

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 5c: Recommendation to propose rule changes
in 40 TAC Chapter 700, Subchapter C, Eligibility for Child
Protective Services**

DATE: October 21, 2011



BACKGROUND AND PURPOSE

The proposed rule amendments contained herein serve three primary purposes: 1) updates to eligibility rules to incorporate a new placement setting referred to as "Supervised Independent Living"; 2) updates to foster care eligibility rules to create one Extended Foster Care program in response to federal guidance and state legislative changes related to Extended Foster Care, Return to Care and Trial Independence; and 3) updates to foster care eligibility rules to delete unnecessary provisions covered by federal law, simplify language and bring the rules into conformity with current practice.

Amendments Related to Supervised Independent Living Placements

The Fostering Connections to Success and Increasing Adoptions Act of 2008, P.L. 110-351 ("Fostering Connections"), authorized state title IV-E agencies to claim Federal Financial Participation (FFP) for young adults who choose to remain in foster care between the ages of 18 and 21 in order to receive additional support for their transition to independence. In recognition of the needs of this population, Fostering Connections further authorized states to claim FFP for young adults in foster care who reside in certain supervised independent living settings, referred to in these rules as "Supervised Independent Living" or "SIL" placements. This was accomplished through a change in the federal definition of a child-care institution for young adults to include "a supervised setting in which the individual is living independently." (See 42 U.S.C. § 672(a)(3)(C)). SIL placements will be offered as a placement option along with other traditional foster care placements to young adults who are in the extended foster care program.

Following guidance from the federal Administration for Children and Families issued July 9, 2010 on the SIL placement option as well as other aspects of Fostering Connections (see Program Instruction ACYF-CB-PI-10-11, July 9, 2010, page 9), DFPS has worked with HHSC to develop appropriate rate methodologies for SIL providers and to complete other necessary implementation steps, including the proposed adoption of these rules. DFPS anticipates being able to offer the SIL placement option to young adults in extended foster care beginning September 1, 2012.

Because the characteristics of SIL placements differ in part from existing foster care placements, DFPS is amending its rules to address the new placement setting. The rate setting methodology for SIL placements, using pro forma rate analysis, was proposed to this Council at the June Council meeting.

Amendments related to Extended Foster Care, Return to Care, and Trial Independence

The federal guidance on Fostering Connections referenced above also made FFP available to states for young adults who age out of foster care and temporarily live independently of the foster care system, but who later return to foster care for additional support. (See PI-10-11 at 5-7.) The federal guidance deems such youth to be engaged in a "trial independence" (TI) period during their absence from foster care, and provides for the continuation of Title IV-E eligibility for youth who return to foster care within a minimum of six months, up to a maximum of 12 months if a court has ordered a TI period of 12 months. Prior to this federal guidance, Title IV-E funding was generally not available to young adults who leave the foster care system and later return to foster care. As a result, the department's current "Return to Care" program for young adults who return to foster care after age 18 is entirely state-funded and serves only those young adults who participate in a relatively limited set of educational/vocational options, e.g. the program was not available for young adults in college, or who were working.

In addition, the July 2010 federal guidance clarified certain conditions that must apply to all young adults in extended foster care in order to receive FFP, the most significant of which is that the family court must continue to have jurisdiction over the youth while the youth is in extended foster care and during any TI period. In order to maximize FFP for extended foster care the Texas Legislature enacted amendments to the Texas Family Code that incorporate the federal guidance. Specifically, Article 63 of S.B. 1 and Article 11 of H.B. 79, of the First Called Session of the 82nd Legislative Session amended Subchapter G, Chapter 263 Family Code to automatically extend the court's jurisdiction over all youth in extended foster care, and to continue such jurisdiction during a TI period of not less than six months, or for such longer period as the court may order up to a maximum of 12 months.

Because the concept of TI from PI-10-11 is a broadening of FFP to the states for the extended foster care program, Texas will, in a fiscally neutral manner, be able to combine what had been referred to as the "Return to Care" program into one Extended Foster Care program that will permit young adults to remain in care or return to care during or after a TI period, up until the young adult's 21st birthday, so long as a DFPS-approved placement is available and the young adult meets the eligibility criteria contained in these amended rules, including agreeing to monthly caseworker visits and continued court oversight.

Clarifying Amendments

Finally, DFPS is updating the subchapter generally, as there are multiple provisions that unnecessarily duplicate controlling federal law, are inconsistent with current practices, and lead to confusion.

DETAILED SECTION ANALYSIS AND DISPOSITION TABLE

Current Rule Sections	Proposed Action; New Rule Section	Summary Explanation of Proposed Action
700.315	Amend	Updates section for the extended foster care program; general cleanup.

Current Rule Sections	Proposed Action; New Rule Section	Summary Explanation of Proposed Action
700.316	Amend	<ul style="list-style-type: none"> • Updates placement and care and age requirements to reflect adults in extended foster care; • Adds SIL placements (via the definition of a "child-care institution") as a placement type that can receive foster care maintenance payments; • Incorporates requirements regarding foster family homes that move out of state; • Deletes resource and income requirements, because they are not eligibility criteria for foster care and relate instead to offsets covered by rule 700.330; • Deletes lump sum provision as it offers no substantive clarification to the public; • Deletes unnecessary provisions related to the prior extended foster care program and moves criteria for the current program to new rule 700.346; • Clarifies that aging out youth in DADS guardianship are eligible for foster care maintenance payments but are not otherwise subject to all of the same eligibility requirements as the general extended foster care population; • Specifies situations in which a child is ineligible for any foster care assistance; and • Clarifies and updates terminology and cites.
700.317	Repeal	Deletes the rule as unnecessary because it offers no clarification or guidance that is not contained in controlling federal law and CPS policy.
700.318	Repeal	Deletes the rule as unnecessary because it offers no clarification or guidance that is not contained in controlling state law and CPS policy.
700.319	Repeal	Deletes the rule as unnecessarily duplicative of 700.329.
700.320	Amend	Updates the rule to reflect current practice.

Current Rule Sections	Proposed Action; New Rule Section	Summary Explanation of Proposed Action
700.321	Repeal	Deletes the section because it is an unnecessary repetition of the federal guidance on point.
700.323	Amend	Strengthens and clarifies controls on the approval process for temporary absences from non-emergency foster care; deletes the distinction between authorized and non-authorized absences; and adds that foster care providers are not entitled to reimbursement during a young adult's TI.
700.327	Repeal	Repeals the rule because it is inaccurate and unnecessary.
700.328	Amend	<ul style="list-style-type: none"> • Consolidates current subsections (a) and (d) and eliminates unnecessary language addressed by DFPS residential contracts; • Updates the consolidated subsection for current practice, including changes to accommodate the Foster Care Redesign project; • Updates the rule to reflect that rate setting is now conducted by HHSC and DFPS no longer has any authority to exempt a provider from the cost reporting requirements for DFPS contractors; • Adds SIL providers and Single Source Continuum Contractors to the section generally and makes clarifying edits to ensure consistency in terminology; • Updates terminology.
700.329	Amend	Clarifies existing rule language.
700.330	Amend	Improves the clarity of the rule by bringing it into conformity with current practice and simplifying language; ensures consistency with state law prohibiting any deduction from money earned by a child in foster care.
700.331	Repeal, New Rule	<ul style="list-style-type: none"> • Consolidates two related rules into a consolidated new rule, • Brings the language into conformity with current practice, and • Notifies the public of DFPS' practices with respect to SSI income.

Current Rule Sections	Proposed Action; New Rule Section	Summary Explanation of Proposed Action
700.332	Repeal	Consolidated this rule into new rule 700.331.
700.333	Repeal	The rule is currently inaccurate and not necessary because it offers not guidance that is not contained in controlling federal law.
700.346	Repeal, New Rule	<ul style="list-style-type: none"> • Consolidates rules to provide for a unified extended foster care program with a single set of eligibility criteria; • Provides that participation in the program is contingent on the availability of an approved placement; • Clarifies eligibility criteria and brings the criteria into conformity with current practice; • Clarifies that youth can transition between eligible activities for extended foster care; and • Provides that young adults may return to extended foster care if they satisfy the eligibility criteria for the extended foster care program.
700.347	New Rule	Provides criteria for a young adult to enter and remain in a SIL placement or be moved to another placement.

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; P.L. 110-351, Fostering Connections Act, which provides for the use of Title IV-E for SIL placements and for extended foster care generally; Texas Family Code (TFC) 264.0111, which entitles a child in foster care to retain money earned by the child; TFC §264.101, which provides for the payment of foster care maintenance for young adults 18 and older who are meeting certain employment or educational criteria; and Article 63 of S.B. 1 and Article 11 of H.B. 79, 82nd Legislature, 1st Called Session, 2011, which provide for extended jurisdiction during TI and for certain court hearings for young adults in extended foster care.

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 youth who have aged out of foster care can avail themselves of a SIL living option that more closely resembles that of their non-foster-care peers, that young adults will have greater access to extended foster care without any increase in costs to the state due to maximization of federal funding, and that eligibility for foster care assistance is clarified for the public generally. 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(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 considered as it is received during the period for comments on the rule. In addition, the agency sought specific public input on the SIL setting in advance of the rule changes proposed. Provider workgroup meetings were held from March 2009 to July 2009. A survey was sent out to residential providers and foster parents to solicit input on appropriate supervision of youth (both minor and young adults). A Request for Information (RFI 530-1--0002) was released in October of 2009, and a public forum was held on Nov. 23, 2009. It is anticipated that a draft Request for Proposal (RFP) for SIL will be issued later this year.

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 change to the rule section as staff recommended for submittal to the *Texas Register*.