

# MEMORANDUM

TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

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

**FROM: Howard G. Baldwin, Jr.  
Commissioner**

**SUBJECT: Agenda Item 6a: Recommendation to propose rule changes  
in 40 TAC, Part 19, Chapter 700, Subchapter A, Section  
700.108, concerning waivers for implementation of Foster  
Care Redesign**

**DATE: January 20, 2012**

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## BACKGROUND AND PURPOSE

As directed by the 82<sup>nd</sup> Legislature, Regular Session, 2011, Section 11, Senate Bill 218, and in Rider 25, Article II-42, House Bill 1 (the General Appropriations Act), the Department is in the process of implementing the initial phase of a redesign of the Foster Care System, as outlined in a January 2011 report submitted to the Legislature entitled "Improving Child and Youth Placement Outcomes: A System Redesign." This initiative, referred to herein as "Foster Care Redesign," will change the way the Department procures, contracts with, and reimburses providers of foster care and related services. A copy of the January 2011 report and additional information about the Foster Care Redesign initiative is available to the public on the Department's Public Website at:

[http://www.dfps.state.tx.us/Child\\_Protection/Foster\\_Care/redesign.asp](http://www.dfps.state.tx.us/Child_Protection/Foster_Care/redesign.asp)

The initial implementation phase of Foster Care Redesign will be rolled out in two of the Department's administrative regions, with roll-out to the remaining administrative regions occurring in future years. Moreover, within the two initial roll-out regions, the transition to the new system will occur in three distinct stages. Detailed operational procedures under the Redesigned system will be negotiated with a Single Source Continuum Contractor selected to provide foster care services within each administrative region, and are subject to modification as needed to ensure the ultimate success of the redesigned system. Pending the full roll-out of Foster Care Redesign statewide, the Department will concurrently maintain its traditional model for obtaining, contracting, and paying for foster care and related services in the remaining administrative regions.

The Department's Child Protective Services rules in Chapter 700, Title 40, Texas Administrative Code, were developed to support the current model of procuring, paying, and contracting for foster care and related services. Some of these rules will require modification to support the Foster Care Redesign system. However, it is not possible to identify and adjust all rules to support both the evolving new system and the concurrent operation of the old system during the multi-year transition. Accordingly, to address the Department's need for maximum flexibility throughout the transition, the Department is proposing to adopt a new rule at § 700.108 to give the Commissioner of the Department of Family and Protective Services, or that person's designee, authority to waive any rule provision in Chapter 700 that does not accurately describe or support the new system design model, provided such waiver does not result in a violation of other state or federal laws.

Following final statewide implementation of Foster Care Redesign, the Department will amend its rules to reflect the fully redesigned system.

**DETAILED SECTION ANALYSIS AND DISPOSITION TABLE**

| <b>Current Rule Sections</b> | <b>Proposed Action; New Rule Section</b> | <b>Summary Explanation of Emergency Rule</b>   |
|------------------------------|--|--|
| N/A                          | § 700.108                                | This rule grants the Commissioner of the Department of Family and Protective Services, or that person's designee, authority to waive a provision in any rule section in Chapter 700, Title 40, Texas Administrative Code, as necessary for the implementation of Foster Care Redesign, provided such waiver does not violate any other state or federal law. |

**STATUTORY AUTHORITY AND STATUTES AFFECTED**

The rule 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.

The proposed rule implements Human Resources Code § 40.002, and Family Code §264.007, which designate the department as the state agency with primary responsibility for operating a child protection program, and Section 11 of Senate Bill 218 of the 82<sup>nd</sup> Legislature, Regular Session, 2011, and in Rider 25, Article II-42, House Bill 1 (the General Appropriations Act), which directs the department to implement Foster Care Redesign.

**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 section will be in effect, the public benefit anticipated as a result of the rule change will be that the Department will have maximum flexibility to implement Foster Care Redesign, within the limits of state and federal law. There is no anticipated economic cost to persons who are required to comply with the proposed section.

(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.

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

#### STAKEHOLDER INPUT

Stakeholder input will be gathered through the public comment period of the rulemaking process.

#### RECOMMENDATION

It is recommended that the Council consider the proposal of 40 TAC 700.108, as discussed in this memorandum, and that the Council recommend proposal, with or without changes to the rule as it is 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*.