

# MEMORANDUM

TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

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

FROM: **Howard Baldwin**  
**Commissioner**

SUBJECT: **Agenda Item 7a: Recommendation to adopt 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: **January 20, 2012**



## BACKGROUND AND PURPOSE

The 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 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.

#### STATUTORY AUTHORITY AND STATUTES AFFECTED

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide 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.

#### COMMENTS AND RESPONSES

The proposed rules were published in the *Texas Register* on November 18, 2011. DFPS received 70 comments regarding the rule changes, including comments from:

- day care center directors,
- other child care providers,
- child care advocates,
- provider groups (Texas Partnership for Out of School Time and Texas Association for the Education of Young Children),
- the Texas Trainer Registry Council,
- a trainer for child care operations, and
- individuals who did not identify their role.

Twenty-four commenters expressed concern about the financial impact of additional training requirements, primarily related to child care centers. Eleven commenters described the additional training requirements as burdensome. Additionally, 40 commenters opposed and one person supported the repeal of limitations on self-instructional training for child care providers.

<b>Section Affected and Original Proposal</b>	<b>Summary of Commenter's Concern</b>	<b>Department Response and Rationale</b>
§743.3	No comments	The department recommends adoption of this section with no changes.
§743.7	No comments	The department recommends adoption of this section with no changes.
§743.105	No comments	The department recommends adoption of this section with no changes.
§743.107	No comments	The department recommends adoption of this section with no changes.
§743.109	No comments	The department recommends adoption of this section with no changes.

<b>Section Affected and Original Proposal</b>	<b>Summary of Commenter's Concern</b>	<b>Department Response and Rationale</b>
§743.201	No comments	The department recommends adoption of this section with no changes.
Chapter 743, Subchapter D, Program Requirements	No comments	The department recommends adoption of this section with no changes.
Chapter 743, Subchapter E, Health	No comments	The department recommends adoption of this section with no changes.
Chapter 743, Subchapter F, Safety	No comments	The department recommends adoption of this section with no changes.
Chapter 743, Subchapter G, Space and Equipment	No comments	The department recommends adoption of this section with no changes.
Chapter 743, Subchapter H, Infant and Toddler Care	No comments	The department recommends adoption of this section with no changes.
§744.105	No comments	The department recommends adoption of this section with no changes.
§744.201	No comments	The department recommends adoption of this section with no changes.
§744.305	No comments	The department recommends adoption of this section with no changes.
§744.603	No comments	The department recommends adoption of this section with no changes.
§744.1309	No comments	<p>The department recommends adoption of this section with one change.</p> <p>While no comment was received for this rule, comments were made to the proposed repeal of §744.1329 (which include requirements limiting self-instructional training). In response to public comment, instead of withdrawing the repeal of §744.1329, the department is recommending that the requirements outlined in §744.1329 be retained by adding the following subsection to this rule: (e) A caregiver or site director may obtain no more than 50% of annual training through self-instructional training. This new subsection mirrors what is currently required in §744.1329 for caregivers, except that the requirement is stated as a percentage of annual training rather than a</p>

<b>Section Affected and Original Proposal</b>	<b>Summary of Commenter's Concern</b>	<b>Department Response and Rationale</b>
§744.1311	No comments	<p>specific number.</p> <p>The department recommends adoption of this section with one change.</p> <p>While no comment was received for this rule, comments were made to the proposed repeal of §744.1329 (which include requirements limiting self-instructional training), and this rule proposal also recommended the deletion of any limits to self instructional training for directors. In response to public comment, instead of deleting the limits to self-instructional training, the department is recommending the withdrawal of the deletion of this language and is renumbering and keeping the following subsection to this rule: (i) no more than 50% of annual training may be obtained through self-instructional training. This reinserted subsection mirrors what is in the current rule, except that the requirement is stated as a percentage of annual training rather than a specific number.</p>
§744.1319	<p>DFPS received three comments related to this rule.</p> <p>Two commenters noted that trainer certification for providers of school-age care should be done through a source other than the Texas Early Childhood Education Coalition (TECEC), as TECEC focuses on early childhood. The commenters suggested other changes that offered options more focused on school-age care.</p> <p>One other commenter suggested that such a drastic change requires more time for child care providers to comply, suggesting that the rule change go into effect in August or December of 2012.</p>	<p>The department recommends adoption of this section with no changes.</p> <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. TECEC is just one option available to individuals that can provide training. For example, school-age and before or after-school programs should be able to access adequate training based on the trainer minimum qualification of "A person who holds a generally recognized credential or possesses documented knowledge relevant to the training the person will provide."</p> <p>Although S.B. 265 does not apply to school-age and before or after-school programs, Child Care Licensing is adopting this rule as proposed in order to create consistent expectations across the child care industry. This helps individual caregivers change</p>

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		<p>jobs without worrying that their previous training is not transferable, and assists both training providers and child care operations in developing and/or accessing child care training based one set of criteria.</p> <p>Regarding the timing of the change: (1) SB 265 became effective on September 1, 2011; (2) an e-mail was sent on August 15, 2011 to all providers with e-mail addresses regarding the laws passed in the 82<sup>nd</sup> Legislative Session; (3) information was placed on the DFPS website specifying the new trainer requirements and that training received after January 1, 2012 will need to be provided by a trainer that meets the new training criteria; and (4) Licensing always provides an "implementation period", which in this instance includes looking at this issue from a one year standpoint (e.g. 9/11 - 9/12) and providing technical assistance.</p>
§744.1327	No comments	The department recommends adoption of this section with no changes.
§744.1329	<p>DFPS received one comment on the repeal of this rule, and 42 comments on the companion rule in Chapter 746, Minimum Standards for Child-Care Centers, §746.1327 (relating to How many annual training clock hours may caregivers obtain from self-instructional materials?). One commenter stated that effective professional development experiences use an active, hands-on approach and stress an interactive approach that encourages students to learn from one another, while also offering opportunities for application and reflection on the material learned. The commenter stated that, "considering that entry level is a high school diploma, we must ensure that the training received is factual, hands on and meets the various learning style of all providers."</p>	<p>The department recommends adoption of this rule repeal with no changes.</p> <p>This rule, which limits the amount of self-instructional training that can be used to count toward annual training requirements, was proposed for repeal. The original rationale for repealing the rule was that since 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> <p>However, in response to public comment, DFPS recommends retaining the requirements in this rule. Rather than withdrawing the repeal of this rule, the department recommends revising §744.1309 and §744.1311 to include requirements limiting self-instructional training to 50 % percent of annual training, which mirrors the limits previously reflected in this rule and §744.1311. These changes create consistency in rule-making between this chapter and Chapters 746 and 747,</p>

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		which minimizes confusion regarding training requirements for child care providers and DFPS staff.
§744.1331	The Texas Trainer Registry Council asked how training received at conferences would be accepted as annual training, since the training certificates would not include each trainer's qualifications. They requested that the conference organizers keep documentation on how each trainer qualifies, so that Child Care Licensing could accept the conference certificate alone as acceptable documentation and investigate any conference training that came into question.	<p>The department recommends adoption of this section with no changes.</p> <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> <p>Child Care Licensing will add a "Helpful Information" section to the minimum standards publication, directly below this rule, indicating that conference sponsors may be responsible for ensuring the appropriateness of all presenter minimum qualifications (rather than listing all presenters and their qualifications on a training certificate).</p>
Chapter 744, Subchapter L, Safety Practices, Division 2, Medication	No comments	The department recommends adoption of this section with no changes.
§744.2651	No comments	The department recommends adoption of this section with no changes.
§744.2653	No comments	The department recommends adoption of this section with no changes.
§744.2655	No comments	The department recommends adoption of this section with no changes.
§744.2663	No comments	The department recommends adoption of this section with no changes.
§744.2665	No comments	The department recommends adoption of this section with no changes.
§746.105	No comments	The department recommends adoption of this section with no changes.
§746.201	No comments	The department recommends adoption of this section with no changes.

<b>Section Affected and Original Proposal</b>	<b>Summary of Commenter's Concern</b>	<b>Department Response and Rationale</b>
§746.305	No comments	The department recommends adoption of this section with no changes.
§746.501	No comments	The department recommends adoption of this section with no changes.
§746.603	No comments	The department recommends adoption of this section with no changes.
§746.1301	<p>DFPS received nine comments on this rule.</p> <p>Two commenters stated that 24 hours of pre-service training is excessive, and that 16 would be more reasonable.</p> <p>Three commenters stated that it would be harder to hire qualified staff, due to the changes in pre-service training exemptions.</p> <p>Six commenters stated that the increased training hours will be a financial burden.</p> <p>Four commenters stated that it is a challenge to find enough training resources and enough staff time to fulfill additional training requirements.</p> <p>One commenter suggested waiting until August 2012 to make the increased training requirements effective, so that day care centers had more time to plan for compliance.</p>	<p>The department recommends adoption of this section with no changes.</p> <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. The changes update the rule to reflect changes in the law.</p> <p>Child Care Licensing will provide technical assistance to help child care providers who report challenges with the financial impact of increased training requirements and lack of training resources.</p> <p>Regarding the timing of the change: (1) SB 265 became effective on September 1, 2011; (2) an e-mail was sent on August 15, 2011 to all providers with e-mail addresses regarding the laws passed in the 82<sup>nd</sup> Legislative Session; (3) information was placed on the DFPS website specifying the new trainer requirements and that training received after January 1, 2012 will need to be provided by a trainer that meets the new training criteria; and (4) Licensing always provides an "implementation period", which in this instance includes looking at this issue from a one year standpoint (e.g. 9/11 - 9/12) and providing technical assistance.</p>
§746.1303	No comments	The department recommends adoption of this section with no changes.
§746.1305	No comments	The department recommends adoption of this section with no changes.
§746.1307	<p>DFPS received two comments on this rule.</p> <p>One commenter emphasized the financial burden of changing the pre-service training exemption for caregivers.</p>	<p>The department recommends adoption of this section with no changes.</p> <p>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</p>

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	<p>The other commenters also stated that they would probably have to stop hiring staff who do not meet the pre-service training exemption, due to the cost of providing the additional pre-service training.</p>	<p>exemption based on previous training must be 24 clock hours of training at another regulated child-care center. The changes update the rule to reflect changes in the law.</p>
<p>§746.1309</p>	<p>DFPS received nine comments on this rule.</p> <p>Eight of these commenters indicated that additional training requirements will be a financial burden on child care centers, both in terms of paying for training and paying staff for the time they spend in training.</p> <p>Three commenters expressed concern about having access to enough training.</p> <p>Two commenters stated that the increased training requirements are excessive, noting that many other professions have lower annual training requirements.</p> <p>Two commenters also cited the additional burden of CPR/First Aid training and transportation safety training, which are not counted toward annual training hours.</p> <p>Two commenters requested additional time to come into compliance with the increased training requirements.</p> <p>One commenter stated that the additional training would not be worth the cost, while three other commenters supported additional training.</p> <p>One commenter suggested fewer training requirements for certified teachers, and different training requirements for preschools versus other child care centers.</p>	<p>The department does not recommend any changes in response to public comment; however, the department recommends adoption of this section with a change.</p> <p>S.B. 260 increases the number of hours of training that are needed annually for day-care center caregivers. S.B. 471 requires day care centers to have specific policies and one hour of training related to child abuse and neglect. S.B. 265 requires training in day care centers to be relevant to the age of children for whom care is provided. This rule change implements each of these changes in the law.</p> <p>Child Care Licensing will provide technical assistance to help child care providers who report challenges with the financial impact of increased training requirements and lack of training resources.</p> <p>Regarding the timing of the change: (1) SB 265 became effective on September 1, 2011; (2) an e-mail was sent on August 15, 2011 to all providers with e-mail addresses regarding the laws passed in the 82<sup>nd</sup> Legislative Session; (3) information was placed on the DFPS website specifying the new trainer requirements and that training received after January 1, 2012 will need to be provided by a trainer that meets the new training criteria; and (4) Licensing always provides an "implementation period", which in this instance includes looking at this issue from a one year standpoint (e.g. 9/11 - 9/12) and providing technical assistance.</p> <p>The change in the rule that is being recommended relates to a requirement that reflects repealed rule §746.1327. In response to public comment, the department is recommending that the requirements relating to limits on self-</p>



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		<p>instructional training outlined in §746.1327 be retained. However, the requirements must be updated to match the annual training requirement increase reflected in this rule. Therefore, the new wording is noted as a percentage (50 %) vs. hours, but mirrors the limits previously reflected in §746.1327.</p>
<p>§746.1311</p>	<p>DFPS received six comments on this rule.</p> <p>Five of these commenters indicated that additional training requirements will be a financial burden on child care centers, both in terms of paying for training and paying staff for the time they spend in training.</p> <p>One commenter indicated that the increased requirements may put smaller programs out of business, or force them to decrease services in order to be exempt from regulation.</p> <p>One commenter expressed concern about staff having enough time in their schedule to attend additional training.</p> <p>One commenter indicated that increased training for directors means that they will have to be away from the center more often, particularly since current rules do not allow them to count preparation for in-house training toward their own annual training hours.</p>	<p>The department does not recommend any changes in response to the public comment; however, the department recommends adoption of this section with one change.</p> <p>S.B. 260 increases the number of hours of training that are needed annually for day care center directors. S.B. 471 requires day care centers to have specific policies and one hour of training related to child abuse and neglect. S.B. 265 requires training in day care centers to be relevant to the age of children for whom care is provided. This rule change implements each of these changes in the law.</p> <p>Child Care Licensing will provide technical assistance to help child care providers who report challenges with the financial impact of increased training requirements.</p> <p>Comments were made to the proposed repeal of §746.1327 (which include requirements limiting self-instructional training), and this rule proposal also recommended the deletion of any limits to self instructional training for directors. In response to public comment, instead of deleting the limits to self-instructional training, the department is recommending the withdrawal of the deletion of this language and is renumbering and keeping the following subsection to this rule: (k) no more than 50% of annual training may be obtained through self-instructional training. This reinserted subsection mirrors what is in the current rule, except that the requirement is stated as a percentage of annual training rather than number of hours.</p>

<b>Section Affected and Original Proposal</b>	<b>Summary of Commenter's Concern</b>	<b>Department Response and Rationale</b>
§746.1317	<p>DFPS received three comments on this rule.</p> <p>One commenter expressed concern about the proposed changes to this rule, stating that the changes are "going to the extreme."</p> <p>One commenter suggested waiting until August or December 2012 to make the additional training requirements effective, so that day care centers had more time to plan for compliance.</p>	<p>The department recommends adoption of this section with no changes.</p> <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>Regarding the timing of the change: (1) SB 265 became effective on September 1, 2011; (2) an e-mail was sent on August 15, 2011 to all providers with e-mail addresses regarding the laws passed in the 82<sup>nd</sup> Legislative Session; (3) information was placed on the DFPS website specifying the new trainer requirements and that training received after January 1, 2012 will need to be provided by a trainer that meets the new training criteria; and (4) Licensing always provides an "implementation period", which in this instance includes looking at this issue from a one year standpoint (e.g. 9/11 - 9/12) and providing technical assistance.</p>
§746.1325	No comments.	The department recommends adoption of this section with no changes.
§746.1327	<p>DFPS received 42 comments on this rule.</p> <p>One commenter supported the repeal of this rule.</p> <p>Three commenters requested that the current rule, which requires at least ½ of annual training to be instructor-led, not be repealed.</p> <p>One commenter suggested that at least 1/3 of annual training be instructor-led.</p> <p>30 commenters opposed repeal of the rule and all stated, "Experts speak to the success of interactive curriculum and research-based, responsive, testable training. Instructor-led training furthers social connections and allows for</p>	<p>The department recommends adoption of the repeal of this section with no changes.</p> <p>This rule, which limits the amount of self-instructional training that can be used to count toward annual training requirements, was proposed for repeal. The rationale was that since 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> <p>However, in response to public comment, DFPS recommends retaining the requirements in this rule. Rather than withdrawing the repeal of this rule, the department recommends revising §746.1309 and §746.1311 to include requirements limiting self-instructional training to mirror the percentage of annual training previously reflected in this rule by</p>

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	<p>sharing and reflection of the content and learning. It ensures active learning and participation and offers personal adjustment and feedback."</p> <p>Six commenters opposed the repeal of the rule, citing the benefit of classroom instruction.</p> <p>One commenter opposed the repeal of the rule, listing 19 "key issues" and research-related information to support her stance.</p> <p>One commenter stated that putting no limit on self-instructional training was in direct contradiction to established best practices and research in professional development for child care providers, citing three professional articles that supported her comment.</p> <p>TAEYC stated that effective professional development experiences use an active hands-on approach and stress an interactive approach that encourages students to learn from one another, while also offering opportunities for application and reflection on the material learned.</p> <p>TAEYC stated that, "considering that entry level is a high school diploma, we must ensure that the training received is factual, hands on and meets the various learning style of all providers."</p>	<p>hours. These changes create consistency in rule-making between this chapter and Chapters 744 and 747, which minimizes confusion regarding training requirements for child care providers and DFPS staff.</p>
§746.1329	<p>The Texas Trainer Registry Council asked how training received at conferences would be accepted as annual training, since the training certificates would not include each trainer's qualifications. They requested that the conference organizers keep documentation on how each</p>	<p>The department recommends adoption of this section with no changes.</p> <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>

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	<p>trainer qualifies, so that Child Care Licensing could accept the conference certificate alone as acceptable documentation and investigate any conference training that came into question.</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> <p>Child Care Licensing will add a "Helpful Information" section to the minimum standards publication, directly below this rule, indicating that conference sponsors may be responsible for ensuring the appropriateness of all presenter minimum qualifications (rather than listing all presenters and their qualifications on a training certificate).</p>
<p>Chapter 746, Subchapter S, Safety Practices, Division 2, Medication</p>	<p>No comments</p>	<p>The department recommends adoption of this section with no changes.</p>
<p>§746.3801</p>	<p>No comments</p>	<p>The department recommends adoption of this section with no changes.</p>
<p>§746.3803</p>	<p>No comments</p>	<p>The department recommends adoption of this section with no changes.</p>
<p>§746.3805</p>	<p>No comments</p>	<p>The department recommends adoption of this section with no changes.</p>
<p>§746.3813</p>	<p>No comments</p>	<p>The department recommends adoption of this section with no changes.</p>
<p>§746.3815</p>	<p>No comments</p>	<p>The department recommends adoption of this section with no changes.</p>

## RECOMMENDATION

It is recommended that the Council recommend adoption of these rules, with and without changes, as they are attached to this memo.

## SCHEDULE

<b>Milestones</b>	<b>Dates</b>
<p>Proposed rules presented to the Council for recommendation to publish</p>	<p>October 21, 2011</p>
<p>Approval to publish proposed rules received from HHSC</p>	<p>November 1, 2011</p>

<b>Milestones</b>	<b>Dates</b>
Proposed rules published in the <i>Texas Register</i>	November 18, 2011
Thirty-day comment period ends	December 19, 2011
Rules presented to the Council for recommendation to adopt	January 20, 2012
Estimated date approval to adopt rules received from HHSC	February 2, 2012
Estimated date adopted rules published in the <i>Texas Register</i>	February 24, 2012
Effective date	March 1, 2012

## ATTACHMENTS

Attached is a copy of the proposed adopted rules, as recommended for submittal to the *Texas Register*.