

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 5f: Recommendation to propose rule changes
in 40 TAC, Chapter 747, Minimum Standards for Child-Care
Homes**

DATE: October 21, 2011



BACKGROUND AND PURPOSE

The Child Care Licensing Program is proposing changes to Chapter 747, Minimum Standards for Child-Care Homes. The purpose of the proposal is to implement legislation passed in the 82nd Legislative Session.

House Bill (H.B.) 434 requires a child-care facility or registered family home to:

1. follow the directions of a child's health-care professional when providing care to a child that needs specialized medical assistance; and
2. maintain a copy of any written directions from the health-care professional for a reasonable period of time.

H.B. 1615 restricts under what circumstances medication may be given to a child. Except in a medical emergency, a child day-care operation must have parental consent before giving a child a prescription or over-the-counter medication.

Senate Bill (S.B.) 260 increases orientation and annual training requirements for home-based day-cares.

S.B. 265 requires training in certain child-care operations to be relevant to the age of children for whom care is provided, and adds trainer minimum qualifications to Human Resources Code §42.0421. All training outlined in this section of the law must be conducted by a person who meets one of seven options for minimum qualifications.

S.B. 1178 expands the "controlling person" concept to all child-care facilities and family homes, not just residential operations.

DETAILED SECTION ANALYSIS AND DISPOSITION TABLE

Current Rule Sections	Proposed Action; New Rule Section	Summary Explanation of Proposed Action
§747.105	Amend	<p>H.B. 1615 adds Human Resources Code §42.065. This new section of the law restricts under what circumstances medication may be given to a child.</p> <p>This rule currently lists definitions for certain terms used in Chapter 747, Minimum Standards for Child-Care Homes. "Health-care professional" is currently only defined for the purpose of describing which professionals can provide vaccinations. This revamped definition is needed because changes to the statute require a broader definition of "health-care professional."</p>
§747.303	Amend	<p>S.B. 1178 expands the "controlling person" concept to all child-care facilities and family homes, not just residential operations.</p> <p>This rule adds the requirement that an operation must make a notification to Licensing when a new individual becomes a controlling person at the operation, or an individual that was previously a controlling person ceases to be a controlling person at the operation.</p>
§747.603	Amend	<p>House Bill (H.B.) 1615 adds Human Resources Code §42.065. This new section of the law restricts under what circumstances medication may be given to a child.</p> <p>H.B. 434 requires a child-care facility or registered family home to:</p> <ul style="list-style-type: none"> A. follow the directions of a child's health-care professional when providing care to a child that needs specialized medical assistance; and B. maintain a copy of any written directions from the health-care professional for a reasonable period of time. <p>The proposed revision adds the following to the list of contents required for a child's record and how long the record must be kept:</p> <ul style="list-style-type: none"> 1. medication administration records, and 2. health-care professional orders or recommendations for specialized medical assistance.

Current Rule Sections	Proposed Action; New Rule Section	Summary Explanation of Proposed Action
§747.1301	Amend	<p>Senate Bill (S.B.) 260 changes orientation and annual training requirements for home-based day-care. The law now requires orientation within seven days of hire and increased hours of annual training for licensed child-care homes (from 15 to 24 hours).</p> <p>The proposed changes update the rule to reflect the changes in the law.</p>
§747.1303	Amend	<p>S.B. 260 changes annual training requirements for home-based day-care. The law now requires 30 hours of training for the owner/primary caregiver of a home-based day-care, increased from 20 hours.</p> <p>The proposed changes update the rule to reflect the change in the law.</p>
§747.1307	Amend	<p>S.B. 260 changes orientation and annual training requirements for home-based day-care. The law now requires orientation within seven days of hire and increased hours of annual training.</p> <p>S.B. 265 requires training to be relevant to the age of children for whom care is provided.</p> <p>This rule outlines annual training requirements for caregivers. The proposed changes to this rule correspond to the changes in law above as follows:</p> <ul style="list-style-type: none"> • Specific references to the specific number of annual training hours has been deleted, since the hours are already specified in proposed changes to §747.1301. • A phrase is added to clarify that training must be relevant to the age of children for whom the caregiver is providing care.
§747.1309	Amend	<p>S.B. 260 increases the number of annual training hours needed for a primary caregiver (from 20 hours to 30 hours).</p> <p>S.B. 265 requires training to be relevant to the age of children for whom care is provided.</p> <p>This rule amendment:</p> <ul style="list-style-type: none"> • implements each of the statutory changes, • revises the title of §747.1307 to delete the reference to the specific number of annual training hours for caregivers, and • revises a cross reference to §747.1307.

Current Rule Sections	Proposed Action; New Rule Section	Summary Explanation of Proposed Action
§747.1315	Amend	<p>S.B. 265 adds trainer minimum qualifications to Human Resources Code §42.0421. All training outlined in this section of the law must be conducted by a person who meets one of seven options for minimum qualifications.</p> <p>This rule lists the criteria for training at home-based day-cares. The proposed change to this rule adds the trainer qualifications outlined in the law, and clarifies that self-instructional training must be developed by a person who meets one of the listed trainer qualifications.</p>
§747.1323	Amend	The proposed change to this rule amends the cross reference to §747.1315.
§747.1325	Repeal	This rule limits the amount of self-instructional training that can be used to count toward annual training requirements. Now that all self-instructional training must be developed by a person who meets one of the qualifications outlined in S.B. 265, it is no longer necessary to limit self-instructional training. Therefore, this rule is proposed for repeal.
§747.1327	Amend	<p>S.B. 265 adds trainer minimum qualifications to Human Resources Code §42.0421. All training outlined in this section of the law must be conducted by a person who meets one of seven options for minimum qualifications.</p> <p>This rule outlines the documentation requirements for training. The proposed change to this rule requires that the trainer qualifications be included in training documentation, so that Child Care Licensing staff can monitor compliance with the law.</p>
Chapter 747, Subchapter S, Safety Practices, Division 2, Medication	Amend	Child Care Licensing proposes to change the name of this Division to "Medication and Medical Assistance", in order to reflect the proposed additions to the Division related to specialized medical assistance.

Current Rule Sections	Proposed Action; New Rule Section	Summary Explanation of Proposed Action
§747.3601	Repeal and Replace	<p>H.B. 1615 adds Human Resources Code §42.065. This new section of the law restricts under what circumstances medication may be given to a child.</p> <p>This rule currently lists the circumstances under which a home-based day-care may administer medication to a child. This rule is proposed for repeal, with the requirements currently listed in the rule incorporated into proposed changes to §§747.3603 and 747.3605. The proposed new rule defines "medication" to include non-prescription medication.</p>
§747.3603	Repeal and Replace	<p>H.B. 1615 adds Human Resources Code §42.065. This new section of the law restricts under what circumstances medication may be given to a child.</p> <p>This rule currently addresses authorization to administer medication for a child's chronic or recurring medical condition, such as asthma. Since the law now includes specific authorization requirements for all medications, this rule is proposed for repeal and replaced with a rule regarding the authorization requirements for all medications. Authorization requirements include:</p> <ul style="list-style-type: none"> • written permission from a parent, or telephone permission for a one-time dose; • re-authorization at least annually; and • prohibition against a parent authorizing more medication than what is prescribed or than what is included in the medication's label instructions.
§747.3605	Repeal and Replace	<p>H.B. 1615 adds Human Resources Code §42.065. This new section of the law restricts under what circumstances medication may be given to a child.</p> <p>This rule currently includes record keeping requirements for medications. The proposed new rule expands the requirements moved from current rules §747.3601 and §747.3603 to include that medication can only be given according to label instructions or as directed by a health-care professional.</p>
	§747.3613	<p>H.B. 434 requires a child-care facility or registered family home to follow the directions of a child's physician or other health care provider when providing a child in care specialized medical assistance.</p> <p>This proposed rule defines specialized medical assistance.</p>

Current Rule Sections	Proposed Action; New Rule Section	Summary Explanation of Proposed Action
	§747.3615	<p>H.B. 434 requires a child-care facility or registered family home to:</p> <ul style="list-style-type: none"> A. follow the directions of a child 's physician or other health care provider when providing a child in care specialized medical assistance; and B. maintain for a reasonable time a copy of any directions from the physician or provider that the parent provides to the facility or home. <p>This proposed rule requires the operation to follow the recommendations or orders of the child's health-care professional when providing a child in care specialized medical assistance, and requires the operation to maintain any written orders or recommendations in the child's record for at least three months after the health-care professional has indicated that the specialized medical assistance is no longer needed.</p>

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 caregivers in home-based day-cares will have a better understanding of when medications may be given to children, how specialized medical assistance must be provided, receive more training, and therefore provide better care to Texas children. DFPS identified the proposed changes to §§747.1301 (relating to What training must I ensure that my caregivers have?) and 747.1303 (relating to What training must I have?) as potentially having an adverse economic impact on licensed and registered child-care homes. Child Care Licensing is sensitive to the impact that proposed legislative mandated changes may have on families as well as providers, particularly in the current economic climate. Accordingly, in proposing changes to minimum standards, every effort has been made to bring training options for low or no cost to providers. In a partnership with AgriLife Texas Cooperative Extension (a part of the Texas A&M University system), Child Care Licensing has online free of charge tutorials for caregivers and consumers.

Tutorials focus on the healthy and safe care of infants and toddlers. There are nine courses (15 clock hours) for Professional Development Training for Infant and Toddler Caregivers. Also, there are eight courses (10 hours) for parents and families who care for young children. Online courses were produced using funds provided under the American Recovery and Reinvestment Act of 2009.

The proposed change to §747.1301 increases the hours of annual training for caregivers in licensed child-care homes from 15 to 24 hours. The proposed change to §747.1303 increases the hours of annual training for the owner/primary caregiver of a home-based day-care from 20 to 30 hours of training. The anticipated economic cost to persons who are required to comply with the proposed sections is outlined in section (c) below.

There are no direct costs to persons other than child-care providers as a result of the proposed rules; however, consumers of child-care services may experience nominal increases in the cost of care to the extent that any given child-care home passes any increased costs of training on to its consumers. The amount of such increase, if any, is impossible to estimate given the variability in the number of staff trained by each child-care home, the discretion that each home will have in how to minimize training costs, and the extent to which each child-care home absorbs any increased costs without increasing its rates.

(c) Impact on Business. There will be a fiscal impact to businesses, including small and micro-businesses, as a result of the rule amendments that impose increased training requirements. Increased training requirements may result in two types of increased costs - the cost of providing the instruction itself, and the cost of the hourly wages paid to the caregiver while undergoing the training.

Instruction may be provided by local resource and referral agencies or may be provided in-house - with the average per hour cost ranging from \$0 per hour when training is available in the community at no-cost, to a high of \$20 per hour for group instruction provided to caregivers by a local resource and referral agency. For purposes of the rules discussed below that increase training hours for caregivers, average hourly instructional costs are estimated to be \$10.00 per hour. The average hourly wage for a caregiver is \$7.98, based on data gathered from the Texas Workforce Commission Occupational Employment Statistics semiannual survey of Texas employers.

§747.1301 currently requires 15 hours of annual training in child-care homes, but amendments to Section 42.0421, Human Resources Code enacted by the 82nd Legislature in S.B. 260 now require 24 hours of annual training. For each caregiver who must receive the additional 9 hours of training, it is estimated that child-care homes will experience an average additional one-time cost of \$90.00 in instructional costs, and \$71.82 in hourly wages paid to the caregiver while undergoing the training.

§747.1303 currently requires 20 hours of annual training for home owner/primary caregiver, but amended Section 42.0421, Human Resources Code, now requires 30 hours. Licensing assumes that training provided for the home owner/primary caregiver will typically not be provided in-house and that the level of expertise of trainers is usually higher than training provided to employees. Using these assumptions, Licensing estimates that the average cost of hourly training for directors is \$25. The hourly wage of a director is \$15.50, based on data gathered from the Texas Workforce Commission Occupational Employment Statistics

semiannual survey of Texas employers. Accordingly, for each home owner/primary caregiver who must receive the additional 10 hours of annual training, it is estimated that child-care homes will experience an additional annual cost of \$250 in instructional costs, and \$155 in hourly wages paid to the primary caregiver while undergoing the training.

The DFPS FY 2010 data book reflects 1,684 Licensed Child Care Homes and 6,537 Registered Family Homes, most of which are either a small business or micro-business as defined in Chapter 2006, Government Code. Chapter 2006 defines a small business as one that is for-profit, independently owned, and has fewer than 100 employees or less than six million dollars in annual gross receipts. A small business that has no more than 20 employees is further defined as a micro-business. DFPS estimates that the vast majority of child-care homes and registered family homes are for-profit businesses, independently owned, and have no more than 20 employees. Chapter 2006 requires that an agency prepare a Regulatory Flexibility Analysis (RFA) for any rule that has a negative economic impact on small businesses, unless consideration of alternative methods of achieving the rule's purpose would not be consistent with the health, safety, and environmental and economic welfare of the state. Because the changes to §§ 747.1301 and 747.1303 that result in possible adverse economic impact to small businesses are required by Section 42.0421, Human Resources Code, these changes are considered *per se* necessary for the health and safety of the children served by child-care centers subject to these rules. Accordingly, no RFA was prepared prior to proposal of these rules.

(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 sections.

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

STAKEHOLDER INPUT

DFPS shared draft copies of the proposed rule changes with all members of the Committee on Licensing Standards for their review and comment. 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 change to the rule section as staff recommended for submittal to the *Texas Register*.