

# 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 5g: Recommendation to propose rule changes  
in 40 TAC, Chapter 743, Minimum Standards for Shelter  
Care; Chapter 744, Minimum Standards for School-Age and  
Before or After-School Programs; and Chapter 746,  
Minimum Standards for Child-Care Centers**

**DATE: October 21, 2011**



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## BACKGROUND AND PURPOSE

The Child Care Licensing Program is proposing changes to Chapter 743, Minimum Standards for Shelter Care; Chapter 744, Minimum Standards for School-Age and Before or After-School Programs; and Chapter 746, Minimum Standards for Child-Care Centers. The purpose of the proposal is to implement legislation passed during 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 physician or other health care provider when providing care to a child that requires specialized medical assistance; and
2. maintain for a reasonable time a copy of any directions from the physician or provider that the parent provides to the facility or home.

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.

S.B. 260 increases orientation, pre-service, and annual training requirements for day care centers.

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. 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. 471 requires day care centers to have specific policies and one hour of training related to child abuse and neglect.

S.B. 1178 adds Subchapter G, relating to Shelter Care, to Chapter 42 of the Human Resources Code, so that shelter care can be regulated separately from other types of child day care. The result is a certificate of compliance for shelter care facilities rather than a license, limited inspection and investigations, and fewer minimum standards. This new subchapter in the law largely reflects the subchapter already in place for the regulation of employer-based day care.

## DETAILED SECTION ANALYSIS AND DISPOSITION TABLE

<b>Current Rule Sections</b>	<b>Proposed Action; New Rule Section</b>	<b>Summary Explanation of Proposed Action</b>
§743.3	Amend	<p>S.B. 1178 adds a new subchapter to Human Resources Code Chapter 42 specifically for shelter care. The result is that shelter care is regulated under this subchapter of the law, separately from other child-care facilities and homes. The new law for shelter care is limited in the requirements imposed on shelter care facilities.</p> <p>Chapter 743 of the Texas Administrative Code includes all of the minimum standards for shelter care. Therefore, Child Care Licensing is proposing significant changes to this chapter, in order to mirror the law.</p> <p>The proposed revision to this rule changes a cross reference to a rule that is proposed for repeal and proposed as a new rule (§743.109).</p>
§743.7	Amend	<p>The proposed changes to this rule delete requirements that are not reflective of the new law for shelter care facilities. Deleted requirements include posting the last inspection or investigation results, posting emergency evacuation plans, and maintaining liability insurance. One other proposed change clarifies that Child Care Licensing expects shelter care facilities to comply with all applicable law and rule.</p>
§743.105	Amend	<p>The proposed change to this rule deletes the requirement for primary caregivers to obtain fingerprint-based criminal history checks.</p>
§743.107	Amend	<p>The proposed change to this rule deletes the requirement for shelter care facility employees to sign the affidavit required by Human Resources Code §42.059.</p>
	§743.109	<p>This proposed new rule simply relocates current §743.301, which is proposed for repeal. This moves the rule into a new subchapter within Chapter 743, since the other rules in the current subchapter with §743.301 are proposed for repeal.</p>
§743.201	Amend	<p>This rule lists the serious incidents that a shelter care facility must report to Licensing, law enforcement, and/or a child's parent. The proposed changes make the rule consistent with Human Resources Code §42.063, which is specifically referenced in the new subchapter of Human Resources Code Chapter 42 that focuses on the regulation of shelter care facilities.</p>

<b>Current Rule Sections</b>	<b>Proposed Action; New Rule Section</b>	<b>Summary Explanation of Proposed Action</b>
Chapter 743, Subchapter D, Program Requirements	Repeal	The new subchapter in Human Resources Code Chapter 42 specifically for shelter care facilities limits Child Care Licensing's authority to promulgate minimum standards for shelter care. Most of the requirements in this subchapter do not fit within the new law's parameters for shelter care minimum standards, so the subchapter is proposed for repeal. This subchapter currently consists of requirements in areas such as activities and discipline. The one rule currently in this chapter that still applies (§743.301) is proposed as new rule §743.109.
Chapter 743, Subchapter E, Health	Repeal	The new subchapter in Human Resources Code Chapter 42 specifically for shelter care facilities limits Child Care Licensing's authority to promulgate minimum standards for shelter care. None of the requirements in this subchapter fit within the new law's parameters for shelter care minimum standards, so the subchapter is proposed for repeal. This subchapter currently consists of requirements in areas such as nutrition and environmental health.
Chapter 743, Subchapter F, Safety	Repeal	The new subchapter in Human Resources Code Chapter 42 specifically for shelter care facilities limits Child Care Licensing's authority to promulgate minimum standards for shelter care. None of the requirements in this subchapter fit within the new law's parameters for shelter care minimum standards, so the subchapter is proposed for repeal. This subchapter currently consists of requirements related to fire safety.
Chapter 743, Subchapter G, Space and Equipment	Repeal	The new subchapter in Human Resources Code Chapter 42 specifically for shelter care facilities limits Child Care Licensing's authority to promulgate minimum standards for shelter care. None of the requirements in this subchapter fit within the new law's parameters for shelter care minimum standards, so the subchapter is proposed for repeal. This subchapter currently consists of requirements in areas such as furnishings and activity space.

<b>Current Rule Sections</b>	<b>Proposed Action; New Rule Section</b>	<b>Summary Explanation of Proposed Action</b>
Chapter 743, Subchapter H, Infant and Toddler Care	Repeal	The new subchapter in Human Resources Code Chapter 42 specifically for shelter care facilities limits Child Care Licensing's authority to promulgate minimum standards for shelter care. None of the requirements in this subchapter fit within the new law's parameters for shelter care minimum standards, so the subchapter is proposed for repeal. This subchapter currently consists of requirements in areas such as diaper changing and feeding infants.
§744.105	Amend	This rule currently lists definitions for certain terms used in Chapter 744, Minimum Standards for School-Age and Before or After-School Programs. "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 H.B. 1615 require a broader definition for "health-care professional".
§744.201	Amend	<p>S.B. 265 requires training to be relevant to the age of children for whom care is provided and adds trainer minimum qualifications to Human Resources Code §42.0421.</p> <p>This rule outlines all permit holder responsibilities. The proposed change now specifies that a program's training provisions must comply with the new and updated training requirements in these minimum standards.</p>
§744.305	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>

<b>Current Rule Sections</b>	<b>Proposed Action; New Rule Section</b>	<b>Summary Explanation of Proposed Action</b>
§744.603	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 program to:</p> <p>(A) follow the directions of a child's physician or other health care provider when providing care to a child that requires specialized medical assistance; and</p> <p>(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> <p>The proposed revision adds the following to the list of contents required for a child's record and how long the records must be kept:</p> <p>1) medication administration records, and</p> <p>2) health-care professional orders or recommendations for specialized medical assistance.</p>
§744.1309	Amend	<p>S.B. 265 requires training to be relevant to the age of children for whom care is provided.</p> <p>This rule describes the annual training requirements for caregivers and site directors. The proposed change to this rule clarifies that annual training must be relevant to the age of the children for whom the person provides care.</p>
§744.1311	Amend	<p>S.B. 265 requires training to be relevant to the age of children for whom care is provided and adds trainer minimum qualifications to Human Resources Code §42.0421.</p> <p>This rule describes the annual training requirements for operation and program directors. The proposed change to this rule clarifies that annual training must be relevant to the age of the children for whom the operation provides care. Another proposed change deletes a limit on self-instructional training. 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.</p>

<b>Current Rule Sections</b>	<b>Proposed Action; New Rule Section</b>	<b>Summary Explanation of Proposed Action</b>
§744.1319	Amend	<p>S.B. 265 adds minimum trainer qualifications, and all training must be conducted by a person who meets one of seven options for minimum qualifications.</p> <p>This rule lists the criteria for training for caregivers and directors. The proposed change to this rule adds the trainer qualifications discussed above, and clarifies that self-instructional training must be developed by a person who meets one of the listed trainer qualifications.</p>
§744.1327	Amend	The proposed change to this rule updates the cross reference to §744.1319.
§744.1329	Repeal	This rule limits the amount of self-instructional training that caregivers can use to count toward their annual training requirement. 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.
§744.1331	Amend	<p>S.B. 265 adds minimum trainer 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 for compliance.</p>
Chapter 744, Subchapter L, 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.
§744.2651	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 program 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 §§744.2653 and 744.2655. The proposed new rule defines "medication" to include non-prescription medication.</p>

<b>Current Rule Sections</b>	<b>Proposed Action; New Rule Section</b>	<b>Summary Explanation of Proposed Action</b>
§744.2653	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"> <li>• written permission from a parent, or telephone permission for a one-time dose;</li> <li>• re-authorization at least annually; and</li> <li>• prohibition against a parent authorizing more medication than what is prescribed or than what is included in the medication's label instructions.</li> </ul>
§744.2655	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 §§744.2651 and 744.2653 to include that medication can only be given according to label instructions or as directed by a health-care professional.</p>
	§744.2663	<p>H.B. 434 requires a program to follow the directions of a child's physician or other health care provider when providing care to a child that needs specialized medical assistance.</p> <p>This proposed rule defines specialized medical assistance.</p>

<b>Current Rule Sections</b>	<b>Proposed Action; New Rule Section</b>	<b>Summary Explanation of Proposed Action</b>
	§744.2665	<p>H.B. 434 requires a program to:</p> <p>(A) follow the directions of a child's physician or other health care provider when providing care to a child that needs specialized medical assistance; and</p> <p>(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> <p>This proposed rule requires the operation to follow the recommendations or orders of the child's health-care professional when providing specialized medical assistance to a child in care, 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>
§746.105	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 746, Minimum Standards for Child-Care Centers. "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>
§746.201	Amend	<p>S.B. 260 changes orientation, pre-service, and annual training requirements for day care centers. The law now requires orientation within seven days of hire and increased hours of pre-service and annual training.</p> <p>S.B. 471 requires specific policies and training related to child abuse and neglect.</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 all permit holder responsibilities. The proposed change now specifies that a program's training provisions must comply with the new and updated training requirements in these minimum standards.</p>



<b>Current Rule Sections</b>	<b>Proposed Action; New Rule Section</b>	<b>Summary Explanation of Proposed Action</b>
§746.305	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>
§746.501	Amend	<p>S.B. 471 requires centers to have specific policies and training related to child abuse and neglect.</p> <p>This rule lists all of the operational policies a center must have. The proposed change adds the requirement to have a policy on preventing and responding to abuse and neglect of children. Specific policy content mirrors the new law.</p>
§746.603	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 program to:</p> <p>(A) follow the directions of a child's physician or other health care provider when providing care to a child that requires specialized medical assistance; and</p> <p>(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> <p>The proposed revision adds the following to the list of contents required for a child's record and how long the records must be kept:</p> <ol style="list-style-type: none"> <li>1) medication administration records, and</li> <li>2) health-care professional orders or recommendations for specialized medical assistance.</li> </ol>
§746.1301	Amend	<p>S.B. 260 changes orientation, pre-service, and annual training requirements. The law now requires orientation within seven days of hire and increased hours of pre-service and annual training.</p> <p>The proposed changes update the rule to reflect the changes in the law.</p>

<b>Current Rule Sections</b>	<b>Proposed Action; New Rule Section</b>	<b>Summary Explanation of Proposed Action</b>
§746.1303	Amend	The proposed change to this rule references orienting employees to the policy now required on preventing and responding to abuse and neglect of children (see §746.501 above). This ensures a thorough orientation for employees and makes the rules more consistent.
§746.1305	Amend	The proposed change to this rule deletes the references to a specific number of training hours, as the number of hours is already specified in §746.1301.
§746.1307	Amend	This rule change implements S.B. 260, which exempts caregivers from pre-service training if he or she has two years of previous experience or equivalent training. The rule change also clarifies that an exemption based on previous training must be 24 clock hours of training at another regulated child-care center.
§746.1309	Amend	<p>S.B. 260 increases the number of hours of training that are needed annually for day-care center caregivers.</p> <p>S.B. 471 requires day care centers to have specific policies and one hour of training related to child abuse and neglect.</p> <p>S.B. 265 requires training in day care centers to be relevant to the age of children for whom care is provided.</p> <p>This rule implements each of the changes for the day care center caregivers.</p>

<b>Current Rule Sections</b>	<b>Proposed Action; New Rule Section</b>	<b>Summary Explanation of Proposed Action</b>
§746.1311	Amend	<p>S.B. 260 increases the number of hours of training that are needed annually for day care center directors.</p> <p>S.B. 471 requires day care centers to have specific policies and one hour of training related to child abuse and neglect.</p> <p>S.B. 265 requires training in day care centers to be relevant to the age of children for whom care is provided.</p> <p>This rule:</p> <ul style="list-style-type: none"> <li>• implements each of the changes for the day care center caregivers;</li> <li>• deletes limits on self-instructional training. Now that all self-instructional training must be developed by a person who meets one of the qualifications that is also outlined in S.B. 265, it is no longer necessary to limit self-instructional training; and</li> <li>• corrects a cite.</li> </ul>
§746.1317	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 listed in the law.</p> <p>This rule lists the criteria for training for caregivers and directors at day care centers. 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>
§746.1325	Amend	<p>The proposed change to this rule amends the cross reference to §746.1317.</p>
§746.1327	Repeal	<p>This rule limits the amount of self-instructional training that caregivers can use to count toward their annual training requirement. 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.</p>

<b>Current Rule Sections</b>	<b>Proposed Action; New Rule Section</b>	<b>Summary Explanation of Proposed Action</b>
§746.1329	Amend	<p>S.B. 265 adds trainer minimum qualifications to Human Resources Code §42.0421.</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 746, Subchapter S, Safety Practices, Division 2, Medication	Amend	<p>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.</p>
§746.3801	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 day care center 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 §§746.3803 and 746.3805. The proposed new rule defines "medication" to include non-prescription medication.</p>
§746.3803	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"> <li>• written permission from a parent, or telephone permission for a one-time dose;</li> <li>• re-authorization at least annually; and</li> <li>• prohibition against a parent authorizing more medication than what is prescribed or than what is included in the medication's label instructions.</li> </ul>

<b>Current Rule Sections</b>	<b>Proposed Action; New Rule Section</b>	<b>Summary Explanation of Proposed Action</b>
§746.3805	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 §§746.3801 and 746.3803 to include that medication can only be given according to label instructions or as directed by a health-care professional.</p>
	§746.3813	<p>H.B. 434 requires a day care center to follow the directions of a child's physician or other health care provider when providing care to a child that needs specialized medical assistance.</p> <p>This proposed rule defines specialized medical assistance.</p>
	§746.3815	<p>H.B. 434 requires a day care center to:</p> <p>(A) follow the directions of a child's physician or other health care provider when providing care to a child that needs specialized medical assistance; and</p> <p>(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> <p>This proposed rule requires the operation to follow the recommendations or orders of the child's health-care professional when providing 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 Chapter 743, Minimum Standards for Shelter Care, it has been determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be that shelters will have more flexibility to provide needed services to their clients. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

For Chapter 744, Minimum Standards for School-Age and Before or After-School Programs, for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be that caregivers and directors in School-Age and Before or After-School Programs will have a better understanding of when medications may be given to children, how specialized medical assistance must be provided, and who must provide the needed training, and therefore provide better care to Texas children. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

For Chapter 746, Minimum Standards for Child-Care Centers, for each year of the first five years the proposed sections will be in effect, the public benefit anticipated as a result of the rule change will be that providers will have a better understanding of when medications may be given to children, how specialized medical assistance must be provided, and caregivers and directors in day care centers will receive more training, and therefore provide better care to Texas children. DFPS identified proposed changes to §§746.1301 (relating to What training must I ensure that my employees have?), 746.1309 (relating to How many clock hours of annual training must be obtained by caregivers?), and 746.1311 (relating to How many clock hours of training must my child-care center director obtain each year?) as potentially having an adverse economic impact on providers. 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 changes to §746.1301 increase pre-service training hours from 8 to 24 hours, increase annual training for caregivers from 15 to 24 hours, and increase annual training for directors from 20 hours to 30 hours. The proposed changes to §746.1309 reflect the increase in annual training for caregivers and require one hour of annual training on prevention, recognition, and reporting of child abuse/neglect. The proposed changes to §746.1311 reflect the increase in annual training for directors and require one hour of annual training on prevention, recognition, and reporting of child abuse/neglect. An analysis of the fiscal impact to child-care providers that

will result from the increased training requirements is detailed below under the heading "Impact to Business".

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 center 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 center, the discretion that each center will have in how it delivers training to minimize costs, and the extent to which each child-care center absorbs any increased costs without increasing its rates.

(c) Impact on Business.

For Chapter 743, Minimum Standards for Shelter Care, and Chapter 744, Minimum Standards for School-Age and Before or After-School Programs, it has been determined that 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.

For Chapter 746, Minimum Standards for Child Care Centers, there will be a fiscal impact to businesses (child-care centers), 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.

§746.1301 currently requires 8 hours of pre-service training, but amendments to Section 42.0421, Human Resources Code enacted by the 82<sup>nd</sup> Legislature in SB 260 now require 24 hours of pre-service training for employees who have not previously been trained or have less than two years of child-care experience. For each caregiver who must receive the additional 16 hours of pre-service training, it is estimated that child-care centers will experience an average additional one-time cost of \$160.00 in instructional costs, and 127.68 in hourly wages paid to the caregiver while undergoing the training.

§746.1309 currently requires 15 hours of annual training for all caregivers, but amended Section 42.0421, Human Resources Code, now requires 24 hours of annual training. For each caregiver who must receive the additional 9 hours of annual training, it is estimated that child-care centers will experience an additional annual cost of \$90.00 in instructional costs, and 71.82 in hourly wages paid to the caregiver while undergoing the training

§746.1311 currently requires 20 hours of annual training for directors, but amended Section 42.0421, Human Resources Code, now requires 30 hours. Licensing assumes that training provided for directors will typically not be provided in-house and that the level of expertise of trainers is usually higher for training provided to directors than for training provided to caregivers. 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 director who must receive the additional 10 hours of annual training, it is estimated that child-care centers will experience an additional annual cost of \$250 in instructional costs, and \$155 in hourly wages paid to the director while undergoing the training.

The DFPS FY 2010 data book reflects 9,436 licensed child-care centers in Texas, many 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. Based on surveys of child-care providers, DFPS estimates that roughly 55% of child-care centers are for-profit businesses and that roughly 70% are independently owned. Approximately 98% of child-care centers have fewer than 100 employees and roughly 68% 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 §§ 746.1301, 746.1309, and 746.1311 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 section(s).

(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 changes to the rule sections as staff recommended for submittal to the *Texas Register*.