

MEMORANDUM

TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

**TO: Chair and Members
Department of Family and Protective Services Council**

**FROM: Howard Baldwin
Interim Commissioner**

**SUBJECT: Agenda Item 5a: Recommendation to propose rule changes
in 40 TAC, Part 19, Chapter 700, Subchapter F, Release
Hearings**

DATE: October 21, 2011



BACKGROUND AND PURPOSE

The Child Protective Services Program is proposing rule amendments to Chapter 700, Subchapter F, Release Hearings. The purpose of the proposal is to improve the department's ability to prevent abuse or neglect of children and vulnerable adults by decentralizing the process of releasing Child Protective Services (CPS) findings to outside parties that have control over a designated perpetrator's access to children and vulnerable adults. The anticipated result of enforcing the proposed rule changes will be that decisions about whether to release findings will be made quicker, thus supporting the prevention of abuse or neglect by persons who have previously abused or neglected children and may pose a risk to any child or vulnerable adult under his or her care.

The primary changes resulting from the proposed amendments are:

- the rules in this subchapter have been changed to question and answer format for a more plain English approach. The purpose is to make the rules easier to read and understand for the general public;
- the definition of a *Release* is clarified by naming certain entities to which CPS abuse or neglect finding information can be disclosed (such as employers and licensing boards);
- CPS abuse or neglect finding information can now be released when there is a risk of harm to *vulnerable adults*, as well as to children;
- the proposed rule decentralizes the release process by changing the approval authority to the Managing Regional Attorney and Regional Director for the region that issued the abuse or neglect finding;
- clarification that the designated perpetrator is responsible for notifying DFPS of any change in address;
- simplification of the notice process by deleting the DFPS discretionary administrative review requirement for a release and any requirement for the designated perpetrator to pay for a copy of the investigation record; and
- clarification of the release hearing process that is held before the State Office of Administrative Hearings. These rules are more specific and accurate and will ultimately replace the hearing rules in Chapter 730, Subchapter R.

DETAILED SECTION ANALYSIS AND DISPOSITION TABLE

Current Rule Sections	Proposed Action; New Rule Section	Summary Explanation of Proposed Action
700.601	Amend	<p>The proposed rule</p> <ul style="list-style-type: none"> • clarifies the definition of <i>Release</i> by naming certain entities to which abuse or neglect finding information can be disclosed (such as employers and licensing boards) and specifying that disclosure may be made if the perpetrator has access to children or vulnerable adults; • for clarity adds new definitions for a <i>Designated Perpetrator</i> and a <i>Sustained Perpetrator</i>, which primarily came from the old §700.602; • adds a new definition for a <i>Vulnerable Adult</i>, which is also now a new basis to release finding information; • deletes unnecessary language; and • updates terminology.
700.602	Repealed and Propose New 700.602	<p>The new rule:</p> <ul style="list-style-type: none"> • decentralizes the release process by changing the approval authority to the Managing Regional Attorney and Regional Director for the region that issued the abuse or neglect finding; and • clarifies and updates terminology.
700.603	Repealed and Propose New 700.603	<p>The new rule:</p> <ul style="list-style-type: none"> • revises to whom the designated perpetrator sends a request for an appeal; • clarifies that the designated perpetrator is responsible for notifying DFPS of any change in address; • deletes from the repealed rule any CPS discretionary administrative review requirements; • deletes any requirement to pay for a CPS investigation record; and • clarifies and updates terminology.
700.604	Repealed and Propose New 700.604	<p>The new rule deletes from the repealed rule CPS discretionary administrative review requirements and clarifies and updates terminology.</p>

Current Rule Sections	Proposed Action; New Rule Section	Summary Explanation of Proposed Action
700.605	Repealed and Propose New 700.605	The new rule describes the process DFPS will take once a release hearing is requested by a designated perpetrator.
700.606	New	The new rule describes the procedural rules that will be followed in a release hearing conducted by the State Office of Administrative Hearings (SOAH).
700.607	New	The new rule describes what actions a SOAH Administrative Law Judge may take regarding a CPS finding.
700.608	New	The new rule describes what happens when a designated perpetrator fails to appear at a release hearing that the designated perpetrator requested.

STATUTORY AUTHORITY AND STATUTES AFFECTED

The modification is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provides 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 Department of 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.

FISCAL IMPLICATIONS

(a) Fiscal Impact. For each of the first five years that the rules will be in effect there will not be costs or revenues to state or local government as a result of enforcing or administering this section.

(b) Public Costs and Benefits. For each of the first five years that the proposed sections will be in effect, the public benefit anticipated as a result of the rule changes will be that decisions about whether to release findings will be made quicker, thus supporting the preventing of abuse or neglect by persons who have previously abused or neglected children and may pose a risk to any child or vulnerable adult under his or her care. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

(c) Impact on Business. There is no anticipated adverse impact on small, micro, and large businesses as a result of the proposed rule changes because the proposed rule changes should not affect the cost of doing business; 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.

(d) Local Employment Impact and Takings Statements. No local employment impact statement was required for this rule. The agency is not required to complete a takings impact assessment regarding the proposed section.

(e) Technology Impact. There is no anticipated impact on technology as a result of the proposed rule changes.

STAKEHOLDER INPUT

The regions favor the changes made to decentralize the decision making to release CPS findings in appropriate situations. Stakeholder input will be obtained during the public comment period.

RECOMMENDATION

It is recommended that the Council consider the proposed rule action, as discussed in this memorandum, and that the Council recommend proposal, with or without changes to the rules as they are attached to this memo.

ATTACHMENTS

Attached is a copy of the proposed amended and new rules as staff recommended for submittal to the *Texas Register*.