clock hours of required training, but may not be substituted for CPR certification, first-aid certification, or required annual training on emergency behavior intervention or psychotropic medication.

Section 748.941 clarifies that only certain pre-service training requirements also apply to annual training. For example, pre-

service training must be instructor led, but a portion of annual training may be self-instructional.

Section 748.943, regarding annual training content, clarifies that the subjects listed are examples. The operation is not specifically required to cover each of these topics each year.

Section 748.945, regarding annual psychotropic medication training, clarifies that the training must be obtained every 12 months (not, for example, January of one calendar year and December of the next calendar year).

Section 748.949 clarifies that a transcript from an accredited college or university may serve as documentation of required annual training.

Section 748.981 clarifies that only one caregiver counted in the child/caregiver ratio must have CPR certification, but every caregiver must have first-aid certification.

New §748.1003, which outlines the required child/caregiver ratio during waking hours: (1) requires that children younger than five years old count as two children in the ratio, rather than having a separate ratio for younger children; (2) clarifies that children may be separated into distinct groups in order to vary the ratio from one group to the next; (3) allows cottage homes to be out of ratio for short periods if the needs of the children can be met and other persons are available to assist as needed. This change allows cottage home caregivers to provide a more normalized, home-like environment, as it allows them to pick up a child from school or work or run a quick errand without having to take several children with them in order to comply with ratio requirements; and (4) clarifies that children may be taken out of the child/caregiver ratio to participate in unsupervised activities, and provides some requirements for doing this (such as giving the child a specific time to return). Current §748.1003 is repealed.

New §748.1007, which outlines the required child/caregiver ratio during sleeping hours: (1) clarifies that these ratios apply only at night and only when children are asleep. This change clarifies that operations may not use these lower ratios during a nap time or beginning at bed time (when children are still awake); (2) requires that children younger than five years old count as two children in the ratio, rather than having a separate ratio for younger children; (3) clarifies that children may be separated into distinct groups in order to vary the ratio from one group to the next; and (4) allows cottage homes to be out of ratio for short periods if the needs of the children can be met and other persons are available to assist as needed. This change allows cottage home caregivers to provide a more normalized, home-like environment, as it allows them to pick up a child from work or run a quick errand without having to take several children with them in order to comply with ratio requirements. Current §748.1007 is repealed.

Section 748.1109 clarifies that requirements related to sibling contact restrictions apply only to restrictions imposed by the operation. For example, the requirements do not apply to restrictions imposed by the court or the child's parent.

Section 748.1111, regarding contact with others, clarifies that requirements related to contact restrictions apply only to restrictions imposed by the operation. For example, the requirements do not apply to restrictions imposed by the court or the child's parent.

Section 748.1113 allows residential treatment centers and emergency care service programs to conduct routine searches of residents in order to prevent dangerous or prohibited items from

being brought into the operation. Residential treatment centers have requested this change due to the often violent and/or suicidal behaviors of the children they serve. Emergency care services programs have requested this change due to their often limited knowledge about the children they serve and the children's potential for dangerous behaviors.

Section 748.1117 clarifies that the routine searches proposed in this rule do not require documentation.

Section 748.1201: (1) allows children receiving emergency care services to be mixed with children admitted for non-emergency care for meals, transportation, and recreation; and (2) clarifies that therapeutic activities, such as group therapy, must remain separate for children in emergency care.

Section 748.1203: (1) adds that young adults admitted must meet the operation's admission policies; and (2) deletes several requirements that are repetitive of other rules.

Section 748.1205, which lists the information that must be documented in the child's record at admission: (1) specifies that the operation must identify a child's high-risk behaviors, if applicable, and the safety plan that will be implemented related to the behaviors; and (2) clarifies that the "reason for admission" must be documented for a child admitted into an emergency care services program, rather than the "immediate danger," since immediate danger is not the only reason for admission into an emergency care services program.

Section 748.1209: (1) requires the orientation only for a child five years old or older, deleting the current requirement for a partial orientation for children "above toddler age and below school age;" (2) adds a required review of the child's input on preferred de-escalation techniques, consistent with §748.237; and (3) adds a required review of the general daily schedule, consistent with §748.235.

Section 748.1219: (1) clarifies that any required psychiatric assessment or evaluation must be completed prior to admission; and (2) deletes the requirement that a physician confirm that the caregivers for a child with primary medical needs are trained to meet the needs of the child. While this may be appropriate and/or necessary for foster parents, it is not necessary or realistic for an entire facility.

Section 748.1223: (1) clarifies that a CPS child's health passport may serve as sufficient documentation of a recent medical exam; (2) deletes the requirement for a health-care professional's signature on the exam results, as operations have expressed concern that health-care professionals are often unwilling or reluctant to sign exam forms; and (3) clarifies documentation requirements for the exam.

Section 748.1225: (1) clarifies that a CPS child's health passport may serve as sufficient documentation of a recent dental exam; (2) deletes the requirement for a dentist's signature on the exam results, as operations have expressed concern that dentists are often unwilling or reluctant to sign exam forms; and (3) clarifies documentation requirements for the exam.

Section 748.1271, which lists the information that must be documented in the child's record at the time of an emergency admission, specifies that the operation must identify a child's high-risk behaviors, if applicable, and the safety plan that will be implemented related to the behaviors.

Section 748.1337, which outlines the service plan requirements for children in care adds experiential life-skills training requirements consistent with House Bill 1912 of the 81st Legislature.

Section 748.1431 clarifies the definition of a "transfer" by adding examples.

Section 748.1437 outlines what must be documented in a child's record at the time of discharge or transfer. The proposal: (1) makes this rule applicable to all discharges/transfers, not only those that are planned. Since Licensing proposes to make this rule applicable to emergency discharges, three items which take more time to develop have been deleted from this rule and added to §748.1439, which gives the operation 15 days to complete discharge documentation; (2) at the request of residential operations, moves three items from §748.1439 to this rule - copies of the child's service plans, a detailed list of the medications the child is taking, and information about any currently ongoing medical treatment. Residential operations indicate that they need this information right away when they admit a new child; and (3) requires documentation related to an emergency discharge or transfer. This is not a new requirement, as it is being moved from §748.1445. These two rules are being consolidated into one. As a result, §748.1445 is repealed.

Section 748.1439 outlines what information must be sent to a subsequent placement within 30 days of a child's discharge. The proposal: (1) combines this rule with §748.1441 by changing "operation" to "placement or caregiver," so that the discharge information must be sent to whomever the child's next caregiver is, whether a residential child care operation or an individual person/family; (2) changes the time frame from 30 days to 15 days. Residential operations requested this change, since they need information from the previous placement in order to develop a comprehensive service plan, which must be complete within 40 days of admission; (3) moves documentation requirements from §748.1437, so that the operation will have more time to complete this documentation, and so that the operation can then make this documentation available for all discharges (not just planned discharges); and (4) deletes the three items moved to §748.1437. As a result, §748.1441 is repealed.

Section 748.1501: (1) deletes the requirement for a dentist's signature on the exam results, as operations have expressed concern that dentists are often unwilling or reluctant to sign exam forms; and (2) clarifies that a CPS child's health passport may be used to meet some of the documentation requirements.

Section 748.1531: (1) deletes the requirement for a health-care professional's signature on the exam results, as operations have expressed concern that health-care professionals are often unwilling or reluctant to sign exam forms; (2) clarifies that a CPS child's health passport may be used to meet some of the documentation requirements; and (3) clarifies that the child's record must contain any documentation provided by the health-care professional who performed the medical exam.

Sections 748.1539, 748.1543, and 748.1545 clarify that a CPS child's health passport may serve as sufficient documentation of the child's immunizations and vision and hearing screenings.

New §748.1583: (1) clarifies that a CPS child's health passport may serve as sufficient documentation of a child's tuberculosis screening; (2) adds the requirement that a tuberculosis screening be completed within 30 days before or after beginning to live, work, or volunteer at the operation. This is needed, since the rule does not currently specify a time frame for completing tuberculosis screenings; (3) adds that a copy of the screening results must

be in the person's record at the operation within 40 days of the person beginning to live, work or volunteer there; and (4) clarifies that no additional screening is required for a person who continues to live, work, or volunteer in a regulated residential child care setting, except on the advice of a physician.

Section 748.1611 deletes "bedrails" as an example of a protective device.

Section 748.1703 exempts cottage homes from the requirement to maintain daily menus, since cottage homes are seeking to provide care more comparable to that provided by foster homes under Chapter 749.

Section 748.1821 begins Division 10, Additional Requirements for Pregnant Children, of Subchapter J, Child Care. The division name is changed to Additional Requirements for Pregnant and Parenting Children, since the division already includes a rule about children who are parents and another rule is proposed as new. The revision regarding a pregnant child adds a time frame of seven days (from admission or learning of the pregnancy) to the requirement to inform the child of her right to be free from pressure to get an abortion, parent her child, or relinquish the child for adoption.

Section 748.1931 clarifies that "up to the age of 22 years old" means up to the person's 23rd birthday (not the 22nd birthday).

Section 748.1933 outlines when a young adult may be admitted into care. The rule currently requires that a young adult come from another residential child care operation or be in the care of DFPS. The proposal: (1) allows any young adult to be admitted for transitional living (regardless of previous living situation or DFPS involvement); and (2) specifies that a young adult may remain in care until his 23rd birthday.

Section 748.1937 allows a professional level service provider to assess the appropriateness of child and adult roommates, rather than the service planning team. This change provides consistency with what is required in Chapter 749.

Section 748.2003: (1) allows the operation to administer medications within one hour of preparation, rather than immediately; and (2) clarifies that emergency behavior intervention may be used to administer medication in specific circumstances.

Section 748.2051 outlines the requirements for allowing a child to be on a self-medication program. The rule currently requires the child's health-care professional to give written authorization for self-medication. Residential child care operations have indicated that health-care professionals are unwilling to provide written authorization, citing liability concerns. Therefore, the proposal allows the parent to authorize a child's self-medication program, while also requiring that the child's health-care professional be consulted and any concerns of the professional noted in the child's record.

Section 748.2101 outlines medication storage requirements. The proposal: (1) fixes a small error, changing "Section II" to "Schedule II" in referring to certain types of medication; and (2) removes the word "securely" in the subsection requiring storage of medications needing refrigeration. Residential operations were interpreting this to mean that they needed a locked refrigerator, which was not the intent of the language.

Section 748.2151 details the requirements for documenting medication administration. Some proposed formatting changes are for clarity only. The proposal: (1) adds to the medication record the reason a prescription medication was prescribed,

in order to ensure that caregivers have this information; (2) requires that the specific reason for giving a PRN medication only be recorded for psychotropic medications, since other PRN medications are typically prescribed for a specific purpose already (such as a cough or asthma symptoms); and (3) changes the requirement to count medications, exempting cottage homes from this requirement and requiring a daily count instead of a "running count" for other operations. Cottage home model operations have requested to be exempt from this requirement, due to their staffing structure and desire to operate more like a foster home rather than an institution.

Section 748.2451 changes the number/percentage of children receiving treatment services, in order to be consistent with the number/percentage in Chapter 749.

Section 748.2455, which outlines when use of emergency intervention is allowed: (1) deletes one subsection specific to short personal restraint, which is proposed as an addition to §748.2459, since that rule specifically speaks to short personal restraint: and (2) adds the conditions under which an operation may use emergency behavior intervention with a child who is attempting to run away. The current rules do not allow use of emergency behavior intervention with a child who is running away. Residential child care operations have expressed a need to have this option when the circumstances warrant intervention, such as when a child is suicidal. As a result, §748.2459 is revised to add the deleted subsection.

Section 748.2553, regarding releasing a child from emergency behavior intervention, deletes a reference to a child damaging property, since only short personal restraint is allowed in this circumstance.

Section 748.2705, which lists restraint devices that are prohibited: (1) adds an introductory phrase and corrects formatting; and (2) deletes a reference to bed rails, as these are not being regulated as restraint devices.

Section 748.2807 deletes a reference to seclusion in one paragraph, so that the section appropriately applies to both seclusion and mechanical restraint.

Section 748.3011 is repealed because it is unnecessary.

Section 748.3017 deletes both subsections referring to stray animals. Residential child care operations have stated that it is impossible to ensure that stray animals are kept off the premises or that children will never interact with a stray animal.

Section 748.3117, regarding fire extinguisher inspections, adds the requirement for the inspector's phone number to be included in the documentation, which makes the rule consistent with other inspection documentation requirements in this chapter.

Section 748.3161 lists the requirements and restrictions regarding heating devices at the operation. Residential child care operations expressed concern regarding the prescriptiveness of this rule. The revisions make the rule more user friendly and more consolidated.

Section 748.3361 specifies that children may not sleep in the same bed with an adult at any time. This is to promote safe sleep and ensure appropriate physical boundaries between staff and children.

Section 748.3365, which outlines the requirements for children's beds and bedding: (1) re-formats the rule for clarity; and (2) deletes a phrase in one subsection that was causing operations to misinterpret the requirement. Rather than making further edits

to the rule, a "helpful hint" box will also be added to the minimum standards publication that will clarify this particular subsection.

Section 748.3441 exempts cottage homes from compliance with this rule, which lists requirements for food service and preparation. Facilities operating on a cottage home model have expressed concern that these requirements are written for a commercial kitchen, rather than a more "family style" kitchen used in a cottage home. A new rule, §748.3445, is proposed specifically for kitchens in cottage homes.

Section 748.3443 exempts cottage homes from keeping thermometers in refrigerators and freezers. Facilities operating on a cottage home model have expressed concern that this requirement is more appropriate for a commercial kitchen, rather than a more "family style" kitchen used in a cottage home.

Section 748.3471, regarding playground safety: (1) states that the rule applies only to playgrounds at the operation, not to playgrounds used by the operation that are not on the operation's premises. Residential child care operations have expressed concern that they do not have the expertise to determine each playground's compliance with complex safety rules, and that most public playgrounds are not maintained in compliance with current national safety standards (upon which these rules are based); and (2) deletes a subsection restricting use of bounce houses. Residential child care operations and other stakeholders have expressed some concern about the restriction on use of bounce houses, particularly that bounce houses are a normal part of childhood life in current American society, and that restrictions on use of these is institutionalizing for foster children.

Section 748.3475 changes the requirement for the operation to inspect its own playground from daily to weekly. Residential child care operations have expressed concern that daily inspections are onerous and unnecessary.

Section 748.3607 addresses concerns ensuring that hot tubs are inaccessible to children when not in use. Currently the rule requires a locking cover, which is only feasible for above-ground hot tubs. Therefore, the proposal allows for fencing around the hot tub instead of a locking cover. This better addresses in-ground hot tubs and offers two options for ensuring safety.

Section 748.3713 lists several requirements for higher risk recreational activities. The majority of the proposed revisions are intended to make the requirements more concise and easier to understand without making substantive changes. The revisions: (1) delete the requirement to "ensure that environmental hazards are not severe enough to cause danger to participants." This requirement is being deleted because higher risk recreational activities, by definition, pose some level of danger to participants; (2) change the required "written plan for action" in case of emergencies to a plan for action that is not required to be written. This revision removes a potential barrier that may prevent operations from offering these types of activities to children in care, which allows for a more normalized childhood experience; and (3) delete the requirement for parental permission for activities with "extreme risks", since this cannot be well-defined beyond the current definition for higher risk recreational activities. Also, operations accepting private placements often report difficulty communicating with parents post-placement, which would present another potential barrier for children's participation in these activities. As a result of these changes, §748.3715 and §748.3717 are repealed.

Section 748.3751, which outlines the requirements for having a lifeguard on duty during swimming activities: (1) clarifies that the requirements of this rule are only intended to apply to swimming activities (not, for example, to a fishing activity); (2) makes a distinction between swimming activities at the facility and those that occur away from the facility. For swimming activities at the facility, the current requirement for a lifeguard remains. For swimming activities away from the facility, there must be an adult counted in the ratio who is able to swim or trained to carry out a water rescue. If more than six children are participating in the activity, there must also be a lifeguard. This proposed revision is primarily based on concerns expressed by facilities that operate on a cottage home model. Since each cottage home operates more independently than typical institutional units, the requirement for a lifeguard to be present at any swimming activity is more challenging for cottage homes; and (3) a new subsection is added that allows children 16 years old or older to serve as the certified lifeguard, but they may not be counted in the ratio as an adult or caregiver. Residential operations have requested that their older residents be allowed to act as the lifeguard, if properly certified. As a result, §748.3759 is revised to allow a lifeguard to count in the child/adult swimming ratio regardless of other people swimming at the same location. This is consistent with the requirements for foster homes in Chapter 749. Also, §748.3761 is repealed because the content has been added to §748.3751.

Section 748.3763: (1) deletes the prohibition against children in care supervising water activities. This provides consistency with the revisions to §748.3751, which allow a child 16 years or older to serve as the certified lifeguard for swimming activities, but not count as a caregiver or adult in the ratio; and (2) deletes "for water activities," as the rule is intended to apply only to swimming activities (not, for example, to a fishing activity).

Section 748.3765 only requires specific life-saving equipment to be present at a swimming activity if more than six children are participating. This revision is primarily based on concerns expressed by facilities that operate on a cottage home model. These facilities are seeking to allow their cottage homes to operate more like foster homes.

Section 748.3801: (1) describes how the division on watercraft activities applies to an operation's recreational activities; and (2) changes the requirements of the watercraft activities division to apply only to activities in which more than six children participate. This is consistent with proposed changes to swimming activity rules and is primarily based on concerns expressed by facilities that operate on a cottage home model. These facilities have expressed concern that current recreational activity rules are too prescriptive and institutional for their model of care.

Section 748.3803 allows a child to be in a watercraft, such as a canoe or kayak, without an adult also in that specific watercraft.

Section 748.3841: (1) corrects punctuation errors; and (2) deletes the requirement that staff experience in hiking or camping be "verifiable."

Section 748.3845, regarding an itinerary for hiking, camping, or field trips lasting more than five hours, deletes field trips. This proposal is in response to concerns expressed by residential operations that this requirement is onerous, unnecessary, and a possible barrier to providing children with normal childhood experiences.

Section 748.3859 is repealed because it is unnecessary.

Section 748.3931 outlines the requirements for weapons, firearms, explosive materials, and projectiles. The proposal requires operations to ensure children do not have unsupervised access to these items by implementing specific precautions outlined in operation policy. Currently the rule only requires development of a policy that includes specific precautions, not actual implementation of the policy.

Section 748.3937 is repealed because it is unnecessary.

Section 748.4231 clarifies which admission assessment requirements apply only to emergency care services and which apply to both emergency care services and respite child-care services.

Additionally, DFPS is making minor editorial corrections to §§748.535, 748.983, 748.1005, 748.1217, 748.2401, 748.2605, 748.2751, 748.2755, 748.2853, 748.2855, 748.3009, 748.3363, 748.3393, and 748.4393.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that residential child care operations will more clearly understand minimum standard requirements, which will help to ensure the health, safety, and well being of children in residential child care. Although the majority of the proposed revisions are cost neutral or have a positive fiscal impact on residential child care operations, select rules are anticipated to have a fiscal impact.

Section 748.1337 is proposed in response to the passage of HB 1912, which requires all caregivers to provide experiential life skills training to children age 14 years and older. Therefore, the proposed rule revision adds a requirement for all residential facilities that all service plans for each child age 14 years and older include planning for how the caregiver will provide experiential life skills training to children age 14 years and older. Due to the recurring nature of service planning, there will be recurring costs associated with the ongoing development of service plans that incorporate experiential life skills training. Licensing anticipates it will take one additional hour of staff time per child age 14 and older to plan, document, and approve the additional requirements in the child's service plan. Costs have been broken down by rule, below. There is no additional cost anticipated to individual foster parents or other caregivers who actually provide the experiential training, because no additional staff or staff time will be required to mentor foster youth in everyday activities, such as balancing a checkbook, meal preparation, etc, that will enable the youth to develop the life skills necessary for independent functioning. For general residential operations, a professional level service provider is required to complete and approve service plans for a general residential operation. For the fiscal analysis, the salary for a Child Protective Service (CPS) Specialist V was used, because the level of responsibility is equivalent. The fiscal year 2011 mid-range salary for a CPS Specialist V (B18) is \$49,590, or \$18.45 per hour. Service plans are required to be completed semi-annually or quarterly, depending on the needs of the child. Therefore, the annual economic impact is estimated to be between \$36.90 to \$73.80 for each child age 14 and older placed in the operation. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

As stated above, although the majority of the proposed revisions are cost neutral or have a positive fiscal impact on residential

child care operations, select rules are anticipated to have a fiscal impact on residential facilities, some of which meet the definition of a small or micro-business. In fiscal year 2006, DFPS licensed 555 residential child-care operations, of which an estimated 8.1%, or 45, are estimated to be small businesses, and an additional estimated 1.2%, or 7, are estimated to be micro-businesses. That impact is summarized above. A regulatory flexibility analysis is not required, since these proposed rule revisions are specifically required by state law and, therefore, presumed to be consistent with the health, safety and welfare of the individuals whom the state law was intended to protect.

HHSC has determined that the proposed sections do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Amy Chandler at (512) 438-3134 in DFPS's Child Care Licensing Division. Electronic comments may be submitted to RCCL Minimum Standards Comments mailbox at rcclstandards@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-413, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

SUBCHAPTER A. PURPOSE AND SCOPE

40 TAC §748.5

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC §42.042.

§748.5. How do Residential Treatment Centers comply with the rules of this chapter?

Residential Treatment Centers (RTCs) are general residential operations that provide treatment services to children with emotional disorders. RTCs, by definition, must always comply with the rules of this chapter as if 100% of the children in their care require treatment services for emotional disorders. This includes, but is not limited to, services to individual children, personnel requirements, and child/caregiver ratio requirements.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 4, 2010.

TRD-201002273

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: June 20, 2010

For further information, please call: (512) 438-3437



SUBCHAPTER B. DEFINITIONS AND SERVICES

DIVISION 1. DEFINITIONS

40 TAC §748.43

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §§42.002, 42.003, and 42.042.

§748.43. *What do certain words and terms mean in this chapter?*

The words and terms used in this chapter have the meanings assigned to them under §745.21 of this title (relating to What do the following words and terms mean when used in this chapter?), unless another meaning is assigned in this section or unless the context clearly indicates otherwise. The following words and terms have the following meanings unless the context clearly indicates otherwise:

(1) - (7) (No change.)

(8) Child in care--A child [~~or a young adult~~] who is currently admitted as a resident of a general residential operation [~~or residential treatment center~~], regardless of whether the child is temporarily away from the operation, as in the case of a child at school or at work. Unless a child has been discharged from the operation, he is considered a child in care.

(9) (No change.)

(10) Cottage home--A living arrangement for children who are not receiving treatment services in which:

(A) Each group of children has separate living quarters;

(B) 12 or fewer children are in each group;

(C) Primary caregivers live in the children's living quarters, 24 hours per day for at least four days a week or 15 days a month; and

(D) Other caregivers are used only to meet the child-to-caregiver ratio in an emergency or to supplement care provided by the primary caregivers.

(11) [~~(10)~~] Counseling--A procedure used by professionals from various disciplines in guiding individuals, families, groups, and communities by such activities as delineating alternatives, helping to articulate goals, processing feelings and options, and providing needed information. This definition does not include career counseling.

(12) [~~(11)~~] Days--Calendar days, unless otherwise stated.

(13) [~~(12)~~] De-escalation--Strategies used to defuse a volatile situation, to assist a child to regain behavioral control, and to avoid a physical restraint or other behavioral intervention.

(14) [~~(13)~~] Department--The Department of Family and Protective Services (DFPS).

(15) [~~(14)~~] Discipline--Guidance that is constructive or educational in nature and appropriate to the child's age, development, situation, and severity of the behavior.

(16) [~~(15)~~] Disinfecting solution--A disinfecting solution may be:

(A) A self-made solution, prepared as follows:

(i) One tablespoon of regular strength liquid household [~~ehlorine~~] bleach to each gallon of water used for disinfecting such items as toys, eating utensils, and nonporous surfaces (such as tile, metal, and hard plastics); or

(ii) One-fourth cup of regular strength liquid household [~~ehlorine~~] bleach to each gallon of water used for disinfecting surfaces such as bathrooms, crib rails, diaper-changing tables, and porous surfaces, such as wood, rubber or soft plastics; or

(B) A commercial product that is registered with [~~meets~~] the Environmental Protection Agency (EPA) as an antimicrobial product and includes directions for use in a hospital as a disinfectant. You [~~Agency's (EPA's) standards for "hospital grade" germicides (solutions that kill germs) that you~~] must use the product according to label directions. Commercial products must not be toxic on surfaces likely to be mouthed by children like crib rails and toys.

(17) [~~(16)~~] Emergency Behavior Intervention--Interventions used in an emergency situation, including personal restraints, mechanical restraints, emergency medication, and seclusion.

(18) [~~(17)~~] Family members--An individual related to another individual within the third degree of consanguinity or affinity. For the definitions of consanguinity and affinity, see Chapter 745 of this title (relating to Licensing). The degree of the relationship is computed as described in Government Code, §573.023 (relating to Computation of Degree of Consanguinity) and §573.025 (relating to Computation of Degree of Affinity).

(19) [~~(18)~~] Field trip--A group activity conducted away from the operation.

(20) [~~(19)~~] Food service--The preparation or serving of meals or snacks.

(21) [~~(20)~~] Full-time--At least 30 hours per week.

(22) [~~(21)~~] Garbage--Food or items that when deteriorating cause offensive odors and/or attract rodents, insects, and other pests.

(23) [~~(22)~~] General Residential Operation--A residential child-care operation that provides child care for 13 or more children or young adults. The care may include treatment services and/or programmatic services. These operations include formerly titled emergency shelters, operations providing basic child care, operations serving children with mental retardation, and halfway houses.

(24) [~~(23)~~] Group of children--Children assigned to a specific caregiver or caregivers. Generally, the group stays with the assigned caregiver(s) throughout the day and may move to different areas throughout the operation, indoors and out. For example, children who are assigned to specific caregivers occupying a unit or cottage are considered a group.

(25) [~~(24)~~] Health-care professional--A licensed physician, licensed registered nurse with appropriate advanced practice authorization from the Texas Board of Nursing [~~Texas Board of Nurse Examiners~~], a licensed vocational nurse (LVN), licensed registered nurse (RN), or other licensed medical personnel providing health care to the child within the scope of his license. This does not include medical doctors or medical personnel not licensed to practice in the United States.

(26) High-risk behavior--Behavior of a child that creates an immediate safety risk to self or others. Examples of high-risk behavior include suicide attempt, self-abuse, aggression causing bodily injury, chronic running away, drug addiction, fire-setting, and sexual perpetration.

(27) [(25)] Human services field--A field of study that contains coursework in the social sciences of psychology and social work including some counseling classes focusing on normal and abnormal human development and interpersonal relationship skills from an accredited college or university. Coursework in guidance counseling does not apply.

(28) [(26)] Immediate danger--A situation where a prudent person would conclude that bodily harm would occur if there were no immediate interventions. Immediate danger includes a serious risk of suicide, serious physical injury, or the probability of bodily harm resulting from a child running away if under 10 years old chronologically or developmentally. Immediate danger does not include:

(A) Harm that might occur over time or at a later time;
or

(B) Verbal threats or verbal attacks.

(29) [(27)] Infant--A child from birth through 17 months.

(30) [(28)] Livestock--An animal raised for human consumption or an equine animal.

(31) [(29)] Living quarters--A structure or part of a structure where a group of children reside, such as a building, house, cottage, or unit.

(32) [(30)] Non-ambulatory--A child that is only able to move from place to place with assistance, such as a walker, crutches, a wheelchair, or prosthetic leg.

(33) [(31)] Non-mobile--A child that is not able to move from place to place, even with assistance.

(34) [(32)] Operation--General residential operations and residential treatment centers.

(35) Parent--A person that has legal responsibility for or legal custody of a child, including the managing conservator or legal guardian.

(36) [(33)] Person legally authorized to give consent--The person legally authorized to give consent by the Texas Family Code or a person authorized by the court.

(37) [(34)] Physical force--Pressure applied to a child's body that reduces or eliminates the child's ability to move freely.

(38) [(35)] PRN--A standing order or prescription that applies "pro re nata" or "as needed according to circumstances."

(39) [(36)] Regularly--On a recurring, scheduled basis.

(40) [(37)] Residential Treatment Center (RTC)--A general residential operation for 13 or more children or young adults that exclusively provides treatment services for children with emotional disorders.

(41) [(38)] Sanitize--A four-step process that must be followed in the subsequent order:

(A) Washing with water and soap;

(B) Rinsing with clear water;

(C) Soaking in or spraying on a disinfecting solution for at least two [40] minutes. Rinsing with cool water only those items that a child is likely to place in his mouth; and

(D) Allowing the surface or article to air-dry.

(42) [(39)] School-age child--A child five years old or older who will attend school in August or September of that year.

(43) [(40)] Seat belt--A lap belt and any shoulder strap included as original equipment on or added to a motor vehicle.

(44) [(41)] Service plan--A plan that identifies a child's basic and specific needs and how those needs will be met.

(45) [(42)] State or local fire inspector--A fire official who is authorized to conduct fire safety inspections on behalf of [designated by] the city, county, or state government.

(46) [(43)] State or local sanitation official--A sanitation official who is authorized to conduct environmental sanitation inspections on behalf of [designated by] the city, county, or state government [that is trained in sanitary science to perform duties relating to education and inspections in environmental sanitation].

(47) [(44)] Substantial bodily harm--Physical injury serious enough that a prudent person would conclude that the injury required professional medical attention. It does not include minor bruising, the risk of minor bruising, or similar forms of minor bodily harm that will resolve healthily without professional medical attention.

(48) [(45)] Toddler--A child from 18 months through 35 months.

(49) [(46)] Treatment director--The person responsible for the overall treatment program providing treatment services. A treatment director may have other responsibilities and may designate treatment director responsibilities to other qualified persons.

(50) [(47)] Universal precautions--An approach to infection control where all human blood and certain human body fluids are treated as if known to be infectious for HIV, HBV, and other blood-borne pathogens.

(51) [(48)] Volunteer--A person who provides:

(A) Child-care services, treatment services, or programmatic services under the auspices of the operation without monetary compensation, including a "sponsoring family;" or

(B) Any type of services under the auspices of the operation without monetary compensation when the person has unsupervised access to a child in care.

(52) [(49)] Water activities--Activities related to the use of splashing pools, wading pools, swimming pools, or other bodies of water.

(53) [(50)] Young adult--An adult whose chronological age is between 18 and 22 years, who is currently in a residential child-care operation, and who continues to need child-care services.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 4, 2010.

TRD-201002274

Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: June 20, 2010
For further information, please call: (512) 438-3437



DIVISION 2. SERVICES

40 TAC §748.61

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.61. What types of services does Licensing regulate?

We regulate the following types of services:

- (1) (No change.)
- (2) Treatment Services--In addition to child-care services, a specialized type of child-care services designed to treat and/or support children with:
 - (A) Emotional Disorders, such as mood disorders, psychotic disorders, or dissociative disorders, and who demonstrate three or more of the following:
 - (i) - (iii) (No change.)
 - (iv) Difficulties that present a significant risk of harm to ~~self or~~ others, including frequent or unpredictable physical aggression; or
 - (v) (No change.)
 - (B) - (D) (No change.)
- (3) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER C. ORGANIZATION AND ADMINISTRATION

DIVISION 1. PERMIT HOLDER RESPONSIBILITIES

40 TAC §§748.103, 748.105, 748.109

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§748.103. What are my operational responsibilities as the permit holder?

- (a) When you begin operating, you must:
 - (1) (No change.)
 - (2) Operate according to the written policies and procedures adopted by the governing body as directed by this chapter;
 - (3) - (12) (No change.)
- (b) (No change.)

§748.105. What responsibilities do I have for personnel policies and procedures?

You must:

- (1) - (5) (No change.)
- (6) Ensure ~~Report or ensure~~ your employees report serious incidents and suspected abuse, neglect, or exploitation. An employee who suspects abuse, neglect, or exploitation must report their suspicion directly to us and may not delegate this responsibility, as directed by Texas Family Code §261.101(b); [as required by the Texas Family Code, §261.401;]
- (7) - (8) (No change.)

§748.109. May I exceed my operation capacity?

No, the number of children and young adults in your care must not exceed the capacity stated on your permit, except as described in §748.103(b) of this title (relating to What are my operational responsibilities as the permit holder?). For the purpose of determining whether you exceed your capacity, the number of children in your care includes a caregiver's own children who are at the operation, if they share general living space, bedroom, and/or bathroom space with children in care, and any children receiving respite child-care services at an operation providing emergency care services.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 3. GENERAL FISCAL REQUIREMENTS

40 TAC §748.163

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.163. *How often must I have a financial records review [professional audit]?*

You must have an annual review of your financial records conducted by an independent Certified Public Accountant in accordance with the Generally Accepted Accounting Principles [a professional audit completed annually] and you must make it available for our review.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 4. REQUIRED POSTINGS

40 TAC §748.191

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.191. *What items must I post at my operation?*

The items listed below must be posted in a prominent and publicly accessible place where employees, children, parents, and others may easily view them at all times:

(1) (No change.)

(2) The Licensing notice *Keeping Children Safe*; and

(3) Emergency and evacuation relocation plans posted in each building and living quarters used by children; and

~~[(4) A general daily schedule for routine activities for children in care.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 5. POLICIES AND PROCEDURES

40 TAC §§748.233, 748.235, 748.237

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§748.233. *What are the requirements for my admission policies?*

~~[(a)]~~ Your admission policies must describe each program you offer, including but not limited to:

(1) ~~The [Have a program statement that describes the] program's goals and[; the] services provided, including whether the program accepts emergency admissions [and the population of children served by the program];~~

(2) ~~The characteristics of the population the program serves, such as behaviors or diagnoses. If the program includes treatment services, you must describe the emotional disorders, mental retardation, pervasive developmental disorders, or primary medical needs that the program is designed to treat [Describe the specific characteristics of children the program will serve, such as the age range, gender, and needs of children served]; and~~

(3) ~~The gender(s) and age range of the population the program serves [Indicate whether you will admit children on an emergency basis].~~

~~[(b) If you provide treatment services, you must have admission policies describing the emotional disorders, mental retardation, pervasive developmental disorders, or primary medical needs that your program is designed to treat.]~~

§748.235. *What child-care policies must I develop?*

You must develop policies that describe:

(1) - (12) (No change.)

~~(13) A general daily schedule for routine activities for children in care;~~

~~(14) [(13)] Child grievance procedures;~~

- (15) [(44)] The type and frequency of reports to parents;
- (16) [(45)] Procedures for routine and emergency diagnosis and treatment of medical and dental problems;
- (17) [(46)] Routine health care relating to pregnancy and childbirth, if you admit and/or care for a pregnant child; ~~and~~
- (18) [(47)] Your plan for providing health-care services to a child with primary medical needs;
- (19) [(48)] If applicable, the policy required by §748.3931(3) of this title (relating to Are weapons, firearms, explosive materials, and projectiles permitted at my operation?); and

(20) [(49)] Written plans and procedures for handling disasters and emergencies, such as fire, severe weather, and transportation emergencies. Employees must know the procedures for addressing disasters and emergencies including evacuation procedures, supervision of children, and contacting emergency help. The administrator or designee in charge of the operation must know what action to take in responding to a transportation emergency call. A copy of these plans and procedures must be available for our staff to review.

§748.237. *What emergency behavior intervention policies must I develop if the use of emergency behavior intervention is permitted at my operation?*

At a minimum, you must develop written emergency behavior intervention policies to implement the requirements in Subchapter N of this chapter (relating to Emergency Behavior Intervention). The policies must include the following:

- (1) - (4) (No change.)
- (5) How you will meet the following requirements:
 - (A) (No change.)
 - (B) During the orientation required in §748.1209 of this title (relating to What orientation must I provide a child?) ~~[admission]~~, explain and document the following to a child in a manner that the child can understand:
 - (i) - (ix) (No change.)
 - (C) During the orientation required in §748.1209 of this title obtain ~~[At admission, requirements for obtaining]~~ each child's input on preferred de-escalation techniques that caregivers can use to assist the child in the de-escalation process~~]; and revisit this information with the child and caregivers during each post emergency behavior intervention discussion];~~

- (6) - (8) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER D. REPORTS AND RECORD KEEPING

DIVISION 1. REPORTING SERIOUS INCIDENTS AND OTHER OCCURRENCES

40 TAC §748.303, §748.305

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§748.303. *When must I report and document a serious incident?*

(a) You must report and document the following types of serious incidents involving a child in your care. The reports must be made to the following entities, and the reporting and documenting must be within the specified time frames:
 Figure: 40 TAC §748.303(a)

(b) - (c) (No change.)

§748.305. *What constitutes a suicide attempt by a child?*

A suicide attempt is ~~[includes]~~ a child's attempt to take his own life using means or methods for causing his death, including any act a child commits intending to cause his death, but excluding suicidal gestures where it is clear the child had no intent to die. Suicidal thoughts are not reportable as a suicide attempt. [a means or method that the child believes is capable of causing his death.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 3. PERSONNEL RECORDS

40 TAC §§748.361, 748.363, 748.365

The amendments and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new section implement HRC §42.042.

§748.361. *Where must I maintain personnel records?*

(a) You must maintain active personnel records at the operation. This may include electronic records per §748.341 of this title (relating to If I keep electronic records, what procedures must I have for those records?).

(b) - (e) (No change.)

§748.363. What information must the personnel record of an employee include?

For each employee, the personnel record must include:

(1) - (8) (No change.)

(9) Proof of request for background checks required by Chapter 745, Subchapter F of this title (relating to Background Checks);

(10) ~~For [A copy of the valid driver's license for]~~ each person who transports a child, a copy of:[:]

(A) The person's valid driver's license; or

(B) A driver's license check conducted through the Texas Department of Public Safety within the last 12 months;

(11) - (13) (No change.)

§748.365. What information regarding personnel must be kept confidential?

All background check results must be kept confidential, in accordance with HRC §40.005, subsections (d) and (e). Background check results must be protected from unauthorized access or release.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 4. CHILD RECORDS

40 TAC §748.393

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.393. *How must I maintain an active child record?*

(a) You must keep active child records at the operation where the child is receiving services. This may include electronic records per §748.341 of this title (relating to If I keep electronic records, what procedures must I have for those records?).

(b) On an on-going basis, you must ensure that each child's record:

(1) (No change.)

(2) Includes documentation of known allergies and chronic health conditions on the exterior of the child's record or in another place where the information is clearly visible to persons with access to the record, including a notation of "no known allergies" when applicable;

(3) - (6) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 5. RECORD RETENTION

40 TAC §748.433

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.433. *How long must I maintain child records?*

You must maintain a child's complete record from admittance to discharge for two years from the date of discharge, or until the resolution of any investigation involving the child [of a serious incident that occurred while the child was in care at your operation], whichever is longer.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER E. PERSONNEL

DIVISION 1. GENERAL REQUIREMENTS

40 TAC §748.507

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.507. *What general responsibilities do all employees have?*

Regardless of whether the employee is counted in the child/caregiver ratio, each employee must:

(1) In the absence of a more specific rule requirement, demonstrate [~~Demonstrate~~] competency, prudent judgment, and self-control in the presence of children and when performing assigned responsibilities;

(2) (No change.)

(3) Know and comply with [applicable] rules of this chapter, Chapter 42 of the Human Resources Code, Chapter 745 of this title (relating to Licensing), and any other [applicable] laws which are relevant to the person's duties.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 2. CHILD-CARE ADMINISTRATOR

40 TAC §§748.531, 748.533, 748.535

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§748.531. *What qualifications must a child-care administrator meet?*

(a) A child-care administrator must:

(1) Meet the qualifications established by the operation's governing body;

(2) Be a Licensed Child-Care Administrator according to Chapter 43 of the Human Resources Code and Chapter 745, Subchapter N [~~of Chapter 745~~] of this title (relating to Administrator [~~Administrators~~] Licensing); and

(3) Be a full-time employee of the operation.

(b) If acting as the administrator for two residential child-care operations under §748.533 of this title (relating to Can a child-care administrator be an administrator for two residential child-care operations?), the administrator must split a full-time schedule between the two operations as described in the professional staffing plans for each operation.

§748.533. *Can a child-care administrator be an administrator for two residential child-care operations?*

(a) (No change.)

(b) An operation that provides emergency care services must designate an employee in the staffing plan that is solely responsible for administering those services. This employee must have the experience and background to be able to perform the child-care administrator responsibilities. See §748.535 of this title (relating to What responsibilities must the child-care administrator designated to be responsible for the on-site administration of the operation have?). A designated employee, other than the child-care administrator for the operation, is not required if the emergency care services program has a capacity of not more than 30 children.

~~{(c) An operation that provides an assessment services program may designate their child-care administrator or another employee as the person responsible for administering those services. The person designated must:}~~

~~{(1) Be a Licensed Child-Care Administrator;}~~

~~{(2) Have a master's degree in social work or a human services field from an accredited college or university and at least two years of supervised child-placing experience. The degree must include:}~~

~~{(A) A minimum of nine credit hours in graduate level courses that focus on family and individual function and interaction; and}~~

~~{(B) At least 350 hours of formal, supervised field placement or practicum with a social service or human services agency; or}~~

~~{(3) Have a master's degree in a human services field and at least three years of supervised child-placing experience.}~~

§748.535. *What responsibilities must the child-care administrator designated to be responsible for the on-site administration of the operation have?*

The child-care administrator must:

(1) Have daily supervision and on-site administrative responsibility for the overall operation; and [-]

(2) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 3. PROFESSIONAL LEVEL SERVICE PROVIDERS

40 TAC §§748.563, 748.569, 748.573

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§748.563. *What professional qualifications must a professional level service provider have in order to perform professional level service activities?*

(a) If you provide treatment services to 30 [25] or more children with emotional disorders, or if more than 50% [30%] of the children in your care receive treatment services for emotional disorders, [then] a professional level service provider must have the following qualifications:

Figure: 40 TAC §748.563(a)

(b) If you provide treatment services to 30 or more children with primary medical needs, or if more than 50% of the children in your care receive treatment services for primary medical needs, a professional level service provider must have the following qualifications:

Figure: 40 TAC §748.563(b)

(c) [(b)] To provide services for any other children, a professional level service provider must have the following qualifications:

Figure: 40 TAC §748.563(c)

[Figure: 40 TAC §748.563(b)]

(d) [(e)] A person who is a professional level service provider at your operation on or before the effective date of these rules may have the following qualifications in lieu of those set forth in subsection (c) [(b)] of this section: [-]

Figure: 40 TAC §748.563(d)

[Figure: 40 TAC §748.563(e)]

§748.569. *Must I have health-care [~~health care~~] professionals on staff or on contract if I provide services to children with primary medical needs?*

If you provide treatment services to 30 [25] or more children with primary medical needs or if more than 50% [30%] of the children in your care receive treatment services for primary medical needs:

(1) You must have a licensed registered nurse on staff or on contract to respond to emergencies, questions, or other medical issues. A registered nurse must work full-time [during the day] at the operation. A registered nurse in this position may be relieved on days off by a licensed registered nurse or by a licensed vocational nurse with appropriate supervision as defined in Tex. Occ. Code §301.353.

(2) - (3) (No change.)

§748.573. *What are the requirements for other nursing personnel for an operation that provides treatment services to 30 [25] or more children with primary medical needs, or for an operation in which more than 50% [30%] of the children in care receive treatment services for primary medical needs?*

Your nursing personnel must:

(1) - (3) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 4. TREATMENT DIRECTOR

40 TAC §748.601

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.601. *Must I have a treatment director?*

You must have a treatment director if you provide treatment services to 30 [25] or more children, or to more than 50% [30%] of the children in your care. Your treatment director must be a full-time employee of your operation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 5. CAREGIVERS

40 TAC §748.685

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.685. *What responsibilities does a caregiver have when supervising a child or children?*

(a) - (c) (No change.)

(d) A child may be away from the operation and caregivers in order to participate in an unsupervised activity, as appropriate based on the caregiver's assessment of the child and the supervision instructions in the child's service plan. The caregiver's assessment of the child must include the factors outlined in subsection (b) of this section. The child's service plan must specify if unsupervised activities are allowed, and under what circumstances. The unsupervised activity may extend into sleeping hours. If a child is participating in an unsupervised activity, the caregiver must:

(1) Know where the child will be;

(2) Give the child a specific time to return to the operation or the caregiver's location;

(3) Give the child a way to contact the caregiver in an emergency; and

(4) Be available to respond if the child contacts the caregiver and needs immediate assistance.

(e) [(d)] Caregivers that supervise a child receiving treatment services for an emotional disorder must maintain daily progress notes for the child. Caregivers must sign and date each progress note at the time the progress note is completed.

(f) [(e)] If a child or children are allowed overnight visits with staff, the child(ren) must be properly fed, lodged, and supervised, and their health, safety, and well-being protected. The person(s) responsible for the child(ren) must be given information about obtaining emergency medical care.

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DIVISION 6. CONTRACT STAFF AND VOLUNTEERS

40 TAC §748.721

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.721. *What are the requirements for a volunteer?*

(a) (No change.)

(b) The personnel record must include a statement signed and dated by the volunteer indicating he must immediately report any suspected incident of abuse, neglect, or exploitation to the Child Abuse Hotline and the operation's administrator or administrator's designee. An internal reporting policy may not require the delegation of the person's responsibility to report suspected abuse, neglect, or exploitation.

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER F. TRAINING AND PROFESSIONAL DEVELOPMENT DIVISION 3. PRE-SERVICE EXPERIENCE AND TRAINING

40 TAC §748.861, §748.863

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§748.861. *What are the pre-service experience requirements for a caregiver?*

(a) If less than 30 [25] children and less than 50% [30%] of your total population of children in care are receiving treatment services, then there are no pre-service experience requirements.

(b) If 30 [25] or more children or 50% [30%] or more of your total population of children in care are receiving treatment services, then a caregiver must have 40 hours of supervised child-care experience in an operation that provides the same treatment services. If the 40-hour experience requirement is not met, before you may assign the person as the only caregiver responsible for a group of children, the caregiver must have at least 40 total hours of supervised child-care experience from your operation and/or another operation that provides the same treatment services. Until the caregiver completes the supervised experience, an experienced caregiver must be physically available to supervise the caregiver at all times. The supervised child-care experience must be documented in the appropriate personnel record.

§748.863. *What are the pre-service hourly training requirements for caregivers and employees?*

(a) Caregivers and certain employees must complete the following training hours before the noted time frame:
Figure: 40 TAC §748.863(a)

(b) (No change.)

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DIVISION 5. PRE-SERVICE TRAINING REGARDING EMERGENCY BEHAVIOR INTERVENTION

40 TAC §748.903

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.903. *If I allow the use of emergency behavior intervention, what curriculum components must be included in the pre-service training regarding emergency behavior intervention?*

(a) - (b) (No change.)

(c) The other 25% [four hours] of the pre-service training [curriculum] regarding emergency behavior intervention must include the following components:

(1) - (10) (No change.)

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DIVISION 6. ANNUAL TRAINING

40 TAC §§748.931, 748.935, 748.937, 748.941, 748.943, 748.945, 748.949

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§748.931. *What are the annual training requirements for caregivers and employees?*

(a) Caregivers and certain employees must complete the following training hours:

Figure: 40 TAC §748.931(a)

[Figure: 40 TAC §748.931]

(b) Caregivers exclusively caring for children receiving treatment services for primary medical needs are exempt from emergency behavior intervention training requirements.

§748.935. *When must a person complete the annual training?*

(a) (No change.)

(b) Alternately, you [You] have the option of prorating the person's annual training requirements from the date of employment to the end of the calendar year or the end of the operation's [agency's] fiscal year and then beginning a new 12-month period that coincides with the calendar or fiscal year.

(c) The method for completing annual training requirements must be consistent throughout your operation.

§748.937. *What types of hours or instruction can be used to complete the annual training requirements?*

(a) If the training complies with the other rules in this division (relating to Annual Training), annual training may include hours or CEUs earned through:

(1) - (5) (No change.)

(6) Completed college courses for which a passing grade is earned, with three college credit hours being equivalent to 50 clock hours of required training. College courses do not substitute for

required CPR or first-aid certification or required annual training on emergency behavior intervention or psychotropic medication. [The hours attending college or a professional credentialing or registry program.]

(b) - (e) (No change.)

§748.941. *What are the instructor requirements for providing annual training?*

The annual training instructors must meet the same requirements in §748.869(c) and (d) of this title (relating to What are the instructor requirements for providing pre-service training?).

§748.943. *What areas or topics are appropriate for annual training?*

Annual training must be in areas appropriate to the needs of children for whom the operation or employee will be providing care, which may include:

(1) - (5) (No change.)

(6) Supervision and safety practices in the care of children; or [and]

(7) (No change.)

§748.945. *For caregivers that administer psychotropic medication, what annual training is required?*

If you permit a caregiver to administer psychotropic medication; [- his]

(1) His annual training must meet the requirements in §748.885 of this title (relating to For caregivers that administer psychotropic medication, what additional curriculum components must be included in the general pre-service training?); and [-]

(2) He must obtain annual psychotropic medication training no later than 12 months after his last psychotropic medication training.

§748.949. *What documentation must I maintain for annual training?*

(a) You must keep documentation verifying completion of annual training in the appropriate personnel record. The documentation may be a certificate, letter, or a signed and dated statement of successful completion from the training source. The documentation may also be a transcript from an accredited college or university.

(b) The documentation for training other than college courses must include the following information:

(1) - (5) (No change.)

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DIVISION 7. FIRST-AID AND CPR CERTIFICATION

40 TAC §748.981, §748.983

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which

provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§748.981. *Who must have first-aid and CPR certification?*

(a) Each caregiver must:

(1) Have a current certification in first-aid[- and CPR with training in rescue breathing and choking appropriate for children that you serve]; and

(2) (No change.)

(b) At all times, at least one caregiver counted in child/caregiver ratio must:

(1) Have current certification in CPR appropriate for the children that you serve; and

(2) (No change.)

(c) Any new caregiver not currently certified in first-aid [and/or CPR] must be trained and certified within 90 days of employment.

§748.983. *When must a caregiver renew first-aid and CPR certification?*

(a) (No change.)

(b) The caregiver in the child/caregiver [~~child-care~~] ratio[-] who must have a current certification in CPR[-] must [~~also~~] complete any new CPR training as required to maintain a current certification.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER G. CHILD/CAREGIVER RATIOS

40 TAC §748.1003, §748.1007

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the

health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC §42.042.

§748.1003. *For purposes of the child/caregiver ratio, how many children can a single caregiver care for during the children's waking hours?*

§748.1007. *For purposes of the child/caregiver ratio, how many children can a single caregiver care for during the children's sleeping hours?*

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40 TAC §§748.1003, 748.1005, 748.1007

The new sections and amendment are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections and amendment implement HRC §42.042.

§748.1003. *For purposes of the child/caregiver ratio, how many children can a single caregiver care for during the children's waking hours?*

(a) The number of children that a single caregiver may care for during waking hours depends on the ages and treatment service needs of the children in the group. A single caregiver may care for five children if at least one child in the group requires treatment services, or eight children if none of the children in the group require treatment services. Children younger than five years old count as two children.

(b) You may separate children into groups based on age and/or treatment services in order to vary the child/caregiver ratio required for each group, as long as:

(1) The groups remain easily distinguishable and separated, such as by cottage or unit; and

(2) The child/caregiver ratio is re-calculated any time groups intermingle, such as on a field trip or in the dining room.

(c) A cottage home may be out of ratio during waking hours for short periods to enable a normal home-like routine as long as the care and supervision needs of the children continue to be met. Staff or

other caregivers must be on the premises and available to respond in an emergency. These additional staff or caregivers must be specifically addressed in the written professional staffing plan.

(d) A child may be away from the operation and caregivers in order to participate in an approved unsupervised activity as outlined in §748.685(d) of this title (relating to What responsibilities does a caregiver have when supervising a child or children?). A child does not count in the child/caregiver ratio while participating in an approved unsupervised activity.

§748.1005. *Can child/caregiver ratios be averaged on an operation-wide basis?*

Each group of children must have sufficient caregivers to meet the required child/caregiver ratio for that group of children. A person may not be counted in the ratio for a group of children if he is caring for children outside the group or working in an administrative capacity. [No. Child/caregiver ratios apply only to the group of children that is actually being cared for by the caregiver. There must be enough caregivers to meet the child/caregiver ratio for any group of children who are located in the same physical setting. Ratios cannot be averaged with other caregivers in your operation that are caring for other children or working in an administrative capacity.]

§748.1007. *For purposes of the child/caregiver ratio, how many children can a single caregiver care for when children are asleep at night?*

(a) The number of children that a single caregiver may care for during night-time sleeping hours depends on whether the caregiver stays awake or sleeps during these hours and on the ages and treatment service needs of the children in the group. Children younger than five years old count as two children.

(b) If the caregiver stays awake, the caregiver may care for:

(1) 15 children if at least one child in the group requires treatment services; or

(2) 24 children if none of the children in the group require treatment services.

(c) If the caregiver sleeps, the caregiver may care for:

(1) 10 children if at least one child in the group requires treatment services; or

(2) 16 children if none of the children in the group require treatment services.

(d) You may separate children into groups based on age and/or treatment services in order to vary the child/caregiver ratio required for each group, as long as:

(1) The groups remain easily distinguishable and separated, such as by cottage or unit; and

(2) The child/caregiver ratio is re-calculated any time groups intermingle, such as on a field trip.

(e) A cottage home may be out of ratio during night-time sleeping hours for short periods to enable a normal home-like routine as long as the care and supervision needs of the children continue to be met. Staff or other caregivers must be on the premises and available to respond in an emergency. These additional staff or caregivers must be specifically addressed in the written professional staffing plan.

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SUBCHAPTER H. CHILD RIGHTS

40 TAC §§748.1109, 748.1111, 748.1113, 748.1117

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§748.1109. What right does a child have regarding contact with siblings?

(a) - (b) (No change.)

(c) When you restrict sibling contact [~~is restricted or not allowed~~], you must include justification in the service plan and service plan reviews and updates. If a restriction imposed by you lasts more than 90 days, you must document the justification for continuing the restriction in the child's record at least every 90 days.

(d) (No change.)

§748.1111. What right to privacy does a child have in his contact with others?

(a) (No change.)

(b) You must document in the child's record:

(1) Any reason for restrictions on [~~restricting~~] the child's mail or telephone calls that you impose; and

(2) (No change.)

(c) (No change.)

(d) Restrictions imposed by you that continue for more than 30 days must be re-evaluated monthly by a professional level service provider, who also must:

(1) - (2) (No change.)

§748.1113. Under what circumstances may I conduct a search for prohibited items or items that endanger a child's safety?

(a) (No change.)

(b) You may search a child, his possessions, or his room [~~only~~] when you have reasonable suspicion:

(1) - (3) (No change.)

(c) Residential treatment centers and emergency care services programs may conduct routine searches (such as upon return from a home visit or return from school) as long as the routine searches are:

(1) Justified in your policies;

(2) Conducted uniformly; and

(3) Do not involve the removal of clothing, other than outer clothing, such as coats, jackets, hats, gloves, shoes, or socks.

(d) [~~(e)~~] Only a caregiver of the same gender as the child may conduct a search that involves the removal of clothing, other than outer clothing, such as coats, jackets, hats, gloves, shoes, or socks.

(e) [~~(d)~~] If a search involves the removal of clothing (other than outer clothing), a second caregiver must witness the search.

(f) [~~(e)~~] The caregiver must ensure that other children do not witness a search that involves the removal of clothing, other than outer clothing.

§748.1117. What must I document regarding a search?

You must document the following in the child's record when you conduct a search under §748.1113(b) [~~§748.1113~~] of this title (relating to Under what circumstances may I conduct a search for prohibited items or items that endanger a child's safety?):

(1) - (9) (No change.)

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SUBCHAPTER I. ADMISSION, SERVICE PLANNING, AND DISCHARGE DIVISION 1. ADMISSION

40 TAC §§748.1201, 748.1203, 748.1205, 748.1209, 748.1217, 748.1219, 748.1223, 748.1225

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§748.1201. May children receiving different types of service live in the same living quarters?

(a) - (b) (No change.)

(c) Children admitted for emergency care services must receive any therapeutic services (such as group therapy or art therapy) separate from children admitted for non-emergency care and must have separate living quarters, such as a separate wing of an operation, or a

separate cottage. Children admitted for emergency care services ~~may~~ ~~[must not]~~ be combined with children in non-emergency care for meals, recreation, and transportation ~~[routine and daily activities, except children receiving regulated respite child-care services].~~

§748.1203. *Who [What children] may I admit?*

(a) You may only admit children or young adults who meet your admission policy guidelines and whose needs you can meet. If you adopt a change in your admission policies that requires a change in the conditions of your permit, you must request an amendment to your permit with us. ~~[You can only accept:]~~

~~[(1) The maximum number of children specified on your permit, except as described in §748.103(b) of this title (relating to What are my operational responsibilities as the permit holder?);]~~

~~[(2) Children whose age and gender are specified on your permit; and]~~

~~[(3) Children needing the types of services that are specified on your permit.]~~

(b) (No change.)

§748.1205. *What information must I document in the child's record at admission?*

(a) You must include the following in the child's record at admission:

(1) - (11) (No change.)

(12) Identification of the child's treatment needs, if applicable, and any additional treatment services or programmatic services the child is receiving; ~~[and]~~

(13) Identification of the child's high-risk behavior(s), if applicable, and the safety plan staff and caregivers will implement related to the behavior(s); and

(14) [(13)] A copy of the placement agreement, if applicable.

(b) If you admit a child for emergency care services, you must document the information:

(1) Regarding the reason for admission ~~[immediate danger]~~ in the child's record upon admission; and

(2) (No change.)

(c) (No change.)

§748.1209. *What orientation must I provide a child?*

(a) Within seven days of admission, you must provide orientation to each newly admitted child who is five years old or older ~~[not an infant or a toddler]~~. You must gear orientation to the intellectual level of the child.

(b) Orientation ~~[For a child functioning at a school age level, orientation]~~ must include information about your policies on the following:

(1) - (5) (No change.)

(6) Emergency behavior intervention, including your policies and practices on the use of personal restraint and the child's input on preferred de-escalation techniques that caregivers can use to assist the child in the de-escalation process;

(7) - (10) (No change.)

(11) Program expectations and rules; ~~[and]~~

(12) A general daily schedule for routine activities for children in care; and

(13) [(12)] Grievance procedures.

~~[(c) For a child functioning above toddler age and below school age, orientation must include as many of the items in subsection (b) of this section as possible.]~~

~~(c) [(d)] You must document in the child's record when the orientation occurred, any items that the orientation did not include, and the reason that the orientation did not include that item.~~

§748.1217. *What information must an admission assessment include?*

(a) - (d) (No change.)

(e) This rule does not apply to children receiving emergency care services. See §748.4231 of this title (relating to What information must an admission assessment include for a child needing emergency care services, including respite child-care services?).

§748.1219. *What are the additional admission requirements when I admit a child for treatment services?*

When you admit a child for treatment services, you must do the following, as applicable:

Figure: 40 TAC §748.1219

§748.1223. *What are the medical requirements when I admit a child into care?*

(a) You must ensure that the child has a medical examination by a health-care professional within 30 days after the date of admission. This exam is not required if ~~[, unless]~~ you have documentation that the child has had a medical examination within the past year, including documentation in the child's health passport if he is in DFPS conservatorship.

(b) - (c) (No change.)

(d) The report and findings of any medical examination must be ~~[signed and dated by the health-care professional who performed the examination and must be]~~ documented in the child's record, according to §748.1531(b) and (c) of this title (relating to What general medical requirements must my operation meet?).

§748.1225. *What are the dental requirements when I admit a child into care?*

(a) (No change.)

(b) A child three years old or older must have a dental appointment scheduled with a dentist within 30 days after the date of admission, and the examination must occur within 90 days after the date of admission. A dental examination is not required if you have documentation that the child has had a dental examination within the past year, including documentation in the child's health passport if he is in DFPS conservatorship.

(c) The report and findings of the dental examination must be ~~[signed and dated by the dentist and must be]~~ documented in the child's record, according to §748.1501(b) and (c) of this title (relating to What general dental requirements must my operation meet?).

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DIVISION 2. EMERGENCY ADMISSION

40 TAC §748.1271

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.1271. At the time of an emergency admission, what information must I document in the child's record [at admission]?

At the time of the emergency admission you must document in the child's record:

(1) - (4) (No change.)

(5) Known contraindications to the use of restraint; ~~and~~

(6) Identification of the child's high-risk behavior(s), if applicable, and the safety plan staff and caregivers will implement related to the behavior(s); and

(7) [(6)] For the purpose of providing treatment services:

(A) A brief description of the child's history;

(B) The child's current behavior; and

(C) Your evaluation of how the placement will meet the child's needs and best interests.

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DIVISION 4. SERVICE PLANS

40 TAC §748.1337

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which

provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Texas Family Code §264.121 and HRC §42.042.

§748.1337. What must a child's initial service plan include?

(a) (No change.)

(b) The child's initial service plan must be documented in the child's record and include those items that a preliminary plan must include (see §748.1331 of this title (relating to What are the requirements for a preliminary service plan?)), and the items noted below for each specific type of service that you provide the child:

Figure: 40 TAC §748.1337(b)

(c) (No change.)

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DIVISION 6. DISCHARGE AND TRANSFER PLANNING

40 TAC §§748.1431, 748.1437, 748.1439

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§748.1431. What does a "transfer" of a child in care mean?

A transfer refers to a child in care who is moved from one of your programs to another one of your programs that you operate [operated] under the same permit or at the same location. For example, you may transfer a child from your emergency care services program to your transitional living services program, if the programs are under the same permit or at the same location. You may also transfer a child from your general residential operation to your child-placing agency, if your child-placing agency office is located on the same property as your general residential operation.

§748.1437. *What must I document in the child's record at the time of a ~~regarding a planned~~ discharge or transfer?*

At the time of a discharge or transfer, you must document the following [Your documentation of a planned discharge or transfer is called a "discharge or transfer summary" and must include]:

~~[(1) A discharge or transfer summary showing services provided to the child, accomplishments, assessment of remaining needs, and recommendations about the services to meet those needs;]~~

~~(1) [(2)] The date and circumstances of the discharge or transfer;~~

~~[(3) Discharge or transfer medications and/or prescriptions for medications;]~~

~~[(4) Support resources for the child, including telephone numbers and addresses;]~~

~~[(5) Aftercare plans and recommendations, including medical, psychiatric, psychological, dental, educational, and social appointments;]~~

~~(2) [(6)] Date and time the child was informed of his discharge or transfer, if applicable; [and]~~

~~(3) [(7)] For discharge [discharges], the name, address, telephone number, and relationship of the person to whom you discharge the child, unless the child legally consents to his discharge. If the child legally consents to his discharge and does not want to involve the child's parent(s), you must document this in the child's record; [-]~~

~~(4) The child's service plans while in your care for the past 12 months;~~

~~(5) A list of medications the child is taking, the dosage, frequency, and reason the medication was prescribed;~~

~~(6) Any treatment for a physical condition that is in progress and requires continuing or follow-up medical care; and~~

~~(7) For emergency discharge or transfer, the explanation given to the child regarding the reason for the discharge or transfer and the child's reaction to the discharge or transfer.~~

§748.1439. *When I discharge a child [to another operation or child-placing agency], what information must I provide to the next placement or caregiver [them]?*

(a) On or before the child's discharge, you must attempt to obtain legal consent to release the ~~[discharge summary and the]~~ information in subsection (b) of this section. If consent is not obtained, your attempt to obtain consent must be documented in the child's record. If consent is obtained, the information must be provided to the receiving placement or caregiver ~~[operation]~~ within 15 [30] days of the date the child is discharged.

(b) If not already provided at the time of discharge, copies [Copies] of the following documentation must be provided to the next placement or caregiver [information from the child's record must also be released with the discharge summary]:

(1) A written discharge summary, which must include:

(A) Services provided to the child while in your care;

(B) Accomplishments of the child while in your care;

(C) An assessment of the child's remaining needs;

(D) Recommendations about the services to meet the child's remaining needs;

(E) Support resources for the child, including telephone numbers and addresses; and

(F) Aftercare plans and recommendations for the child, including medical, psychiatric, psychological, dental, educational, and social appointments;

(2) [(4)] The child's background information, including progress notes for the past 60 days, if applicable;

(3) [(2)] Any unresolved incidents or investigations involving the child, if applicable; and

(4) [(3)] Assessments and/or evaluations that you have performed for the child, including the child's admission assessment, diagnostic assessment, educational assessment, neurological assessment, and psychiatric or psychological evaluation. [-]

[(4) The child's service plans while in your care for the past 12 months;]

[(5) A list of medications the child is taking, the dosage, frequency, and reason the medication was prescribed; and]

[(6) Any treatment for a physical condition that is in progress and requires continuing or follow-up medical care.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams

General Counsel

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For further information, please call: (512) 438-3437

◆ ◆ ◆
40 TAC §748.1441, §748.1445

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC §42.042.

§748.1441. *To whom do I provide a copy of the discharge summary when I discharge a child to his home?*

§748.1445. *What must I document in the child's record at the time of an emergency discharge or transfer?*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER J. CHILD CARE

DIVISION 1. DENTAL CARE

40 TAC §748.1501

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.1501. What general dental requirements must my operation meet?

- (a) (No change.)
- (b) The child's record must include a written record of each dental examination specifying the:
 - (1) - (4) (No change.)
 - (5) A copy of the results of the dental examination [~~that is signed and dated by the health-care professional who performed the examination~~].

(c) For a child in DFPS conservatorship, you must supplement any information already documented in the child's health passport in order to comply with subsection (b) of this section. In your written record for the child, you are not required to repeat information that is already in the child's health passport.

(d) [(e)] You must obtain follow-up dental work recommended by the dentist, such as treatment of cavities and cleaning.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 2. MEDICAL CARE

40 TAC §§748.1531, 748.1539, 748.1543, 748.1545

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which

provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§748.1531. What general medical requirements must my operation meet?

- (a) (No change.)
- (b) The child's record must include a written record of each medical examination specifying:
 - (1) - (4) (No change.)
 - (5) The results of the medical examination; [~~that is signed and dated by the health-care professional who performed the examination; and~~]
 - (6) If the medical examination is a result of an injury or medical incident, the documentation of the circumstances surrounding the incident, including the date and time of the incident; and [-]
 - (7) Any other documentation provided by the health-care professional who performed the examination.

(c) For a child in DFPS conservatorship, you must supplement any information already documented in the child's health passport in order to comply with subsection (b) of this section. In your written record for the child, you are not required to repeat information that is already in the child's health passport.

(d) [(e)] You must obtain follow-up medical treatment as recommended by the health-care professional.

§748.1539. What immunizations must a child in my care have?

- (a) (No change.)
- (b) You must maintain current immunizations records for each child in your care. For a child in DFPS conservatorship, documentation in the child's health passport is sufficient.
- (c) Unless the child is exempt from immunization requirements, all immunizations required for the child's age must:

(1) - (2) (No change.)

§748.1543. What documentation is acceptable for an immunization record?

- (a) (No change.)
- (b) Documentation of an immunization record on file at your operation may be:
 - (1) - (2) (No change.)
 - (3) An official immunization record generated from a state or local health authority, such as a registry; [ø]
 - (4) A record received from school officials, including a record from another state; or [-]
 - (5) The child's health passport, for a child in DFPS conservatorship.

§748.1545. Must children in my care have a vision and hearing screening?

(a) (No change.)

(b) For each child required to be screened, you must keep one of the following in each child's record:

(1) The individual vision and hearing screening results; however, results found in the child's health passport if the child is in DFPS conservatorship are sufficient to meet this requirement;

(2) - (3) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 3. COMMUNICABLE DISEASES

40 TAC §748.1583

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §42.042.

§748.1583. *Who must have a tuberculosis (TB) examination?*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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40 TAC §748.1583

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of

services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC §42.042.

§748.1583. *Who must have a tuberculosis (TB) examination?*

(a) All persons over the age of one year old must have a documented tuberculosis screening that was conducted as recommended by the Center for Disease Control, within 30 days before or after beginning to live, work, or volunteer at your operation unless the person:

(1) Has lived, worked, or volunteered at a regulated residential child-care operation within the previous 12 months. For example, an employee beginning employment in a regulated residential child-care operation for the first time would need a baseline tuberculosis screening. Employment in a different residential child-care operation would not require a new screening, as long as documentation in paragraph (2) of this subsection is also provided. If the employee left employment in regulated residential child-care for more than 12 months and then returned, a new screening would be required; and

(2) Provides documentation of a tuberculosis screening.

(b) Documentation must consist of a copy of the results of the baseline tuberculosis screening or chest radiograph, which must be in the person's record at your operation within 40 days of the person beginning to live, work, or volunteer at your operation. Documentation of a copy of the results of treatment (if treatment is required) must also be maintained in the person's record. For a child in DFPS conservatorship, documentation in the child's health passport is sufficient.

(c) Except on the advice of a physician, no additional screening is required for a person who continues to live, work, and/or volunteer in a regulated residential child-care setting.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 4. PROTECTIVE DEVICES

40 TAC §748.1611

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules

governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.1611. *What is a protective device?*

(a) (No change.)

(b) Examples of a protective device are helmets, elbow guards, mittens, [~~bedrails,~~] and wheelchair seat belts.

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 7. NUTRITION AND HYDRATION

40 TAC §748.1703

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.1703. *What are the requirements for daily menus?*

(a) - (c) (No change.)

(d) This rule does not apply to meals prepared and served in cottage homes.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 10. ADDITIONAL REQUIREMENTS FOR PREGNANT AND PARENTING CHILDREN

40 TAC §748.1821

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.1821. *What information must I provide a pregnant child regarding her pregnancy?*

You must:

(1) - (2) (No change.)

(3) Inform the child, within seven days of admission or upon learning of the pregnancy, of her right to be free from pressure to get an abortion, relinquish her child for adoption, or to parent her child.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER K. OPERATIONS THAT PROVIDE CARE FOR CHILDREN AND ADULTS

DIVISION 2. GENERAL REQUIREMENTS

40 TAC §§748.1931, 748.1933, 748.1937

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§748.1931. *After a child in my care turns 18 years old, may the person remain in my care?*

(a) A young adult may remain in your care until his 23rd birthday [up to the age of 22 years old] in order to:

(1) - (4) (No change.)

(b) (No change.)

§748.1933. *May I admit a young adult into care?*

(a) You [Yes, you] may admit a young adult into your transitional living program. [~~operation.~~]

(b) For other programs or services, the young adult must:

(1) Come immediately from [From] another residential child-care operation if the reason for admittance is consistent with a condition listed in §748.1931 of this title (relating to After a child in my care turns 18 years old, may the person remain in my care?); or

(2) Be [If the child is] in the care of the Texas Department of Family and Protective Services.

(c) A young adult may remain in your care until his 23rd birthday.

§748.1937. *May an adult in care [resident] share a bedroom with a child in care [resident]?*

[(a)] An adult in care [resident] may share a bedroom with a child in care [resident] if:

(1) A professional level service provider [The service planning team] determines there are no risks to either of them after assessing the following:

- (A) Their behaviors;
- (B) Their compatibility with each other;
- (C) Their respective relationships;
- (D) Any past history of sexual trauma or sexually inappropriate behavior; and
- (E) Appropriateness; and

(2) The assessment and approval by the professional level service provider is documented and dated in the child's record; and

(3) [(2)] Their age difference is less than two years.

[(b)] ~~The assessment and approval by the service planning team must be documented and dated in the child's record.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER L. MEDICATION

DIVISION 1. ADMINISTRATION OF MEDICATION

40 TAC §748.2003

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including

the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.2003. *What medication requirements must my operation meet?*

(a) (No change.)

(b) You must:

(1) - (3) (No change.)

(4) Administer each child's medication within one hour of [immediately after] preparation;

(5) - (7) (No change.)

(8) Not physically force a child to take prescription medication except as allowed by §748.2455(a)(2)(B) of this title (relating to What actions must a caregiver take before using a permitted type of emergency behavior intervention?);

(9) - (11) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 2. SELF-ADMINISTRATION OF MEDICATION

40 TAC §748.2051

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.2051. *What are the requirements for a self-medication program?*

For a child to be on a self-medication program:

(1) The child's parent [health-care professional] must give written authorization for the child to be on the program;

(2) (No change.)

(3) The health-care professional who prescribed the medication must be consulted, and any concerns of the health-care professional documented in the child's record. [You must notify the parent and the person legally authorized to give medical consent that the child is on the program.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 3. MEDICATION STORAGE AND DESTRUCTION

40 TAC §748.2101

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.2101. *What medication storage requirements must my operation meet?*

You must:

(1) - (3) (No change.)

(4) Store medication covered by Schedule [Section] II of the Texas Controlled Substances Act under double lock in a separate container. For example, a double lock can include a lock on the cabinet or filing cabinet and the door to the closet where medications are stored;

(5) Make provisions for [securely] storing medication that requires refrigeration;

(6) - (10) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 4. MEDICATION RECORDS

40 TAC §748.2151

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.2151. *What records must you [~~it~~] maintain for each child receiving medication?*

(a) You must maintain a cumulative record of all:

(1) Prescription [~~prescription~~] medication dispensed to each [a] child; and

(2) Nonprescription [~~all nonprescription~~] medication, excluding vitamins, dispensed to a child under five years old.

(b) You must maintain the medication record during the time that you provide services to the child. This record must include the:

(1) Child's full name;

(2) Prescribing health-care professional's name, if applicable;

(3) Reason medication was prescribed, for prescription medication;

(4) [~~(3)~~] Medication name, strength, and dosage;

(5) [~~(4)~~] Date (day, month, and year) and time the medication was administered;

(6) [~~(5)~~] Name and signature of the person who administered the medication;

(7) [~~(6)~~] Child's refusal to accept medication, if applicable; and

(8) [~~(7)~~] Reasons for administering the medication, including the specific symptoms, condition, and/or injuries of the child that you are treating, only for:

(A) PRN psychotropic medications; and

(B) Nonprescription [~~prescriptions and nonprescription~~] medications (excluding vitamins) for children under five years old. [~~and~~]

(c) [~~(8)~~] Unless you operate on a cottage home model, you must [Running] count [of] each [child's prescribed] medication prescribed to a child at least daily and document the count. The medication count must match the medication documentation.

(d) [~~(b)~~] Identification of any prohibited prescription medication, non-prescription medication, or vitamins for each child must be maintained in the medication record that must be incorporated into the child's record.

(e) [~~(e)~~] The medication records of prescription and applicable nonprescription medication dispensed to the child must be incorporated into the child's record.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER N. EMERGENCY BEHAVIOR INTERVENTION

DIVISION 1. DEFINITIONS

40 TAC §748.2401

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.2401. *What do certain words mean in this subchapter?*

These words have the following meaning in this subchapter:

(1) (No change.)

(2) De-escalation--See §748.43(13) [~~§748.43(12)~~] of this title (relating to What do certain words and terms mean in this chapter?).

(3) Emergency behavior intervention--See §748.43(17) [~~§748.43(16)~~] of this title.

(4) - (7) (No change.)

(8) PRN--See §748.43(38) [~~§748.43(35)~~] of this title.

(9) - (14) (No change.)

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DIVISION 2. TYPES OF EMERGENCY BEHAVIOR INTERVENTION THAT MAY BE ADMINISTERED

40 TAC §§748.2451, 748.2455, 748.2459

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§748.2451. *What types of emergency behavior intervention may I administer?*

(a) If permitted in your policies and you meet the requirements of this subchapter, you may administer the following types of emergency behavior intervention to a child in your care:

(1) - (3) (No change.)

(4) Seclusion:

(A) Only for children with emotional disorders or pervasive developmental disorders; and only if you provide treatment services to 30 [25] or more children with emotional disorders or pervasive developmental disorders, or if more than 50% [30%] of the children in your care receive treatment services for emotional disorders or pervasive developmental disorders. Seclusion is not permitted for children receiving therapeutic camp services; or

(B) (No change.)

(5) (No change.)

(b) - (c) (No change.)

§748.2455. *What actions must a caregiver take before using a permitted type of emergency behavior intervention?*

(a) Before using a permitted type of emergency behavior intervention, the caregiver must:

(1) Attempt less restrictive behavior interventions that prove to be ineffective at defusing the situation; and

(2) Determine that the basis for the emergency behavior intervention is:

(A) An emergency situation; or

(B) A need for a personal restraint to administer intramuscular medication or other medical treatments prescribed by a licensed physician, such as administering insulin to a child with diabetes, [~~;~~ ~~or~~]

~~[(C) A need for a personal restraint in a general residential operation where a child is significantly damaging property, such as breaking car windows or putting holes into walls. If this is the basis of the personal restraint, only a short personal restraint may be used and only to prevent the damage.]~~

(b) A child's active attempt to run away may be considered an emergency situation when the following is a factor:

- (1) The child is developmentally or chronologically under six years old;
- (2) The child is suicidal;
- (3) The operation is located near a high traffic area;
- (4) Adverse weather conditions pose a clear safety risk to the child; or
- (5) Other clear safety risks are present.

§748.2459. *What is the appropriate use for a short personal restraint?*

Generally, a short personal restraint is used in urgent situations, such as:

- (1) (No change.)
- (2) To intervene when a child under five years old (chronological or developmental age) demonstrates disruptive behavior, if other efforts to de-escalate the child's behavior have failed; [ø]
- (3) When a child over five years old demonstrates behavior disruptive to the environment or milieu, such as disrobing in public, provoking others that creates a safety risk, or to intervene to prevent a child from physically fighting; or[-]
- (4) When a child is significantly damaging property, such as breaking car windows or putting holes into walls.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 4. RESPONSIBILITIES DURING ADMINISTRATION OF ANY TYPE OF EMERGENCY BEHAVIOR INTERVENTION

40 TAC §748.2553

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.2553. *When must a caregiver release a child from an emergency behavior intervention?*

A child must be released as follows:
 Figure: 40 TAC §748.2553

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 5. ADDITIONAL RESPONSIBILITIES DURING ADMINISTRATION OF A PERSONAL RESTRAINT

40 TAC §748.2605

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.2605. *What personal restraint techniques are prohibited?*

- (a) (No change.)
- (b) Prone and supine restraints are prohibited except:
 - (1) - (3) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 7. ADDITIONAL RESPONSIBILITIES DURING ADMINISTRATION OF A MECHANICAL RESTRAINT

40 TAC §748.2705

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including

the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.2705. *What mechanical and other restraint devices are prohibited?*

The following must not be used as restraint devices:

(1) ~~[(a)]~~ Devices with metal wrist or ankle cuffs, such as handcuffs or shackles;

(2) ~~[(b)]~~ Devices with rubber bands, rope, or cord;

(3) ~~[(c)]~~ Devices with padlocks, key locks, or fastening devices;

(4) ~~[(d)]~~ Long ties, such as leashes;

(5) ~~[(e)]~~ Bed sheets or blankets; and

(6) ~~[(f)]~~ Veil beds. ~~[; and]~~

~~[(g)] Beds that have bedrails for the entire length of the bed, except for a child receiving primary medical needs and authorized by a physician.~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 8. SUCCESSIVE USE AND COMBINATIONS OF EMERGENCY BEHAVIOR INTERVENTION

40 TAC §748.2751, §748.2755

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§748.2751. *May a caregiver successively use emergency behavior interventions on a child?*

(a) A caregiver may successively use emergency behavior interventions on a child only if:

(1) - (2) (No change.)

(3) The following written orders are met:

(A) If the successive intervention is seclusion immediately following a personal restraint or mechanical restraint: the written order for the seclusion meets the requirements in Division 3 of this subchapter (relating to Orders) ~~[and permits]~~ and provides clinical justification for the use of the seclusion successive to a personal restraint or a mechanical restraint;

(B) If the successive intervention is a mechanical restraint immediately following a personal restraint or seclusion: the written order for the mechanical restraint meets the requirements in Division 3 of this subchapter and permits and provides clinical justification for the use of the mechanical restraint successive to a personal restraint or a seclusion; and

(C) If the successive intervention is a personal restraint immediately following a seclusion or a mechanical restraint: The professional ordering the seclusion or mechanical restraint must approve of and provide clinical justification for the successive use of the personal restraint in a written order. ~~[; and]~~

~~[(D)]~~ If the successive intervention is personal restraint immediately following another personal restraint, ~~[;]~~ the time spent in the personal restraints is cumulative and may not exceed the maximum length of time permitted.

(c) ~~[(b)]~~ A caregiver must allow the child:

(1) Bathroom privileges at least once every two hours;

(2) An opportunity to drink water at least once every two hours;

(3) Regularly prescribed medications unless otherwise ordered by the licensed physician;

(4) Regularly scheduled meals and snacks served in a safe and appropriate manner; and

(5) An environment that is adequately ventilated during warm weather, adequately heated during cold weather, appropriately lighted, and free of safety hazards.

§748.2755. *May a caregiver simultaneously implement mechanical restraint in combination with emergency medication?*

(a) (No change.)

(b) The written orders must include clinical justification for the combination of mechanical restraint with emergency medication that goes beyond the justification for the use of a single emergency behavior intervention. Clinical justification for the combination of mechanical restraint and emergency medication must be coordinated and provided by the licensed psychiatrist ordering the mechanical ~~[medical]~~ restraint and the licensed physician ordering the emergency medication, if they are different people.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 9. TIME RESTRICTIONS FOR EMERGENCY BEHAVIOR INTERVENTION

40 TAC §748.2807

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.2807. *May continuation orders be obtained verbally to exceed the maximum length of time that seclusion or mechanical restraint can be administered to a child?*

(a) Yes, if:

(1) (No change.)

(2) Verbal authorization is obtained before the end of the maximum length of time ~~[for seclusion]~~;

(3) - (4) (No change.)

(b) - (c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 10. GENERAL CAREGIVER RESPONSIBILITIES, INCLUDING DOCUMENTATION, AFTER THE ADMINISTRATION OF EMERGENCY BEHAVIOR INTERVENTION

40 TAC §748.2853, §748.2855

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules

governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§748.2853. *What must the caregiver document after discussing with the child the use of the emergency behavior intervention?*

The caregiver must document the following after discussing with the child the use of the emergency behavior intervention:

(1) ~~[(a)]~~ The date and time the caregiver offered the discussion;

(2) ~~[(b)]~~ The child's reaction to the opportunity for discussion;

(3) ~~[(c)]~~ The date and time the discussion took place, if applicable; and

(4) ~~[(d)]~~ The content of the discussion, if applicable.

§748.2855. *When must a caregiver document the use of an emergency behavior intervention, and what must the documentation include?*

(a) As soon as possible, but no later than 24 hours after the initiation of the intervention, the caregiver must document in the child's record the following information:

(1) (No change.)

~~[(2) The basis for the emergency behavior intervention;]~~

(2) ~~[(3)]~~ A description and assessment of the circumstances and specific behaviors that caused the basis for the emergency behavior intervention;

(3) ~~[(4)]~~ The de-escalation attempted before and during the use of the emergency behavior intervention and the child's reaction to those strategies;

(4) ~~[(5)]~~ The specific emergency behavior intervention administered;

(5) ~~[(6)]~~ The date and time the intervention was administered;

(6) ~~[(7)]~~ The length of time the child was restrained or secluded;

(7) ~~[(8)]~~ The name of the caregiver(s) that participated in the incident that led to the intervention, and who administered the intervention;

(8) ~~[(9)]~~ The name of the person(s) who observed the child;

~~[(10) The duration of the emergency behavior intervention;]~~

(9) ~~[(11)]~~ All attempts to explain to the child what behaviors were necessary for release from the intervention;

(10) ~~[(12)]~~ The child's condition following the use of the medication or release from the intervention, including any injury the child sustained as a result of the intervention or any adverse effects caused by the use of the intervention; and

(11) ~~[(13)]~~ The actions the caregiver(s) took to facilitate the child's return to normal activities following the end of the intervention.

(b) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER O. SAFETY AND
EMERGENCY PRACTICES
DIVISION 1. SANITATION AND HEALTH
PRACTICES

40 TAC §748.3009, §748.3017

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§748.3009. How should items be sanitized?

Items may be sanitized by:

(1) Completing the four-step process outlined in the definition in ~~§748.43(41)~~ [~~§748.43(38)~~] of this title (relating to What do certain words and terms mean in this chapter?);

(2) - (4) (No change.)

§748.3017. Are animals allowed at my operation?

(a) Yes; if:

~~[(1) You keep the operation and premises free of stray animals.]~~

~~[(2) You do not allow children to play with stray animals or other animals that could be dangerous.]~~

~~[(1) [(3)] You have documentation at your operation showing dogs, cats, and ferrets have been vaccinated as required by Texas Health and Safety Code, Chapter 826; and [-]~~

~~[(2) [(4)] All animals on the premises, including pets and livestock, are treated according to a licensed veterinarian's recommendations to protect the health and safety of children. If you choose to have animals on the premises, you must ensure that the animals do not create health problems or a health risk for children.~~

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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40 TAC §748.3011

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §42.042.

§748.3011. When must employees and children wash their hands?

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 3. FIRE SAFETY PRACTICES

40 TAC §748.3117

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.3117. How often must the state or local fire inspector inspect fire extinguisher(s)?

(a) (No change.)

(b) You must keep documentation of the inspection and/or the purchase of new fire extinguishers at the operation for review. The doc-

umentation must indicate the date of the inspection and the inspector's name and telephone number.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 4. HEATING DEVICES

40 TAC §748.3161

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.3161. *What steps must I take to ensure that heating devices do not present hazards to children?*

(a) Gas appliances must be safe and in good repair [~~have metal tubing and connections, be in good repair, and free from leaks~~].

(b) Space heaters must be enclosed and have a screen or guard [~~have the seal of approval of a United States test laboratory or be approved by the state or local fire inspector~~].

(c) You must ensure that children do not have access to [~~safe-guard~~] floor and wall furnace grates, steam and hot water pipes, and electric space heaters [~~; so children do not have access to them~~].

~~[(d) Gas fuel heaters, fireplaces, and wood-burning stoves must be properly vented to the outside.]~~

~~[(d) [(e)] If you use a fireplace[;] or wood-burning stove, it must be kept clean and have a screen or guard [or space heater, you must install a screen or guard with sufficient strength to prevent children from falling into the fire or against the stove or heater].~~

~~[(e) You may not use a stove to heat any part of the operation, including portable camp stoves.~~

~~[(f) You may not use open flame or liquid fuel heaters.~~

~~[(f) You must keep fireplaces and wood-burning stoves clean.]~~

~~[(g) You may not use any of the following in your operation:]~~

~~[(1) Stoves, including portable camp stoves, used to heat any part of the operation;]~~

~~[(2) Open flame heaters (heaters where the flame can be easily touched or accessed); or]~~

~~[(3) Liquid fuel heaters.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER P. PHYSICAL SITE

DIVISION 2. INTERIOR SPACE

40 TAC §§748.3361, 748.3363, 748.3365

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§748.3361. *May a child in care share a bedroom with an adult?*

(a) - (b) (No change.)

(c) To determine whether a child should share a bedroom with an adult resident, see §748.1937 of this title (relating to May an adult in care [~~resident~~] share a bedroom with a child in care [~~resident~~]?).

~~[(d) Children may not sleep in the same bed with an adult caregiver at any time.~~

~~[(e) [(d)] Subsections (a) - (c) of this section do [This rule does] not apply to travel and camping situations.~~

§748.3363. *May [~~Can~~] children of opposite genders [~~the other gender~~] share a bedroom?*

(a) A child six years old or older must [~~may~~] not share a bedroom with a child [~~person~~] of the opposite [~~other~~] gender. Prior to permitting a child under six years old to share a bedroom with a child [~~person~~] of the opposite [~~other~~] gender, the service planning team must assess:

(1) What is in the best interest of each [~~the~~] child;

(2) The history of these children [~~persons~~] for possible sexual abuse and/or sexual behavior problems; and

(3) (No change.)

(b) The assessment and approval by the service planning team must be documented and dated in each [~~the~~] child's record.

§748.3365. *What are the requirements for beds and bedding?*

(a) You must provide each child with an [~~]~~

~~[(+)] [An] individual bed or bunk bed. For [; for] infants and toddlers, a crib is allowable. For crib requirements, see §748.1751~~

of this title (relating to What specific safety requirements must my cribs meet?). [;] Each bed being used by a child must have:

- (1) [~~2~~] A clean and comfortable mattress;
 - (2) [~~3~~] A mattress cover or protector [~~if the child is not provided with a mattress that is waterproof or washable~~];
 - (3) [~~4~~] A pillow and bed linens appropriate for the temperature, including a pillowcase, top sheet, and fitted or bottom sheet;
 - (4) [~~5~~] Extra linens as needed for the child's warmth and comfort, such as a blanket or bedspread; and
 - (5) [~~6~~] Clean bed linens that are changed or laundered if used by a different child and as often as needed for cleanliness and sanitation, but not less than once a week.
- (b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 3. TOILET AND BATH FACILITIES

40 TAC §748.3393

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.3393. *What are the requirements for a toilet that a child uses?*

(a) Your operation must dispose of wastewater into a sanitary sewage system, or an approved septic system in accordance with the Texas Commission on Environmental Quality, and submit to [includ- ing] any routine inspections required by law.

(b) - (f) (No change.)

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DIVISION 5. FOOD PREPARATION, STORAGE, AND EQUIPMENT

40 TAC §§748.3441, 748.3443, 748.3445

The amendments and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new section implement HRC §42.042.

§748.3441. *What general requirements apply to food service and preparation?*

(a) - (s) (No change.)

(t) This rule does not apply to cottage homes.

§748.3443. *What are the requirements for storing food?*

(a) - (b) (No change.)

(c) Subsection (b) of this section does not apply to cottage homes.

§748.3445. *How must kitchen, dining areas, supplies, and equipment be maintained in a cottage home?*

(a) All food and drinks must be of safe quality and must be stored, prepared, and served under sanitary and safe conditions.

(b) You must keep furniture, equipment, food contact surfaces, and other areas where food is prepared, eaten, or stored clean and in good repair.

(c) Persons who handle food and/or eating utensils for the group must:

(1) Maintain personal cleanliness;

(2) Keep hands clean at all times;

(3) Be free of infections commonly transmitted through the handling of food or drink and free of communicable diseases; and

(4) Minimize food contamination through the use of utensils.

(d) Food must be protected from contamination.

(e) When you serve an infant or toddler:

(1) If the child is capable of sitting up, you must serve food on plates, napkins, or other sanitary holders, such as a high chair tray; and

(2) You must not serve food that presents a risk of choking.

(f) Utensils and containers intended for one-time use, such as paper and plastic dishes, must not be used more than once.

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DIVISION 6. PLAY EQUIPMENT AND SAFETY REQUIREMENTS

40 TAC §748.3471, §748.3475

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§748.3471. What are the minimum safety requirements for outdoor equipment?

You must ensure that outdoor equipment and supplies ~~[used both]~~ [and away from] the operation are safe for the children as follows:

- (1) The outdoor activity space must be arranged, so caregivers can adequately supervise children at all times; [-]
- (2) The design, scale, and location of the equipment must be appropriate for the body size and ability of the children using the equipment; [-]
- (3) Equipment must not have openings that can entrap a child's body or body part that has penetrated the opening; [-]
- (4) Equipment must not have protrusions or openings that can entangle something around a child's neck or a child's clothing; [-]
- (5) Equipment must be securely anchored according to manufacturer's specifications to prevent collapsing, tipping, sliding, moving, or overturning; [-]
- (6) All anchoring devices must be placed below the level of the playing surface to prevent tripping or injury resulting from a fall; [-]
- (7) Equipment must not have exposed pinch, crush, or shear points on or underneath it; [-]
- (8) You must not install climbing equipment, swings, or slides over asphalt or concrete, unless the asphalt or concrete is covered with properly installed unitary surfacing materials as specified in this subchapter; [-]
- (9) Outdoor platforms more than 20 inches in height for children five years old and younger, and more than 30 inches in height for school-age children, must be equipped with guardrails that surround

the elevated surface, except for entrances and exits, and that prevent children from crawling over or through the guardrail; [-]

(10) The height of the highest play surface or platform cannot be more than eight feet; and [-]

(11) (No change.)

~~{(12) Bounce houses are permitted if used by no more than one child at a time.}~~

§748.3475. What special maintenance procedures must I follow for my playground?

(a) Your administrator or designee must inspect the playground weekly ~~[daily]~~ to ensure no hazards are present. Your administrator or designee must inspect the equipment and surfacing material for:

(1) - (5) (No change.)

(b) (No change.)

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DIVISION 9. SWIMMING POOLS, WADING/SPLASHING POOLS, AND HOT TUBS

40 TAC §748.3607

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.3607. What are the requirements for a hot tub?

A hot tub must be:

(1) Enclosed per the requirements in §748.3603 of this title (relating to What are the additional requirements for a swimming pool located at my operation?); or

(2) Covered ~~[ecovered]~~ with a locking cover when not in use.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams

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SUBCHAPTER Q. RECREATION ACTIVITIES DIVISION 1. GENERAL REQUIREMENTS

40 TAC §748.3713

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.3713. *What duties are required for a person supervising higher risk recreational activities?*

A person supervising higher risk recreational activities must:

(1) (No change.)

(2) Facilitate training or experience for other persons working in the activity to prepare them for foreseeable risks; ~~[that may include:]~~

~~[(A) Sunstroke, sunburn, dehydration, hypothermia, frostbite, and snow blindness, as appropriate to the type of activity and weather conditions; and]~~

~~[(B) Dangerous plants, animals, situations, or other hazards that may be associated with the higher risk activities or locations;]~~

(3) - (5) (No change.)

(6) Ensure there is a first-aid kit located at the site of the activity that contains appropriate and sufficient equipment for the type of activity and number of participants; ~~[-]~~

~~[(A) Relevant to the type of injuries that might be sustained in the specific activity; and]~~

~~[(B) Adequate for the number of participants, the terrain, and the length of the activity;]~~

(7) Obtain information [an up-to-date report] on weather and travel conditions ~~[from an official source]~~ before a trip or activity that is outdoors;

~~[(8) Ensure that environmental hazards are not severe enough to cause danger to participants;]~~

(8) ~~[(9)]~~ Develop a written plan for action in case of emergencies [natural disasters] relevant to the terrain and activity, including lost participants, injuries, and illnesses and communicate the plan to other persons working on the activity;

(9) ~~[(10)]~~ Consider each participant's age, physical condition, and experience, as well as the season and weather trends;

(10) ~~[(11)]~~ Ensure that [any] risk factors [involved in a higher risk activity] are explained to the child prior [as part of the orientation] to the activity, and that the child has an opportunity to decline participation[-]. The child must then have the opportunity to decline his participation in that specific activity. In the case of an activity with extreme risks, the parent must be advised and have the opportunity to refuse his child's participation]; and

(11) ~~[(12)]~~ Instruct [Must instruct] children on the safety precautions and proper use of relevant items or animals. This must be done before access to the item or animal is allowed.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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40 TAC §748.3715, §748.3717

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC §42.042.

§748.3715. *Where must the written plan for action be kept?*

§748.3717. *What instruction must a caregiver have regarding the plan for action?*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 2. SWIMMING ACTIVITIES

40 TAC §§748.3751, 748.3759, 748.3763, 748.3765

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§748.3751. Must a certified lifeguard be on duty during a swimming [an] activity [involving a body of water]?

(a) A certified lifeguard must supervise children at all times during a swimming [an] activity involving a body of water two feet deep or more which occurs at your operation.

(b) At all times during a swimming activity involving a body of water two feet deep or more which occurs away from your operation:

(1) If there are six or fewer children participating in the swimming activity, at least one adult counted in the swimming child/adult ratio must be able to swim or must be trained to carry out a water rescue; and

(2) If more than six children are participating in the swimming activity, a certified lifeguard must also be on duty.

~~[(b) You do not need to provide a lifeguard when you are:]~~

~~[(1) Using a public pool for which you are not responsible and the pool provides a qualified lifeguard; or]~~

~~[(2) Involved in watercraft activities, however you must comply with the requirements in Division 3 of this subchapter (relating to Watercraft Activities).]~~

(c) A child in your care who is a certified lifeguard may act as the lifeguard if he is:

(1) At least 16 years old; and

(2) Not counted as an adult or caregiver in the required child/adult swimming ratio.

§748.3759. May I count the certified lifeguard in the swimming child/adult ratio?

A lifeguard who is supervising the area where the children are swimming may be counted in the child/adult ratio except as specified in §748.3751(c) of this title (relating to Must a certified lifeguard be on duty during a swimming activity?).

~~[(a) You must not count the certified lifeguard in the swimming child/adult ratio when people other than the children from your operation are swimming.]~~

~~[(b) [If only children from your operation are swimming, you may count the certified lifeguard in the swimming child/adult ratio. However, the] The lifeguard must never be left alone with any of the children unless the lifeguard is also a qualified caregiver for your operation.~~

§748.3763. May I include volunteers or employees who do not meet minimum qualifications for caregivers in the swimming child/adult ratio?

~~[Children in your care must never supervise water activities.] To meet the swimming child/adult ratio [for water activities], you may include adult volunteers and employees of the operation who do not meet the minimum qualifications for caregivers, providing you:~~

~~(1) - (2) (No change.)~~

§748.3765. What are the requirements for a child's access to a body of water?

~~(a) - (b) (No change.)~~

~~(c) If you allow a child to swim in a body of water:~~

~~(1) - (2) (No change.)~~

~~(3) If more than six children are participating in the activity, you [You] must have life-saving equipment present at all times that is sufficient to reach and rescue the child, such as a safety throw bag with a brightly colored 50-foot buoyant rope or a rescue boat equipped with a reach pole and a buoy.~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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40 TAC §748.3761

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §42.042.

§748.3761. Must persons who are counted in the swimming child/adult ratio know how to swim and carry out a water rescue?

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 3. WATERCRAFT ACTIVITIES

40 TAC §748.3801, §748.3803

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§748.3801. *What watercraft activities do the rules of this division apply to?*

The rules of this division apply to water activities:

(1) In which more than six children participate; and

(2) That involve ~~involving~~ boats, canoes, kayaks, sailboats, rafts, jet skis, or ~~and~~ inflatable tubes.

§748.3803. *What are the requirements for watercraft activities?*

(a) A non-swimmer must wear[-]

~~[(1)]~~ ~~[Wear]~~ a life vest; ~~and~~

~~[(2)]~~ ~~With the exception of inflatable tubes, not be in a watercraft without an adult.~~

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 4. WILDERNESS HIKING AND CAMPING EXCURSIONS

40 TAC §748.3841, §748.3845

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including

the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§748.3841. *What are the requirements for hiking or camping excursions?*

When you participate in a hiking or camping activity in an area unfamiliar to the participating adults, and the hiking activity lasts more than two hours:

(1) The person qualified to supervise the hiking or camping excursion must consider the following when selecting the area for hiking or camping:

(A) - (B) (No change.)

(C) Water quality and quantity; [-]

(2) The person qualified to supervise the hiking or camping excursion must have ~~some verifiable~~ experience leading a group in hiking or camping at the elevation, terrain, and climate where the activity is to take place; [-]

(3) Before participation, the caregivers and children must receive instruction on:

(A) - (D) (No change.)

(E) Fire risks; [-]

(4) The emergency medical care consent forms must be readily accessible to the caregivers accompanying them; [-]

(5) Caregivers participating in the hiking or camping activity must regularly monitor and care for the health and safety of children; and [-]

(6) (No change.)

§748.3845. *What type of itinerary must I have for hiking or ~~[-]~~ camping excursions ~~[- or field trips]~~?*

(a) For hiking or [-] camping excursions ~~[- or field trips]~~ that last for over five hours, you must have an ~~a day-to-day~~ itinerary prepared prior to departure, including the:

(1) - (3) (No change.)

(b) For hiking or [-] camping excursions ~~[- or field trips]~~ that last overnight, each point of the itinerary must also identify:

(1) - (3) (No change.)

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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40 TAC §748.3859

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §42.042.

§748.3859. *How must I maintain equipment or chemicals used for disinfecting water?*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 6. WEAPONS, FIREARMS, EXPLOSIVE MATERIALS, AND PROJECTILES

40 TAC §748.3931

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.3931. *Are weapons, firearms, explosive materials, and projectiles permitted at my operation?*

Generally, weapons, firearms, explosive materials, and projectiles (such as darts or arrows), are permitted, however, there are some specific restrictions:

(1) - (2) (No change.)

(3) If you allow weapons, firearms, explosive materials, projectiles, or toys that explode or shoot, you must ~~develop policies identifying specific precautions to~~ ensure children do not have unsupervised access to them by implementing specific precautions outlined

in your policies, including locked storage and separate locked storage for the weapons and ammunition;

(4) - (5) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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40 TAC §748.3937

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The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §42.042.

§748.3937. *What are the requirements for recreational archery?*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER S. ADDITIONAL REQUIREMENTS FOR OPERATIONS THAT PROVIDE EMERGENCY CARE SERVICES
DIVISION 2. ADMISSION ASSESSMENT

40 TAC §748.4231

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of

services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.4231. *What information must an admission assessment include for a child needing emergency care services, including respite child-care services?*

(a) An admission assessment must provide an initial evaluation of the appropriate placement of the child and must include:

(1) - (3) (No change.)

(4) A description of the child's condition as observed by the intake worker; and

(5) Only for emergency care services:

(A) ~~[(4)]~~ The reason for emergency placement;

~~[(5)] A description of the child's condition as observed by the intake worker;~~

(B) ~~[(6)]~~ The child's understanding of the need for emergency care services; and

(C) ~~[(7)]~~ The child's feelings about the crisis situation and operation care.

(b) You must also obtain the following information as soon as possible after admission:

(1) The child's identity, date of birth, and as applicable any additional information needed to determine the child's ability to consent to emergency care services for the child or the child's offspring. To consent to services, the child must be:

(A) - (C) (No change.)

(2) - (5) (No change.)

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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**SUBCHAPTER T. ADDITIONAL
REQUIREMENTS FOR OPERATIONS
THAT PROVIDE AN ASSESSMENT SERVICES
PROGRAM
DIVISION 4. ASSESSMENT REPORT
40 TAC §748.4393**

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.4393. *When must I complete the assessment report?*

(a) The ~~[admission]~~ assessment report must be completed ~~[conducted]~~ rapidly, consistent with good practice, in order to allow for a permanent placement as soon as possible.

(b) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 749. CHILD-PLACING AGENCIES

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§749.43, 749.61, 749.101, 749.103, 749.105, 749.163, 749.303, 749.333, 749.341, 749.347, 749.423, 749.503, 749.505, 749.507, 749.511, 749.551, 749.553, 749.571, 749.577, 749.585, 749.587, 749.607, 749.631, 749.633, 749.663, 749.669, 749.673, 749.675, 749.761, 749.863, 749.931, 749.933, 749.935, 749.939, 749.941, 749.945, 749.947, 749.949, 749.1003, 749.1011, 749.1013, 749.1101, 749.1103, 749.1105, 749.1107, 749.1111, 749.1135, 749.1151, 749.1153, 749.1187, 749.1189, 749.1281, 749.1309, 749.1335, 749.1361, 749.1373, 749.1401, 749.1409, 749.1415, 749.1421, 749.1425, 749.1427, 749.1463, 749.1501, 749.1521, 749.1541, 749.1543, 749.1641, 749.1803, 749.1813, 749.1815, 749.1819, 749.1841, 749.1861, 749.1891, 749.2001, 749.2055, 749.2059, 749.2153, 749.2301, 749.2303, 749.2305, 749.2451, 749.2471, 749.2491, 749.2493, 749.2521, 749.2551, 749.2557, 749.2563, 749.2565, 749.2567, 749.2593, 749.2599, 749.2629, 749.2635, 749.2803, 749.2807, 749.2815, 749.2905, 749.2913, 749.2915, 749.2917, 749.2961, 749.3023, 749.3025, 749.3027, 749.3029, 749.3031, 749.3039, 749.3041, 749.3079, 749.3107, 749.3133, 749.3135, 749.3137, 749.3139, 749.3147, 749.3301, 749.3341, 749.3343, 749.3349, 749.3373, 749.3425, 749.3503, 749.3621, 749.3623, 749.3627, 749.3691, 749.3725, 749.3727, and 749.3893; the repeal of §§749.165, 749.665, 749.1371, 749.1375, 749.1379, 749.1417, 749.1817, 749.2441, 749.2443, 749.2559, 749.2903, 749.3347, 749.3429, 749.3633, 749.3693, 749.3741, and 749.3761; and new §§749.305, 749.307, 749.554, 749.681, 749.951, 749.991, 749.1291,

749.1371, 749.1417, 749.2407, 749.2453, 749.2488, 749.2902, 749.2903, 749.2904, 749.3375, 749.3633, 749.3635, 749.3637, 749.3741, 749.3743, 749.3745, 749.3747, 749.3749, 749.3751, 749.3753, 749.3771, and 749.3781, in its Child-Placing Agencies chapter.

This chapter was effective January 1, 2007. Since three years have passed since this complete overhaul of the residential child care minimum standards, Child Care Licensing (CCL) has recently made an effort to: (1) identify minimum standards that require clarification; (2) identify minimum standards that are not having the intended outcome; and (3) identify unintended consequences of minimum standards. To initiate this evaluation process, CCL posted an online survey open to residential child care operations and other stakeholders, including foster parents and CCL field staff. CCL also hosted regional public meetings, during which operations and stakeholders could offer verbal comments/suggestions. CCL also hosted temporary workgroups through the Committee on Licensing Standards in order to seek input and guidance from operations and other stakeholders. While the majority of the proposed revisions clarify requirements or modify them based on stakeholder input, a few also implement changes in the law from the 81st Legislative Session: (1) Senate Bill (SB) 68 replaced the term "child care institution" with the term "general residential operation;" (2) House Bill 1912 relates to assisting children in residential child care to transition successfully to independent living; and (3) HB 3137 relates to foster parent rights. A summary of the changes is described below.

Section §749.43 lists the definitions for this chapter. The revision adds definitions for high-risk behavior, parent, and participant and clarifies several definitions already included in the rule.

Section 748.61 clarifies the description of a child requiring treatment services for an emotional disorder. Self-harm is currently referenced twice in the description, so one of the references is deleted.

Section 749.101 requires a child-placing agency to keep Licensing informed of the hours of operation for each agency main or branch office of the agency.

Section 749.103 requires that the agency follow its own policies. The revision clarifies that Licensing only intends to enforce an agency operating according to its policies required by this chapter, as opposed to any and all of the agency's policies. One revision provides consistency with the companion rule in Chapter 748, General Residential Operations, by requiring an agency to observe the conditions "and restrictions" of the license. Another revision specifies the time frame for notifying Licensing of changes to the hours of operation for a main or branch office of the agency.

Section 749.105 adds the requirement that an employee must report suspected abuse, neglect, or exploitation directly to DFPS per Texas Family Code (TFC) §261.101(b).

Section 749.163 lists the fiscal requirements for an agency. Currently §749.165 requires an annual professional audit. However, agencies regulated under this chapter have continually expressed concern that financial audits are very costly and that the rule is not clear regarding what type of audit is required, who must conduct the audit, etc. Therefore, the proposal gives the option for an annual, independent review of financial records or proof that the agency has at least three months of reserve funds (based on their operating expenses). As a result Also, §749.165 is repealed.

Section 749.303 simplifies what an agency must document when updating the written professional staffing plan before opening a branch office by deleting specific documentation elements and, instead, requiring that the plan include information on how specific staff positions will supervise services provided by that office.

New §749.305 is proposed in concert with the deletion of §749.2441, which currently requires agencies to have a separate license in each DFPS region in which they operate. This new proposed rule offers agencies two options for compliance. For each DFPS region or within 150 miles of each verified foster home, the agency can either have an office, Licensing Administrator, and treatment director (if applicable) OR comply with certain caseload requirements. To be consistent with the grandfather clause currently in §749.2441, the rule gives agencies licensed before January 1, 2007, until January 1, 2012, to comply. Section 749.2443 is repealed also, because it is no longer needed.

New §749.307 outlines requirements for how foster homes verified by an agency's branch office can transfer to the main or another branch office of the agency. Transfers related to a Licensing remedial action require an update to the foster home study and a new verification for each foster home, whereas other transfers do not require these steps.

Section 749.333 reorganizes admission policies to make them easier to understand, but no requirements are added or deleted.

Section 749.341 makes the emergency behavior intervention policy requirements for orientation upon admission consistent with other orientation requirements in this chapter.

Section 749.347 lists the rights and responsibilities of the agency and foster parents. The revisions are primarily related to the requirements in HB 3137 (81st Legislature). One revision deletes a section which is repetitive of another section. There are two additions, one regarding a foster parent's right to review their record and another regarding both the agency and foster parents' responsibility for complying with minimum standards. Finally, an addition requires the agency to share with foster parents the policy regarding rights and responsibilities at the time the foster home is verified.

Section 749.503, which lists the serious incident reporting requirements: (1) changes "critical injury or illness" to "serious injury or illness," to more accurately reflect the nature of the reporting requirement; (2) clarifies that tickets issued to children at school are not reportable, nor are any law enforcement citations that do not result in the child being detained (such as a traffic ticket); and (3) reiterates HRC §42.063(e), which requires foster parents to report serious incidents directly to DFPS.

Section 749.505 clarifies the definition of suicide attempt as not including suicidal thoughts or gestures.

Section 749.507 deletes the requirement to report to Licensing when a foster home adds a swimming pool or other permanent body of water to their property.

Section 749.511 adds the requirement that the name of the adoptive home must be included in serious incident documentation.

Section 749.551 clarifies that personnel records maintained by the agency may include electronic records.

Section 749.553, which lists the information that must be included in a personnel record, adds clarifying language regarding documentation of background checks.

New §749.554 clarifies that background check results are, by law, confidential and must be protected from unauthorized access or release.

Section 749.571 clarifies that client records may include electronic records maintained by the operation.

Section 749.577 clarifies that a notation of "no known allergies" must be documented rather than simply omitting allergy information from a child's record.

Section 749.585 clarifies that a child's record only needs to be maintained due to an unresolved investigation if the investigation involves the child (rather than any investigation of an incident that occurred while the child was at the operation).

Section 749.587 adds a requirement to inform Licensing in writing if an adoption agency that ceases to operate transfers adoption records to the Bureau of Vital Statistics.

Section 749.607: (1) clarifies that the subsection on "competency, prudent judgment, and self-control" will only be cited by Licensing when no other, more specific minimum standard addresses the nature of the situation; (2) clarifies that employees are only responsible for knowing the law and rules that are relevant to their duties, not every law and rule relevant to the operation as a whole; and (3) adds caregivers to the body of the rule, as they are currently only included in the question portion of the rule.

Section 749.631: (1) adds a requirement that the administrator be present at a Texas office of the agency in order to provide appropriate oversight; and (2) clarifies that an administrator for two operations must split a full-time schedule between the operations as described in the professional staffing plans for both operations.

Section 749.633 eliminates the requirement to identify a separate administrator for an assessment services program at the agency.

Section 749.663: (1) adds duties for child placement staff for a supervised independent living program, such as assisting residents to access resources; and (2) clarifies what activities child placement staff are responsible for when providing foster care services, adoption services, or supervised independent living services.

Section 749.665 is repealed and moved to Subchapter H, Foster Care Services: Admission and Placement, of this chapter.

Section 749.669 changes the timeframe for imposing restrictions not approved by the treatment director or service planning team from seven days to 30 days. This change is consistent with the time frames already set in §749.1959 for using restrictions as discipline.

Sections 749.673 and 749.675: (1) simplify and clarify the professional qualifications by changing the requirement from working in an agency "under the direct supervision of a person fully qualified to conduct child placement management activities" to working in an agency "conducting child-placing activities;" and (2) address how staff who are exclusively providing supervised independent living services may meet different minimum qualifications.

New §749.681 duplicates the content of §745.4041, which is repealed in this issue of the *Texas Register* and added here. This rule outlines ethical requirements the agency must follow when conducting a foster home screening, a pre-adoptive home

screening, or a post-placement adoptive report. Requirements include not having a conflict of interest with any party in a disputed suit; making a report to Licensing any foster or adoptive placement that has been made by anyone other than the child's parents or a child-placing agency; and refraining from making a custody recommendation if the agency has only investigated one side of a disputed case.

Section 749.761 clarifies that an internal abuse/neglect reporting policy may not require the delegation of the person's responsibility to report suspected abuse/neglect directly to DFPS.

Section 749.863, which outlines the pre-service training requirements for caregivers and professional staff: (1) exempts caregivers providing care only for children receiving treatment services for primary medical needs from the requirement to receive pre-service emergency behavior intervention (EBI) training. EBI is not used with children who have primary medical needs, so there is no reason to require the training; (2) allows professional staff 90 days (after beginning job duties) to complete EBI training, and allows caregivers to complete half of the required EBI training before beginning job duties and the other half within 90 days of being responsible for a child in care. Agencies requested this additional time to train staff, as some may be new to residential child care and may not have a frame of reference for training on this type of crisis management. (Note that other rules in this chapter require a person to be qualified in EBI before performing a restraint, except short personal restraint. So, this flexibility in obtaining the required training should not put children at risk.); and (3) exempts professional staff from pre-service EBI training if they are exclusively working with children who have primary medical needs, participants of a supervised independent living program, or clients in an adoption program.

Section 749.931, which outlines the annual training requirements for caregivers and professional staff: (1) exempts caregivers providing care only for children receiving treatment services for primary medical needs from the requirement to receive annual emergency behavior intervention (EBI) training. EBI is not used with children who have primary medical needs, so there is no reason to require the training; (2) deletes child-placing agency administrators from the section on unlicensed staff, since these persons are all licensed; and (3) exempts professional staff from EBI training if they are exclusively working with children who have primary medical needs, participants of a supervised independent living program, or clients in an adoption program.

Section 749.933 clarifies that the operation has the option to track annual training based on either the calendar year or each person's date of employment, and that the method chosen must be consistent throughout the operation.

Section 749.935 clarifies that three college credit hours are considered equivalent to 50 clock hours of required training, but may not be substituted for CPR certification, first-aid certification, or required annual training on emergency behavior intervention or psychotropic medication.

Section 749.939 clarifies that only certain pre-service training requirements also apply to annual training. For example, pre-service training must be instructor led, but a portion of annual training may be self-instructional.

Section 749.941 clarifies that the subjects listed are examples of annual training. The agency is not specifically required to cover each of these topics each year.

Sections 749.945 and 749.947 clarify that the annual training for psychotropic medication and emergency behavior intervention must be obtained every 12 months (not, for example, January of one calendar year and December of the next calendar year).

Section 749.949 clarifies that a transcript from an accredited college or university may serve as documentation of required annual training.

New §749.951 allows specific exceptions to annual training requirements for a caregiver who is absent from the home on an extended basis for military service or as a condition of employment.

Section 749.1003 adds "the right to appropriate equipment and supplies" for hygiene and personal care and "reasonable opportunities to select (the child's own) clothing" to child rights. These revisions are consistent with requirements already in Chapter 748.

Section 749.1011 clarifies that requirements related to contact restrictions with siblings apply only to restrictions imposed by the agency. For example, the requirements do not apply to restrictions imposed by the court or the child's parent.

Section 749.1013 clarifies that requirements related to contact restrictions with others apply only to restrictions imposed by the agency. For example, the requirements do not apply to restrictions imposed by the court or the child's parent.

Section 749.1101: (1) adds that young adults admitted for foster care must meet the agency's admission policies; and (2) deletes two requirements that are repetitive of other rules.

Section 749.1103 clarifies that "up to the age of 22 years old" means up to the person's 23rd birthday (not the 22nd birthday).

Section 749.1105 when a young adult may be admitted into care. The rule currently requires that a young adult come from another residential child care operation or be in the care of DFPS. The revisions: (1) allow any young adult to be admitted for transitional living or supervised independent living (regardless of previous living situation or DFPS involvement); and (2) specify that a young adult may remain in care until his 23rd birthday.

Section 749.1107 specifies that at admission the agency must identify a child's high risk behaviors, if applicable, and the safety plan that will be implemented related to the behaviors.

Section 749.1111 lists the orientation requirements for a newly admitted child. The revision: (1) requires the orientation only for a child five years old or older, deleting the current requirement for a partial orientation for children "above toddler age and below school age;" and adds a required review of the child's input on preferred de-escalation techniques, consistent with §749.341.

Section 749.1135 clarifies that any required psychiatric assessment or evaluation must be completed prior to admission of children who need treatment services.

Section 749.1151: (1) clarifies that a CPS child's health passport may serve as sufficient documentation of a recent medical exam; (2) deletes the requirement for a health-care professional's signature on the exam results, as agencies have expressed concern that health care professionals are often unwilling or reluctant to sign exam forms; and (3) clarifies documentation requirements for the exam.

Section 749.1153: (1) clarifies that a CPS child's health passport may serve as sufficient documentation of a recent dental exam; (2) deletes the requirement for a dentist's signature on the exam

results, as agencies have expressed concern that dentists are often unwilling or reluctant to sign exam forms; and (3) clarifies documentation requirements for the exam.

Section 749.1189 specifies that at the time of an emergency admission, the operation must identify a child's high-risk behaviors, if applicable, the safety plan that will be implemented related to the behaviors, and document this information in the child's record.

New §749.1291 contains information that was previously in §749.665.

Section 749.1309, regarding service planning requirements: (1) corrects an error by changing the requirement of planning for trips "away from the agency" to planning for trips "away from the foster home;" (2) adds experiential life-skills training requirements consistent with HB 1912 of the 81st Legislature; and (3) corrects a grammatical error.

Section 749.1335 adds "and caregivers" to the requirement that the agency must instruct employees on any new needs, and strategies or techniques to meet those needs, identified for a foster child as part of the service planning review and update.

Section 749.1361 clarifies the definition of a "transfer" by adding examples.

Section 749.1371 outlines what must be documented in a child's record at the time of discharge or transfer. The revision: (1) makes this rule applicable to all discharges/transfers, not only those that are planned. Since Licensing is making this rule applicable to emergency discharges, three items which take more time to develop have been deleted and added to §749.1373, which gives the operation 15 days to complete discharge documentation; (2) at the request of residential operations, moves three items from §749.1373 to this rule - copies of the child's service plans, a detailed list of the medications the child is taking, and information about any currently ongoing medical treatment. Residential operations indicate that they need this information right away when they admit a new child; and (3) requires documentation related to an emergency discharge or transfer. This is not a new requirement, as it is being moved from §749.1379. These two rules are being consolidated into one, and §749.1379 is repealed.

Section 749.1373 outlines what information must be sent to a subsequent placement within 30 days of a child's discharge. The revision: (1) combines this rule with §749.1375 by changing "operation" to "placement or caregiver," so that the discharge information must be sent to whomever the child's next caregiver is, whether a residential child care operation or an individual person/family; (2) changes the time frame from 30 days to 15 days. Residential operations requested this change, since they need information from the previous placement in order to develop a comprehensive service plan, which must be complete within 40 days of admission; (3) moves documentation requirements from §749.1371, so that the agency will have more time to complete this documentation, and so that the agency can then make this documentation available for all discharges (not just planned discharges); and deletes the three items moved to §749.1371. As a result of the rules being combined, §749.1375 is repealed.

Section 749.1401: (1) deletes the requirement for a health-care professional's signature on the exam results, as agencies have expressed concern that health-care professionals are often unwilling or reluctant to sign exam forms; (2) clarifies that a CPS child's health passport may be used to meet some of the docu-

mentation requirements; and (3) clarifies that the child's record must contain any documentation provided by the health-care professional who performed the medical exam.

Section 749.1409: (1) deletes the requirement for a dentist's signature on the exam results, as agencies have expressed concern that dentists are often unwilling or reluctant to sign exam forms; and (2) clarifies that a CPS child's health passport may be used to meet some of the documentation requirements.

Section 749.1417: (1) clarifies that a CPS child's health passport may serve as sufficient documentation of a child's tuberculosis screening; (2) adds the requirement that a baseline tuberculosis screening be completed within 30 days before or after beginning to live, work, or volunteer at the operation. This is needed, since the rule does not currently specify a time frame for completing tuberculosis screenings; (3) adds that a copy of the screening results must be in the person's record at the operation within 40 days of the person beginning to live, work or volunteer there; and (4) clarifies that no additional screening is required for a person who continues to live, work, or volunteer in a regulated residential child care setting, except on the advice of a physician.

Sections 749.1421, 749.1425, and 749.1427 clarify that a CPS child's health passport may serve as sufficient documentation of the child's immunizations.

Section 749.1463 allows the operation to administer medications within one hour of preparation, rather than immediately.

Section 749.1501 currently requires the child's health-care professional to give written authorization for self-medication. Residential child care operations have indicated that health-care professionals are unwilling to provide written authorization, citing liability concerns. Therefore, the revision allows the parent to authorize a child's self-medication program, while also requiring that the child's health-care professional be consulted and any concerns of the professional noted in the child's record.

Section 749.1521, which outlines medication storage requirements: (1) fixes a small error, changing "Section II" to "Schedule II" in referring to certain types of medication; (2) removes the word "securely" in the subsection requiring storage of medications needing refrigeration. Residential operations were interpreting this to mean that they needed a locked refrigerator, which was not the intent of the language; and (3) changes the requirement for destroying discontinued medication, expired medication, and medication for discharged or deceased children immediately "in a way that ensures that children do not have access to it" to storing the medication in a separate locked area until it is destroyed. These changes were made after agencies commented that once the medication is destroyed, the children will not have access to it, and it is not always possible to immediately destroy the medication.

Section 749.1541: (1) adds to the medication record the reason a prescription medication was prescribed, in order to ensure that caregivers have this information; and (2) requires that the specific reason for giving a PRN medication only be recorded for psychotropic medications, since other PRN medications are typically prescribed for a specific purpose already (such as a cough or asthma symptoms).

Section 749.1543 changes the timeframe the foster parents must maintain a child's medication records from "30 days" to "the current month" based on concerns that the current wording requires foster parents to keep both the current month's records and the previous month's records.

Section 749.1641 deletes "bedrails" as an example of a protective device. Bed rails are not being regulated as a protective device.

Section 749.1803 allows foster parents to be in a different room from an infant at any time if certain criteria are met. Currently the rule allows for this only if the infant is asleep.

Section 749.1813 allows for special items that assist with safe sleep for infants with primary medical needs, if there is a written recommendation from a health-care professional.

Section 749.1815 adds a requirement that an infant may not sleep with an adult at any time. Also, §749.1817 is combined with this rule, so §749.1817 is repealed.

Section 749.1819: (1) changes the prohibition against sharing bottles or training cups to sterilizing the bottles or training cups between uses by different infants. This is more realistic for foster parents while still protecting the health and safety of infants; and (2) prohibits breastfeeding by a caregiver without written consent from the infant's parent.

Section 749.1841: (1) allows foster parents to be in a different room from a toddler at any time if certain criteria are met. Currently, this rule allows for this only if the toddler is asleep; and (2) prohibits breastfeeding by a caregiver without written consent from the child's parent.

Section 749.1861 adds a time frame of seven days (from admission or learning of the pregnancy) to the requirement to inform a pregnant child of her right to be free from pressure to get an abortion, parent her child, or relinquish the child for adoption.

Section 749.2055, concerning when emergency behavior intervention is allowed: (1) deletes one subsection specific to short personal restraint, which is proposed as an addition to §749.2059, since §749.2059 specifically speaks to short personal restraint; and (2) adds the conditions under which an operation may use emergency behavior intervention with a child who is attempting to run away. The current rules do not allow use of emergency behavior intervention with a child who is running away. Residential child care operations have expressed a need to have this option when the circumstances warrant intervention, such as when a child is suicidal.

Section 749.2153 deletes a reference to a child damaging property, since only short personal restraint is allowed in this circumstance.

Section 749.2305: (1) deletes two requirements that are essentially duplicative of other requirements already in the rule; and (2) corrects language by changing a reference to "child placing staff" to "child placement staff."

New §749.2407 prohibits a foster home from being verified for foster care by more than one agency at a time, but allows a foster home to also be approved as an adoptive home by another agency(ies).

Section 749.2451 clarifies that the documentation requirements regarding foster home screening interviews must be met for each interview conducted.

New §749.2453 clarifies that Licensing allows, but does not require, an agency to update a foster home screening completed by the agency.

Section 749.2471, which outlines the requirements for verifying a foster home: (1) adds the requirement for a foster care capacity on each foster home's verification certificate. This informa-

tion is already being reported to DFPS, so this is something that agencies are already doing to a lesser extent; (2) clarifies that the documentation of ages and gender(s) of children for which the home is verified is limited to children for whom the family provides foster care or respite child-care, not all children in the home (such as biological children); and (3) in conjunction with new §749.307, adds that a foster home verification certificate include which agency main or branch office issued the verification.

New §749.2488 contains the rights and responsibilities statement agencies are required to provide foster parents under HB 3137 of the 81st Legislature. The statement lists the rights and responsibilities of foster parents and the agency, requires that the foster parents and agency staff sign the statement at the time the home is verified, that the foster parents have a copy of the signed statement, and that a copy of the signed statement is in the foster home record.

Section 749.2493 adds clarifying language regarding compliance with all relevant law and rule.

The revisions to §749.2551 regarding foster family home maximum capacity are based on a Licensing clarification already posted on the DFPS web site as a Frequently Asked Question. In order to assist these smaller foster homes to provide a more normalized family experience for children in care, the changes require no ratio for two-parent households. For single-parent households, the revisions add a maximum capacity based on the child population, in lieu of a child/caregiver ratio. It is also proposed that two-parent homes be considered single-parent homes, for the sole purposed of compliance with this rule, if one parent is on an extended absence due to military deployment or as a requirement of his/her employment. Section 749.2559 is repealed as a result of these changes.

Section 749.2557 clarifies that children visiting the home or in the home for babysitting are not counted in the capacity, although the caregivers are responsible for ensuring that the presence of additional children does not prevent adequate supervision for children in foster or respite care.

Section 749.2563, which outlines child/caregiver ratio requirements for foster group homes: (1) clarifies that children visiting the home or in the home for babysitting are not counted in the child/caregiver ratio, although the caregivers are responsible for ensuring that the presence of additional children does not prevent adequate supervision for children in foster or respite care; (2) allows the foster home to take children out of the child/caregiver ratio in order for them to participate in unsupervised activities if certain criteria are met. For example, the child must be able to contact the caregiver if there is an emergency; and (3) allows older foster children to have more normalized childhood experiences, such as going to a movie with friends or going on a date.

Section 749.2565 allows placement of a child under five years old in a foster group home only to maintain a sibling group. The revision clarifies that the sibling group may be of any age range. It is intended to clarify that the rule does *not* require at least one of the siblings to be over five years old. This has been a point of confusion for agencies wanting to place sibling groups together in a single foster home.

Section 749.2567 outlines when a foster home may be out of the required child/caregiver ratio. The revisions are based on a Licensing clarification already posted on the DFPS web site as a Frequently Asked Question. The revision includes limiting the rule to foster group homes, as proposed revisions to other

rules do not include child/caregiver ratios for foster family homes. The revisions require a staffed foster group home to comply with ratio requirements at all times, since shift staff do not require the same flexibility/normalization as caregivers who live in the home. Another revision requires that a non-staffed foster home needing three caregivers must always have at least two caregivers with the children during waking hours, and can be out of ratio during sleeping hours if there is a safety plan to ensure the care and supervision needs of the children are met.

Section 749.2599 clarifies that this rule applies to both foster children serving as caregivers and non-foster children. The revisions also clarify that the rule is intended to allow babysitting only, not qualifying children as a regular caregiver in the home. Finally, the proposed revisions add a minimum age of 16 years old to serve as a babysitter.

Section 749.2629 clarifies that children receiving respite child-care are counted in the capacity and child-caregiver ratio for the home.

Section 749.2803 changes "ages and gender(s) of children for which the home is verified" to "ages and gender(s) of children the home will accept," which makes more sense.

Section 749.2805 adds an unexpected change in employment or financial status or an unexpected housing change. This addition essentially requires the agency to re-evaluate the foster home when the family's housing or financial status changes unexpectedly.

Section 749.2815 requires agency staff to document any changes to the information in the foster home screening noted during the supervisory visit. Agencies have been documenting this information in home screening addendums, which can be time-consuming and costly. New §749.2453 clarifies that foster home screening addendums are not required. The proposed change to this rule clarifies for agencies where this information can be documented, in lieu of a more formal home study addendum.

New §748.2902 moves the health inspection requirements currently found in §749.2903, which includes both health and fire inspection requirements, to a separate rule. This rule also specifies the expectations for inspection documentation, correction of any deficiencies noted during the inspection, and compliance with any conditions or restrictions set by the inspector.

Section 749.2903 is repealed so it can be separated into three separate rules, §749.2902 for health inspections, and §749.2903 and §749.2904 for fire safety requirements based on the size of a foster home as well as the population served at the foster home.

New §749.2903 regarding fire safety includes the requirements for foster family homes *not* serving children receiving treatment services for primary medical needs and foster group homes with three or fewer unrelated children. These homes have the option of having a fire inspection from a certified inspector or local/state fire authority or having a fire safety evaluation conducted by agency staff using the State Fire Marshal's fire prevention checklist for foster homes. The new rule includes requirements for inspection/evaluation documentation and correction of any deficiencies noted during the inspection/evaluation.

New §749.2904 regarding fire safety includes the requirements for foster family homes serving children receiving treatment services for primary medical needs and foster group homes with more than three unrelated children. These homes must have a fire inspection conducted by a certified inspector or local/state

fire authority. These homes may only be evaluated by agency staff when a fire inspector is not available to conduct an inspection. This new rule includes requirements for inspection documentation and correction of any deficiencies noted during the inspection. Foster family homes serving children with primary medical needs and foster group homes with several non-related children are required to obtain an inspection, rather than an evaluation by agency staff, due to their increased risk in the event of a fire.

Section 749.2905 outlines how frequently fire and health inspections must be conducted. The revision changes a reference to "DFPS checklist" to just "checklist", since the State Fire Marshal's checklist would be used for fire inspections, as indicated in new §749.2903 and §749.2904.

Section 749.2913 adds an option for a fire extinguisher to be replaced after use. The rule currently only references servicing a fire extinguisher after each use.

Section 749.2917 deletes requirements for keeping the home and premises free of stray animals and not allowing children to play with stray animals or other animals that could be dangerous. Agencies have expressed concern that it is not realistic to keep a property completely free of stray animals, and other rules can be cited if a child is allowed to play with a dangerous animal.

Section 749.2961, concerning weapons, firearms, explosive materials, and projectiles in a foster home: (1) adds a requirement that the agency enforce the policy the agency currently must develop identifying specific precautions to ensure children do not have unsupervised access to these items; (2) clarifies that both the weapons and ammunition can be stored in the same location, such as a gun cabinet, but that access to both cannot be obtained with only one key or combination. For example, ammunition could be in a locked box inside a gun cabinet with a different lock; (3) adds the requirement that caregivers, in addition to foster parents, must notify the agency if there is a change in the type or numbers of weapons, firearms, etc.; and (4) adds an exemption and related requirements for a foster parent or adult household member who is an active law enforcement officer required to carry a firearm at all times as part of his law enforcement duties.

Section 749.3023: (1) adds that bedrooms used by foster children must have at least one source of natural lighting. Currently this rule prohibits only the use of a basement as a bedroom without natural lighting. The rule includes an exemption from this requirement for homes verified before January 1, 2007; and (2) deletes the prohibition from using a detached structure as a bedroom and outlines criteria for using a detached structure as a bedroom for children 16 years old or older.

Section 749.3025, which outlines when a child can share a bedroom with an adult in care: (1) expands the rule to apply to all adults in care, not only those who turn 18 years old while in care; and (2) adds a prohibition against children and adults sharing a bed unless the adult is the child's parent and the child is between one and 10 years old.

Section 749.3027 adds a prohibition against children and caregivers sleeping in the same bed at any time.

Section 749.3029 adds exceptions for when children of the opposite sex can share a bedroom: a child sharing a bedroom with his minor parent and non-ambulatory children receiving treatment services for primary medical needs.

Section 749.3031 clarifies that the requirement for each foster child to have his own bed and mattress does not prevent a child receiving respite child-care services or requiring closer supervision from sleeping on a couch, sleeping bag, etc., for fewer than seven days.

Section 749.3039, which lists requirements for outdoor recreation space and equipment, and currently prohibits use of trampolines as play or recreational equipment: (1) allows children in care five years old or older to use trampolines less than four feet in diameter and no higher than 12 inches; (2) allows the use of larger trampolines by children 13 years old or older, and children six to 12 years old with a written recommendation from a physician for a medical reason or a behavioral health professional for an emotional/behavioral reason; (3) requires that, if a larger trampoline is present in a foster home, only children eligible to use the larger trampoline may be placed in the home; and (4) outlines the requirements for using a larger trampoline, such as having shock-absorbing pads cover the springs, hooks, and frame. Section 749.3041, concerning requirements for a foster home's physical environment: (1) clarifies that the home, the outdoor areas, and equipment and furniture must each be safe for children, kept clean, and in good repair; and (2) consistent with proposed revisions to §749.2917, deletes the requirement to keep stray animals of the premises; makes this rule consistent with a comparable rule in Chapter 748 for residential facilities, as well as consistent with current regulatory practice, by clarifying that flammable or poisonous substances must be stored out of the reach of children "unless caregivers have evaluated a child as capable and likely to use such items responsibly."

Section 749.3107, concerning supervising foster children learning to drive, allows other children to be in the vehicle, as long as all the children in the vehicle are learning how to drive.

Section 749.3133, concerning aboveground swimming pools in foster homes: (1) clarifies the options for ensuring that the pool is inaccessible to children when not in use; (2) allows children 16 years old or older and not receiving treatment services to access the pool without adult supervision, consistent with the requirements for in-ground pools; and (3) clarifies that a pool cover does not substitute for any of the requirements in the rule.

Section 749.3135 adds that the dangers of the body of water must be explained to children participating in a swimming activity involving the body of water. This is consistent with a comparable rule in Chapter 748.

Section 749.3137 outlines the supervision requirements for swimming activities. The revision: (1) makes the child/caregiver ratio requirements consistent with other proposed rule changes, by making the ratio 1:6 for foster family homes (the maximum number of children for these homes) and by cross-referencing the child/caregiver ratio rule for foster group homes; (2) deletes the reference to a rule that is repealed and emphasizes a proposed subsection of §749.2563 that allows children to have unsupervised activities.

Section 749.3139 clarifies that neither children nor adults in care may supervise water activities.

Section 749.3147 allows for fencing around the hot tub instead of a locking cover. This better addresses in-ground hot tubs and offers two options for ensuring safety. Currently the rule requires a locking cover, which is only feasible for above-ground hot tubs.

Section 749.3301 clarifies that the adoptive placement agreement must be signed by both the adoptive parents and the

agency. Currently the rule does not specify that an agency representative must sign the document.

Section 749.3341 clarifies that an agency may contract with another licensed child-placing agency to make the contacts with a child being considered for adoption if certain conditions are met. For example, the person who makes the contacts must meet minimum qualifications for a child placement staff.

Section 749.3343 outlines requirements for preparing a child for adoption. The revision: (1) deletes the requirement that the preparation be based on the child's needs and level of understanding, which is substituted with age-based requirements; (2) adds an age of five years old or older to the required preparation activities; (3) adds that preparation activities for children under five years old must include as many of the items for children five and older as possible; and (4) requires that, regardless of age, the agency must document in the child's record the reasons any preparation activities were not completed.

Section 749.3349 adds the requirements found in §749.3347, so that all professional assessment requirements are found in one rule. As a result, §749.3347 is repealed.

Section 749.3373 clarifies that the written agreement (between the agency and adoptive parents before the placement of a child) must be signed by both the adoptive parents and the agency. Currently the rule does not specify that the agreement must be signed by both parties.

New §749.3375 is the current §745.4067. All child-placing agency requirements currently in Chapter 745 are being moved to Chapter 749, so that all child-placing agency requirements can be housed in the same chapter.

Section 749.3425 outlines the requirements for post-placement contacts between the agency, adoptive parents, and child placed for adoption. The revision: (1) clarifies that the contacts must be face-to-face; (2) clarifies that contacts are documented by child placement staff and approved by child placement management staff; and (3) clarifies that an agency may contract with another licensed child-placing agency to make the contacts if certain conditions are met. For example, the person who makes the contacts must meet minimum qualifications for a child placement staff.

Section 749.3429 is repealed because §749.3727 is identical to it.

Section 749.3503 clarifies that an agency may contract with another licensed child-placing agency to make the contacts with the birth parent if certain conditions are met. For example, the person who makes the contacts must meet minimum qualifications for a child placement staff.

Section 749.3623 lists the requirements for the pre-adoptive home screening. The revision: (1) clarifies that the insurance coverage that must be verified is the medical insurance planned for the child; and (2) clarifies that, when obtaining background information from other child-placing agencies, the requirements for obtaining any record of deficiencies and the most current fire and health inspections are only applicable if the family was verified as a foster home.

Section 749.3627 clarifies that the documentation requirements for adoptive home screening interviews must be met for each interview conducted.

Section 749.3633 is repealed and proposed as new. The new rule outlines new timeframes and requirements for pre-adop-

tive home screening updates. The repealed rule requires the home screening to be updated within 30 days of placement if the screening is more than six months old. The new rule allows for the update every 12 months and after a major life change in the adoptive family. This new rule also lists timeframes for visiting the home and what documentation must be included. The current rule requires the home visit within 30 days before the child is placed, while the proposed rule requires the visit within 90 days before placement. New §749.3635 supplements new §749.3633 by defining "major life change in the adoptive family," such as a marriage or divorce.

New §749.3637 is current §745.4073. All child-placing agency requirements currently in Chapter 745 are moved to Chapter 749, so that all child-placing agency requirements can be housed in the same chapter.

Section 749.3691 clarifies that an agency may contract with another licensed child-placing agency to make the contacts with the adoptive applicants if certain conditions are met. For example, the person who makes the contacts must meet minimum qualifications for a child placement staff. Also, §749.3693 is repealed because it is combined with §749.3691.

Section 749.3725, which outlines what actions the agency must take if an adoption has not been completed within the timeframe stated in the written agreement with the adoptive parents, changes the reference to the timeframe from six months to the "timeframe in the written agreement." This language is consistent with the rest of this rule and with other rules, which do not specify six months.

Section 749.3727 clarifies that any changes in the adoptive family during the post-placement period must be documented in the adoptive home record.

New Division 6, Post-Placement Adoptive Reports, is proposed in Subchapter S, Adoption Services: Adoptive Parents. It contains rules moved from Chapter 745.

New §749.3743 is moved from §745.4033, with changes to the language. The revisions: (1) delete references to and requirements for the foster home screening and pre-adoptive home screening, limiting the rule to the post-placement adoptive report; and (2) add an exception that interviews are not required for the post-placement adoptive report when a foster family adopts a foster child who has been placed in that home at least six months.

New §749.3745 on interview requirements for a post-placement adoptive report is moved from §745.4035, with changes to the language. The revisions: (1) delete references to and requirements for the foster home screening and pre-adoptive home screening, limiting the rule to the post-placement adoptive report; and (2) clarify that documentation must be kept for each contact and interview.

New §749.3747 on a home visit when developing a post-placement adoptive report is moved from §745.4037, with changes to the language. The revisions: (1) delete references to and requirements for the foster home screening and pre-adoptive home screening, limiting the rule to the post-placement adoptive report; and (2) add an exception that a home visit is not required when a foster family adopts a foster child who has been placed in that home at least six months.

New §§749.3741, 749.3749, 749.3751, and 749.3753 are moved from Chapter 745 with minor changes and updates to rule references.

With the addition of Division 6, §749.3741 and §749.3761 are repealed and proposed with new rule numbers. Section 749.3741 is proposed as new §749.3771. Section 749.3761 is proposed as new §749.3781 with two changes: one clarifying that interviewing "both" adoptive parents means interviewing "each" of the adoptive parents and another clarifying that all household members must be present for the home visit, not just the family members (this distinction would apply if someone is living in the home who is not related to the family).

In addition, DFPS is making minor clarifications to §§749.1187, 749.1281, 749.1415, 749.1891, 749.2001, 749.2301, 749.2303, 749.2491, 749.2521, 749.2593, 749.2635, 749.2915, 749.3079, and 749.3893.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that residential child care operations will more clearly understand minimum standards requirements, which will help to ensure the health, safety, and well being of children in residential child care. Although the majority of the proposed revisions are cost neutral or have a positive fiscal impact on residential child care operations, select rules are anticipated to have a fiscal impact.

New §749.2488 is proposed in response to the passage of HB 3137, which requires each child-placing agency to provide a rights and responsibilities statement to all existing and new foster parents. The rule was developed with input from foster parents, stakeholders, and child-placing agencies. The rule requires the child-placing agency to give this statement to foster parents by the time their home is verified and place a signed copy in the agency home record. There will be a one-time cost associated with providing the required statements to each existing or new foster home verified by a child-placing agency. To calculate the estimated cost of these visits, the salary for a Child Protective Services (CPS) Specialist II was used, because CPS is a child-placing agency, and the CPS Specialist II is the child placement staff for CPS. It is anticipated that this contact will require no more than one additional hour of staff time per home, and this is a one-time cost. The mid-range fiscal year (FY) 2011 salary for a CPS Specialist II (B15) is \$45,054 per year, or \$16.76 per hour. Therefore, the estimated adverse economic impact is no more than \$16.76 per new and existing foster home verified by a child-placing agency.

Revisions to service planning rule §749.1309 is proposed in response to the passage of HB 1912, which requires all caregivers to provide experiential life skills training to children age 14 years and older. Therefore, the proposed rule revision adds a requirement for all residential facilities that all service plans for each child age 14 years and older include planning for how the caregiver will provide experiential life skills training to children age 14 years and older. Due to the recurring nature of service planning, there will be recurring costs associated with the ongoing development of service plans that incorporate experiential life skills training. Licensing anticipates it will take one additional hour of staff time per child age 14 and older to plan, document, and approve the additional requirements in the child's service plan. Costs have been broken down below. There is no additional cost anticipated to individual foster parents or other caregivers who actually provide the experiential training, because no additional

staff or staff time will be required to mentor foster youth in everyday activities, such as balancing a checkbook, meal preparation, etc, that will enable the youth to develop the life skills necessary for independent functioning. For child-placing agencies and independent foster homes, a child placement staff is required to complete service plans for a child-placing agency, and a child placement management staff is required to review and approve the service plans. It is anticipated that it will take child placement staff 45 minutes to plan for and document the requirements in the service plan, and that it will take child placement management staff 15 minutes to review and approve the additional requirements in the service plan. The salary for a CPS Specialist II (B15) was used to determine salary costs for the child placement staff because CPS is a child-placing agency and the CPS Specialist II is the child placement staff for CPS. The salary for a CPS Supervisor II (B20) was used for determining salary costs for the child placement management staff because this position most often meets the minimum qualifications for and acts as child placement management staff for CPS. The FY 2011 mid-range salary for a CPS Specialist II is \$45,054, or \$12.57 for each 45 minutes. The FY 2011 mid-range salary for a CPS Supervisor II is \$56,775, or \$5.28 for each 15 minutes. Therefore, the staff cost per service plan is \$17.85. Service plans are required to be completed semi-annually or quarterly, depending on the needs of the child. Therefore, the annual adverse economic impact is estimated to be between \$35.70 to \$71.40 for each child age 14 and older placed into a child-placing agency.

New rules §749.305 and §749.307 are proposed to meet the goals of existing §749.2441, which is simultaneously being repealed. Section 749.2441 requires a child-placing agency (CPA) that operates in more than one DFPS administrative region to obtain a separate license within each region. The rule became effective January 1, 2007 and gave licensed CPAs five years to comply. The intent of §749.2441 was two-fold: (1) better protect children by limiting the span of control for administrative staff overseeing the agency's programs within a regional area; and (2) make it possible to pursue adverse actions against a CPA's regional license in a poor-performing region without negatively affecting the license(s) of the CPA held in other regions where there are no concerns. Following its adoption, CPAs expressed considerable concern to Licensing regarding the adverse economic impact §749.2441 would have on their operations. As a result, Licensing worked with providers and developed §749.305 and §749.307, which meet the intent of §749.2441 while reducing the economic impact to providers. Section 749.305 requires each CPA to have in each DFPS region, or within 150 miles of an agency foster home, *either* (1) a branch or main office, licensed administrator, and treatment director (a treatment director would only be needed if required by the agency's census), OR (2) a branch or main office and a sufficient number of employees to meet specific caseload requirements. This proposed rule has a compliance date of January 1, 2012. Proposed rule §749.307 requires each CPA to update the verification/home screening of any foster family that transfers from one of the CPA's branch offices to another branch office, if the transfer occurs following the closure of the first CPA branch while under corrective or adverse action. Based on the input obtained from CPAs, it is anticipated that there will be a net reduction in costs to CPAs though the repeal of §749.2441 and the simultaneous adoption of §749.305 and §749.307.

For assessing the economic impact, it is essential to understand what the current rule requires. To comply with §749.2441, each child-placing agency operating in more than one region would

have to obtain a new license for each region in which they operate, even if the foster home was within 150 miles of all the agency's offices. To obtain a new license, the operation would have to do the following: (1) submit a new application for each needed license; (2) submit a 12-month budget of income and expenses with each new application; (3) submit documentation of reserve funds or available credit at least equal to operating costs for the first three months of operations with each new application; (4) submit application fees (if required) for each application; (5) submit background checks on all employees and caregivers under the new licenses (\$46.20 per person); (6) establish a new governing body or formally identify that the governing body of the "parent" agency is the governing body for the new license(s); (7) develop new policies, procedures, and job descriptions for each license or identify which from the "parent" agency apply to the new license(s); (8) maintain a main and any branch offices in the region where the license is held; (9) transfer agency homes under the new license, as applicable; (10) develop an organizational chart showing the administrative, professional, and staffing structures and lines of authority for each license; (11) hire at least one full-time child placing agency administrator per license; (12) hire at least one treatment director (if required by the agency's census) per license; (13) prepare an annual budget and maintain separate financial records for each license; and (14) obtain a professional audit for each license. In contrast, §749.305 and §749.307 would only require agencies to (1) have a main or branch office in a geographic area that the operation selects based on their business need by January 1, 2012, (either DFPS region or within 150 miles of each verified foster home); (2) hire one licensed administrator in each geographic area by January 1, 2012; (3) hire one treatment director (if required by the agency's census) in each geographic area by January 1, 2012; and (4) update the verification of any home the agency chooses to transfer to a new branch if the branch is closed under corrective or adverse action (effective upon adoption). Consequently, repealing §749.2441 and adding §749.305 and §749.307 both meets the intent behind the adoption of §749.2441 and results in a net reduction in burdensome costs and, therefore, removes much of the negative economic impact while still ensuring child health and safety.

As stated above, although the majority of the proposed revisions are cost neutral or have a positive fiscal impact on residential child care operations, select rules are anticipated to have a fiscal impact on residential facilities, some of which meet the definition of a small or micro-business. In FY 2006, DFPS licensed 555 residential child-care operations, of which an estimated 8.1%, or 45, are estimated to be small businesses, and an additional estimated 1.2%, or 7, are estimated to be micro-businesses. That impact is summarized above. A regulatory flexibility analysis is not required, since these proposed rule revisions are specifically required by state law and, therefore, presumed to be consistent with the health, safety and welfare of the individuals whom the state law was intended to protect.

There is no anticipated economic cost to persons who are required to comply with the proposed sections.

HHSC has determined that the proposed sections do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Leslie Reid at (512) 438-4666 in DFPS's Child Care Licensing Division. Electronic comments may be submitted to the

RCCL Minimum Standards Comments mailbox at rcclstandards@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-413, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

SUBCHAPTER B. DEFINITIONS AND SERVICES

DIVISION 1. DEFINITIONS

40 TAC §749.43

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§749.43. What do certain words and terms mean in this chapter?

The words and terms used in this chapter have the meanings assigned to them under §745.21 of this title (relating to What do the following words and terms mean when used in this chapter?), unless another meaning is assigned in this section or unless the context clearly indicates otherwise. The following words and terms have the following meanings unless the context clearly indicates otherwise:

(1) - (4) (No change.)

(5) Adoptive home screening--Also known as a pre-adoptive home screening. A written evaluation, prior to the placement of a child in an adoptive home, of the:

(A) Prospective adoptive parent(s);

(B) Family of the prospective adoptive parents; and

(C) Environment of the adoptive parents and their family in relation to their ability to meet the needs of a child, and if a child has been identified for adoption, the needs of that particular child.

(6) [~~5~~] Adult--A person 18 years old or older.

(7) [~~6~~] Caregiver--A caregiver:

(A) Is a person counted in the child/caregiver ratio for foster care services, including employees, foster parents, contract service providers, and volunteers, whose duties include direct care, supervision, guidance, and protection of a child in care. This includes any person that is solely responsible for a child in foster care. For example, a child-placement staff that takes a foster child on an appointment or doctor's visit is considered a caregiver.

(B) Does not include babysitters or respite child-care providers who are not:

(i) Verified foster parents;

(ii) Licensed foster parents; or

(iii) Agency employees.

(C) Does not include a contract service provider who:

(i) Provides a specific type of service to your agency for a limited number of hours per week or month; or

(ii) Works with one particular child.

(8) [(7)] Certified fire inspector--Person certified by the Texas Commission on Fire Protection to conduct fire inspections.

(9) [(8)] Child/caregiver ratio--The maximum number of children for whom one caregiver can be responsible.

(10) [(9)] Child in care--A child [or a young adult] who has been placed by a child-placing agency in a foster or adoptive home, regardless of whether the child is temporarily away from the home, as in the case of a child at school or at work or receiving respite child-care services. Unless a child has been discharged from the child-placing agency, he is considered a child in care.

(11) [(10)] Child passenger safety seat system--An infant or child passenger restraint system that meets the federal standards for crash-tested restraint systems as set by the National Highway Traffic Safety Administration.

(12) [(11)] Counseling--A procedure used by professionals from various disciplines in guiding individuals, families, groups, and communities by such activities as delineating alternatives, helping to articulate goals, processing feelings and options, and providing needed information. This definition does not include career counseling.

(13) [(12)] Days--Calendar days, unless otherwise stated.

(14) [(13)] De-escalation--Strategies used to defuse a volatile situation, to assist a child to regain behavioral control, and to avoid a physical restraint or other behavioral intervention.

(15) [(14)] Department--The Department of Family and Protective Services (DFPS).

(16) [(15)] Discipline--A form of guidance that is constructive or educational in nature and appropriate to the child's age, development, situation, and severity of the behavior.

(17) [(16)] Disinfecting solution--A disinfecting solution may be:

(A) A self-made solution, prepared as follows:

(i) One tablespoon of regular strength liquid household [chlorine] bleach to each gallon of water used for disinfecting such items as toys, eating utensils, and nonporous surfaces (such as tile, metal, and hard plastics); or

(ii) One-fourth cup of regular strength liquid household [chlorine] bleach to each gallon of water used for disinfecting surfaces such as bathrooms, crib rails, diaper-changing tables, and porous surfaces, such as wood, rubber or soft plastics; or

(B) A commercial product that is registered with [meets] the Environmental Protection Agency (EPA) as an antimicrobial product and includes directions for use in a hospital as a disinfectant. You [Agency's (EPA's) standards for "hospital grade" germicides (solutions that kill germs) that you] must use the product according to label directions. Commercial products must not be toxic on surfaces likely to be mouthed by children, like crib rails and toys.

(18) [(17)] Emergency Behavior Intervention--Interventions used in an emergency situation, including personal restraints, mechanical restraints, emergency medication, and seclusion.

(19) [(18)] Family applicants--All residents, part- or full-time, of a household that are being considered for verification as an agency foster home or approved as an adoptive home.

(20) [(19)] Family members--An individual related to another individual within the third degree of consanguinity or affinity. For the definitions of consanguinity and affinity, see Chapter 745 of this title (relating to Licensing). The degree of the relationship is computed as described in Government Code, §573.023 (relating to Computation of Degree of Consanguinity) and §573.025 (relating to Computation of Degree of Affinity).

(21) [(20)] Food service--The preparation or serving of meals or snacks.

(22) [(21)] Foster family home--A home that is the primary residence of the foster parent(s) and provides care for six or fewer children or young adults, under the regulation of a child-placing agency.

(23) [(22)] Foster group home--An operation verified:

(A) After January 1, 2007, that is the primary residence of the foster parent(s) and provides care for seven to 12 children or young adults, under the regulation of a child-placing agency; or

(B) Prior to January 1, 2007, that provides care for seven to 12 children or young adults, under the regulation of a child-placing agency.

(24) [(23)] Foster home--As referred to in this chapter means both types of homes, foster family homes and foster group homes.

(25) [(24)] Foster home screening--A written evaluation, prior to the placement of a child in a foster home, of the:

(A) Prospective foster parent(s);

(B) Family of the prospective foster parent(s); and

(C) Environment of the foster parent(s) and their family in relation to their ability to meet the child's needs.

(26) [(25)] Foster parent--A person who provides foster care services in the foster home.

(27) [(26)] Full-time--At least 30 hours per week.

(28) [(27)] Garbage--Food or items that when deteriorating cause offensive odors and/or attract rodents, insects, and other pests.

(29) [(28)] Health-care professional--A licensed physician, licensed registered nurse with appropriate advanced practice authorization from the Texas Board of Nurse Examiners, a licensed vocational nurse (LVN), a licensed registered nurse (RN), or other licensed medical personnel providing health care to the child within the scope of his license. This does not include medical doctors or medical personnel not licensed to practice in the United States.

(30) High-risk behavior--Behavior of a child that creates an immediate safety risk to the child or others. Examples of high-risk behavior include suicide attempt, self-abuse, aggression causing bodily injury, chronic running away, drug addiction, fire setting, and sexual perpetration.

(31) [(29)] Human services field--A field of study that contains coursework in the social sciences of psychology and social work including some counseling classes focusing on normal and abnormal human development and interpersonal relationship skills from an accredited college or university. Coursework in guidance counseling does not apply.

(32) [(30)] Immediate danger--A situation where a prudent person would conclude that bodily harm would occur if there were no immediate interventions. Immediate danger includes a serious risk of suicide, serious physical injury, or the probability of bodily harm result-

ing from a child running away if under 10 years old chronologically or developmentally. Immediate danger does not include:

(A) Harm that might occur over time or at a later time;

or

(B) Verbal threats or verbal attacks.

(33) [(34)] Infant--A child from birth through 17 months.

(34) [(32)] Livestock--An animal raised for human consumption or an equine animal.

(35) [(33)] Living quarters--A structure or part of a structure where a group of children reside, such as a building, house, cottage, or unit.

(36) [(34)] Long-term placement--A placement intended to last for more than 90 days.

(37) [(35)] Master record--The compilation of all required records for a specific person or home, such as a master personnel record, master case record for a child, or a master case record for a foster or adoptive home.

(38) [(36)] Non-ambulatory--A child that is only able to move from place to place with assistance, such as a walker, crutches, a wheelchair, or prosthetic leg.

(39) [(37)] Non-mobile--A child that is not able to move from place to place, even with assistance.

(40) Parent--A person that has legal responsibility for or legal custody of a child, including the managing conservator or legal guardian.

(41) [(38)] Person legally authorized to give consent--The person legally authorized to give consent by the Texas Family Code or a person authorized by the court.

(42) [(39)] Physical force--Pressure applied to a child's body that reduces or eliminates the child's ability to move freely.

(43) [(40)] Post-adoptive services--Services available through the child-placing agency (direct or on referral) to birth and adoptive parents and the adoptive child after the adoption is consummated. Examples include counseling, maintaining a registry if a central registry is not used, providing pertinent, new medical information to birth or adoptive parents, or providing the adult adoptee a copy of his record upon request.

(44) [(41)] Post-placement report--A written evaluation of the assessments and interviews, after the adoptive placement of the child, regarding the:

(A) Child;

(B) Prospective adoptive parent(s);

(C) Family of the prospective adoptive parent(s);

(D) Environment of the prospective adoptive parent(s) and their family; and

(E) Adjustment of all individuals to the placement.

(45) [(42)] Pre-adoptive home screening--See adoptive home screening. [A written evaluation, prior to the placement of a child in an adoptive home, of the:]

[(A) Prospective adoptive parent(s);]

[(B) Family of the prospective adoptive parents; and]

[(C) Environment of the adoptive parents and their family in relation to their ability to meet the needs of a child, and if a child has been identified for adoption, the needs of that particular child.]

(46) [(43)] PRN--A standing [standard] order or prescription that applies "pro re nata" or "as needed according to circumstances."

(47) [(44)] Professional service provider--Refers to:

(A) A child placement management staff or person qualified to assist in child placing activity;

(B) A psychiatrist licensed by the Texas Medical Board;

(C) A psychologist licensed by the Texas State Board of Examiners of Psychologists;

(D) A master's level social worker or higher licensed by the Texas State Board of Social Work Examiners;

(E) A professional counselor licensed by the Texas State Board of Examiners of Professional Counselors;

(F) A marriage and family therapist licensed by the Texas State Board of Examiners of Marriage and Family Therapists; and

(G) Other professional employees in fields such as drug counseling, nursing, special education, vocational counseling, pastoral counseling, and education who may be included in the professional staffing plan for your agency that provides treatment services if the professional's responsibilities are appropriate to the scope of the agency's program description. These professionals must have the minimum qualifications generally recognized in the professional's area of specialization.

(48) [(45)] Re-evaluation--Includes an assessment of all factors required for the initial evaluation only for the purpose of determining if any substantive changes have occurred. If substantive changes have occurred, these areas must be fully evaluated.

(49) [(46)] Regularly--On a recurring, scheduled basis.

(50) [(47)] Sanitize--A four-step process that must be followed in the subsequent order:

(A) Washing with water and soap;

(B) Rinsing with clear water;

(C) Soaking in or spraying on a disinfecting solution for at least two [10] minutes. Rinsing with cool water only those items that a child is likely to place in his mouth; and

(D) Allowing the surface or article to air-dry.

(51) [(48)] School-age child--A child who is five years old or older and who will attend school in August or September of that year.

(52) [(49)] Seat belt--A lap belt and any shoulder strap included as original equipment on or added to a motor vehicle.

(53) [(50)] Service plan--A plan that identifies a child's basic and specific needs and how those needs will be met.

(54) [(51)] State or local fire inspector--A fire official who is authorized to conduct fire safety inspections on behalf of [designated by] the city, county, or state government.

(55) [(52)] State or local sanitation official--A sanitation official who is authorized to conduct environmental sanitation inspections on behalf of [designated by] the city, county, or state government [that is trained in sanitary science to perform duties relating to education and inspections in environmental sanitation].

(56) [(53)] Substantial bodily harm--Physical injury serious enough that a prudent person would conclude that the injury required professional medical attention. It does not include minor bruising, the risk of minor bruising, or similar forms of minor bodily harm that will resolve healthily without professional medical attention.

(57) [(54)] Toddler--A child from 18 months through 35 months old.

(58) [(55)] Treatment director--The person responsible for the overall treatment program providing treatment services. A treatment director may have other responsibilities and may designate treatment director responsibilities to other qualified persons.

(59) [(56)] Universal precautions--An approach to infection control where all human blood and certain human body fluids are treated as if known to be infectious for HIV, HBV, and other blood-borne pathogens.

(60) [(57)] Volunteer--A person who provides services:

(A) Child-care services, treatment services, or programmatic services under the auspices of the agency without monetary compensation, including a "sponsoring family;" or

(B) Any type of services under the auspices of the agency without monetary compensation when the person has unsupervised access to a child in care.

(61) [(58)] Water activities--Activities related to the use of splashing pools, wading pools, swimming pools, or other bodies of water.

(62) [(59)] Young adult--An adult whose chronological age is between 18 and 22 years, who is currently in a residential child-care operation [agency], and who continues to need child-care services.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 5, 2010.

TRD-201002362

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: June 20, 2010

For further information, please call: (512) 438-3437



DIVISION 2. SERVICES

40 TAC §749.61

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§749.61. *What types of services does Licensing regulate?*

We regulate the following types of services:

(1) (No change.)

(2) Treatment Services--In addition to child-care services, a specialized type of child-care services designed to treat and/or support children with:

(A) Emotional Disorders, such as mood disorders, psychotic disorders, or dissociative disorders, and who demonstrate three or more of the following:

(i) - (iii) (No change.)

(iv) Difficulties that present a significant risk of harm to [self or] others, including frequent or unpredictable physical aggression; or

(v) (No change.)

(B) - (D) (No change.)

(3) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 5, 2010.

TRD-201002363

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: June 20, 2010

For further information, please call: (512) 438-3437



SUBCHAPTER C. ORGANIZATION AND ADMINISTRATION

DIVISION 1. PERMIT HOLDER RESPONSIBILITIES

40 TAC §§749.101, 749.103, 749.105

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§749.101. *What are my responsibilities as the permit holder before I begin operating?*

Before you begin operating, you are responsible for:

(1) - (5) (No change.)

(6) Developing and providing us your plan for ensuring that:

(A) We are informed of any changes in:

(i) (No change.)

(ii) Your hours of operation at your main office and any branch office(s);

(iii) [~~(ii)~~] Agency home verification; and

(iv) [~~(iii)~~] Your written professional staffing plan;

(B) - (E) (No change.)

(F) You evaluate the effectiveness of your system for meeting rules of this chapter and describe the process your agency will use to address problems that your evaluation system identifies; and[-]

(7) Informing us of your hours of operation at your main office and any branch offices.

§749.103. *What are my operational responsibilities as the permit holder?*

When you begin operating, you must:

(1) (No change.)

(2) Operate according to the written policies and procedures adopted by the governing body as directed by this chapter;

(3) - (8) (No change.)

(9) Observe the conditions and restrictions of your permit;

(10) - (16) (No change.)

(17) If your child-placing agency will be moving to another location or changing hours of operation, notify [Notify] us in writing as soon as possible but [that you are relocating your child-placing agency] at least 15 days prior to the move or change in hours of operation.

§749.105. *What responsibilities do I have for personnel policies and procedures?*

You must:

(1) - (4) (No change.)

(5) Ensure your employees report serious incidents and suspected abuse, neglect, or exploitation. An employee who suspects abuse, neglect, or exploitation must report their suspicion directly to us and may not delegate this responsibility, as directed by Texas Family Code §261.101(b) [as required by the Family Code, §261.401];

(6) - (7) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams

General Counsel

Department of Family and Protective Services

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DIVISION 3. GENERAL FISCAL REQUIREMENTS

40 TAC §749.163

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of

services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§749.163. *What are my specific fiscal requirements?*

You must:

(1) - (3) (No change.)

(4) Demonstrate at all times that you have or will have sufficient funds to provide appropriate services for all children in your care; ~~and~~

(5) Account for a child's money separately from the funds of your agency and the foster home. No child's personal earnings, allowances, or gifts may be used to pay for the child's room and board, unless such a use is a part of the child's service plan and the child's parent approves it in writing. You must give or send the child's money to the child, parent, or next placement within 30 days of the child's discharge; and

(6) You must make one of the following available for our review:

(A) An annual review of your financial records conducted by an independent Certified Public Accountant in accordance with the Generally Accepted Accounting Principles; or

(B) Proof of reserve funds equal to at least three months of operating expense for your agency.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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40 TAC §749.165

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §42.042.

§749.165. *How often must I have a professional audit?*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 7. BRANCH OFFICES

40 TAC §§749.303, 749.305, 749.307

The amendment and new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment and new sections implement HRC §42.042.

§749.303. *What must I do before opening a branch office?*

At least 30 days prior to the opening of a branch office, you must provide us the following information with your request to amend your license:

(1) - (4) (No change.)

(5) An updated written professional staffing plan that includes [A written plan describing] how child placement management staff, the Licensed Child-Placing Agency Administrator, and the treatment director, if applicable, will supervise services [child-placement activities] provided from the branch office. [The plan must describe:]

[(A) Who will be responsible for the on-going supervision and support to the employees;]

[(B) How often there will be in-person contact and supervision of the employees;]

[(C) Who will be responsible for providing support in case of emergencies or placement crises; and]

[(D) How employees will be provided with reasonable access to their supervisor(s).]

§749.305. *When are additional staff or offices required for foster care services?*

(a) In each DFPS region where you verify foster homes or within 150 miles of each verified foster home, you must comply with one the following:

(1) Maintain a main office or branch office with:

(A) An administrator who meets §749.631 of this title (relating to What qualifications must a child-placing agency administrator meet?); and

(B) A treatment director, if applicable, in §749.721 of this title (relating to Must I have a treatment director?); or

(2) Maintain caseloads within the following limits:

(A) A caseload of foster children cannot exceed:

(i) 35 for children receiving child-care services; and

(ii) 25 for children receiving treatment services;

(B) A caseload of foster homes cannot exceed 15 homes; and

(C) A combination caseload of both children and homes cannot exceed 30 cases. Calculate the maximum of 30 cases by counting each child as one case and each foster as two cases. (For example, a combination caseload of 10 foster homes, which would be counted as 20 cases, and 10 children would equal the maximum of 30 cases.)

(b) If you choose to comply with subsection (a) of this section using the caseload limits in paragraph (2) of subsection (a) of this section, you are only required to have one administrator and one treatment director (if applicable) for each license.

(c) If you were licensed before January 1, 2007, you have until January 1, 2012, to comply with this requirement.

(d) This rule does not apply to a child-placing agency that provides only adoption services.

§749.307. *What happens to the foster homes supervised by a branch office when the branch office closes?*

(a) If the branch office closure is related to a corrective or adverse action which Licensing is taking or has taken against your agency, you must:

(1) Close a foster home under that branch office; or

(2) Transfer a foster home under that branch office to your main or another branch office, including:

(A) Updating the foster home study in §749.2473 of this title (relating to What must I do to verify a foster home that another child-placing agency has previously verified?), with the exception of new criminal history and central registry background checks;

(B) Ensuring that all required criminal history and central registry background checks for the foster home have been conducted within the last 24 months; and

(C) Issuing a new verification certificate.

(b) If the branch office closure is not related to a corrective or adverse action which Licensing is taking or has taken against your agency, you may transfer the foster homes to the main office or another branch office without updating the foster homes' home studies or issuing new verification certificates.

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DIVISION 8. POLICIES AND PROCEDURES

40 TAC §§749.333, 749.341, 749.347

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.0452 and §42.042.

§749.333. *What are the requirements for my admission policies?*

~~{(a)}~~ Your admission policies must describe each program you offer, including but not limited to:

(1) ~~The [Have a program statement that describes the] program's goals and[- the] services provided, including whether the program accepts emergency admission [and the population of children served by the program];~~

(2) ~~The [Describe the specific] characteristics of the population [children] the program serves, such as behaviors and diagnoses. If the program includes treatment services, you must describe the emotional disorders, mental retardation, pervasive developmental disorders, or primary medical needs that the program is designed to treat [will serve, such as the age range, gender, and needs of children served]; and~~

(3) ~~The gender(s) and age range of the population the program serves [Indicate whether you will admit children on an emergency basis].~~

~~{(b)} If you provide treatment services, you must have admission policies describing the emotional disorders, mental retardation, pervasive developmental disorders, or primary medical needs that your program is designed to treat.~~

§749.341. *What emergency behavior intervention policies must I develop if the use of emergency behavior intervention is permitted in my foster homes?*

At a minimum, you must develop emergency behavior intervention policies to implement the requirements in Subchapter L of this chapter (relating to Foster Care Services: Emergency Behavior Intervention). The policies must include the following:

(1) - (4) (No change.)

(5) How you will meet the following requirements during the orientation required in §749.1111 of this title (relating to What orientation must I provide a child?):

(A) ~~Explain [During admission, explain] and document the following to a child in a manner that the child can understand:~~

~~(i) - (ix) (No change.)~~

(B) ~~Obtain [At admission, requirements for obtaining] each child's input on preferred de-escalation techniques that caregivers can use to assist the child in the de-escalation process[- and revisiting this information with the child and caregivers during each post emergency behavior intervention discussion];~~

(6) - (8) (No change.)

§749.347. *What policies must I develop on the rights and responsibilities of the child-placing agency, foster parents, and caregivers?*

(a) You must develop a policy clearly stating ~~[statement of] the rights and responsibilities of the child-placing agency and foster parents. The policy [that address the relationship between the agency and the foster parents and] must specify:~~

(1) What decisions you will make, what decisions the foster parents will make, and which ones you and the foster parents must agree upon;

(2) Training requirements for foster parents and caregivers, including:

(A) What part you will provide;

(B) What part the foster parents and caregivers must acquire on their own; and

(C) A statement about who will be responsible for training fees, travel expenses, and associated child-care costs;

(3) The channels through which you and the foster parents will communicate with each other;

(4) The amount of reimbursement(s) you will provide the foster parents and when the foster parents will receive it;

(5) The type of relevant ~~[kind and amount of] information and pre-placement contact you will provide, so the foster parents can make an informed decision about a placement;~~

(6) How much discretion the foster parents have in accepting or declining specific placements;

(7) The kind and amount of support provided to all foster families and any services available to foster parents[-, including respite child-care, homemaker services, or counseling];

~~{(8)} The kind and amount of information about a child (including previous placements) that you will give to foster parents when placing or considering placing the child.[-]~~

~~(8) [(9)] The kind of information you expect the foster parents to report to you and within what time frames;~~

~~(9) [(10)] The foster parents' role in the services to children in care, including expectations for the foster parents' participation in service planning and implementation of the service plan; [and]~~

~~(10) [(11)] The foster parents' right to appeal your actions and decisions that affect them and the procedures for making an appeal.[-]~~

~~(11) The responsibilities of the child-placing agency and the foster parents for complying with the rules of this chapter; and~~

~~(12) How foster parents may review their child-placing agency home record.~~

~~(b) You must provide foster parents with a copy of this policy at the time you verify the home.~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams
General Counsel
Department of Family and Protective Services
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DIVISION 9. CLIENTS AND APPEALS

40 TAC §749.423

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.0452 and §42.042.

§749.423. *What rights do my adult clients have?*

When a person becomes your adult client, you [You] must inform the person [your adult clients]:

- (1) (No change.)
- (2) Of their right to appeal agency actions and decisions that affect them, and the procedures for making an appeal; ~~and~~
- (3) Of procedures for making a complaint to us; ~~and[-]~~
- (4) Of other entities where it is appropriate to file complaints, such as the board or state agency that professionally licenses individuals whom you employ or contract with, and the procedures for making complaints to those entities.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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General Counsel

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SUBCHAPTER D. REPORTS AND RECORD KEEPING

DIVISION 1. REPORTING SERIOUS INCIDENTS AND OTHER OCCURRENCES

40 TAC §§749.503, 749.505, 749.507, 749.511

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including

the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§749.503. *When must I report and document a serious incident?*

(a) You must report and document the following types of serious incidents involving a child in your care. The reports must be made to the following entities, and the reporting and documenting must be within the specified time frames:

Figure: 40 TAC §749.503(a)

(b) Foster parents must report any serious incident directly to the Child Abuse Hotline if the incident involves a child under the care of the foster parent.

(c) ~~[(b)]~~ If there is a serious incident involving an adult resident, you do not have to report the incident to Licensing, but you must document the incident. You do have to report the incident to law enforcement, as outlined in the chart above. You also have to report the incident to the parents, if the adult resident is not capable of making decisions about his own care.

(d) ~~[(c)]~~ You must report and document the following types of serious incidents involving your agency, one of your foster homes, an employee, contract staff, or a volunteer to the following entities within the specified time frame:

Figure: 40 TAC §749.503(d)

~~Figure: 40 TAC §749.503(e)~~

§749.505. *What constitutes a suicide attempt by a child?*

A suicide attempt is ~~[includes]~~ a child's attempt to take his own life using means or methods for causing his death, including any act a child commits intending to cause his death, but excluding suicidal gestures where it is clear the child had no intent to die. Suicidal thoughts are not reportable as a suicide attempt. [-, including a means or method that the child believes is capable of causing his death.]

§749.507. *When must I report other occurrences?*

You must report and document the following occurrences to the following entities within the specified time frame:

Figure: 40 TAC §749.507

§749.511. *How must I document a serious incident?*

A serious incident must be documented in a written report that includes the following information:

(1) The name of the foster home or adoptive home, physical address, and telephone number;

(2) - (10) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 3. PERSONNEL RECORDS

40 TAC §§749.551, 749.553, 749.554

The amendments and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new section implement HRC §42.042.

§749.551. *Where must I maintain personnel records?*

(a) You must maintain active personnel records at the agency. This may include electronic records in §749.531 of this title (relating to If I keep electronic records, what procedures must I have for those records?).

(b) - (e) (No change.)

§749.553. *What information must the personnel record of an employee include?*

For each employee, excluding foster parents, the personnel record must include:

(1) - (8) (No change.)

(9) Proof of request for background checks required by Chapter 745, Subchapter F of this title (relating to Background Checks);

(10) ~~For [A copy of the valid driver's license for]~~ each person who transports a child, a copy of: [?]

~~(A) The person's valid driver's license; or~~

~~(B) A driver's license check conducted through the Texas Department of Public Safety within the last 12 months;~~

(11) - (13) (No change.)

§749.554. *What information regarding personnel must be kept confidential?*

All background check results must be kept confidential, in accordance with Human Resources Code §40.005(d) and (e). Background check results must be protected from unauthorized access or release.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 4. CLIENT RECORDS

40 TAC §§749.571, 749.577, 749.585, 749.587

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§749.571. *What client records must I maintain?*

You must maintain master records for all clients. The records must be individualized, current, and complete. The master record may include electronic records in §749.531 of this title (relating to If I keep electronic records, what procedures must I have for those records?).

§749.577. *What information must an active child record include?*

For each child, the active record must include:

(1) (No change.)

(2) Documentation of known allergies and chronic conditions on the exterior of the child's record or in another location where the information is clearly visible to persons with access to the record, including a notation of "no known allergies" when applicable; and

(3) (No change.)

§749.585. *How long must I maintain client records?*

(a) (No change.)

(b) You must maintain a foster child's complete record from admittance to discharge for two years from the date of discharge, or until the resolution of any investigation involving the child, whichever is longer. ~~[child records for a child placed in foster care:]~~

~~[(1) For at least two years after the child is discharged; and]~~

~~[(2) Until the resolution of any investigation of a serious incident that occurred while the child was in care with your agency.]~~

(c) - (f) (No change.)

§749.587. *How must I handle adoption records if I cease operating?*

(a) If you cease operating, you must transfer adoption records to:

(1) The Department of State Health Services, Bureau of Vital Statistics, and provide written notification to Licensing of the transfer; or

(2) (No change.)

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER E. AGENCY STAFF AND CAREGIVERS
DIVISION 1. GENERAL REQUIREMENTS

40 TAC §749.607

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§749.607. *What general responsibilities do all employees and caregivers have?*

Regardless of whether the employee or caregiver is counted in the child/caregiver ratio, each employee or caregiver must:

(1) In the absence of a more specific rule requirement, demonstrate [Demonstrate] competency, prudent judgment, and self-control in the presence of children and when performing assigned responsibilities;

(2) (No change.)

(3) Know and comply with [applicable] rules of this chapter, Chapter 42 of the Human Resources Code, Chapter 745 of this title (relating to Licensing), and any other [applicable] laws which are relevant to the person's duties.

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DIVISION 2. CHILD-PLACING AGENCY ADMINISTRATOR

40 TAC §749.631, §749.633

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules

governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§749.631. *What qualifications must a child-placing agency administrator meet?*

(a) A child-placing agency administrator must:

(1) Meet the qualifications established by the agency's governing body;

(2) Be a Licensed Child-Placing Agency Administrator according to Chapter 43 of the Human Resources Code and [~~Subchapter N of~~] Chapter 745, Subchapter N of this title (relating to Administrator [Administrator's] Licensing); [~~and~~]

(3) Be a full-time employee of the agency; [~~and~~-]

(4) Be present at a Texas office of the agency to provide on-site administrative oversight.

(b) If acting as the administrator for two residential child-care operations under §749.633 of this title (relating to Can a child-placing agency administrator be an administrator for two residential child-care operations?), the administrator must split a full-time schedule between the two operations as described in the professional staffing plans for each operation.

§749.633. *Can a child-placing agency administrator be an administrator for two residential child-care operations?*

[(a)] A [Except as provided in subsection (b) of this section, a] child-placing agency administrator can be an administrator for two residential child-care operations, including a general residential operation or residential treatment center, if:

(1) Both operations are in good standing with Licensing;

(2) The size and scope of the operation are manageable by one person, which is clarified in the written professional staffing plans; [~~and~~]

(3) The person also holds a valid Child-Care Administrator License, if applicable; and

(4) At least one child-placing agency is [not] managing [more than] 25 or fewer foster homes, if acting as the administrator for two child-placing agencies.

[(b)] An agency that provides an assessment services program may designate their child-placing agency administrator or another employee as the person responsible for administering those services. The person designated must:}

[(1)] Be a Licensed Child-Placing Agency Administrator;}

[(2)] Have a master's degree in social work or a human services field from an accredited college or university and at least two years of supervised child-placing experience. The degree must include:}

[(A)] A minimum of nine credit hours in graduate level courses that focus on family and individual function and interaction; and}

[(B)] At least 350 hours of formal, supervised field placement or practicum with a social service or human services agency; or}

[(3)] Have a master's degree in a human services field and at least three years of supervised child-placing experience.}

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DIVISION 3. CHILD PLACEMENT STAFF

40 TAC §§749.663, 749.669, 749.673, 749.675, 749.681

The amendments and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new section implement HRC §42.042.

§749.663. *What are the responsibilities of child placement staff?*

(a) Child placement staff providing foster care services are responsible for:

(1) (No change.)

(2) Placing a child into a foster home~~[- adoptive home,-]~~ or ~~any~~ other substitute living arrangement;

(3) Managing the case of a child ~~in any substitute living arrangement~~, including:

(A) (No change.)

(B) Stewarding direct contact with the child and the ~~adoptive parents,-]~~ foster parents~~[-]~~ or other caregivers; and

(C) (No change.)

~~[(4) Case management and service delivery to birth parents;]~~

~~(4) [(5)] Orientation, assessment, and verification of foster parents; and~~

~~[(6) Orientation, assessment, and approval of adoptive parents; and]~~

~~(5) [(7)] Monitoring and providing support services to foster parents, including the initiation of development plans, corrective actions, or adverse actions.~~

(b) Child placement staff providing adoption services are responsible for:

(1) Deciding whether to admit a child for placement;

(2) Placing a child into a foster home, adoptive home, or other substitute living arrangement;

(3) Managing the case of a child, including:

(A) Developing and updating of service plans;

(B) Stewarding direct contact with the child and the foster parents, adoptive parents, or other caregivers; and

(C) Performing any additional case management activities;

(4) Case management and service delivery to birth parents; and

(5) Orientation, assessment, and approval of adoptive parents.

(c) [(b)] Child placement management staff may directly perform any of these responsibilities.

§749.669. *How do child placement management staff document approval?*

Child placement management staff must review and approve by signing and dating the following documents:

(1) - (7) (No change.)

(8) Any restrictions imposed on the child for more than 30 ~~[seven]~~ days that have not been approved by the treatment director or service planning team, and any monthly re-evaluations of a restriction that continues for more than 30 days;

(9) - (11) (No change.)

§749.673. *What are the qualifications that an employee must have to perform child placement activities?*

In addition to the requirements that all employees must meet, employees who perform child placement activities must meet the following qualifications:

Figure: 40 TAC §749.673

§749.675. *What are the qualifications an employee must have to perform child placement management activities?*

In addition to the requirements that all employees must meet, employees who perform child placement management activities must meet the following qualifications:

Figure: 40 TAC §749.675

§749.681. *What ethical requirements must I follow when conducting a foster home screening, an adoptive home screening, or a post-placement adoptive report?*

(a) You must not have a conflict of interest with any party in a disputed suit. You must not allow any previous knowledge of any party that was not exclusively obtained through a home screening or adoptive report to bias you. You must disqualify yourself if a conflict or bias exists. You must present any issues or concerns relating to such a conflict or bias to the court before you accept an appointment. However, unless the court finds you biased, you may conduct subsequent reports in a case you have previously screened.

(b) You must report to us any foster or adoptive placement that appears to have been made by someone other than the child's parents or a child-placing agency.

(c) If you have investigated only one side of a disputed case, you may state whether the party you investigated appears to be suitable for custody. You must refrain from making a custody recommendation, unless otherwise directed by the court.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams
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40 TAC §749.665

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §42.042.

§749.665. *What are the requirements for contact between child placement staff and children in care?*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 6. CONTRACT STAFF AND VOLUNTEERS

40 TAC §749.761

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§749.761. *What are the requirements for a volunteer?*

(a) (No change.)

(b) The personnel record must include a statement signed and dated by the volunteer indicating he must immediately report any suspected incident of abuse, neglect, or exploitation to the Child Abuse Hotline and the agency's administrator or administrator's designee. An internal reporting policy may not require the delegation of the person's responsibility to report suspected abuse, neglect, or exploitation.

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER F. TRAINING AND PROFESSIONAL DEVELOPMENT DIVISION 3. PRE-SERVICE EXPERIENCE AND TRAINING

40 TAC §749.863

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§749.863. *What are the pre-service hourly training requirements for caregivers and employees?*

(a) Caregivers and certain employees must complete the following training hours before the noted timeframe:

Figure: 40 TAC §749.863(a)

(b) Caregivers exclusively caring for children receiving treatment services for primary medical needs are exempt from pre-service emergency behavior intervention training requirements.

(c) [(b)] You must document the completion of each training requirement in the appropriate personnel record.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 6. ANNUAL TRAINING

40 TAC §§749.931, 749.933, 749.935, 749.939, 749.941, 749.945, 749.947, 749.949, 749.951

The amendments and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new section implement HRC §42.042.

§749.931. *What are the annual training requirements for caregivers and employees?*

(a) Caregivers and employees must complete the following training hours:

Figure: 40 TAC §749.931(a)
[Figure: 40 TAC §749.931]

(b) Child placement staff, child placement management staff, child-placing agency administrators, executive directors, and full-time professional service providers who are exclusively assigned to provide adoption services, or exclusively assigned to children receiving treatment services for primary medical needs are not required to obtain any annual training related to emergency behavior intervention.

§749.933. *When must an employee or caregiver complete the annual training?*

(a) (No change.)

(b) Alternatively, you [Yœu] have the option of prorating the person's annual training requirements from the date of employment to the end of the calendar year or the end of the agency's fiscal year and then beginning a new 12-month period that coincides with the calendar or fiscal year.

(c) The method for completing annual training requirements must be consistent throughout your agency.

§749.935. *What types of hours or instruction can be used to complete the annual training requirements?*

(a) If the training complies with the other rules in this division (relating to Annual Training), annual training may include hours or CEUs earned through:

(1) - (3) (No change.)

(4) Planned learning opportunities provided by child-care associations or Licensing; [œ]

(5) (No change.)

(6) Completed college courses for which a passing grade is earned, with three college credit hours being equivalent to 50 clock hours of required training. College courses do not substitute for

required CPR or first-aid certification or required annual training on emergency behavior intervention or psychotropic medication. [The hours attending college or a professional credentialing or registry program.]

(b) - (e) (No change.)

§749.939. *What are the instructor requirements for providing annual training?*

The annual training instructors must meet the same requirements in §749.869(c) and (d) of this title (relating to What are the instructor requirements for providing pre-service training?).

§749.941. *What areas or topics are appropriate for annual training?*

Annual training must be in areas appropriate to the needs of children for whom the caregiver provides care, which may include:

(1) - (5) (No change.)

(6) Supervision and safety practices in the care of children;
or [and]

(7) (No change.)

§749.945. *For a caregiver that administers psychotropic medication, what annual training is required?*

If you permit a caregiver to administer psychotropic medication: [~~his~~]

(1) His annual training must meet the requirements in §749.885 of this title (relating to Are there additional general pre-service training requirements for a caregiver that administers psychotropic medication?); and

(2) He must obtain annual psychotropic medication training no later than 12 months after his last psychotropic medication training.

§749.947. *What [must] annual training is required regarding emergency behavior intervention [include]?*

(a) - (c) (No change.)

(d) Each caregiver who is required to obtain annual emergency behavior intervention training must obtain each annual training no later than 12 months after his last emergency behavior intervention training.

§749.949. *What documentation must I maintain for annual training?*

(a) You must keep documentation verifying completion of annual training in the appropriate personnel record. The documentation may be a certificate, letter, or a signed and dated statement of successful completion from the training source. The documentation may also be a transcript from an accredited college or university.

(b) The documentation for training other than college courses must include the following information:

(1) - (5) (No change.)

§749.951. *What are the annual training requirements if a caregiver is absent from the home on an extended basis for military service or as a condition of his employment?*

(a) If a caregiver is absent from the home on an extended basis for military service:

(1) He is temporarily exempt from annual training requirements;

(2) Upon his return home, his annual training requirements are prorated; and

(3) If needed, he must obtain first aid and/or CPR certification within 60 days of returning home.

(b) If a caregiver is absent from the home on an extended basis as a condition of his employment:

(1) Annual training requirements are prorated based on the amount of time the caregiver is at home; and

(2) If needed, he must maintain first aid and/or CPR certification.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 7. FIRST-AID AND CPR CERTIFICATION

40 TAC §749.991

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC §42.042.

§749.991. How do the rules in this division apply to child-placement staff?

A child-placement staff who meets the definition of a caregiver only because he provides transportation for children in foster care:

(1) Is not required to obtain CPR certification; and

(2) Must obtain first-aid certification:

(A) Excluding rescue breathing and choking; and

(B) Which may be completed using self-instructional training, such as a web-based course.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER G. CHILDREN'S RIGHTS

40 TAC §§749.1003, 749.1011, 749.1013

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§749.1003. What rights does a child in care have?

(a) (No change.)

(b) You must adhere to the child's rights, including:

(1) - (9) (No change.)

(10) The right to appropriate equipment and supplies for, and training in, personal care, hygiene, and grooming;

(11) (No change.)

(12) The right to have adequate personal clothing, which must be suitable to his age and size and comparable to the clothing of other children in the community, and reasonable opportunities to select his clothing;

(13) - (30) (No change.)

§749.1011. What right does a child have regarding contact with siblings?

(a) - (b) (No change.)

(c) When you restrict sibling contact [~~is restricted or not allowed~~], you must include justification in the child's record. If the restriction lasts more than 90 days, you must document the justification for continuing the restriction in the child's record at least every 90 days.

(d) (No change.)

§749.1013. What right to privacy does a child have with respect to his contact with others?

(a) (No change.)

(b) You must document in the child's record:

(1) Any reason for restrictions on [~~restricting~~] the child's mail or telephone calls that you impose; and

(2) (No change.)

(c) (No change.)

(d) Restrictions imposed by you that continue for more than 30 days must be re-evaluated monthly by your child placement management staff, who also must:

(1) - (2) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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**SUBCHAPTER H. FOSTER CARE SERVICES:
ADMISSION AND PLACEMENT
DIVISION 1. ADMISSIONS**

40 TAC §§749.1101, 749.1103, 749.1105, 749.1107, 749.1111

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§749.1101. Who [~~What children~~] may I admit?

(a) You may only admit children or young adults who meet your admission policy guidelines and whose needs you can meet. If you adopt a change in your admission policies that requires a change in the conditions of your permit, you must request an amendment to your permit with us. [~~You can only accept children:~~]

{(1) Whose age and gender are specified on your permit; and}

{(2) Needing the services that are specified on your permit.}

(b) (No change.)

§749.1103. After a child in my care turns 18 years old, may the person remain in my care?

(a) A young adult may remain in your care until his 23rd birthday [~~up to the age of 22 years old~~] in order to:

(1) - (4) (No change.)

(b) (No change.)

§749.1105. May I admit a young adult into care?

(a) You may admit a young adult into your transitional living program. [~~care:~~]

(b) For other programs or services, the young adult must:

(1) Come immediately from [~~From~~] another residential child-care operation if the reason for admittance is consistent with a condition listed in §749.1103 of this title (relating to After a child in my care turns 18 years old, may the person remain in my care?); or

(2) Be [~~If the child is~~] in the care of the Texas Department of Family and Protective Services.

(c) A young adult may remain in your care until his 23rd birthday.

§749.1107. What information must I document in the child's record at the time of admission?

(a) You must include the following in the child's record at the time of admission:

(1) - (11) (No change.)

(12) Identification of the child's treatment needs, if applicable, and any additional treatment services or programmatic services the child is receiving; [~~and~~]

(13) Identification of the child's high-risk behavior(s), if applicable, and the safety plan staff and caregivers will implement related to the behavior(s); and

(14) [~~(13)~~] A copy of the placement agreement, if applicable.

(b) (No change.)

§749.1111. What orientation must I provide a child?

(a) Within seven days of admission, you must provide orientation to each newly admitted child who is five years old or older [~~not an infant or a toddler~~]. You must gear orientation to the intellectual level of the child.

(b) Orientation [~~For a child functioning at a school age level; orientation~~] must include information about your policies on the following:

(1) - (5) (No change.)

(6) Emergency behavior intervention, including your agency's policies and practices on the use of personal restraint and the child's input on preferred de-escalation techniques that caregivers can use to assist the child in the de-escalation process;

(7) - (12) (No change.)

{(e) For a child functioning above toddler age and below school age, orientation must include as many of the items in subsection (b) of this section as possible.}

(c) [~~(d)~~] You must document in the child's record when the orientation occurred, any item that the orientation did not include, and the reason that the orientation did not include that item.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 2. ADMISSION ASSESSMENT

40 TAC §749.1135

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the

Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§749.1135. *What are the additional admission requirements when I admit a child for treatment services?*

When you admit a child for treatment services, you must do the following, as applicable:

Figure: 40 TAC §749.1135

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 3. REQUIRED ADMISSION INFORMATION

40 TAC §749.1151, §749.1153

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§749.1151. *What are the medical requirements when I admit a child into care?*

(a) You must ensure that the child has a medical examination by a health-care professional within 30 days after the date of admission. This exam is not required if [; unless] you have documentation that the child has had a medical examination within the past year, including documentation in the child's health passport if he is in DFPS conservatorship.

(b) - (c) (No change.)

(d) The reports and findings of any medical examination must be ~~signed and dated by the health-care professional who performed the examination and must be~~ documented in the child's record according to §749.1401(b) and (c) of this title (relating to What general medical requirements must my agency meet?).

§749.1153. *What are the dental requirements when I admit a child into care?*

(a) (No change.)

(b) A child three years old or older must have a dental appointment scheduled with a dentist within 30 days after the date of admission, and the examination must occur within 90 days after the date of

admission. A dental examination is not required if you have documentation that the child has had a dental examination within the past year, including documentation in the child's health passport if he is in DFPS conservatorship.

(c) The report and findings of the dental examination must be ~~signed and dated by the dentist and must be~~ documented in the child's record according to §749.1409(b) and (c) of this title (relating to What general dental requirements must my agency meet?).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 4. EMERGENCY ADMISSION

40 TAC §749.1187, §749.1189

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§749.1187. *For an emergency admission, when must I complete all of the requirements for an admission assessment?*

(a) For an emergency admission, you must complete all of the requirements (see Division ~~2~~ [4] of this subchapter (relating to Admission Assessment [Admissions])) for an admission assessment within 40 days from the date of the child's admission.

(b) (No change.)

§749.1189. *At the time of an emergency admission, what information must I document in the child's record [~~at admission~~]?*

At the time of the emergency admission you must document in the child's record:

(1) - (4) (No change.)

(5) Known contra-indications to the use of restraint; ~~and~~

(6) Identification of the child's high-risk behavior(s), if applicable, and the safety plan staff and caregivers will implement related to the behavior(s); and

(7) [6] For the purpose of providing treatment services:

(A) A brief description of the child's history;

(B) The child's current behavior; and

(C) Your evaluation of how the placement will meet the child's needs and best interests.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 6. SUBSEQUENT PLACEMENT

40 TAC §749.1281

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§749.1281. What are the requirements when I move a child from one foster home to another?

(a) - (b) (No change.)

(c) For all moves, child placement [~~child placing~~] staff must prepare a child according to §749.1253 of this title (relating to What must staff do to prepare a child for a placement?).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 7. POST-PLACEMENT CONTACT

40 TAC §749.1291

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Ser-

vices Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC §42.042.

§749.1291. What are the requirements for contact between child placement staff and children in foster care?

(a) Child placement staff must have monthly face-to-face contact with a child in care. However, staff can miss two visits per year, provided a child does not go longer than 60 days without a visit. These contacts are to ensure the:

(1) Needs of a child are being met; and

(2) Placement continues to be appropriate.

(b) If the child is able to communicate in a meaningful way, the contact with the child must:

(1) Be for a length of time sufficient to address the child's needs and determine the appropriateness of the placement;

(2) Provide an opportunity to meet in private; and

(3) Provide an opportunity for the child to express his feelings about how the placement is working out.

(c) If the child is non-verbal or pre-verbal, the contact with the child must be for a length of time sufficient for an appropriate observation of the child and the child's placement, including an assessment of any changes in behavior or developmental progress or delays as well as a verification that the placement is meeting the child's needs as specified in the service plan.

(d) The required contacts must be significant and must be documented in the child's record. The documentation in the child's record must be sufficient to address the requirements of subsections (b) and (c) of this section.

(e) Child placement management staff must review and approve documentation of contacts.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER I. FOSTER CARE SERVICES: SERVICE PLANNING, DISCHARGE DIVISION 1. SERVICE PLANS

40 TAC §749.1309

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC

§40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Texas Family Code §264.121 and HRC §42.042.

§749.1309. *What must a child's initial service plan include?*

(a) (No change.)

(b) The child's initial service plan must be documented in the child's record and include those items that a preliminary plan must include (see §749.1301 of this title (relating to What are the requirements for a preliminary service plan?)), and the items noted below for each specific type of service that you provide the child:

Figure: 40 TAC §749.1309(b)

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DIVISION 2. SERVICE PLAN REVIEW AND UPDATES

40 TAC §749.1335

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§749.1335. *How do I review and update a service plan?*

To review and update a service plan, you must:

(1) (No change.)

(2) Identify any new needs and strategies or techniques to meet these needs, including instructions to appropriate employees and caregivers;

(3) - (11) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams

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DIVISION 3. DISCHARGE AND TRANSFER PLANNING

40 TAC §§749.1361, 749.1371, 749.1373

The amendments and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new section implement HRC §42.042.

§749.1361. *What does a "[the] transfer" of a child in care [""] mean?*

A transfer refers to a child in care who is moved from one of your programs [or foster homes] to another one of your programs [or foster homes] operated under the same permit or at the same location. For example, a child may transfer from one foster home in which he was receiving treatment services to another foster home that offers transitional living services. A child may also transfer from your child-placing agency to your general residential operation, if your child-placing agency office is located on the same property as your general residential operation. This term does not apply if the child experiences a change in programs or services but remains in the same foster home. This term also does not apply if the child moves from one foster home to another for a reason other than a need for different services/programming, such as moving to be closer to siblings.

§749.1371. *What must I document in the child's record at the time of a discharge or transfer?*

At the time of a discharge or transfer, you must document the following:

(1) The date and circumstances of the discharge or transfer;

(2) Date and time the child was informed of his discharge or transfer, if applicable;

(3) For discharge, the name, address, telephone number and relationship of the person to whom you discharge the child, unless the child legally consents to his discharge. If the child legally consents to his discharge and does not want to involve the child's parent(s), you must document this in the child's record;

(4) The child's service plans while in your care for the past 12 months;

(5) A list of medications the child is taking, the dosage, frequency, and reason the medication was prescribed;

(6) Any treatment for a physical condition that is in progress and requires continuing or follow-up medical care; and

(7) For emergency discharge or transfer, the explanation given to the child regarding the reason for the discharge or transfer and the child's reaction to the discharge or transfer.

§749.1373. When I discharge a child [to another agency or residential child care operation], what information must I provide to the next placement or caregiver [them]?

(a) On or before the child's discharge, you must attempt to obtain legal consent to release the [discharge summary and the] information in subsection (b) of this section. If consent is not obtained, your attempt to obtain consent must be documented in the child's record. If consent is obtained, the information must be provided to the receiving placement or caregiver [operation] within 15 [30] days of the date the child is discharged.

(b) If not already provided at the time of discharge, copies [Copies] of the following documentation must be provided to the next placement or caregiver [information from the child's record must also be released with the discharge summary]:

(1) A written discharge summary, which must include:

(A) Services provided to the child while in your care;

(B) Accomplishments of the child while in your care;

(C) An assessment of the child's remaining needs;

(D) Recommendations about the services to meet the child's remaining needs;

(E) Support resources for the child, including telephone numbers and addresses; and

(F) Aftercare plans and recommendations for the child, including medical, psychiatric, psychological, dental, educational, and social appointments;

(2) [(4)] The child's background information, including progress notes for the past 60 days if applicable;

(3) [(2)] Any unresolved incidents or investigations involving the child, if applicable; and

(4) [(3)] Assessments and/or evaluations that you have performed for the child, including the child's admission assessment, diagnostic assessment, educational assessment, neurological assessment, and psychiatric or psychological evaluation. [;]

[(4) The child's service plans while in your care for the past 12 months;]

[(5) A list of medications the child is taking, the dosage, frequency, and reason the medication was prescribed; and]

[(6) Any treatment for a physical condition that is in progress and requires continuing or follow-up medical care.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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40 TAC §§749.1371, 749.1375, 749.1379

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the

Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC §42.042.

§749.1371. What must I document in the child's record regarding a planned discharge or transfer?

§749.1375. To whom do I provide a copy of the discharge summary when I discharge a child to his home?

§749.1379. What must I document in the child's record at the time of an emergency discharge or transfer?

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER J. FOSTER CARE SERVICES: MEDICAL AND DENTAL

DIVISION 1. MEDICAL AND DENTAL CARE

**40 TAC §§749.1401, 749.1409, 749.1415, 749.1417,
749.1421, 749.1425, 749.1427**

The amendments and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new section implement HRC §42.042.

§749.1401. What general medical requirements must my agency meet?

(a) (No change.)

(b) The child's record must include a written record of each medical examination specifying:

(1) - (4) (No change.)

(5) A copy of the [The] results of the medical examination; [that is signed and dated by the health-care professional who performed the examination; and]

(6) If the medical examination is a result of an injury or medical incident, the documentation of the circumstances surrounding the incident, including the date and time of the incident; and[-]

(7) Any other documentation provided by the health-care professional who performed the examination.

(c) For a child in DFPS conservatorship, you must supplement any information already documented in the child's health passport in order to comply with subsection (b) of this section. In your written record for the child, you are not required to repeat information that is already in the child's health passport.

(d) [(e)] You must obtain follow-up medical treatment as recommended by the health-care professional.

§749.1409. What general dental requirements must my agency meet?

(a) A child [children] in your care must receive dental care:

(1) - (4) (No change.)

(b) The child's record must include a written record of each dental examination specifying the:

(1) - (4) (No change.)

(5) A copy of the [The] results of the dental examination [that is signed and dated by the health-care professional who performed the examination].

(c) For a child in DFPS conservatorship, you must supplement any information already documented in the child's health passport in order to comply with subsection (b) of this section. In your written record for the child, you are not required to repeat information that is already in the child's health passport.

(d) [(e)] You must obtain follow-up dental work indicated by the examination, such as treatment of cavities and cleaning.

§749.1415. What health precautions must I take if a person in care, employee, caregiver, someone else in one of my foster homes, or someone else in my agency has a communicable disease?

(a) You must notify the Department of State Health Services (DSHS) after you become aware that a person in your care, an employee, a contract service provider, a caregiver, someone else in one of your foster homes, or a volunteer has contracted [e]ntacted] a communicable disease that the law requires you to report to the DSHS as specified in 25 TAC Chapter 97, Subchapter A (relating to Control of Communicable Diseases).

(b) - (e) (No change.)

§749.1417. Who must have a tuberculosis (TB) examination?

(a) All persons over the age of one year old must have a documented tuberculosis screening that was conducted as recommended by the Center for Disease Control (CDC) within 30 days before or after beginning to live, work, or volunteer at your operation unless the person:

(1) Has lived, worked, or volunteered at a regulated residential child-care operation within the previous 12 months. For example, an employee beginning employment in a regulated residential child-care operation for the first time would need a baseline tuberculosis screening. Employment in a different residential child-care operation would not require a new screening, as long as documentation in paragraph (2) of this subsection is also provided. If the employee left employment in regulated residential child-care for more than 12 months and then returned, a new screening would be required; and

(2) Provides documentation of a tuberculosis screening.

(b) Documentation must consist of a copy of the results of the baseline tuberculosis screening or chest radiograph, which must be in the person's record at your operation within 40 days of the person beginning to live, work, or volunteer at your operation. Documentation of a copy of the results of treatment (if treatment is required) must also be maintained in the person's record. For a child in DFPS conservatorship, documentation in the child's health passport is sufficient.

(c) Except on the advice of a physician, no additional screening is required for a person who continues to live, work, and/or volunteer in a regulated residential child-care setting.

§749.1421. What immunizations must a child in my care have?

(a) (No change.)

(b) You must maintain current immunizations records for each child in your care. For a child in DFPS conservatorship, documentation in the child's health passport is sufficient.

(c) Unless the child is exempt from immunization requirements, all immunizations required for the child's age must:

(1) - (2) (No change.)

§749.1425. What documentation is acceptable for an immunization record?

(a) (No change.)

(b) Documentation of an immunization record on file at your agency may be:

(1) - (2) (No change.)

(3) An official immunization record generated from a state or local health authority, such as a registry; [e]r[-]

(4) A record received from school officials, including a record from another state; or[-]

(5) The child's health passport, for a child in DFPS conservatorship.

§749.1427. Must children in my care have a vision and hearing screening?

(a) (No change.)

(b) For each child required to be screened, you must keep one of the following in each child's record:

(1) The individual vision and hearing screening results; however, results found in the child's health passport if the child is in DFPS conservatorship are sufficient to meet this requirement;

(2) - (3) (No change.)

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40 TAC §749.1417

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §42.042.

§749.1417. *Who must have a tuberculosis (TB) examination?*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 2. ADMINISTRATION OF MEDICATION

40 TAC §749.1463

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§749.1463. *What medication requirements must caregivers meet?*

(a) (No change.)

(b) Caregivers must:

(1) - (3) (No change.)

(4) Administer each child's medication within one hour of [immediately after] preparation;

(5) - (8) (No change.)

(9) Ensure that a child is not given ~~[your employees do not provide]~~ any prescription medication or treatment ~~[to a child]~~ except on written orders of a health-care professional;

(10) - (11) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 3. SELF-ADMINISTRATION OF MEDICATION

40 TAC §749.1501

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§749.1501. *What are the requirements for a self-medication program?*

For a child to be on a self-medication program:

(1) The child's parent ~~[health-care professional]~~ must give written authorization for the child to be on the program;

(2) (No change.)

(3) The health-care professional who prescribed the medication must be consulted and any concerns of the health-care professional documented in the child's record. [You must notify the parent and the person legally authorized to give medical consent that the child is on the program.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 4. MEDICATION STORAGE AND DESTRUCTION

40 TAC §749.1521

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§749.1521. *What medication storage requirements must a foster home meet?*

A foster home must:

(1) - (3) (No change.)

(4) Store medication covered by Schedule [Section] II of the Texas Controlled Substances Act under double lock in a separate container. For example, a double lock can include a lock on the cabinet or filing cabinet and the door to the closet where medications are stored;

(5) Make provisions for ~~[securely]~~ storing medication that requires refrigeration;

(6) (No change.)

(7) Remove discontinued medication immediately and store it in a separate locked area until it is destroyed [destroy it in a way that ensures that children do not have access to it];

(8) Remove medication on or before the expiration date and store it in a separate locked area until it is destroyed [destroy it in a way that ensures that children do not have access to it];

(9) Remove medication of a discharged or deceased child immediately and store it in a separate locked area until it is destroyed [destroy it in a way that ensures that children do not have access to it]; and

(10) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 5. MEDICATION RECORDS

40 TAC §749.1541, §749.1543

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Ser-

vices Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§749.1541. *What records must caregivers maintain for each child receiving medication?*

(a) Caregivers must maintain a cumulative record of all:

(1) Prescription [prescription] medication dispensed to each [a] child; and

(2) Nonprescription [all nonprescription] medication, excluding vitamins, dispensed to a child under five years old.

(b) Caregivers must maintain the medication record during the time that they provide services to the child. This record must include the:

(1) Child's full name;

(2) Prescribing health-care professional's name, if applicable;

(3) Reason medication was prescribed, for prescription medication;

(4) [~~3~~] Medication name, strength, and dosage;

(5) [~~4~~] Date (day, month, and year) and the time the medication was administered;

(6) [~~5~~] Name and signature of the person who administered the medication;

(7) [~~6~~] Child's refusal to accept medication, if applicable; and

(8) [~~7~~] Reasons for administering the medication, including the specific symptoms, condition, and/or injuries of the child that the caregiver is treating, only for:

(A) PRN psychotropic medication; [~~prescriptions~~] and

(B) Nonprescription [nonprescription] medications (excluding vitamins) for children under five years old.

(c) [~~b~~] Identification of any prohibited prescription medication, nonprescription medication, and vitamins for each child must be maintained in the medication record, which must be incorporated into the child's record.

(d) [~~e~~] The medication records of prescription and nonprescription medication dispensed to the child must be incorporated into the child's record.

§749.1543. *Where must a child's medication records be maintained?*

(a) The foster parents must maintain at the foster home the child's medication records for the current month [30 days].

(b) - (c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 9. PROTECTIVE DEVICES

40 TAC §749.1641

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§749.1641. *What is a protective device?*

- (a) (No change.)
- (b) Examples of a protective device are helmets, elbow guards, mittens, ~~[bedrails,]~~ and wheelchair seat belts.
- (c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER K. FOSTER CARE SERVICES: DAILY CARE, PROBLEM MANAGEMENT DIVISION 1. ADDITIONAL REQUIREMENTS FOR INFANT CARE

40 TAC §§749.1803, 749.1813, 749.1815, 749.1819

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§749.1803. *What are the basic care requirements for an infant?*

- (a) - (c) (No change.)
- (d) An infant's caregiver must never leave the infant unsupervised; [-]

(1) A sleeping infant is considered supervised if the caregiver is within eyesight or hearing range of the infant [child] and can intervene as needed, or if the caregiver uses a video camera or audio monitoring device to monitor the infant [child] and is close enough to the infant [child] to intervene as needed; and

(2) An awake infant is considered supervised if the caregiver is within eyesight of the infant and is close enough to the infant to intervene as needed. For short periods of time in the course of routine household activities, the infant may be out of the caregiver's eyesight, as long as the:

- (A) Infant is within hearing range;
 - (B) Infant's environment is free of any safety hazards;
- and
- (C) Caregiver is able to intervene immediately, as needed.

§749.1813. *What types of equipment may a foster home not use with infants?*

- (a) - (c) (No change.)
- (d) An infant receiving treatment services for primary medical needs may have special items that assist him with safe sleep at the written recommendation of a health-care professional.

§749.1815. *What are the specific sleeping requirements for [Are] infants [required to sleep on their backs]?*

(a) [Yes.] Caregivers must place an infant not yet able to turn over on his own in a face-up sleeping position unless a health-care professional orders otherwise.

(b) An infant must not have his head, face, or crib covered at any time by an item such as a blanket, linen, or clothing.

(c) An infant may not sleep in a prone position with a sleeping adult at any time, including in the adult's bed, on a couch, etc.

§749.1819. *What are the specific requirements for feeding an infant?*

- (a) - (c) (No change.)
- (d) A caregiver who cares for more than one infant must:
 - (1) Sterilize shared [Not permit the infant to share] bottles or training cups between uses by different infants; and
 - (2) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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40 TAC §749.1817

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §42.042.

§749.1817. *If an infant has difficulty falling asleep, may the infant's head or crib be covered?*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 2. ADDITIONAL REQUIREMENTS FOR TODDLER CARE

40 TAC §749.1841

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§749.1841. *What are the basic care requirements for a toddler?*

(a) - (b) (No change.)

(c) A toddler's caregiver must never leave the toddler unsupervised. A [sleeping] toddler is considered supervised if the caregiver is within eyesight or hearing range of the child and can intervene as needed, or if the caregiver uses a video camera or an audio monitoring device to monitor the child and is close enough to the child to intervene as needed.

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DIVISION 3. ADDITIONAL REQUIREMENTS FOR PREGNANT CHILDREN

40 TAC §749.1861

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§749.1861. *What information must I provide a pregnant child regarding her pregnancy?*

You must:

(1) - (2) (No change.)

(3) Inform the child, within seven days of admission or upon learning of the pregnancy, of her right to be free from pressure to get an abortion, relinquish her child for adoption, or to parent her child.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 4. EDUCATIONAL SERVICES

40 TAC §749.1891

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including

the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§749.1891. *What responsibilities do I have for the education of a child in care?*

(a) You must arrange an appropriate education for each child, including:

(1) - (2) (No change.)

(3) For a child attending an accredited educational facility or program, ensuring the facility or program [that] implements a special education student's individual education plan (IEP); and

(4) (No change.)

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER L. FOSTER CARE SERVICES: EMERGENCY BEHAVIOR INTERVENTION DIVISION 1. DEFINITIONS

40 TAC §749.2001

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§749.2001. *What do certain words mean in this subchapter?*

These words have the following meaning in this subchapter:

(1) (No change.)

(2) De-escalation--See §749.43(14) [§749.43(13)] of this title (relating to What do certain words and terms mean in this chapter?).

(3) Emergency behavior intervention--See §749.43(18) [§749.43(17)] of this title.

(4) - (7) (No change.)

(8) PRN--See §749.43(46) [§749.43(43)] of this title.

(9) - (14) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 2. TYPES OF EMERGENCY BEHAVIOR INTERVENTION THAT MAY BE ADMINISTERED

40 TAC §749.2055, §749.2059

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§749.2055. *What actions must a caregiver take before using a permitted type of emergency behavior intervention?*

(a) Before using a permitted type of emergency behavior intervention, the caregiver must:

(1) Attempt less restrictive behavior interventions that prove to be ineffective at defusing the situation; and

(2) Determine that the basis for the emergency behavior intervention is:

(A) An emergency situation; or

(B) A need for a personal restraint to administer intramuscular medication or other medical treatments prescribed by a licensed physician, such as administering insulin to a child with diabetes; [; ¶]

~~[(C) A need for a personal restraint in a foster home where a child is significantly damaging property, such as breaking car windows or putting holes into walls. If this is the basis of the personal restraint, only a short personal restraint may be used and only to prevent the damage.]~~

(b) A child's active attempt to run away may be considered an emergency situation when the following is a factor:

(1) The child is developmentally or chronologically under six years old;

- (2) The child is suicidal;
- (3) The operation is located near a high traffic area;
- (4) Adverse weather conditions pose a clear safety risk to the child; or
- (5) Other clear safety risks are present.

§749.2059. *What is the appropriate use for a short personal restraint?*

Generally, a short personal restraint is used in urgent situations, such as:

- (1) (No change.)
- (2) To intervene when a child under the age of five (chronological or developmental age) demonstrates disruptive behavior, if other efforts to de-escalate the child's behavior have failed; [∅]
- (3) When a child over five years old demonstrates behavior disruptive to the environment or milieu, such as disrobing in public, provoking others that creates a safety risk, or to intervene to prevent a child from physically fighting; or
- (4) When a child is significantly damaging property, such as breaking car windows or putting holes into walls.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 4. RESPONSIBILITIES DURING ADMINISTRATION OF ANY TYPE OF EMERGENCY BEHAVIOR INTERVENTION

40 TAC §749.2153

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§749.2153. *When must a caregiver release a child from an emergency behavior intervention?*

A child must be released as follows:
 Figure: 40 TAC §749.2153

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 8. GENERAL CAREGIVER RESPONSIBILITIES, INCLUDING DOCUMENTATION, AFTER THE ADMINISTRATION OF EMERGENCY BEHAVIOR INTERVENTION

40 TAC §§749.2301, 749.2303, 749.2305

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§749.2301. *What follow-up actions must caregivers take after the child's behavior no longer constitutes an emergency situation?*

- (a) - (b) (No change.)
- (c) Caregivers involved in the emergency behavior intervention must:
 - (1) Debrief with child placement [plac~~ing~~] staff concerning the incident as soon as possible after the situation has stabilized; and
 - (2) (No change.)
 - (3) The child placement [plac~~ing~~] staff must review the use of the emergency behavior intervention within 72 hours of the intervention.
- (e) - (f) (No change.)

§749.2303. *What must the caregiver document after discussing with the child the use of the emergency behavior intervention?*

The caregiver must document the following after discussing with the child the use of the emergency behavior intervention:

- (1) [~~(a)~~] The date and time the caregiver offered the discussion;
- (2) [~~(b)~~] The child's reaction to the opportunity for discussion;
- (3) [~~(c)~~] The date and time the discussion took place, if applicable; and
- (4) [~~(d)~~] The content of the discussion, if applicable.

§749.2305. *When must a caregiver document the use of an emergency behavior intervention, and what must the documentation include?*

(a) As soon as possible, but no later than 24 hours after the initiation of the intervention, the caregiver must document in the child's record the following information:

(1) (No change.)

~~(2) The basis for the emergency behavior intervention;~~

(2) ~~(3)~~ A description and assessment of the circumstances and specific behaviors that caused the basis for the emergency behavior intervention;

(3) ~~(4)~~ The de-escalation attempted before and during the use of the emergency behavior intervention and the child's reaction to those strategies;

(4) ~~(5)~~ The specific emergency behavior intervention administered;

(5) ~~(6)~~ The date and time the intervention was administered;

(6) ~~(7)~~ The length of time the child was restrained;

(7) ~~(8)~~ The name of the caregiver(s) that participated in the incident that led to the intervention, and who administered the intervention;

(8) ~~(9)~~ The name of the person(s) who observed the child;

~~(10) The duration of the emergency behavior intervention;~~

(9) ~~(11)~~ All attempts to explain to the child what behaviors were necessary for release from the intervention;

(10) ~~(12)~~ The child's condition following the use of the medication or release from the intervention, including any injury the child sustained as a result of the intervention or any adverse effects caused by the use of the intervention; and

(11) ~~(13)~~ The actions the caregiver(s) took to facilitate the child's return to normal activities following the end of the intervention.

(b) The child placement ~~[child-placing]~~ staff must document their review of the use of the emergency behavior intervention within 72 hours of the incident.

(c) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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**SUBCHAPTER M. FOSTER HOMES:
SCREENINGS AND VERIFICATIONS
DIVISION 1. GENERAL REQUIREMENTS
40 TAC §749.2407**

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC §42.042.

§749.2407. May a home be verified or approved by more than one child-placing agency simultaneously?

(a) A home may not be verified to provide foster care services by more than one child-placing agency at one time.

(b) A home may be simultaneously verified by one child-placing agency for foster care services only and approved by another child-placing agency(ies) for adoption only.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 2. FOSTER HOME SCREENINGS

40 TAC §749.2441, §749.2443

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC §42.042.

§749.2441. Can I verify foster homes anywhere in the state?

§749.2443. Do the requirements described in §749.2441 of this title (relating to Can I verify foster homes anywhere in the state?) apply to the counties in which I place children for adoption?

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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40 TAC §§749.2451, §749.2453

The amendment and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment and new section implement HRC §42.042.

§749.2451. What must I document regarding [are the requirements for documenting the] interviews I conduct for a foster home screening?

(a) (No change.)

(b) The documentation must include the date [dates] and method [methods] used to contact each [the] required person [persons], the date [dates] of each interview [the interviews], who was present at each interview [the interviews], their relationship to the prospective foster parents, and a summary of each interview [the interviews].

(c) (No change.)

§749.2453. When must I update the foster home screening?

You may update a foster home screening you completed, but you are not required to do so except under the circumstances described in §749.307(a) of this title (relating to What happens to the foster homes under a branch office when the branch office closes?).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 3. VERIFICATION OF FOSTER HOMES

40 TAC §§749.2471, 749.2488, 749.2491, 749.2493

The amendments and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services

Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new section implement HRC §42.0452 and §42.042.

§749.2471. What must I do to verify a foster home?

Verifying a foster home includes the following steps:

(1) - (3) (No change.)

(4) Inspecting the home to ensure and document that the home meets appropriate rules of this chapter, including:

(A) (No change.)

(B) Subchapter K of this chapter (relating to Foster Care Services: Daily Care and Problem Management); and

(C) (No change.)

(5) - (7) (No change.)

(8) Obtaining from the child placement management staff review and approval of the [screenings,] home screening [study,] and the recommended verification of the home; and

(9) Issuing a verification certificate that specifies the:

(A) - (B) (No change.)

(C) The foster home's total capacity, which includes the biological and adopted children of the caregivers who live in the foster home, any children receiving foster or respite child-care, and children for whom the family provides day care; [-]

(D) The foster home's foster care capacity, a subset of the total capacity which includes only children placed for foster care or respite child care;

(E) [~~(D)~~] The ages and gender(s) of children for which the home is verified to provide foster care or respite child care; [~~and~~]

(F) [~~(E)~~] The types of services the foster home will provide; and

(G) The child-placing agency main office or branch office which issued the verification.

§749.2488. What statement must I provide to foster parents regarding foster parent and child-placing agency rights and responsibilities?

(a) You must provide foster parents with a written copy of the following statement that lists the rights and responsibilities of foster parents and the child-placing agency:

(1) Foster parents have the right to be treated with dignity, respect, and consideration as a member of the service planning team;

(2) Foster parents have the right and responsibility to participate in service planning and implementation of the service plan;

(3) Foster parents have the right and responsibility to obtain training that will assist them in meeting the needs of children placed in their home;

(4) The child-placing agency has a responsibility to assist foster parents in identifying training that will enhance the foster parents ability to meet the needs of children placed in their home;

(5) Foster parents and the child-placing agency have the responsibility to communicate with each other in a timely and effective manner;

(6) Foster parents have the right to be reimbursed for care of the children placed in their home in a timely manner and according to the child-placing agency's policy;

(7) The child-placing agency has the responsibility to provide relevant information about a child to foster parents when placing or considering placing the child;

(8) Foster parents have the right and responsibility to obtain information and ask questions about children the child-placing agency would like to place in their home, including requesting a pre-placement visit;

(9) Foster parents have the right to know how much discretion they have in declining specific placements without fear of negative repercussions;

(10) The child-placing agency has the responsibility to provide support to all of their foster parents and inform them of any services available to foster parents;

(11) Foster parents have the responsibility to report to the child-placing agency and Licensing information as required by the child-placing agency's policies and this chapter;

(12) Foster parents have the right to appeal child-placing agency actions and decisions that affect them and to know the procedures for making an appeal;

(13) Foster parents have the responsibility to comply with this chapter as applicable;

(14) The child-placing agency has the responsibility to provide foster parents with support, training, and oversight in order to ensure the foster parents are in compliance, as applicable, with this chapter; and

(15) Foster parents have the right to review their foster home record maintained by the child-placing agency.

(b) You and the foster parents must sign a copy of the statement at the time you verify the home.

(c) The foster home must have a copy of the signed statement.

(d) You must file a copy of the signed statement in the foster home record maintained by the child-placing agency.

§749.2491. *May I verify a foster home to provide different services?*

(a) You may verify a foster home to provide different services as long as a child placement staff completes an assessment of the home that includes a review of the following:

(1) - (3) (No change.)

(4) The foster parents' experience and ability to provide each service.

(b) - (e) (No change.)

§749.2493. *May a foster home [family] provide day care in addition to foster care?*

A foster group home may not provide day care in addition to foster care. A foster family home may provide day care in addition to foster care under the following conditions:

(1) The number and ages of children in both types of care must meet all relevant laws and rules, including the requirements [those] listed in §745.375 of this title (relating to May I offer child day care at my agency foster home or independent foster home?);

(2) - (5) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Department of Family and Protective Services

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DIVISION 4. TEMPORARY VERIFICATION

40 TAC §749.2521

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§749.2521. *What must I do prior to issuing a temporary verification?*

(a) (No change.)

(b) You may only issue a temporary verification after [you]:

(1) You inspect [Inspect] the new location;

(2) You determine [Determine] that the home meets the minimum standards, including all health and safety, environment, and space and equipment standards; and

~~[(3) Document that all health and safety, environment, and space and equipment standards are met; and]~~

(3) ~~[(4)]~~ The child placement management staff reviews [review] and approves [approve] the temporary verification by signing and dating it.

(c) - (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 5. CAPACITY AND CHILD/CARE-GIVER RATIO

40 TAC §§749.2551, 749.2557, 749.2563, 749.2565, 749.2567

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§749.2551. *What is the maximum number of children a foster family home may care for?*

(a) A two-parent foster family home may care for up to six children, including any biological and adopted children of the caregivers who live in the foster home and any children receiving foster or respite child-care, and children for whom the family provides day care. A home in which one foster parent is absent for extended periods, such as military service or out-of-town job assignments, must comply with subsection (b) of this section when only one foster parent is regularly present in the home.

(b) A single-parent foster family home may care for a maximum of:

(1) Five children if any child in the home is under five years old;

(2) Four children if more than two children in the home receive treatment services (except for children with primary medical needs, see paragraph (3) of this subsection); and

(3) Four children if any child in the home receives treatment services for primary medical needs.

(c) ~~[(b)]~~ All adults in care must also be counted in the capacity of the home per §749.2651 of this title (relating to May a foster home accept adults into the home for care?).

§749.2557. *May a foster home exceed its verified capacity?*

(a) ~~[No.]~~ The ~~[maximum]~~ number of children in a foster home, including the biological and adopted children of the caregivers who live in the foster home, any children receiving foster or respite child-care, and children for whom the family provides day care, must not exceed the total capacity stated on the home's verification.

(b) Children visiting the home or in the home for infrequent babysitting are not counted in the capacity of the home. However, the caregivers in the home must ensure that the presence of additional children in the home does not prevent adequate supervision of children in foster and respite child-care.

§749.2563. *How do I determine child/caregiver ratio for a foster group home?*

(a) The number of children one caregiver may supervise in a foster group home is eight, unless the home meets one of the criteria in the chart below:

Figure: 40 TAC §749.2563(a)

~~Figure: 40 TAC §749.2563~~

(b) Children visiting the home or in the home for infrequent babysitting are not counted in the child/caregiver ratio. However, the

caregivers in the home must ensure that the presence of additional children in the home does not prevent adequate supervision of children in foster and respite child-care.

(c) A child may be away from the foster home and caregivers in order to participate in an approved unsupervised activity as outlined in §749.2593(d) of this title (relating to What responsibilities does a caregiver have when supervising a child?). A child does not count in the child/caregiver ratio while participating in an approved unsupervised activity.

§749.2565. *Are there restrictions on placing a child younger than five years old in a foster group home?*

(a) You may ~~[Yes, you:]~~

~~[(1)]~~ [May] only place a child who is younger than five years old in a foster group home if you determine that:

(1) ~~[(A)]~~ The placement is necessary to maintain a sibling group of children of any age; and

(2) ~~[(B)]~~ A less restrictive setting cannot meet the needs of the sibling group.

(b) ~~[(2)]~~ You must document your decision in the child's record.

§749.2567. *Must a foster group home maintain the child/caregiver ratio at all times?*

(a) A foster group home that is not the primary residence of any caregiver must maintain the required child/caregiver ratio at all times.

(b) A foster group home that is the primary residence of at least one caregiver may be out of ratio during waking hours for short periods as long as the care and supervision needs of the children continue to be met, except that the home must comply with subsection (c) of this section.

(c) For a foster group home that is the primary residence of at least one caregiver, if three caregivers are required to meet the child/caregiver ratio, there must be at least two caregivers with the children during waking hours.

(d) A foster group home that is the primary residence of at least one caregiver may be out of ratio during night-time sleeping hours as long as you have a safety plan for night-time supervision which ensures that the care and supervision needs of the children continue to be met.

(e) When ~~[No. However, even during a time that]~~ all children in care are away from the home, at least one caregiver must be on-call and immediately available ~~[by phone]~~ to:

(1) Respond to emergencies, changes in schedules, or unplanned events; and

(2) Provide care and supervision whenever a child needs the attention of a caregiver, including when the child returns to the home.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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40 TAC §749.2559

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The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §42.042.

§749.2559. *How do I determine the child/caregiver ratio for a foster family home?*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 6. SUPERVISION

40 TAC §749.2593, §749.2599

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§749.2593. *What responsibilities does a caregiver have when supervising a child?*

(a) (No change.)

(b) In deciding how closely to supervise a child, the caregiver must take into account:

(1) - (4) (No change.)

(5) The child's [~~needs, including the~~] physical, mental, emotional, and social needs.

(c) (No change.)

(d) A child may be away from the foster home and caregivers in order to participate in an unsupervised activity, as appropriate based on the caregiver's assessment of the child and the supervision instructions in the child's service plan. The caregiver's assessment of the child must include the factors outlined in subsection (b) of this section. The child's service plan must specify if unsupervised activities are allowed, and under what circumstances. If a child is participating in an unsupervised activity, the caregiver must:

(1) Know where the child will be;

(2) Give the child a specific time to return to the foster home or the caregiver's location;

(3) Give the child a way to contact the caregiver in an emergency; and

(4) Be available to respond if the child contacts the caregiver and needs immediate assistance.

(e) [~~(f)~~] Caregivers that supervise a child receiving treatment services must maintain progress notes for the child, at a frequency determined by the service planning team. Caregivers must sign and date each progress note at the time the progress note is completed. Progress notes must be available for Licensing staff to review.

§749.2599. *Can a child serve as a caregiver?*

A child who is 16 years old or older, including a foster child, [~~over the age of 16~~] may serve as a babysitter [~~caregiver~~] for [~~foster care~~] children under the age of 13 as long as:

(1) The child placement management staff approves the child to babysit [~~be a caregiver~~], establishing limits with duration and frequency;

(2) The child acts as a babysitter [~~caregiver~~] for no more than eight hours and never over night;

(3) (No change.)

(4) Neither the child babysitting nor any of the foster children in the babysitter's care is [~~supervising or~~] receiving treatment services.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 7. RESPITE CHILD-CARE SERVICES

40 TAC §749.2629, §749.2635

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§749.2629. *In addition to the requirements of this division, what requirements of this chapter apply to respite child-care services that a foster home provides?*

You and the foster home providing respite child-care must meet all requirements of the applicable rules of this chapter for all children in care, including children admitted for respite child-care services. This includes compliance with capacity and child/caregiver ratios and supervision rules. Children receiving respite care in a foster home are counted in the capacity and child/caregiver ratio for the home.

§749.2635. *May I place a child for respite child-care services in a home that Licensing does not regulate?*

You may place a child for respite child-care services in a home that meets the requirements of the short-term program exemption set forth in §745.117(2) [~~§745.117(6)~~] of this title (relating to Which programs of limited duration are exempt from Licensing regulation?).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER N. FOSTER HOMES: MANAGEMENT AND EVALUATION

40 TAC §§749.2803, 749.2807, 749.2815

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§749.2803. *What changes affect the conditions of a foster home's verification?*

(a) Changes that affect the conditions of a foster home's verification include a change in the:

(1) - (3) (No change.)

(4) Ages and gender(s) of children for which the home is approved [~~verified~~];

(5) - (6) (No change.)

(b) (No change.)

§749.2807. *How do I evaluate a foster home's compliance with the relevant Licensing rules affecting the need for the evaluation?*

You are responsible for the home's ongoing compliance with our rules. You must evaluate the home as follows:

(1) - (2) (No change.)

(3) When an unplanned change in housing or employment occurs, you must evaluate the rules related to the change;

(4) [~~(3)~~] You must document the rules that were evaluated and the determination of the evaluation;

(5) [~~(4)~~] During any contact with the foster family, including routine supervisory contacts and investigations, you must cite and address any deficiencies noted;

(6) [~~(5)~~] Your documentation of deficiencies must include plans for achieving compliance; and

(7) [~~(6)~~] You must also document a plan for follow-up to ensure compliance was achieved.

§749.2815. *How often must I have supervisory visits with the foster home?*

(a) - (b) (No change.)

(c) You must document each visit in the home's record. The documentation must include specific rules evaluated, results of the evaluation, deficiencies found, plans for achieving compliance, [~~and~~] plans for follow-up to ensure compliance was achieved, and any changes to the information in the foster home screening since the last supervisory visit, including the reasons for any change in the home's verification.

(d) For each supervisory visit, documentation of the visit must be signed by the foster parent(s) present for the visit and the child-placement staff conducting the visit.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER O. FOSTER HOMES: HEALTH AND SAFETY REQUIREMENTS, ENVIRONMENT, SPACE AND EQUIPMENT DIVISION 1. HEALTH AND SAFETY

40 TAC §§749.2902 - 749.2905, 749.2913, 749.2915, 749.2917

The amendments and new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new sections implement HRC §42.042.

§749.2902. What health safety measures are required at a foster home?

(a) For each foster home, you must attempt to obtain a health inspection from the local health authority. If you cannot obtain a health inspection by a local authority, you must document all attempts to obtain an inspection with the date, name of person contacted, and the person's response to the request to complete an inspection.

(b) For each foster home that does not have a health inspection from the local health authority, you must evaluate the foster home's health safety using our Environmental Health Checklist form.

(c) Each inspection or evaluation must be documented, including the name and telephone number of the person who conducted the inspection or evaluation.

(d) Deficiencies documented during any inspection or evaluation must be corrected, and the foster home must comply with any conditions or restrictions specified by the inspector or evaluator.

(e) Once you document that a health inspection is not available in a particular area, you may use that documentation for any foster home verified by you in that area. A copy of the documentation must be on file in each foster home record to which the documentation applies.

(f) Documentation that a health inspection is not available in a particular area is valid for one year.

§749.2903. What fire safety measures are required at a foster family home not serving children receiving treatment services for primary medical needs?

(a) Foster family homes not serving children receiving treatment services for primary medical needs must have either:

(1) A fire inspection conducted by a certified fire inspector or a local or state fire authority; or

(2) A fire safety evaluation conducted by your child placement staff using the State Fire Marshal's fire prevention checklist for foster homes.

(b) Each fire inspection or fire safety evaluation must be documented, including the name and telephone number of the person who conducted the inspection or evaluation.

(c) Deficiencies documented during any inspection or evaluation must be corrected, and the foster home must comply with any conditions or restrictions specified by the inspector or evaluator.

§749.2904. What fire safety measures are required at a foster family home serving children receiving treatment services for primary medical needs or a foster group home?

(a) Foster family homes serving children receiving treatment services for primary medical needs and foster group homes must have a

fire inspection conducted by a certified fire inspector or a local or state fire authority. You must document efforts to obtain a fire inspection. If, after exploring and documenting efforts to obtain a fire inspection for a home, you cannot obtain a fire inspection, then a fire safety evaluation may be conducted by your child-placement staff using the State Fire Marshal's fire prevention checklist for foster homes. Documentation of efforts to obtain a fire inspection must include each date, the name of the person contacted, and the person's response to the request to complete an inspection.

(b) Each inspection or use of the State Fire Marshal's checklist must be documented, including the name and telephone number of the person who conducted the inspection or evaluation.

(c) Deficiencies documented during any inspection or use of the State Fire Marshal's checklist must be corrected, and the foster home must comply with any conditions or restrictions specified by the inspector or child-placement staff.

(d) Once you document that a fire inspection is not available in a particular area, you may use that documentation for any foster home verified by you in that area. A copy of the documentation must be on file in each foster home record to which the documentation applies.

(e) Documentation that a fire inspection is not available in a particular area is valid for one year.

§749.2905. How often must fire and health inspections be conducted at a foster home?

(a) (No change.)

(b) If you use a [DFPS] checklist for a foster home's fire or health inspection, the checklist is current for one year.

§749.2913. How many fire extinguishers must a foster home have?

(a) (No change.)

(b) The fire extinguisher(s) must be:

(1) Serviced or replaced after each use; and

(2) (No change.)

§749.2915. Where must a foster home store dangerous tools and equipment?

A foster home must store dangerous tools and equipment, such as hatchets, saws, and axes, so they are inaccessible to children. Children may use these tools and equipment, with caregiver supervision [-] as needed [appropriate] based on the child's age, maturity, and treatment issues.

§749.2917. What are the requirements for animals that are present at a foster home?

~~{(a) Caregivers must keep the home and premises free of stray animals.}~~

~~{(b) The foster home must not allow children to play with stray animals or other animals that could be dangerous.}~~

~~{(c)} Any animals on the premises of a home must be kept free of disease. Animals must be vaccinated and treated as recommended by a licensed veterinarian. The caregivers must have documentation at the home showing that dogs, cats, and ferrets have been vaccinated as required by Texas Health and Safety Code, Chapter 826. If the foster home chooses to have animals on the premises, it must ensure that the animals do not create health problems or a health risk for children.~~

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40 TAC §749.2903

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §42.042.

§749.2903. *Who must conduct fire and health inspections at a foster home?*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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**DIVISION 3. WEAPONS, FIREARMS,
EXPLOSIVE MATERIALS, AND PROJECTILES**

40 TAC §749.2961

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§749.2961. *Are weapons, firearms, explosive materials, and projectiles permitted in a foster home?*

(a) Generally, weapons, firearms, explosive materials, and projectiles (such as darts or arrows), are permitted, however, there are some specific restrictions:

(1) If you allow weapons, firearms, explosive materials, projectiles, or toys that explode or shoot, you must develop and enforce a policy identifying specific precautions to ensure children do not have unsupervised access to them, including:

(A) Locked [~~locked~~] storage [and separate locked storage] for the weapons and the ammunition;

(B) [~~2~~] Locked storage must be made of strong, unbreakable material;

(C) [~~3~~] If the locked storage has a glass or another breakable front or enclosure, [~~the~~] guns must be secured with a locked cable or chain placed through the trigger guards; and

(D) Separate locked storage for the weapons and the ammunition. Ammunition may be stored with weapons in the same location, such as a gun cabinet, provided that access to both ammunition and weapons cannot be obtained by using the same key and/or combination;

(2) [~~4~~] You must determine that it is appropriate for a specific child to use the weapons, firearms, explosive materials, projectiles, or toys that explode or shoot; and

(3) [~~5~~] No child may use a weapon, firearm, explosive material, projectile, or toy that explodes or shoots, unless the child is directly supervised by a qualified adult.

(b) Your policies must require foster parents/caregivers [~~parents~~] to notify you if there is a change in the type of or an addition to weapons, firearms, explosive materials, or projectiles that are on the property where the foster home is located.

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 4. SPACE AND EQUIPMENT

**40 TAC §§749.3023, 749.3025, 749.3027, 749.3029,
749.3031, 749.3039, 749.3041**

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§749.3023. *Which rooms in the home may not be used as bedrooms?*

(a) Only a room ~~[rooms]~~ that provides ~~[provide]~~ adequate opportunities for rest and privacy may be used as a bedroom.

(b) Bedrooms used by foster children must have at least one source of natural lighting.

~~(c) [(b)]~~ Foster children or any other household members may not use any of the following as a bedroom:

(1) A room commonly used for other purposes, including dining rooms, living rooms, hallways, or porches;

(2) A passageway to other rooms; or

(3) A room that does not have doors for privacy. ~~[-; or]~~

~~[(4) A detached structure.]~~

(d) A foster child may use a detached structure as a bedroom if:

(1) The child is 16 years old or older;

(2) The service planning team approves; and

(3) The detached structure is included in required fire and health inspections for the foster home.

~~(e) [(e)]~~ A foster child may use a basement as a bedroom if there is ~~[-]~~

~~[(+)]~~ a ~~[A]~~ second fire escape route from the basement. ~~[-; and]~~

~~[(2) Natural lighting.]~~

~~(f) [(d)]~~ A foster child may not use a room, including a basement or detached structure, as a bedroom if there is no natural lighting:

(1) Unless you verified the home prior to January 1, 2007; and

(2) Until the verification is no longer valid, or the home is structurally altered through the addition of a new room.

§749.3025. *May an adult ~~[a resident]~~ in care ~~[who turns 18 years old]~~ share a bedroom with a minor?*

(a) Before an adult in care ~~[resident who has turned 18 years old while placed in his current foster home]~~ can share a bedroom with a minor resident, you must assess the behaviors, maturity level, and relationships of each resident to determine whether there are risks to either the minor or adult in care.

(b) You must document and date your assessment in the child's ~~[each resident's]~~ record.

(c) Children may not sleep in the same bed with an adult unless the adult is the child's parent and the child is between the ages of one year and 10 years old.

§749.3027. *May a child in care share a bedroom with an adult caregiver?*

(a) - (b) (No change.)

(c) Children may not sleep in the same bed with an adult caregiver at any time.

(d) [(e)] To facilitate continuous supervision of a child, the caregiver may move a child to a location where the caregiver can directly and continuously supervise a child until there is no longer an immediate danger to himself or others. However, the caregiver must provide comfortable sleeping arrangements for the child.

§749.3029. *Can children of opposite sex share a bedroom?*

Foster children ~~[Children]~~ six years old or older must not share a bedroom with a person of the opposite sex, except for: ~~[-]~~

(1) A child sharing a bedroom with his minor parent; or

(2) Non-ambulatory children receiving treatment services for primary medical needs.

§749.3031. *What are the requirements for beds and bedding?*

(a) Each foster child shall have his own bed and mattress. This does not prevent a child receiving respite care or requiring closer supervision from sleeping on a couch, sleeping bag, etc. for fewer than seven days.

(b) - (d) (No change.)

§749.3039. *What are the requirements for outdoor recreation space and equipment?*

(a) - (d) (No change.)

(e) Trampolines may only ~~[not]~~ be used at the foster home if: ~~[as play or recreational equipment.]~~

(1) Only one child is on the trampoline at a time;

(2) Somersaults are not allowed on the trampoline;

(3) Shock-absorbing pads cover the springs, hooks, and ~~frame;~~

(4) No ladder is used with the trampoline; and

(5) A caregiver provides supervision as follows:

(A) For children under 15 years old, the caregiver must be immediately present, watching the child(ren) at all times, enforcing safety rules, and able to respond in an emergency; and

(B) For children 15 years old and older, the caregiver must be on the premises, visually check on the child(ren) at frequent intervals, and able to respond in an emergency.

§749.3041. *What are the requirements for a foster home's physical environment?*

The foster home must ensure that:

(1) The home is safe for children, kept clean, and in good repair;

(2) Equipment and furniture are safe for children, kept clean, and in good repair;

(3) Exits in living areas are not blocked by furniture;

(4) The outdoor areas are safe for children, kept clean, and in good repair;

(5) [(+)] Outdoor areas are well drained;

(6) [(2)] Windows and doors used for ventilation are screened;

[(3) Equipment and furniture are safe for children, kept clean, and in good repair.]

(7) [(4)] Flammable or poisonous substances are stored out of the reach of children unless caregivers have evaluated a child as capable and likely to use such items responsibly; and

(8) [(5)] The home is ~~[House and grounds are]~~ free of rodents and ~~[-]~~ insects. ~~[-; and stray animals; and]~~

[(6) Exits in living areas are not blocked by furniture.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 5. NUTRITION AND FOOD PREPARATION

40 TAC §749.3079

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§749.3079. *What are the requirements for storing food?*

All food items must be:

- (1) - (2) (No change.)
- (3) Protected [~~Be protected~~] from contamination;
- (4) - (6) (No change.)

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DIVISION 6. TRANSPORTATION

40 TAC §749.3107

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the

Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§749.3107. *May caregivers teach or supervise foster children in learning to drive?*

(a) (No change.)

(b) Only the caregiver responsible for instruction and the child(ren) [~~child~~] learning to drive may be present in the vehicle.

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DIVISION 7. SWIMMING POOLS, BODIES OF WATER, SAFETY

40 TAC §§749.3133, 749.3135, 749.3137, 749.3139, 749.3147

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§749.3133. *What are the requirements for a pool at a foster home?*

(a) - (n) (No change.)

(o) An aboveground pool must:

{(1) Have a barrier that prevents a child's access to the pool;}

(1) [~~(2)~~] Be inaccessible to children under the age of 16 years old or children receiving treatment services when it is not in use; and

(2) [~~(3)~~] Meet all other requirements in this rule except for subsections (c) - (e) of this section [pool safety requirements specified in this subchapter].

(p) A pool cover does not substitute for any of the requirements in this rule.

§749.3135. *What general requirements must caregivers meet for children regarding a body of water?*

(a) - (b) (No change.)

(c) Rules governing the activity and the dangers of the body of water must be explained to participants in a manner that is clearly understood prior to their participation.

§749.3137. *What are the child/adult ratios for swimming activities?*

(a) The maximum number of children one adult can supervise during swimming activities is based on the age of the youngest child in the group and is specified in the following chart:

Figure: 40 TAC §749.3137(a)

(b) - (d) (No change.)

(e) The ratios in subsection (a) of this section do not include children over the age of 12 years old who are proficient swimmers. However, [however] you must still comply with the child/caregiver ratios required in [§749.2559 of this title (relating to How do I determine the child/caregiver ratio for a foster family home?) or] §749.2563 of this title (relating to How do I determine child/caregiver ratio for a foster group home?), including compliance with subsection (c) of this section if children are on an unsupervised swimming activity.

§749.3139. *May I include volunteers or relatives who do not meet minimum qualifications for caregivers in the swimming child/adult ratio?*

To meet the swimming child/adult ratio, you may include adult volunteers and adult relatives who do not meet the minimum qualifications for caregivers, providing:

(1) (No change.)

(2) Persons [Children] in your care do not supervise water activities; and

(3) (No change.)

§749.3147. *What are the requirements for a hot tub?*

A hot tub must be:

(1) Enclosed per the requirements in §749.3133 of this title (relating to What are the requirements for a pool at a foster home?); or

(2) Covered [eovered] with a locking cover when not in use.

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SUBCHAPTER Q. ADOPTION SERVICES: CHILDREN

DIVISION 1. CONSENT

40 TAC §749.3301

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including

the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§749.3301. *What legal authority must I have to place a child in adoptive care?*

To place a child in adoptive care, you must have an agreement signed by you and the person legally authorized to consent to the child's placement.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 3. PREPARATION FOR ADOPTION

40 TAC §§749.3341, 749.3343, 749.3349

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§749.3341. *How often must I have contact with a child being considered for adoptive placement?*

(a) - (d) (No change.)

(e) You may contract with another licensed child-placing agency to make these contacts as long as:

(1) The person making the contacts meets the minimum qualifications for a child placement staff in §749.673 of this title (relating to What are the qualifications that an employee must have to perform child placement activities?);

(2) The agency submits the required documentation to you;

(3) Your child-placement management staff reviews and approves the documentation; and

(4) You maintain the documentation in the child's record.

§749.3343. *What does preparing a child for adoption include?*

~~[(a) You must base your preparation on the child's needs and level of understanding.]~~

(a) ~~[(b)]~~ Preparation must include helping a ~~[the]~~ child five years old or older to:

- (1) Know and understand his history;
- (2) Understand the difference between biological, foster, and adoptive parents;
- (3) Express hopes and fears about adoption, including fears of disruption;
- (4) Separate from people he is close to, and grieve their loss;
- (5) Form new attachments; and
- (6) As appropriate, make a plan for contact with siblings, other family members, and/or other significant persons.

(b) Preparation for children under five years old must include as many of the items in subsection (a) of this section as appropriate based on the child's age and intellectual level.

(c) Regardless of the child's age, you must document in the child's record any items in subsection (a) of this section not addressed with the child during preparation for adoption and the reason for not addressing each item.

(d) ~~[(e)]~~ You must document preparation activities in the child's record.

§749.3349. What ~~[must the]~~ professional assessments must I obtain on a child being placed for adoption ~~[assessment of a child include]?~~

(a) - (d) (No change.)

(e) Required assessments must be current within:

- (1) 30 days of placement if the child is less than 18 months old;
- (2) Three months of placement if the child is 18 months to four years old; and
- (3) Six months of placement if the child is five years old or older.

(f) You must provide any testing that an assessment recommends for the child.

(g) You must document the assessments and results in the child's record.

(h) ~~[(e)]~~ If professional assessments have been completed since the child was placed in the home, you are not required to repeat them.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams

General Counsel

Department of Family and Protective Services

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For further information, please call: (512) 438-3437



40 TAC §749.3347

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the

Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §42.042.

§749.3347. What assessment information must I obtain on a child being placed for adoption?

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams

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DIVISION 4. PLACEMENT REQUIREMENTS

40 TAC §749.3373, §749.3375

The amendment and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment and new section implement HRC §42.042.

§749.3373. What must my agreement with the adoptive parents include?

(a) Before placing the child into the home, you must have a written agreement with the adoptive parents signed by you and the adoptive parents.

(b) - (c) (No change.)

§749.3375. May I place a child in the home of a prospective adoptive parent before I complete the adoptive home screening?

This may be done only if the prospective adoptive parent is a:

(1) Member of the child's family related by the second degree of consanguinity or affinity; or

(2) Foster family with whom the child has been living immediately prior to the request for an adoptive home screening.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams

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DIVISION 6. POST-PLACEMENT SUPERVISION

40 TAC §749.3425

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§749.3425. *What are the requirements for post-placement contacts with the adoptive family and child?*

(a) You must have face-to-face contacts with the child and adoptive parents, as follows:

Figure: 40 TAC §749.3425(a)

(b) Contacts not in the home must allow [may be in your office or another location that allows] you enough privacy to counsel with the adoptive family and evaluate the placement.

(c) (No change.)

(d) Contacts must be documented by child placement staff [and reviewed by child placement management staff].

(e) You may contract with another licensed child-placing agency to make these contacts as long as:

(1) The person making the contacts meets the minimum qualifications for a child placement staff in §749.673 of this title (relating to What are the qualifications that an employee must have to perform child placement activities?);

(2) The agency submits the required documentation to you;

(3) Your child-placement management staff reviews and approves the documentation; and

(4) You maintain the documentation in the child's record.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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40 TAC §749.3429

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The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §42.042.

§749.3429. *What must I do if there are changes in the adoptive family during the post-placement period?*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER R. ADOPTION SERVICES: BIRTH PARENTS

DIVISION 1. BIRTH PARENT PREPARATION

40 TAC §749.3503

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§749.3503. *What are the requirements for contacting birth parents that become my clients?*

(a) - (e) (No change.)

(f) You may contract with another licensed child-placing agency to make these contacts as long as:

(1) The person making the contacts meets the minimum qualifications for a child-placement staff in §749.673 of this title (relating to What are the qualifications that an employee must have to perform child placement activities?);

(2) The agency submits the required documentation to you;

(3) Your child-placement management staff reviews and approves the documentation; and

(4) You maintain the documentation in the child's record.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER S. ADOPTION SERVICES:

ADOPTIVE PARENTS

DIVISION 2. ADOPTIVE HOME SCREENING

40 TAC §§749.3621, 749.3623, 749.3627, 749.3633, 749.3635, 749.3637

The amendments and new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new sections implement HRC §42.042.

§749.3621. *What is an adoptive [a pre-adoptive] home screening?*

An adoptive [A pre-adoptive] home screening contains documentation of the following:

(1) - (6) (No change.)

§749.3623. *What information must I obtain for the adoptive home screening?*

You must obtain, document, and assess the following information about a prospective adoptive home:

Figure: 40 TAC §749.3623

§749.3627. *What must I document regarding interviews [that I conduct] for an adoptive home screening?*

You must document all interviews and attempts to complete interviews. The documentation must be a part of the adoptive home record and include:

(1) The date [dates] and method [methods] used to contact each [the] required person [persons];

(2) The date [dates] of each interview [the interviews];

(3) Who was present at each interview [the interviews] and their relationship to the adoptive applicants; and

(4) A summary of each interview [the interviews].

§749.3633. *When must I update an adoptive home screening?*

(a) You must update an adoptive home screening for a family seeking adoptive placement:

(1) Every 12 months; and

(2) After a major life change in the adoptive family.

(b) The update must include:

(1) A review and any required updating of each category of information required for an adoptive home screening; and

(2) Documentation of at least one visit to the adoptive home when all household members are present within the 90-day period before the update is approved by the child placement management staff.

(c) No update is required for adoptive homes that also are providing foster care as a foster home verified by your agency.

§749.3635. *What is a "major life change in the adoptive family"?*

A major life change in the adoptive family includes:

(1) Marriage, divorce, separation, death, birth, adoption, or any other change in household composition; or

(2) A serious health problem that affects the ability of the adoptive parent to care for children.

§749.3637. *Must I complete an adoptive home screening update if the prospective adoptive parents plan to adopt another child?*

Yes. If prospective adoptive parents plan to adopt another child, either in addition to or instead of the child for whom the screening was done, you must complete a written adoptive home screening update.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 2. PRE-ADOPTIVE HOME

SCREENING

40 TAC §749.3633

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §42.042.

§749.3633. *What must I do if I do not place a child with the adoptive applicants within six months after I complete the pre-adoptive home screening?*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams
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DIVISION 4. PRE-PLACEMENT REQUIREMENTS

40 TAC §749.3691

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§749.3691. *What contacts must I maintain with adoptive applicants prior to the placement of a child?*

(a) - (b) (No change.)

(c) In addition to the quarterly contacts, you must provide education and training in regard to the following as deemed appropriate by the child placement [placemng] staff:

(1) - (3) (No change.)

(d) (No change.)

(e) You may contract with another licensed child-placing agency to make these contacts as long as:

(1) The person making the contacts meets the minimum qualifications for a child-placement staff in §749.673 of this title (relating to What are the qualifications that an employee must have to perform child placement activities?);

(2) The agency submits the required documentation to you;

(3) Your child-placement management staff reviews and approves the documentation; and

(4) You maintain the documentation in the child's record.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams
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40 TAC §749.3693

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §42.042.

§749.3693. *May I contract with another agency for the quarterly contacts?*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams
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DIVISION 5. PRE-ADOPTION CONSUMMATION ACTIVITIES

40 TAC §749.3725, §749.3727

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including

the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§749.3725. *If the adoption has not been completed within the stipulated time frame in the written agreement, what actions must my agency take?*

(a) Your agency must make every effort to see that the adoption is consummated as stipulated within the written agreement.

(b) ~~(4)~~ You must make an assessment of why the adoption will not be completed according to the time frame in the written agreement in §749.3373(c)(1) of this title (relating to What must my agreement with the adoptive parents include?) [at the end of a six-month supervisory period]. The assessment must include:

(1) ~~(A)~~ Input from staff who have supervised the adoption placement, professionals who have provided counseling for the family, any other professional staff involved with the family, and the adoptive family; and

(2) ~~(B)~~ A plan for finalization of the adoption and for supervision of the placement that is based upon the assessment.

(c) ~~(2)~~ The assessment and plan must be documented. Child placement management staff must review the documentation and plan and must determine whether the assessment and plan will meet the needs of the child for safety, care, and permanency.

(d) ~~(3)~~ The adoptive placement must be re-evaluated if it has not been completed within one year.

§749.3727. *What actions must my agency take if there are changes to the adoptive family during the post-placement period?*

Your agency must document in the adoptive home record any changes in the adoptive family that may affect the child and assess the effect of the changes on the child. This includes any major life change in the adoptive family [changes in health, financial condition, or family or household composition].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams

General Counsel

Department of Family and Protective Services

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DIVISION 6. COUNSELING SERVICES

40 TAC §749.3741

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §42.042.

§749.3741. *Is my agency required to offer counseling services to the adoptive family?*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams

General Counsel

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DIVISION 6. POST-PLACEMENT ADOPTIVE REPORT

40 TAC §§749.3741, 749.3743, 749.3745, 749.3747, 749.3749, 749.3751, 749.3753

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042.

§749.3741. *What is a post-placement adoptive report?*

A post-placement adoptive report is a written evaluation of the assessments and interviews, after the placement of the child, regarding the:

- (1) Child;
- (2) Prospective adoptive parent(s);
- (3) Family of the prospective adoptive parent(s);
- (4) Environment of the prospective adoptive parent(s) and their family; and
- (5) Adjustment of all individuals to the placement.

§749.3743. *Whom must I interview when developing a post-placement adoptive report?*

(a) Interviews for a post-placement adoptive report may be conducted in one visit and must include:

(1) Individual interviews with each prospective adoptive parent;

(2) Individual interviews with each child three years or older living in the home and any other person living full or part-time with the family;

(3) A joint interview with the prospective adoptive parents; and

(4) A family group interview with all family members living in the home.

(b) These interviews are not required for a post-placement adoptive report when a foster family adopts a foster child who has been placed in that home at least six months.

§749.3745. What must I document regarding interviews for a post-placement adoptive report?

You must document in the record all interviews and attempts to interview persons listed in §749.3743 of this title (relating to Whom must I interview when developing a post-placement adoptive report?). The documentation must include the date and method taken to contact each required person, the date of each interview, who was present at each interview, their relationship to the adoptive parents, and a summary of each interview.

§749.3747. Is a visit to the home required when developing a post-placement adoptive report?

Yes. You must visit the home when all members of the household are present. You must document in the record the date, persons present, their relationship to the prospective adoptive parents, and observations made during the visit. This visit is not required for a post-placement adoptive report when a foster family adopts a foster child who has been placed in that home at least six months.

§749.3749. When must I develop a post-placement adoptive report?

You must conduct the interviews for a post-placement adoptive report after the child has resided with the prospective adoptive parent for at least five months, unless otherwise directed by the court. However, you may start developing the post-placement adoptive report (e.g. the gathering of written information) after the placement of the child.

§749.3751. What issues should an interview for a post-placement adoptive report address?

Each interview should focus on the adjustment of the family and the child following the placement of the child. You must also address any items required by §749.3623 of this title (relating to What information must I obtain for the adoptive home screening?) that have not been adequately addressed.

§749.3753. What information must the post-placement adoptive report include?

(a) It must include the following documented information:

(1) A summary of all assessments and available information about the child who is the subject of a petition for adoption, including:

(A) Health history, social history, educational history, genetic and family history, and other information required by the Texas Family Code, §162.005 and §162.007;

(B) History of physical, sexual, or emotional abuse experienced by the child;

(C) History of any previous placements, including the date and reasons for placement;

(D) The child's understanding of adoptive placement or conservatorship; and

(E) The child's legal status;

(2) A summary of all assessments, interviews, and available information about the prospective adoptive parents including:

(A) The adoptive home screening (See §749.3623 of this title (relating to What information must I obtain for the adoptive home screening?)), including the results of the criminal history and central registry background checks;

(B) The birth parents' expectations for adoptive placement and further involvement;

(C) Individual strengths and weaknesses of the adoptive parents;

(D) Observations made relative to the family's interactions with each other;

(E) Interviews conducted, as applicable, in accordance with §749.3743 of this title (relating to Whom must I interview when developing a post-placement adoptive report?); and

(F) A visit to the home conducted, as applicable, in accordance with §749.3747 of this title (relating to Is a visit to the home required when developing a post-placement adoptive report?);

(3) An evaluation of the child's present or prospective physical, intellectual, social, and psychological functioning and needs, and whether the environment will meet those needs;

(4) A summary of the adjustment of the family and child in the home during the post-placement period, if appropriate;

(5) Sources of information and verification, to the extent possible, of all statements of fact pertinent to the report;

(6) The basis for your conclusions or recommendations; and

(7) The names and the qualifications of all persons involved in the preparation and evaluation of the report.

(b) All persons involved in the preparation and evaluation of the report must sign the report.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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General Counsel

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DIVISION 7. SUBSEQUENT ADOPTIONS

40 TAC §749.3761

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §42.042.

§749.3761. *What are the requirements if adoptive parents apply to adopt another child?*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams

General Counsel

Department of Family and Protective Services

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DIVISION 7. COUNSELING SERVICES

40 TAC §749.3771

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC §42.042.

§749.3771. *Is my agency required to offer counseling services to the adoptive family?*

Yes, you must offer counseling services post-placement and post-adoption. The services may be provided directly or through referrals outside of your agency.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Department of Family and Protective Services

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DIVISION 8. SUBSEQUENT ADOPTIONS

40 TAC §749.3781

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC §42.042.

§749.3781. *What are the requirements if adoptive parents apply to adopt another child?*

(a) Before you may place another child into the home, you must update the adoptive home screening.

(b) The update must include at least one:

(1) Individual interview with each applicant;

(2) Individual interview with each child three years or older living in the home either full or part time;

(3) Individual interview with any other person living full or part time with the family; and

(4) Visit to the home while all family members are present.

(c) You must complete all other requirements for an adoptive placement.

(d) If a subsequent adoption occurs within one year from a previous adoption, in which all of the required home visits and interviews were conducted, an individual interview with each adoptive parent and a home visit with all household members present will meet the interview and home visit requirements.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: June 20, 2010

For further information, please call: (512) 438-3437



SUBCHAPTER T. ADDITIONAL REQUIREMENTS FOR CHILD-PLACING AGENCIES THAT PROVIDE AN ASSESSMENT SERVICES PROGRAM

DIVISION 4. ASSESSMENT REPORT

40 TAC §749.3893

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Com-

missioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§749.3893. *When must I complete the assessment report?*

(a) The [admission] assessment report must be completed [conducted] rapidly, consistent with good practice, in order to allow for a permanent placement as soon as possible.

(b) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 5, 2010.

TRD-201002451

Gerry Williams

General Counsel

Department of Family and Protective Services

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For further information, please call: (512) 438-3437



CHAPTER 750. INDEPENDENT FOSTER HOMES

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§750.43, 750.103, 750.105, 750.159, 750.185, 750.237, and 750.501; new §750.109, 750.153, and 750.503; and the repeal of §750.153, in its Independent Foster Homes chapter.

This chapter was effective January 1, 2007. Since three years have passed since this compete overhaul of the residential child care minimum standards, Child Care Licensing (CCL) has recently made an effort to: (1) identify minimum standards that require clarification; (2) identify minimum standards that are not having the intended outcome; and (3) identify unintended consequences of minimum standards. To initiate this evaluation process, CCL posted an online survey open to residential child care operations and other stakeholders, including foster parents and CCL field staff. CCL also hosted regional public meetings, during which operations and stakeholders could offer verbal comments/suggestions. CCL also hosted temporary workgroups through the Committee on Licensing Standards in order to seek input and guidance from operations and other stakeholders. While the majority of the proposed revisions clarify requirements or modify them based on stakeholder input, one change implements House Bill (HB) 3137 relating to foster parent rights from the 81st Legislative Session. A summary of the changes is described below.

Section 750.43 adds a definition for "primary residence" which is consistent with the primary residence requirements in Chapter 749, Child-Placing Agencies, for foster homes verified under child-placing agencies.

Section 750.103 clarifies that Licensing only intends to enforce a foster home operating according to its policies required by this chapter, as opposed to any and all of the home's policies. Licensing will also limit regulation to any specific requirements of the rules of this chapter.

Section 750.105 adds the requirement that employees and caregivers must report serious incidents and suspected abuse, neglect, or exploitation directly to DFPS. An additional change makes the rule consistent with Chapter 748, General Residential Operations, and Chapter 749.

New §750.109 outlines the rights and responsibilities of foster parents and Licensing, as required by HB 3137. Examples: Foster parents have the responsibility to comply with minimum standards rules, and they also have the right to technical assistance from Licensing on how to comply with minimum standards.

New §750.153 reorganizes the requirements regarding admission policies to make them easier to understand, but does not add or delete any requirements. The existing §750.153 is repealed.

Section 750.159 makes the emergency behavior intervention policy requirements for orientation upon admission consistent with other orientation requirements in this chapter.

Section 750.185 deletes "birth parent, foster parent applicant, or adoptive applicant" and replaces it with "potential adult client." The current language is not appropriate for independent foster homes, since they do not perform adoptions or verify foster homes.

Section 750.237 clarifies that a notation of "no known allergies" must be documented rather than simply omitting allergy information from a child's record.

Section 750.501 adds "Division 2, Subchapter H of Chapter 749 of this title" to make admission assessment requirements more consistent for all foster homes.

New §750.503 combines requirements from two current rules in Chapter 720, 24-Hour Care Licensing, regarding the minimum qualifications for the person who develops an admission assessment. The rules in Chapter 720 are repealed in this issue of the *Texas Register*, so that all relevant requirements will now be housed together.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that residential child care operations will more clearly understand minimum standard requirements, which will help to ensure the health, safety, and well being of children in residential child care. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

HHSC has determined that the proposed sections do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Leslie Reid at (512) 438-4666 in DFPS's Child Care Licensing Division. Electronic comments may be submitted to the RCCL Minimum Standards Comments mailbox at rcclstandards@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-413, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

SUBCHAPTER B. DEFINITIONS AND SERVICES

DIVISION 1. DEFINITIONS

40 TAC §750.43

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§750.43. *What do certain words and terms mean in this chapter?*

The words and terms used in this chapter have the meanings assigned to them under §745.21 of this title (relating to What do the following words and terms mean when used in this chapter?) and §749.43 of this title (relating to What do certain words and terms mean in this chapter?), unless another meaning is assigned in this section or unless the context clearly indicates otherwise. The following words and terms have the following meanings unless the context clearly indicates otherwise:

(1) - (4) (No change.)

(5) Primary residence--A place that a foster parent lives on a routine basis and:

(A) It is listed as the place of residence on their most recent tax return; or

(B) It is the address listed on their motor vehicle registration, driver's license, voter's registration, or other document filed with a public agency.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 4, 2010.

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Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: June 20, 2010

For further information, please call: (512) 438-3437



SUBCHAPTER C. ORGANIZATION AND ADMINISTRATION

DIVISION 1. PERMIT HOLDER RESPONSIBILITIES

40 TAC §§750.103, 750.105, 750.109

The amendments and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new section implement HRC §42.0452 and §42.042.

§750.103. *What are my operational responsibilities as permit holder?*

When you begin operating, you must:

(1) Operate according to the written policies and procedures adopted by the governing body as directed by this chapter;

(2) - (5) (No change.)

(6) Observe the conditions and restrictions of your permit;

(7) - (10) (No change.)

§750.105. *What responsibilities do I have for personnel policies and procedures?*

You must:

(1) - (4) (No change.)

(5) Ensure [~~Report or~~ ensure] your employees and caregivers report serious incidents and suspected abuse, neglect, or exploitation as required in §750.201(1) of this title (relating to What are the requirements for reports and record keeping?). An employee who suspects abuse, neglect, or exploitation must report their suspicion directly to us and may not delegate this responsibility, as directed by Texas Family Code, §261.101(b); [~~by the Texas Family Code, §261.401;~~]

(6) - (7) (No change.)

§750.109. *What are the rights and responsibilities of the foster home and Licensing?*

The rights and responsibilities of the foster home and Licensing include, but are not limited to, the following:

(1) Foster parents have the right and responsibility to obtain training that will assist them in meeting the needs of children receiving care in the foster home;

(2) Foster parents have the right and responsibility to obtain as much information as they need on a child before making a placement decision regarding that child;

(3) Foster parents have the responsibility to comply with the rules in this chapter;

(4) Foster parents have the right to technical assistance from Licensing regarding how to comply with the rules in this chapter; and

(5) Foster parents have the right to request administrative review and/or appeal of Licensing actions and decisions that affect them and to know the procedures for doing so per Chapter 745 of this title (relating to Licensing).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams

General Counsel

Department of Family and Protective Services

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DIVISION 4. FOSTER HOME POLICIES

40 TAC §750.153

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §42.042.

§750.153. What are the requirements for my admission policies?

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 4, 2010.

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Gerry Williams

General Counsel

Department of Family and Protective Services

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For further information, please call: (512) 438-3437



40 TAC §750.153, §750.159

The new section and amendment are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and

Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section and amendment implement HRC §42.042.

§750.153. What are the requirements for my admission policies?

Your admission policies must describe each program you offer, including but not limited to:

(1) The program's goals and services provided, including whether the program accepts emergency admissions;

(2) The characteristics of the population served by the program, such as behaviors and diagnoses. If the program includes treatment services, you must describe the emotional disorders, mental retardation, pervasive developmental disorders, or primary medical needs that the program is designed to treat; and

(3) The gender(s) and age range of the population served by the program.

§750.159. What emergency behavior intervention policies must I develop if the use of emergency behavior intervention is permitted in my home?

At a minimum, you must develop emergency behavior intervention policies to implement the requirements in Subchapter L of this chapter (relating to Emergency Behavior Intervention). The policies must include the following:

(1) - (4) (No change.)

(5) How you will meet the following requirements during the child's orientation:

(A) Explain [During admission, explain] and document the following to a child in a manner that the child can understand:

(i) - (ix) (No change.)

(B) Obtain [At admission, requirements for obtaining] each child's input on preferred de-escalation techniques that caregivers can use to assist the child in the de-escalation process[; and revisiting this information with the child and caregivers during each post emergency behavior intervention discussion];

(6) - (8) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams

General Counsel

Department of Family and Protective Services

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For further information, please call: (512) 438-3437



DIVISION 5. CLIENTS AND APPEALS

40 TAC §750.185

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of

services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§750.185. *What must my appeal process include?*

(a) - (b) (No change.)

(c) You must provide this information to each potential adult [birth parent, foster parent applicant, or adoptive applicant before you make that person your] client.

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams

General Counsel

Department of Family and Protective Services

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SUBCHAPTER D. REPORTS AND RECORD KEEPING

DIVISION 2. CLIENT RECORDS

40 TAC §750.237

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§750.237. *What information must an active child record include?*

For each child, the active record must include:

(1) (No change.)

(2) Documentation of known allergies and chronic health conditions on the exterior of the child's record or in another location where the information is clearly visible to persons with access to the record, including a notation of "no known allergies" when applicable; and

(3) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams

General Counsel

Department of Family and Protective Services

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For further information, please call: (512) 438-3437



SUBCHAPTER H. ADMISSION

40 TAC §750.501, §750.503

The amendment and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment and new section implement HRC §42.042.

§750.501. *What are the requirements for admission?*

You must comply with:

(1) (No change.)

(2) Division 2, Subchapter H of Chapter 749 of this title (relating to Admission Assessment);

(3) [~~2~~] Division 3, Subchapter H of Chapter 749 of this title (relating to Required Admission Information); and

(4) [~~3~~] Division 4, Subchapter H of Chapter 749 of this title (relating to Emergency Admission).

§750.503. *Who must develop the admission assessment?*

The person who develops a child's admission assessment must meet one of the following qualifications:

(1) A master's degree in social work or other human services field from an accredited college or university and a minimum of one year of experience in children's or family services;

(2) A master's degree from an accredited college or university and two years of experience in children's or family services;

(3) A bachelor's degree in social work or other human services field from an accredited college or university and two years of experience in children's or family services; or

(4) A bachelor's degree from an accredited college or university and three years of experience in children's or family services.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-201002271

Gerry Williams
General Counsel
Department of Family and Protective Services
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For further information, please call: (512) 438-3437



ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 7. STATE OFFICE OF ADMINISTRATIVE HEARINGS

CHAPTER 159. RULES OF PROCEDURE FOR ADMINISTRATIVE LICENSE SUSPENSION HEARINGS

SUBCHAPTER C. WITNESSES AND SUBPOENAS

1 TAC §159.101

The State Office of Administrative Hearings (SOAH) adopts an amendment to Subchapter C, Witnesses and Subpoenas, §159.101 (concerning Breath Test Operator and Technical Supervisor). The amendment is adopted without changes to the proposed text as published in the December 4, 2009, issue of the *Texas Register* (34 TexReg 8597). The amendment implements House Bill (HB) 2730 (81st Legislature, 2009), §3.01, which amended Transportation Code, Chapter 524, §524.039 to restrict the circumstances under which the person who requests a hearing may require the attendance at the hearing of the breath test operator or the breath test technical supervisor. In accordance with HB 2730, the amendment requires a person seeking to mandate the attendance of these individuals to apply to SOAH for issuance of a subpoena. The amendment also provides guidance on the circumstances that constitute good cause for issuance of a subpoena and the procedures for demonstrating them.

SOAH received written comments from the Texas Criminal Defense Lawyers Association (TCDLA), Texas Department of Public Safety (DPS), and K. Howard Sharp. SOAH also conducted a public hearing on the proposed amendment on February 26, 2010, and received oral comments from the following individuals and organizations: Lawrence Boyd on behalf of TCDLA and the DWI Committee; Troy McKinney on behalf of TCDLA, the Harris County Criminal Defense Lawyers Association, and the Fort Bend County Criminal Defense Lawyers Association; Doug Murphy individually and on behalf of TCDLA; Billy McNabb; J. Gary Trichter; Leah Bates; John Fox on behalf of the San Antonio Criminal Defense Lawyers Association; Lanette Rasmusel on behalf of the Texas Department of Public Safety; K. Howard Sharp; and Allen McDougall.

For the proposed amendment:

DPS filed written comments in support of the proposed amendment and also appeared at the public hearing on February 26, 2010.

Against the proposed amendment:

Mr. McNabb, Mr. Murphy, Mr. Trichter, Ms. Bates, Mr. McKinney, Mr. Boyd, and Mr. Fox commented in opposition to the proposed amendment. These individuals represent defendants in administrative license suspension hearings at SOAH. They asserted that the proposed manner of restricting the ability of a defendant to subpoena breath test operators (BTOs) and breath test technical supervisors (supervisors) violates defendants' due process rights, is otherwise unfair, and goes beyond the restrictions authorized by HB 2730.

SOAH appreciates these comments and the perspectives offered by these individuals and organizations. After careful consideration, SOAH, however, respectfully disagrees with their objections to the amendment. Prior to HB 2730, the person requesting the hearing was entitled to request the presence of the BTO and supervisor as a matter of right and without issuance of a subpoena. The statute now requires a subpoena, which is to be issued "only on a showing of good cause." As specifically authorized by §524.038 of the Transportation Code, the Department relies on affidavits to attest to the reliability of the breath test instrument and the analytical results and to show that the test was administered in accordance with the law in each SOAH hearing in which it asserts that the defendant failed a breath test. Accordingly, if the new restriction is to have any meaning, it must mean something beyond the mere fact that the Department intends to rely on affidavit testimony. As addressed below in the more specific responses to these objections, SOAH finds that the amendment establishes a reasonable threshold for establishing good cause and an appropriate mechanism to allow the Administrative Law Judge (ALJ) to make an informed decision on the request.

The commenters opposed to the amendment urge that it would inappropriately restrict the range of situations that constitute good cause to require the attendance of these persons. They also assert that the amendment goes beyond requiring simple good cause to require "extraordinary" or "uber" good cause. They generally acknowledged that the amendment provides an example of good cause but asserted that there are other ways of establishing good cause that should also be accepted. One commenter provided several scenarios, based on information hypothesized to have been obtained in the discovery process, that he believes would constitute good cause but would not fit under the proposed rule due to a lack of personal knowledge. These include documentation reflecting a discrepancy between the stated time of arrest and the time reflected on the breath test slip; information that the equipment was out of tolerance and taken out of service on the date of arrest; or video showing the BTO leaving the room during the fifteen minute waiting period.

SOAH agrees that these examples could constitute good cause to require the attendance of the BTO and/or the supervisor. SOAH disagrees, however, that the amendment would preclude a requestor from obtaining subpoenas under these circum-

stances. The requisite personal knowledge to support the good cause affidavit need not be from the defendant or another eyewitness to the events, though that could be one way to satisfy the requirement. An attorney who has obtained discovery responses that raise a genuine issue concerning the validity of the breath test has personal knowledge of the discovery requested and received and may use those documents as the basis for a good cause affidavit. In SOAH's view, the affidavit requirement does not unduly restrict what may constitute good cause but provides the mechanism for a requestor to provide adequate sworn information to the ALJ in order to allow the ALJ to make an informed determination regarding the existence of good cause.

SOAH believes the substantive requirement that the requestor raise a genuine issue concerning the validity of the breath test is consistent with the statutory authorization of affidavit testimony by these individuals and the specific statutory restriction that subpoenas be issued "only for good cause." This standard is also consistent with existing case law applying the general "good cause" standard for issuance of subpoenas under §2001.089 of the Administrative Procedure Act (APA). See *Balkum v. Texas Dept. of Public Safety*, 33 S.W.3d 263, 267 (Tex. App.-El Paso 2000, *no pet.*) (The fact that a subpoenaed officer was one of several witnesses to an arrest does not entitle the requestor to a subpoena as a matter of law. "The question is whether the witness sought to be subpoenaed could provide relevant testimony on a genuine *contested* issue.") (Emphasis in original).

In light of the case law, SOAH disagrees that the proposed amendment would violate due process requirements or would even apply a different substantive standard for "good cause" under HB 2730 than the "good cause" that is generally required under the APA. From experience, however, SOAH has determined that genuine contested factual issues involving the stop, investigation, and arrest of defendants-which require numerous subjective professional considerations-are far more prevalent in driver's license suspension hearings than are contested factual issues pertaining to the validity of the breath test results. Accordingly, SOAH has elsewhere established simplified procedures for defendants to subpoena stopping and arresting officers, whose testimony is routinely central to the contested issues at the hearing. In contrast with those witnesses, SOAH finds it appropriate through this amendment implementing HB 2730 to require a formal and somewhat detailed showing of the need for the testimony of BTOs and supervisors.

Other Commenters:

K. Howard Sharp, an attorney with DPS, commented on his own behalf. He spoke in general support of the amendment but recommended a modification to provide that the ALJ may issue a subpoena based on information adduced at the hearing only if the defendant shows that the information was not available prior to the hearing.

In the interest of justice, SOAH believes that the ALJ should retain discretion to issue a subpoena for good cause developed at the hearing even if the information was available prior to the hearing. The ALJ would be free to consider the prior availability of the information in assessing whether good cause for the subpoenas is established at the hearing.

Allen McDougall, a breath test technical supervisor, also spoke in general support of the amendment. He stated that he spends nearly two full days each week at SOAH waiting to testify, but that he is rarely called as a witness despite having been requested

by the Defendant. He stated that it would be more convenient for him to appear by telephone when his testimony is required.

SOAH believes the proposed amendment satisfies the overall concerns raised by Mr. McDougall in terms of the inefficient use of his time and resources. Where good cause is established to require the testimony of the BTO or supervisor, SOAH believes that the appearance of these witnesses by telephone would be appropriate only under the same circumstances as for other witnesses, as set out in §159.209 of this title relating to (Participation by Telephone or Videoconference).

The amendment is adopted under Government Code, Chapter 2003, which authorizes the State Office of Administrative Hearings to conduct contested case hearings, Government Code, Chapter 2001, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures, and §2003.050, which requires SOAH to adopt rules governing the procedures, including discovery procedures, that relate to a hearing conducted by SOAH. The amendment affects Government Codes, Chapters 2001, 2003, and Transportation Code Chapter 524.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 10, 2010.

TRD-201002499

Kerry D. Sullivan

General Counsel

State Office of Administrative Hearings

Effective date: May 30, 2010

Proposal publication date: December 4, 2009

For further information, please call: (512) 475-4931

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 2. LICENSING

SUBCHAPTER A. GENERAL PROVISIONS

The Texas Department of Agriculture (the department) adopts the repeal of §2.1 and new §2.1, regarding application for a license with the department, without changes to the proposal published in the March 19, 2010, issue of the *Texas Register* (35 TexReg 2242). The repeal of §2.1 allows the department to update its application requirements and to delete unnecessary and outdated language.

New §2.1, as adopted, provides requirements for submitting an application, timelines for submission of required documentation, what actions will be taken by the department on an application, and requirements for filing a notice of protest in regard to a license application. New §2.1 also provides for an incomplete application to become void after one year from the date of submission. Currently, applications for license or registration do not expire. As a result, the department has a large number of abandoned applications that are sitting in a dormant status. Over time this has created inefficiencies in managing the various internal agency storage components. This rule change allows the de-

partment to manage these items in a more efficient manner, allowing for more efficient use of the department's data storage and other resources.

No comments were received on the proposal.

4 TAC §2.1

The repeal of §2.1 is adopted under the Texas Agriculture Code, §12.016 which provides the department with the authority to adopt rules to administer its duties under the Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201002497

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Effective date: May 30, 2010

Proposal publication date: March 19, 2010

For further information, please call: (512) 463-4075



4 TAC §2.1

New §2.1 is adopted under the Texas Agriculture Code, §12.016 which provides the department with the authority to adopt rules to administer its duties under the Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

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For further information, please call: (512) 463-4075



TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER B. TRANSFER OF CREDIT, CORE CURRICULUM AND FIELD OF STUDY CURRICULA

19 TAC §4.28

The Texas Higher Education Coordinating Board (Coordinating Board) adopts an amendment to §4.28, concerning Core Cur-

riculum, without changes to the proposed text as published in the February 5, 2010, issue of the *Texas Register* (35 TexReg 739).

Specifically, this proposed amendment changes the portion of this rule regarding the approval of course substitutions for individual students who demonstrate evidence of a learning disability that precludes their fulfillment of the requirement through an approved core curriculum course. The change relieves Coordinating Board staff of responsibility for the review and approval of individual requests. Instead, each institution of higher education would review documented evidence and approve or deny requests for course substitutions on an individual basis.

One comment was received during the comment period.

Comment: Dallas County Community College District recommended that visual, oral, and aural physical disabilities be added to the citation in §4.28(k)(1).

Response: Because policies are already in place regarding visual, oral, and aural physical disabilities, as well as other physical disabilities, no change was made to the proposed amendment.

The amendment is adopted under the Texas Education Code, Chapter 61, Subchapter C, §61.051(j), which provides the Coordinating Board with the authority to approve courses for credit, distance education, and existing programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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SUBCHAPTER C. TEXAS SUCCESS INITIATIVE

19 TAC §4.61

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §4.61, concerning the Commissioner's limited authority to waive Texas Success Initiative requirements, with changes to the proposed text as published in the March 19, 2010, issue of the *Texas Register* (35 TexReg 2243).

Specifically, this new section will allow the Commissioner of Higher Education to waive §§4.51 - 4.60 of Coordinating Board rules if necessary to provide flexibility for Texas public institutions of higher education contracted by the Coordinating Board to plan, develop, and implement developmental education and adult basic education initiatives as outlined by and under the direction of the Coordinating Board.

No comments were received concerning the new section, however the Coordinating Board General Counsel noticed that "Article III" had been omitted from the language in the new section.

The new section is adopted under the Texas Education Code, §51.307, which provides the Coordinating Board with the authority to adopt rules to implement the provisions of Texas Education Code, §51.3062, concerning the Texas Success Initiative.

§4.61. *Limited Waiver of Rules.*

The Commissioner of Higher Education is authorized to waive §§4.51 - 4.60 of this title (relating to Texas Success Initiative) for grants and contracts awarded under General Appropriations Act, Senate Bill 1, 81st Texas Legislature, Article III, §50 (page III-62) and §56 (page III-63).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Bill Franz

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SUBCHAPTER R. REVIEW OF LOW-PRODUCING DEGREE PROGRAMS

19 TAC §§4.285 - 4.293

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §§4.285 - 4.293, concerning Review of Low-Producing Degree Programs. Sections 4.287 - 4.291 and §4.293 are adopted with changes to the proposed text as published in the January 8, 2010, issue of the *Texas Register* (35 TexReg 175). Sections 4.285, 4.286 and 4.292 are being adopted without changes and will not be republished.

Specifically, these new sections establish procedures for annual review of the number of graduates produced by degree programs at institutions of higher education to determine which are low-producing degree programs, and provides remedies for those programs that meet the definition of low-producing.

The following comments were received concerning the new sections:

Comment: Texas Association of College Technical Educators (TACTE), Grayson Community College, Brazosport College, San Jacinto Community College District, and Lamar Institute of Technology commented that the content regarding associate degree programs is ambiguous in regards to the inclusion and notification of associate of applied science degree and career technical programs.

Response: Staff agree and have clarified language in §4.287(4)(A) and by adding §4.288(c).

Comment: TACTE commented that degree programs should allow for exceptions from §4.291 for workforce needs in specific industries.

Response: Staff agree and have added clarifying language to §4.291(a)(1)(A).

Comment: TACTE, Palo Alto College, Brazosport College, Collin County Community College, Texas A&M-Corpus Christi, and the

University of Texas System state that the 10-year closure cycle is too long to respond to changes in the economy and be responsive to labor market, industry, and student needs.

Response: Staff agree and have added clarifying language in §4.293(c) and (d)(1) and (2).

Comment: TACTE commented that the process for program reinstatement for associate degrees is not addressed in §4.293.

Response: Staff agree and have made the clarification by adding §4.293(d)(1).

Comment: Palo Alto College commented that the proposed rules do not allow for a deactivation period for programs that are being closed due to low-productivity.

Response: No change is recommended. Staff notes that current procedure for phasing out any program allows for a teach-out period.

Comment: Stephen F. Austin University and a member of the general public commented that programs, especially math and science graduate programs, at smaller regional comprehensive institutions will be jeopardized and should be exempt from the proposed rules.

Response: No change is recommended. Staff noted that the minimum degree completion requirements are not excessive and are similar to standards adopted in many other states. Additionally, staff noted that the rules allow for a request for temporary exemption of a program that can justify need by explaining recruitment and retention strategies, applicable Closing the Gap initiatives, student success, and cost efficiency.

Comment: The University of Texas at Tyler commented that allowances should be given to new programs and programs that are a service to other programs and do not incur additional cost.

Response: No change is recommended. Staff noted that these concerns are addressed in §4.289(a) for new programs and in §4.291(a)(2) for service programs.

Comment: The University of Texas at Tyler commented that reviewing low-performing programs annually causes additional burden on the institution and recommends a biennial review.

Response: No change is recommended. Staff noted that the number of degrees completed are reported every year to the Coordinating Board. No action is required of the institution until the fifth year of a low-producing degree program.

Comment: A member of the general public commented that it is unreasonable to expect small and medium sized universities to produce the same number of graduates per years as similar programs at larger institutions.

Response: No change is recommended. Staff noted that the minimum degree completion requirements are not excessive and are similar to standards adopted in many other states.

Comment: A member of the general public commented that each institution should determine its own degree-production requirements dependent on the intensity of the program.

Response: No change is recommended. Staff noted that the rules allow for a request for temporary exemption of a program that can justify need by explaining recruitment and retention strategies, applicable Closing the Gap initiatives, student success, and cost efficiency.

Comment: Texas A&M University-Corpus Christi recommended that related variations on the same degree program (BA, BS, BBA, etc.) be treated as a single degree.

Response: No change is recommended. Institutions currently report degree completion by CIP code, combining all programs classified under the same CIP code, and level, not by degree type.

Comment: Texas A&M University-Corpus Christi commented that clarification is needed in regards to §4.290 and the required action timeline.

Response: Staff agree and clarifying language has been added to §4.290 and the redundancy eliminated in §4.289(a).

Comment: San Jacinto Community College District commented that the minimum program requirements reported for the Perkins Act for career technical programs is 15 graduates in three years. San Jacinto Community College District commented that institutions would have two sets of figures to report.

Response: No change is recommended. The degree completion requirement outlined in the rules is the same number required for the Perkins institutional effectiveness.

Comment: Lamar Institute of Technology commented that language regarding the reinstatement of closed programs neglects to include the procedure for reinstatement of associate degree programs.

Response: Staff agree and have included the procedure by clarifying §4.293(c) and adding §4.293(d)(1).

Comment: Texas Woman's University commented that §4.289 does not describe how permanent exemptions are designated for bachelor's degrees that are similar to other programs and do not incur additional cost.

Response: No change is recommended. Staff noted that the request for §4.291(a)(2) outlines the requirements for any level degree requesting a temporary exemption. Permanent exemptions outlined in §4.289 apply to Master's programs that are terminal degree options for students not continuing on to the doctoral level of the same program.

Comment: Collin County Community College commented that §4.87(4)(A) should include language referring to program completers rather than degree completers to incorporate the certificate program completers as well as the degree program completers.

Response: Staff agree and have clarified the definition in §4.287(4)(A) and the notification policy in §4.288(c).

Comment: Collin County Community College commented that low-performing programs cannot be determined on an annual basis and that the definition of low-performing programs in §4.287(4)(A) - (C) reference an average over five years.

Response: Staff agree and have added clarifying language to §4.290. The alerts referenced in §4.287(4)(A) - (C) do not require action on the part of the institution; therefore, no change is recommended for §4.287(4)(A) - (C).

Comment: South Texas College commented that students' transferring to a four-year institution before earning an award should be considered as a success measure.

Response: No change is recommended. Staff noted that the proposed rule applies to career technical certificates, associate's, bachelor's, master's and doctoral degrees awarded.

Comment: South Texas College commented that future occupational needs expectancy should be considered in the exempt section.

Response: No change is recommended. Staff noted that the rules allow for a request for temporary exemption of a program that can justify need by explaining recruitment and retention strategies, applicable Closing the Gap initiatives, student success, and cost efficiency.

The new rules are adopted under the Texas Education Code, Chapter 61, Subchapter C, §61.051(j), which provides the Coordinating Board with the authority to approve courses for credit, distance education, and existing programs.

§4.287. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Board--The Texas Higher Education Coordinating Board.

(2) Degree or certificate program--Any grouping of subject matter courses which, when satisfactorily completed by a student, will entitle the student to receive a degree or certificate from an institution of higher education.

(3) Institution of higher education or institution--Any public technical institute, public junior college, public senior college or university, medical or dental unit, or other agency of higher education as defined in Texas Education Code, §61.003.

(4) Low-Producing Degree Programs--Degree programs that do not meet the following minimum standards for degrees awarded in the program:

(A) For career technical certificates, associate and bachelor's programs, an average of five degrees awarded per academic year, to total not fewer than twenty-five degrees awarded for any five-year period;

(B) For master's programs, an average of three degrees awarded per academic year, to total not fewer than fifteen degrees awarded for any five-year period; and

(C) For doctoral and special professional degrees, an average of two degrees awarded per academic year, to total not fewer than ten degrees awarded for any five-year period.

(5) Permanent Exemption--Exemption for degree programs which removes them from the list of low-producing degree programs indefinitely.

(6) Temporary Exemption--Exemption for degree programs which removes them from the consequences of low-producing degree programs for a defined period of time.

(7) Related Degree Program--A degree program for which an institution may use common faculty and other resources.

§4.288. Notification of Low-Producing Degree Programs.

(a) Coordinating Board staff will send each institution an annual list of low-producing degree programs.

(b) The Board will alert an institution when a degree program has not met the minimum standards for three consecutive years. A second alert will follow if that degree program has not met the minimum standards for four consecutive years.

(c) Completers of career technical certificate programs that are reported under the same CIP code as an existing associate's degree

program will be counted as completers of the corresponding associate's degree program for purposes of determining low-producing status.

§4.289. *Exemptions.*

New programs or programs that are granted exemption will be noted on the annual list of low-producing programs, according to the following criteria:

(1) A new degree program is exempted for the first five years of program implementation. Annual review begins in the sixth year of implementation.

(2) A Master's degree program requiring only courses taught in the corresponding doctoral program is permanently exempted from low-producing status. These degrees are, in effect, terminal master's degrees available to students who are unable to meet doctoral requirements. No additional cost is associated with these degrees.

§4.290. *Consequences for Non-Exempt Low-Producing Degree Programs.*

Once the institution has been notified that a degree program has not met the minimum standards for five consecutive years, the institution must:

- (1) Phase out or consolidate the low-producing degree program with another program or programs; or
- (2) Request a temporary exemption.

§4.291. *Process for Requesting a Temporary Exemption.*

(a) A low-producing degree program is eligible for a temporary exemption if:

(1) The Coordinating Board staff determines the necessity for a temporary exemption because:

(A) The institution demonstrates evidence that the low-producing degree program contributes to meeting Closing the Gaps initiatives or other Coordinating Board policies including workforce needs in specific industries; and

(B) Institutional efforts are being made to increase enrollments, limit cost inefficiencies, and improve program success. The period of time for the exemption will be established by Coordinating Board staff after discussions with the institution; or

(2) The degree is composed exclusively of courses required for other existing degrees at the institution and there is very limited or no additional cost associated with the degree.

(b) To request a temporary exemption provide the following information:

- (1) A narrative that explains the causes of low production;
- (2) Justification for continuing the degree program. Justification should incorporate issues of need, quality, cost, and Closing the Gaps initiatives;

(3) An action plan for the low-producing degree program. The action plan should include a detailed strategy for increasing enrollment, graduation output, and graduation rates. In accordance with the institution's Uniform Recruitment and Retention Strategy, the action plan should include specific strategies to recruit, retain, and graduate students from underrepresented groups for the program; and

(4) The following data on the degree program for the last two years:

- (A) Number of declared majors; and
- (B) Number of students per class section.

(c) Coordinating Board staff will evaluate the application for a temporary exemption and approve or deny it. If approved, the exemption will be for a limited period of time determined by the staff after discussion with the institution.

§4.293. *Reinstatement of Closed Programs.*

(a) A program that has been closed due to low productivity may not be considered for reinstatement until a minimum of ten years has passed.

(b) Programs eligible for reinstatement must complete the requirements for new academic program approval.

(c) Institutions may not start a new degree program that is a related degree program to one that has been closed due to low productivity without completing the applicable new program request form and providing compelling evidence of state or regional need.

(d) An institution may request the reinstatement of a program closed due to low-productivity before the conclusion of the ten-year period:

(1) For career technical certificates and associate degrees, by completing the applicable new program request form and providing compelling evidence of state or regional need. Career technical certificates and associate degrees may be approved by the Assistant Commissioner of Academic Affairs and Research; or

(2) For baccalaureate, master's or doctoral degrees, by completing the applicable new program request form and providing compelling evidence of state or regional need. Baccalaureate, master's or doctoral degrees may be approved by the Coordinating Board at one of its quarterly meetings.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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CHAPTER 5. RULES APPLYING TO PUBLIC UNIVERSITIES AND HEALTH-RELATED INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §5.5

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §5.5, concerning the Uniform Admission Policy, with changes to the proposed text as published in the February 12, 2010, issue of the *Texas Register* (35 TexReg 990).

Specifically, these amendments will implement requirements under House Bill 3826 (80th Texas Legislature) that amend specific provisions for first-time undergraduate students admitted to public universities requiring the completion of the Recommended

(RHSP) or Advanced High School Program (AHSP), or an equivalent curriculum or that portion available to the student if the full RHSP or AHSP is not available, or achievement of ACT's College Readiness Benchmarks on the ACT assessment or a score of at least 1500 out of 2400 for the SAT assessment. In addition, these amendments will clarify the function and applicability of the 18 admissions factors outlined in Texas Education Code §51.805(b).

There were no comments received concerning the amendments.

The amendments are adopted under Texas Education Code, §51.803 and §51.807, which provides the Coordinating Board with the authority to adopt rules relating to the operation of admissions programs under these sections, including rules relating to the identification of eligible students, and adopting rules to establish standards for determining whether a private high school is accredited and whether a student completing a high school curriculum meets the requirements of Texas Education Code, §28.025, or its equivalent. The amendments are also adopted under Texas Education Code, §61.051, which describes the Board's role in coordinating higher education in Texas.

§5.5. *Uniform Admission Policy.*

(a) Each public university shall admit first-time undergraduate students for each semester in accordance with Texas Education Code, §§51.801 - 51.809. Only The University of Texas at Austin shall admit students under Texas Education Code §51.803(a-1) - (a-5) and subsection (e) of this section.

(b) All applicants from Texas schools accredited by a generally recognized accrediting agency and who graduate in the top 10 percent of their high school class or who graduate in the top 25 percent of their high school class, to the extent the governing board of a general academic teaching institution has adopted such an admission policy, shall be admitted to a general academic teaching institution if the student meets the following conditions:

(1) The student has met one of the following:

(A) Successfully completed the Recommended or Advanced High School Program from a Texas public high school as outlined under Texas Education Code, §28.025, and §74.63 and §74.64 of this title (relating to Recommended High School Program and Distinguished Achievement High School Program--Advanced High School Program);

(B) Successfully completed a curriculum from a high school in Texas other than a public high school that is equivalent in content and rigor to the Recommended or Advanced High School Program as outlined under subsection (c) of this section;

(C) Satisfied ACT's College Readiness Benchmarks on the ACT assessment; or

(D) Earned on the SAT assessment a score of at least a 1500 out of 2400, or the equivalent; and

(2) The student submitted an official high school transcript or diploma that must, not later than the end of the student's junior year, indicate whether the student has satisfied the requirements outlined under paragraph (1)(A) or (B) of this subsection.

(3) For applicants who graduate in the top 10 percent of their high school class and want to be considered for automatic admission under Texas Education Code, §51.803, the student must:

(A) Submit a complete application defined by the institution before the expiration of the institution's established deadline; and

(B) Have graduated from high school within the two years prior to the academic year for which the student is applying for admission.

(c) A student is considered to have satisfied the requirements of subsection (b)(1)(A) or (B) of this section if the student completed all or the portion of the Recommended or Advanced High School Program or of a curriculum equivalent in content and rigor, as applicable, that was available to the student. A student may be considered to have completed the Recommended or Advanced High School curriculum if a student was unable to complete the remainder of the curriculum solely because courses necessary to complete the remainder were unavailable to the student at the appropriate times in the student's high school career as a result of course scheduling, lack of enrollment capacity, or another cause not within the student's control. The standards for determining whether a student has satisfied the requirements of this subsection include the following:

(1) For a student in a Texas public high school, the public high school providing to a Texas public institution of higher education the Academic Achievement Record or transcript outlined under subsection (b)(2) of this section must indicate, in a form and manner prescribed by the Commissioner of Higher Education, whether the student has completed all or a portion of the Recommended or Advanced High School Program or of the curriculum equivalent in content and rigor, as applicable, that was available.

(2) For a student in a Texas private high school, the private high school providing to a Texas public institution of higher education the transcript or diploma outlined under subsection (b)(2) of this section must:

(A) Be accredited by the Texas Private School Accreditation Commission or other accrediting organizations recognized by the Texas Education Agency; and

(B) Indicate, in a form and manner prescribed by the Commissioner of Higher Education, whether the student has completed all or a portion of the Recommended or Advanced High School Program or of the curriculum equivalent in content and rigor, as applicable, that was available.

(d) All applicants from high schools operated by the United States Department of Defense and who graduate in the top 10 percent of their high school class shall be admitted to a general academic teaching institution if the student meets the following conditions, or if subsection (c) of this section applies whether the student has completed the portion of the recommended or advanced curriculum or of the curriculum equivalent in content and rigor, as applicable, that was available to the student:

(1) The student graduated from high school within the two years prior to the academic year for which the student is applying;

(2) The student is a Texas resident as defined in Texas Education Code, §54.052 or is entitled to pay tuition and fees at the rate provided for Texas residents for the term or semester to which the student is admitted;

(3) The student submitted a complete application as defined by the institution before the expiration of the institution's established deadline; and

(4) The student meets the curriculum or the ACT/SAT test score requirements as outlined under subsection (b)(1) of this section.

(e) For the period from the 2011-2012 academic year through the 2015-2016 academic year, The University of Texas at Austin is not required to admit applicants in excess of the number needed to fill 75 percent of first-time resident undergraduate students.

(f) High school rank for students seeking automatic admission to a general academic teaching institution on the basis of their class rank is determined and reported as follows:

(1) Most recent available class rank, based on a point in time no earlier than the end of the 11th grade, shall be used for admission decision-making.

(2) The top 10 percent and top 25 percent of a high school class shall not contain more than 10 percent and top 25 percent, respectively, of the total class size.

(3) The student's rank shall be reported by the applicant's high school or school district as a specific number out of a specific number total class size.

(4) Class rank shall be determined by the school or school district from which the student graduated or is expected to graduate.

(g) A general academic teaching institution may limit the number of students admitted under this section if the number of applicants eligible and applying for admission to the institution under this section exceeds by more than 10 percent the average number of first-time freshmen admitted the previous two academic years. If an institution chooses to limit the number of students admitted under this section, it must ensure that:

(1) At least 97 percent of first-time freshmen admitted are in the top 10 percent of their high school class; and

(2) Clear guidelines are established for the selection of students based on one or a specified combination of the following methods:

(A) A lottery in which all students qualified for automatic admission have an equal chance for selection;

(B) Students are selected on a first-come, first-admitted basis following receipt of a complete application; or

(C) At least four or more criteria identified in Texas Education Code, §51.805 are used to select students admitted.

(h) The 18 admissions factors outlined in Texas Education Code, §51.805(b) may be considered by a general academic teaching institution when an applicant is eligible for admission under the "other admissions" provision as described in Texas Education Code, §51.805, but only after the applicant has met the curriculum or the ACT/SAT test score requirements as outlined under subsection (b)(1) of this section or finds relief from these requirements as outlined under subsection (c) of this section.

(i) Each public institution of higher education shall admit a student as an undergraduate if the student meets the following conditions:

(1) Is the child of a public servant listed in Texas Government Code, §615.003 who was killed or sustained a fatal injury in the line of duty according to requirements for verification outlined by the institution; and

(2) Meets the minimum admissions requirements established for purposes of this subsection by the governing board of the institution for high school or prior college-level grade point average and performance on standardized tests.

(j) Each general academic teaching institution shall annually report to the Board the composition of the entering class of first-time freshmen students admitted under this section. The report shall include a demographic breakdown of the class including race, ethnicity, and economic status. Each general academic teaching institution shall pro-

vide this report to the Board annually on or before a date set by the Board.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 7. DEGREE GRANTING COLLEGES AND UNIVERSITIES OTHER THAN TEXAS PUBLIC INSTITUTIONS SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §§7.3, 7.7, 7.11

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §§7.3, 7.7, and 7.11, concerning General Provisions of the Degree Granting Colleges and Universities Other Than Texas Public Institutions, without changes to the proposed text as published in the February 5, 2010, issue of the *Texas Register* (35 TexReg 740).

Specifically, the amendment to §7.3 adds a definition for a "Conditional Certificate of Authorization." The intent is to provide a mechanism for an institution that is accredited by a Coordinating Board recognized accreditor to operate under the guidelines of a Conditional Certificate of Authorization for a limited period of time. This also allows for the institution to verify state degree-granting authority to a recognized accrediting agency prior to receiving full accreditation status. The amendment to §7.7 adds the process for a Conditional Certificate of Authorization for an institution whose main campus is accredited by a Coordinating Board recognized accreditor. The intent is to describe the process the Board will use to allow an institution to operate under the guidelines of a Conditional Certificate of Authorization for a limited period of time. This amendment also describes the method by which the Conditional Certificate of Authorization will be determined and the penalty if the conditions are not satisfied. The amendment to §7.11 deletes the term "associate" from subsection (d). The removal of the word "associate" will more accurately reflect that all approved degree programs which have modifications resulting from a change of ownership should be included, not merely associate level programs.

No comments were received regarding the proposed amendments.

The amendments are adopted under the Texas Education Code, Chapter 61, Subchapter C, §61.051(j), which provides the Coordinating Board with the authority to approve courses for credit, distance education, and existing programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 13. FINANCIAL PLANNING SUBCHAPTER B. FORMULA FUNDING

19 TAC §13.22

The Texas Higher Education Coordinating Board adopts amendments to §13.22, concerning Community and Technical College Formulas, without changes to the proposed text as published in the February 12, 2010, issue of the *Texas Register* (35 TexReg 991).

Specifically, the Coordinating Board is provided the authority to devise, establish, and periodically revise formulas reflective of both fixed and variable elements of cost.

No comments were received regarding the proposed amendments.

The amendments are adopted under the Texas Education Code, §61.059.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. FORMULA FUNDING AND TUITION CHARGES FOR REPEATED AND EXCESS HOURS OF UNDERGRADUATE STUDENTS

19 TAC §13.102

The Texas Higher Education Coordinating Board adopts amendments to §13.102, concerning Definitions, without changes to the proposed text as published in the February 12, 2010, issue of the *Texas Register* (35 TexReg 992).

Specifically, in compliance with Texas Education Code, §61.0595(d), the proposed amendments will align the definitions section of Subchapter F with an amendment to §13.104(6) which was adopted by the board in summer 2009 and provides that hours earned by a student before graduating from high school and used to satisfy high school graduation requirements

are exempt from the calculation of excess hours. The definition of hours is being revised from quarter credit hours to semester credit hours.

No comments were received regarding the proposed amendments.

The amendments are adopted under the Texas Education Code, §61.0595(d).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 21. STUDENT SERVICES SUBCHAPTER B. DETERMINATION OF RESIDENT STATUS AND WAIVER PROGRAMS FOR CERTAIN NONRESIDENT PERSONS

19 TAC §21.29, §21.30

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §21.29 and §21.30, concerning the Determination of Resident Status and Waiver Programs for Certain Nonresident Persons, without changes to the proposed text as published in the February 12, 2010, issue of the *Texas Register* (35 TexReg 993).

Specifically, the amendment to §21.29(1)(A) reflects a change mandated by Senate Bill 2244 of the 81st Texas Legislature. A person's or person's caretaker's business or organization must have become established as part of this state's Economic Development and Diversification Program not earlier than five years before the person's enrollment date in order for the person or person's caretaker to be eligible to pay the resident rate for tuition and required fees without first residing in the state for twelve months. The amendment to §21.29(1)(C) corrects the name of the web site. The amendment to §21.30 eliminates the requirement that Residence Determination Officials attend training on an annual basis. Limited travel budgets make it difficult for some Residence Determination Officials to attend annual conferences, where most training is provided.

No comments were received regarding the proposed amendments.

The amendments are adopted under the Texas Education Code, §54.075, which provides the Coordinating Board with the authority to adopt rules to carry out the purposes of Texas Education Code, §§54.0501 - 54.075.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER M. TEXAS COLLEGE WORK-STUDY PROGRAM

19 TAC §21.402

The Texas Higher Education Coordinating Board (Coordinating Board) adopts an amendment to §21.402, concerning the definitions for the Texas College Work-Study Program, with changes to the proposed text as published in the February 12, 2010, issue of the *Texas Register* (35 TexReg 993).

Specifically, the amendment to this section clarifies that a student's federal or state veterans' benefits are not to be considered in determining a student's financial need. Federal regulations were recently changed to exclude such resources. Since state statutes do not address this issue, institutions have asked for guidance. Staff believes the support to veterans shown by the 81st Texas Legislature indicates concurrence with this amendment.

The following comment was received regarding the amendment:

Comment: The University of Texas System commented that the definition of "Financial need" in §22.402 should clarify the types of federal and state veterans' benefits that are not to be considered in determining a student's financial need.

Response: The Board agreed and added the words "educational and special combat pay" to the definition. The added language will make the definition of "Financial need" consistent with federal tax and education laws.

The amendment is adopted under the Texas Education Code, §56.077, which provides the Coordinating Board with the authority to adopt rules necessary to administer the Texas College Work-Study Program.

§21.402. *Definitions.*

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

- (1) Board--The Texas Higher Education Coordinating Board.
- (2) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.
- (3) Cost of attendance--A Board-approved estimate of the expenses incurred by a typical financial aid student in attending a particular college or university. It includes direct educational costs (tuition, fees, books, and supplies) as well as indirect costs (room and board, transportation, and personal expenses).
- (4) Encumbered funds--Program funds that have been offered to a specific student, which offer the student has accepted, and which may or may not have been disbursed to the student.

(5) Expected family contribution--The amount of discretionary income that should be available to a student from his or her resources and that of his or her family, as determined following the federal methodology.

(6) Financial need--The cost of attendance at a particular public or private institution of higher education less the expected family contribution. The cost of attendance and family contribution are to be determined in accordance with Board guidelines. Federal and state veterans' educational and special combat pay benefits are not to be considered in determining a student's financial need.

(7) General academic teaching institution--The University of Texas at Austin; The university of Texas at El Paso; The University of Texas of the Permian Basin; The University of Texas at Dallas; The University of Texas at San Antonio; Texas A&M University, Main University; The University of Texas at Arlington; Tarleton State University; Prairie View A&M University; Texas Maritime Academy (now Texas A&M University of Galveston); Texas Tech University; University of North Texas; Lamar University; Lamar State College--Orange; Lamar State College--Port Arthur; Texas A&M University--Kingsville; Texas A&M University--Corpus Christi; Texas Woman's University; Texas Southern University; Midwestern State University; University of Houston; University of Texas--Pan American; the University of Texas at Brownsville; Texas A&M University--Commerce; Sam Houston State University; Texas State University--San Marcos; West Texas A&M University; Stephen F. Austin State University; Sul Ross State University; Angelo State University; The University of Texas at Tyler; and any other college, university, or institution so classified as provided in this chapter or created and so classified, expressly or impliedly, by law.

(8) Half-time student--For undergraduates, a person who is enrolled or is expected to be enrolled for the equivalent of six or more semester credit hours. For graduate students, a person who is enrolled or is expected to be enrolled for the equivalent of 4.5 or more semester credit hours.

(9) Institution of Higher Education or Institution--Any public technical institute, public junior college, public senior college or university, medical or dental unit or other agency of higher education as defined in Texas Education Code, §61.003(8).

(10) Program--The Texas College Work-Study Program.

(11) Program Officer--The individual named by each participating institution's chief executive officer to serve as agent for the Board. The Program Officer has primary responsibility for all ministerial acts required by the program, including maintenance of all records and preparation and submission of reports reflecting program transactions. Unless otherwise indicated by the administration, the director of student financial aid shall serve as Program Officer.

(12) Resident of Texas--A resident of the State of Texas as determined in accordance with Subchapter B of this chapter (relating to Determination of Resident Status and Waiver Programs for Certain Nonresident Persons). Nonresident students who are eligible to pay resident tuition rates are not residents of Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114



SUBCHAPTER NN. EXEMPTION PROGRAM FOR VETERANS AND THEIR DEPENDENTS (THE HAZLEWOOD ACT)

19 TAC §21.2100

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §21.2100 concerning the Exemption Program for Veterans and their Dependents (The Hazlewood Act) without changes to the proposed text as published in the January 8, 2010, issue of the *Texas Register* (35 TexReg 177).

Specifically, the amendments to §21.2100(4) align the age requirement in the definition of "Children" with the age requirement in the new Hazlewood Legacy Program, through which veterans may assign unused Hazlewood hours to one of their children. Previously, a child or dependent of a veteran who was killed or disabled was eligible only if the child or dependent was 18 years of age or younger at the time of his or her parent's death or disabling injury. The amendments indicate that the age restriction of an eligible child or dependent has been changed from 18 to 25. The amendments bring consistency with §21.2108(c).

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §54.203, which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, §54.203.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS

SUBCHAPTER F. PROVISIONS FOR THE SCHOLARSHIP PROGRAMS FOR VOCATIONAL NURSING STUDENTS

19 TAC §22.102

The Texas Higher Education Coordinating Board (Coordinating Board) adopts an amendment to §22.102 with changes to the proposed text as published in the February 12, 2010, issue of the *Texas Register* (35 TexReg 999), concerning the Provisions for the Scholarship Programs for Vocational Nursing Students.

Specifically, the amendment to this section clarifies that a student's federal or state veterans' benefits are not to be considered in determining a student's financial need. Federal regulations were recently changed to exclude such resources. Since state statutes do not address this issue, institutions have asked for guidance. Staff believes the support to veterans shown by the 81st Texas Legislature indicates concurrence with this amendment.

The following comment was received regarding the amendment:

Comment: The University of Texas System commented that the definition of "Financial need" in §22.102 should clarify the types of federal and state veterans' benefits that are not to be considered in determining a student's financial need.

Response: The Board agreed and added the words "educational and special combat pay" to the definition. The added language will make the definition of "Financial need" consistent with federal tax and education laws.

The amendment is adopted under the Texas Education Code, §61.656, which provides the Coordinating Board with the authority to adopt rules relating to the establishment of a scholarship program for vocational nursing students.

§22.102. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

- (1) Board--The Texas Higher Education Coordinating Board.
- (2) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.
- (3) Cost of attendance--A Board-approved estimate of the expenses incurred by a typical financial aid student in attending a particular college or university. It includes direct educational costs (tuition, fees, books, and supplies) as well as indirect costs (room and board, transportation, and personal expenses).
- (4) Expected family contribution--The amount of discretionary income that should be available to a student from his or her resources and that of his or her family, as determined following the federal methodology.
- (5) Financial need--The cost of attendance at a particular public or private institution of higher education less the expected family contribution. The cost of attendance and family contribution are to be determined in accordance with Board guidelines. Federal and state veterans' educational and special combat pay benefits are not to be considered in determining a student's financial need.
- (6) Half-time student--For undergraduates, enrollment for the equivalent of six or more semester credit hours. For graduate students, enrollment for the equivalent of 4.5 or more semester credit hours.
- (7) Program Officer--The individual named by each participating institution's chief executive officer to serve as agent for the Board. The Program Officer has primary responsibility for all ministerial acts required by the program, including maintenance of all records and preparation and submission of reports reflecting program transac-

tions. Unless otherwise indicated by the administration, the director of student financial aid shall serve as Program Officer.

(8) Resident of Texas--A resident of the State of Texas as determined in accordance with Chapter 21, Subchapter B of this title (relating to Determination of Residence Status and Waiver Programs for Certain Nonresident Persons). Nonresident students who are eligible to pay resident tuition rates are not residents of Texas.

(9) Rural--Located in a non-metropolitan area as defined by the United States Census Bureau in its most recent census.

(10) Vocational Nursing Student--A student enrolled in a nonprofit school or program that is preparing the student for licensure as a licensed vocational nurse.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Bill Franz

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SUBCHAPTER G. PROVISIONS FOR THE SCHOLARSHIP PROGRAMS FOR PROFESSIONAL NURSING STUDENTS

19 TAC §22.122

The Texas Higher Education Coordinating Board (Coordinating Board) adopts an amendment to §22.122 with changes to the proposed text as published in the February 12, 2010, issue of the *Texas Register* (35 TexReg 1000) concerning the Provisions for the Scholarship Programs for Professional Nursing Students.

Specifically, the amendment to this section clarifies that a student's federal or state veterans' benefits are not to be considered in determining a student's financial need. Federal regulations were recently changed to exclude such resources. Since state statutes do not address this issue, institutions have asked for guidance. Staff believes the support to veterans shown by the 81st Texas Legislature indicates concurrence with this amendment.

The following comment was received regarding the amendment:

Comment: The University of Texas System commented that the definition of "Financial need" in §22.122 should clarify the types of federal and state veterans' benefits that are not to be considered in determining a student's financial need.

Response: The Board agreed and added the words "educational and special combat pay" to the definition. The added language will make the definition of "Financial need" consistent with federal tax and education laws.

The amendment is adopted under the Texas Education Code, §61.656, which provides the Coordinating Board with the authority to adopt rules relating to the establishment of a scholarship program for professional nursing students.

§22.122. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Board--The Texas Higher Education Coordinating Board.

(2) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(3) Cost of attendance--A Board-approved estimate of the expenses incurred by a typical financial aid student in attending a particular college or university. It includes direct educational costs (tuition, fees, books, and supplies) as well as indirect costs (room and board, transportation, and personal expenses).

(4) Expected family contribution--The amount of discretionary income that should be available to a student from his or her resources and that of his or her family, as determined following the federal methodology.

(5) Financial need--The cost of attendance at a particular public or private institution of higher education less the expected family contribution. The cost of attendance and family contribution are to be determined in accordance with Board guidelines. Federal and state veterans' educational and special combat pay benefits are not to be considered in determining a student's financial need.

(6) Half-time student--For undergraduates, enrollment for the equivalent of six or more semester credit hours. For graduate students, enrollment for the equivalent of 4.5 or more semester credit hours.

(7) Professional nursing student--A student enrolled in an eligible public, private or independent institution of higher education in a course of study leading to an initial or an advanced degree in professional nursing.

(8) Program Officer--The individual named by each participating institution's chief executive officer to serve as agent for the Board. The Program Officer has primary responsibility for all ministerial acts required by the program, including maintenance of all records and preparation and submission of reports reflecting program transactions. Unless otherwise indicated by the administration, the director of student financial aid shall serve as Program Officer.

(9) Resident of Texas--A resident of the State of Texas as determined in accordance with Chapter 21, Subchapter B of this title (relating to Determination of Resident Status and Waiver Programs for Certain Nonresident Persons). Nonresident students who are eligible to pay resident tuition rates are not residents of Texas.

(10) Rural--Located in a non-metropolitan area as defined by the United States Census Bureau in its most recent census.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER H. PROVISIONS FOR THE LICENSE PLATE INSIGNIA SCHOLARSHIP PROGRAM

19 TAC §22.142

The Texas Higher Education Coordinating Board (Coordinating Board) adopts an amendment to §22.142, concerning definitions for the Provisions for the License Plate Insignia Scholarship Program, also known as the Collegiate License Plate Program, with changes to the proposed text as published in the February 12, 2010, issue of the *Texas Register* (35 TexReg 1000).

Specifically, the amendment to this section clarifies that a student's federal or state veterans' benefits are not to be considered in determining a student's financial need. Federal regulations were recently changed to exclude such resources. Since state statutes do not address this issue, institutions have asked for guidance. Staff believes the support to veterans shown by the 81st Texas Legislature indicates concurrence with this amendment.

The following comment was received regarding the amendment:

Comment: The University of Texas System commented that the definition of "Financial need" in §22.142 should clarify the types of federal and state veterans' benefits that are not to be considered in determining a student's financial need.

Response: The Board agreed and added the words "educational and special combat pay" to the definition. The added language will make the definition of "Financial need" consistent with federal tax and education laws.

The amendment is adopted under the Texas Transportation Code, §504.615, which provides the Coordinating Board with the authority to adopt rules necessary to administer the License Plate Insignia Scholarship Program.

§22.142. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

- (1) Board--The Texas Higher Education Coordinating Board.
- (2) Cost of Attendance--A Board-approved estimate of the expenses incurred by a typical financial aid recipient in attending a particular college or university. It includes direct educational costs (tuition, fees, books and supplies) as well as indirect costs (room and board, transportation, and personal expenses).
- (3) Department--Texas Department of Transportation.
- (4) Expected Family Contribution--The amount of discretionary income that should be available to a student from his or her resources and that of his or her family, as determined following the federal methodology.
- (5) Financial need--The cost of attendance at a particular public or private institution of higher education less the expected family contribution and any gift aid for which the student is entitled. The cost of education and family contribution figures are to be determined in accordance with Board guidelines. Federal and state veterans' educational and special combat pay benefits are not to be considered in determining a student's financial need.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER J. TEXAS CAREER OPPORTUNITY GRANT PROGRAM

19 TAC §§22.181 - 22.188

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §§22.181 - 22.188, concerning the Texas Career Opportunity Grant Program. Sections 22.182, 22.184, 22.185, and 22.188 are adopted with changes to the proposed text as published in the February 19, 2010, issue of the *Texas Register* (35 TexReg 1399). Sections 22.181, 22.183, 22.186, and 22.187 are being adopted without changes and will not be republished.

Specifically, House Bill 3519, 81st Texas Legislature, amended the Labor Code by adding §305.003, and mandates that the Texas Higher Education Coordinating Board and the Texas Workforce Commission shall enter into a Memorandum of Understanding for the coordination and administration of the Texas Career Opportunity Grant Program. The new sections describe the authority and purpose of the program, provide definitions of terms used, outline program award amounts and limits, and set forth requirements whereby students may qualify to receive a grant.

The following comments were received regarding the new sections:

Comment: Coordinating Board staff, in consultation with the Texas Workforce Commission, determined that §302.153 of the Labor Code requires priority for "covered persons" (veterans and spouses of veterans who died or were disabled while serving) in training or assistance under a job training or employment assistance program that is funded wholly or partly with state money.

Response: The Board addressed this requirement by adopting the rules with additional definitions in §22.182 for Covered Person, Discharge or Release, Non-Service-Connected, Service-Connected, and Veteran. Other definitions were renumbered accordingly. A statement of the obligation to give priority to covered persons in the selection of award recipients was also added to §22.184 (Eligible Students) as new subsection (b).

Comment: Staff commented that academic progress requirements need to be addressed in the rules.

Response: The Board agreed and adopted new §22.184(a)(7), which indicates that students receiving grants should meet the institution's financial aid academic progress standards.

Comment: Staff commented that the rules should address the fact that an eligible student may not be in default on a loan made through certain Texas student loan programs.

Response: The Board agreed and amended new §22.184(a)(8) to include the state student loan programs, in addition to federal student loan programs, to the restriction regarding default on a student loan.

Comment: Staff commented that the rules need to indicate that no student's award should exceed his or her financial need.

Response: The Board agreed and adopted new §22.185(b)(1)(B). Subsequent subparagraphs were relettered accordingly.

Comment: Regarding the shared administration of the Texas Career Opportunity Grant Program, Coordinating Board staff determined, in consultation with the Texas Workforce Commission, that the annual report to the Texas Legislature should be a joint effort of the Commission and the Coordinating Board.

Response: The Board agreed with and adopted new §22.188(c) to reflect the cooperative nature of the Program.

The new sections are adopted under the Labor Code, §305.003, which allows the Coordinating Board to administer the Texas Career Opportunity Grant Program through a memorandum of understanding with the Texas Workforce Commission.

§22.182. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

- (1) Board--The Texas Higher Education Coordinating Board.
- (2) Career School or College--A school or college identified by the Texas Workforce Commission as meeting the requirements set out in the Texas Education Code, Title 3, Chapter 132, §132.001(1).
- (3) Commission--The Texas Workforce Commission.
- (4) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.
- (5) Cost of Attendance--An estimate of the expenses incurred by a typical financial aid student in attending a particular eligible institution approved by Board staff. It includes direct educational costs (tuition, fees, books, and supplies) as well as indirect costs (room and board, transportation, and personal expenses).
- (6) Covered Person--Any of the following individuals:
 - (A) A veteran.
 - (B) The spouse of any of the following individuals:
 - (i) Any veteran who died of a service-connected disability.
 - (ii) Any member of the Armed Forces serving on active duty who, at the time of application for assistance under this section, is listed, pursuant to the United States Code, §556 of Title 37, and regulations issued thereunder, by the Secretary concerned in one of more of the following categories and has been so listed for a total of more than 90 days: missing in action, captured in the line of duty by a hostile force, or forcibly detained or interned in the line of duty by a foreign government or power.
 - (iii) Any veteran who has a total disability resulting from a service-connected disability.

(iv) Any veteran who died while a disability so evaluated was in existence.

(7) Discharge or Release--

(A) Retirement from the active military, naval, or air service; or

(B) The satisfactory completion of the period of active military, naval, or air service for which a person was obligated at the time of entry into such service in the case of a person who, due to enlistment or reenlistment, was not awarded a discharge or release from such period of service at the time of such completion thereof and who, at such time, would otherwise have been eligible for a discharge or release under conditions other than dishonorable.

(8) Expected Family Contribution--The amount of discretionary income that should be available to a student from his or her resources and that of his or her family, as determined following the federal methodology.

(9) Financial Need--The cost of attendance at a particular eligible institution less the expected family contribution. The cost of attendance and family contribution are to be determined in accordance with Board staff guidelines.

(10) Full-time Enrollment--

(A) At least 12 semester hours or 12 quarter hours per academic term in an educational program using a semester, trimester, or quarter system;

(B) At least 24 semester hours or 36 quarter hours per academic year for an educational program using credit hours but not using a semester, trimester, or quarter system, or the prorated equivalent for a program of less than one academic year;

(C) At least 24 clock hours per week for an educational program using clock hours;

(D) A series of courses or seminars equaling at least 12 semester or quarter hours over a maximum of 18 weeks;

(E) For a program that measures credit hours and uses nonstandard terms, the number of weeks of instruction in the term divided by the number of weeks of instruction in the academic year, multiplied by the number of credit hours in the academic year.

(11) Half-time Enrollment--Half of the minimum enrollment levels for Full-time Enrollment.

(12) Non-Service-Connected--With respect to a veteran's disability or death, such disability that was not incurred or aggravated, or that resulted in death, while serving in the line of duty in the active military, naval, or air service.

(13) Program Officer--The individual named by each participating eligible institution's chief executive officer to serve as agent for the Board. The Program Officer has primary responsibility for all ministerial acts required by the program, including maintenance of all records and preparation and submission of reports reflecting program transactions. Unless otherwise indicated by the administration, the director of student financial aid shall serve as Program Officer.

(14) Qualified Education Program--A program identified by the Texas Workforce Commission as delivered by an eligible institution; results in a certificate or degree; is at least 30 weeks in length and meets or exceeds 24 semester credit hours, 36 quarter credit hours, or 900 clock hours; and delivers occupational training associated with an occupation included on the Statewide Occupations List compiled by the Texas Workforce Commission.

(15) Resident of Texas--A resident of the State of Texas as determined in accordance with Chapter 21, Subchapter B of this title (relating to Determination of Resident Status and Waiver Programs for Certain Nonresident Persons). Nonresident students who are eligible to pay resident tuition rates are not residents of Texas.

(16) Service-Connected--With respect to a veteran's disability or death, such disability that was incurred or aggravated, or that resulted in death, while serving in the line of duty in the active military, naval, or air service.

(17) State Fiscal Year--A 12-month period beginning September 1 and ending August 31, for which state funding for the TCOG Program grant is appropriated.

(18) Tuition and Required Fees--Charges that an institution assesses a student as a condition of enrollment at the institution or in a specific course.

(19) Veteran--A person who served in the active military, naval, or air service, and who was discharged or released under conditions other than dishonorable.

§22.184. Eligible Students.

(a) To receive an initial award through the TCOG Program, a student must:

- (1) be a resident of Texas;
- (2) show financial need;
- (3) be enrolled in a qualified education program at a participating eligible institution;
- (4) be enrolled on at least a half-time basis;
- (5) be required to pay more tuition and required fees than the amount required at a public technical institution;
- (6) be charged not less than the regular tuition and required fees paid by other students enrolled at the institution the person attends;
- (7) meet the school's financial aid academic progress requirements;
- (8) not be in default on a loan made under the Federal Perkins Loan Program, Federal Family Education Loan Program, William D. Ford Federal Direct Loan Program, or the State of Texas' College Access Loan Program, Health Education Loan Program or B-On-Time Loan Program; and
- (9) not owe a refund on a grant received under the federal Pell Grant Program or the federal Supplemental Education Opportunity Grant program.

(b) An eligible applicant who is a covered person and is enrolled in a qualified education program shall be given priority over other eligible applicants for the grants.

§22.185. Award Amounts and Adjustments.

(a) Funding. Funds awarded through this program may not exceed the amount of appropriations, gifts, grants and other funds that are available for this use.

(b) Award Amounts.

(1) The amount of a TCOG Program award may not exceed the least of:

- (A) the maximum grant specified by the Texas Legislature;
- (B) the applicant's financial need;

(C) the amount by which the tuition and required fees at the eligible institution exceeds the average amount of tuition and required fees that would be charged at a public technical institute as determined by the Board; or

(D) an amount equal to 50 percent of the average state appropriation in the biennium preceding the biennium in which the grant is made for a full-time student or the equivalent at a public technical institute, as determined by the Board.

(2) The student's award amount shall be calculated based on the following schedule:

(A) if enrolled for at least full-time status - 100% of the maximum award;

(B) if enrolled for at least 75% of full-time status - 75% of the maximum award;

(C) if enrolled for at least 50% of full-time status - 50% of the maximum award;

(D) if enrolled for less than 50% of full-time status - the student is not eligible for an award.

(c) Uses. A person receiving a TCOG Program grant may only use the money to pay any usual and customary cost of attendance incurred by the person at an eligible institution.

§22.188. Annual Report.

(a) Each eligible institution participating in the TCOG Program shall report to the Board on a state fiscal year basis:

(1) the number of students receiving awards, broken down by the race or ethnicity of the recipients; and

(2) the number of students attending the eligible institution, broken down by race or ethnicity.

(b) The Board shall deliver the information collected from each eligible institution to the Commission annually.

(c) The Board and the Commission shall jointly prepare, sign and deliver to the Texas Legislature an annual report regarding the Texas Career Opportunity Grant Program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Bill Franz

General Counsel

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**SUBCHAPTER L. TOWARD EXCELLENCE,
ACCESS, AND SUCCESS (TEXAS) GRANT
PROGRAM**

19 TAC §22.226, §22.234

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §22.226 and §22.234, concerning the Toward EXcellence, Access, and Success (TEXAS)

Grant Program, with changes to the proposed text as published in the February 12, 2010, issue of the *Texas Register* (35 TexReg 1001).

Specifically, the amendment to §22.226 clarifies that a student's federal or state veterans' benefits are not to be considered in determining a student's financial need. Federal regulations were recently changed to exclude such resources. Since state statutes do not address this issue, institutions have asked for guidance. Staff believes the support to veterans shown by the 81st Texas Legislature indicates concurrence with this amendment. New §22.234(e) clarifies the approach institutions are to use in determining the amount of a partial award when a student's financial need is insufficient to justify a full award in a given term or if the student has a limited number of hours of eligibility left in the program. A recent review by the State Auditor's Office suggested the Coordinating Board provide additional guidance on this issue.

The following comments were received regarding the amendments:

Comment: Staff realized that institutions will have begun their financial aid packaging prior to the adoption of the proposed rule at the April Coordinating Board meeting and recommended that language be added to clarify, in new §22.234(e), that the new schedule for prorating awards is required for awards made for FY 2012, but is optional for awards made for FY 2011.

Response: The Board agreed and adopted new §22.234(e) with the additional clarifying language.

Comment: The University of Texas System commented that the definition of "Financial need" in §22.226 should clarify the types of federal and state veterans' benefits that are not to be considered in determining a student's financial need.

Response: The Board agreed and added the words "educational and special combat pay" to the definition. The added language will make the definition of "Financial need" consistent with federal tax and education laws.

The amendments are adopted under the Texas Education Code, §56.303, which provides the Coordinating Board with the authority to adopt any rules necessary to implement the TEXAS Grant Program.

§22.226. *Definitions.*

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

- (1) Awarded--Offered to a student.
- (2) Board--The Texas Higher Education Coordinating Board.
- (3) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.
- (4) Cost of attendance--A Board-approved estimate of the expenses incurred by a typical financial aid student in attending a particular college. It includes direct educational costs (tuition, fees, books, and supplies) as well as indirect costs (room and board, transportation, and personal expenses).
- (5) Degree or certificate program of four years or less--A baccalaureate degree or certificate program other than in architecture, engineering or any other program determined by the board to require four years or less to complete.

(6) Degree or certificate program of more than four years--A baccalaureate degree or certificate program in architecture, engineering or any other program determined by the board to require more than four years to complete.

(7) Enrolled on at least a three-quarter basis--Enrolled for the equivalent of nine semester credit hours in a regular semester.

(8) Entering undergraduate--A student enrolled in the first 30 semester credit hours or their equivalent, excluding hours taken during dual enrollment in high school and courses for which the student received credit through examination.

(9) Expected family contribution--The amount of discretionary income that should be available to a student from his or her resources and that of his or her family, as determined following the federal methodology.

(10) Financial need--The cost of attendance at a particular public or private institution of higher education less the expected family contribution. The cost of attendance and family contribution are to be determined in accordance with Board guidelines. Federal and state veterans' educational and special combat pay benefits are not to be considered in determining a student's financial need.

(11) Initial year award--The grant award made in the student's first year in the TEXAS Grant program, typically made up of a fall and spring disbursement.

(12) Institution of Higher Education or Institution--Any public technical institute, public junior college, public senior college or university, medical or dental unit or other agency of higher education as defined in Texas Education Code, §61.003(8).

(13) Period of enrollment--The term or terms within the current state fiscal year (September 1 - August 31) for which the student was enrolled in an approved institution and met all the eligibility requirements for an award through this program.

(14) Private or Independent Institution of Higher Education--Any college or university defined as a private or independent institution of higher education by Texas Education Code, §61.003(15).

(15) Program Officer--The individual named by each participating institution's chief executive officer to serve as agent for the Board. The Program Officer has primary responsibility for all ministerial acts required by the program, including maintenance of all records and preparation and submission of reports reflecting program transactions. Unless otherwise indicated by the administration, the director of student financial aid shall serve as Program Officer.

(16) Recommended or advanced high school programs--The curriculum specified in the Texas Education Code, §28.025, and the rules promulgated there under by the State Board of Education.

(17) Required fees--A mandatory fee (required by statute) or discretionary fee (authorized by statute, imposed by the governing board of an institution) that an institution charges to a student as a condition of enrollment at the institution or in a specific course.

(18) Resident of Texas--A resident of the State of Texas as determined in accordance with Chapter 21, Subchapter B of this title (relating to Determination of Resident Status and Waiver Programs for Certain Nonresident Persons). Nonresident students who are eligible to pay resident tuition rates are not residents of Texas.

(19) Tuition--Statutory tuition, designated and/or Board-authorized tuition.

§22.234. *Award Amounts and Adjustments.*

(a) Funding. Funds awarded through this program may not exceed the amount of appropriations, gifts, grants and other funds that are available for this use.

(b) Award Amounts.

(1) The amount of a TEXAS Grant awarded through an institution may not be reduced by any gift aid for which the person receiving the grant is eligible, unless the total amount of a person's grant plus any aid other than loans received equals or exceeds the student's tuition and required fees. The amount of a TEXAS Grant awarded to a student attending a private or independent institution may not be reduced by any gift aid for which the person receiving the grant is eligible, unless the total amount of a person's grant plus any gift aid exceeds the student's financial need.

(2) The Board shall determine and announce the maximum amount of a TEXAS Grant award prior to the start of each fiscal year. The calculation of the maximum amount will be based on the mandates contained in Texas Education Code, §56.307. However, no student's award shall be greater than the amount of the student's financial need.

(3) For students enrolled in eligible private or independent institutions:

(A) The amount of the TEXAS Grant may not exceed the maximum award possible through the Tuition Equalization Grant Program (Texas Education Code, §61.221).

(B) No student may receive both a TEXAS Grant and a Tuition Equalization Grant in the same term or semester.

(4) An eligible institution may not charge a person receiving a TEXAS Grant through that institution, an amount of tuition and required fees in excess of the amount of the TEXAS Grant received by the person unless it also provides the student sufficient aid other than loans to meet his or her full tuition and required fees. Nor may it deny admission to or enrollment in the institution based on a person's eligibility to receive or actual receipt of a TEXAS Grant.

(5) The eligible institution may require a student to forgo or repay the amount of an initial TEXAS Grant awarded to the student as described in §22.228(a)(6)(B) of this title (relating to Eligible Students) if the student is determined to have failed to complete the Recommended or Advanced High School Program or its equivalent as evidenced by the final high school transcript.

(6) If the money available for TEXAS Grants is sufficient to provide grants to all eligible applicants in the amounts specified in paragraphs (1) - (4) of this subsection, the Board may use any excess money to award a grant in an amount not more than three times the amount that may be awarded under paragraphs (1) - (4) of this subsection, to a student who:

(A) is enrolled in a program that fulfills the educational requirements for licensure or certification by the state in a health care profession that the Board, in consultation with the Texas Workforce Commission and the Statewide Health Coordinating Council, has identified as having a critical shortage in the number of license holders needed in this state;

(B) has completed at least one-half of the work toward a degree or certificate that fulfills the educational requirement for licensure or certification; and

(C) meets all the requirements to receive a grant award under §22.228 of this title.

(7) An award to an otherwise eligible student enrolled for less than a three quarter-time load is to be prorated. The amount he/she can be awarded is equal to the semester's maximum award for the rele-

vant type of institution, divided by twelve hours and multiplied by the actual number of hours for which the student enrolled.

(c) Uses. A person receiving a TEXAS Grant may only use the money to pay any usual and customary cost of attendance at an institution of higher education incurred by the student.

(d) Over Awards. If, at a time after an award has been offered by the institution and accepted by the student, the student receives assistance that was not taken into account in the student's estimate of financial need, so that the resulting sum of assistance exceeds the student's financial need, the institution is not required to adjust the award under this program unless the sum of the excess resources is greater than \$300.

(e) Prorated Awards. If a student's need is insufficient to allow him or her to receive a full award in a given term or semester, or if the student's balance of eligible hours is less than the number of hours he or she is taking in a given term or semester, the student's award amount for that term or semester should be prorated. Beginning no later than Fiscal Year 2012, prorated amounts shall be calculated using the following schedule:

- (1) If enrolled for 12 or more hours - 100% of the maximum award;
 - (2) If enrolled for 9-11 hours - 75% of the maximum award;
 - (3) If enrolled for 6-8 hours - 50% of the maximum award;
- and
- (4) If enrolled for fewer than 6 hours - 25% of the maximum award.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER M. TEXAS EDUCATIONAL OPPORTUNITY GRANT PROGRAM

19 TAC §22.254, §22.260

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §22.254 and §22.260, concerning the Texas Educational Opportunity Grant Program, with changes to the proposed text as published in the February 12, 2010, issue of the *Texas Register* (35 TexReg 1002).

Specifically, the amendment to §22.254 clarifies that a student's federal or state veterans' benefits are not to be considered in determining a student's financial need. Federal regulations were recently changed to exclude such resources. Since state statutes do not address this issue, institutions have asked for guidance. Staff believes the support to veterans shown by the 81st Texas Legislature indicates concurrence with this amendment. New §22.260(e) clarifies the approach institutions are to use in determining the amount of a partial award when

a student's financial need is insufficient to justify a full award in a given term or if the student has a limited number of hours of eligibility left in the program. A recent review of the TEXAS Grant Program by the State Auditor's Office suggested the Coordinating Board provide additional guidance on this issue for that program, and the same guidance is needed for the Texas Educational Opportunity Grant Program.

The following comments were received regarding the amendments:

Comment: Staff realized that institutions will have begun their financial aid packaging prior to the adoption of the proposed rule at the April Coordinating Board meeting and recommended that language be added to clarify, in new §22.260(e), that the new schedule for prorating awards is required for awards made for FY 2012, but is optional for awards made for FY 2011.

Response: The Board agreed and adopted new §22.260(e) with the additional clarifying language.

Comment: The University of Texas System commented that the definition of "Financial need" in §22.254 should clarify the types of federal and state veterans' benefits that are not to be considered in determining a student's financial need.

Response: The Board agreed and added the words "educational and special combat pay" to the definition. The added language will make the definition of "Financial need" consistent with federal tax and education laws.

The amendments are adopted under the Texas Education Code, §56.403, which provides the Coordinating Board with the authority to adopt any rules necessary to implement the Texas Educational Opportunity Grant Program.

§22.254. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

- (1) Awarded--Offered to a student.
- (2) Board--The Texas Higher Education Coordinating Board.
- (3) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.
- (4) Cost of attendance--A Board-approved estimate of the expenses incurred by a typical financial aid student in attending a particular college. It includes direct educational costs (tuition, fees, books, and supplies) as well as indirect costs (room and board, transportation, and personal expenses).
- (5) Encumbered funds--Program funds that have been offered to a specific student, which offer the student has accepted, and which may or may not have been disbursed to the student.
- (6) Enrolled on at least a half-time basis--Enrolled for the equivalent of six semester credit hours in a regular semester.
- (7) Entering student--A student enrolled in the first 30 semester credit hours or their equivalent, excluding hours taken during dual enrollment in high school and courses for which the student received credit through examination.
- (8) Expected family contribution--The amount of discretionary income that should be available to a student from his or her resources and that of his or her family, as determined following the federal methodology.

(9) Financial need--The cost of attendance at a particular public or private institution of higher education less the expected family contribution. The cost of attendance and family contribution are to be determined in accordance with Board guidelines. Federal and state veterans' educational and special combat pay benefits are not to be considered in determining a student's financial need.

(10) Initial year award--The grant award made in the student's first year in the Texas Educational Opportunity Grant Program, typically made up of a fall and spring disbursement.

(11) Institution--A public junior college as defined in Texas Education Code, §61.003(2); a public technical institution as defined in Texas Education Code, §61.003(7); and Lamar State College-Orange and Lamar State College-Port Arthur.

(12) Period of enrollment--The term or terms within the current state fiscal year (September 1 - August 31) for which the student was enrolled in an approved institution and met all the eligibility requirements for an award through this program.

(13) Program--The Texas Educational Opportunity Grant Program.

(14) Program Officer--The individual named by each participating institution's chief executive officer to serve as agent for the Board. The Program Officer has primary responsibility for all ministerial acts required by the program, including maintenance of all records and preparation and submission of reports reflecting program transactions. Unless otherwise indicated by the administration, the director of student financial aid shall serve as Program Officer.

(15) Resident of Texas--A resident of the State of Texas as determined in accordance with Chapter 21, Subchapter B of this title (relating to Determination of Resident Status and Waiver Programs for Certain Nonresident Persons). Nonresident students who are eligible to pay resident tuition rates are not residents of Texas.

§22.260. Award Amounts and Adjustments.

(a) Funding. Funds awarded through this program may not exceed the amount of appropriations, grants and other funds that are available for this use.

(b) Award Amounts.

(1) The amount of a Texas Educational Opportunity Grant award may not be reduced by any gift aid for which the person receiving the grant is eligible, unless the total amount of a person's grant plus any gift aid received exceeds the student's financial need.

(2) The Board shall determine and announce the maximum amount of a Texas Educational Opportunity Grant award prior to the start of each fiscal year. The calculation of the maximum amount will be based on the mandates contained in Texas Education Code, §56.407. However, no student's award shall be greater than the amount of the student's financial need. To ensure the program has sufficient funds to make awards to all eligible returning recipients, institutions may not decrease award amounts per student in order to provide grants to a larger number of applicants. If an otherwise eligible student, due to hardship, enrolls for less than a half-time course load, his or her award is to be prorated. The amount he or she can be awarded is equal to the semester's maximum award for the relevant type of institution, divided by twelve hours and multiplied by the actual number of hours for which the student is enrolled.

(3) An approved institution may not charge a person receiving a Texas Educational Opportunity Grant through that institution, an amount of tuition and required fees in excess of the amount of the Texas Educational Opportunity Grant award received by the person. Nor may it deny admission to or enrollment in the institution based on

a person's eligibility to receive or actual receipt of a Texas Educational Opportunity Grant award. If an institution's tuition and fee charges exceed the Texas Educational Opportunity Grant award amount, it may address the shortfall in one of two ways:

(A) It may use other available sources of financial aid, other than a loan or work-study funds to cover any difference in the amount of a Texas Educational Opportunity Grant award and the student's actual amount of tuition and required fees at the institution; or

(B) it may waive the excess charges for the student. However, if a waiver is used, the institution may not report the recipient's tuition and fees in a way that would increase the general revenue appropriations to the institution.

(c) Uses. A person receiving a Texas Educational Opportunity Grant award may only use the money to pay any usual and customary cost of attendance at an institution of higher education incurred by the student.

(d) Over Awards. If, at a time after an award has been offered by the institution and accepted by the student, the student receives assistance that was not taken into account in the student's estimate of financial need, so that the resulting sum of assistance exceeds the student's financial need, the institution is not required to adjust the award under this program unless the sum of the excess resources is greater than \$300.

(e) Prorated Awards. If a student's need is insufficient to allow him or her to receive a full award in a given term or semester, or if the student's balance of eligible hours is less than the number of hours he or she is taking in a given term or semester, the student's award amount for that term or semester should be prorated. Beginning no later than Fiscal Year 2012, prorated amounts shall be calculated using the following schedule:

- (1) If enrolled for 12 or more hours - 100% of the maximum award;
 - (2) If enrolled for 9-11 hours - 75% of the maximum award;
 - (3) If enrolled for 6-8 hours - 50% of the maximum award;
- and
- (4) If enrolled for fewer than 6 hours - 25% of the maximum award.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER T. EXEMPTION FOR FIREFIGHTERS ENROLLED IN FIRE SCIENCE COURSES

19 TAC §22.519, §22.523

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §22.519 and §22.523, concerning the Exemption for Firefighters Enrolled in Fire Science Courses, without changes to the proposed text as published in the February 12, 2010, issue of the *Texas Register* (35 TexReg 1003).

Specifically, the amendment to §22.519 clarifies the types of courses that make up a fire science curriculum and removes the indication that the Coordinating Board staff will identify eligible courses. The amendments to §22.523 indicate that certificate programs may also qualify as fire science curricula and that institutions are to identify eligible programs. The Coordinating Board, in turn, will post the list of programs on its web site. The amendments also clarify that the exemption applies only to courses specifically related to a degree or certificate program identified by the institutions as a fire science curriculum. General education courses that do not apply to the fire science curriculum are not subject to the exemption.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §54.208, which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, §54.208.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 22. EXAMINING BOARDS

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §281.9

The Texas State Board of Pharmacy adopts amendments to §281.9 concerning Grounds for Discipline for a Pharmacy Technician or a Pharmacy Technician Trainee. The amendments are adopted without changes to the proposed text as published in the March 26, 2010, issue of the *Texas Register* (35 TexReg 2492).

The amendments implement S.B. 1853 as passed by the 81st Texas Legislature. S.B. 1853 amended the Texas Pharmacy Act to specify that the Board may discipline a pharmacy technician if the technician has: (a) performed a duty only a pharmacist may perform; (b) used alcohol or drugs in an "intemperate" manner; (c) engaged in negligent, unreasonable, or inappropriate conduct when working in a pharmacy; (d) violated a disciplinary or-

der; (e) been convicted of a criminal offense that requires registration as a sex offender; or (f) been disciplined by pharmacy or other health regulatory board; specify that a disciplinary action affecting the registration of a pharmacy technician trainee remains in effect if the trainee obtains registration as a pharmacy technician; and give the Board the authority on probable cause, to order a pharmacy technician to submit to a mental or physical evaluation.

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. DISCIPLINARY GUIDELINES

22 TAC §281.64

The Texas State Board of Pharmacy adopts amendments to §281.64 concerning Sanctions for Criminal Offenses. The amendments are adopted without changes to the proposed text as published in the March 26, 2010, issue of the *Texas Register* (35 TexReg 2493).

The amendments provide clarification for offenses involving impairment and reference the Texas Pharmacy Act citations.

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

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CHAPTER 291. PHARMACIES SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.7, §291.29

The Texas State Board of Pharmacy adopts new §291.7, concerning Prescription Drug Recalls by the Manufacturer, and new §291.29, concerning Professional Responsibility of Pharmacists. The new sections are adopted without changes to the proposed text as published in the March 26, 2010, issue of the *Texas Register* (35 TexReg 2494).

New rule §291.7 provides the requirements for pharmacies to follow in the event of a prescription drug recall by the manufacturer. New rule §291.29 clarifies the requirements for a pharmacist's corresponding responsibility in verifying the validity of prescriptions issued via the internet or without a valid patient-practitioner relationship or a legitimate medical purpose.

Comments:

§291.7: Texas Pharmacy Business Council commented that the proposed new rule §291.7 was not specific as to the type of recall the rule applied to and the method of receipt of the notification. Texas Pharmacy Business Council further commented that pharmacists are regulated by the FDA in regard to this matter, and further regulation by TSBP appears superfluous and duplicative. The Board disagrees with the comments in that pharmacists should be allowed to use professional judgment with regard to the method of receipt of notification, timeframe of receipt, and class of recall and did not include restrictions as to the type of recall and the method of notification or timeframe.

§291.29: Texas Pharmacy Business Council commented that the proposed new §291.29 is vague and unduly burdensome in the "professional responsibility" standards governing all classes of pharmacy. The National Association of Chain Drug Stores commented that the proposed new rule is vague with respect to what standard pharmacists must meet to demonstrate that one has made "every reasonable effort" to ensure that a prescription was issued only where a valid preexisting patient-prescriber relationship exists. The proposed new rule would require pharmacists to police the prescribing activities of prescribers to ensure that they are practicing within the confines of the laws and regulations of the Texas Medical Board, when this would more appropriately be the role of the Texas Medical Board. The Board disagrees with the comments, in that the rules only clarify what is currently the legal standard of practice for pharmacists and imposes no additional requirements.

The new rules are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the new rules: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

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SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

22 TAC §291.32, §291.33

The Texas State Board of Pharmacy adopts amendments to §291.32, concerning Personnel, and §291.33, concerning Operational Standards. Section 291.33 is adopted with changes to the proposed text as published in the March 26, 2010, issue of the *Texas Register* (35 TexReg 2495). Section 291.32 is adopted without changes and will not be republished. The adopted amendment to §291.33(c)(3)(D)(ii)(I) updates the name of the agency from "Texas State Board of Medical Examiners" to "Texas Medical Board".

The amendments to §291.32 provide requirements for pharmacists providing cognitive services and electronic verification of prescriptions from remote sites. The proposed amendments to §291.33 implement provisions of House Bill 19 passed during the 81st Regular Session of the Texas Legislature requiring pharmacists to place the statement "Do not flush unused medications or pour down a sink or drain" on the prescription label or written information and clarify the requirements for pharmacists performing drug regimen reviews from remote locations.

Comments:

§291.32: The Texas Pharmacy Business Council commented that the proposed amendments were sweeping and needed further clarification. The National Association of Chain Drug Stores commented the proposed rules contradict current rules with regard to the licensing of pharmacists engaged in central processing. The Board disagrees with these comments. The rules require pharmacists verifying the data entry performed by pharmacy technicians to be licensed in Texas in order to ensure adequate supervision of pharmacy technicians.

§291.33: The Texas Pharmacy Business Council and the Texas Federation of Drug Stores commented in support of the proposed rules regarding the disposal of prescription drugs. The Board agrees with the comments.

The amendments are adopted under §§551.002, 554.051, 562.006, and 562.001, of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing

the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §562.006 and §562.0061 as authorizing the agency to adopt rules regarding the prescription label and written information provided to consumers.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.33. Operational Standards.

(a) Licensing requirements.

(1) A Class A pharmacy shall register annually or biennially with the board on a pharmacy license application provided by the board, following the procedures specified in §291.1 of this title (relating to Pharmacy License Application).

(2) A Class A pharmacy which changes ownership shall notify the board within ten days of the change of ownership and apply for a new and separate license as specified in §291.3 of this title (relating to Required Notifications).

(3) A Class A pharmacy which changes location and/or name shall notify the board within ten days of the change and file for an amended license as specified in §291.3 of this title.

(4) A Class A pharmacy owned by a partnership or corporation which changes managing officers shall notify the board in writing of the names of the new managing officers within ten days of the change, following the procedures in §291.3 of this title.

(5) A Class A pharmacy shall notify the board in writing within ten days of closing, following the procedures in §291.5 of this title (relating to Closed Pharmacies).

(6) A separate license is required for each principal place of business and only one pharmacy license may be issued to a specific location.

(7) A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for the issuance and renewal of a license and the issuance of an amended license.

(8) A Class A pharmacy, licensed under the provisions of the Act, §560.051(a)(1), which also operates another type of pharmacy which would otherwise be required to be licensed under the Act, §560.051(a)(2) concerning Nuclear Pharmacy (Class B), is not required to secure a license for such other type of pharmacy; provided, however, such licensee is required to comply with the provisions of §291.51 of this title (relating to Purpose), §291.52 of this title (relating to Definitions), §291.53 of this title (relating to Personnel), §291.54 of this title (relating to Operational Standards), and §291.55 of this title (relating to Records), contained in Nuclear Pharmacy (Class B), to the extent such sections are applicable to the operation of the pharmacy.

(9) A Class A (community) pharmacy engaged in the compounding of non-sterile pharmaceuticals shall comply with the provisions of §291.131 of this title (relating to Pharmacies Compounding Non-Sterile Preparations).

(10) A Class A (community) pharmacy engaged in the compounding of sterile pharmaceuticals shall comply with the provisions of §291.133 of this title (relating to Pharmacies Compounding Sterile Preparations).

(11) A Class A (Community) pharmacy engaged in the provision of remote pharmacy services, including storage and dispensing of prescription drugs, shall comply with the provisions of §291.121 of this title (relating to Remote Pharmacy Services).

(12) Class A (Community) pharmacy engaged in centralized prescription dispensing and/or prescription drug or medication order processing shall comply with the provisions of §291.123 of this title (relating to Centralized Prescription Drug or Medication Order Processing) and/or §291.125 of this title (relating to Centralized Prescription Dispensing).

(b) Environment.

(1) General requirements.

(A) The pharmacy shall be arranged in an orderly fashion and kept clean. All required equipment shall be clean and in good operating condition.

(B) A Class A pharmacy shall have a sink with hot and cold running water within the pharmacy, exclusive of restroom facilities, available to all pharmacy personnel and maintained in a sanitary condition.

(C) A Class A pharmacy which serves the general public shall contain an area which is suitable for confidential patient counseling.

(i) Such counseling area shall:

(I) be easily accessible to both patient and pharmacists and not allow patient access to prescription drugs;

(II) be designed to maintain the confidentiality and privacy of the pharmacist/patient communication.

(ii) In determining whether the area is suitable for confidential patient counseling and designed to maintain the confidentiality and privacy of the pharmacist/patient communication, the board may consider factors such as the following:

(I) the proximity of the counseling area to the check-out or cash register area;

(II) the volume of pedestrian traffic in and around the counseling area;

(III) the presence of walls or other barriers between the counseling area and other areas of the pharmacy; and

(IV) any evidence of confidential information being overheard by persons other than the patient or patient's agent or the pharmacist or agents of the pharmacist.

(D) The pharmacy shall be properly lighted and ventilated.

(E) The temperature of the pharmacy shall be maintained within a range compatible with the proper storage of drugs; the temperature of the refrigerator shall be maintained within a range compatible with the proper storage of drugs requiring refrigeration.

(F) Animals, including birds and reptiles, shall not be kept within the pharmacy and in immediately adjacent areas under the control of the pharmacy. This provision does not apply to fish in aquariums, guide dogs accompanying disabled persons, or animals for sale to the general public in a separate area that is inspected by local health jurisdictions.

(2) Security.

(A) Each pharmacist while on duty shall be responsible for the security of the prescription department, including provisions for effective control against theft or diversion of prescription drugs, and records for such drugs.

(B) The prescription department shall be locked by key, combination or other mechanical or electronic means to prohibit unau-

thorized access when a pharmacist is not on-site except as provided in subparagraphs (C) and (D) of this paragraph and paragraph (3) of this subsection. The following is applicable:

(i) If the prescription department is closed at any time when the rest of the facility is open, the prescription department must be physically or electronically secured. The security may be accomplished by means such as floor to ceiling walls; walls, partitions, or barriers at least 9 feet 6 inches high; electronically monitored motion detectors; pull down sliders; or other systems or technologies that will secure the pharmacy from unauthorized entrance when the pharmacy is closed. Pharmacies licensed prior to June 1, 2009, shall be exempt from this provision unless the pharmacy changes location. Change of location shall include the relocation of the pharmacy within the licensed address. A pharmacy licensed prior to June 1, 2009 that files a change of ownership but does not change location shall be exempt from the provisions.

(ii) Effective, June 1, 2009, the pharmacy's key, combination, or other mechanical or electronic means of locking the pharmacy may not be duplicated without the authorization of the pharmacist-in-charge or owner.

(iii) Effective, June 1, 2009, at a minimum, the pharmacy must have a basic alarm system with off-site monitoring and perimeter and motion sensors. The pharmacy may have additional security by video surveillance camera systems.

(C) Prior to authorizing individuals to enter the prescription department, the pharmacist-in-charge or owner may designate persons who may enter the prescription department to perform functions, other than dispensing functions or prescription processing, documented by the pharmacist-in-charge including access to the prescription department by other pharmacists, pharmacy personnel and other individuals. The pharmacy must maintain written documentation of authorized individuals other than individuals employed by the pharmacy who accessed the prescription department when a pharmacist is not on-site.

(D) Only persons designated either by name or by title including such titles as "relief" or "floater" pharmacist, in writing by the pharmacist-in-charge may unlock the prescription department except in emergency situations. An additional key to or instructions on accessing the prescription department may be maintained in a secure location outside the prescription department for use during an emergency or as designated by the pharmacist-in-charge for entry by another pharmacist.

(E) Written policies and procedures for the pharmacy's security shall be developed and implemented by the pharmacist-in-charge and/or the owner of the pharmacy. Such policies and procedures may include quarterly audits of controlled substances commonly abused or diverted; perpetual inventories for the comparison of the receipt, dispensing, and distribution of controlled substances; monthly reports from the pharmacy's wholesaler(s) of controlled substances purchased by the pharmacy; opening and closing procedures; product storage and placement; and central management oversight.

(3) Temporary absence of pharmacist.

(A) On-site supervision by pharmacist.

(i) If a pharmacy is staffed by only one pharmacist, the pharmacist may leave the prescription department for short periods of time without closing the prescription department and removing pharmacy technicians, pharmacy technician trainees, and other pharmacy personnel from the prescription department provided the following conditions are met:

(I) at least one pharmacy technician remains in the prescription department;

(II) the pharmacist remains on-site at the licensed location of the pharmacy and is immediately available;

(III) the pharmacist reasonably believes that the security of the prescription department will be maintained in his or her absence. If in the professional judgment of the pharmacist, the pharmacist determines that the prescription department should close during his or her absence, then the pharmacist shall close the prescription department and remove the pharmacy technicians, pharmacy technician trainees, and other pharmacy personnel from the prescription department during his or her absence; and

(IV) a notice is posted which includes the following information:

(-a-) the pharmacist is on a break and the time the pharmacist will return; and

(-b-) pharmacy technicians may begin the processing of prescription drug orders or refills brought in during the pharmacist's absence, but the prescription or refill may not be delivered to the patient or the patient's agent until the pharmacist verifies the accuracy of the prescription.

(ii) During the time a pharmacist is absent from the prescription department, only pharmacy technicians who have completed the pharmacy's training program may perform the following duties, provided a pharmacist verifies the accuracy of all acts, tasks, and functions performed by the pharmacy technicians prior to delivery of the prescription to the patient or the patient's agent:

(I) initiating and receiving refill authorization requests;

(II) entering prescription data into a data processing system;

(III) taking a stock bottle from the shelf for a prescription;

(IV) preparing and packaging prescription drug orders (i.e., counting tablets/capsules, measuring liquids and placing them in the prescription container);

(V) affixing prescription labels and auxiliary labels to the prescription container; and

(VI) prepackaging and labeling prepackaged drugs.

(iii) Upon return to the prescription department, the pharmacist shall:

(I) conduct a drug regimen review as specified in subsection (c)(2) of this section; and

(II) verify the accuracy of all acts, tasks, and functions performed by the pharmacy technicians prior to delivery of the prescription to the patient or the patient's agent.

(iv) An agent of the pharmacist may deliver a previously verified prescription to the patient or his or her agent provided a record of the delivery is maintained containing the following information:

(I) date of the delivery;

(II) unique identification number of the prescription drug order;

(III) patient's name;

(IV) patient's phone number or the phone number of the person picking up the prescription; and

(V) signature of the person picking up the prescription.

(v) Any prescription delivered to a patient when a pharmacist is not in the prescription department must meet the requirements for a prescription delivered to a patient as described in subsection (c)(1)(F) of this section.

(vi) During the times a pharmacist is absent from the prescription department a pharmacist intern shall be considered a registered pharmacy technician and may perform only the duties of a registered pharmacy technician.

(vii) In pharmacies with two or more pharmacists on duty, the pharmacists shall stagger their breaks and meal periods so that the prescription department is not left without a pharmacist on duty.

(B) Pharmacist is off-site.

(i) The prescription department must be secured with procedures for entry during the time that a pharmacy is not under the continuous on-site supervision of a pharmacist and the pharmacy is not open for pharmacy services.

(ii) Pharmacy technicians and pharmacy technician trainees may not perform any duties of a pharmacy technician or pharmacy technician trainee during the time that the pharmacist is off-site.

(iii) A pharmacy may use an automated storage and distribution device as specified in subsection (i) of this section for pick-up of a previously verified prescription by a patient or patient's agent, provided the following conditions are met:

(I) a notice is posted which includes the following information:

(-a-) the pharmacist is off-site and not present in the pharmacy;

(-b-) no new prescriptions may be prepared at the pharmacy but previously verified prescriptions may be delivered to the patient or the patient's agent; and

(-c-) the date/time when the pharmacist will return.

(II) the pharmacy must maintain documentation of the absences of the pharmacist(s); and

(III) the prescription department is locked and secured to prohibit unauthorized entry.

(iv) An agent of the pharmacist may deliver a previously verified prescription to a patient or patient's agent during short periods of time when a pharmacist is off-site, provided the following conditions are met:

(I) short periods of time may not exceed two consecutive hours in a 24 hour period;

(II) a notice is posted which includes the following information:

(-a-) the pharmacist is off-site and not present in the pharmacy;

(-b-) no new prescriptions may be prepared at the pharmacy but previously verified prescriptions may be delivered to the patient or the patient's agent; and

(-c-) the date/time when the pharmacist will return.

(III) the pharmacy must maintain documentation of the absences of the pharmacist(s); and

(IV) the prescription department is locked and secured to prohibit unauthorized entry.

(v) During the time a pharmacist is absent from the prescription department and is off-site, a record of prescriptions delivered must be maintained and contain the following information:

(I) date and time of the delivery;

(II) unique identification number of the prescription drug order;

(III) patient's name;

(IV) patient's phone number or the phone number of the person picking up the prescription; and

(V) signature of the person picking up the prescription.

(vi) Any prescription delivered to a patient when a pharmacist is not on-site at the pharmacy must meet the requirements for a prescription delivered to a patient as described in subsection (c)(1)(F) of this section.

(c) Prescription dispensing and delivery.

(1) Patient counseling and provision of drug information.

(A) To optimize drug therapy, a pharmacist shall communicate to the patient or the patient's agent, information about the prescription drug or device which in the exercise of the pharmacist's professional judgment the pharmacist deems significant, such as the following:

(i) the name and description of the drug or device;

(ii) dosage form, dosage, route of administration, and duration of drug therapy;

(iii) special directions and precautions for preparation, administration, and use by the patient;

(iv) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;

(v) techniques for self monitoring of drug therapy;

(vi) proper storage;

(vii) refill information; and

(viii) action to be taken in the event of a missed dose.

(B) Such communication:

(i) shall be provided with each new prescription drug order;

(ii) shall be provided for any prescription drug order dispensed by the pharmacy on the request of the patient or patient's agent;

(iii) shall be communicated orally in person unless the patient or patient's agent is not at the pharmacy or a specific communication barrier prohibits such oral communication;

(iv) effective, June 1, 2010, shall be documented by recording the initials or identification code of the pharmacist providing the counseling in the prescription dispensing record on either the original hard-copy prescription. in the pharmacy's data processing system or in an electronic logbook; and

(v) shall be reinforced with written information relevant to the prescription and provided to the patient or patient's agent. The following is applicable concerning this written information.

(I) Written information must be in plain language designed for the consumer and printed in an easily readable font size comparable to but no smaller than ten-point Times Roman.

(II) When a compounded product is dispensed, information shall be provided for the major active ingredient(s), if available.

(III) For new drug entities, if no written information is initially available, the pharmacist is not required to provide information until such information is available, provided:

(-a-) the pharmacist informs the patient or the patient's agent that the product is a new drug entity and written information is not available;

(-b-) the pharmacist documents the fact that no written information was provided; and

(-c-) if the prescription is refilled after written information is available, such information is provided to the patient or patient's agent.

(IV) Effective January 1, 2011, the written information accompanying the prescription or the prescription label shall contain the statement "Do not flush unused medications or pour down a sink or drain." A drug product on a list developed by the Federal Food and Drug Administration of medicines recommended for disposal by flushing is not required to bear this statement.

(C) Only a pharmacist may verbally provide drug information to a patient or patient's agent and answer questions concerning prescription drugs. Non-pharmacist personnel may not ask questions of a patient or patient's agent which are intended to screen and/or limit interaction with the pharmacist.

(D) Nothing in this subparagraph shall be construed as requiring a pharmacist to provide consultation when a patient or patient's agent refuses such consultation. The pharmacist shall document such refusal for consultation.

(E) In addition to the requirements of subparagraphs (A) - (D) of this paragraph, if a prescription drug order is delivered to the patient at the pharmacy, the following is applicable.

(i) So that a patient will have access to information concerning his or her prescription, a prescription may not be delivered to a patient unless a pharmacist is in the pharmacy, except as provided in subsection (b)(3) of this section.

(ii) Any prescription delivered to a patient when a pharmacist is not in the pharmacy must meet the requirements described in subparagraph (F) of this paragraph.

(iii) A Class A pharmacy shall make available for use by the public a current or updated edition of the United States Pharmacopeia Dispensing Information, Volume II (Advice to the Patient), or another source of such information designed for the consumer.

(F) In addition to the requirements of subparagraphs (A) - (D) of this paragraph, if a prescription drug order is delivered to the patient or his or her agent at the patient's residence or other designated location, the following is applicable.

(i) The information specified in subparagraph (A) of this paragraph shall be delivered with the dispensed prescription in writing.

(ii) If prescriptions are routinely delivered outside the area covered by the pharmacy's local telephone service, the phar-

macy shall provide a toll-free telephone line which is answered during normal business hours to enable communication between the patient and a pharmacist.

(iii) The pharmacist shall place on the prescription container or on a separate sheet delivered with the prescription container in both English and Spanish the local and if applicable, toll-free telephone number of the pharmacy and the statement: "Written information about this prescription has been provided for you. Please read this information before you take the medication. If you have questions concerning this prescription, a pharmacist is available during normal business hours to answer these questions at (insert the pharmacy's local and toll-free telephone numbers)."

(iv) The pharmacy shall maintain and use adequate storage or shipment containers and use shipping processes to ensure drug stability and potency. Such shipping processes shall include the use of appropriate packaging material and/or devices to ensure that the drug is maintained at an appropriate temperature range to maintain the integrity of the medication throughout the delivery process.

(v) The pharmacy shall use a delivery system which is designed to assure that the drugs are delivered to the appropriate patient.

(G) Except as specified in subparagraph (B) of this paragraph, in the best interest of the public health and to optimize drug therapy, upon delivery of a refill prescription, a pharmacist shall ensure that the patient or patient's agent is offered information about the refilled prescription. Either a pharmacist or other pharmacy personnel shall inform the patient or patient's agent that a pharmacist is available to discuss the patient's prescription and provide information.

(H) A pharmacy shall post a sign no smaller than 8.5 inches by 11 inches in clear public view at all locations in the pharmacy where a patient may pick up prescriptions. The sign shall contain the following statement in a font that is easily readable: "Do you have questions about your prescription? Ask the pharmacist." Such notification shall be in both English and Spanish.

(I) The provisions of this paragraph do not apply to patients in facilities where drugs are administered to patients by a person required to do so by the laws of the state (i.e., nursing homes).

(2) Pharmaceutical care services.

(A) Drug regimen review.

(i) For the purpose of promoting therapeutic appropriateness, a pharmacist shall, prior to or at the time of dispensing a prescription drug order, review the patient's medication record. Such review shall at a minimum identify clinically significant:

- (I) known allergies;
- (II) rational therapy-contraindications;
- (III) reasonable dose and route of administration;
- (IV) reasonable directions for use;
- (V) duplication of therapy;
- (VI) drug-drug interactions;
- (VII) drug-food interactions;
- (VIII) drug-disease interactions;
- (IX) adverse drug reactions; and
- (X) proper utilization, including overutilization

or underutilization.

(ii) Upon identifying any clinically significant conditions, situations, or items listed in clause (i) of this subparagraph, the pharmacist shall take appropriate steps to avoid or resolve the problem including consultation with the prescribing practitioner. The pharmacist shall document such occurrences.

(iii) The drug regimen review may be conducted by remotely accessing the pharmacy's electronic data base from outside the pharmacy by:

(I) an individual Texas licensed pharmacist employee of the pharmacy provided the pharmacy establishes controls to protect the privacy of the patient and the security of confidential records; or

(II) a pharmacist employed by a Class E pharmacy provided the pharmacies have entered into a written contract or agreement which outlines the services to be provided and the responsibilities and accountabilities of each pharmacy in compliance with federal and state laws and regulations.

(iv) Any questions regarding a prescription drug order must be resolved with the prescriber and written documentation of these discussions made and maintained.

(B) Other pharmaceutical care services which may be provided by pharmacists include, but are not limited to, the following:

(i) managing drug therapy as delegated by a practitioner as allowed under the provisions of the Medical Practices;

(ii) administering immunizations and vaccinations under written protocol of a physician;

(iii) managing patient compliance programs;

(iv) providing preventative health care services; and

(v) providing case management of patients who are being treated with high-risk or high-cost drugs, or who are considered "high risk" due to their age, medical condition, family history, or related concern.

(3) Generic Substitution.

(A) General requirements.

(i) In accordance with Chapter 562 of the Act, a pharmacist may dispense a generically equivalent drug product if:

(I) the generic product costs the patient less than the prescribed drug product;

(II) the patient does not refuse the substitution; and

(III) the practitioner does not certify on the prescription form that a specific prescribed brand is medically necessary as specified in a dispensing directive described in subparagraph (C) of this paragraph.

(ii) If the practitioner has prohibited substitution through a dispensing directive in compliance with subparagraph (C) of this paragraph, a pharmacist shall not substitute a generically equivalent drug product unless the pharmacist obtains verbal or written authorization from the practitioner and notes such authorization on the original prescription drug order.

(B) Prescription format for written prescription drug orders.

(i) A written prescription drug order issued in Texas may:

(I) be on a form containing a single signature line for the practitioner; and

(II) contain the following reminder statement on the face of the prescription: "A generically equivalent drug product may be dispensed unless the practitioner hand writes the words 'Brand Necessary' or 'Brand Medically Necessary' on the face of the prescription."

(ii) A pharmacist may dispense a prescription that is not issued on the form specified in clause (i) of this subparagraph, however, the pharmacist may dispense a generically equivalent drug product unless the practitioner has prohibited substitution through a dispensing directive in compliance with subparagraph (C)(i) of this paragraph.

(iii) The prescription format specified in clause (i) of this subparagraph does not apply to the following types of prescription drug orders:

(I) prescription drug orders issued by a practitioner in a state other than Texas;

(II) prescriptions for dangerous drugs issued by a practitioner in the United Mexican States or the Dominion of Canada; or

(III) prescription drug orders issued by practitioners practicing in a federal facility provided they are acting in the scope of their employment.

(iv) In the event of multiple prescription orders appearing on one prescription form, the practitioner shall clearly identify to which prescription(s) the dispensing directive(s) apply. If the practitioner does not clearly indicate to which prescription(s) the dispensing directive(s) apply, the pharmacist may substitute on all prescriptions on the form.

(C) Dispensing directive.

(i) Written prescriptions.

(I) A practitioner may prohibit the substitution of a generically equivalent drug product for a brand name drug product by writing across the face of the written prescription, in the practitioner's own handwriting, the phrase "brand necessary" or "brand medically necessary."

(II) The dispensing directive shall:

(-a-) be in a format that protects confidentiality as required by the Health Insurance Portability and Accountability Act of 1996 (29 U.S.C. §1181 et seq.) and its subsequent amendments; and

(-b-) comply with federal and state law, including rules, with regard to formatting and security requirements.

(III) The dispensing directive specified in this paragraph may not be preprinted, rubber stamped, or otherwise reproduced on the prescription form.

(IV) A practitioner may prohibit substitution on a written prescription only by following the dispensing directive specified in this paragraph. Two-line prescription forms, check boxes, or other notations on an original prescription drug order which indicate "substitution instructions" are not valid methods to prohibit substitution, and a pharmacist may substitute on these types of written prescriptions.

(ii) Verbal Prescriptions.

(I) If a prescription drug order is transmitted to a pharmacist orally, the practitioner or practitioner's agent shall prohibit

substitution by specifying "brand necessary" or "brand medically necessary." The pharmacists shall note any substitution instructions by the practitioner or practitioner's agent, on the file copy of the prescription drug order. Such file copy may follow the one-line format indicated in subparagraph (B)(i) of this paragraph, or any other format that clearly indicates the substitution instructions.

(II) If the practitioner's or practitioner's agent does not clearly indicate that the brand name is medically necessary, the pharmacist may substitute a generically equivalent drug product.

(III) To prohibit substitution on a verbal prescription reimbursed through the medical assistance program specified in 42 C.F.R., §447.331:

(-a-) the practitioner or the practitioner's agent shall verbally indicate that the brand is medically necessary; and

(-b-) the practitioner shall mail or fax a written prescription to the pharmacy which complies with the dispensing directive for written prescriptions specified in clause (i) of this subparagraph within 30 days.

(iii) Electronic prescription drug orders.

(I) To prohibit substitution, the practitioner or practitioner's agent shall note "brand necessary" or "brand medically necessary" on the electronic prescription drug order.

(II) If the practitioner or practitioner's agent does not clearly indicate on the electronic prescription drug order that the brand is medically necessary, the pharmacist may substitute a generically equivalent drug product.

(III) To prohibit substitution on an electronic prescription drug order reimbursed through the medical assistance program specified in 42 C.F.R., §447.331, the practitioner shall fax a copy of the original prescription drug order which complies with the requirements of a written prescription drug order specified in clause (i) of this subparagraph within 30 days.

(iv) Prescriptions issued by out-of-state, Mexican, Canadian, or federal facility practitioners.

(I) The dispensing directive specified in this subsection does not apply to the following types of prescription drug orders:

(-a-) prescription drug orders issued by a practitioner in a state other than Texas;

(-b-) prescriptions for dangerous drugs issued by a practitioner in the United Mexican States or the Dominion of Canada; or

(-c-) prescription drug orders issued by practitioners practicing in a federal facility provided they are acting in the scope of their employment.

(II) A pharmacist may not substitute on prescription drug orders identified in subclause (I) of this clause unless the practitioner has authorized substitution on the prescription drug order. If the practitioner has not authorized substitution on the written prescription drug order, a pharmacist shall not substitute a generically equivalent drug product unless:

(-a-) the pharmacist obtains verbal or written authorization from the practitioner (such authorization shall be noted on the original prescription drug order); or

(-b-) the pharmacist obtains written documentation regarding substitution requirements from the State Board of Pharmacy in the state, other than Texas, in which the prescription drug order was issued. The following is applicable concerning this documentation.

(-1-) The documentation shall state that a pharmacist may substitute on a prescription drug order issued in such other state unless the practitioner prohibits substitution on the original prescription drug order.

(-2-) The pharmacist shall note on the original prescription drug order the fact that documentation from such other state board of pharmacy is on file.

(-3-) Such documentation shall be updated yearly.

(D) Refills.

(i) Original substitution instructions. All refills, including prescriptions issued prior to June 1, 2001, shall follow the original substitution instructions or dispensing directive, unless otherwise indicated by the practitioner or practitioner's agent.

(ii) Narrow therapeutic index drugs.

(I) The board, in consultation with the Texas Medical Board, has determined that no drugs shall be included on a list of narrow therapeutic index drugs as defined in §562.013, Occupations Code.

(-a-) The board has specified in §309.7 of this title (relating to Dispensing Responsibilities) that for drugs listed in the publication, pharmacists shall use as a basis for determining generic equivalency, Approved Drug Products with Therapeutic Equivalence Evaluations and current supplements published by the Federal Food and Drug Administration, within the limitations stipulated in that publication. Pharmacists may only substitute products that are rated therapeutically equivalent in the Approved Drug Products with Therapeutic Equivalence Evaluations and current supplements.

(-b-) Practitioners may prohibit substitution through a dispensing directive in compliance with subparagraph (C) of this paragraph.

(II) The board shall reconsider the contents of the list if the Federal Food and Drug Administration determines a new equivalence classification which indicates that certain drug products are equivalent but special notification to the patient and practitioner is required when substituting these products.

(4) Substitution of dosage form.

(A) As specified in §562.002 of the Act, a pharmacist may dispense a dosage form of a drug product different from that prescribed, such as a tablet instead of a capsule or liquid instead of tablets, provided:

(i) the patient consents to the dosage form substitution;

(ii) the pharmacist notifies the practitioner of the dosage form substitution; and

(iii) the dosage form so dispensed:

(I) contains the identical amount of the active ingredients as the dosage prescribed for the patient;

(II) is not an enteric-coated or time release product;

(III) does not alter desired clinical outcomes;

(B) Substitution of dosage form may not include the substitution of a product that has been compounded by the pharmacist unless the pharmacist contacts the practitioner prior to dispensing and obtains permission to dispense the compounded product.

(5) Therapeutic Drug Interchange. A switch to a drug providing a similar therapeutic response to the one prescribed shall not be made without prior approval of the prescribing practitioner. This paragraph does not apply to generic substitution. For generic substitution, see the requirements of paragraph (3) of this subsection.

(A) The patient shall be notified of the therapeutic drug interchange prior to, or upon delivery, of the dispensed prescription to the patient. Such notification shall include:

(i) a description of the change;

(ii) the reason for the change;

(iii) whom to notify with questions concerning the change; and

(iv) instructions for return of the drug if not wanted by the patient.

(B) The pharmacy shall maintain documentation of patient notification of therapeutic drug interchange which shall include:

(i) the date of the notification;

(ii) the method of notification;

(iii) a description of the change; and

(iv) the reason for the change.

(6) Prescription containers.

(A) A drug dispensed pursuant to a prescription drug order shall be dispensed in a child-resistant container unless:

(i) the patient or the practitioner requests the prescription not be dispensed in a child-resistant container; or

(ii) the product is exempted from requirements of the Poison Prevention Packaging Act of 1970.

(B) A drug dispensed pursuant to a prescription drug order shall be dispensed in an appropriate container as specified on the manufacturer's container.

(C) Prescription containers or closures shall not be reused. However, if a patient or patient's agent has difficulty reading or understanding a prescription label, a prescription container may be reused provided:

(i) the container is designed to provide audio-recorded information about the proper use of the prescription medication;

(ii) the container is reused for the same patient;

(iii) the container is cleaned; and

(iv) a new safety closure is used each time the prescription container is reused.

(7) Labeling.

(A) At the time of delivery of the drug, the dispensing container shall bear a label in plain language and printed in an easily readable font size, unless otherwise specified, with at least the following information:

(i) name, address and phone number of the pharmacy;

(ii) unique identification number of the prescription that is printed in an easily readable font size comparable to but no smaller than ten-point Times Roman;

(iii) date the prescription is dispensed;

(iv) initials or an identification code of the dispensing pharmacist;

(v) name of the prescribing practitioner;

(vi) name of the patient or if such drug was prescribed for an animal, the species of the animal and the name of the owner that is printed in an easily readable font size comparable to but no smaller than ten-point Times Roman;

(vii) instructions for use that is printed in an easily readable font size comparable to but no smaller than ten-point Times Roman;

(viii) quantity dispensed;

(ix) appropriate ancillary instructions such as storage instructions or cautionary statements such as warnings of potential harmful effects of combining the drug product with any product containing alcohol;

(x) if the prescription is for a Schedules II - IV controlled substance, the statement "Caution: Federal law prohibits the transfer of this drug to any person other than the patient for whom it was prescribed";

(xi) if the pharmacist has selected a generically equivalent drug pursuant to the provisions of the Act, Chapters 562 and 563, the statement "Substituted for Brand Prescribed" or "Substituted for 'Brand Name'" where "Brand Name" is the actual name of the brand name product prescribed;

(xii) the name of the advanced practice nurse or physician assistant, if the prescription is carried out or signed by an advanced practice nurse or physician assistant in compliance with Subtitle B, Chapter 157, Occupations Code;

(xiii) the name of the pharmacist who signed the prescription for a dangerous drug under delegated authority of a physician as specified in Subtitle B, Chapter 157, Occupations Code;

(xiv) the name and strength of the actual drug product dispensed that is printed in an easily readable font size comparable to but no smaller than ten-point Times Roman, unless otherwise directed by the prescribing practitioner;

(I) The name shall be either:

(-a-) the brand name; or

(-b-) if no brand name, then the generic name

and name of the manufacturer or distributor of such generic drug. (The name of the manufacturer or distributor may be reduced to an abbreviation or initials, provided the abbreviation or initials are sufficient to identify the manufacturer or distributor. For combination drug products or non-sterile compounded drug products having no brand name, the principal active ingredients shall be indicated on the label.)

(II) Except as provided in clause (xi) of this subparagraph, the brand name of the prescribed drug shall not appear on the prescription container label unless it is the drug product actually dispensed.

(xv) effective June 1, 2010, if the drug is dispensed in a container other than the manufacturer's original container, the date after which the prescription should not be used or beyond-use-date. Unless otherwise specified by the manufacture, the beyond-use-date shall be one year from the date the drug is dispensed or the manufacturer's expiration date, whichever is earlier. The beyond-use-date may be placed on the prescription label or on a flag label attached to the bottle. A beyond-use-date is not required on the label of a prescription dispensed to a person at the time of release from prison or jail if the prescription is for not more than a 10-day supply of medication; and

(xvi) effective January 1, 2011, either on the prescription label or the written information accompanying the prescription, the statement "Do not flush unused medications or pour down a sink or drain." A drug product on a list developed by the Federal Food and Drug Administration of medicines recommended for disposal by flushing is not required to bear this statement.

(B) If the prescription label required in subparagraph (A) of this paragraph is printed in a type size smaller than ten-point Times Roman, the pharmacy shall provide the patient written information containing the information specified in subparagraph (A) of this paragraph in an easily readable font size comparable to but no smaller than ten-point Times Roman.

(C) The label is not required to include the initials or identification code of the dispensing pharmacist specified in subparagraph (A) of this paragraph if the identity of the dispensing pharmacist is recorded in the pharmacy's data processing system. The record of the identity of the dispensing pharmacist shall not be altered in the pharmacy's data processing system.

(D) The dispensing container is not required to bear the label specified in subparagraph (A) of this paragraph if:

(i) the drug is prescribed for administration to an ultimate user who is institutionalized in a licensed health care institution (e.g., nursing home, hospice, hospital);

(ii) no more than a 34-day supply or 100 dosage units, whichever is less, is dispensed at one time;

(iii) the drug is not in the possession of the ultimate user prior to administration;

(iv) the pharmacist-in-charge has determined that the institution:

(I) maintains medication administration records which include adequate directions for use for the drug(s) prescribed;

(II) maintains records of ordering, receipt, and administration of the drug(s); and

(III) provides for appropriate safeguards for the control and storage of the drug(s); and

(v) the dispensing container bears a label that adequately:

(I) identifies the:

(-a-) pharmacy by name and address;

(-b-) unique identification number of the pre-

scription;

(-c-) name and strength of the drug dis-

persed;

(-d-) name of the patient; and

(-e-) name of the prescribing practitioner and,

if applicable, the name of the advanced practice nurse or physician assistant who signed the prescription drug order;

(II) effective June 1, 2010, if the drug is dispensed in a container other than the manufacturer's original container, specifies the date after which the prescription should not be used or beyond-use-date. Unless otherwise specified by the manufacture, the beyond-use-date shall be one year from the date the drug is dispensed or the manufacturer's expiration date, whichever is earlier. The beyond-use-date may be placed on the prescription label or on a flag label attached to the bottle. A beyond-use-date is not required on the label of a prescription dispensed to a person at the time of release from prison or jail if the prescription is for not more than a 10-day supply of medication; and

(III) sets forth the directions for use and cautionary statements, if any, contained on the prescription drug order or required by law.

(d) Equipment and supplies. Class A pharmacies dispensing prescription drug orders shall have the following equipment and supplies:

- (1) data processing system including a printer or comparable equipment;
- (2) refrigerator;
- (3) adequate supply of child-resistant, light-resistant, tight, and if applicable, glass containers;
- (4) adequate supply of prescription, poison, and other applicable labels;
- (5) appropriate equipment necessary for the proper preparation of prescription drug orders; and
- (6) metric-apothecary weight and measure conversion charts.

(e) Library. A reference library shall be maintained which includes the following in hard-copy or electronic format:

- (1) current copies of the following:
 - (A) Texas Pharmacy Act and rules;
 - (B) Texas Dangerous Drug Act and rules;
 - (C) Texas Controlled Substances Act and rules; and
 - (D) Federal Controlled Substances Act and rules (or official publication describing the requirements of the Federal Controlled Substances Act and rules);
- (2) at least one current or updated reference from each of the following categories:
 - (A) patient information:
 - (i) United States Pharmacopeia Dispensing Information, Volume II (Advice to the Patient); or
 - (ii) a reference text or information leaflets which provide patient information;
 - (B) drug interactions: a reference text on drug interactions, such as Drug Interaction Facts. A separate reference is not required if other references maintained by the pharmacy contain drug interaction information including information needed to determine severity or significance of the interaction and appropriate recommendations or actions to be taken;
 - (C) a general information reference text, such as:
 - (i) Facts and Comparisons with current supplements;
 - (ii) United States Pharmacopeia Dispensing Information Volume I (Drug Information for the Healthcare Provider);
 - (iii) Clinical Pharmacology;
 - (iv) American Hospital Formulary Service with current supplements; or
 - (v) Remington's Pharmaceutical Sciences; and
 - (3) basic antidote information and the telephone number of the nearest Regional Poison Control Center.
- (f) Drugs.

(1) Procurement and storage.

(A) The pharmacist-in-charge shall have the responsibility for the procurement and storage of drugs, but may receive input from other appropriate staff relative to such responsibility.

(B) Prescription drugs and devices and nonprescription Schedule V controlled substances shall be stored within the prescription department or a locked storage area.

(C) All drugs shall be stored at the proper temperature, as defined in the USP/NF and §291.15 of this title (relating to Storage of Drugs).

(2) Out-of-date drugs or devices.

(A) Any drug or device bearing an expiration date shall not be dispensed beyond the expiration date of the drug or device.

(B) Outdated drugs or devices shall be removed from dispensing stock and shall be quarantined together until such drugs or devices are disposed of properly.

(3) Nonprescription Schedule V controlled substances.

(A) Schedule V controlled substances containing codeine, dihydrocodeine, or any of the salts of codeine or dihydrocodeine may not be distributed without a prescription drug order from a practitioner.

(B) A pharmacist may distribute nonprescription Schedule V controlled substances which contain no more than 15 milligrams of opium per 29.5729 ml or per 28.35 Gm provided:

(i) such distribution is made only by a pharmacist; a nonpharmacist employee may not distribute a nonprescription Schedule V controlled substance even if under the supervision of a pharmacist; however, after the pharmacist has fulfilled professional and legal responsibilities, the actual cash, credit transaction, or delivery may be completed by a nonpharmacist:

(ii) not more than 240 ml (eight fluid ounces), or not more than 48 solid dosage units of any substance containing opium, may be distributed to the same purchaser in any given 48-hour period without a prescription drug order;

(iii) the purchaser is at least 18 years of age; and

(iv) the pharmacist requires every purchaser not known to the pharmacist to furnish suitable identification (including proof of age where appropriate).

(C) A record of such distribution shall be maintained by the pharmacy in a bound record book. The record shall contain the following information:

(i) true name of the purchaser;

(ii) current address of the purchaser;

(iii) name and quantity of controlled substance purchased;

(iv) date of each purchase; and

(v) signature or written initials of the distributing pharmacist.

(4) Class A Pharmacies may not sell, purchase, trade or possess prescription drug samples, unless the pharmacy meets all of the following conditions:

(A) the pharmacy is owned by a charitable organization described in the Internal Revenue Code of 1986, or by a city, state or county government;

(B) the pharmacy is a part of a health care entity which provides health care primarily to indigent or low income patients at no or reduced cost;

(C) the samples are for dispensing or provision at no charge to patients of such health care entity; and

(D) the samples are possessed in compliance with the federal Prescription Drug Marketing Act of 1986.

(g) Prepackaging of drugs.

(1) Drugs may be prepackaged in quantities suitable for internal distribution only by a pharmacist or by supportive personnel under the direction and direct supervision of a pharmacist.

(2) The label of a prepackaged unit shall indicate:

(A) brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(B) facility's lot number;

(C) expiration date; and

(D) quantity of the drug, if the quantity is greater than one.

(3) Records of prepackaging shall be maintained to show:

(A) name of the drug, strength, and dosage form;

(B) facility's lot number;

(C) manufacturer or distributor;

(D) manufacturer's lot number;

(E) expiration date;

(F) quantity per prepackaged unit;

(G) number of prepackaged units;

(H) date packaged;

(I) name, initials, or electronic signature of the packer; and

(J) signature, or electronic signature of the responsible pharmacist.

(4) Stock packages, repackaged units, and control records shall be quarantined together until checked/released by the pharmacist.

(h) Customized patient medication packages.

(1) Purpose. In lieu of dispensing two or more prescribed drug products in separate containers, a pharmacist may, with the consent of the patient, the patient's caregiver, or the prescriber, provide a customized patient medication package (patient med-pak).

(2) Definition. A patient med-pak is a package prepared by a pharmacist for a specific patient comprising a series of containers and containing two or more prescribed solid oral dosage forms. The patient med-pak is so designed or each container is so labeled as to indicate the day and time, or period of time, that the contents within each container are to be taken.

(3) Label.

(A) The patient med-pak shall bear a label stating:

(i) the name of the patient;

(ii) the unique identification number for the patient med-pak itself and a separate unique identification number for each of

the prescription drug orders for each of the drug products contained therein;

(iii) the name, strength, physical description or identification, and total quantity of each drug product contained therein;

(iv) the directions for use and cautionary statements, if any, contained in the prescription drug order for each drug product contained therein;

(v) if applicable, a warning of the potential harmful effect of combining any form of alcoholic beverage with any drug product contained therein;

(vi) any storage instructions or cautionary statements required by the official compendia;

(vii) the name of the prescriber of each drug product;

(viii) the date of preparation of the patient med-pak and the beyond-use date assigned to the patient med-pak (which such beyond-use date shall not be later than 60 days from the date of preparation);

(ix) the name, address, and telephone number of the pharmacy;

(x) the initials or an identification code of the dispensing pharmacist;

(xi) effective June 1, 2010, the date after which the prescription should not be used or beyond-use-date. Unless otherwise specified by the manufacture, the beyond-use-date shall be one year from the date the med-pak is dispensed or the earliest manufacturer's expiration date for a product contained in the med-pak if it is less than one-year from the date dispensed. The beyond-use-date may be placed on the prescription label or on a flag label attached to the bottle. A beyond-use-date is not required on the label of a prescription dispensed to a person at the time of release from prison or jail if the prescription is for not more than a 10-day supply of medication; and

(xii) effective January 1, 2011, either on the prescription label or the written information accompanying the prescription, the statement "Do not flush unused medications or pour down a sink or drain." A drug product on a list developed by the Federal Food and Drug Administration of medicines recommended for disposal by flushing is not required to bear this statement.

(xiii) any other information, statements, or warnings required for any of the drug products contained therein.

(B) If the patient med-pak allows for the removal or separation of the intact containers therefrom, each individual container shall bear a label identifying each of the drug product contained therein.

(C) The dispensing container is not required to bear the label specified in subparagraph (A) of this paragraph if:

(i) the drug is prescribed for administration to an ultimate user who is institutionalized in a licensed health care institution (e.g., nursing home, hospice, hospital);

(ii) no more than a 34-day supply or 100 dosage units, whichever is less, is dispensed at one time;

(iii) the drug is not in the possession of the ultimate user prior to administration;

(iv) the pharmacist-in-charge has determined that the institution:

(I) maintains medication administration records which include adequate directions for use for the drug(s) prescribed;

(II) maintains records of ordering, receipt, and administration of the drug(s); and

(III) provides for appropriate safeguards for the control and storage of the drug(s); and

(v) the dispensing container bears a label that adequately:

(I) identifies the:

(-a-) pharmacy by name and address;

(-b-) unique identification number of the prescription;

(-c-) name and strength of each drug product dispensed;

(-d-) name of the patient; and

(-e-) name of the prescribing practitioner of each drug product and if applicable, the name of the advanced practice nurse or physician assistant who signed the prescription drug order;

(II) effective June 1, 2010, the date after which the prescription should not be used or beyond-use-date. Unless otherwise specified by the manufacture, the beyond-use-date shall be one year from the date the med-pak is dispensed or the earliest manufacturer's expiration date for a product contained in the med-pack if it is less than one-year from the date dispensed. The beyond-use-date may be placed on the prescription label or on a flag label attached to the bottle. A beyond-use-date is not required on the label of a prescription dispensed to a person at the time of release from prison or jail if the prescription is for not more than a 10-day supply of medication; and

(III) for each drug product sets forth the directions for use and cautionary statements, if any, contained on the prescription drug order or required by law.

(4) Labeling. The patient med-pak shall be accompanied by a patient package insert, in the event that any drug contained therein is required to be dispensed with such insert as accompanying labeling. Alternatively, such required information may be incorporated into a single, overall educational insert provided by the pharmacist for the total patient med-pak.

(5) Packaging. In the absence of more stringent packaging requirements for any of the drug products contained therein, each container of the patient med-pak shall comply with official packaging standards. Each container shall be either not reclosable or so designed as to show evidence of having been opened.

(6) Guidelines. It is the responsibility of the dispensing pharmacist when preparing a patient med-pak, to take into account any applicable compendial requirements or guidelines and the physical and chemical compatibility of the dosage forms placed within each container, as well as any therapeutic incompatibilities that may attend the simultaneous administration of the drugs.

(7) Recordkeeping. In addition to any individual prescription filing requirements, a record of each patient med-pak shall be made and filed. Each record shall contain, as a minimum:

(A) the name and address of the patient;

(B) the unique identification number for the patient med-pak itself and a separate unique identification number for each of the prescription drug orders for each of the drug products contained therein;

(C) the name of the manufacturer or distributor and lot number for each drug product contained therein;

(D) information identifying or describing the design, characteristics, or specifications of the patient med-pak sufficient to

allow subsequent preparation of an identical patient med-pak for the patient;

(E) the date of preparation of the patient med-pak and the beyond-use date that was assigned;

(F) any special labeling instructions; and

(G) the initials or an identification code of the dispensing pharmacist.

(8) The patient med-pak label is not required to include the initials or identification code of the dispensing pharmacist specified in paragraph (3)(A) of this subsection if the identity of the dispensing pharmacist is recorded in the pharmacy's data processing system. The record of the identity of the dispensing pharmacist shall not be altered in the pharmacy's data processing system.

(i) Automated devices and systems.

(1) Automated compounding or counting devices. If a pharmacy uses automated compounding or counting devices:

(A) the pharmacy shall have a method to calibrate and verify the accuracy of the automated compounding or counting device and document the calibration and verification on a routine basis;

(B) the devices may be loaded with bulk or unlabeled drugs only by a pharmacist or by pharmacy technicians under the direction and direct supervision of a pharmacist;

(C) the label of an automated compounding or counting device container shall indicate the brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(D) records of loading bulk or unlabeled drugs into an automated compounding or counting device shall be maintained to show:

(i) name of the drug, strength, and dosage form;

(ii) manufacturer or distributor;

(iii) manufacturer's lot number;

(iv) expiration date;

(v) date of loading;

(vi) name, initials, or electronic signature of the person loading the automated compounding or counting device; and

(vii) signature or electronic signature of the responsible pharmacist; and

(E) the automated compounding or counting device shall not be used until a pharmacist verifies that the system is properly loaded and affixes his or her signature to the record specified in subparagraph (D) of this paragraph.

(2) Automated pharmacy dispensing systems. This paragraph becomes effective September 1, 2000.

(A) Authority to use automated pharmacy dispensing systems. A pharmacy may use an automated pharmacy dispensing system to fill prescription drug orders provided that:

(i) the pharmacist-in-charge is responsible for the supervision of the operation of the system;

(ii) the automated pharmacy dispensing system has been tested by the pharmacy and found to dispense accurately. The pharmacy shall make the results of such testing available to the Board upon request; and

(iii) the pharmacy will make the automated pharmacy dispensing system available for inspection by the board for the purpose of validating the accuracy of the system.

(B) Quality assurance program. A pharmacy which uses an automated pharmacy dispensing system to fill prescription drug orders shall operate according to a written program for quality assurance of the automated pharmacy dispensing system which:

(i) requires continuous monitoring of the automated pharmacy dispensing system; and

(ii) establishes mechanisms and procedures to test the accuracy of the automated pharmacy dispensing system at least every six months and whenever any upgrade or change is made to the system and documents each such activity.

(C) Policies and procedures of operation.

(i) When an automated pharmacy dispensing system is used to fill prescription drug orders, it shall be operated according to written policies and procedures of operation. The policies and procedures of operation shall establish requirements for operation of the automated pharmacy dispensing system and shall describe policies and procedures that:

(I) include a description of the policies and procedures of operation;

(II) provide for a pharmacist's review, approval, and accountability for the transmission of each original or new prescription drug order to the automated pharmacy dispensing system before the transmission is made;

(III) provide for access to the automated pharmacy dispensing system for stocking and retrieval of medications which is limited to licensed healthcare professionals or pharmacy technicians acting under the supervision of a pharmacist;

(IV) require prior to use, that a pharmacist checks, verifies, and documents that the automated pharmacy dispensing system has been accurately filled each time the system is stocked;

(V) provide for an accountability record to be maintained which documents all transactions relative to stocking and removing medications from the automated pharmacy dispensing system;

(VI) require a prospective drug regimen review is conducted as specified in subsection (c)(2) of this section; and

(VII) establish and make provisions for documentation of a preventative maintenance program for the automated pharmacy dispensing system.

(ii) A pharmacy which uses an automated pharmacy dispensing system to fill prescription drug orders shall, at least annually, review its written policies and procedures, revise them if necessary, and document the review.

(D) Recovery Plan. A pharmacy which uses an automated pharmacy dispensing system to fill prescription drug orders shall maintain a written plan for recovery from a disaster or any other situation which interrupts the ability of the automated pharmacy dispensing system to provide services necessary for the operation of the pharmacy. The written plan for recovery shall include:

(i) planning and preparation for maintaining pharmacy services when an automated pharmacy dispensing system is experiencing downtime;

(ii) procedures for response when an automated pharmacy dispensing system is experiencing downtime;

(iii) procedures for the maintenance and testing of the written plan for recovery; and

(iv) procedures for notification of the Board, each patient of the pharmacy, and other appropriate agencies whenever an automated pharmacy dispensing system experiences downtime for more than two days of operation or a period of time which significantly limits the pharmacy's ability to provide pharmacy services.

(3) Final check of prescriptions dispensed using an automated pharmacy dispensing system. For the purpose of §291.32(b)(2) of this title (relating to Personnel), a pharmacist must perform the final check of all prescriptions prior to delivery to the patient to ensure that the prescription is dispensed accurately as prescribed.

(A) This final check shall be considered accomplished if:

(i) a check of the final product is conducted by a pharmacist after the automated system has completed the prescription and prior to delivery to the patient; or

(ii) the following checks are conducted by a pharmacist:

(I) if the automated pharmacy dispensing system contains bulk stock drugs, a pharmacist verifies that those drugs have been accurately stocked as specified in paragraph (2)(C)(i)(IV) of this subsection; and

(II) a pharmacist checks the accuracy of the data entry of each original or new prescription drug order entered into the automated pharmacy dispensing system.

(B) If the final check is accomplished as specified in subparagraph (A)(ii) of this paragraph, the following additional requirements must be met.

(i) The dispensing process must be fully automated from the time the pharmacist releases the prescription to the automated system until a completed, labeled prescription ready for delivery to the patient is produced.

(ii) The pharmacy has conducted initial testing and has a continuous quality assurance program which documents that the automated pharmacy dispensing system dispenses accurately as specified in paragraph (2)(A) and (B) of this subsection.

(iii) The automated pharmacy dispensing system documents and maintains:

(I) the name(s), initials, or identification code(s) of each pharmacist responsible for the checks outlined in subparagraph (A)(ii) of this paragraph; and

(II) the name(s), initials, or identification code(s) and specific activity(ies) of each pharmacist or pharmacy technician who performs any other portion of the dispensing process.

(iv) The pharmacy establishes mechanisms and procedures to test the accuracy of the automated pharmacy dispensing system at least every month rather than every six months as specified in paragraph (2)(B) of this subsection.

(4) Automated checking device.

(A) For the purpose of this subsection, an automated checking device is a fully automated device which confirms, after dispensing but prior to delivery to the patient, that the correct drug and strength has been labeled with the correct label for the correct patient.

(B) For the purpose of §291.32(b)(2) of this title, the final check of a dispensed prescription shall be considered accomplished using an automated checking device provided:

(i) a check of the final product is conducted by a pharmacist prior to delivery to the patient or the following checks are performed by a pharmacist:

(I) the prepackaged drug used to fill the order is checked by a pharmacist who verifies that the drug is labeled and packaged accurately; and

(II) a pharmacist checks the accuracy of each original or new prescription drug order.

(ii) the prescription is dispensed, labeled, and made ready for delivery to the patient in compliance with Class A (Community) Pharmacy rules; and

(iii) prior to delivery to the patient:

(I) the automated checking device confirms that the correct drug and strength has been labeled with the correct label for the correct patient; and

(II) a pharmacist performs all other duties required to ensure that the prescription has been dispensed safely and accurately as prescribed.

(C) If the final check is accomplished as specified in subparagraph (B) of this paragraph, the following additional requirements must be met.

(i) The pharmacy has conducted initial testing of the automated checking device and has a continuous quality assurance program which documents that the automated checking device accurately confirms that the correct drug and strength has been labeled with the correct label for the correct patient.

(ii) The pharmacy documents and maintains:

(I) the name(s), initials, or identification code(s) of each pharmacist responsible for the checks outlined in subparagraph (B)(i) of this paragraph; and

(II) the name(s) initials, or identification code(s) and specific activity(ies) of each pharmacist or pharmacy technician who perform any other portion of the dispensing process.

(iii) The pharmacy establishes mechanisms and procedures to test the accuracy of the automated checking device at least monthly.

(5) Automated storage and distribution device. A pharmacy may use an automated storage and distribution device to deliver a previously verified prescription to a patient or patient's agent when the pharmacy is open or when the pharmacy is closed as specified in subsection (b)(3)(B)(iii) of this section, provided:

(A) the device is used to deliver refills of prescription drug orders and shall not be used to deliver new prescriptions as defined by §291.31(26) of this title (Relating to Definitions);

(B) the automated storage and distribution device may not be used to deliver a controlled substance;

(C) drugs stored in the automated storage and distribution device are stored at proper temperatures;

(D) the patient or patient's agent is given the option to use the system;

(E) the patient or patient's agent has access to a pharmacist for questions regarding the prescription at the pharmacy where

the automated storage and distribution device is located, by a telephone available at the pharmacy that connects directly to another pharmacy, or by a telephone available at the pharmacy and a posted telephone number to reach another pharmacy;

(F) the pharmacist-in-charge is responsible for the supervision of the operation of the system;

(G) the automated storage and distribution device has been tested by the pharmacy and found to dispense prescriptions accurately. The pharmacy shall make the results of such testing available to the board upon request;

(H) the automated storage and distribution device may be loaded with previously verified prescriptions only by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist;

(I) the pharmacy will make the automated storage and distribution device available for inspection by the board;

(J) the automated storage and distribution device is located within the pharmacy building whereby pharmacy staff has access to the device from within the prescription department and patients have access to the device from outside the prescription department. The device may not be located on an outside wall of the pharmacy and may not be accessible from a drive-thru;

(K) the automated storage and distribution device is secure from access and removal of prescription drug orders by unauthorized individuals;

(L) the automated storage and distribution device has adequate security system to prevent unauthorized access and to maintain patient confidentiality; and

(M) the automated storage and distribution device records a digital image of the individual accessing the device to pick-up a prescription and such record is maintained by the pharmacy for two years.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 10, 2010.

TRD-201002495

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Effective date: May 30, 2010

Proposal publication date: March 26, 2010

For further information, please call: (512) 305-8028



SUBCHAPTER D. INSTITUTIONAL PHARMACY (CLASS C)

22 TAC §§291.72 - 291.75

The Texas State Board of Pharmacy adopts amendments to §291.72, concerning Definitions, §291.73, concerning Personnel, §291.74, concerning Operational Standards, and §291.75 concerning Records. The amendments are adopted without changes to the proposed text as published in the March 26, 2010, issue of the *Texas Register* (35 TexReg 2498).

The amendments implement the provisions of House Bill (H.B.) 1924 as passed by the 81st Texas Legislature which establish a new definition for a rural hospital; add current rule language that outlines the procedures for a nurse to enter a pharmacy when the pharmacy is closed and remove drugs for administration to a patient to the Act; allow pharmacy technicians in a "rural hospital" to perform certain duties without the direct supervision of a pharmacist; eliminate references to Carisoprodol that are no longer needed; and correct grammatical errors.

The Texas Organization of Rural and Community Hospitals and the Texas Hospital Association commented in support of the rules and state that the proposed amendments properly implement the provisions of H.B. 1924 passed by the 81st Legislature. The Board agrees with the comments.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 305-8028



SUBCHAPTER F. NON-RESIDENT PHARMACY (CLASS E)

22 TAC §291.104

The Texas State Board of Pharmacy adopts amendments to §291.104, concerning Operational Standards. The amendments are adopted without changes to the proposed text as published in the March 26, 2010, issue of the *Texas Register* (35 TexReg 2502).

The amendments implement provisions of House Bill 19 passed during the 81st Regular Session of the Texas Legislature requiring pharmacists to place the statement "Do not flush unused medications or pour down a sink or drain" on the prescription label or written information for the patient.

The Texas Federation of Drug Stores commented in support of the proposed language. The Board agrees with the comment.

The amendments are adopted under §§551.002, 554.051, 562.006, and 562.0061 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing

the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §562.006 and §562.0061 as authorizing the agency to adopt rules regarding the prescription label and written information provided to consumers.

The statutes affected by the amendment: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8028



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 97. COMMUNICABLE DISEASES

SUBCHAPTER B. IMMUNIZATION

REQUIREMENTS IN TEXAS ELEMENTARY AND SECONDARY SCHOOLS AND INSTITUTIONS OF HIGHER EDUCATION

25 TAC §97.64

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts an amendment to §97.64, concerning required vaccinations for students enrolled in health-related and veterinary courses in institutions of higher education. The amendment to §97.64 is adopted without changes to the proposed text as published in the January 15, 2010, issue of the *Texas Register* (35 TexReg 305), and the section will not be republished.

BACKGROUND AND PURPOSE

The amendment to §97.64(d)(2) is required by Senate Bill (SB) 291, 81st Legislature, Regular Session, 2009. SB 291 (b-1) states that: "A rule adopted under Subsection (b) that requires a hepatitis B vaccination for students may apply only to students enrolled in a course of study that involves potential exposure to human or animal blood or bodily fluids."

The amendment to §97.64(d)(2) will implement the SB 291 language under Education Code, §51.933 as added by this Act. The amendment tracks the statutory amendment, and reflects the potential for human-to-human hepatitis B transmission due to blood and bodily fluid exposure because of cuts and abrasions acquired during veterinary coursework.

SECTION-BY-SECTION SUMMARY

The amendment to §97.64(d)(2) changes current language from "Students enrolled in schools of veterinary medicine whose coursework involves direct contact with animals or animal remains shall receive a complete series of hepatitis B vaccine prior to such contact" to "Students enrolled in schools of veterinary medicine whose coursework involves potential exposure to human or animal blood or bodily fluids shall receive a complete series of hepatitis B vaccine prior to such contact." This change brings the rule in line with the statutory amendment.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rule during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The amendment is authorized by Education Code, §51.933, which requires the immunization against diseases for students at any institution of higher education who are pursuing a course of study in a human or animal health profession; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 5, 2010.

TRD-201002452

Lisa Hernandez

General Counsel

Department of State Health Services

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Proposal publication date: January 15, 2010

For further information, please call: (512) 458-7111 x6972



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER O. STATE SALES AND USE TAX

34 TAC §3.315

The Comptroller of Public Accounts adopts an amendment to §3.315, concerning motor vehicle parking and storage, with changes to the proposed text as published in the March 5, 2010, issue of the *Texas Register* (35 TexReg 1938).

Subsection (a) is amended to provide relevant definitions; and the existing subsection (a) and subsequent subsections have been relettered to accommodate the addition of the definitions. Subsection (e) is amended to clarify when service providers may make tax-free purchases of services and tangible personal property. Subsection (f) is amended to require that colleges, universities, and public schools collect sales tax on charges to students, faculty, and staff for short-term or event parking.

The comptroller's office has made the following changes to the proposed rule. New subsection (a)(6) is added to include the definition for voluntary gratuity. Subsection (b) is modified to clarify that charges for valet parking services are taxable motor vehicle parking services. Subsection (i) is new and addresses valet parking services to clarify that charges for valet parking services are taxable regardless of whether compensation for the service is received directly from the owner of the parked vehicle or from a third party such as a restaurant or nightclub. The former subsection (i) has been relettered as new subsection (j).

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §151.0101.

§3.315. *Motor Vehicle Parking and Storage.*

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) College, university, and public school students, faculty, and staff--Any person who is:

(A) registered as a current student and who is enrolled in a course of instruction at the school;

(B) paid or employed by the school to provide classroom instruction or academic research;

(C) otherwise employed as a full-time or part-time employee of the school; or

(D) a volunteer sanctioned by the school to participate in school activities, events or other functions.

(2) Parking facility--A parking facility is a real property structure, such as a lot or garage, whether improved or unimproved, where parking is permitted for a fee. The term includes areas, which are specifically designed and used for parking, but may at times be rented or leased for purposes other than parking.

(3) Parking permits and decals--Motor vehicle parking permits and decals represent registrations of motor vehicles or individual persons for parking privileges.

(4) College--For the purpose of this section, an institution of higher education that is exempt from sales tax either as a governmental entity under Tax Code, §151.309, or as a nonprofit educational organization under Tax Code, §151.310(a)(1). See §3.322 of this title (relating to Exempt Organizations).

(5) University--For the purpose of this section, an institution of higher education that is exempt from sales tax either as a governmental entity under Tax Code, §151.309, or as a nonprofit educational organization under Tax Code, §151.310(a)(1). See §3.322 of this title.

(6) Voluntary gratuity--A gift of money or other item of value given freely by the purchaser to a parking attendant over and above the sales price of the parking service.

(b) Sales tax is due on the charge for parking and storage of a motor vehicle. Examples include charges for parking meters, either private or municipally owned, permits for parking or storage in lots or garages, impound fees, charges for valet parking services, and parking facility lease or rental. If the charge for parking and storage either includes a charge for transportation such as shuttle services, or is in addition to a separately stated charge for transportation, sales tax is due on the entire charge, including any separately stated charges for transportation, other than motor vehicle towing provided by licensed tow truck operators. Motor vehicle towing charges are not subject to sales tax. Persons who repossess motor vehicles for creditors are providing taxable debt collection services rather than towing services, and should refer to §3.354 of this title (relating to Debt Collection Services) for more information.

(c) A boot fee by a private parking lot or garage is subject to sales tax. The private parking lot or garage does not owe sales tax to the booting company. A boot fee by a city or other local government entity is not subject to sales tax.

(d) If a contract for the lease or rental of real property includes a charge for motor vehicle parking and storage, sales tax is due on the motor vehicle parking or storage charge. If one agreement includes motor vehicle parking, and another agreement for similar property does not, any monetary difference may be considered as evidence of the value of the parking.

(e) The person who provides the parking or storage service must pay sales or use tax on all taxable items that are purchased for use in providing the service. The service provider may make tax-free purchases of taxable services that are provided to the customer as an integral part of the motor vehicle parking and storage service. The service provider may also make tax-free purchases of tangible personal property that is transferred to the care, custody, and control of the customer. Examples include decals or ticket stubs that are transferred to the customer. See §3.285 of this title (relating to Resale Certificate; Sales for Resale).

(f) Colleges, universities, and public schools are not required to collect sales tax on charges for parking permits and decals issued to their students, faculty, or staff for campus parking.

(1) Charges to the general public for parking are taxable.

(2) Charges to students, faculty, or staff for parking not covered by a permit or decal, such as parking at special events such as concerts or sporting events, are taxable.

(3) Colleges, universities, and public schools are not required to collect sales tax on any parking that is included, without separate charge, as part of a sale of an amusement service, if the amusement service is exempt under Tax Code, §151.3101(a)(1) or (5).

(g) Sales tax is not due on the charges for the use of parking meters or visitor parking facilities funded or operated by the Texas State Preservation Board or by the Texas State History Museum for visitors of the Capitol complex in Austin, Texas.

(h) A rental or lease of a parking facility is presumed to be taxable.

(1) If a parking facility is rented or leased for a purpose other than parking, then the charge is not taxable. For example, a rental might include the lease of a parking facility for a flea market. The lessor must collect tax unless the lessor receives and retains documentation,

such as an exemption certificate or contract, clearly describing the nontaxable activity.

(2) The lump-sum rental or lease of a parking facility for an event, wherein there will be a combination of parking and a nontaxable use of the facility, is taxable as the provision of motor vehicle parking. A separately stated charge for the use of the area in the facility that is not devoted to motor vehicle parking is not taxable. The separately stated charges for the motor vehicle parking and the nontaxable use must, however, represent a reasonable allocation based on the area used for motor vehicle parking and the nontaxable use.

(i) Valet parking services. Valet parking services are taxable regardless of whether compensation for the service is received directly from the owner of the parked vehicle or from a third party such as a restaurant or nightclub; or, the parking service is provided at the service provider's location or on the purchaser's own property.

(1) A provider of valet parking services must collect tax on the total amount charged to a person under a contract to provide valet parking services to the person's guests, patrons, employees or others.

(2) A person who provides parking services to others during the normal course of business for a separately stated charge may issue a resale certificate in lieu of tax to a valet parking service provider. That person must collect tax on the total amount charged to patrons for the service. A resale certificate cannot be issued when valet parking is provided to patrons free of charge or as an incidental part of another service.

(3) Tax is due on a mandatory charge to an individual for valet parking service. A voluntary gratuity given by a vehicle owner to a parking attendant is not taxable. See §3.337 of this title (relating to Gratuities).

(j) Local tax. Local sales and use tax is due based on the location where the parking service occurs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Ashley Harden

General Counsel

Comptroller of Public Accounts

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 711. INVESTIGATIONS IN DADS MENTAL RETARDATION AND DSHS MENTAL HEALTH FACILITIES AND RELATED PROGRAMS

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS),

amendments to §§711.3, 711.9, 711.11, 711.23, 711.401, 711.403, 711.405, 711.409, 711.411, 711.417, 711.425, 711.603, 711.605, 711.611, 711.613, 711.801, 711.1001, and 711.1013; and new §711.802, in its Investigations in Department of Aging and Disability Services (DADS) Mental Retardation and Department of State Health Services (DSHS) Mental Health Facilities and Related Programs chapter. The amendments to §711.401 and §711.605 are adopted with changes to the proposed text published in the February 12, 2010, issue of the *Texas Register* (35 TexReg 1093). The amendments to §§711.3, 711.9, 711.11, 711.23, 711.403, 711.405, 711.409, 711.411, 711.417, 711.425, 711.603, 711.611, 711.613, 711.801, 711.1001, and 711.1013; and new §711.802 are adopted without changes to the proposed text and will not be republished.

The justification for the amendments and new section is to implement requirements in Senate Bill (SB) 643, 81st Legislature, Regular Session, 2009, and Senate Concurrent Resolution (SCR) 77, 81st Legislature, Regular Session, 2009.

SCR 77 approves the agreement between the State of Texas and the US Department of Justice regarding the protection of residents of State Supported Living Centers. The agreement requires DFPS to make policy changes and operational enhancements. These include: (1) completing investigations in State Supported Living Centers (formerly known as State Schools) within 10 calendar days of the incident being reported; and (2) supervisory review of all investigations.

SB 643 transfers the responsibility for the investigation of abuse, neglect, and exploitation in Licensed Intermediate Care Facilities for the Mentally Retarded (ICFs-MR) from the DADS to DFPS effective June 1, 2010. In addition, SB 643 instructs DFPS to immediately notify the Health and Human Services Commission Office of the Inspector General (OIG) when allegations involving children or adults in State Supported Living Centers or the component of the Rio Grande State Center that serves individuals with mental retardation constitute a criminal offense under any law.

A summary of the changes is described below.

Section 711.3, Definitions, is revised. In paragraph (17), DFPS is clarifying that emergency services in paragraph (17) pertain to Home and Community-Based Services Waiver (HCSW) and not Licensed Intermediate Care Facilities for the Mentally Retarded (ICFs-MR). DFPS also added the term In-Home staff to emphasize that protective actions are taken by In-Home specialists and not MH&MR investigators. DFPS is adding in new paragraph (18) a definition for emergency services that are provided in Licensed ICFs-MR when an immediate removal is necessary to protect a resident from further abuse, neglect, or exploitation. In new paragraph (25), DFPS is adding a definition for licensed ICF-MR administrator (designee) when an administrator is the alleged perpetrator. In new paragraph (31), DFPS is clarifying the definition of perpetrator to name the facilities/providers that the employee, agent or contractor must work for in order to be considered an alleged perpetrator in an APS MH&MR Investigation.

In §711.9, DFPS is adding a clarification to the rule question that APS has jurisdiction to investigate in situations where the victim is an employee of the facility/provider as well as a client.

In §711.11, DFPS is adding references to the statute governing the improper use of chemical or mechanical restraints in Licensed ICFs-MR.

In §711.23, DFPS is referencing the statute governing the proper use of restraints and seclusion in Licensed ICFs-MR.

In §711.401, DFPS is making the following changes: (1) in subsection (a) DFPS is: revising the guidelines for referring MH&MR investigations to law enforcement based on the language in SB 643; and adding a new section to the table to cover when investigators notify the OIG of allegations in State Supported Living Centers or Rio Grande State Center of allegations that constitute a crime; and (2) in subsection (b), DFPS is: revising the table to clarify that State Hospital references include the mental health component of the Rio Grande State Center and State Supported Living Centers include the ICF-MR component of the Rio Grande State Center; and adding a new section to the table to cover that the administrator's designee is notified in Licensed ICFs-MR.

In §711.403 and §711.411, DFPS is adding Licensed ICF-MR to the list of facilities investigated by DFPS.

In §711.405, DFPS is: (1) inserting language to clarify that this rule applies to state facilities and to Licensed ICFs-MR that operate peer review committees; and (2) inserting the word "state-operated" to describe State Supported Living Centers, State Hospitals and State Centers as opposed to a privately operated and licensed ICF-MR facility.

In §711.409, language is added to clarify that this section applies to Licensed ICFs-MR that do not operate peer review committees.

In §711.417, DFPS is revising the section to require that DFPS investigations in State Supported Living Centers be completed in 10 days instead of the previous 14 or 21 days.

In §711.425, DFPS is adding the word "death" for Class I abuse, which was accidentally omitted from the original rule language.

Section 711.603 is revised to clarify that this rule applies to state-operated facilities.

Section 711.605 is revised to be consistent with changes made in other sections. In subsection (a), new language is added to specify when the OIG receives a copy of the APS MH&MR investigation report.

Section 711.611: (1) references the statute governing if the victim or alleged victim, guardian, or parent is notified of the finding in Licensed ICFs-MR; and (2) clarifies that State Hospital references include the mental health component of the Rio Grande State Center and State Supported Living Centers include the ICF-MR component of the Rio Grande State Center; and adding a new section to the table to cover that the administrator's designee is notified in Licensed ICFs-MR.

In §711.613, DFPS is revising the rule title to clarify which facilities/providers the rule language references.

Section 711.801 is revised to state that the investigator utilizes the resources of the APS In-home staff to provide emergency services, if necessary.

New §711.802 provides guidelines for APS staff if clients in Licensed ICFs-MR are found in a condition of abuse or neglect that requires immediate intervention by DADS.

Section 711.1001 adds language to clarify that if the administrator of a licensed ICF-MR is the alleged perpetrator, the designee must request the review of finding or methodology used to conduct the investigation. In addition, the word "state-operated" is inserted to describe State Supported Living Centers, State Hos-

pitals and State Centers as opposed to a privately operated and licensed ICF-MR facility.

In §711.1013 the word "state-operated" is inserted to describe State Supported Living Centers, State Hospitals and State Centers as opposed to a privately operated and licensed ICF-MR facility.

Throughout the sections, DFPS is replacing the terms "director of state schools" with "assistant commissioner for state supported living centers" and "state school" with "state supported living center." Also, licensed ICF-MR is added to the list of entities investigated by DFPS. DFPS is also making minor revisions to address areas that require greater clarity.

The sections will function by ensuring that clients residing in state supported living centers will receive a more expeditious investigation of abuse, neglect, or exploitation. In addition to a more expeditious investigation, other policy changes will result in increased oversight of investigations due to a mandatory supervisory review. Transferring the statutory authority for investigations of Licensed ICFs-MR from DADS to DFPS will ensure that all abuse, neglect, and exploitation investigations are conducted by an outside entity rather than by the facility itself; thereby eliminating any perceived or real conflict of interest.

During the public comment period, DFPS received four comments from the Private Providers Association of Texas (PPAT) and individual providers of ICF-MR Services. A summary of the comments and DFPS's responses follows:

Comment concerning §711.3: The rule does not mention licensed Assisted Living Centers or Day Activities and Health Care (DAHS) programs. Will DFPS be conducting investigations in these DADS licensed programs?

Response: DFPS will not be investigating abuse, neglect or exploitation allegations in Assisted Living Centers or Day Activities and Health Care (DAHS) programs. The rules add licensed ICFs-MR to the list of programs that are currently investigated by DFPS. DFPS is adopting this section without change.

Comment concerning §711.401: The fax number for DADS Consumer Rights and Services should be different for ICFs-MR abuse, neglect or exploitation intakes.

Response: DFPS agrees, and is correcting the rule text to reflect the proper phone number for intakes involving licensed ICFs-MR.

Comments concerning §711.417: Several comments were received from ICF-MR providers that are accustomed to completion of abuse, neglect, and exploitation investigations in five days. DFPS will have 14 days or 21 days to complete the investigation based on the priority guidelines established in this rule. Many ICFs-MR pay their staff for leave taken during the course of the investigation if the abuse, neglect, or exploitation allegations are unsubstantiated. There is concern that many allegations are unfounded and this will mean that staff are paid for more time off as a result of the investigation taking longer.

Response: The 14- and 21-day time frames are consistent with the time frames required under DFPS rules for all other facility investigations conducted under Subchapter F, Chapter 48, Human Resources Code (HRC) - with the exception of new time frames for investigations in state supported living centers that were agreed to in SCR 77. The 14- and 21-day time frames were used in requesting sufficient resources to conduct licensed ICF-MR investigations to be consistent with other facility investiga-

tions and to lower the costs of this new function to the state. The legislature allocated resources to DFPS consistent with these time frames and specifically directed DFPS in HRC §48.255 to adopt rules for licensed ICF-MR investigations to be as consistent as practicable with other facility investigations.

DFPS estimates that it will conduct a total of 1500 investigations in private ICF-MR's per year, which is roughly two investigations per ICF-MR, on average. DFPS understands the concerns raised by providers regarding the longer time frames for completing the investigation. DFPS staff will make every effort to complete the investigation as soon as possible and will be providing a five-day status report to each provider as required by policy. The report is designed to summarize the status of the investigation five business days after the intake is received. DFPS is adopting this section without change.

Comments concerning §711.605:

(1) Completed investigations in Home and Community-Based Services Waiver (HCSW) programs, Texas Home Living Waiver (TxHml) programs and ICFs-MR should be mailed to DADS Waiver Survey and Certification.

Response: Historically all HCS and TxHml investigations have been mailed to DADS Consumer Rights and Services and State Supported Living Center investigations have been mailed to the Assistant Commissioner for State Supported Living Centers. Based on this comment, DFPS is revising the rule to more generally state that the investigations are sent to DADS without noting the specific division and deleting specific addresses in rule. There will be ongoing discussions between DADS and DFPS regarding the appropriate process for ensuring notifications and copies of investigative reports are sent to the appropriate division.

(2) Completed investigations in State Support Living Centers should be mailed to the appropriate Assistant Commissioner at DADS or DSHS.

Response: DFPS is adding "or their designee" in subsection (a)(7) to provide greater discretion to DADS, DSHS, and APS in where to send the final report.

SUBCHAPTER A. INTRODUCTION

40 TAC §§711.3, 711.9, 711.11, 711.23

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement Human Resources Code §48.252 and Family Code §261.404, which provide APS authority to investigate allegations of abuse, neglect, or exploitation of persons receiving services from state operated facilities including State Supported Living Centers.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gerry Williams
General Counsel
Department of Family and Protective Services
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For further information, please call: (512) 438-3437



SUBCHAPTER E. CONDUCTING THE INVESTIGATION

40 TAC §§711.401, 711.403, 711.405, 711.409, 711.411, 711.417, 711.425

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement Human Resources Code §48.252 and Family Code §261.404, which provide APS authority to investigate allegations of abuse, neglect, or exploitation of persons receiving services from state operated facilities including State Supported Living Centers.

§711.401. Who and when does the investigator notify of an allegation and when is the identity of the reporter revealed?

(a) Except as provided in subsection (b) of this section, the investigator makes the following notifications, as appropriate:
Figure: 40 TAC §711.401(a)

(b) If the administrator or CEO is the alleged perpetrator, the investigator makes other notifications, in subsection (a) of this section, as appropriate, but instead of notifying the administrator or CEO:
Figure: 40 TAC §711.401(b)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER G. RELEASE OF REPORT AND FINDINGS

40 TAC §§711.603, 711.605, 711.611, 711.613

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement Human Resources Code §48.252 and Family Code §261.404, which provide APS authority to investigate allegations of abuse, neglect, or exploitation of persons receiving services from state operated facilities including State Supported Living Centers.

§711.605. Who receives the investigative report?

- (a) The investigator sends a copy of the investigative report to:
- (1) the administrator, and when appropriate, the contractor CEO except as described in paragraph (5) of this subsection;
 - (2) DADS State Office, if the investigation involves an HCSW or licensed ICF-MR;
 - (3) local law enforcement when a person served has been abused, neglected, or exploited in a manner that constitutes a criminal offense under any law, including the Texas Penal Code, §22.04;
 - (4) the Office of the Inspector General when a person served at a state supported living center or the ICF-MR component of the Rio Grande State Center has been abused, neglected, or exploited in a manner that constitutes a criminal offense under any law;
 - (5) the following, if the administrator or contractor CEO is the perpetrator or alleged perpetrator:
 - (A) State Hospitals/Mental Health services component of the Rio Grande State Center--the Assistant Commissioner for Mental Health Substance Abuse Services at DSHS.
 - (B) State Supported Living Centers/the ICF-MR component of the Rio Grande State Center--the Assistant Commissioner of State Supported Living Centers at DADS.
 - (C) Community Centers and Local Authorities--the:
 - (i) Chair of the Community Center Board of Trustees or Local Authority Board of Directors;
 - (ii) Assistant Commissioner for Mental Health and Substance Abuse Services; and
 - (iii) Assistant Commissioner for Access & Intake at DADS.
 - (D) HCSW Programs--the HCSW CEO/Administrator Designee.
 - (E) Contractor CEO--the administrator.
 - (F) Licensed ICFs-MR--the licensed ICF-MR Administrator designee;
 - (6) the state office of Adult Protective Services if a confirmed finding is made against a physician, dentist, pharmacist, registered nurse, licensed vocational nurse, or other licensed professional. The state office forwards a copy of the report to the appropriate licensing authority; and

(7) if requested, the DADS Assistant Commissioner of State Supported Living Centers or the DSHS Assistant Commissioner for Mental Health Substance Abuse Services or their designee for investigations in state supported living centers, state centers, or state hospitals, as applicable.

(b) Law enforcement or a prosecutor may request that DFPS delay the release of the investigative report to anyone listed in subsection (a)(1) or (2) of this section, or may request that DFPS delay forwarding a copy of the report to the appropriate licensing authority.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gerry Williams

General Counsel

Department of Family and Protective Services

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SUBCHAPTER I. PROVISION OF SERVICES

40 TAC §711.801, §711.802

The amendment and new section are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment and new section implement Human Resources Code §48.252 and Family Code §261.404, which provide APS authority to investigate allegations of abuse, neglect, or exploitation of persons receiving services from state operated facilities including State Supported Living Centers.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gerry Williams

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SUBCHAPTER K. REQUESTING A REVIEW OF FINDING IF YOU ARE THE ADMINISTRATOR OR CONTRACTOR CEO

40 TAC §711.1001, §711.1013

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement Human Resources Code §48.252 and Family Code §261.404, which provide APS authority to investigate allegations of abuse, neglect, or exploitation of persons receiving services from state operated facilities including State Supported Living Centers.

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CHAPTER 745. LICENSING

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§745.117, 745.119, 745.129, 745.133, 745.135, 745.139, 745.403, 745.601, 745.621, 745.625, 745.630, 745.637, 745.685, 745.697, 745.731, 745.733, 745.8445, 745.8447, 745.8491, 745.8801, 745.8803, and 745.8817; the repeal of §§745.615, 745.626, 745.8805, 745.8807, 745.8809, 745.8811, and 745.8815; and new §§745.615, 745.626, 745.8805, 745.8806, 745.8807, 745.8809, and 745.8815, in its Licensing chapter. The amendments to §745.601 and §745.621 are adopted with changes to the proposed text published in the February 12, 2010, issue of the *Texas Register* (35 TexReg 1099). The amendments to §§745.117, 745.119, 745.129, 745.133, 745.135, 745.139, 745.403, 745.625, 745.630, 745.637, 745.685, 745.697, 745.731, 745.733, 745.8445, 745.8447, 745.8491, 745.8801, 745.8803, and 745.8817; the repeal of §§745.615, 745.626, 745.8805, 745.8807, 745.8809, 745.8811, and 745.8815; and new §§745.615, 745.626, 745.8805, 745.8806, 745.8807, 745.8809, and 745.8815 are adopted without changes to the proposed text and will not be republished.

The justification for the amendments, repeals, and new sections is to support and implement new legislation passed during the 81st Legislature, Regular Session, 2009; to establish consis-

tency with other rules; to establish and clarify processes; and/or to clarify the meaning in certain rules of this chapter. DFPS is amending or adding rules to be consistent with changes in the law as stipulated in Senate Bill (S.B.) 68, related to exemptions; background checks; and the change in time period (from two years to five years) a child day care provider is ineligible to apply for a new permit after a request for a permit is denied or a permit is revoked for substantive reasons.

Through its passage of S.B. 68, the legislature made numerous changes to Chapter 42, Human Resources Code (HRC). These changes include a thorough revision of HRC §42.041, which provides specific exemptions from DFPS licensure for programs that otherwise meet the rather broad definition of "child-care facility" in HRC §42.002(3). Prior to the legislative session, the Texas Attorney General issued an opinion that all exemptions from DFPS licensure have to be in statute. This opinion called into question the legal validity of several exemptions that DFPS had promulgated into rule but that were not included in §42.041. The legislature responded to this opinion with statutory changes to §42.041 via S.B. 68. Section 42.041 now includes some of the exemptions that were previously only in rule. On the other hand, the criteria for some of these exemptions are different in statute than they are in the existing rules. To avoid confusion regarding exemptions, DFPS is amending its exemption rules to be consistent with §42.041. The amendments include the addition of new criteria in rule, and the repeal and reorganization of some exemptions into new rules.

The changes in S.B. 68 also include a thorough revision of HRC §42.056, which provides requirements for background checks conducted in relation to a person's presence in a child-care operation regulated by DFPS. These changes include: (1) clarification of exactly who has to have a background check; (2) clarification of who has to have an FBI fingerprint-based criminal history check in addition to a name-based criminal history check; (3) a provision for allowing a waiver of submission of fingerprints if there is already a fingerprint-based criminal history check on file with DFPS or with the DPS clearinghouse, and a name-based criminal history check has been conducted every 24 months; (4) the inclusion of family homes and child-placing agencies in some of the background check requirements that, as reflected in the statute, previously did not apply to them; and (5) a provision for allowing a person in any child-care facility or family home to have access to or contact with children in care before the completion of a fingerprint check if the operation is experiencing a staffing shortage, the name-based criminal and central registry checks are completed and do not preclude the person from having contact with children, and the person's prints are submitted as soon as possible, but no later than 30 days after the person first provides care to a child in care, has access to a child in care, or is hired.

Rules are amended or added to establish consistency with other DFPS programs and HHSC agencies, to establish timeframes and processes, and to clarify the meaning in rule related to: (1) background checks, (2) administrative reviews, (3) release of confidential information to operations, and (4) notifying the reporter of investigation results.

With respect to background checks, these amendments (in addition to the previously described ones that implement statutory changes) clarify when a person who is a board member or officer of the governing body of an operation is subject to background check requirements.

With respect to the release of confidential information to child-care operations, DFPS is amending the rule regarding who can have access to otherwise confidential information related to a completed investigation of child abuse, exploitation, or neglect to include an operation cited for a deficiency related to the finding. An operation already has an opportunity to challenge such a deficiency during an administrative review. But without access to the information related to the investigation, other than the relatively bare amount of information that is in the operation's monitoring file, the operation usually does not have the information related to the finding. This makes it difficult for the operation to make safety decisions and determine whether the deficiency should be appealed. DFPS will continue to redact certain confidential information out of an investigation file, including but not limited to, information that would identify the reporter.

With respect to amendments to the rules governing the process and procedures for administrative reviews, DFPS is adopting amendments related to: (1) a more exhaustive list of when a person is entitled to request an administrative review; (2) the procedure for requesting an administrative review; (3) the consequences for not requesting an administrative review in accordance with rules; and (4) when and how an administrative review is conducted.

The amendments related to notifying a reporter of the results of an investigation allow Licensing not to send notification to the reporter if there is a reasonable likelihood that notifying the reporter would jeopardize the reporter's safety or if the reporter opts out of getting such notification. For circumstances when the reporter would be notified, the amendments clarify what the notification would include, which would be whether violations of the rule or law were found as a result of the investigation.

A summary of the changes follows:

Section 745.117 concerning exemptions, is revised to be consistent with S.B. 68, such as clarifying the Parents on the Premises exemption includes retreats, and programs must not advertise that they are a child-care facility or licensed. This revision also clarifies that part-time employees, contractors, and caregivers may also use this program. In addition, existing paragraph (2) pertaining to Skills Program is moved to §745.129(2) of this title (relating to What miscellaneous programs are exempt from Licensing regulation?). Existing paragraph (3) pertaining to Parents' Day Out Program is deleted as an exemption, but by definition is no longer a day-care center if the program does not operate more than two days a week and does not keep a child 24 hours a day. Existing paragraph (4) (the new paragraph (2)) has new time limits for the Short-Term Program exemption. Existing paragraph (6) pertaining to Respite Care is deleted and subsumed into new paragraph (2) Short-Term Program. Existing paragraph (8) pertaining to Agreement Between Friends is deleted because this type of exemption is now addressed in §745.129(3).

Section 745.119 is amended to be consistent with S.B. 68 and to allow for possible exemption status for certain educational facilities, regardless of a county's population size.

Section 745.129 is revised to make paragraph (1) the Neighborhood Recreation Program exemption consistent with the S.B. 68. The new requirements state that the program: (A) must establish a system for receiving and resolving complaints from parents of children; (B) may only accept a nominal annual membership fee as compensation for services; (C) must be organized as a non-profit or be located at the participant's residence; (D) must not

advertise that they provide child-care services or are licensed; and (E) must run background checks through DPS for all employees or volunteers. Also, new paragraph (2) is added to include the Skills Program exemption, which was deleted from §745.117 of this title (relating to Which programs of limited duration are exempt from Licensing regulation?). This new exemption has the following requirements: (A) must offer direct instruction in a single skill; (B) must not offer services that are not directly related to the single skill, except transportation and snacks; (C) must not advertise that they provide child-care services or are licensed; (D) must inform parents that they are not licensed by the state; (E) must inform parents of the physical risks children face while participating in the skills program; and (F) must run background checks through DPS for all employees and volunteers.

Section 745.133 is amended to include that Licensing may visit a program in order to gain additional information, if necessary, to determine if the program meets all exemption criteria.

Section 745.135 is amended to include actions Licensing can take against an operation that knowingly continues to operate without obtaining a license or registration.

Section 745.139 is amended to clarify that restrooms and indoor/outdoor activity areas may be shared between programs if the operation has a plan for how caregivers from each program will supervise children using these shared spaces.

Section 745.403 is amended to prohibit issuance of a day-care permit before the fifth anniversary date that a revocation or denial of a permit takes effect.

Section 745.601 adds a definition of an owner to further clarify who is required to have a background check.

Section 745.615 is repealed and adopted as new to use language consistent with S.B. 68 and include criteria for who is required to have a central registry check and name-based criminal history check, and who is required to have a fingerprint-based criminal history check.

Section 745.621 clarifies when a background check is required for a board member of a corporation or association that also governs or owns an operation.

Section 745.625 is revised to be consistent with the changes in §745.615 and in accordance with S.B. 68. Subsection (b) of the rule is deleted.

Section 745.626 is repealed and adopted as new to be consistent with S.B. 68, which allows direct care for a child without a fingerprint-based criminal history check when an operation is experiencing staff shortage and the results of the name-based criminal history check and the central registry do not preclude the caregiver's presence at the operation. There is also a requirement that the fingerprints be submitted within 30 days.

Section 745.630 is amended to allow DFPS to use fingerprint results on file with the DPS clearinghouse if the name-based criminal history results have been submitted every 24 months, per S.B. 68. This amendment also divides the rule into subparagraphs in order to make the rule easier to read.

Section 745.637 deletes the word residential from the section, which allows day-care facilities to also receive previous history on a person if the history is not confidential.

Section 745.697 clarifies that risk evaluations apply only to the operation that submitted the request.

Section 745.8445 is revised to include circumstances when Licensing will not send results of an investigation to the reporter.

Section 745.8447 clarifies what information regarding the results of the investigation is sent to the reporter.

Section 745.8491 is revised to allow operations to obtain confidential information if they are cited for abuse or neglect as a result of an investigation.

Section 745.8805 is repealed and adopted as new to identify the specific circumstances under which an administrative review may be requested.

New §745.8806 is added to specify the time limit to request an administrative review. The timeline was previously included in existing §745.8809 of this title (relating to How do I request an administrative review?), which is being repealed.

Section 745.8807 is repealed and adopted as new to clarify who may request an administrative review.

Section 745.8809 is repealed and adopted as new to include where the administrative review request should be sent and what documentation should be included as part of the request.

Section 745.8811 is repealed because the information is now included in §745.8809.

Section 745.8815 is repealed and adopted as new to specify how administrative reviews are conducted, include new timeframes as to when the reviews will be scheduled, held, and completed and when notification should be sent to the requester after the review is complete.

In addition, minor clarifications are made to §§745.685, 745.731, 745.733, 745.8801, 745.8803, and 745.8817.

The sections will function by ensuring the legal validity of the exemptions is now consistent with the statutory changes and clarifies for the public which programs must be licensed and which ones may be exempt; making it easier for providers to meet child/staff ratio in times of staffing shortages while still maintaining the needed protections for children, because operations still must conduct central registry and name-based criminal history checks and submit fingerprint-based criminal history checks within 30 days of an employee's access to children; the changes will also allow DFPS access to the DPS clearinghouse to use fingerprint check results on file. This is expected to save employees from the added expense of paying for a second fingerprint check; and the extension from two to five years before Licensing can accept an application from a child day care provider whose child day care permit was revoked or denied for a substantive reason will benefit the public in that it allows for additional time for these individuals to work on issues which may have contributed to the denial or revocation. This change also allows for consistency across both the residential child care and child day care programs. The changes to administrative reviews will be beneficial for the public since the rules allow for a clearer understanding of the administrative review process and the reviews can be conducted and completed in a timelier manner. In addition, information on the public website will be current and will more accurately reflect an operation's history with regards to compliance or non-compliance with laws and rules. The changes providing an operation greater access to completed investigations of child abuse and neglect involving employees at that operation will provide greater protection for children because the operation will be able to make better safety decisions about their employees. It will also be easier for the operation to determine whether to ap-

peal the abuse or neglect deficiency determination. The change regarding investigation results not being sent to the reporter for safety reasons will benefit the public in that it provides further protection for the reporter by maintaining the reporter's confidentiality

During the public comment period, DFPS received comments from two Even Start programs and a representative from a general residential operation providing residential treatment services. A summary of the comments and DFPS's responses follow:

Comments concerning §745.117: Two comments were received. Both commenters expressed concern with the limited number of hours children may be in care in order to be considered exempt under parents on the premises exemption. One of the commenters also expressed concern that it is the quality of care and not the number of hours a child is in care that should allow a program to remain exempt. This commenter also stated their program already meets state standards for teacher qualifications, group sizes, and ratios.

Response: This is not a new exemption, but it is an exemption that required changes to be consistent with statutory changes. To be considered exempt under the current and proposed rule, programs with parents on the premises may care for children up to 12 hours a week while remaining exempt, so long as they meet the other criteria specified in this rule. The intent of this rule is to allow for child care for a brief period of time while parents engage in elective activities, such as shopping or using a health club. The 12 hours of child care allowed in this exemption is not a change to the current rule. DFPS is adopting this section without change.

Comment concerning §745.601: One comment was received in response to the concept of ownership and background checks. The commenter was concerned that some people who are never present at the operation, such as an owner or board member, may be subject to background checks.

Response: DFPS is amending the definition of "owner" to include further clarification of when an officer of a governing body needs a background check.

Comment concerning §745.621: One commenter expressed concern that the amended language would require each board member to submit to a background check. The commenter expressed concern with this since some board members do not work at or reside at operations, nor do they have unsupervised access to children in care.

Response: DFPS is adopting this rule with a change to make it clear that board members only have to have background checks if they are already included in the list of persons needing a background check under §745.615. As noted above, DFPS is also clarifying who an "owner" is in §745.601(5). These two changes should clarify and simplify the issue.

General comment: One commenter expressed concern that she did not receive the mailed notification of the public comment period until March 10, 2010, which is five days before the end of the public comment period.

Response: Notification of the public comment period was posted on the agency's website with a link to the proposed rules in the *Texas Register*. An email was also sent on February 16, 2010, to all providers who have email addresses on file with the agency that also included the link to the *Texas Register* site.

SUBCHAPTER C. OPERATIONS THAT ARE EXEMPT FROM REGULATION

DIVISION 2. EXEMPTIONS FROM REGULATION

40 TAC §§745.117, 745.119, 745.129, 745.133, 745.135, 745.139

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement S.B. 68, 81st Regular Session of the Texas Legislature, and HRC §42.042.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 4, 2010.

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Gerry Williams

General Counsel

Department of Family and Protective Services

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For further information, please call: (512) 438-3437



SUBCHAPTER D. APPLICATION PROCESS

DIVISION 9. REAPPLYING FOR A PERMIT

40 TAC §745.403

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements S.B. 68, 81st Regular Session of the Texas Legislature, and HRC §42.042.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. BACKGROUND CHECKS

DIVISION 1. DEFINITIONS

40 TAC §745.601

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements S.B. 68, 81st Regular Session of the Texas Legislature, and HRC §42.042.

§745.601. *What words must I know to understand this subchapter?*

These words have the following meanings:

(1) Continuous stay--Staying overnight or consecutive nights at an operation.

(2) Direct care or direct access--Being counted in the child-to-caregiver ratio or having any responsibility that requires contact with children in care.

(3) Frequently present at your operation--More than two non-continuous visits at your operation in a 30-day period; one continuous stay per year at your operation and the duration of the stay exceeds seven days; or more than two continuous stays per year at your operation and the duration of each stay exceeds 48 hours. For foster homes, the following individuals are not considered frequently present at a foster home:

(A) A child unrelated to a foster parent who visits the foster home unless:

(i) The child is responsible for the care of foster children; or

(ii) There is a reason to believe that the child has a criminal history or previously abused or neglected another child; or

(B) An adult unrelated to a foster parent who visits the foster home unless:

(i) The adult has unsupervised access to children in care; or

(ii) There is a reason to believe that the adult has a criminal history or previously abused or neglected a child.

(4) Non-continuous visit--Being physically present at an operation for a period of time of less than 24 hours. Multiple or periodic visits to an operation within the same day is one visit.

(5) Owner--A person who owns a child-care operation. An owner includes:

(A) A sole proprietor;

(B) A partner in a partnership; or

(C) An officer of the governing body if the officer:

(i) Has a role in the every day operation of the facility;

(ii) Participates in making policies that address the everyday operation of the child-care operation or DFPS requirements; or

(iii) Signs background check requests or requests risk evaluations for the operation.

(6) Regularly--On a scheduled basis.

(7) Unsupervised access--The person is allowed to be with children without the presence of a qualified caregiver.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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General Counsel

Department of Family and Protective Services

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DIVISION 2. REQUESTING BACKGROUND CHECKS

40 TAC §745.615, §745.626

The repeals are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement S.B. 68, 81st Regular Session of the Texas Legislature, and HRC §42.042.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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40 TAC §§745.615, 745.621, 745.625, 745.626, 745.630, 745.637

The amendments and new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new sections implement S.B. 68, 81st Regular Session of the Texas Legislature, and HRC §42.042.

§745.621. Must I request background checks on board members of corporations or associations who own or govern the operation?

No, you do not have to request a background check on an individual board member unless he is specifically listed as one of the persons you must request a background check on in §745.615 of the title (relating to On whom must I request background checks?).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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General Counsel
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**DIVISION 4. EVALUATION OF RISK
BECAUSE OF A CRIMINAL CONVICTION OR
A CENTRAL REGISTRY FINDING OF CHILD
ABUSE OR NEGLECT**

40 TAC §745.685, §745.697

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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**DIVISION 5. DESIGNATED AND SUSTAINED
PERPETRATORS OF CHILD ABUSE OR
NEGLECT**

40 TAC §745.731, §745.733

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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**SUBCHAPTER K. INSPECTIONS AND
INVESTIGATIONS**

DIVISION 2. NOTIFICATION

40 TAC §745.8445, §745.8447

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 3. CONFIDENTIALITY

40 TAC §745.8491

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER M. ADMINISTRATIVE REVIEWS AND DUE PROCESS HEARINGS DIVISION 1. ADMINISTRATIVE REVIEWS

40 TAC §§745.8801, 745.8803, 745.8805 - 745.8807, 745.8809, 745.8815, 745.8817

The amendments and new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code

§531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new sections implement HRC §42.042.

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40 TAC §§745.8805, 745.8807, 745.8809, 745.8811, 745.8815

The repeals are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC §42.042.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gerry Williams

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Department of Family and Protective Services

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

General Land Office

Title 31, Part 1

The General Land Office (GLO) submits this notice of its intent to review and consider for readoption, revision, or repeal Chapter 8, concerning the "Gas Marketing Program", in accordance with the Texas Government Code, §2001.039.

The rules to be reviewed are found in Chapter 8, which is located at Title 31, Part 1 of the Texas Administrative Code.

During the review process, the GLO will determine whether the reasons for adoption of the rules continue to exist, whether amendments or changes are needed, or whether repeal of the chapter is appropriate. Existing rules may be amended for simplification or clarity.

This review of Chapter 8 is filed in accordance with the GLO's rule review plan published in the April 23, 2010, issue of the *Texas Register* (35 TexReg 3297).

The GLO will consider comments related to whether the reasons for adoption of these rules continue to exist, whether amendments or changes are needed, or whether repeal of the chapter is appropriate. Any changes to the rules will be proposed by the GLO after reviewing the rules and considering the comments received in response to this notice. Any proposed rule changes will then appear in the "Proposed Rules" section of the *Texas Register* and will be adopted in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The GLO will accept written comments on this rule review for a thirty-day period beginning on the date of publication of this notice of intent to review in the *Texas Register*. Any comments or questions should be directed to Walter Talley, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 463-6311, email address walter.talley@glo.state.tx.us. Comments received later than thirty days following the date of publication of this notice will not be considered.

TRD-201002574

Trace Finley

Deputy Commissioner, Policy and Governmental Affairs

General Land Office

Filed: May 12, 2010



Adopted Rule Reviews

Texas Education Agency

Title 19, Part 2

The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 74, Curriculum Requirements, Subchapter AA, Commissioner's Rules on College Readiness, pursuant to the Texas Government Code, §2001.039. The TEA proposed the review of 19 TAC Chapter 74, Subchapter AA, in the February 5, 2010, issue of the *Texas Register* (35 TexReg 899).

Relating to the review of 19 TAC Chapter 74, Subchapter AA, the TEA finds that the reasons for adopting Subchapter AA continue to exist and readopts the rule. The TEA received no comments related to the review of Subchapter AA. No changes are necessary as a result of the review.

This concludes the review of 19 TAC Chapter 74.

TRD-201002472

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: May 6, 2010



Commission on State Emergency Communications

Title 1, Part 12

The Commission on State Emergency Communications (CSEC) has completed its review of Texas Administrative Code, Title 1, Chapter 253, Practice and Procedure. Notice of the review of Chapter 253 was published in the June 22, 2007, issue of the *Texas Register* (32 TexReg 3859).

CSEC received no public comments on the rule review in response to the notice. During the review, CSEC considered but did not propose adding new rules to Chapter 253.

CSEC has determined that the reasons for initially adopting the only rule in Chapter 253 (§253.1, Petitions for Rulemaking before the Commission) continue to exist and readopts the rule without changes. This re-adoption is conducted in accordance with Government Code §2001.039.

This concludes the review of Texas Administrative Code, Title 1, Part 12, Chapter 253.

For purposes of the next statutory review of Chapter 253, CSEC will deem June 22, 2007 (publication date of the last notice of review of Chapter 253) as the date CSEC concluded its review of Chapter 253.

TRD-201002453



Public Utility Commission of Texas

Title 16, Part 2

The Public Utility Commission of Texas (commission) initiated a review of Chapter 25, Subchapters A-G of this title, pursuant to the Administrative Procedure Act (APA), Texas Government Code §2001.039, Agency Review of Existing Rules. The purpose of this review was to consider whether to re-adopt these subchapters, and the commission sought comments on the need to continue these subchapters, by publishing a notice in the July 17, 2009, issue of the *Texas Register* (34 TexReg 4743). Having completed this review, the commission finds that the reasons for initially adopting Chapter 25, Subchapters A-G continue to exist and re-adopts Chapter 25, Subchapters A-G.

The following persons filed comments in response to the request for comments: CenterPoint Energy Houston Electric LLC (CenterPoint); CPL Retail Energy, Direct Energy, First Choice Power, Gexa Energy, Green Mountain Energy Company, TXU Energy Retail Company, WTU Retail Energy, the Alliance for Retail Markets, and the Texas Energy Association for Marketers (Retail Providers); AEP Texas Central Company, AEP Texas North Company, and Southwestern Electric Power Company (AEP); and Entergy Texas, Inc. (Entergy). No reply comments were filed.

Summary of Comments

Recommendations for Repeal or Retention of Rules

No commenter specifically recommended that provisions of Subchapters A-G be retained. AEP noted, however, that most of the provisions of Subchapters A-G are still applicable. The Retail Providers expressed the view that §25.2, relating to Cross-Reference Transition Provision, is no longer necessary. Entergy and AEP suggested that §25.78 be repealed. CenterPoint Energy stated that the reports required by §25.87 and §25.88 could be eliminated, and AEP and the Retail Providers requested that §25.87 be repealed.

Recommendations for Amendments to Rules: General Comments

Most of the commenters provided suggestions for amending provisions of Subchapters A-G. CenterPoint provided a general comment on these subsections, requesting that the commission consider modifying many of the terms used in the Substantive Rules to align the terms with those used by the North American Electric Reliability Corporation and the Federal Energy Regulatory Commission. Comments on specific sections are summarized below.

Commission Response

With respect to CenterPoint's suggestion, the commission believes that more discussion of adopting different terms is needed before publishing such a proposal for public comment. There are benefits to uniformity with the terms that are used by the industry in other regions or other contexts, but there is also a cost to customers and market participants in changing terms the current terms in Chapter 25 that they are accustomed to using.

Subchapter A, General Provisions

The Retail Providers expressed the view that §25.2, relating to Cross-Reference Transition Provision, is no longer necessary. The Retail Providers expressed the view that §25.4, relating to Statement of Non-

Discrimination, should be broadened to forbid discrimination based on level of income, location in an economically distressed geographic area, qualification for low-income or energy-efficiency services, and religion. The Retail Providers also commented that §25.6, relating to Cost of Copies of Public Information, needs to be updated to the correct the reference to another section.

Commission Response

There are still several sections in Chapter 25 that include references to sections in Chapter 23, which has been repealed and replaced with Chapters 25 and 26. The commission concludes that §25.2 should be re-adopted and retained until the other sections of Chapter 25 are updated to remove the references to sections in Chapter 23. The commission notes that the reference in §25.6 appears to be incorrect and should be updated when it is feasible to do so. Other suggestions for amendments to these sections may have merit and will be considered in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

Subchapter B, Customer Service and Protection

AEP commented that §25.24, relating to Credit Requirements and Deposits, should be reviewed and possibly amended to reflect the increased risk associated with bad debts. They argued that a customer's possession of a credit card is not an indication of good credit rating and therefore should not satisfy the utility credit requirements. AEP suggested that a credit rating system (such as Fitch or Value Line) should be used for non-residential customers to define a threshold of customer credit quality for which security would not be required.

The Retail Providers commented that §25.27, relating to Retail Electric Service Switchovers, should be revised to include an "Applicability" subsection to explicitly indicate that electric switchovers are applicable to transmission and distribution utilities, not just to transmission and distribution utility service territories. The Retail Providers expressed the view that §25.30, relating to Complaints, needs an "Applicability" subsection to explicitly include transmission and distribution utilities, so that the term "electric utility" applies to all electric utilities that provide retail electric utility service in Texas.

Commission Response

Suggestions for amendments to sections in this subchapter may have merit and will be considered in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

Subchapter C, Infrastructure and Reliability

CenterPoint and AEP noted that §25.52, relating to Reliability and Continuity of Service, required amendment as a result of the passage of HB 2052 and subsequent changes to Public Utility Regulatory Act (PURA) §38.005(b). CenterPoint noted that a review of §25.53, relating to Electric Service Emergency Operations Plans, is necessary due to the passage of HB 1831 and the addition of §38.101 to PURA.

Commission Response

The commission has initiated Project Number 37387, *Rulemaking to Amend Substantive Rule §25.52, Reliability and Continuity of Service*, to address the amendment of PURA §38.005 by the 81st Legislature. The addition of PURA §38.101 and passage of HB 1831 will require a review of §25.53. In addition, Project No. 36375, *Cost Benefit Analysis of the Deployment of Utility Infrastructure Upgrades and Storm Hardening Programs*, contemplates the initiation of a rulemaking project that may involve amendments to one or both of these sections. The commission will consider additional amendments in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

Subchapter D, Records, Reports and Other Required Information

CenterPoint requested that the commission review the various reports that are required to be filed under §25.73, relating to Financial and Operating Reports, and determine whether there is a continuing need to file each report. It stated that some of the required reports are available on federal agency websites where the reports are required to be filed. CenterPoint provided an example in which a notice of the federal filing to the commission could be provided, instead of the Security and Exchange Commission report required to be filed under §25.73(c). The notice would contain the applicable Internet website address and conserve commission resources by eliminating a filing at the Commission.

Commission Response

The suggestion to review the requirement to file these reports may have merit and will be considered in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

Entergy commented that §25.78, relating to State Agency Utility Account Information, was created to seek information until the implementation of Senate Bill 7 on January 1, 2002. Given that this date has passed, Entergy requested that §25.78 be repealed. AEP commented that §25.78 should be repealed, because the rule requires electric utilities to report state agency billing information to the General Services Commission, which no longer exists. CenterPoint requested that the commission consider reducing the number of paper copies required to be filed, such as the four copies of the *Annual Progress Report on Five Year Plan to Enhance Supplier and Workforce Diversity* that are required by §25.85(e), relating to Report of Workforce Diversity and Other Business Practices. CenterPoint stated it would be more economical and efficient to file one paper report and one electronic version.

Commission Response

The commission concludes that the views of state agency customers need to be heard before it proposes to repeal §25.78. The commission will consider repealing or amending these sections in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

CenterPoint stated that the reports required by §25.87, relating to Distribution Unbundling Reports, and §25.88, relating to Retail Market Performance Measure Reporting, could be eliminated, because the review by the commission and Electric Reliability Council of Texas of the many metrics from other sources reduces the value of the information contained in these reports. AEP also requested that §25.87 be repealed, because the required report expired April 1, 2001, and the commission agreed in a previous review that the rule was no longer necessary and should be repealed. The Retail Providers made a similar comment. The Retail Providers requested that the date, December 1, 2000, be removed from §25.90, relating to Market Power Mitigation Plans, because that date has expired as it relates to the requirement that market power mitigation plans be filed by electric utilities and power generation companies that own or control more than 20% of the installed generation capacity located in, or capable of delivering electricity to, a power region.

Commission Response

Based on the comments, it appears that §25.87 is obsolete and should be repealed, and the commission will initiate a separate project to propose the repeal and obtain public comments. The commission does not believe that information from other sources fills the need for the reports it obtains under §25.88 and concludes that it should not be repealed. The commission will consider repealing or amending these sections in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

Subchapter E, Certification and Registration

The Retail Providers commented that §25.109, relating to Registration of Power Generation Companies and Self Generators, contains obsolete dates and needs revision to reflect current procedures.

Commission Response

The suggestion to amend §25.109 may have merit and will be considered in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

Subchapter F, Metering

The Retail Providers asserted that language should be included in Subchapter F, relating to Metering, stating that that the subchapter applies to transmission and distribution utilities (TDUs) as well as other electric utilities. The Retail Providers also stated that §25.127, relating to Generation Station Meters, Instruments and Records, should be updated to reflect the fact that TDUs do not own generation plants.

Commission Response

The commission has repealed and readopted §25.125, relating to Adjustments Due to Meter Errors, and §25.126, relating to Meter Tampering, and has adopted new provisions that make it clear which rules apply to utilities in competitive areas and which apply to utilities in areas in which retail competition is not in effect. Section 25.121(g) of this title, relating to Meter Requirements, states that in any instance where a provision of Subchapter F is inconsistent with §25.214 of this title, relating to Terms and Conditions or Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities, the provisions of the tariff in §25.214 shall control. Section 25.127(b) of this title, relating to Generating Station, Meters, Instruments, and Records, states specifically that each electric utility shall keep daily load and monthly output records. TDUs are not required to keep these records because they do not operate generating stations. Therefore, it does not appear that a clarification is required. There may be instances in which the applicability of Subchapter F should be clarified, and will be considered in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

Subchapter G, Submetering

The Retail Providers commented that §25.141, relating to Central System or Non-Submetered Master Metered Utilities, and §25.142, relating to Submetering for Apartments, Condominiums, and Mobile Home Parks, should be updated to reflect the fact that REPs are the billing agents for the supply of electricity to premises that are master metered in the deregulated environment.

Commission Response

The suggestion to amend §25.141 and §25.142 may have merit and will be considered in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

The commission readopts Chapter 25, Subchapters A-G, pursuant to the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supplement 2009), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and the Administrative Procedure Act (APA), Texas Government Code §2001.039, which requires each state agency to review and re-adopt its rules every four years.

Cross Reference to Statutes: PURA §14.002 and APA §2001.039.

SUBCHAPTER A. GENERAL PROVISIONS.

SUBCHAPTER B. CUSTOMER SERVICE AND PROTECTION.

SUBCHAPTER C. INFRASTRUCTURE AND RELIABILITY.

SUBCHAPTER D. RECORDS, REPORTS AND OTHER REQUIRED INFORMATION.

SUBCHAPTER E. CERTIFICATION AND REGISTRATION.

SUBCHAPTER F. METERING.

SUBCHAPTER G. SUBMETERING.

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Public Utility Commission of Texas

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The Public Utility Commission (commission) initiated a review of Chapter 25, Subchapters H-J of this title, pursuant to the Administrative Procedure Act (APA), Texas Government Code §2001.039, Agency Review of Existing Rules. The purpose of this review was to consider whether to re-adopt these subchapters, and the commission sought comments on the need to continue these subchapters, by publishing a notice in the August 14, 2009, issue of the *Texas Register* (34 TexReg 5595). Having completed this review, the commission finds that the reasons for initially adopting Chapter 25, Subchapters H-J continue to exist and re-adopts Chapter 25, Subchapters H-J.

The commission received written comments from the Retail Providers (consisting of CPL Retail Energy, Direct Energy, First Choice Power, Gexa Energy, Green Mountain Energy Company, Reliant Energy, Stream Energy, TXU Energy Retail Company LP, WTU Retail Energy, the Alliance for Retail Markets, and Texas Energy Association for Marketers; Retail Providers); AEP Texas Central Company, AEP Texas North Company, and Southwestern Electric Power Company (AEP); CenterPoint Houston Electric, LLC (CenterPoint); Electric Transmission Texas, LLC (ETT); and Lone Star Transmission, LLC (Lone Star). Reply comments were received from CPL Retail Energy and Texas Industrial Energy Consumers (TIEC).

Summary of Comments

Recommendations for Repeal or Retention of Rules

No commenter specifically recommended that provisions of Subchapters H-J be retained. AEP noted, however, that most of the provisions of Subchapters H-J are still applicable.

CenterPoint noted that provisions of §25.182, relating to Energy Efficiency Grant Program, and §25.183, relating to Reporting and Evaluation of Energy Efficiency Programs, are obsolete. The Retail Providers and CenterPoint argued that §25.185, relating to Energy Efficiency Incentive Program for Military Bases, should be repealed. CenterPoint and AEP argued that §25.218, relating to Estimation of Electric Consumption for Certain Customers Affected by Hurricane Ike, and §25.221, relating to Electric Cost Separation, should be repealed. AEP argued that §25.223, relating to Unbundling of Energy Service, should be repealed. CenterPoint noted that provisions of §25.227, relating to Electric Utility Service for Public Retail Customers, are obsolete. AEP suggested that §25.232, relating to Adjustment for House Bill 11, Acts of 72nd Legislature, First Called Special Session 1991, should be repealed at some point. CenterPoint suggested that obsolete provisions of §25.236, relating to Recovery of Fuel Costs, and §25.236, relating to Recovery of Fuel Costs, be repealed. Lone Star recommended that §25.233, relating to Treatment of Integrated Resource Plan Costs, be repealed. CenterPoint, AEP, and the Retail Providers recommended that §25.261, relating to Stranded Cost recovery of Environmental Cleanup Costs, be repealed.

Recommendations for Amendments to Rules

Most of the commenters provided suggestions for amending provisions of Subchapters H-J. CenterPoint provided a general comment on these subsections, requesting that the commission consider modifying many of the terms used in the Substantive Rules to align the terms with those used by the North American Electric Reliability Corporation and the Federal Energy Regulatory Commission. Comments on specific sections are summarized below.

Commission Response

With respect to CenterPoint's suggestion, the commission believes that more discussion of adopting different terms is needed before publishing such a proposal for public comment. There are benefits to uniformity with the terms that are used by the industry in other regions or other contexts, but there is also a cost to customers and market participants in changing the current terms in Chapter 25 that they are accustomed to using.

Subchapter H, Electrical Planning

Division 1, Renewable Energy Resources and Use of Natural Gas

The Retail Providers and CenterPoint suggested that the language in §25.174, relating to Competitive Renewable Energy Zones, requiring ERCOT to provide a study on the state wind energy production potential by December 1, 2006, be removed since the date has passed. CenterPoint also emphasized that the vast knowledge and experience gained from implementing this rule could be used to "fine tune" the current rules in order to facilitate future proceedings. Lone Star supported proposed revisions to subsection (b) of this rule, consistent with comments Lone Star filed in Project Number 34577, noting that other than changes regarding financial commitments by generators, this rule should not be reopened.

Commission Response

Suggestions for amendments to this section may have merit and will be considered in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

Division 2, Energy Efficiency and Customer-Owned Resources

Lone Star argued that §25.181, relating to energy efficiency goal, applies to each "electric utility" as defined in Chapter 25 but has no application to transmission-only utilities, which should be exempt from this rule. CenterPoint requested that the commission consider removing some obsolete requirements of this rule, noting that some dates in subsections (a)(3), (e), (f), (h), (o), and (t) have passed.

Commission Response

Suggestions for amendments to this section may have merit and will be considered in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

CenterPoint requested that the commission consider removing obsolete requirements of §25.182, relating to Energy Efficiency Grant Program, noting that the dates in subsections (g) and (h) have passed.

Commission Response

Based on the comments, it appears that portions of §25.182 are obsolete and should be repealed, and the commission will consider amending this section in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

CenterPoint requested that the commission consider removing obsolete requirements of §25.183, relating to Reporting and Evaluation of Energy Efficiency Programs, noting that the date in subsection (f) is in the past.

Commission Response

Suggestions for amendments to this section may have merit and will be considered in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

Lone Star recommended that the commission exempt transmission-only utilities from §25.184, relating to Energy Efficiency Implementation Project.

Commission Response

Suggestions for amendments to this section may have merit and will be considered in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

The Retail Providers and CenterPoint argued that the requirement of the standard offer program established in §25.185, Energy Efficiency Incentive Program for Military Bases, to reduce energy consumption of military bases by 5% by January 1, 2005 as compared to 2002 is no longer applicable since the target has expired.

Commission Response

Based on the comments, it appears that §25.185 is obsolete and should be repealed, and the commission will initiate a separate project to propose its repeal and obtain public comments.

Subchapter I, Transmission and Distribution

Division 1, Open-Access Comparable Transmission Service for Electrical Utilities in the Electric Reliability Council of Texas

Lone Star requested that §25.192, relating to Transmission Service Rates, be amended to require the Electric Reliability Council of Texas to file the calculation of coincident peak loads by November 1st rather than by December 1st. Lone Star and ETT also recommended that the commission allow interim transmission cost of service (TCOS) filings to be made no more than twice per calendar year, rather than annually as currently authorized, as well as permit uncontested interim TCOS filings to be administratively approved. These recommendations are consistent with those filed by ETT and others in the petition for rule-making in Project No. 37221.

Commission Response

The commission opened Project Number 37519 to consider amendments to §25.192, including several of the matters recommended by Lone Star and ETT. The commission issued a proposed rule for public comments and will be considering amendments to this section in that project.

AEP and CenterPoint commented that §25.193, relating to Distribution Service Provider Transmission Cost Recovery Factors, should be amended so that the transmission cost recovery factors (TCRFs) for distribution service providers (DSPs) would allow DSPs to fully recover increased transmission charges from TSPs in a timely manner. Currently, interim requests for TCOS increases may be filed at any time during the year, while the TCRF may be updated on March 1 and December 1. Because of this mismatch, AEP commented that the DSP could potentially under-recover costs for several months. AEP also stated that the DSPs' under-recoveries will be exacerbated by the competitive renewable energy zone (CREZ) build-out of transmission facilities and the increases in TSPs' interim TCOS updates. The Retail Providers argued that if the commission considers updating the TCRF more frequently than twice a year, then it should also consider the impact on retail electric providers (REPs) and end-use customers. Furthermore, the Retail Providers argued that commission procedures should ensure that REPs are able to pass through any transmission and distribution utility (TDU) rate changes in the same manner and on the same timeline that the TDU effectuates the rate changes, and that REPs

should be given adequate notice after a change in rates goes into effect. TIEC countered by stating the existing rate change timeline in the rule should not be amended, arguing that the twice-a-year adjustments are adequate. TIEC stated that all other issues raised by other commenters can be addressed in Project Number 37221, and the rule should not be changed.

Commission Response

The commission is considering amendments to §25.193 in Project Number 37909 and has issued a proposal for publication to permit interested persons to comment on proposed amendments.

Lone Star suggested that the commission should review several subsections of §25.195, relating to Terms and Conditions for Transmission Service, and amend them as necessary to align them with the CREZ orders and rules. Lone Star submitted that the commission's review of interconnection agreements is unnecessary and subsection (e) should be eliminated. TIEC commented that it believes the commission oversight of Standard Generation Interconnection Agreements is necessary and should not be eliminated.

Commission Response

The commission believes that, in general, the terms and conditions for transmission service are reasonable and are consistent with its rules and orders relating to CREZ. The commission will consider amending this section in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

Lone Star commented that the commission should affirmatively address whether §25.198, relating to Initiating Transmission Service, applies to CREZ transmission or any modifications to CREZ transmission facilities. Lone Star further commented that CREZ TSPs should be allowed to assess a deposit for the facilities study cost, as do other TSPs. Lone Star stated that the commission should provide some guidance on the order of performing studies for requesting generators that seek to connect to CREZ facilities, and assumptions about tying in at the substations for CREZ transmission.

Commission Response

A CREZ TSP is a TSP under the definition in §25.5(143), so this section applies to a CREZ TSP. Nevertheless, the suggestions for clarifying this section may have merit and may be considered in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

ETT stated that the commission should modify §25.199, relating to Transmission Planning, Licensing and Cost-recovery for utilities within the Electric Reliability Council of Texas to reflect that CREZ transmission projects qualify as projects ordered by the commission under Public Utility Regulatory Act (PURA) §39.203(e). In its view, the rule should affirmatively address whether this section applies to CREZ transmission facilities or modifications to CREZ facilities. TIEC countered by stating that projects awarded in Docket Number 35665 are not subject to this section, and it should not be modified.

Commission Response

The suggestions for clarifying this section in connection with CREZ projects may have merit and may be considered in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

Lone Star stated that §25.200(d), relating to Load Shedding, Curtailments, and Redispatch, provides that TSPs are liable for interruptions they cause as governed by the retail delivery service tariff adopted under §25.214 of this title, relating to Terms and Conditions of Retail Delivery Service provided by investor owned transmission and distribu-

tion utilities. Lone Star argued that the subsection should be amended to reflect that it does not apply to a transmission-only utility.

Commission Response

The suggestion to amend this section may have merit and may be considered in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

Lone Star stated that §25.202(a)(3), relating to Commercial Terms for Transmission Service, allows 65 days to pass before a TSP can file a complaint about a defaulting DSP. Once the complaint is filed, the commission must have a contested case to decide what to do. Lone Star argued that this timeline should be shortened.

Commission Response

A DSP receives an invoice and has 30 days to pay. A DSP is in default if the invoice is not paid within 30 calendar days after the due date. The commission has not had reports of DSPs failing to pay for transmission service or failing to pay on a timely basis. For this reason, the commission concludes that an amendment to this rule is not warranted.

AEP urged that the commission should update §25.211, relating to Interconnection of On-Site Distributed Generation, based on experience gained over the years since its adoption in January 2001, and specifically to allow more time for utilities to process the increasing number of applications for interconnection with the utility system.

Commission Response

The suggestion to amend this section may have merit and may be considered in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

CenterPoint requested that the commission consider removing obsolete requirements of §25.213, relating to Metering for Distributed Renewable Generation, noting that the dates in subsections (b)(8) and (b)(9) are in the past.

Commission Response

The suggestion to amend this section may have merit and may be considered in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

CenterPoint requested that the commission consider removing obsolete provisions of §25.214, relating to Terms and Conditions of Retail Delivery Service provided by investor owned transmission and distribution utilities, noting that dates in subsections (a) and (d)(2) have passed.

Commission Response

The suggestion to amend this section may have merit and may be considered in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

The Retail Providers pointed out that the standard delivery tariff for electric utilities specified in §25.214 has been revised several times. The Retail Providers suggested that §25.215, relating to Terms and Conditions of Access by a Competitive Retailer to the Delivery System of a Municipally Owned Utility or Electric Cooperative that has Implemented Customer Choice, also be updated to ensure that changes required of TDUs are also required of municipal utilities and cooperatives in a customer choice environment, where appropriate. CenterPoint requested that the commission consider removing obsolete requirements of this rule, noting that the date in subsection (d) is in the past.

Commission Response

The suggestion to amend this section may have merit and may be considered in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

CenterPoint requested that the commission consider modifying §25.216, relating to Selection of Transmission Service Providers, pointing out that the vast knowledge and experience gained from implementing the rule could be used to "fine tune" the current rules in order to facilitate future proceedings.

Commission Response

The suggestion to amend this section may have merit and may be considered in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

CenterPoint requested that the commission consider removing obsolete requirements of §25.217, relating to Distributed Renewable Generation, noting that the date in subsection (g) is in the past.

Commission Response

The suggestion to amend this section may have merit and may be considered in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

CenterPoint and AEP requested that the commission consider repealing §25.218, relating to Estimation of Electric Consumption for Certain Customers Affected by Hurricane Ike, since it has not been in effect since January 1, 2009.

Commission Response

The commission agrees that §25.218 is obsolete and will initiate a separate project to propose the repeal and obtain public comments.

CenterPoint pointed out that §25.221, relating to Electric Cost Separation, requires compliance before dates that are in the past and requested that the rule be repealed or the compliance filing dates be modified. AEP urged the commission to repeal this rule.

Commission Response

The commission agrees that the compliance filing dates in §25.221 are in the past, and the section may be obsolete. The suggestions to amend or repeal this section may be considered in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

AEP urged the commission to repeal §25.223, relating to Unbundling of Energy Service, arguing that the reports required under it were filed prior to the transition to competition.

Commission Response

The commission agrees that §25.223 may be obsolete. The suggestion to amend this section may be considered in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

CenterPoint requested that the commission consider removing some of the obsolete requirements of §25.227, relating to Electric Utility Service for Public Retail Customers.

Commission Response

The suggestion to amend this section may have merit and may be considered in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

Subchapter J, Costs, Rates and Tariffs

Division I, Retail Rates

Lone Star commented that §25.231, relating to Cost of Service, should be amended to provide for a future test year, because new-entrant utilities will have large portions of their rate base entering service in coming years. Lone Star and ETT commented that §25.231(c)(2)(D) should spell out construction work in progress (CWIP) standards for transmission ordered to meet CREZ goals. ETT added that §25.231(c)(2)(D) should track PURA §35.004(d) regarding CWIP recovery for CREZ transmission projects, instead of following the provisions of §36.054(a). Lone Star submitted that the language, "efforts to comply with the statewide integrated resource plan," in §25.231(c)(1)(B) is obsolete and should be removed from the rule.

TIEC stated in its reply comments that the commission did not order the CREZ projects under PURA §39.203(e). TIEC contended that the relevant legislation regarding inclusion of CREZ CWIP in rate base is PURA §36.054. Finally, TIEC concluded that CWIP should not be authorized for any CREZ TSP under PURA §36.054, because all the CREZ TSPs assured the commission that their financial integrity would not be jeopardized by constructing the CREZ projects when they applied to build them.

Commission Response

The suggestions to amend this may be considered in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

SWEPSCO commented that §25.232, relating to Adjustment for House Bill 11, Acts of 72nd Legislature, First Called Special Session 1991, should remain in place until the completion of SWEPSCO's current base-rate case, Docket Number 37364. Thereafter, the commission could consider repealing the rule.

Commission Response

The suggestion to amend this section may have merit and may be considered in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

Lone Star asserted that §25.233, relating to Treatment of Integrated Resource Plan Costs, is obsolete and should be repealed.

Commission Response

The commission agrees that §25.233 is obsolete and has repealed it in Project Number 36174 by an order issued on February 12, 2010.

AEP encouraged the commission to examine modifications to §25.234, relating to Rate Design, to consider alternatives to a historical test year.

Commission Response

The suggestions to amend this may be considered in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

CenterPoint commented that obsolete requirements of §25.236, relating to Recovery of Fuel Costs, should be removed.

Commission Response

The suggestion to amend this section may have merit and may be considered in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

CenterPoint commented that in §25.251, relating to Renewable Energy Tariff, the reference to PURA §31.002(1) should, instead, refer to §31.002(6).

Commission Response

The suggestion to amend this section may have merit and may be considered in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

Division 2, Recovery of Stranded Costs

CenterPoint, AEP, and the Retail Providers commented that the commission should consider repealing §25.261, relating to Stranded Cost Recovery of Environmental Cleanup Costs, because its applicability provisions have expired. CenterPoint added that if the commission determines that the rule should be kept active because issues related to it may be remanded to the commission, the commission should amend the dates in the rule that are in the past.

Commission Response

The suggestions to repeal or amend this section may have merit and may be considered in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

CenterPoint and the Retail Providers commented that §25.263, relating to True-Up Proceeding, may no longer be necessary. CenterPoint added that if the commission determines that the rule should be kept active because issues related to it may be remanded to the commission, the commission should amend the dates in the rule that are in the past.

Commission Response

The suggestions to repeal or amend this section may have merit and may be considered in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

CenterPoint commented that §25.264, relating to Quantification of Stranded Costs of Nuclear Generation Assets, may no longer be necessary. If the commission determines that the rule should be kept active because issues related to it may be remanded to the commission, the commission should amend the dates in the rule that are in the past.

Commission Response

The suggestion to repeal or amend this section may have merit and may be considered in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

The commission readopts Chapter 25, Subchapters H-J, pursuant to the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §14.002 (Vernon 2007 & Supplement 2009), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and the Administrative Procedure Act (APA), Texas Government Code §2001.039, which requires each state agency to review and re-adopt its rules every four years.

Cross Reference to Statutes: PURA §14.002 and APA §2001.039.

SUBCHAPTER H. ELECTRICAL PLANNING.

SUBCHAPTER I. TRANSMISSION AND DISTRIBUTION.

SUBCHAPTER J. COSTS, RATES, AND TARIFFS.

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Public Utility Commission of Texas

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The Public Utility Commission of Texas (commission) initiated a review of Chapter 25, Subchapters K-O of this title, pursuant to the Administrative Procedure Act (APA), Texas Government Code §2001.039, Agency Review of Existing Rules. The purpose of this

review was to consider whether to re-adopt these subchapters, and the commission sought comments on the need to continue these subchapters, by publishing a notice in the September 11, 2009, issue of the *Texas Register* (34 TexReg 6346). Having completed this review, the commission finds that the reasons for initially adopting Chapter 25, Subchapters K-O continue to exist and re-adopts Chapter 25, Subchapters K-O.

The commission received written comments from the Retail Electric Provider Coalition (consisting of Gexa Energy, Reliant Energy, Stream Energy, TXU Energy Retail Company LP, and the Alliance for Retail Markets; Retail Providers); CenterPoint Houston Electric, LLC (CenterPoint); Electric Transmission Texas, LLC (ETT); AEP Texas Central Company, AEP Texas North Company, and Southwestern Electric Power Company (AEP). No reply comments were received.

Summary of Comments

Recommendations for Repeal or Retention of Rules

No commenter specifically recommended that provisions of Subchapters K-O be retained. ETT and AEP noted, however, that most of the provisions of Subchapters K-O are still applicable.

Recommendations for Amendments to Rules

Most of the commenters provided suggestions for amending provisions of Subchapters K-O. CenterPoint provided a general comment on these subsections, requesting that the commission consider modifying many of the terms used in the Substantive Rules to align the terms with those used by the North American Electric Reliability Corporation and the Federal Energy Regulatory Commission. These comments are summarized below.

Commission Response

With respect to CenterPoint's suggestion, the commission believes that more discussion of adopting different terms is needed before publishing such a proposal for public comment. There are benefits to uniformity with the terms that are used by the industry in other regions or other contexts, but there is also a cost to customers and market participants in changing the current terms in Chapter 25 that they are accustomed to using.

Subchapter K, Relationships with Affiliates

Section 25.271, Foreign Utility Company Ownership by Exempt Holding Companies

The Retail Providers and CenterPoint recommended that §25.271 be amended to reflect amendments to the Public Utility Holding Company Act (PUHCA).

Commission Response

The Retail Providers' and CenterPoint's suggestions for amendments to this section may have merit and will be considered in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

Section 25.272, Code of Conduct for Electric Utilities and their Affiliates

The Retail Providers and CenterPoint recommended that §25.272 be amended to reflect amendments to PURA and PUHCA. Restrictions in §25.272(h)(1), relating to the use of a utility's name and logo, were applicable through September 1, 2005. The Retail Providers recommended that this provision be amended to make the relevant provisions applicable prospectively. CenterPoint also recommended that several obsolete provisions be repealed. ETT noted that §25.272(i) requires utilities to conduct audits of compliance with the code of conduct but precludes a utility from recovering these costs from customers. ETT

and AEP argued that the section should be amended to treat these costs like other utility expenses.

Commission Response

Suggestions for amendments to this section may have merit and will be considered in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

Section 25.273, Contracts Between Electric Utilities and their Competitive Affiliates

The Retail Providers recommended that §25.273 be amended to reflect amendments to PURA.

Commission Response

Suggestions for amendments to this section may have merit and will be considered in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

Subchapter L, Nuclear Decommissioning, and Subchapter K, Relationships with Affiliates

No comments were filed concerning sections in these subchapters.

Subchapter O, Unbundling and Market Power

CenterPoint recommended that several obsolete provisions of Division 1, Unbundling, and Division 3, Capacity Auction, be repealed.

Commission Response

Some of the provisions in this subchapter are obsolete, in terms of the areas that are already open to retail competition, but they may not be obsolete in terms of the possibility of retail competition in areas that are not now open to competition. CenterPoint's suggestions for amendments to sections in this subchapter may have merit and will be considered in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

Section 25.341, Definitions, and Section 25.343, Competitive Energy Services

AEP recommended that the commission conduct an evaluation of the market for competitive energy services that are referred to in these sections and amend the rules, as appropriate, to suit current market conditions. It also recommended that Southwestern Electric Power Company be excluded from the application of these sections, based on recent legislation.

Commission Response

Suggestions for amendments to these sections may have merit and will be considered in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

Section 25.422, Transition to Competition for Certain Areas in the Southwest Power Pool

AEP recommended that this section, which applies to SWEPCO, be amended to comply with recent legislation.

Commission Response

Suggestions for amendments to this section may have merit and will be considered in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

The commission readopts Chapter 25, Subchapters K-O, pursuant to the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supplement 2009), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and the Administrative Procedure Act (APA), Texas Government Code §2001.039,

which requires each state agency to review and re-adopt its rules every four years.

Cross Reference to Statutes: PURA §14.002 and APA §2001.039.

SUBCHAPTER K. RELATIONSHIPS WITH AFFILIATES.

SUBCHAPTER L. NUCLEAR DECOMMISSIONING.

SUBCHAPTER M. COMPETITIVE METERING.

SUBCHAPTER O. UNBUNDLING AND MARKET POWER.

TRD-201002503

Adriana A. Gonzales

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Public Utility Commission of Texas

Filed: May 10, 2010



The Public Utility Commission of Texas (commission) initiated a review of Chapter 25, Subchapters P-S of this title, pursuant to the Administrative Procedure Act (APA), Texas Government Code §2001.039, Agency Review of Existing Rules. The purpose of this review was to consider whether to re-adopt these subchapters, and the commission sought comments on the need to continue these subchapters, by publishing a notice in the September 11, 2009, issue of the *Texas Register* (34 TexReg 6347). Having completed this review, the commission finds that the reasons for initially adopting Chapter 25, Subchapters P-S continue to exist and re-adopts Chapter 25, Subchapters P-S.

The commission received written comments from AEP Texas Central Company, AEP Texas North Company, and Southwestern Electric Power Company (collectively, AEP); CPL Retail Energy, WTU Retail Energy, Reliant Energy, TXU Energy Retail Company LP, the Alliance for Retail Markets, REPower, and the Texas Energy Association for Marketers (collectively, Retail Providers); and CenterPoint Energy Houston Electric LLC (CenterPoint). Retail Providers also submitted reply comments.

Summary of Comments

Recommendations for Repeal or Retention of Rules

No commenter specifically recommended that provisions of Subchapters P-S be retained. Several commenters recommended that provisions of the rules in these subchapters be repealed.

Recommendations for Amendments to Rules: General Comments

Most of the commenters provided suggestions for amending provisions of Subchapters P-S. CenterPoint provided a general comment on these subsections, requesting that the commission consider modifying many of the terms used in the Substantive Rules to align the terms with those used by the North American Electric Reliability Corporation and the Federal Energy Regulatory Commission. Comments on specific sections are summarized below.

Commission Response

With respect to CenterPoint's suggestion, the commission believes that more discussion of adopting different terms is needed before publishing such a proposal for public comment. There are benefits to uniformity with the terms that are used by the industry in other regions or other contexts, but there is also a cost to customers and market participants in changing the current terms in Chapter 25 that they are accustomed to using.

Subchapter P, Pilot Projects

Section 25.431, Retail Competition Pilot Project.

CenterPoint suggested that the commission repeal Subchapter P, as the dates for implementation have expired as well as the applicability of certain provisions.

Commission Response

The commission agrees that the dates for implementation have expired and that the rule has no further applicability in the ERCOT region. This section may not be obsolete, however, because of the possibility of retail competition in areas that are not now open to competition. CenterPoint's suggestions for repealing this section should be considered in connection with a proposal that specifically poses the question whether it is obsolete and permits interested persons to comment on the continuing need for the section. The commission will consider repealing or amending this section in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

Section 25.453, Targeted Energy Efficiency Programs

CenterPoint suggested that the commission repeal §25.453 because the Texas Department of Housing and Community Affairs no longer conducts a targeted low-income energy efficiency program.

Commission Response

The statutory authority for these programs remains in the Public Utility Regulatory Act (PURA), but the legislature has not funded this program in a number of years. CenterPoint's suggestions for repealing this section should be considered in connection with a proposal that specifically poses the question whether it is obsolete and permits interested persons to comment on the continuing need for the section. The commission will consider repealing or amending this section in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

Section 25.471, General Provisions of Customer Protection Rules

The Retail Providers recommended that "religion" be added to the list of impermissible bases for discrimination set forth in subsection (c) of the rule. The Retail Providers stated that the prohibition for discrimination on the basis of religion is provided for by PURA §39.101(a)(5).

Commission Response

The commission agrees with the Retail Providers and will consider amending this section in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

Section 25.472, Privacy of Customer Information

CenterPoint recommended that the commission repeal §25.472(a), which relates to the provision of customer lists at the commencement of retail competition, on the basis that it is obsolete. The Retail Providers suggested that the cross-reference in subsection (b) to §25.272(c)(5) should be deleted, because the information gathered is limited to information gathered by an electric utility. The Retail Providers asserted that this subsection should refer to §25.5, where proprietary customer information is defined in a way that is not limited to electric utilities, but also applies to the information gathered by REPs.

Commission Response

Subsection (a) may not be obsolete, in terms of the possibility of retail competition in areas that are not now open to competition. CenterPoint's suggestions for repealing subsection (a) should be considered in connection with a proposal that specifically poses the question whether it is obsolete and permits interested persons to comment on the continuing need for the subsection. The commission agrees with the Retail Providers that the reference in subsection (b) to §25.272(c)(5) should be deleted and the subsection should instead refer to the defini-

tion of "proprietary customer information" in §25.5. The commission will consider repealing or amending portions of this section in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

Section 25.474, Selection of Retail Electric Provider

CenterPoint recommended that the commission repeal §25.474(c), because it is questionable whether the provisions relating to the initial selection process for a retail electric provider are still needed. The Retail Providers recommended that "password" be added to the list of permissible account access verification data set forth in this section. The Retail Providers stated that the use of a password, in some instances, would be a more secure form of authorization from a customer's perspective. In addition, certain customers are more comfortable using a password as a method of verification than disclosing more personal information, as required by the rule, such as portions of the customer's social security number or mother's maiden name. CenterPoint recommended that the commission to repeal subsection (q)(1), for which the deadlines have expired.

Commission Response

Subsection (c) may not be obsolete, in terms of the possibility of retail competition in areas that are not now open to competition. CenterPoint's suggestions for repealing subsection (c) should be considered in connection with a proposal that specifically poses the question whether it is obsolete and permits interested persons to comment on the continuing need for the subsection. The commission agrees that although the current rule provides that a "federal taxpayer identification number" is a proper form of account access verification for a non-residential customer, the potential use of this number by others through an internet search could compromise the protection of customer information. The commission believes that by adding "password" to the list of permissible verification data, the protection of customer information would be enhanced. With respect to the metering standards in subsection (q)(1), the dates are in the past, but the commission concludes that the substantive requirements in this subsection remain in effect. The commission will consider repealing or amending portions of this section in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

Section 25.477, Refusal of Electric Service

CenterPoint suggested that the commission repeal subsection (d) because the effective date has expired.

Commission Response

The commission agrees that this effective date provision is obsolete and could be repealed. The commission will consider repealing this subsection in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

Section 25.478, Credit Requirements and Deposits

CenterPoint suggested that the commission repeal subsection (j)(1), because the date has passed. The Retail Providers suggested that the last sentence of subsection (j)(1), which contains an expired deadline, be deleted.

Commission Response

The last sentence in this subsection establishes an effective date in 2004 for the substantive requirements in the other sentences. The commission agrees with the Retail Providers that the last sentence is unnecessary, but the other sentences are substantive requirements that should remain in effect. The commission will consider amending this subsection in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

Section 25.479, Issuance and Format of Bills

CenterPoint suggested that the commission repeal subsection (i), because the effective date has passed.

Commission Response

The commission adopted amendments to this section after CenterPoint filed its comments, and the effective date is now in subsection (a). Because this is a recent amendment, the commission believes that the effective date should remain in the section.

Section 25.480, Bill Payments and Adjustments

The Retail Providers stated that subsection (g) of this section refers to a June 1 annual report date. The Retail Providers suggested that the reference to June 1 be removed and that the subsection instead refer to the annual report required under §25.107.

Commission Response

The commission has changed the date for REPs' reports in recent amendments to §25.107 of this title, relating to Certification of Retail Electric Providers. The commission will consider amending this subsection in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

Section 25.483, Unauthorized Charges

AEP stated that the existing rules in Chapter 25 still apply in today's electric market. However, AEP argued that §25.483 should be amended to simplify the definition of "extreme weather emergency" and establish a specific trigger mechanism for extreme weather emergencies, based on a National Weather Service bulletin.

Commission Response

The AEP suggestion would require comments from interested persons. The commission will consider amending this section in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

Section 25.484, Texas Electric No-call List

The Retail Providers noted that subsection (g)(1) refers to a prior version of the REP disclosure rule, §25.473, and recommended that this reference be updated to reflect the current version of the disclosure rule, §25.475.

Commission Response

The commission believes that the reference in this subsection is correct, in that it refers to non-English language requirements in §25.473 of this title, relating to non-English language requirements. The commission concludes that an amendment to this section is not needed.

Section 25.487, Obligations related to Move-in Transactions

CenterPoint stated that there continues to be a need for the safety-net process, but the review under subsection (e) includes an expired date and recommended this subsection be repealed or the deadline amended to a future date.

Commission Response

Subsection (e) calls for a review of the safety-net process by a date in 2004. The commission will consider amending this section in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

Section 25.489, Treatment of Premises with no Retail Electric Provider of Record

The Retail Providers commented that a sunset review of this rule may be appropriate, as the Move In, Move Out (MIMO) and safety net processes are working effectively, so that this rule is moot.

Commission Response

The commission agrees with the Retail Providers that it may be appropriate to review this section for possible repeal. The commission will consider amending or repealing this section in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

Section 25.490, Moratorium on Disconnection on Move-out

CenterPoint recommended the repeal of this section if all of the transmission and distribution utilities in ERCOT have received approval from the commission pursuant to §25.490(d).

Commission Response

The commission agrees that this provision is obsolete and will initiate a proceeding to repeal the rule.

Section 25.495, Unauthorized Change of Retail Electric Provider

CenterPoint suggested that the commission repeal subsection (c) because the effective date has passed.

Commission Response

The commission agrees with CenterPoint that this subsection, which sets out the effective date of the section, is not needed. The commission will consider amending this section in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

Section 25.501, Wholesale Market Design for the Electric Reliability Council of Texas

CenterPoint expressed the view that subsection (m), which requires the development and implementation of a wholesale market design in ERCOT, is no longer necessary and the date for implementing the new design, October 1, 2006, has passed. It recommended that subsection (m) be repealed.

Commission Response

The commission will consider amending this section in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

Section 25.502, Pricing Safeguards in Markets Operated by the Electric Reliability Council of Texas

CenterPoint stated that the provisions for disclosure of offer prices are no longer necessary and points to the termination date, October 1, 2006. It concluded that this provision should be repealed. CenterPoint

also stated that subsections (h) and (i) should be repealed, because different System-Wide Offer Caps have been implemented pursuant to §25.505(g)(6), and the Modified Competitive Solution Method has expired, in accordance with subsection (i).

Commission Response

The pricing disclosure requirements in subsection (d), offer caps in subsection (h), and Modified Competitive Solution have all expired. The commission has recently proposed amendments to §25.502 in Project Number 35392 and, in connection with these amendments, is requesting comments on a proposal to repeal these subsections.

Section 25.505, Resource Adequacy in the Electric Reliability Council of Texas Power Region

CenterPoint suggested that the rule should be amended to remove all dates in the rule that are in the past.

Commission Response

The commission will consider amending this section in connection with other projects to amend rules in Chapter 25, as resources and commission priorities permit.

All comments, including any not specifically referenced herein, were fully considered by the commission.

The commission readopts Subchapters P-S of Chapter §25, Substantive Rules Applicable to Electric Service Providers, pursuant to the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supplement 2009), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and the Administrative Procedure Act (APA), Texas Government Code §2001.039, which requires each state agency to review and re-adopt its rules every four years.

Cross Reference to Statutes: PURA §14.002 and APA §2001.039.

SUBCHAPTER P. PILOT PROJECTS.

SUBCHAPTER Q. SYSTEM BENEFIT FUND.

SUBCHAPTER R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE.

SUBCHAPTER S. WHOLESALE MARKETS.

TRD-201002504

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Public Utility Commission of Texas

Filed: May 10, 2010

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 40 TAC §711.401(a)

The investigator notifies...	Within...	Does the investigator reveal the identity of the reporter?
The administrator or CEO	One hour of receipt of the allegation by DFPS.	Only if the alleged perpetrator is a Mental Health Services Provider and the allegation is sexual exploitation.
DADS Office of Consumer Rights and Services, by fax, at (512) 438-4302 of allegations involving an HCSW provider, and for licensed ICFs-MR by fax at (512) 438-2722 or (512) 438-2724.	24 hours of receipt of the allegation by DFPS or the next working day.	
Law enforcement of any allegation of abuse, neglect, or exploitation involving a child.	One hour of receipt of the allegation by DFPS.	Yes
Law enforcement of any allegation of abuse, neglect, or exploitation believed to constitute a criminal offense under any law, involving an adult person served.		
Office of Inspector General of any allegation of abuse, neglect, or exploitation in state supported living centers or the ICF-MR component of Rio Grande State Center believed to constitute a criminal offense under any law involving a child or adult person served.		

Figure: 40 TAC §711.401(b)

The Investigator notifies...	Within...	Does the investigator reveal the identity of the reporter?
For State Hospitals and mental health component of the Rio Grande State Center - The DSHS Office of Consumer Services and Rights Protection at (800) 252-8154.	One hour of receipt of the allegation by DFPS.	Only if the alleged perpetrator is a Mental Health Services Provider and the allegation is sexual exploitation.
For State Supported Living Centers and the ICF-MR component of the Rio Grande State Center - The DADS Office of Consumer Rights and Services at (800) 458-9858.		
For HCSW Programs - The HCSW CEO/Administrator Designee.		
For Licensed ICFs-MR - The licensed ICF-MR Administrator Designee.		
For Community Centers and Local Authorities - The DADS Office of Consumer Rights and Services at (800) 458-9858, DSHS Office of Consumer Services and Rights Protection at (800) 252-8154, and either the Chair of the Community Center Board of Trustees or Local Authority Board of Directors, as appropriate.	24 hours of receipt of the allegation by DFPS or the next working day.	

Figure: 40 TAC §743.201(a)

	(i) To Licensing?	(i) To Parents?	(i) To Law enforcement?
Serious Incident	(ii) If so, when?	(ii) If so, when?	(ii) If so, when?
(1) A child dies while in your care.	(A)(i) YES (A)(ii) Report as soon as possible, but no later than 24 hours after the incident or occurrence.	(B)(i) YES (B)(ii) Immediately.	(C)(i) YES (C)(ii) Immediately.
(2) A critical injury or illness that warrants treatment by a medical professional or hospitalization, including dislocated, fractured, or broken bones; concussions; lacerations requiring stitches; second and third degree burns; and damage to internal organs.	(A)(i) YES (A)(ii) Report as soon as possible, but no later than 24 hours after the incident or occurrence.	(B)(i) YES (B)(ii) Report as soon as possible, but no later than 24 hours after the incident or occurrence.	(C)(i) NO (C)(ii) Not Applicable.
(3) Allegations of abuse, neglect, or exploitation of a child; or any incident where there are indications that a child in care may have been abused, neglected, or exploited.	(A)(i) YES (A)(ii) As soon as you become aware of it.	(B)(i) YES (B)(ii) As soon as you become aware of it.	(C)(i) NO (C)(ii) Not applicable.
(4) A lost or missing child.	(A)(i) YES (A)(ii) As soon as you become aware that the child is lost or missing.	(B)(i) YES (B)(ii) As soon as you become aware that the child is lost or missing.	(C)(i) NO (C)(ii) Not applicable.

Figure: 40 TAC §743.201(b)

	(i) To Licensing?	(i) To Parents?
Serious Incident	(ii) If so, when?	(ii) If so, when?
(1) Any incident that renders all or part of your operation unsafe or unsanitary for a child, such as a fire or a flood.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after the incident.	(B)(i) YES (B)(ii) As soon as possible, but no later than 24 hours after the incident.
(2) A disaster or emergency that requires your operation to close.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after the incident.	(B)(i) YES (B)(ii) As soon as possible, but no later than 24 hours after the incident.
(3) An investigation of abuse or neglect or exploitation by an entity (other than Licensing) of an employee or other adult at the operation.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after you become aware of the investigation.	(B)(i) NO (B)(ii) Not applicable.
(4) An arrest, indictment, or a county or district attorney accepts an "Information" regarding an official complaint against an employee alleging commission of any crime as provided in §745.651 of this title (relating to What types of criminal convictions may preclude a person from being present in an operation?).	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after you become aware of the situation.	(B)(i) NO (B)(ii) Not applicable.

Figure 1: 40 TAC Chapter 744--Preamble

Age Group	Proposed Reduction in Child-to-Caregiver Ratios in a Classroom with one caregiver
3 yrs	-1
5 yrs	-2
6-13 yrs of age	-4

Figure 2: 40 TAC Chapter 744--Preamble

Age Group	Average Tuition per Year in \$	Proposed Reduction/ Classroom Ratio	Lost Revenue to Classroom per Year in \$
3 yrs	5,770	-1	5,770
5 yrs	5,353	-2	10,706
6-8 yrs	4,133	-4	16,532
9-13 yrs	4,263	-4	17,052

Figure 3: 40 TAC Chapter 744--Preamble

Age Group	Max Children per Caregiver under Revised Ratio for the Age Group	Tuition Distribution/Child (lost revenue/yr divided by max number of children per caregiver)	Possible Tuition Increase per Month, per Child in \$
3 yrs	14	412	34
5 yrs	20	535	45
6-8 yrs	22	752	63
9-13 yrs	22	775	65

Figure: 40 TAC §744.1015(a)

Education	Experience
(1) A bachelor's degree with six college credit hours in management,	and at least one year of experience in a licensed operation or similar experience as specified in §744.1021 of this title (relating to What types of experience may count towards meeting director qualifications?);
(2) An associate's of applied science degree in child development or a closely related field with six college credit hours in child development and six college credit hours in management. A "closely related field" is any educational instruction pertaining to the growth, development, physical or mental care, or education of children ages birth through 13 years,	and at least two years of experience in a licensed operation or similar experience as specified in §744.1021 of this title;
(3) Sixty college credit hours with nine college credit hours in child development and six college credit hours in management,	and at least two years of experience in a licensed operation or similar experience as specified in §744.1021 of this title, or instructor certification and one year experience in training others in a skill, talent, ability, expertise, or proficiency that is the goal of skill instruction or training that is a core component of your operation's program;
(4) A Child Development Associate credential or Certified Child-Care Professional credential with six college credit hours in management,	and at least two years of experience in a licensed operation or similar experience as specified in §744.1021 of this title;
(5) A child-care administrator's certificate from a community college with at least 15 college credit hours in child development and three college credit hours in management,	and at least two years of experience in a licensed operation or similar experience as specified in §744.1021 of this title;
(6) A day-care administrator's credential issued by a professional organization or an educational institution and approved by Licensing based on criteria specified in Subchapter P of Chapter 745 of this title (relating to Day-Care Administrator's Credential Program),	and at least two years of experience in a licensed operation or similar experience as specified in §744.1021 of this title; or

(7) Nine college credit hours in child development and nine college credit hours in management,	and at least three years of experience in a licensed operation or similar experience as specified in §744.1021 of this title, or instructor certification and one year experience in training others in a skill, talent, ability, expertise, or proficiency that is the goal of skill instruction or training that is a core component of your operation's program.
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Figure: 40 TAC §744.1017(a)

Program Director to Site Director Ratio	Education	Experience
(1) Equal to or less than 1:5	30 clock hours of training in child or youth development, recreational leadership, or management; and	At least six months of experience in a licensed operation or similar experience as specified in §744.1021 of this title (relating to What types of experience may count towards meeting director qualifications?); or
(2) More than 1:5	70 clock hours of training in child or youth development, recreational leadership, or management; and	At least one year of experience in a licensed operation or similar experience as specified in §744.1021 of this title.

Figure: 40 TAC §744.1601

If the specified age of the children in the group is...	Then the maximum number of children one caregiver may supervise is...
3 years	14
4 years	18
5 years	20
6-13 years	22

Figure: 40 TAC §744.1607

If the specified age of the children in the group is...	Then the maximum group size and number of children two or more caregivers may supervise is...
3 years	28
4 years	35
5 years	35
6-13 years	35

Figure: 40 TAC §744.1611(b)

If the total number of caregivers required to supervise the combined groups before naptime is...	Then the number of caregivers needed to supervise groups combined in a central sleeping location is...	And the number of additional employees required in the building must be at least...
10	5	3
9	5	3
8	4	2
7	4	2
6	3	2
5	3	2
4	2	1
3	2	1
2	1	1
1	1	1

Figure: 40 TAC §744.1613(b)

If the specified age of the children in the group is...	Then the maximum number of children one caregiver may supervise is...
3 years	15
4 years	18
5 years	22
6-13 years	26

Figure: 40 TAC §744.1613(c)

If the specified age of the children in the group is...	Then the maximum group size and number of children two or more caregivers may supervise is...
3 years	30
4-13 years	35

Figure: 40 TAC §744.1701(a)

If the age of the youngest child in the group is...	Then you must have (number of caregivers) caregivers to supervise...	Every (number of children) children
3 years	1	6
4 years	1	8
5 years	1	10
6 years and older	1	12

Figure: 40 TAC §744.1901(a)

Ratio for Splashing or Wading Pools (Two Feet Deep or Less)		
If the age of the youngest child is...	Then you must have (number) adults to supervise...	Every (number) children.
3 years	1	6
4 years	1	16
5 years	1	20
6-13 years	1	22

Figure: 40 TAC §744.1903(a)

Ratio for Splashing or Wading Pools (Two Feet Deep or Less)		
If the age of the youngest child is...	Then you must have (number) adults to supervise...	Every (number) children.
3 years	1	6
4 years	1	16
5 years	1	20
6-8 years	1	22
9 years and older	1	25

Figure: 40 TAC §744.1905(b)

Ratio for Swimming Pools (More Than Two Feet Deep)		
If the age of the youngest child is...	Then you must have (number) adult to supervise...	Every (number) children.
3 years	1	6
4 years	1	8
5 years	1	10
6 years and older	1	12

Figure: 40 TAC §744.2405(a)

Food Groups	Number of Servings to Meet 1/3 Daily Requirement	Number of Servings to Meet 1/2 Daily Requirement	Serving Size
Milk	2/3 of One Serving	1	3/4 c. 1% Milk or 1 & 1/2 oz. Cheese or 3/4 c. Yogurt
Meat/ Meat Alternative	2/3 of One Serving	1	1 & 1/2 oz. Cooked lean meat or 3/4 Egg or 1/4 c. Cooked beans
Vegetable	1	1 and 1/2	1/2 c. Raw or cooked vegetable or 1/2 c. Raw leafy vegetable
Fruit	2/3 of One Serving	1	1/2 c. Canned or chopped fruit or 1 Piece fruit or melon wedge or 1/2 c. Juice
Whole Grains	2	3	1/2 Slice Bread or 1/4 c. Cooked cereal 1/2 oz. Ready to eat cereal or 1/4 c. Cooked pasta or rice or 3 to 5 Crackers

Figure: 40 TAC §744.2405(b)

Food Groups	Number of Servings to Meet 1/3 Daily Requirement	Number of Servings to Meet 1/2 Daily Requirement	Serving Size
Milk	2/3 to 1	1 to 1 and 1/2	1c. 1% Milk or 1& 1/2 oz. Natural cheese or 1 c. Yogurt
Meat/ Meat Alternative	2/3 to 1	1	2 oz. Cooked lean meat, poultry, or fish or 1/2 c. Cooked beans or 1/2 c. Tofu or 2 Tb. Peanut butter
Vegetables	1 to 1 and 2/3	2	1/2 c. Raw or cooked vegetables or 1/2 c. Raw leafy vegetable
Fruit	2/3 to 1 and 1/3	1 to 2	1/2 c. Canned or chopped fruit or 1 medium piece fruit or 3/4 c. Juice
Whole Grains	2 to 3 and 2/3	3 to 5+	1 slice bread or 1/2 c. Cooked cereal or 3/4 oz. Ready to eat cereal or 1/2 c. Cooked pasta or rice or 4-6 crackers

Figure: 40 TAC §744.3807(d)

If the child is...	Being transported in this type of vehicle as specified in §746.5603(b) of this title (relating to What type of vehicle may I use to transport children?)...	Then the child must be secured in...
(1) Three years of age and weighs more than 20 pounds	All vehicles	A rear-facing or forward-facing child safety seat, safety vest or harness according to the manufacturer's instructions;
(2) Four years of age and weighs 40 pounds or less	(A) General purpose vehicle and small school bus	A forward-facing child safety seat, safety vest or harness according to the manufacturer's instructions;
	(B) Large school bus	A safety restraint system according to vehicle manufacturer's instruction;
(3) Four years of age, weighs more than 40 pounds, and is less than four feet, nine inches in height; or five years through seven years of age, regardless of weight, and is less than four feet, nine inches in height	(A) General purpose vehicle	A forward-facing child safety seat, booster seat, safety vest or harness according to the manufacturer's instructions;
	(B) Small school bus	A properly fitting safety belt anywhere the child sits in the vehicle;
	(C) Large school bus	A safety restraint system according to vehicle manufacturer's instruction;
(4) Four years through seven years of age and four feet, nine inches in height or taller	(A) General purpose vehicle	A booster seat according to the manufacturer's instructions or a properly fitting safety belt anywhere the child sits in the vehicle;
	(B) Small school bus	A properly fitting safety belt anywhere the child sits in the vehicle;
	(C) Large school bus	A safety restraint system according to vehicle manufacturer's instruction;
(5) Eight years through 14 years of age	(A) General purpose vehicle and small school bus	A properly fitting safety belt anywhere the child sits in the vehicle;
	(B) Large school bus	A safety restraint system according to vehicle manufacturer's instruction.

Figure: 40 TAC §745.37(2)

Child Day-Care Operations	Description of Operation	Type of Permit
(A) Listed Family Home	A caregiver at least 18 years old that provides care in her own home for compensation, for three or fewer children unrelated to the caregiver, birth through 13 years, for at least four hours a day, three or more days a week, and more than nine consecutive weeks. The total number of children in care, including children related to the caregiver, may not exceed 12.	Listing (A caregiver who is subject to regulation as a listed family home may instead become a registered family home.)
(B) Registered Child-Care Home	The primary caregiver provides regular care in the caregiver's own residence for not more than six children from birth through 13 years, and may provide care after school hours for not more than six additional elementary school children. The total number of children in care at any given time, including the children related to the caregiver, must not exceed 12.	Registration
(C) Licensed Child-Care Home	The primary caregiver provides care in the caregiver's own residence for children from birth through 13 years. The total number of children in care varies with the ages of the children, but the total number of children in care at any given time, including the children related to the caregiver, must not exceed 12.	License
(D) Child-Care Center	An operation providing care at a location other than the permit holder's home, for seven or more children under 14 years of age, for less than 24 hours per day, but at least two hours a day, three or more days a week.	License
(E) Employer-Based Child Care	A small employer providing care for up to 12 of the employees' children that are under 14 years of age, for less than 24 hours per day. The care is located on the employer's premises and in the same building where the parents work.	Compliance Certificate
(F) Shelter Care	A child care program at a temporary shelter, such as a family violence or homeless shelter, providing care for children under 14 years of age while	License

	the resident parent is away from the shelter. The child care program operates for at least four hours a day three days a week.	
(G) Before or After-School Program	An operation that provides care before, or after, or before and after, the customary school day and during school holidays, for at least two hours a day and three days a week, to children who attend pre-kindergarten through grade six.	License
(H) School-age Program	An operation that provides supervision and recreation, skills instruction, or skills training for at least two hours a day and three days a week to children attending pre-kindergarten through grade six. A school-age program operates before or after the customary school day and may also operate during school holidays, the summer period, or any other time when school is not in session.	License

Figure: 40 TAC §745.37(3)

Residential Child-Care Operations	Description	Type of Permit
(A) Foster Family Home (Independent)	An operation that provides care for six or fewer children up to the age of 18 years.	License
(B) Foster Group Home (Independent)	An operation that provides care for seven to 12 children up to the age of 18 years.	License
(C) General Residential Operation	An operation that provides child care for 13 or more children up to the age of 18 years. The care may include treatment services. Residential treatment centers are a type of general residential operation.	License
(D) Child-Placing Agency (CPA)	A person, agency, or organization other than a parent who places or plans for the placement of a child in an adoptive home or other residential care setting.	License
(E) Maternity Home	An operation that provides care for four or more minor and/or adult women and her children during pregnancy and/or during the six-week postpartum period, within a period of 12 months.	License
(F) Child-Placing Agency Foster Family Home	An operation that provides care for six or fewer children, up to the age of 18 years, under the regulation of a child-placing agency.	Verification (The CPA issues this. A CPA regulates its own foster family homes.)
(G) Child-Placing Agency Foster Group Home	An operation that provides care for seven to 12 children, up to the age of 18 years, under the regulation of a child-placing agency.	Verification (The CPA issues this. A CPA regulates its own foster group homes.)

Figure: 40 TAC §745.243

Type of Application	Required Application Materials
(1) Application for Listing a Family Home	<p>(A) A completed Listing Request Form;</p> <p>(B) A completed Request for Criminal History and Central Registry Check Form on all applicable persons. See Subchapter F of this chapter (relating to Background Checks); and</p> <p>(C) The listing fee.</p>
(2) Application for Registering a Child-Care Home	<p>(A) A completed Registration Request Form;</p> <p>(B) A completed Request for Criminal History and Central Registry Check Form on all applicable persons. See Subchapter F of this chapter;</p> <p>(C) A notarized Affidavit for Applicants for Employment with a Child-Care Facility or Registered Child-Care Home Form for any employee of the registered child-care home or any applicant you intend to hire;</p> <p>(D) Proof of current certification in infant/child/adult CPR;</p> <p>(E) Proof of current certification in first aid, which must include rescue breathing and choking;</p> <p>(F) The registration fee;</p> <p>(G) Verification that the applicant completed the required orientation within one year prior to the date of application; and</p> <p>(H) Proof of a high school diploma or high school equivalent.</p>
(3) Application for Licensing a Child Day-Care Operation	<p>(A) A completed Child Day-Care Licensing Application Form;</p> <p>(B) A floor plan of the building and surrounding space to be used, including dimensions of the indoor and outdoor space;</p> <p>(C) A completed Governing Body/Director Designation Form. This form is not required if the governing body is a sole proprietorship and the proprietor is also the director;</p> <p>(D) Completed background checks on all applicable persons. See Subchapter F of this chapter;</p> <p>(E) A completed Personal History Statement Form for each applicant that is a sole proprietor or partner, and all persons designated as director or co-director;</p> <p>(F) If the applicant is a for-profit corporation or limited liability company, proof that the corporation or company is not delinquent in paying the franchise tax. For information on franchise tax, see §745.245 of this title (relating to How do I demonstrate that the governing body is not delinquent in paying the franchise tax?);</p> <p>(G) Except for licensed child-care homes, proof of liability insurance or documentation that the applicant is unable to obtain liability insurance and a copy of the written notice informing the parents that there is no insurance coverage. For further information on liability insurance, see §745.249 and §745.251 of this title (relating to What insurance coverage must I have for my licensed operation? and What are acceptable reasons for not obtaining liability insurance?);</p> <p>(H) A completed Plan of Operation for Licensed Facilities Form. The plan of operation must show how you plan to comply with the minimum standards;</p> <p>(I) The application fee; and</p> <p>(J) The initial license fee.</p>

<p>(4) Application for Licensing a Shelter Care Operation</p>	<p>(A) A completed Child Day-Care Licensing Application Form. If the law requires that the applicant keep the shelter care location confidential, the applicant must include on the application form a valid correspondence address and telephone number, including a method to immediately contact your operation that allows our staff to obtain your location address within 30 minutes;</p> <p>(B) A floor plan of the building and surrounding space to be used, including dimensions of the indoor and outdoor space;</p> <p>(C) Completed background checks on all applicable persons;</p> <p>(D) If the applicant is a for-profit corporation or limited liability company, proof that the corporation or company is not delinquent in paying the franchise tax. For information on franchise tax, see §745.245 of this title;</p> <p>(E) Proof of liability insurance or documentation that the applicant is unable to obtain liability insurance;</p> <p>(F) The application fee; and</p> <p>(G) The initial license fee.</p>
<p>(5) Application for a Compliance Certificate for an Employer-Based Child Care Operation</p>	<p>(A) A completed Employer-Based Child Care Application Form;</p> <p>(B) A floor plan of the building and surrounding space to be used, including dimensions of the indoor and outdoor space;</p> <p>(C) Completed background checks on all applicable persons as required for licensed child-care centers. See Subchapter F of this chapter;</p> <p>(D) If the applicant is a for-profit corporation or limited liability company, proof that the corporation or company is not delinquent in paying the franchise tax. For information on franchise tax, see §745.245 of this title; and</p> <p>(E) The application fee.</p>
<p>(6) Application for Licensing a Residential Child-Care Operation including a Child-Placing Agency and Maternity Home</p>	<p>(A) A completed Application for a License to Operate a Residential Child-Care Facility, Child-Placing Agency, or Maternity Home;</p> <p>(B) A floor plan of the building and surrounding space to be used, including dimensions of the indoor space;</p> <p>(C) Completed background checks on all applicable persons. See Subchapter F of this chapter;</p> <p>(D) A completed Controlling Person Form as set forth in Subchapter G of this chapter (relating to Residential Controlling Person and Certain Employment Prohibited);</p> <p>(E) A completed Personal History Statement Form for each applicant that is a sole proprietor or partner, unless you are a licensed administrator;</p> <p>(F) If the applicant is a for-profit corporation or a limited liability company, proof that the corporation or company is not delinquent in paying the franchise tax. For information on franchise tax, see §745.245 of this title;</p> <p>(G) Proof of liability insurance or documentation that the applicant is unable to obtain liability insurance and a copy of the written notice informing the parents that there is no insurance coverage. For further information on liability insurance, see §745.249 and §745.251 of this title;</p> <p>(H) Policies, procedures, and documentation required by minimum standard rules;</p>

	<p>(I) The application fee; and</p> <p>(J) The initial license fee, if applicable.</p>
<p>(7) Application for Certifying a Child Day-Care Operation</p>	<p>(A) A completed Child Day-Care Licensing Application Form;</p> <p>(B) A floor plan of the building and surrounding space to be used, including dimensions of the indoor and outdoor space;</p> <p>(C) A completed Governing Body/Director Designation Form;</p> <p>(D) Completed background checks on all applicable persons. See Subchapter F of this chapter;</p> <p>(E) A completed Personal History Statement Form for all persons designated as director or co-director; and</p> <p>(F) A completed Plan of Operation for Licensed Facilities Form. The plan of operation must show how you plan to comply with the minimum standards.</p>
<p>(8) Application for Certifying a Residential Child-Care Operation including a Child-Placing Agency and Maternity Home</p>	<p>(A) A completed Application for a License to Operate a Residential Child-Care Facility, Maternity Home, or Child-Placing Agency;</p> <p>(B) A floor plan of the building and surrounding space to be used, including dimensions of the indoor space;</p> <p>(C) Completed background checks on all applicable persons. See Subchapter F of this chapter;</p> <p>(D) A completed Controlling Person Form as set forth in Subchapter G of this chapter;</p> <p>(E) A completed Personal History Statement Form for each applicant that is a sole proprietor or partner, unless you are a licensed administrator; and</p> <p>(F) Policies, procedures, and documentation required by minimum standard rules.</p>

Figure: 40 TAC §748.303(a)

	(i) To Licensing?	(i) To Parents?	(i) To Law enforcement?
Serious Incident	(ii) If so, when?	(ii) If so, when?	(ii) If so, when?
(1) A child dies while in your care.	(A)(i) YES (A)(ii) Report as soon as possible, but no later than 24 hours after the incident or occurrence.	(B)(i) YES (B)(ii) Immediately.	(C)(i) YES (C)(ii) Immediately.
(2) A critical injury or illness that warrants treatment by a medical professional or hospitalization, including dislocated, fractured, or broken bones; concussions; lacerations requiring stitches; second and third degree burns; and damage to internal organs.	(A)(i) YES (A)(ii) Report as soon as possible, but no later than 24 hours after the incident or occurrence.	(B)(i) YES (B)(ii) Report as soon as possible, but no later than 24 hours after the incident or occurrence.	(C)(i) NO (C)(ii) Not Applicable.
(3) Allegations of abuse, neglect, or exploitation of a child; or any incident where there are indications that a child in care may have been abused, neglected, or exploited.	(A)(i) YES (A)(ii) As soon as you become aware of it.	(B)(i) YES (B)(ii) As soon as you become aware of it.	(C)(i) NO (C)(ii) Not applicable.
(4) Physical abuse committed by a child against another child. For the purpose of this subsection, physical abuse is: physical injury that results in substantial bodily harm and requiring emergency medical treatment, excluding any accident; or failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial bodily harm to a child.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after the occurrence or incident.	(B)(i) YES (B)(ii) As soon as possible, but no later than 24 hours after the occurrence or incident.	(C)(i) NO (C)(ii) Not applicable.

<p>(5) Sexual abuse committed by a child against another child. For the purpose of this subsection, sexual abuse is: conduct harmful to a child's mental, emotional or physical welfare, including nonconsensual sexual activity between children of any age, and consensual sexual activity between children with more than 24 months difference in age or when there is a significant difference in the developmental level of the children; or failure to make a reasonable effort to prevent sexual conduct harmful to a child.</p>	<p>(A)(i) YES</p> <p>(A)(ii) As soon as possible, but no later than 24 hours after the occurrence or incident.</p>	<p>(B)(i) YES</p> <p>(B)(ii) As soon as possible, but no later than 24 hours after the occurrence or incident.</p>	<p>(C)(i) NO</p> <p>(C)(ii) Not applicable.</p>
<p>(6) A child is indicted, charged, or arrested for a crime, not including being issued a ticket at school by law enforcement or any other citation that does not result in the child being detained.</p>	<p>(A)(i) YES</p> <p>(A)(ii) As soon as possible, but no later than 24 hours after you become aware of it.</p>	<p>(B)(i) YES</p> <p>(B)(ii) As soon as you become aware of it.</p>	<p>(C)(i) NO</p> <p>(C)(ii) Not applicable.</p>
<p>(7) A child developmentally or chronologically under 6 years old is absent from your operation and cannot be located, including the removal of a child by an unauthorized person.</p>	<p>(A)(i) YES</p> <p>(A)(ii) Within 2 hours of notifying law enforcement.</p>	<p>(B)(i) YES</p> <p>(B)(ii) Within 2 hours of notifying law enforcement.</p>	<p>(C)(i) YES</p> <p>(C)(ii) Immediately upon determining the child is not on the premises and the child is still missing.</p>
<p>(8) A child developmentally or chronologically 6 to 12 years old is absent from your operation and cannot be located, including the removal of a child by an unauthorized person.</p>	<p>(A)(i) YES</p> <p>(A)(ii) Within 2 hours of notifying law enforcement, if the child is still missing.</p>	<p>(B)(i) YES</p> <p>(B)(ii) Within 2 hours of determining the child is not on the premises, if the child is still missing.</p>	<p>(C)(i) YES</p> <p>(C)(ii) Within 2 hours of determining the child is not on the premises, if the child is still missing.</p>

(9) A child 13 years old or older is absent from your operation and cannot be located, including the removal of a child by an unauthorized person.	(A)(i) YES (A)(ii) No later than 24 hours from when the child's absence is discovered and the child is still missing.	(B)(i) YES (B)(ii) No later than 24 hours from when the child's absence is discovered and the child is still missing.	(C)(i) YES (C)(ii) No later than 24 hours from when the child's absence is discovered and the child is still missing.
(10) A child in your care contracts a communicable disease that the law requires you to report to the Department of State Health Services (DSHS) as specified in 25 TAC Chapter 97, Subchapter A (relating to Control of Communicable Diseases).	(A)(i) YES, unless the information is confidential. (A)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.	(B)(i) YES, if their child has contracted the communicable disease or has been exposed to it. (B)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.	(C)(i) NO (C)(ii) Not applicable.
(11) A suicide attempt by a child.	(A)(i) YES (A)(ii) As soon as you become aware of the incident.	(B)(i) YES (B)(ii) As soon as you become aware of the incident.	(C)(i) NO (C)(ii) Not applicable.

Figure: 40 TAC §748.563(a)

Educational qualifications:	Professional qualifications:
A master's degree or higher from an accredited college or university in social work or other human services field and nine credit hours in graduate level courses that focus on family and individual function and interaction.	One year of documented full-time work experience in a treatment setting serving children, including RTCs, child-placing agencies providing treatment services, psychiatric hospitals serving children, etc.

Figure: 40 TAC §748.563(b)

Educational qualifications:	Professional qualifications:
A nurse's degree or higher.	One year of documented full-time work experience in a medical or residential setting serving children with primary medical needs.

Figure: 40 TAC §748.563(c)

Options:	Educational qualifications:	Professional qualifications:
Option 1	(A) A master's degree or higher from an accredited college or university in social work or other human services field; and (B) Nine credit hours in graduate level courses that focus on family and individual function and interaction.	One year of documented full-time work experience in a residential child-care operation, or related field of child and family services.
Option 2	A master's degree or higher from an accredited college or university.	Two years of documented full-time work experience in a residential child-care operation, or related field of child and family services.
Option 3	A bachelor's degree from an accredited college or university in social work or other human services field.	Two years of documented full-time work experience in a residential child-care operation, or related field of child and family services.
Option 4	A bachelor's degree from an accredited college or university.	Three years of documented full-time work experience in a residential child-care operation, or related field of child and family services.

Figure: 40 TAC §748.563(d)

Options:	Educational qualifications:	Professional qualifications:
Option 1	A bachelor's degree from an accredited college or university.	No qualifications are needed if the professional level service provider is directly supervised by a service provider who meets one of the qualifications in subsection (a) or (c) of this section.
Option 2	Educational requirements for a Licensed Child-Care Administrator.	Child-Care Administrator's License.

Figure: 40 TAC §748.863(a)

Who is required to receive the training?	What type of pre-service training?	How many hours of training are needed?	When must the training be completed?
(1) All caregivers	General pre-service training	8 hours	Before the person can be the only caregiver responsible for a child in care
(2) Caregivers caring for children receiving only child care services or programmatic services	Pre-service training regarding emergency behavior intervention	8 hours	At least 4 hours of training before the person can be the only caregiver responsible for a child in care, and all 8 hours of training within 90 days of being responsible for a child in care
(3) Caregivers caring for children receiving treatment services, except for those exclusively caring for children receiving treatment services for primary medical needs	Pre-service training regarding emergency behavior intervention	16 hours, however, if your operation prohibits the use of emergency behavior intervention, then only 8 hours of training are needed	At least half of the required hours of training before the person can be the only caregiver responsible for a child in care, and all of the required hours of training within 90 days of being responsible for a child in care
(4) Child care administrators, professional level service providers, treatment directors, and case managers, except those exclusively assigned to children receiving treatment services for primary medical needs	Pre-service training regarding emergency behavior intervention	8 hours	All 8 hours of training within 90 days of beginning job duties

Figure: 40 TAC §748.931(a)

Who is required to receive the annual training?	How many hours of annual training are needed?
<p>(1) Caregivers where an operation has less than 30 children in care that are receiving treatment services and less than 50% of their total population of children in care are receiving treatment services</p>	<p>(A) 20 hours. (B) Of the 20 hours, every six months a caregiver must complete at least four hours of training specifically related to the emergency behavior intervention techniques that you allow. The caregiver must have this training within 180 days from the date that he last received such training. (C) The 20 hours must include two hours of transportation safety training if the caregiver transports a child in care whose chronological or developmental age is younger than nine years old.</p>
<p>(2) Caregivers where an operation has 30 or more children in care that are receiving treatment services or 50% or more of their total population of children in care are receiving treatment services</p>	<p>(A) 50 hours. (B) Of the 50 hours, every six months a caregiver must complete at least four hours of training specifically related to the emergency behavior intervention techniques that you allow. The caregiver must have this training within 180 days from the date that he last received such training. (C) The 50 hours must include two hours of transportation safety training if the caregiver transports a child in care whose chronological or developmental age is younger than nine years old.</p>
<p>(3) Caregivers in a cottage home</p>	<p>(A) 20 hours. (B) Of the 20 hours, a caregiver must complete at least four hours of training annually specifically related to the emergency behavior intervention techniques that you allow. The caregiver must have this training within 12 months from the date that he last received such training. (C) The 20 hours must include two hours of transportation safety training if the caregiver transports a child in care whose chronological or developmental age is younger than nine years old.</p>

<p>(4) Child-care administrators, professional level service providers, treatment directors, and case managers who hold a relevant professional license</p>	<p>(A) 15 hours, however, annual training hours used to maintain a person's relevant professional license may be used to complete these hours. The 15 hours must include two hours of transportation safety training if the person transports a child in care whose chronological or developmental age is younger than nine years old.</p> <p>(B) There are no annual training requirements for emergency behavior intervention. However, if there is a substantial change in techniques, types of intervention, or operation policies regarding emergency behavior intervention, then the staff must be re-trained in emergency behavior intervention.</p>
<p>(5) Professional level service providers, treatment directors, and case managers who do not hold a relevant professional license</p>	<p>(A) 20 hours, which must include two hours of transportation safety training if the person transports a child in care whose chronological or developmental age is younger than nine years old.</p> <p>(B) There are no annual training requirements for emergency behavior intervention. However, if there is a substantial change in techniques, types of intervention, or operation policies regarding emergency behavior intervention, then the staff must be re-trained in emergency behavior intervention.</p>

Figure: 40 TAC §748.1219

If:	Then:
<p>(1) You intend to provide treatment services for a child with an emotional disorder or pervasive development disorder</p>	<p>(A) The admission assessment must include a written, dated, and signed psychiatric or psychological diagnostic assessment including the child's diagnoses.</p> <p>(i) If the child is coming from another regulated placement, the evaluation must have been completed within 14 months before the date of admission.</p> <p>(ii) If the child is not coming from another regulated placement, the evaluation must have been completed within six months before the date of admission.</p> <p>(B) The admission assessment must include the reason(s) for choosing treatment services for the child.</p> <p>(C) The admission assessment must include consideration given to any history of inpatient or outpatient treatment.</p>
<p>(2) You intend to provide treatment services for a child with mental retardation</p>	<p>(A) The admission assessment must include a psychological evaluation with a psychometric evaluation completed within 14 months before the date of admission.</p> <p>(i) A licensed psychologist who has experience with mental retardation or published scales must determine and document the child's level of adaptive functioning.</p> <p>(ii) Standardized tests must be used to determine the intellectual functioning of a child. The test results must be documented in the evaluation.</p> <p>(iii) The evaluation must indicate manifestations of mental retardation as defined in the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.</p> <p>(B) The admission assessment must include the reason(s) for choosing treatment services for the child.</p> <p>(C) The admission assessment must include consideration given to any history of inpatient or outpatient treatment.</p>
<p>(3) You intend to provide treatment services for a child with primary medical needs</p>	<p>(A) The admission assessment must have a licensed physician's signed, written orders as the basis for the child's admission. The physician's evaluation must confirm that the child can be cared for appropriately in a residential child-care operation.</p> <p>(B) The written orders must include orders for:</p> <p>(i) Medications;</p>

	<ul style="list-style-type: none"> (ii) Treatments; (iii) Diet; (iv) Range-of-motion program at stated intervals; (v) Habilitation, as appropriate; and (vi) Any special medical or developmental procedures. <p>(C) The admission assessment must include the reason(s) for choosing treatment services for the child.</p> <p>(D) The admission assessment must include consideration given to any history of inpatient or outpatient treatment.</p>
<p>(4) The child's behavior and/or history within the last two months indicates that the child is an immediate danger to himself or others</p>	<p>(A) The admission assessment must include a written, dated, and signed psychiatric or psychological diagnostic assessment including:</p> <ul style="list-style-type: none"> (i) The child's diagnosis, if applicable; (ii) An assessment of the child's needs and potential danger to himself or others; and (iii) Recommendations for care, treatment, and further evaluation. If the child is admitted, the recommendations must become part of the child's plan of service and must be implemented. <p>(B) If the child is:</p> <ul style="list-style-type: none"> (i) Coming from another regulated placement, the evaluation must have been completed within 14 months before the date of admission. (ii) Not coming from another regulated placement, the evaluation must have been completed within six months before the date of admission. <p>(C) You must then evaluate your ability to provide services and safeguards appropriate to the child's needs, including direct and continuous supervision, if needed.</p>

Figure: 40 TAC §748.1337(b)

Type of Service	Items that must be included:
(1) Child-care services	<p>(A) The child's needs identified in the admission assessment, in addition to basic needs related to day-to-day care and development, including:</p> <ul style="list-style-type: none"> (i) Medical needs, including scheduled medical exams and plans for recommended follow-up treatment; (ii) Dental needs, including scheduled dental exams and plans for recommended follow-up treatment; (iii) Intellectual functioning, including any testing and plans for recommended follow-up; (iv) Developmental functioning, including any developmental delays and plans to improve or remediate developmental functioning; (v) Educational needs and how those needs will be met, including planning for high school completion and post-secondary education and training, if appropriate, and any school evaluations or recommendations; (vi) Plans for social, recreation, and leisure activities; (vii) Plans for integrating the child into the community and community activities, as appropriate; (viii) Therapeutic needs, including plans for psychological/psychiatric testing and follow-up treatment and use of psychotropic medications; and (ix) Cultural identity needs, including assisting children in connecting with their culture in the community; <p>(B) Plans for maintaining and improving the child's relationship with family members, including recommendations for visitation and contacts between the child and the child's parents, the child and the child's siblings, and the child and the child's extended family;</p> <p>(C) Recent data from the current caregiver's evaluation of the child's behavior and level of functioning;</p> <p>(D) Specific goals and strategies to meet the child's needs, including instructions to caregivers responsible for the care of the child. Instructions must include specific information about:</p> <ul style="list-style-type: none"> (i) Level of supervision required; (ii) Discipline techniques; (iii) Behavior intervention techniques; (iv) Plans for trips and visits away from the operation; and (v) Any actions the caregivers must take or conditions the caregivers must be aware of to meet the child's special needs, such as medications, medical care, dietary needs, psychiatric care, how to communicate with the child, and reward systems; <p>(E) If the child is 13 years old or older, a plan for educating the child in the following areas:</p> <ul style="list-style-type: none"> (i) Healthy interpersonal relationships; (ii) Healthy boundaries; (iii) Pro-social communication skills; (iv) Sexually transmitted diseases; and (v) Human reproduction;

	<p>(F) If the child is 14 years old or older, plans for the caregivers to assist the child in obtaining experiential life-skills training to improve his transition to independent living. Plans must:</p> <ul style="list-style-type: none"> (i) Be tailored to a child's skills and abilities; and (ii) Include training in practical activities that include, but are not limited to, grocery shopping, meal preparation, cooking, using public transportation, performing basic household tasks, and balancing a checkbook; <p>(G) For children 16 years old and older, preparation for independent living;</p> <p>(H) For children who exhibit high-risk behaviors, such as self harm, sexual aggression, runaway, or substance abuse:</p> <ul style="list-style-type: none"> (i) Plans to minimize the risk of harm to the child or others, such as special instructions for caregivers, sleeping arrangements, or bathroom arrangements; and (ii) A specific safety contract developed between the child and employee that addresses how the child's safety needs will be maintained; <p>(I) Expected outcomes of placement for the child and estimated length of stay in care;</p> <p>(J) Plans for discharge;</p> <p>(K) The names and roles of persons who participated in the development of the child's service plan;</p> <p>(L) The date the service plan was developed and completed;</p> <p>(M) The effective date of the service plan; and</p> <p>(N) The signatures of the service planning team members that were involved in the development of the service plan.</p>
(2) Treatment services	<p>(A) The child-care services planning requirements noted above;</p> <p>(B) A description of the emotional, behavioral, and physical conditions that require treatment services;</p> <p>(C) A description of the emotional, behavioral, and physical conditions the child must achieve and maintain to function in a less restrictive setting, including any special treatment program and/or other services and activities that are planned to help the child achieve and to function in a less restrictive setting; and</p> <p>(D) A list of emotional, physical, and social needs that require specific professional expertise, and plans to obtain the appropriate professional consultation and treatment for those needs. Any specialized testing, recommendations, and/or treatment must be documented in the child's record.</p>
(3) Treatment services for children with mental retardation	<p>(A) The child-care and treatment services planning requirements noted above;</p> <p>(B) A minimum of one hour per day of visual, auditory and tactile stimulation to enhance the child's physical, neurological, and emotional development;</p> <p>(C) An educational or training plan encouraging normalization appropriate to the child's functioning; and</p> <p>(D) Career planning for older adolescents who are not receiving treatment services for severe or profound mental retardation.</p>

<p>(4) Transitional living program</p>	<p>(A) Child-care service planning requirements;</p> <p>(B) Plans for encouraging the child to participate in community life and to form interpersonal relationships/friendships outside the transitional living program, such as community team sports, Eagle Scouts, and employment after school;</p> <p>(C) Consumer education, such as meal planning, meal preparation, grocery shopping, public transportation, searching for an apartment, and obtaining utility services;</p> <p>(D) Career planning, including assisting the child in enrolling in an educational or vocational job training program;</p> <p>(E) Money management and assisting the child in establishing a personal bank account;</p> <p>(F) Assisting the child with how to access resources, such as medical and dental care, therapy, mental health care, an attorney, the police, and other emergency assistance;</p> <p>(G) Assisting the child in obtaining the child's social security number, birth certificate, and a driver's license or a Department of Public Safety identification card, as needed; and</p> <p>(H) Problem-solving, such as assessing personal strengths and needs, stress management, reviewing options, assessing consequences for actions taken and possible short-term and long-term results, and establishing goals and planning for the future.</p>
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Figure: 40 TAC §748.2553

Type of Emergency Behavior Intervention	The caregiver must release the child:
(1) Short personal restraint	(A) Immediately when an emergency health situation occurs during the restraint. The caregiver must obtain treatment immediately; or (B) Within one minute, or sooner if the danger is over or the disruptive behavior is de-escalated.
(2) Personal restraint	(A) Immediately when an emergency health situation occurs during the restraint. The caregiver must obtain treatment immediately; (B) Within one minute of the implementation of a prone or supine hold; (C) As soon as the child's behavior is no longer a danger to himself or others; (D) As soon as the medication is administered; or (E) When the maximum time allowed for personal restraint is reached.
(3) Emergency medication	Not applicable.
(4) Seclusion	(A) Immediately when an emergency health situation occurs during the seclusion. The caregiver must obtain treatment immediately; (B) As soon as the child's behavior is no longer a danger to himself or others; (C) No later than five minutes after the child begins exhibiting the required behaviors; (D) When the maximum time allowed for seclusion is reached; (E) If the child falls asleep in seclusion. In this situation, the caregiver must: (i) Unlock the door; (ii) Continuously observe the child until he awakens; and (iii) Evaluate his overall well-being; or (F) If the child is receiving emergency care services: (i) As soon as the child is no longer a danger to himself or others; (ii) Upon the arrival of a medical professional; or (iii) Upon assistance from law enforcement or the fire department.
(5) Mechanical restraint	(A) Immediately when an emergency health situation occurs during the restraint. The caregiver must obtain treatment immediately; (B) As soon as the child's behavior is no longer a danger to himself or others; (C) No later than five minutes after the child begins exhibiting the required behaviors; (D) When the maximum time allowed for mechanical restraint is reached; or (E) If the child falls asleep in the mechanical restraint. In this situation, the caregiver must release the child from the restraint and continuously observe the child until he awakens and evaluate him.

Figure: 40 TAC §749.503(a)

	(i) To Licensing?	(i) To Parents?	(i) To Law enforcement?
Serious Incident	(ii) If so, when?	(ii) If so, when?	(ii) If so, when?
(1) A child dies while in your care.	(A)(i) YES (A)(ii) Report as soon as possible, but no later than 24 hours after the incident or occurrence.	(B)(i) YES (B)(ii) Immediately	(C)(i) YES (C)(ii) Immediately
(2) A critical injury or illness that warrants treatment by a medical professional or hospitalization, including dislocated, fractured, or broken bones; concussions; lacerations requiring stitches; second and third degree burns; and damage to internal organs.	(A)(i) YES (A)(ii) Report as soon as possible, but no later than 24 hours after the incident or occurrence.	(B)(i) YES (B)(ii) Report as soon as possible, but no later than 24 hours after the incident or occurrence.	(C)(i) NO (C)(ii) Not Applicable
(3) Allegations of abuse, neglect, or exploitation of a child; or any incident where there are indications that a child in care may have been abused, neglected, or exploited.	(A)(i) YES, including whether you plan to move the child until the investigation is complete. (A)(ii) As soon as you become aware of it.	(B)(i) YES, including whether you plan to move the child until the investigation is complete. (B)(ii) As soon as you become aware of it.	(C)(i) NO (C)(ii) Not applicable
(4) Physical abuse committed by a child against another child. For the purpose of this subsection, physical abuse is: physical injury that results in substantial bodily harm and requiring emergency medical treatment, excluding any accident; or failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial bodily harm to the child.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after the occurrence or incident.	(B)(i) YES (B)(ii) As soon as possible, but no later than 24 hours after the occurrence or incident.	(C)(i) NO (C)(ii) Not applicable

<p>(5) Sexual abuse committed by a child against another child. For the purpose of this subsection, sexual abuse is: conduct harmful to a child's mental, emotional or physical welfare, including nonconsensual sexual activity between children of any age, and consensual sexual activity between children with more than 24 months difference in age or when there is a significant difference in the developmental level of the children; or failure to make a reasonable effort to prevent sexual conduct harmful to a child.</p>	<p>(A)(i) YES</p> <p>(A)(ii) As soon as possible, but no later than 24 hours after the occurrence or incident.</p>	<p>(B)(i) YES</p> <p>(B)(ii) As soon as possible, but no later than 24 hours after the occurrence or incident.</p>	<p>(C)(i) NO</p> <p>(C)(ii) Not applicable</p>
<p>(6) A child is indicted, charged, or arrested for a crime, not including being issued a ticket at school by law enforcement or any other citation that does not result in the child being detained.</p>	<p>(A)(i) YES</p> <p>(A)(ii) As soon as possible, but no later than 24 hours after you become aware of it.</p>	<p>(B)(i) YES</p> <p>(B)(ii) As soon as you become aware of it.</p>	<p>(C)(i) NO</p> <p>(C)(ii) Not applicable</p>
<p>(7) A child developmentally or chronologically under 6 years old is absent from a foster home and cannot be located, including the removal of a child by an unauthorized person.</p>	<p>(A)(i) YES</p> <p>(A)(ii) Within 2 hours of notifying law enforcement.</p>	<p>(B)(i) YES</p> <p>(B)(ii) Within 2 hours of notifying law enforcement.</p>	<p>(C)(i) YES</p> <p>(C)(ii) Immediately upon determining the child is not on the premises and the child is still missing.</p>
<p>(8) A child developmentally or chronologically 6 to 12 years old is absent from a foster home and cannot be located, including the removal of a child by an unauthorized person.</p>	<p>(A)(i) YES</p> <p>(A)(ii) Within 2 hours of notifying law enforcement, if the child is still missing.</p>	<p>(B)(i) YES</p> <p>(B)(ii) Within 2 hours of determining the child is not on the premises, if the child is still missing.</p>	<p>(C)(i) YES</p> <p>(C)(ii) Within 2 hours of determining the child is not on the premises, if the child is still missing.</p>

<p>(9) A child 13 years old or older is absent from a foster home and cannot be located, including the removal of a child by an unauthorized person.</p>	<p>(A)(i) YES</p> <p>(A)(ii) No later than 24 hours from when the child's absence is discovered and the child is still missing.</p>	<p>(B)(i) YES</p> <p>(B)(ii) No later than 24 hours from when the child's absence is discovered and the child is still missing.</p>	<p>(C)(i) YES</p> <p>(C)(ii) No later than 24 hours from when the child's absence is discovered and the child is still missing.</p>
<p>(10) A child in your care contracts a communicable disease that the law requires you to report to the Department of State Health Services (DSHS) as specified in 25 TAC Chapter 97, Subchapter A (relating to Control of Communicable Diseases).</p>	<p>(A)(i) YES, unless the information is confidential.</p> <p>(A)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.</p>	<p>(B)(i) YES, if their child has contracted the communicable disease or has been exposed to it.</p> <p>(B)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.</p>	<p>(C)(i) NO</p> <p>(C)(ii) Not applicable</p>
<p>(11) A suicide attempt by a child.</p>	<p>(A)(i) YES</p> <p>(A)(ii) As soon as you become aware of the incident.</p>	<p>(B)(i) YES</p> <p>(B)(ii) As soon as you become aware of the incident.</p>	<p>(C)(i) NO</p> <p>(C)(ii) Not applicable</p>

Figure: 40 TAC §749.503(d)

	(i) To Licensing? (ii) If so, when?	(i) To Parents? (ii) If so, when?
<p>Serious Incident</p> <p>(1) Any incident that renders all or part of your agency or a foster home unsafe or unsanitary for a child, such as a fire or a flood.</p>	<p>(A)(i) YES</p> <p>(A)(ii) As soon as possible, but no later than 24 hours after the incident.</p>	<p>(B)(i) YES</p> <p>(B)(ii) As soon as possible, but no later than 24 hours after the incident.</p>
<p>(2) A disaster or emergency that requires a foster home to close.</p>	<p>(A)(i) YES</p> <p>(A)(ii) As soon as possible, but no later than 24 hours after the incident.</p>	<p>(B)(i) YES</p> <p>(B)(ii) As soon as possible, but no later than 24 hours after the incident.</p>
<p>(3) An adult who has contact with a child in care contracts a communicable disease noted in 25 TAC Chapter 97, Subchapter A (relating to Control of Communicable Diseases).</p>	<p>(A)(i) YES, unless the information is confidential.</p> <p>(A)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.</p>	<p>(B)(i) YES, if their child has contracted the communicable disease or has been exposed to it.</p> <p>(B)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.</p>
<p>(4) An allegation that a person under the auspices of your child-placing agency who directly cares for or has access to a child in the setting has abused drugs within the past seven days.</p>	<p>(A)(i) YES</p> <p>(A)(ii) Within 24 hours after learning of the allegation.</p>	<p>(B)(i) NO</p> <p>(B)(ii) Not applicable.</p>
<p>(5) An investigation of abuse or neglect by any other entity other than Licensing of an employee, contract staff, volunteer, or other adult at the agency.</p>	<p>(A)(i) YES</p> <p>(A)(ii) As soon as possible, but no later than 24 hours after you become aware of the investigation.</p>	<p>(B)(i) NO</p> <p>(B)(ii) Not applicable.</p>
<p>(6) An arrest or indictment, or a county or district attorney accepts an "Information" regarding an official complaint, against an employee, a foster parent, a contract staff, or volunteer alleging commission of any crime as provided in §745.651 of this title (relating to What types of criminal convictions may preclude a person from being present in an operation?).</p>	<p>(A)(i) YES</p> <p>(A)(ii) As soon as possible, but no later than 24 hours after you become aware of the situation.</p>	<p>(B)(i) NO</p> <p>(B)(ii) Not applicable.</p>

Figure: 40 TAC §749.507

Occurrences	(i) To Licensing? (ii) If so, when?	(i) To Parents? (ii) If so, when?
(1) Medically pertinent incidents, such as seizures, that do not rise to the level of a serious incident.	(A)(i) NO (A)(ii) Not applicable; however, you must document the type of incident including the date, time, action taken, and child's name.	(B)(i) YES (B)(ii) Within seven days.
(2) Changing your child-placing agency administrator.	(A)(i) YES, in writing. (A)(ii) Within seven days after the action is taken.	(B)(i) NO (B)(ii) Not applicable.

Figure: 40 TAC §749.673

Options for qualifications:	Educational qualifications:	Professional qualifications:
Option 1	(1) (A) A master's degree from an accredited college or university in social work or other human services field; and (B) Nine credit hours in graduate level courses that focus on family and individual function and interaction.	One year of documented full-time work experience in a child-placing agency conducting child-placing activities. The experience may include a maximum of 350 hours of formal, supervised field placement or practicum in child-placing activities.
Option 2	(2) A master's degree from an accredited college or university.	Two years of documented full-time work experience in a child-placing agency conducting child-placing activities. The experience may include a maximum of 350 hours of formal, supervised field placement or practicum in child-placing activities.
Option 3	(3) A bachelor's degree from an accredited college or university in social work or other human services field.	Two years of documented full-time work experience in a child-placing agency conducting child-placing activities. The experience may include a maximum of 350 hours of formal, supervised field placement or practicum in child-placing activities.
Option 4	(4) A bachelor's degree from an accredited college or university.	(A) Three years of documented full-time work experience in a child-placing agency conducting child-placing activities. The experience may include a maximum of 350 hours of formal, supervised field placement or practicum in child-placing activities; or (B) Direct supervision from a child placement management staff. The direct supervision with the child placement management staff must consist of 10 documented, monthly, face-to-face, individual, case-related conferences over each annual period. The direct supervision must continue until the employee's previous experience and directly supervised experience totals three years.

Figure: 40 TAC §749.675

Options for qualifications:	A license in social work or another human services field:	Educational qualifications:	Professional qualifications. Any field placement or practicum experience may not be counted:
Option 1	Yes	(A) A master's degree from an accredited college or university in social work or other human services field; and (B) Nine credit hours in graduate level courses that focus on family and individual function and interaction.	Two years of documented full-time experience in a child-placing agency conducting child-placing activities.
Option 2	No	(A) A master's degree from an accredited college or university; and (B) Nine credit hours in graduate level courses that focus on family and individual function and interaction.	Three years of documented full-time experience in a child-placing agency conducting child-placing activities.
Option 3	Yes	(A) A bachelor's degree from an accredited college or university in social work or other human services field; and (B) Nine credit hours in undergraduate level courses that focus on family and individual function and interaction.	Four years of documented full-time experience in a child-placing agency conducting child-placing activities.
Option 4	No	(A) A bachelor's degree from an accredited college or university; and (B) Nine credit hours in undergraduate level courses that focus on family and individual function and interaction.	Five years of documented full-time experience in a child-placing agency conducting child-placing activities.

Figure: 40 TAC §749.863(a)

Who is required to receive the training?	What type of pre-service training?	How many hours of training are needed?	When must the training be completed?
(1) All caregivers	General pre-service training	8 hours	Before this person can be the only caregiver responsible for a child in care
(2) Caregivers caring for children receiving only child care services or programmatic services	Pre-service training regarding emergency behavior intervention	8 hours	At least 4 hours of training before the person can be the only caregiver responsible for a child in care, and all 8 hours of training within 90 days of being responsible for a child in care
(3) Caregivers caring for children receiving treatment services for emotional disorders, mental retardation, or pervasive developmental disorders	Pre-service training regarding emergency behavior intervention	16 hours, however, if your agency prohibits the use of emergency behavior intervention, then only 8 hours of training are needed	At least half of the required hours of training before the person can be the only caregiver responsible for a child in care, and all of the required hours of training within 90 days of being responsible for a child in care
(4) Child-placing agency administrators, treatment directors, child placement staff, child placement management staff, and full-time professional service providers, except those exclusively assigned to provide adoption services, or those exclusively assigned to children receiving treatment services for primary medical needs	Pre-service training regarding emergency behavior intervention	8 hours	All 8 hours of training within 90 days of beginning job duties

Figure: 40 TAC §749.931(a)

Who is required to receive the annual training?	How many hours of annual training are needed?
(1) Caregivers caring for children receiving only child-care services, programmatic services, and/or treatment services for primary medical needs	<p>(A) For homes with two foster parents, the foster parents must receive a total of 20 hours of annual training, of which four hours must be on training specific to the emergency behavior interventions allowed by your agency.</p> <p>(B) For all other caregivers, each caregiver must receive 20 hours of annual training, of which four hours must be on training specific to the emergency behavior interventions allowed by your agency.</p> <p>(C) For foster group homes only, each person's annual training must include two hours of transportation safety training if the person transports a child in care whose chronological or developmental age is younger than nine years old.</p> <p>(D) Caregivers exclusively caring for children receiving treatment services for primary medical needs are exempt from emergency behavior intervention training requirements.</p>
(2) Caregivers caring for children receiving treatment services for emotional disorders, mental retardation, or pervasive developmental disorders	<p>(A) For homes with two foster parents, the foster parents must receive a total of 50 hours of annual training, of which eight hours for each foster parent must be on training specific to the emergency behavior interventions allowed by your agency. These 50 hours must be distributed appropriately, and each foster parent must receive some amount of training.</p> <p>(B) For homes with one foster parent, 30 hours, of which eight hours must be on training specific to the emergency behavior interventions allowed by your agency.</p> <p>(C) All other caregivers, 30 hours, of which eight hours must be on training specific to the emergency behavior interventions allowed by your agency.</p> <p>(D) For foster group homes only, each person's annual training must include two hours of transportation safety training if the person transports a child in care whose chronological or developmental age is younger than nine years old.</p>
(3) Child placement staff with less than one year of child-placing experience	<p>(A) 30 hours for the initial year;</p> <p>(B) 20 hours after the initial year; and</p> <p>(C) There are no annual training requirements for emergency behavior interventions. However, if there is a substantial change in techniques, types of intervention, or agency policies regarding emergency behavior intervention, then the staff must be re-trained.</p> <p>(D) Annual training must include two hours of transportation safety training if the person transports a child placed in a foster group home whose chronological or developmental age is younger than nine years old.</p>

<p>(4) Child placement staff with at least one year of child-placing experience</p>	<p>20 hours. Annual training must include two hours of transportation safety training if the person transports a child placed in a foster group home whose chronological or developmental age is younger than nine years old. There are no annual training requirements for emergency behavior interventions. However, if there is a substantial change in techniques, types of intervention, or agency policies regarding emergency behavior intervention, then the staff must be re-trained.</p>
<p>(5) Child placement management staff</p>	<p>20 hours. Annual training must include two hours of transportation safety training if the person transports a child placed in a foster group home whose chronological or developmental age is younger than nine years old. There are no annual training requirements for emergency behavior interventions. However, if there is a substantial change in techniques, types of intervention, or agency policies regarding emergency behavior intervention, then the staff must be re-trained.</p>
<p>(6) Child-placing agency administrators, executive directors, treatment directors, and full-time professional service providers who hold a relevant professional license</p>	<p>(A) 15 hours, however, annual training hours used to maintain a person's relevant professional license may be used to complete these hours. (B) There are no annual training requirements for emergency behavior interventions. However, if there is a substantial change in techniques, types of intervention, or agency policies regarding emergency behavior intervention, then the staff must be re-trained. (C) Annual training must include two hours of transportation safety training if the person transports a child placed in a foster group home whose chronological or developmental age is younger than nine years old.</p>
<p>(7) Executive directors, treatment directors, and full-time professional service providers who do not hold a relevant professional license</p>	<p>20 hours. Annual training must include two hours of transportation safety training if the person transports a child placed in a foster group home whose chronological or developmental age is younger than nine years old. There are no annual training requirements for emergency behavior interventions. However, if there is a substantial change in techniques, types of intervention, or agency policies regarding emergency behavior intervention, then the staff must be re-trained.</p>

Figure: 40 TAC §749.1135

If:	Then:
<p>(1) You intend to provide treatment services for a child with an emotional disorder or pervasive development disorder</p>	<p>(A) The admission assessment must include a written, dated, and signed psychiatric or psychological diagnostic assessment, including the child's diagnoses.</p> <p>(i) If the child is coming from another regulated placement, the evaluation must have been completed within 14 months before the date of admission.</p> <p>(ii) If the child is not coming from another regulated placement, the evaluation must have been completed within six months before the date of admission.</p> <p>(B) The admission assessment must include the reason(s) for choosing treatment services for the child.</p> <p>(C) The admission assessment must include consideration given to any history of inpatient or outpatient treatment.</p>
<p>(2) You intend to provide treatment services for a child with mental retardation</p>	<p>(A) The admission assessment must include a psychological evaluation with a psychometric evaluation completed within 14 months before the date of admission.</p> <p>(i) A licensed psychologist who has experience with mental retardation or published scales must determine and document the child's level of adaptive functioning.</p> <p>(ii) Standardized tests must be used to determine the intellectual functioning of a child. The test results must be documented in the evaluation.</p> <p>(iii) The evaluation must indicate manifestations of mental retardation as defined in the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.</p> <p>(B) The admission assessment must include the reason(s) for choosing treatment services for the child.</p> <p>(C) The admission assessment must include consideration given to any history of inpatient or outpatient treatment.</p>

<p>(3) You intend to provide treatment services for a child with primary medical needs</p>	<p>(A) The admission assessment must have a licensed physician's signed, written orders as the basis for the child's admission. The physician's evaluation must confirm that the child can be cared for appropriately in a foster home setting and that the foster parents have been trained to meet the needs of the child and demonstrated competency.</p> <p>(B) The written orders must include orders for:</p> <ul style="list-style-type: none"> (i) Medications; (ii) Treatments; (iii) Diet; (iv) Range-of-motion program at stated intervals; (v) Habilitation, as appropriate; and (vi) Any special medical or developmental procedures. <p>(C) The admission assessment must include the reason(s) for choosing treatment services for the child.</p> <p>(D) The admission assessment must include consideration given to any history of inpatient or outpatient treatment.</p>
<p>(4) The child's behavior and/or history within the last two months indicates that the child is an immediate danger to himself or others</p>	<p>(A) The admission assessment must include a written, dated, and signed psychiatric or psychological diagnostic assessment including:</p> <ul style="list-style-type: none"> (i) The child's diagnosis, if applicable; (ii) An assessment of the child's needs and potential danger to himself or others; and (iii) Recommendations for care, treatment, and further evaluation. If the child is admitted, the recommendations must become part of the child's service plan and must be implemented. <p>(B) If the child is:</p> <ul style="list-style-type: none"> (i) Coming from another regulated placement, the evaluation must have been completed within 14 months before the date of admission. (ii) Not coming from another regulated placement, the evaluation must have been completed within six months before the date of admission. <p>(C) You must then evaluate your ability to provide services and safeguards appropriate to the child's needs, including direct and continuous supervision, if needed.</p>

Figure: 40 TAC §749.1309(b)

Type of Service	Items that must be included:
(1) Child-care services	<p>(A) The child's needs identified in the admission assessment, in addition to basic needs related to day-to-day care and development, including:</p> <ul style="list-style-type: none"> (i) Medical needs, including scheduled medical exams and plans for recommended follow-up treatment; (ii) Dental needs, including scheduled dental exams and plans for recommended follow-up treatment; (iii) Intellectual functioning, including any testing and plans for recommended follow-up; (iv) Developmental functioning, including any developmental delays and plans to improve or remediate developmental functioning; (v) Educational needs and how those needs will be met, including planning for high school completion and post-secondary education and training, if appropriate, and any school evaluations or recommendations; (vi) Plans for social, recreation, and leisure activities; (vii) Plans for integrating the child into the community and community activities, as appropriate; (viii) Therapeutic needs, including plans for psychological/psychiatric testing and follow-up treatment and use of psychotropic medications; and (ix) Cultural identity needs, including assisting children in connecting with their culture in the community; <p>(B) Plans for maintaining and improving the child's relationship with family members, including recommendations for visitation and contacts between the child and the child's parents, the child and the child's siblings, and the child and the child's extended family;</p> <p>(C) Recent data from the current caregiver's evaluation of the child's behavior and level of functioning;</p> <p>(D) Specific goals and strategies to meet the child's needs, including instructions to caregivers responsible for the care of the child. Instructions must include specific information about:</p> <ul style="list-style-type: none"> (i) Level of supervision required; (ii) Discipline techniques; (iii) Behavior intervention techniques; (iv) Plans for trips and visits away from the foster home; and (v) Any actions the caregivers must take or conditions the caregivers must be aware of to meet the child's special needs, such as medications, medical care, dietary needs, psychiatric care, how to communicate with the child, and reward systems; <p>(E) If the child is 13 years old or older, a plan for educating the child in the following areas:</p> <ul style="list-style-type: none"> (i) Healthy interpersonal relationships; (ii) Healthy boundaries; (iii) Pro-social communication skills; (iv) Sexually transmitted diseases; and (v) Human reproduction;

	<p>(F) If the child is 14 years old or older, plans for the caregivers to assist the child in obtaining experiential life-skills training to improve his transition to independent living. Plans must:</p> <ul style="list-style-type: none"> (i) Be tailored to the child's skills and abilities; and (ii) Include training in practical activities that include, but are not limited to, grocery shopping, meal preparation, cooking, using public transportation, performing basic household tasks, and balancing a checkbook; <p>(G) For children 16 years old and older, preparation for independent living;</p> <p>(H) For children who exhibit high-risk behaviors, such as self harm, sexual aggression, runaway, or substance abuse:</p> <ul style="list-style-type: none"> (i) Plans to minimize the risk of harm to the child or others, such as special instructions for caregivers, sleeping arrangements, or bathroom arrangements; and (ii) A specific safety contract developed between the child and staff that addresses how the child's safety needs will be maintained; <p>(I) Expected outcomes of placement for the child and estimated length of stay in care;</p> <p>(J) Plans for discharge;</p> <p>(K) The names and roles of persons who participated in the development of the child's service plan;</p> <p>(L) The date the service plan was developed and completed;</p> <p>(M) The effective date of the service plan; and</p> <p>(N) The signatures of the service planning team members that were involved in the development of the service plan.</p>
(2) Treatment services	<p>For children receiving treatment services, the plan must address all of the child's waking hours and include:</p> <ul style="list-style-type: none"> (A) The child-care services planning requirements noted above; (B) A description of the emotional, behavioral, and physical conditions that require treatment services; (C) A description of the emotional, behavioral, and physical conditions the child must achieve and maintain to function in a less restrictive setting, including any special treatment program and/or other services and activities that are planned to help the child achieve and to function in a less restrictive setting; and (D) A list of emotional, physical, and social needs that require specific professional expertise, and plans to obtain the appropriate professional consultation and treatment for those needs. Any specialized testing, recommendations, and/or treatment must be documented in the child's record.
(3) Treatment services for children with mental retardation	<ul style="list-style-type: none"> (A) The child-care and treatment services planning requirements noted above; (B) A minimum of one hour per day of visual, auditory and tactile stimulation to enhance the child's physical, neurological, and emotional development; (C) An educational or training plan encouraging normalization appropriate to the child's functioning; and (D) Career planning for older adolescents who are not receiving treatment services for severe or profound mental retardation.

(4) Transitional living program	<p>(A) Child-care service planning requirements;</p> <p>(B) Plans for encouraging the child to participate in community life and to form interpersonal relationships/friendships outside the transitional living program, such as community team sports, Eagle Scouts, and employment after school;</p> <p>(C) Consumer education, such as meal planning, meal preparation, grocery shopping, public transportation, searching for an apartment, and obtaining utility services;</p> <p>(D) Career planning, including assisting the child in enrolling in an educational or vocational job training program;</p> <p>(E) Money management and assisting the child in establishing a personal bank account;</p> <p>(F) Assisting the child with how to access resources, such as medical and dental care, therapy, mental health care, an attorney, the police, and other emergency assistance;</p> <p>(G) Assisting the child in obtaining the child's social security number, birth certificate, and a driver's license or a Department of Public Safety identification card, as needed; and</p> <p>(H) Problem-solving, such as assessing personal strengths and needs, stress management, reviewing options, assessing consequences for actions taken and possible short-term and long-term results, and establishing goals and planning for the future.</p>
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Figure: 40 TAC §749.2153

Type of Emergency Behavior Intervention	The caregiver must release the child:
(1) Short personal restraint	<p>(A) Immediately when an emergency health situation occurs during the restraint. The caregiver must obtain treatment immediately; or</p> <p>(B) Within one minute, or sooner if the danger is over or the disruptive behavior is de-escalated.</p>
(2) Personal restraint	<p>(A) Immediately when an emergency health situation occurs during the restraint. The caregiver must obtain treatment immediately;</p> <p>(B) Within one minute of the implementation of a prone or supine hold;</p> <p>(C) As soon as the child's behavior is no longer a danger to himself or others;</p> <p>(D) As soon as the medication is administered; or</p> <p>(E) When the maximum time allowed for personal restraint is reached.</p>
(3) Emergency medication	Not applicable.

Figure: 40 TAC §749.2563(a)

If the home cares for:	Then the number of children one caregiver may care for is:
One child under age 5	One caregiver to five children
More than two children receiving treatment services (except for children with primary medical needs, see below)	One caregiver to four children
One child with primary medical needs	One caregiver to four children

Figure: 40 TAC §749.3137(a)

If the age of the youngest child is...	Then you must have one adult to supervise every (number) child/ren in the group	Swimming Child/Adult Ratio
0 to 23 months old	1	1:1
2 years old	2	2:1
3 years old	3	3:1
4 years old	4	4:1
5 years old or older in a foster family home	6	6:1
5 years old or older in a foster group home	You must meet the applicable child/caregiver ratios as provided in §749.2563 of this title (relating to How do I determine child/caregiver ratio for a foster group home?).	varies

Figure: 40 TAC §749.3425(a)

If the child:	Then you must have:
(1) Is under the age of two years old and does not need treatment services:	A minimum of five face-to-face contacts with the child and the adoptive parents within the first six months of placement: (A) Two of the contacts must be face-to-face with the entire prospective adoptive family; and (B) At least one of the two face-to-face contacts noted above must be in the adoptive home.
(2) Needs treatment services or is two years old or older:	Monthly face-to-face contacts with the adoptive family during the first six months, two of these contacts must be in the adoptive home with all members of the adoptive family.

Figure: 40 TAC §749.3623

Required Information	Description of Discussion, Assessment, and Documentation Requirements
(1) The age of the adoptive applicants.	All adoptive applicants must be at least 21 years or older. You must include documentation verifying their age.
(2) The marital status of the adoptive applicants including any previous marriages.	If the adoptive applicants are married, you must review and document the marriage license or declaration of marriage record. You must document information about any previous marriages, divorces, or deaths of former spouses.
(3) A history of the adoptive applicants' residence and their citizenship status.	You must document the: (A) Length of time spent at each residence for the past 10 years (street address, city, state); and (B) Citizenship of the adoptive applicants.
(4) The financial status of the adoptive applicants.	Adoptive applicants must be able to meet the child's basic material needs. You must include the family's ability to support a child, employment history, income, expenses, and ability to manage money. You must verify income and medical insurance coverage plans for the child.
(5) The results of criminal history and central registry background checks conducted on the adoptive applicants and any non-client person 14 years of age or older who regularly or frequently stays or works in the home.	Persons applying to adopt children through a child-placing agency, and any non-client person 14 years of age or older who will regularly or frequently be staying or be present at the home while children are being provided care, must obtain a criminal history and central registry background check (See Chapter 745, Subchapter F of this title (relating to Background Checks)). The results of those checks must be documented in the adoptive home record and the home study.
(6) Health status of the adoptive applicants.	Document information about the physical, mental, and emotional status (including substance abuse history) of all persons living in the home in relation to the family's ability to adopt a child and to assume parenting responsibilities. You must observe these persons for any indication of problems and follow up, where indicated, with a professional evaluation. Document the information obtained through your observations or through a physician's statement. Consideration must be given to the health and age of the adoptive applicants. There must be a plan in place to ensure the child will be raised in a stable and consistent environment to adulthood.
(7) Any disabilities of the adoptive applicants.	A person must not be prohibited from adopting a child solely based on a disability. You must evaluate individuals who are disabled in relation to their adjustment to the disability and any limits the disability imposes on the adoptive applicants' ability to care for a child. This evaluation must be documented in the home study.

(8) The adoptive applicants' motivation for adoption.	Discuss and assess the adoptive applicants' motivation for adoption. You must assess the applicants' motivation and its effect on their ability to accept and parent an adopted child.
(9) The fertility of the adoptive applicants.	Discuss and assess information about the couple's fertility. The applicants' fertility is important only in relation to unresolved feelings about their infertility and their ability to accept and parent a child not born to them.
(10) The quality of the adoptive applicants' marital and family relationships.	Describe the quality of marital and family relationships in relation to the family's ability to adopt and parent a child. You must assess the stability of a couple's relationship, the strengths and problems of the relationship, and how those issues will relate to an adopted child. You must assess the quality of the relationships between the prospective adoptive parents and their biological children, living in or out of the home, strengths and problems of those relationships, and how those issues will relate to an adopted child.
(11) The adoptive applicants' feelings about their childhood and parents.	Discuss and assess adoptive applicants' feelings about their childhoods and parents, including any history of abuse or neglect and their resolution of the experiences.
(12) The adoptive applicants' attitude about an adopted child's religion.	Evaluate adoptive applicants on: (A) Their willingness to respect and encourage a child's religious affiliation, if any; (B) Their willingness to provide a child opportunity for religious and spiritual development, if desired; and (C) The health protection they plan to give a child if their religious beliefs prohibit certain medical treatment.
(13) The adoptive applicants' values, feelings, and practices in regard to child care and discipline.	Discuss and assess the applicants' knowledge of child development and their child-care experience. Discuss and assess the ways the applicants were disciplined as children and their reactions to the discipline they received. Discuss and assess the prospective adoptive parents' discipline styles, techniques, and their ability to recognize and respect differences in children and use discipline methods that suit the individual child. If their current discipline methods are different than those that you approve, discuss and assess how they would change their child care practices to conform with your approved methods.

<p>(14) The adoptive applicants' sensitivity to and feelings about children who may have been subjected to abuse and neglect if the agency may place such children with the adoptive parents.</p>	<p>Discuss and assess the adoptive applicants' understanding of the dynamics of child abuse and neglect. Discuss and assess their understanding of how these issues and experiences affect them, their families, and the children they may adopt. Assess the adoptive family applicants' ability to help children who have been abused or neglected. If the adoptive applicants experienced abuse or neglect as a child, assess the handling of those experiences and assess the impact of those experiences on the applicant's ability to help children deal with their own experiences. Evaluate the availability of family and community resources to meet the needs of the children adopted by the family.</p>
<p>(15) The adoptive applicants' sensitivity to, and feelings for children's experiences of separation from, and the loss of, their biological families.</p>	<p>Discuss and assess the adoptive applicants' understanding of the dynamics of separation and loss and the effects of these experiences on children. Discuss and assess their personal experiences with separation and loss and their processing of those experiences. Assess the applicants' acceptance of the process of grief and loss for children and assess their ability to help children through the grieving process.</p>
<p>(16) The adoptive applicants' sensitivity to, and feelings about, a child's biological family.</p>	<p>Discuss the adoptive applicants' feelings about the child's parents, including those parents who abused or neglected the child. Assess their sensitivity and reactions to the birth parents. Discuss and assess their sensitivity to and acceptance of a child's feelings about his parents and assess their ability to help the child deal with those feelings. Discuss and assess the applicants' sensitivity to and acceptance of the child's relationships with his siblings. Discuss and assess their reactions to the possibility of contacts between the child and his biological family in the future.</p>
<p>(17) The attitude of other family and household members regarding adoption.</p>	<p>Discuss and assess the attitudes of other family and household members toward the plan of adoption. Discuss and assess their involvement in the care of children, their attitudes toward the children, and their acceptance of the adoption plan.</p>
<p>(18) The attitude of the adoptive applicants' extended family regarding adoption.</p>	<p>Discuss the extended family's attitude toward adoption and the involvement the family will have with the adopted children. Discuss and assess their involvement in the care of the children, their attitudes toward adoption, and adopted children.</p>
<p>(19) Support systems available to adoptive applicants and adopted children.</p>	<p>Discuss and assess the support systems available to the adoptive family and the support they may receive from these resources.</p>
<p>(20) The language(s) spoken by the adoptive applicants.</p>	<p>Document the language(s) spoken by each adoptive applicant.</p>

<p>(21) The adoptive applicants' expectations of and plans for adoptive children.</p>	<p>Discuss and assess the prospective adoptive parent's expectations of the child and the flexibility of their expectations in relation to the child's actual needs and abilities. Assess their capacities to recognize and emphasize the strengths and achievements of the child and their capacities to adjust their expectations according to the abilities of the child.</p>
<p>(22) Adoptive applicants' ability to work with specific kinds of behaviors and backgrounds.</p>	<p>Discuss and assess the adoptive applicants' ability to work with and/or willingness to accept specific behaviors, backgrounds, special needs and/or disabilities and other characteristics of children.</p>
<p>(23) Background information from other child-placing agencies.</p>	<p>Request and assess the following background information (if provided) from any child-placing agency that previously conducted a foster screening, adoptive home screening, post placement adoptive report, or home study:</p> <ul style="list-style-type: none"> (A) The screening, report, home study, and related documentation; (B) Documentation of supervisory visits and evaluations; (C) Regarding a foster home, any record of deficiencies and their resolutions; and (D) Regarding a foster home, the most current fire and health inspections.

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ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Department of Assistive and Rehabilitative Services

Notice of Public Hearing

Early Childhood Intervention (ECI) provides comprehensive early intervention services to families with infants and toddlers who have developmental delays, have diagnosed physical or mental conditions with a high probability of developmental delay, or exhibit atypical development. Early intervention services are provided as required by the Individuals with Disabilities Education Act (IDEA), Part C as Amended in 2004.

ECI is soliciting public comments on proposed amendments to:

Title 40, Texas Administrative Code Part 2, Chapter 108, Division for Early Childhood Intervention Services;

Title 40, Part 2, Chapter 101, Administrative Rules and Procedures, Subchapter J, Appeals and Hearing Procedures, Division 3, Division for Early Childhood Intervention Services, §101.8011; and

The Texas Department of Assistive and Rehabilitative Services Division of Early Childhood Intervention Standards Manual for Contracted Programs.

The proposed revisions to Title 40, Texas Administrative Code Part 2, Chapter 108, Division for Early Childhood Intervention Services and Title 40, Part 2, Chapter 101, Administrative Rules and Procedures, Subchapter J, Appeals and Hearing Procedures, Division 3, Division for Early Childhood Intervention Services, §101.8011 will be available for viewing in the *Texas Register* at www.sos.state.tx.us/texreg/ and on the Texas Department of Assistive and Rehabilitative Services Web site at www.dars.state.tx.us/ on approximately June 11, 2010.

The proposed revisions to the ECI Standards Manual for Contracted Programs can be viewed on the Texas Department of Assistive and Rehabilitative Services Web site at www.dars.state.tx.us/.

ECI will host public hearings around the state to collect testimony and respond to comments. Public Hearings will be held according to the following schedule, and each of these hearings will be held from 4:00 p.m. to 7:00 p.m.

June 23, 2010

United Way of the Texas Gulf Coast

50 Waugh

Houston, Texas 77007

June 29, 2010

American Foundation of the Blind

11030 Ables Lane

Dallas, Texas 75229

July 8, 2010

Region 20 Education Service Center

1314 Hines Avenue

San Antonio, Texas 78208

Written comments or requests for copies of the draft proposal may be submitted to ECI.policy@dars.state.tx.us or mailed to:

Texas Department of Assistive and Rehabilitative Services, Division for Early Childhood Intervention, 4900 North Lamar Boulevard, Austin, Texas 78751-2399

For persons with disabilities requesting accommodations, please contact DARS Inquiries at 1-800-628-5115 TDD/TTY 1-866-581-9328 preferably five business days prior to the scheduled meeting.

TRD-201002544

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Filed: May 12, 2010

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of April 30, 2010, through May 6, 2010. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for this activity extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on May 12, 2010. The public comment period for this project will close at 5:00 p.m. on June 11, 2010.

FEDERAL AGENCY ACTIONS:

Applicant: Port of Harlingen; Location: The project is located at the Circle X Subdivision, along the Arroyo Colorado, in Cameron County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Paso Real, Texas. Approximate UTM Coordinates in NAD 83 (meters): Zone 14; Easting: 649213.47; Northing: 2913220.78. Project Description: The applicant proposes to install approximately 1,490 linear feet of sheetpile bulkhead with anchored tie-backs to prevent further erosion from the existing bank of the Arroyo Colorado. In addition, the applicant proposes to place approximately 7,100 cubic yards of compacted sand backfill behind the new bulkhead within jurisdictional waters of the United States. The total area of jurisdictional waters to be filled as a result of this project is 0.5 acres. No mitigation is being proposed. CCC Project No.: 10-0109-F1. Type of Application: U.S.A.C.E. permit application #SWG-2010-00246 is being evaluated

under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above, including a copy of the consistency certifications for inspection, may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-201002510

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office

Coastal Coordination Council

Filed: May 11, 2010

Comptroller of Public Accounts

Notice of Availability and Request for Applications

Pursuant to Chapter 403, Sections 403.352 and 403.358, Texas Government Code; Chapter 134, Sections 134.002 and 134.008, Texas Education Code; and House Bill Nos. 3 and 1935, 81st Texas Legislature, Reg. Sess. (2009), the Comptroller of Public Accounts (Comptroller), announces this Notice of Availability and Request for Applications (RFA # N-G-3) and invites applications from qualified and interested nonprofit organizations in order to develop, support, or expand programs that prepare low-income students for careers in high-demand occupations and meet the requirements consistent with the terms of this Request for Applications and notice. The Comptroller reserves the right to award more than one grant under the terms of this RFA. If a grant award is made under the terms of this RFA, the recipient should anticipate an effective date no earlier than September 30, 2010, or as soon thereafter as practical.

Contact: Parties interested in submitting an application should contact Kevin Deiters, Director, Educational Opportunities & Investment Division, Comptroller of Public Accounts, in the Issuing Office at: 111 E. 17th St., Room 510, Austin, Texas 78774, (512) 463-8473. The Comptroller will mail copies of the application and instructions only to those parties specifically requesting a copy. The application and instructions will be available at <http://www.everychanceeverytexan.org/funds/launchpad/> after 10:00 a.m. CZT on Friday, May 21, 2010, and during normal business hours thereafter.

Questions and Non-Mandatory Letters of Intent: All written inquiries, questions, and Non-mandatory Letters of Intent must be received at the above-referenced address not later than 2:00 p.m. (CZT) on Friday, May 28, 2010. Prospective applicants are encouraged to fax non-mandatory Letters of Intent and Questions to (512) 463-4208 to ensure timely receipt. Non-mandatory Letters of Intent must be addressed to Kevin Deiters, Director, Educational Opportunities & Investment Division, Comptroller of Public Accounts, at: 111 E. 17th St., Room 510, Austin, Texas 78774 and be signed by an authorized representative of your entity. On or about Friday, June 4, 2010, the Comptroller expects to post responses to questions at <http://www.everychanceeverytexan.org/funds/launchpad/>. Late Non-mandatory Letters of Intent and Questions will not be considered under any circumstances. Applicants

shall be solely responsible for verifying timely receipt of Non-Mandatory Letters of Intent and Questions in the Issuing Office.

Closing Date: Applications must be delivered in the Issuing Office to the attention of the Director no later than 2:00 p.m. (CZT), on Friday, June 18, 2010. Late applications will not be considered under any circumstances. Applicants shall be solely responsible for verifying the timely receipt of applications in the Issuing Office.

Evaluation Criteria: Applications will be evaluated under the evaluation criteria outlined in the application instructions. The Comptroller will make the final decision. The Comptroller reserves the right to accept or reject any or all applications submitted. The Comptroller is not obligated to make a grant award or to execute a contract on the basis of this notice or RFA. The Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or RFA.

The anticipated schedule of events pertaining to this grant is as follows: Issuance of RFA - May 21, 2010, after 10:00 a.m. CZT; Non-Mandatory Letters of Intent and Questions Due - May 28, 2010, 2:00 p.m. CZT; Official Responses to Questions posted - June 4, 2010; Applications Due - June 18, 2010, 2:00 p.m. CZT; Grant Award/Contract Execution - August 31, 2010, or as soon thereafter as practical; Commencement of Grant Funding - September 30, 2010, or as soon thereafter as practical.

TRD-201002543

William Clay Harris

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: May 12, 2010

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/17/10 - 05/23/10 is 18% for Consumer¹/Agricultural/Commercial²/credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/17/10 - 05/23/10 is 18% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

TRD-201002507

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: May 11, 2010

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity

to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 21, 2010**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 21, 2010**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Applied Fabrication & Field Services, LLC; DOCKET NUMBER: 2009-1794-AIR-E; IDENTIFIER: RN105671200; LOCATION: Rose City, Orange County; TYPE OF FACILITY: surface coating; RULE VIOLATED: 30 Texas Administrative Code (TAC) §116.110(a) and Texas Health and Safety Code (THSC), §382.085(b), by failing to obtain a permit or meet the conditions of a permit by rule; PENALTY: \$1,050; ENFORCEMENT COORDINATOR: Raymond Marlow, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: Clarke Products, Inc.; DOCKET NUMBER: 2010-0435-AIR-E; IDENTIFIER: RN102891108; LOCATION: Grand Prairie, Tarrant County; TYPE OF FACILITY: acrylic products manufacturing; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(1), Federal Operating Permit Number O-02888, General Terms and Conditions, and THSC, §382.085(b), by failing to submit a permit compliance certification; PENALTY: \$1,000; ENFORCEMENT COORDINATOR: Audra Benoit, (409) 898-3838; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: DELUXE AUTO PARTS, L.L.C.; DOCKET NUMBER: 2009-1979-MLM-E; IDENTIFIER: RN103218780; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: automobile salvage yard; RULE VIOLATED: 30 TAC §281.25(a)(4) and Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXR05M4599, Part III Section C.1(c), by failing to maintain a rain gauge on-site or use a rain gauge located in the immediate vicinity of the site and monitor the rain gauge a minimum of once per week and once per day during storm events; 30 TAC §328.56(d)(2) and §328.60(a), by failing to obtain a scrap tire storage registration; and 30 TAC §305.125(1) and TPDES Permit Number TXR05M499, Part III Section E. 2(b) and Part V. Section M.3., by failing to take all reasonable steps to minimize or prevent any discharge or other permit violation that has a reasonable likelihood of adversely affecting human health or the environment; PENALTY: \$6,825; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(4) COMPANY: DRENNAN DAY CUSTOM HOMES, INC.; DOCKET NUMBER: 2010-0147-EAQ-E; IDENTIFIER: RN105865877; LOCATION: Liberty Hill, Williamson County; TYPE OF FACILITY: subdivision development site; RULE VIOLATED: 30 TAC §213.21(d) and §213.23(a)(1), by failing to obtain approval of a contributing zone plan; PENALTY: \$2,500; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(5) COMPANY: Keith Drewery dba Drewery Construction Company, Inc.; DOCKET NUMBER: 2010-0667-WQ-E; IDENTIFIER: RN105883631; LOCATION: Nacogdoches County; TYPE OF FACILITY: storm water; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: \$700; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: DuchMandola, Limited dba Mandola Estate Winery; DOCKET NUMBER: 2010-0032-IWD-E; IDENTIFIER: RN104789094; LOCATION: Hays County; TYPE OF FACILITY: winery; RULE VIOLATED: 30 TAC §305.65 and §305.125(2) and the Code, §26.121, by failing to obtain authorization to operate a wastewater treatment facility; PENALTY: \$4,200; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(7) COMPANY: E.I. du Pont de Nemours and Company; DOCKET NUMBER: 2008-1529-IHW-E; IDENTIFIER: RN100216035; LOCATION: Nederland, Jefferson County; TYPE OF FACILITY: industrial organic chemicals plant; RULE VIOLATED: 30 TAC §335.2(b) and 40 Code of Federal Regulations (CFR) §270.1(c), by failing to prevent the disposal of industrial hazardous waste at an unauthorized facility; and 30 TAC §335.69(a)(4) and 40 CFR §265.31, by failing to maintain and operate the tank in a manner to prevent the release of hazardous waste; PENALTY: \$85,500; Supplemental Environmental Project (SEP) offset amount of \$34,200 applied to Texas Air Quality Research Center at Lamar University - *Flare Speciation and Air Quality Modeling*; ENFORCEMENT COORDINATOR: John Shelton, (512) 239-2563; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(8) COMPANY: Fairbank Food Store, Inc. dba BestCo Food Mart; DOCKET NUMBER: 2010-0279-PST-E; IDENTIFIER: RN101893782; LOCATION: Spring, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.45(c)(3)(A), by failing to properly install an emergency shutoff valve on each pressurized delivery or product line and ensure that it is securely anchored at the base of the dispenser; 30 TAC §115.246(6) and THSC, §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for review; 30 TAC §115.244(3) and THSC, §382.085(b), by failing to conduct monthly inspections of the Stage II vapor recovery system (VRS); and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II vapor space manifolding and dynamic back pressure; PENALTY: \$4,944; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: Fikes Wholesale, Inc. dba CEFCO Convenience Stores; DOCKET NUMBER: 2009-2057-MLM-E; IDENTIFIER: RN101435261; LOCATION: Burleson County; TYPE OF FACILITY: gas station and convenience store with public water supply (PWS); RULE VIOLATED: 30 TAC §290.46(p)(1), by failing to provide a

written notice to the executive director of a change in the ownership of the PWS facility at least 120 days prior to the date the change is to occur; 30 TAC §290.39(e)(1) and (3) and (h)(1), by failing to submit plans and specifications for the PWS facility to the executive director and to receive written approval of plans and specifications prior to beginning construction of a new PWS; 30 TAC §290.43(c)(1) - (5), by failing to provide a ground storage tank that is designed in strict accordance with American Water Works Association standards; 30 TAC §290.45(d)(2)(B)(v) and THSC, §341.0315(c), by failing to provide a minimum pressure tank capacity of 220 gallons at the PWS facility; 30 TAC §290.41(c)(3)(A), by failing to submit a copy of the well completion data to the commission and obtain approval from the executive director prior to placing the well into service; 30 TAC §290.41(c)(3)(O), by failing to provide an intruder-resistant fence around the well site; 30 TAC §290.43(f), by failing to provide an automatic low water level cutoff device on each of the PWS facility's two service pumps that take suction from the storage tank; 30 TAC §290.41(c)(3)(B), by failing to provide a well casing that extends a minimum of 18 inches above the elevation of the finished floor of the pump room or the natural ground surface; 30 TAC §290.41(c)(3)(K), by failing to ensure that the wellhead is sealed with a gasket or sealing compound and that a well casing vent is provided that is properly elevated, faces downward, and has an opening that is covered with a 16-mesh or finer corrosion-resistant screen; 30 TAC §290.46(h), by failing to maintain a supply of calcium hypochlorite on hand for use when making repairs to the PWS facility; 30 TAC §334.8(c)(5)(C), by failing to permanently affix a legible tab, label, or marking to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated underground storage tank (UST); 30 TAC §334.10(b)(1)(B) and (2)(B)(vii) and §334.51(c)(1) and (2)(A), by failing to maintain records regarding spill and overflow controls installed at the facility; 30 TAC §334.72, by failing to report a potential release at the petroleum storage tank facility; and 30 TAC §334.74(3), by failing to file a release determination report with the commission within 45 days after a suspected release has occurred; PENALTY: \$10,115; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(10) COMPANY: Phil Fitzgerald; DOCKET NUMBER: 2009-1932-MLM-E; IDENTIFIER: RN105804603; LOCATION: Moss Hill, Liberty County; TYPE OF FACILITY: property; RULE VIOLATED: 30 TAC §324.6 and 40 CFR §279.22(d), by failing to perform response action upon detection of a release of used oil; and 30 TAC §330.15(c), by failing prevent unauthorized disposal of municipal solid waste; PENALTY: \$1,250; ENFORCEMENT COORDINATOR: Danielle Porras, (512) 239-2602; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: Flint Hills Resources, LP; DOCKET NUMBER: 2010-0233-AIR-E; IDENTIFIER: RN100235266; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §101.20(3) and §116.715(c)(7), Air Permit Number 8803A and PSD-TX-413M9, Special Condition (SC) Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$6,025; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(12) COMPANY: Harris County Municipal Utility District Number 304; DOCKET NUMBER: 2010-0275-MWD-E; IDENTIFIER: RN102097771; LOCATION: Harris County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0013564001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permitted effluent limits for ammonia-nitrogen

(NH₃-N); PENALTY: \$2,240; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(13) COMPANY: High Prairie Water Supply Corporation; DOCKET NUMBER: 2010-0342-PWS-E; IDENTIFIER: RN101234607; LOCATION: Madison County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.109(c)(1)(A), by failing to collect routine distribution coliform samples at active service connections; 30 TAC §290.44(d)(1), by failing to properly install an air release device in such a manner as to preclude the possibility of submergence or possible entrance of contaminants; 30 TAC §290.41(c)(3)(M), by failing to provide a suitable sampling tap on the discharge pipe of each well pump prior to any treatment; 30 TAC §290.46(f)(2), by failing to provide copies of sanitary control easements; and 30 TAC §290.42(e)(4)(B), by failing to properly house gas chlorine cylinders so that they are protected from adverse weather conditions and vandalism; PENALTY: \$822; ENFORCEMENT COORDINATOR: Anna Meier, (512) 239-1370; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(14) COMPANY: Jasper County Water Control and Improvement District Number 1; DOCKET NUMBER: 2010-0136-MWD-E; IDENTIFIER: RN101610673; LOCATION: Jasper County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010808001, Effluent Limitations and Monitoring Requirements Numbers 1, 3, and 6, and the Code, §26.121(a), by failing to comply with permitted effluent limitations for pH, dissolved oxygen, and NH₃-N; PENALTY: \$2,800; ENFORCEMENT COORDINATOR: Carlie Konkol, (512) 239-0735; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(15) COMPANY: Jim Hogg County Water Control & Improvement District Number 2; DOCKET NUMBER: 2010-0165-MWD-E; IDENTIFIER: RN101523512; LOCATION: Jim Hogg County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010799001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a)(1), by failing to meet permitted effluent limitations for NH₃-N and total suspended solids (TSS); PENALTY: \$7,140; ENFORCEMENT COORDINATOR: Evette Alvarado, (512) 239-2573; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(16) COMPANY: KHURAM ENTERPRISES, INC. dba Super Food Country Store; DOCKET NUMBER: 2009-2051-PST-E; IDENTIFIER: RN101199354; LOCATION: Dickinson, Galveston County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.242(1)(C) and (3)(L) and THSC, §382.085(b), by failing to upgrade the Stage II equipment to onboard refueling vapor recovery compatible systems; 30 TAC §115.242(3)(A) and THSC, §382.085(b), by failing to maintain the Stage II VRS in proper operating condition; 30 TAC §115.242(6) and THSC, §382.085(b), by failing to remove equipment from service and tag with out-of-order upon detection of the defects; and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; PENALTY: \$3,173; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(17) COMPANY: City of Leander; DOCKET NUMBER: 2009-1149-WQ-E; IDENTIFIER: RN105763981; LOCATION: Leander, Williamson County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §285.25(a)(4) and 40 CFR §122.26(c), by failing to develop and implement a storm water pollution prevention

plan and obtain authorization to discharge storm water associated with construction activities; PENALTY: \$2,700; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 2800 South IH 35, Austin, Texas 78704-5700, (512) 339-2929.

(18) COMPANY: City of Leander; DOCKET NUMBER: 2009-1206-MWD-E; IDENTIFIER: RN101917722; LOCATION: Leander, Williamson County; TYPE OF FACILITY: wastewater treatment and associated collection system; RULE VIOLATED: 30 TAC §305.125(4) and (5), TPDES Permit Number WQ0012644001, Permit Conditions Number 2.g., and the Code, §26.121, by failing to prevent the unauthorized discharge of wastewater from the collection system; and 30 TAC §305.125(9) and TPDES Permit Number WQ0012644001, Monitoring and Reporting Requirements Number 7.a., by failing to notify the TCEQ within 24 hours of an unauthorized discharge of wastewater; PENALTY: \$13,490; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 2800 South IH 35, Austin, Texas 78704-5700, (512) 339-2929.

(19) COMPANY: Jose Mejia dba Mejia Landscaping; DOCKET NUMBER: 2010-0072-LII-E; IDENTIFIER: RN105845804; LOCATION: Austin, Travis County; TYPE OF FACILITY: landscaping business; RULE VIOLATED: 30 TAC §30.5(b) and §344.30(a)(2) and the Code, §37.003, by failing to refrain from advertising or representing himself to the public as a holder of a license or registration unless he possesses a current license or registration or unless he employs an individual who holds a current license; PENALTY: \$250; ENFORCEMENT COORDINATOR: Philip Aldridge, (512) 239-0855; REGIONAL OFFICE: 2800 South IH 35, Austin, Texas 78704-5700, (512) 339-2929.

(20) COMPANY: NAUSHEEN, INC. dba Sunshine Food Mart; DOCKET NUMBER: 2010-0087-PST-E; IDENTIFIER: RN102365962; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; PENALTY: \$4,907; ENFORCEMENT COORDINATOR: Philip Aldridge, (512) 239-0855; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(21) COMPANY: Petroleum Wholesale, L.P.; DOCKET NUMBER: 2009-1926-PST-E; IDENTIFIER: RN102027695; LOCATION: Houston, Harris County; TYPE OF FACILITY: USTs; RULE VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system; 30 TAC §334.54(b)(2), by failing to maintain all piping, pumps, manways, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; and 30 TAC §334.7(d)(3), by failing to provide an amended registration for any change or additional information regarding the USTs; PENALTY: \$3,675; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(22) COMPANY: Richards Independent School District; DOCKET NUMBER: 2010-0303-MWD-E; IDENTIFIER: RN102027695; LOCATION: Grimes County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0013527001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a)(1), by failing to comply with the permitted effluent limitations for biochemical oxygen demand and TSS; and 30 TAC §305.125(17) and TPDES Permit Number WQ0013527001, Sludge Provisions, by failing to submit the annual sludge report; PENALTY: \$6,360; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE:

6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(23) COMPANY: Sabina Petrochemicals, LLC; DOCKET NUMBER: 2010-0137-AIR-E; IDENTIFIER: RN100216977; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §101.20(2) and §113.110, 40 CFR §63.104(a), and THSC, §382.085(b), by failing to monitor the heat exchange system properly to detect for leaks of hazardous air pollutants; PENALTY: \$32,429; SEP offset amount of \$12,972 applied to Texas Air Quality Research Center at Lamar University - *Flare Speciation and Air Quality Modeling*; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(24) COMPANY: Steinhagen Oil Company, Inc. dba Fastland Number 14; DOCKET NUMBER: 2010-0420-PST-E; IDENTIFIER: RN101908952; LOCATION: Vidor, Orange County; TYPE OF FACILITY: station for fleet refueling and retail sales of gasoline; RULE VIOLATED: 30 TAC §334.42(i), by failing to inspect all sumps, manways, overspill containers, or catchment basins associated with a UST; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II VRS; and 30 TAC §115.242(9) and THSC, §382.085(b), by failing to post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with a Stage II VRS; PENALTY: \$4,554; ENFORCEMENT COORDINATOR: Anna Meier, (512) 239-1370; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(25) COMPANY: City of Streetman; DOCKET NUMBER: 2010-0058-MWD-E; IDENTIFIER: RN101919991; LOCATION: Streetman, Freestone County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010471001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, and the Code, §26.121(a)(1), by failing to comply with permitted effluent limits for total residual chlorine and TSS; PENALTY: \$5,370; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(26) COMPANY: Valero Refining-Texas, L.P.; DOCKET NUMBER: 2010-0098-AIR-E; IDENTIFIER: RN100238385; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §101.20(1) and (3) and §116.715(a), 40 CFR §60.18(c)(2), New Source Review Flexible Permit Number 39142/PSD-TX-822M2, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$10,000; SEP offset amount of \$4,000 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Kirk Schoppe, (512) 239-0489; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(27) COMPANY: Hernan Votero; DOCKET NUMBER: 2010-0221-LII-E; IDENTIFIER: RN105864367; LOCATION: Galveston, Galveston County; TYPE OF FACILITY: landscaping business; RULE VIOLATED: 30 TAC §30.5(a) and §344.30(a)(1), Texas Occupations Code, §1903.251, and the Code, §37.003, by failing to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system; PENALTY: \$1,371; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(28) COMPANY: Wilkinson Jim Iron & Metal, Inc.; DOCKET NUMBER: 2010-0156-AIR-E; IDENTIFIER: RN102293404; LOCATION: Brownsville, Cameron County; TYPE OF FACILITY: scrap metal recycling plant; RULE VIOLATED: 30 TAC §101.4 and §106.4(c) and

THSC, §382.085(a) and (b), by failing to control the discharge of an air contaminant in such concentration and of duration as to adversely affect human health or welfare; PENALTY: \$6,750; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(29) COMPANY: James H. Wood; DOCKET NUMBER: 2010-0143-LII-E; IDENTIFIER: RN103738399; LOCATION: Bedford, Tarrant County; TYPE OF FACILITY: landscape business; RULE VIOLATED: 30 TAC §344.70(b), by failing to include in all forms of written and electronic advertisements for irrigation systems, the irrigator's license number; 30 TAC §344.52(c), by failing to provide the test results of backflow prevention devices; 30 TAC §344.35(d)(2), by failing to obtain all permits and inspections required to install an irrigation system; 30 TAC §344.71(b), by failing to include in all written estimates, proposals, bids, and invoices relating to the installation or repair of an irrigation system(s) the statement: "Irrigation in Texas is regulated by the Texas Commission on Environmental Quality (TCEQ) (MC-178), P.O. Box 13087, Austin, Texas 78711-3087. TCEQ's web site is: www.tceq.state.tx.us"; 30 TAC §30.24(k), by failing to notify the executive director of any change from the previously submitted license application information within ten days from the date the change occurred; and 30 TAC §344.61(c), by failing to provide the irrigation plan with the minimum information; PENALTY: \$1,705; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3100; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(30) COMPANY: ZENU & NILU ENTERPRISE, INC. dba Ella Quick Mart; DOCKET NUMBER: 2009-1919-PST-E; IDENTIFIER: RN100923580; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain the Stage II VRS in proper operating condition; and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II vapor space manifold and dynamic back pressure; PENALTY: \$3,315; ENFORCEMENT COORDINATOR: John Shelton, (512) 239-2563; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201002506

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: May 11, 2010



Enforcement Orders

A default order was entered regarding USA Developers LLC, Docket No. 2008-0992-PST-E on May 3, 2010 assessing \$3,675 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney at (512) 239-0654, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hankamer Ventures, L.P. dba D.J.'s Country Store, Docket No. 2008-1255-PST-E on May 3, 2010 assessing \$9,164 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Yoon Soo Song dba Beltway Grill Texaco, Docket No. 2008-1288-PST-E on May 3, 2010 assessing \$13,839 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gary Shiu, Staff Attorney at (713) 422-8916, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Robert McAdams, Docket No. 2008-1490-PST-E on May 3, 2010 assessing \$46,145 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephanie J. Frazee, Staff Attorney at (512) 239-3693, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Craig Schnieder, Docket No. 2009-0953-LII-E on May 3, 2010 assessing \$250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding John Platis dba South Main Diamond, Docket No. 2009-0963-PST-E on May 3, 2010 assessing \$10,096 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Kemp, Docket No. 2009-0964-MWD-E on May 3, 2010 assessing \$18,690 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dhiraj Ramolia and Kamala Ramolia, Docket No. 2009-0979-MSW-E on May 3, 2010 assessing \$5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Green Cow Compost, LLC, Docket No. 2009-1047-AGR-E on May 3, 2010 assessing \$4,240 in administrative penalties with \$848 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Jecha, P.G., Enforcement Coordinator at (512) 239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nick Corovessis dba Exxon Oyster Creek, Docket No. 2009-1120-PST-E on May 3, 2010 assessing \$5,086 in administrative penalties with \$1,017 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Targa Midstream Services Limited Partnership, Docket No. 2009-1180-AIR-E on May 3, 2010 assessing \$37,720 in administrative penalties with \$7,544 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southwest Shipyard, L.P., Docket No. 2009-1207-IWD-E on May 3, 2010 assessing \$72,385 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BASF Corporation, Docket No. 2009-1277-AIR-E on May 3, 2010 assessing \$6,425 in administrative penalties with \$1,285 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Javeria Enterprises, Inc. dba Best Food Market, Docket No. 2009-1285-PST-E on May 3, 2010 assessing \$2,560 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephanie J. Frazee, Staff Attorney at (512) 239-3693, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fort Worth Excavating, Inc., Docket No. 2009-1289-AIR-E on May 3, 2010 assessing \$5,160 in administrative penalties with \$1,032 deferred.

Information concerning any aspect of this order may be obtained by contacting Kirk Schoppe, Enforcement Coordinator at (512) 239-0489, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dale Risinger dba Loma Linda Water Supply, Docket No. 2009-1301-PWS-E on May 3, 2010 assessing \$1,990 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Amanda Henry, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Pedro Chavarria dba Pedro's Landscaping and Irrigation, Docket No. 2009-1375-LII-E on May 3, 2010 assessing \$250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sharesa Y. Alexander, Staff Attorney at (512) 239-3503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Jaime Garcia, Docket No. 2009-1439-MSW-E on May 3, 2010 assessing \$7,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TLALOC Outdoors, Inc. dba Cripple Creek Restaurant, Docket No. 2009-1449-PWS-E on May 3, 2010 assessing \$446 in administrative penalties with \$89 deferred.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2558, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Big Spring, Docket No. 2009-1457-SLG-E on May 3, 2010 assessing \$7,290 in administrative penalties with \$1,458 deferred.

Information concerning any aspect of this order may be obtained by contacting Carlie Konkol, Enforcement Coordinator at (512) 239-0735, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding New Star Holdings, L.L.C. dba Island Mobil, Docket No. 2009-1462-PST-E on May 3, 2010 assessing \$2,344 in administrative penalties with \$468 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lokey Mata dba Lokey's Body Shop, Docket No. 2009-1470-UIC-E on May 3, 2010 assessing \$1,000 in administrative penalties with \$200 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Valero Refining-Texas, L.P., Docket No. 2009-1487-AIR-E on May 3, 2010 assessing \$23,330 in administrative penalties with \$4,666 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Galveston, Docket No. 2009-1488-SLG-E on May 3, 2010 assessing \$5,400 in administrative penalties with \$1,080 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Manuel Garcia III dba Last Chance Drive In, Docket No. 2009-1521-PST-E on May 3, 2010 assessing \$625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Marshall Coover, Staff Attorney at (512) 239-3400 Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Calvin Sanders, Docket No. 2009-1526-MSW-E on May 3, 2010 assessing \$2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Marshall Coover, Staff Attorney at (512) 239-3400 Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MID-TEX PROPERTIES LP, Docket No. 2009-1528-WQ-E on May 3, 2010 assessing \$9,100 in administrative penalties with \$1,820 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rhodia Inc, Docket No. 2009-1540-AIR-E on May 3, 2010 assessing \$6,007 in administrative penalties with \$1,201 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Excell Disposal Waste Containers, Inc., Docket No. 2009-1554-MSW-E on May 3, 2010 assessing \$900 in administrative penalties with \$180 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ROSEMIN ENTERPRISES, INC. dba Express Store, Docket No. 2009-1558-PST-E on May 3, 2010 assessing \$4,222 in administrative penalties with \$844 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Josh Gafford, Docket No. 2009-1563-AIR-E on May 3, 2010 assessing \$900 in administrative penalties with \$180 deferred.

Information concerning any aspect of this order may be obtained by contacting Kirk Schoppe, Enforcement Coordinator at (512) 239-0489, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding US Department of the Army, Docket No. 2009-1565-AIR-E on May 3, 2010 assessing \$1,000 in administrative penalties with \$200 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JERRY RESENDEZ ENTERPRISES, INC., Docket No. 2009-1577-WQ-E on May 3, 2010 assessing \$15,200 in administrative penalties with \$3,040 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KM Liquids Terminals LLC, Docket No. 2009-1622-AIR-E on May 3, 2010 assessing \$12,000 in administrative penalties with \$2,400 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-3420, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Occidental Permian Ltd., Docket No. 2009-1625-AIR-E on May 3, 2010 assessing \$9,000 in administrative penalties with \$1,800 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond Marlow, P.G., Enforcement Coordinator at (409) 899-8785, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jeramie C. Kenney dba Kenney Turf and Irrigation, Docket No. 2009-1626-LII-E on May 3, 2010 assessing \$712 in administrative penalties with \$142 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Joseph Little and Caverns Inn Restaurant & Motel, Inc. dba Caverns Inn, Docket No. 2009-1627-PWS-E on May 3, 2010 assessing \$4,401 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jordan Jones, Enforcement Coordinator at (512) 239-2569, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Jarvis Adventure, Inc., Docket No. 2009-1646-PWS-E on May 3, 2010 assessing \$6,730 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Thomas Jecha, P.G., Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Adan Marquez and Melinda Marquez, Docket No. 2009-1664-PST-E on May 3, 2010 assessing \$3,675 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney at (512) 239-0635, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Olympia C-Store Management LLC dba Mobil 360, Docket No. 2009-1672-PST-E on May 3, 2010 assessing \$5,536 in administrative penalties with \$1,107 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Austwell, Docket No. 2009-1683-PWS-E on May 3, 2010 assessing \$267 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Marshall Coover, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding All Beverage Corporation dba Marsh Beer & Wine, Docket No. 2009-1684-PST-E on May 3, 2010 assessing \$22,455 in administrative penalties with \$4,491 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Houston Sky Business, Inc. dba Texan Food Mart, Docket No. 2009-1692-PST-E on May 3, 2010 assessing \$5,096 in administrative penalties with \$1,019 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Darrell Breazeale, Docket No. 2009-1698-WOC-E on May 3, 2010 assessing \$368 in administrative penalties with \$73 deferred.

Information concerning any aspect of this order may be obtained by contacting Amanda Henry, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Paul Schenk, Jr. dba Paul Schenk Jr. Dairy, Docket No. 2009-1699-AGR-E on May 3, 2010 assessing \$1,050 in administrative penalties with \$210 deferred.

Information concerning any aspect of this order may be obtained by contacting Carlie Konkol, Enforcement Coordinator at (512) 239-0735 Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Alberto Garcia, Docket No. 2009-1701-LII-E on May 3, 2010 assessing \$250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dobbs Coating Systems, Inc., Docket No. 2009-1703-AIR-E on May 3, 2010 assessing \$2,000 in administrative penalties with \$400 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Senna Hills Municipal Utility District and Senna Hills, Ltd., Docket No. 2009-1707-MWD-E on May 3, 2010 assessing \$2,675 in administrative penalties with \$535 deferred.

Information concerning any aspect of this order may be obtained by contacting Jordan Jones, Enforcement Coordinator at (512) 239-2569, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ZAZ, INC dba Quick & Easy, Docket No. 2009-1713-PST-E on May 3, 2010 assessing \$4,842 in administrative penalties with \$968 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Austin, Docket No. 2009-1734-PWS-E on May 3, 2010 assessing \$570 in administrative penalties with \$114 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Evonik Degussa Corporation, Docket No. 2009-1747-IWD-E on May 3, 2010 assessing \$17,380 in administrative penalties with \$3,476 deferred.

Information concerning any aspect of this order may be obtained by contacting Jordan Jones, Enforcement Coordinator at (512) 239-2569, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding OLMOS CONSTRUCTION, INC., Docket No. 2009-1749-PST-E on May 3, 2010 assessing \$3,346 in administrative penalties with \$669 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Robert Nelson, Jr., Docket No. 2009-1755-PST-E on May 3, 2010 assessing \$2,625 in administrative penalties with \$525 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southern Union Pipeline, Ltd., Docket No. 2009-1760-AIR-E on May 3, 2010 assessing \$2,050 in administrative penalties with \$410 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Devon Gas Services, L.P., Docket No. 2009-1765-AIR-E on May 3, 2010 assessing \$750 in administrative penalties with \$150 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CIRCLE K STORES INC dba Circle K Stores 2700020, Docket No. 2009-1779-PST-E on May 3, 2010 assessing \$8,971 in administrative penalties with \$1,794 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Vopak Logistics Services USA Inc., Docket No. 2009-1784-AIR-E on May 3, 2010 assessing \$3,150 in administrative penalties with \$630 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond Marlow, P.G., Enforcement Coordinator at (409) 899-8785, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Owens Corning Insulating Systems, LLC, Docket No. 2009-1788-IWD-E on May 3, 2010 assessing \$19,054 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gentek Investments, Inc. dba Rowdys, Docket No. 2009-1802-PST-E on May 3, 2010 assessing \$3,579 in administrative penalties with \$715 deferred.

Information concerning any aspect of this order may be obtained by contacting Philip Aldridge, Enforcement Coordinator at (512) 239-0855, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HP Enterprise Services, LLC [formerly Electronic Data Systems, LLC] dba Las Colinas Office Building, Docket No. 2009-1809-PST-E on May 3, 2010 assessing \$1,750 in administrative penalties with \$350 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Krum, Docket No. 2009-1815-MWD-E on May 3, 2010 assessing \$4,860 in administrative penalties with \$972 deferred.

Information concerning any aspect of this order may be obtained by contacting Carlie Konkol, Enforcement Coordinator at (512) 239-0735, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Alamo, Docket No. 2009-1828-MSW-E on May 3, 2010 assessing \$2,125 in administrative penalties with \$425 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NEW MART CORPORATION dba J & C Mobil, Docket No. 2009-1879-PST-E on May 3, 2010 assessing \$5,168 in administrative penalties with \$1,033 deferred.

Information concerning any aspect of this order may be obtained by contacting Philip Aldridge, Enforcement Coordinator at (512) 239-0855, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Joe F. Slater, Docket No. 2009-1884-LII-E on May 3, 2010 assessing \$1,093 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephanie Frazee, Staff Attorney at (512) 239-3693, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E. I. du Pont de Nemours and Company, Docket No. 2009-1887-AIR-E on May 3, 2010 assessing \$6,275 in administrative penalties with \$1,255 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pilot Travel Centers LLC dba Pilot Travel Center 375, Docket No. 2009-1914-PST-E on May 3, 2010 assessing \$7,096 in administrative penalties with \$1,419 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hilco United Services, Inc., Docket No. 2009-1927-PWS-E on May 3, 2010 assessing \$2,300 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Central Bosque Water Supply Corporation, Docket No. 2009-2014-PWS-E on May 3, 2010 assessing \$129 in administrative penalties with \$25 deferred.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Columbia-Brazoria Independent School District, Docket No. 2009-2027-MWD-E on May 3, 2010 assessing \$3,140 in administrative penalties with \$628 deferred.

Information concerning any aspect of this order may be obtained by contacting Evette Alvarado, Enforcement Coordinator at (512) 239-2573, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding T. J. Lambrecht Construction, Inc., Docket No. 2010-0014-WR-E on May 3, 2010 assessing \$350 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Field Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding City of Leander, Docket No. 2010-0016-WQ-E on May 3, 2010 assessing \$700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Field Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Texas Energy Operations, LC, Docket No. 2010-0018-WR-E on May 3, 2010 assessing \$350 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Field Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201002553

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 12, 2010



Notice of Extension of Public Comment Period for Proposed Revisions to 30 TAC Chapters 116 and 330 and to the State Implementation Plan

In the April 16, 2010, issue of the *Texas Register* (35 TexReg 2978), the Texas Commission on Environmental Quality (commission) published new and amended sections in 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, and Chapter 330, Municipal Solid Waste. The preamble to the proposal stated that

the commission must receive all written comments by May 17, 2010. **The commission has extended the deadline for receipt of written comments to June 7, 2010.**

Comments should be mailed to Devon Ryan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.state.tx.us/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2010-006-116-PR. Copies of the proposed rule-making can be obtained from the commission's Web site at http://www.tceq.state.tx.us/nav/rules/propose_adopt.html. For further information or questions concerning this proposal, please contact Mr. Beecher Cameron, Air Permits Division, at (512) 239-1495.

TRD-201002500

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: May 10, 2010



Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 21, 2010**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 21, 2010**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Albemarle Corporation; DOCKET NUMBER: 2009-0583-AIR-E; TCEQ ID NUMBER: RN100211523; LOCATION: 13000 Baypark Road, Pasadena, Harris County; TYPE OF FACILITY: chemical plant; RULES VIOLATED: 30 TAC §101.20(1) and §122.143(4), 40 Code of Federal Regulations (CFR) §60.49b(w), Texas Health and Safety Code (THSC), §382.085(b), and Federal

Operating Permit Number O-01559, Special Terms and Conditions Number 1A, by failing to submit the semi-annual reports required by 40 CFR Subpart Db for steam generating units Emission Point Number VSP-9; PENALTY: \$7,200; Supplemental Environmental Project offset amount of \$3,600 applied to Houston Regional Monitoring Corporation (HRMC) - Houston Area Air Monitoring; STAFF ATTORNEY: Anna Treadwell, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: J.W. McQuerry dba McQuerry Properties, and his heir, Danna Tramel dba McQuerry Properties; DOCKET NUMBER: 2007-0715-MSW-E; TCEQ ID NUMBER: RN104872528; LOCATION: 2425 and 2355 Decatur Avenue, Fort Worth, Tarrant County; TYPE OF FACILITY: used oil and used oil filter processing, generation, collection, and storage facility; RULES VIOLATED: 30 TAC §324.12 and 40 CFR §279.54(b) and (g), by failing to respond to the release of used oil upon detection and to keep containers storing used oil in good condition and to prevent them from leaking; 30 TAC §324.12 and 40 CFR §279.54(c) and (e), by failing to have a secondary containment system for a facility that processes used oil; and 30 TAC §324.12(3) and 40 CFR §279.55(a), by failing to prepare an analysis plan; PENALTY: \$10,250; STAFF ATTORNEY: Barham A. Richard, Litigation Division, MC 175, (512) 239-0107; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Mukhi Petroleum LLC dba C Store Sub Express; DOCKET NUMBER: 2009-1316-PST-E; TCEQ ID NUMBER: RN102014354; LOCATION: 3201 North Beach Street, Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months and the vapor space manifold and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever comes first; PENALTY: \$2,163; STAFF ATTORNEY: Xavier Guerra, Litigation Division, R-13, (210) 403-4016; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: M.Y.M. Investment, Inc. dba Kwik & Save Food Store; DOCKET NUMBER: 2008-0532-PST-E; TCEQ ID NUMBER: RN102394160; LOCATION: 5602 Allendale Road, Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §330.50(b) and (2)(A)(i)(III) and TWC, §26.3475(a), by failing to provide proper release detection for the pressurized piping associated with the underground storage tanks (USTs); and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II vapor recovery system at least once every 12 months; PENALTY: \$5,364; STAFF ATTORNEY: Xavier Guerra, Litigation Division, R-13, (210) 403-4016; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: Stratus Interests, Inc.; DOCKET NUMBER: 2009-1353-PWS-E; TCEQ ID NUMBER: RN101278356; LOCATION: 30300 Interstate Highway 10 West, Boerne, Kendall County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and THSC, §341.033(d), by failing to collect routine distribution water samples for coliform analysis for the months of November 2008 and January - May 2009; PENALTY: \$1,748; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, R-12, (713) 422-8914; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.



Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 21, 2010**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 21, 2010**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: David Montanez dba David Montanez Calf Farm; DOCKET NUMBER: 2009-1741-AGR-E; TCEQ ID NUMBER: RN105006829; LOCATION: 3850 County Road (CR) 382, Carlton, Erath County; TYPE OF FACILITY: calf raising operation; RULES VIOLATED: 30 TAC §321.47(d)(3) and TCEQ Agreed Order (AO) Docket Number 2008-0732-AGR-E, Ordering Provision 2.d., by failing to provide certification from a licensed Texas professional engineer that the design and construction of all retention control structures are in accordance with the technical standards developed by the Natural Resource Conservation Service; and 30 TAC §321.33(d) and TCEQ AO Docket Number 2008-0732-AGR-E, Ordering Provision 2.a., by failing to obtain authorization to expand an existing animal feeding operation general permit prior to meeting the definition of a concentrated animal feeding operation; PENALTY: \$11,250; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: George Santos; DOCKET NUMBER: 2009-1595-LII-E; TCEQ ID NUMBER: RN105797856; LOCATION: 10618 Odyssey Court, Houston, Harris County; TYPE OF FACILITY: landscape irrigation business; RULES VIOLATED: 30 TAC §30.5(b) and §344.30(a)(2), TWC, §37.003 and Texas Occupations Code, §1903.251, by failing to refrain from advertising or representing himself to the public as a person who can perform services for which a license or registration is required when not possessing a current license or registration; and 30 TAC §§344.23, 344.30, and 344.34(b), TWC, §37.003 and Texas Occupations Code, §1903.251, by failing to refrain from using false, misleading, or deceptive practices to bid, advertise, sell, install, maintain, alter, or service irrigation systems and by failing to refrain from using or attempting to use the license number of a licensed irrigator; PENALTY: \$750; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: M & F, Inc. dba Marathon Phillips; DOCKET NUMBER: 2009-1393-PST-E; TCEQ ID NUMBER: RN102838844; LOCATION: 6345 Windswept Lane, Houston, Harris County; TYPE OF FACILITY: two underground storage tanks (USTs) and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code (THSC), §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II vapor space manifolding and dynamic back pressure at least once every 36 months and upon major system replacement or modification; and 30 TAC §115.246(4) and (6) and THSC, §382.085(b), by failing to maintain Stage II records at the station and make them available for inspection upon request by agency personnel; PENALTY: \$4,696; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: Salvador Anguiano; DOCKET NUMBER: 2009-1461-AGR-E; TCEQ ID NUMBER: RN105139117; LOCATION: 1996 North Farm-to-Market Road 219, near Dublin, Erath County; TYPE OF FACILITY: calf raising operation; RULES VIOLATED: TWC, §26.121(a) and 30 TAC §321.47(b)(3)(A), by failing to ensure that manure, litter, or wastewater generated on site is stored, beneficially used, or disposed of in a manner that would protect surface water and groundwater quality; 30 TAC §321.33(d), by failing to obtain authorization to expand an existing animal feeding operation prior to meeting the definition of a concentrated animal feeding operation through an individual water quality permit; PENALTY: \$2,200; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Wazir A. Dhanani; DOCKET NUMBER: 2009-1902-PST-E; TCEQ ID NUMBER: RN101433373; LOCATION: 4200 South University Parks Drive, Waco, McLennan County; TYPE OF FACILITY: four USTs; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days from the date of occurrence of the change; and 30 TAC §334.22(a) and TWC, §5.702, by failing to pay outstanding UST fees and associated late fees for TCEQ Financial Account Numbers 0051015U and 0051285U for Fiscal Years 1998 - 2001; PENALTY: \$3,675; STAFF ATTORNEY: Marshall Coover, Litigation Division, MC 175, (512) 239-0620;

REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(6) COMPANY: Wesley F. Luna and Tammy Jenkins; DOCKET NUMBER: 2009-0456-PST-E; TCEQ ID NUMBER: RN102272986; LOCATION: 3916 Valley Ridge Drive, Granbury, Hood County; TYPE OF FACILITY: two inactive USTs; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and 30 TAC §334.54(b)(2), by failing to maintain all piping, pumps, manways and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; PENALTY: \$2,625; STAFF ATTORNEY: Xavier Guerra, Litigation Division, R-13, (210) 403-4016; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Will Dylan Investments, Inc.; DOCKET NUMBER: 2009-1661-MSW-E; TCEQ ID NUMBER: RN102854478; LOCATION: 7771 Kiely Road, Canutillo, El Paso County; TYPE OF FACILITY: property; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: \$1,300; STAFF ATTORNEY: Barham A. Richard, Litigation Division, MC 175, (512) 239-0107; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

TRD-201002513

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: May 11, 2010



Notice of Water Quality Applications

The following notice was issued on April 30, 2010 through May 7, 2010.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

THE PREMCOR REFINING GROUP INC. which operates the Valero Port Arthur Refinery, has applied for a major amendment to TPDES Permit No. WQ0000309000 to authorize an increase in effluent limits at Outfall 001 due to a production increase; removal of concentration effluent limits for biochemical oxygen demand, chemical oxygen demand, oil and grease, ammonia nitrogen, sulfides, phenolics, total chromium, hexavalent chromium, copper, cyanide, lead and mercury at Outfall 001; reduction of the monitoring frequency for biochemical oxygen demand, total suspended solids, chemical oxygen demand, oil and grease, ammonia nitrogen, sulfides, phenolics from once per day to three times per week at Outfall 001; reduction of the monitoring frequency for total copper and total lead from three times per week to once per quarter at Outfall 001; removal of effluent limits and monitoring requirements for cyanide and total mercury at Outfall 001; removal of monitoring and reporting requirements for total silver at Outfall 001; the addition of the discharge of utility wastewater via Outfall 001; define utility wastewater in the Other Requirements; the addition

of the discharge of concrete washout water as an allowable discharge with stormwater associated with construction activities as a modification of Item 9 of the Other Requirements; revision of the language on Item 10 of the Other Requirements regarding the Aquashade and Azure Blue. The current permit authorizes the discharge of process wastewater, cooling tower blowdown, boiler blowdown, ballast water, domestic wastewater, remediation wastewater, hydrostatic test water, storm water, and storm water from construction activities at a daily average flow not to exceed 33,000,000 gallons per day via Outfall 001; process wastewater, cooling tower blowdown, boiler blowdown, ballast water, domestic wastewater, remediation wastewater, hydrostatic test water, storm water, and storm water from construction activities on a flow variable basis via Outfall 101; hydrostatic test water, storm water, and storm water from construction activities on an intermittent and flow variable basis via Outfalls 004, 005A, 005B, 005C, 006, 007 and 008; and storm water and storm water runoff associated with industrial activities from a concrete batch plant on an intermittent and flow variable basis via Outfall 009. The facility is located approximately 0.5 mile north of the Martin Luther King Bridge on State Highway 82, southwest of the City of Port Arthur, Jefferson County, Texas 77640. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the action is consistent with the applicable CMP goals and policies.

CITY OF ROSENBERG has applied for a renewal of TPDES Permit No. WQ0010607002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,500,000 gallons per day. The facility is located at 3650 North Fairgrounds Road, 2,000 feet southwest of the intersection of U.S. Highway 59 and State Highway 36, south of the City of Rosenberg in Fort Bend County, Texas 77471.

MAVERICK COUNTY has applied for a renewal of TCEQ Permit No. WQ0013716001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day via surface irrigation of 60 acres of non-public access land which will consist primarily of Coastal Bermuda Grass, alfalfa and other ground cover. This permit will not authorize a discharge of pollutants into waters in the State. The domestic wastewater treatment facility is located approximately 4,300 feet southeast of the intersection of U.S. Highway 277 and State Highway 131 in Maverick County, Texas 78852. The disposal site is located approximately 4,500 feet southeast of the intersection of U.S. Highway 277 and State Highway 131 in Maverick County, Texas 78852.

NECHES RIVER TREATMENT CORPORATION AND LOWER NECHES VALLEY AUTHORITY which operates North Regional Treatment Plant have applied for a minor amendment without renewal to TPDES Permit No. WQ0001727000 to remove Outfall 002 upon effective transfer of Outfall 002 to TPDES Permit No. WQ0003426000; and to add minimum analytical level (MAL) of 5 mg/L for Oil and Grease in the Other Requirement section of the permit. The existing permit authorizes the discharge of treated industrial wastewater and treated domestic wastewaters from participating industries at a daily average flow not to exceed 21,000,000 gallons per day via Outfall 001; and raw water intake treatment system clarifier underflow at a daily average flow not to exceed 1,000,000 gallons per day via Outfall 002. The facility is located at 2655 Gulf States Road, approximately 2.5 miles north of the intersection of State Route 347 and U.S. Route 96 and approximately 3 miles southeast of the Interstate Highway 10 Bridge spanning the Neches River outside the eastern boundary of the city limits of Beaumont, Jefferson County, Texas 77701.

CEMEX CEMENT OF TEXAS LP which operates Balcones Cement Plant, has applied to for a major amendment with renewal to TPDES Permit No. WQ0002179000 to authorize discharge of storm water from two new areas of the facility via Outfall 001; to authorize reuse of wastewater for on-site landscaping and irrigation; and to authorize the discharge of truck wash water from CEMEX Construction Materials, Inc. Quarry via Outfall 001. The current permit authorizes the discharge of wash water from the plant process and truck wash areas and storm water from plant and material/product storage areas via Outfall 001. The facility is located at 2580 Wald Road, at the intersection of Wald Road and Solms Road, approximately 0.75 mile north of Interstate Highway 35, and approximately 1.8 miles southwest of the City of New Braunfels, Comal County, Texas 78132.

JOSEPH WILSON OSINGA, JENNIFER SHEREE OSINGA, BERT MARCEL VELSEN and HEIDI VELSEN has applied for a Major Amendment of, and conversion to an individual permit, Texas Pollutant Discharge Elimination System (TPDES) Registration No. WQ0003682000, for a Concentrated Animal Feeding Operation (CAFO), to authorize the applicant to expand an existing dairy cattle facility from 850 head to a maximum capacity of 1,600 head of which 700 head are milking cows and authorize an additional Retention Control Structure. The facility is located on the east side of US Highway 281, approximately 10 miles south of the city limits's sign of Stephenville in Erath County, Texas.

THE CITY OF BAYTOWN has applied for a renewal of TPDES Permit No. WQ0010395008, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 8,000,000 gallons per day. The facility is located at the crossing of Interstate Highway 10 and Spring Gully, due south of Interstate Highway 10 and on the east side of Spring Gully within the City of Baytown in Harris County, Texas 77521.

SAN JACINTO RIVER AUTHORITY has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0011658002, to authorize the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 633,600 gallons per day. The facility will be located at 1577 Damsite Road, Conroe, in Montgomery County, Texas 77304.

CITY OF CALLISBURG has applied for a renewal of TPDES Permit No. WQ0011840001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 120,000 gallons per day. The facility is located adjacent to and west of Farm-to-Market Road 678, approximately 3,000 feet southeast of the intersection of Farm-to-Market Road 678 and Farm-to-Market Road 2896 in Cooke County, Texas 76240.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 387 has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014347001 to authorize an additional interim phase not to exceed 96,000 gallons per day. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,000,000 gallons per day. The facility is located at 25810 1/2 Gosling Road near the City of Spring in Harris County, Texas 77389.

WALLACE ALLEN RAYNOR has applied for a renewal of TPDES Permit No. WQ0014438001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The facility is located approximately 260 feet west of Farm-to-Market Road 3322 and approximately 5,000 feet north of the intersection of Farm-to-Market Road 3322 and State Highway 31, at the end of Rosedale Road, northwest of Kilgore in Gregg County, Texas 75662.

BHAKTI VISHRAM KUTEER LLC has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014818001 to authorize the addition of an interim phase with a daily average flow not to exceed 25,000 gallons per day. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 49,000 gallons per day. The facility will be located approximately 1,320 feet southeast from the intersection of Farm-to-Market Road 2759 and Farm-to-Market Road 762, in the City of Rosenberg in Fort Bend County, Texas 77471.

WESTON MUNICIPAL UTILITY DISTRICT has applied for a new permit, proposed TPDES Permit No. WQ0014956001, to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 2,100,000 gallons per day. The facility will be located 1,900 feet north and 1,100 feet east of the intersection of Interstate Highway 10 and Mason Road in Harris County, Texas 77449.

HARRIS COUNTY IMPROVEMENT DISTRICT NO. 18 has applied for a new permit, proposed TPDES Permit No. WQ0014964001, to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 1,185,000 gallons per day. The facility will be located on the west side of Interstate Highway 45 North, approximately 3,950 feet north of the intersection of Interstate Highway 45 North and Spring Stuebner Road in Harris County, Texas 77389.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-201002552

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 12, 2010



Public Notice of the Implementation of Contingency Rules for Collin, Dallas, Denton, and Tarrant Counties

Purpose of Notice: The Texas Commission on Environmental Quality (TCEQ) is publishing this notice to inform the public and affected regulated entities that compliance with the following two contingency rules will be required in the Dallas-Fort Worth (DFW) area: 30 Texas Administrative Code (TAC) Chapter 115, Subchapter F, Division 3, relating to Degassing or Cleaning of Stationary, Marine, and Transport Vessels; and 30 TAC Chapter 115, Subchapter F, Division 4, relating to Petroleum Dry Cleaning Systems.

Background: The DFW area contingency rules in Chapter 115, Subchapter F, Divisions 3 and 4 were adopted by the Texas Natural Resource Conservation Commission, a predecessor agency to the TCEQ, on April 27, 1994, and published in the May 13, 1994, issue of the *Texas Register* (19 TexReg 3703). The contingency rules in Chapter 115, Subchapter F, Divisions 3 and 4 are being implemented as a result of the DFW area failing to attain the 1997 eight-hour ozone National Ambient Air Quality Standard by the June 15, 2010, attainment deadline based on monitoring data. The ambient ozone monitoring data from 2007, 2008, and 2009, which have been validated by the TCEQ staff, indicate that the DFW area has an ozone design value of 86 parts per billion (ppb), thereby exceeding the 1997 eight-hour ozone standard of 0.08 parts per million (which is met when the design value is 84 ppb or lower).

Who is Affected?: This notice affects owners or operators of stationary storage tanks and transport vessels in Collin, Dallas, Denton, and Tar-

rant Counties that are subject to Chapter 115, Subchapter F, Division 3; this includes owners or operators of stationary storage tanks greater than or equal to one million gallons and transport vessels greater than or equal to 8,000 gallons that are storing volatile organic compounds (VOC) with a vapor space partial pressure less than 0.5 pounds per square inch absolute. This notice also affects owners or operators of petroleum dry cleaning facilities in Collin, Dallas, Denton, and Tarrant Counties that are subject to Chapter 115, Subchapter F, Division 4.

What is Required?: Affected owners or operators are required to comply with the specific VOC emission specifications, control requirements, monitoring and testing requirements, and recordkeeping requirements in Chapter 115, Subchapter F, Divisions 3 and 4.

What is the Compliance Date?: Affected owners or operators are required to comply as soon as practicable, but no later than one year after the publication date of this notice.

For additional information regarding this notice, please contact Lindley Anderson of the Air Quality Planning Section at (512) 239-0003.

TRD-201002505

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: May 11, 2010



Office of the Governor

Correction of Error

The Office of the Governor, Criminal Justice Division, published a notice titled "Request for Grant Applications for the Crime Stoppers Assistance Fund Program" in the April 23, 2010, issue of the *Texas Register* (35 TexReg 3314), TRD-201001797.

There was an error in the closing date for receipt of applications.

The original text published on page 3315 in the April 23 issue of the *Texas Register* read as follows.

"Closing Date for Receipt of Applications: All applications must be certified via CJD's eGrants website on or before June 18, 2010."

As corrected, the text should read as follows:

"Closing Date for Receipt of Applications: All applications must be certified via CJD's eGrants website on or before July 6, 2010."

TRD-201002569



Texas Health and Human Services Commission

Notice of Award of a Major Consulting Contract

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Health and Human Services Commission (HHSC) announces the award of contract 529-06-0425-00042 to **Health Management Associates** an entity with a principal place of business 120 North Washington Square, Suite 705, Lansing, Michigan 48933. The contractor shall develop two deliverables, the State Medicaid Health Information Technology Plan (SMHP) and the Implementation Advance Planning Document (IAPD). As required by the Centers for Medicare and Medicaid Services (CMS) these two documents outline HHSC's plans for the incentive payments to Medicaid providers who adopt the meaningful use of Electronic Health Records (EHR's) and the strategic plan for HHSC to promote health care quality and the exchange of health information under Medicaid.

The total value of the contract with Health Management Associates is \$641,010. The contract was executed on April 29, 2010 and will expire on August 31, 2010, unless extended or terminated sooner by the parties.

TRD-201002474

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: May 6, 2010



Public Notice

The Texas Health and Human Services Commission announces its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed effective date for this amendment is September 1, 2010.

The proposed amendment will add the non-state operated Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR) to the Attendant Compensation Rate Enhancement effective September 1, 2010.

The proposed addition of ICF/MR to the Attendant Compensation Rate Enhancement is estimated to result in an aggregate annual expenditure of \$280,750 for the remainder of FFY 2010, with approximately \$199,164 in federal funds and approximately \$81,586 in state general revenue. For FFY 2011, the proposed addition of ICF/MR to the Attendant Compensation Rate Enhancement is estimated to result in an aggregate expenditure of \$3,368,995, with approximately \$2,127,689 in federal funds and approximately \$1,241,306 in state general revenue.

To obtain copies of the proposed amendment or to submit written comments, interested parties may contact Pam McDonald by mail at Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, Mail Code H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1373; by facsimile at (512) 491-1998; or by e-mail at pam.mcdonald@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201002454

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: May 6, 2010



Texas Department of Insurance

Company Licensing

Application for admission in the State of Texas by CAMPMED CASUALTY & INDEMNITY COMPANY, INC. OF MARYLAND, a foreign fire and casualty company. The home office is in Brunswick, Maryland.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-201002548

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: May 12, 2010

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Texas Department of Insurance, Division of Workers' Compensation

Correction of Error

The Texas Department of Insurance, Division of Workers' Compensation proposed amendments to Chapter 141, concerning dispute resolution--benefit review conference. The notice, published in the May 7, 2010, issue of the *Texas Register* (35 TexReg 3623), contained errors in the preamble.

On page 3626 the deadline for public comments was incorrectly noted as May 7. The deadline is June 7, 2010. As corrected the paragraph should read as follows.

"To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. CST on Monday, June 7, 2010. Comments may be submitted via the internet through the Division's internet website at <http://www.tdi.state.tx.state.tx.us/wc/rules/proposedrules/index.html>, by email at rulecomments@tdi.state.tx.us or by mailing or delivering your comments to Maria Jimenez, Texas Department of Insurance, Division of Workers' Compensation, Workers' Compensation Counsel, MS-4D, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645."

The statutory authority paragraph on page 3627 contained several typographical errors. As corrected the paragraph should read as follows.

"The following statutes are affected by this proposal: §§141.1, 141.2, 141.4 and 141.7, §§401.024, 402.00111, 402.00116, 402.00128, 402.061, 409.009, 410.007,410.021, 410.023, 410.025, 410.026, 410.027, 410.029, 410.031,410.034, 410.151, 410.154, 415.001, 415.002, 415.003, 415.021, 415.0035."

TRD-201002511

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Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on May 10, 2010, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Time Warner Cable for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 38247 before the Public Utility Commission of Texas.

The requested amendment is to expand the service area footprint to include Kountze, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) (800) 735-2989. All inquiries should reference Project Number 38247.

TRD-201002537

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: May 11, 2010

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on May 10, 2010, for an amendment to a service provider certificate of operating authority (SPCOA), pursuant to §§54.101 - 54.105 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of DSLnet Communications, LLC for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 38249.

Applicant intends to reflect a change in ownership/control.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than Friday, May 28, 2010. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 38249.

TRD-201002536

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: May 11, 2010

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Request for Proposals to Administer the Texas Universal Service Fund

Title: Texas Universal Service Fund Administrator

RFP No. 473-10-00114

Deadline for proposal submission: 2:00 p.m., Central Daylight Time, Thursday, July 1, 2010

The Public Utility Commission of Texas (PUCT) is issuing a Request for Proposals (RFP) for an entity to administer the Texas Universal Service Fund (TUSF). The Statement of Work contains detailed information concerning the administrator's responsibilities.

In 1987, the Texas Legislature established a universal service fund and authorized the PUCT to adopt and enforce rules regarding administration of the fund. The purpose of the TUSF is to implement a competitively neutral mechanism that enables all Texas residents to obtain basic telecommunications services. The PUCT establishes a statewide uniform charge payable by telecommunications providers. The TUSF administrator collects the charge and disburses TUSF revenue monthly.

The statutes that establish the TUSF can be found here: <http://www.statutes.legis.state.tx.us/Docs/UT/htm/UT.56.htm>. The PUCT's rules concerning the TUSF can be found in Subchapter P of the agency's rules here: <http://www.puc.state.tx.us/rules/subrules/telecom/index.cfm>.

Proposers **must** have a minimum of 5 years experience working on similar projects (as described in the Statement of Work. The PUCT strongly encourages Historically Underutilized Businesses (HUBs) to compete for this award and strongly encourages non-HUBs to identify HUB sub-contractors or joint-proposers.

The complete RFP, including examples of required reports, schedules, and other documentation, is on the PUC website at: <http://www.puc.state.tx.us/about/procurement/currentrfps.cfm>.

To obtain a copy of the RFP, contact Mike Schurwon, Purchaser, at (512) 936-7069; mike.schurwon@puc.state.tx.us; or PUCT Purchaser, P.O. Box 13326, Austin, TX 78711-3326.

TRD-201002535
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 11, 2010

San Antonio-Bexar County Metropolitan Planning Organization

Request for Proposals - Traffic Signal Re-timing Study V

The San Antonio-Bexar County Metropolitan Planning Organization (MPO) is seeking proposals from qualified firms to conduct the Traffic Signal Re-timing Study V.

A copy of the Request for Proposals (RFP) may be requested by downloading the RFP and attachments from the MPO's website at www.sametroplan.org or calling Stephanie Lee, Regional Transportation Planner at (210) 227-8651. Anyone wishing to submit a proposal must do so by 12:00 p.m. (CST), Friday, June 25, 2010 at the MPO office:

Isidro "Sid" Martinez
Director
San Antonio-Bexar County Metropolitan Planning Organization
825 South Saint Mary's
San Antonio, Texas 78205

The contract award will be made by the MPO's Transportation Policy Board based on the recommendation of the project's oversight committee. The Traffic Signal Re-timing Study V oversight committee will review the proposals based on the evaluation criteria listed in the RFP.

Funding for this study, in the amount of \$400,000.00, is contingent upon the availability of Federal transportation planning funds.

TRD-201002568
Jeanne Geiger
Deputy Director
San Antonio-Bexar County Metropolitan Planning Organization
Filed: May 12, 2010

University of North Texas System

Request for Information

Outside Counsel - September 1, 2010 to August 31, 2012 (RFI)

In accordance with the provisions of Texas Government Code, Chapter 2254, the University of North Texas System (UNT System) requests information from law firms interested in representing the UNT System and its institutions in the areas of law described below. The UNT System is comprised of the System Administration, one health related institution, two general academic institutions and a college of law all located in North Texas. This RFI is issued to establish a referral list from which UNT System, by and through its Office of General Counsel, will select appropriate counsel for representation of UNT System and its institutions on specific matters as the need arises during the time-frame beginning September 1, 2010 to August 31, 2012. UNT System invites responses to this RFI from qualified firms for the provision of legal services under the direction and supervision of the UNT System's

Office of General Counsel. Subject to approval by the Texas Attorney General, UNT System will engage outside counsel with experience in the following areas of law:

Communications (FCC): Representation and advice regarding communications law, noncommercial broadcast issues, First Amendment, and broadcast journalism legal issues, including but not limited to preparing, filing, prosecuting, maintaining, and renewing various permits, licenses, and license applications with the Federal Communications Commission.

Corporate Law: Representation and advice regarding corporate and securities transactions and regulations, including but not limited to entity formation, such as corporations, joint ventures, limited partnerships, limited liability companies, 501(c)(3) corporations, and public-private partnerships; drafting and filing entity documents; filing for certificates of authority to transact business in other states; and private equity investing.

Employment Law: Representation and advice regarding complex employment law issues, including employee compensation and benefits.

Government Contracting: Representation and advice with respect to government procurement laws and statutes and other legal issues related to government contracting, including but not limited to correctional health care contracting.

Health Law: Representation and advice regarding billing; clinical research contracting; Health Insurance Portability and Accountability Act (HIPAA); regulatory compliance; and other general health law matters.

Immigration Law: Representation and advice regarding immigration law matters, including but not limited to petitioning for nonimmigrant visas (including H-1Bs); petitioning for employer sponsored permanent residence; representation before the Department of Labor, including labor condition applications, labor certifications, Program Electronic Review Management (PERM) complying with the Student and Exchange Visitor Information System (SEVIS) requirements; impact of homeland security issues on immigration law; and interaction with and representation before applicable U.S. governmental agencies, including the Department of Homeland Security and the Department of Labor, as well as interaction with the UNT System Office of General Counsel, UNT System institutions' international and academic affairs offices, and human resources offices. Outside Counsel should be admitted to practice before all United States District Courts in Texas.

Intellectual Property Matters: Representation and advice regarding intellectual property and technology transfer matters, including but not limited to preparing, filing, prosecuting, and maintaining patent applications in the United States and other countries; securing copyright protection for computer software; preparing, filing, and prosecuting applications to register trademarks and service marks in the United States and other countries; complex licensing transactions; and all other related matters.

International Programs and Activities: Representation and advice regarding the establishment and management of international education programs and all related issues, including interpretation and guidance on U.S. and foreign regulations as they impact education programs abroad.

Litigation - General: Representation and advice regarding complex litigation matters, including but not limited to employment litigation, real estate litigation including eminent domain, wills, trusts and estate litigation, Texas Public Information Act litigation, and commercial and creditors' rights litigation.

Public School Law: Representation and advice to UNT System regarding public school law and charter school law issues.

Real Estate and Finance Transactions: Representation and advice regarding acquisitions, dispositions, eminent domain, financings, entity formation (joint ventures, limited partnerships, limited liability companies, real estate investment trusts, business trusts), securitization, leasing, construction contracting, and workouts and restructurings.

Real Estate and Oil & Gas: Representation and advice on a broad range of matters involving real estate, real estate development, oil and gas, and mineral interests affecting UNT System and its institutions. Outside Counsel may, among other things, evaluate proposals, review surveys, examine title and title commitments, assist in curing title exceptions and/or defects, draft, review, and negotiate contracts, lease agreements, and business operations agreements and provide such other guidance and expertise as may be necessary to protect and develop the UNT System's varied real estate interests, oil and gas interests, and/or mineral interests. Outside Counsel may be called upon further to assist in the acquisition of real property and/or mineral rights.

Tax-Exempt Bond Matters: Representation and advice on specific bond and commercial paper matters, securities law issues, and related financial matters as the need arises. Bonds are issued under authority granted the UNT System in Article VII, §17 of the Texas Constitution. The UNT System's Outside Counsel needs include the usual and necessary services of a bond counsel in connection with the issuance, sale, and delivery of bonds. Outside Counsel shall be responsible for all duties and services necessary or advisable to facilitate the issuance of bonds as needed by the UNT System. Outside Counsel shall provide advice and representation on federal tax related matters regarding bonds issued by the UNT System, including strategies and management practices in the conduct of a debt program. Outside Counsel may be requested to address issues related to the issuance of commercial paper and increasing the UNT System's self liquidity. Outside Counsel may be called on to provide representation and advice in regard to filings or proceedings before administrative agencies, including, by way of example, the Texas Higher Education Coordinating Board, the Texas Bond Review Board, the Internal Revenue Service, the Securities and Exchange Commission, and the State Securities Administrator. Outside Counsel may be asked to prepare prospectuses, official statements or other materials on behalf of the UNT System in accordance with various securities laws. Outside Counsel may be requested to perform title examinations and issue title opinions.

Tax Matters: Representation and advice regarding federal and state income, estate, gift, employment, ad valorem, and excise taxes, including but not limited to matters regarding: taxation of any kind, including tax liens, tax garnishments, tax levies, tax assessments, tax valuations, as well as summonses, subpoenas, and discovery relating to tax matters; tax audits; appeals of tax issues; tax hearings before administrative law judges and magistrates; appeals to Internal Revenue Service (IRS) appeals officers, district court, U.S. Tax Court, U.S. District Court, U.S. Court of Claims, and other venues on tax matters; employee benefits such as Internal Revenue Code (I.R.C.) Section 125 cafeteria plans, defined benefit and contribution plans including the Texas Optional Retirement Program, I.R.C. Section 403(b), Section 415(m), and Section 457(a), Section 457(b), and Section 457(f) plans; income tax matters, including unrelated business income tax as it relates to universities; federal tax matters regarding compensation issues related to university physicians; interaction with and representation before the IRS and other taxing authorities in any tax controversy; and charitable fundraising activities. Outside Counsel should be admitted to practice before

the Texas district courts, the U.S. Tax Court, the U.S. District Court, and the U.S. Court of Claims.

Responses: Responses to this RFI shall not exceed thirty-five (35) pages and should include at least the following information: (1) a description of the area(s) of law described above which the firm is interested in representing the UNT System and its institutions; (2) a description of the firm's or attorney's qualifications for performing the legal services, including the firm's prior experience in the specific area of law for which the firm is responding; (3) the names and expertise, including scientific or technical, of the attorneys that would be assigned to work on such matters, the availability of the lead attorney and others assigned to the project; (4) the submission of fee information in the form of a range of hourly rates for each billing class of personnel who may be assigned to perform services in relation to UNT System's matter and/or a proposed flat fee or other fee arrangement directly related to the achievement of specific goals and cost controls; (5) a description of the efforts made by the firm to encourage and develop the participation of minorities and women in the provision both of the firm's legal services generally and the specific areas of law in particular; (6) disclosures of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the UNT System or to the State of Texas, or any of its boards, agencies, commissions, universities, or elected or appointed officials); (7) the firm's agreement with the billing guidelines, which among other things sets forth the allowable billable expenses; and (8) confirmation of willingness to comply with policies, directives, and guidelines of the UNT System and the Attorney General of the State of Texas. You will be contacted via e-mail if the UNT System chooses to contract with your firm for outside counsel services.

Format and Person to Contact: Responses must be sent via e-mail to rresponse@untranet.unt.edu. Please do not forward hard copies of any materials to UNT System. Questions should be addressed to Nancy S. Footer, Vice Chancellor and General Counsel, Office of General Counsel, University of North Texas System and sent to cheryl.finley@unt.edu.

Deadline for Submission of Response: All responses must be completed and submitted to the Office of General Counsel of UNT System via e-mail as noted above no later than 11:59 p.m., Monday, June 21, 2010.

TRD-201002546
Carrie Stoeckert
Assistant Director of Bids and Contracts
University of North Texas System
Filed: May 12, 2010

◆ ◆ ◆ Workforce Solutions Capital Area

Request for Qualifications for Audit

Workforce Solutions Capital Area Workforce Board is issuing a Request for Qualifications (RFQ) for the solicitation for Independent Financial Auditing Services for the fiscal year ending September 30, 2010. A copy of the RFQ may be obtained from our website www.wfscapitalarea.com or by contacting:

Jerry W. Neef
Workforce Solutions Capital Area
6505 Airport Blvd., Suite 101E
Austin, Texas 78752
Phone: (512) 597-7105

Fax: (512) 719-4710
jerry.neef@twc.state.tx.us

The RFQ will be available May 14, 2010 at 1:00 p.m. (CST). The response deadline to the RFQ is due on or before June 11, 2010 at 12:00p.m. (CST).

TRD-201002570

Jerry W. Neef
Chief Financial Officer
Workforce Solutions Capital Area
Filed: May 12, 2010



How to Use the Texas Register

Information Available: The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 35 (2010) is cited as follows: 35 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "35 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 35 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Register* is available in an .html version as well as a .pdf (portable document

format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*. If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION

Part 4. Office of the Secretary of State

Chapter 91. Texas Register

40 TAC §3.704.....950 (P)