

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 6b: Recommendation to propose rule changes
in 40 TAC Chapter 700, Subchapter H, Adoption Assistance
Program; and Chapter 700, Subchapter J, Assistance
Programs for Relatives and Other Caregivers**

DATE: January 20, 2012



BACKGROUND AND PURPOSE

The Child Protective Services Division is recommending amendments to rules in Title 40, Chapter 700, Subchapters H and J of the Texas Administrative Code. The proposed rules reduce the maximum amount of reimbursement that may be paid for nonrecurring adoption expenses and nonrecurring permanency care assistance (PCA) expenses to \$1,200 per child.

Currently, a person who adopts a child who is the subject of an adoption assistance agreement may be reimbursed up to \$1,500 for the reasonable and necessary nonrecurring expenses associated with the adoption of the child. Currently, a person who obtains permanent managing conservatorship of a child who is the subject of a PCA agreement may be reimbursed up to \$2,000 for the reasonable and necessary expenses associated with obtaining conservatorship of the child. Expenses that can be reimbursed under both programs include legal fees, home studies, court costs, health and psychological examinations, and reasonable costs for lodging, food, and transportation in order to attend court hearings associated with the adoption or award of managing conservatorship.

The proposed changes to §700.850 are necessary to ensure that the department does not exceed amounts appropriated to the department for the purpose of nonrecurring adoption expenses under the General Appropriations Act for the 2012-2013 fiscal biennium (House Bill 1, 82nd Legislature, Regular Session), as explained in greater detail in the Fiscal Impact section of this memo. Further, by making the maximum reimbursable amounts for nonrecurring expenses consistent between the adoption assistance and PCA programs (also see proposed changes to §700.1043), the department will achieve greater consistency between the two programs and will remove a potential monetary disincentive to choosing adoption of a child over permanent managing conservatorship of a child when both options are legally viable. It is anticipated that the new rules will become effective on or about June 1, 2012; however, the reduced amounts will be applicable to adoption assistance and permanency care assistance agreements signed on or after August 1, 2012. The delayed implementation date for the reduced amount will allow staff a two-month interval following the effective date of the new rule in which to convey this new information to families in the process of negotiating an adoption assistance or PCA agreement.

DETAILED SECTION ANALYSIS AND DISPOSITION TABLE

Current Rule Sections	Proposed Action; New Rule Section	Summary Explanation of Proposed Action
700.850		An amendment to this rule changes the maximum amount of reimbursement for nonrecurring adoption expenses from \$1,500 to \$1,200 for agreements signed on or after August 1, 2012.
700.1043		An amendment to this rule changes the maximum amount of reimbursement for nonrecurring PCA expenses from \$2,000 to \$1,200 for agreements signed on or after August 1, 2012.

STATUTORY AUTHORITY AND STATUTES AFFECTED

The rules are 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 amendment to 40 TAC 700.850 implements Family Code §162.304, which directs the Department to enter into adoption assistance agreements for eligible children and provides that the "need for and amounts of the subsidy shall be determined by the department under its rules." The amendment to 40 TAC 700.1043 implements Family Code §264.853, which directs the HHSC executive commissioner to adopt rules necessary to implement the PCA program.

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. The Department estimates that, in comparison to what would be spent on reimbursements for nonrecurring adoption expenses without any change to § 700.850, the amendments to that section will result in a total *decrease* in such expenditures in both State and Federal funds in each of the first five years that this rule will be in effect (which includes all or part of six fiscal years), as follows:

\$136,740 in FY '12 (including \$68,370 in savings to state funds); \$1,380,138 in FY '13 (including \$690,069 in state funds); \$1,413,106 in FY '14 (including \$706,553 in state funds), \$1,471,915 in FY '15 (including \$735,958 in state funds); \$1,501,353 in FY '16 (including \$750,677 in state funds); and \$1,501,353 in FY '17 (including \$750,677 in state funds). The decreased expenditures in the FY '12 - '13 biennium are necessary to comply with HB 1, 82nd Legislature, Regular Session (the Appropriations Act), including Rider 31, Article II-43, HB 1. Rider 31 provides that from the amounts appropriated under Strategy B.1.12, Adoption Assistance and Permanency Care Assistance, the Department may spend no more than \$6,146,790 in FY 2012, and \$6,146,790 in FY 2013, on nonrecurring adoption expenses without prior approval of the Legislative Budget Board and Governor. Further, Rider 31 directs that any request to spend amounts in excess of

those listed in Rider 31 include a detailed explanation of the need for additional funding and the steps that have been taken by the Department to address the need without exceeding the amounts appropriated. The changes to §700.850, are a necessary step so that the Department does not exceed its budget allocation for the biennium beginning with FY 2012.

With regard to the change to §700.1043, there is no expense history for nonrecurring reimbursement contained in the PCA program due to the relative newness of this program. As a result, the savings associated with this section are unknown.

(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 Department does not exceed its budget allocation, consistent with legislative appropriations and intent. Further, by making the maximum reimbursable amounts for nonrecurring expenses consistent in both the adoption assistance and PCA programs, the rule amendments will serve to ensure that families have no financial incentive to choose permanent managing conservatorship over adoption for children who are legally eligible for adoption. This is an important public benefit because adoption is a more favorable permanency outcome for most children.

The rules will have a potential fiscal impact to persons whose nonrecurring expenses associated with adopting a child or obtaining conservatorship of a child exceed the new maximum reimbursable amounts. The potential impact is a maximum loss of \$300 per child who is the subject of an adoption assistance agreement and a maximum loss of \$800 per child who is the subject of a PCA agreement.

(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 these rules. 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

The Department did not seek stakeholder input on this rule, as the proposed rule changes are primarily based on the agency's obligation to ensure that it does not exceed appropriated funds.

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*.