

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 5b: Recommendation to propose rule
changes in 40 TAC, Chapter 700, Subchapter O,
Foster and Adoptive Home Development,
§700.1501, Regarding Waivers and Variances for
Relative Foster Homes**

DATE: **October 21, 2011**



BACKGROUND AND PURPOSE

The Child Protective Services Program is recommending the following change be made to Chapter 700, Subchapter O, Foster and Adoptive Home Development, §700.1501, Decision on Foster Home Applications.

The primary purpose of the proposed rule change is to correctly state the current practice of reviewing requests for variances and waivers to minimum standards for relative foster homes. The current rule states that the Director of Child Protective Services reviews these requests, which is incorrect. The Residential Child Care Licensing division is responsible for the review of all requests for variances and waivers to minimum standards, including the requests made for relative foster homes. As a regulated Child Placing Agency, the Foster and Adoptive Home Development (FAD) program of CPS does not have the statutory authority to process its own waiver and variance requests.

DETAILED SECTION ANALYSIS AND DISPOSITION TABLE

Current Rule Sections	Proposed Action; New Rule Section	Summary Explanation of Proposed Action
700.1501	Amend	Correct rule to reflect current practice; update and consolidate language.

STATUTORY AUTHORITY AND STATUTES AFFECTED

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 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; HRC § 42.042(j) and 42.048(c), which grants the authority to promulgate minimum standards for CPAs regarding waivers and variances.

FISCAL IMPLICATIONS

(a) Fiscal Impact. For each of the first five years that the rule 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 change will be that the public will better understand FAD's practices because the rule will correctly state the current practice for processing waivers and variances. 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 change because the proposed rule change should not affect the cost of doing business; 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.

(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(s).

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

STAKEHOLDER INPUT

Stakeholder input will be obtained during the public comment period.

RECOMMENDATION

It is recommended that the Council consider the proposed rule amendments, as discussed in this memorandum, and that the Council recommend publication of the rule amendments as proposed.

ATTACHMENTS

Attached is a copy of the proposed change to the rule section as staff recommended for submittal to the *Texas Register*.