

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 7b: Recommendation to adopt rule
changes in 40 TAC, Chapter 747, Minimum
Standards for Child-Care Homes**

DATE: **January 20, 2012**



BACKGROUND AND PURPOSE

The purpose of the proposed changes to Chapter 747, Minimum Standards for Child-Care Homes, 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.

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. During the comment period, DFPS received comments from the Texas Trainer Registry Council, the Texas Association for the Education of Young Children (TAEYC), a child care provider, and a person who did not identify her organization or role.

The Texas Trainer Registry Council made a specific request regarding documentation of annual training (see §747.1327). TAEYC expressed opposition to the proposed repeal of limits on self-instructional training. The child care provider expressed concern about both the cost and burden of increased training hours, as well as stating that she did not believe that more training necessarily equals better child care. The final commenter expressed concern about the financial impact of increased training requirements.

Section Affected and Original Proposal	Summary of Commenter's Concern	Department Response and Rationale
§747.105	No comments	The department recommends adoption of this section with no changes.
§747.303	No comments	The department recommends adoption of this section with no changes.
§747.603	No comments	The department recommends adoption of this section with no changes.
§747.1301	Two commenters disagree with increasing training hours for home-based child care providers	<p>The department recommends adoption of this section with no changes.</p> <p>Senate Bill (S.B.) 260 changed orientation and annual training requirements for home-based day-care. The law now requires caregivers for licensed child-care homes to have orientation within seven days of hire and increased hours of annual training (from 15 to 24 hours). The changes update the rule to reflect changes in the law.</p>

Section Affected and Original Proposal	Summary of Commenter's Concern	Department Response and Rationale
§747.1303	Two commenters disagree with increasing training hours for home-based child care providers	<p>The department recommends adoption of this section with no changes.</p> <p>Senate Bill (S.B.) 260 changed orientation and annual training requirements for home-based day-care. The law now requires the permit holder that is a primary caregiver in licensed child-care homes to have 30 hours of annual training instead of the previous 20 hours. The changes update the rule to reflect changes in the law.</p>
§747.1307	Two commenters disagree with increasing training hours for home-based child care providers	<p>S.B. 260 changed orientation and annual training requirements, including an increase in annual training hours, for home-based day-care. However, the relevant change to this rule only deletes the outdated references to the previously required "15 clock hours" of training. Sections 747.1301, 747.1303, and 747.1309 are the rules that actually increase the number of training hours.</p> <p>The department does recommend adoption of §747.1307 with a change. A requirement from §747.1325, which is being repealed with this package, is added to this rule. In response to public comment, DFPS recommends retaining the requirements from §747.1325, but must update them to match annual training requirement increases reflected in other rules. Therefore, subsection (g) is added to this rule stating "A caregiver may obtain no more than 80% of annual training from self-instructional materials."</p>

Section Affected and Original Proposal	Summary of Commenter's Concern	Department Response and Rationale
§747.1309	Two commenters disagree with increasing training hours for home-based child care providers	<p>S.B. 260 changed orientation and annual training requirements for home-based day-care. The law now requires a primary caregiver in licensed child-care homes to have 30 hours of annual training instead of the previous 20 hours. The changes update the rule to reflect changes in the law.</p> <p>The department recommends adoption of §747.1309 with a change. A requirement from §747.1325, which is being repealed with this package, is added to this rule. In response to public comment, DFPS recommends retaining the requirements from §747.1325, but must update them to match annual training requirement increases reflected in other rules. Therefore, subsection (h) is added to this rule stating "A primary caregiver may obtain no more than 80% of annual training from self-instructional materials."</p>
§747.1315	No comments	The department recommends adoption of this section with no changes.
§747.1323	No comments	The department recommends adoption of this section with no changes.

Section Affected and Original Proposal	Summary of Commenter's Concern	Department Response and Rationale
§747.1325	<p>DFPS received one comment on 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?). The commenter expressed concern about repealing the limits on self-instructional training in all day care minimum standards, suggesting that the current limit of 50% for day care centers be maintained. The commenter also 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 also 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 the rule repeal, which limits the amount of self-instructional training that can be used to count toward annual training requirements.</p> <p>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 as well as using technical assistance to help child-care providers who report challenges with the financial impact of increased training requirements.</p> <p>This rule specifies a number of annual training hours that would be contradictory to changes adopted in other rules, and this rule cannot be amended after being proposed for repeal. Therefore, DFPS is revising §747.1307 and §747.1309 to include requirements limiting self-instructional training to 80% of annual training which mirrors the limits previously reflected in this rule.</p>

Section Affected and Original Proposal	Summary of Commenter's Concern	Department Response and Rationale
§747.1327	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 747, Subchapter S, Safety Practices, Division 2, Medication	No comments	The department recommends adoption of this section with no changes.
§747.3601	No comments	The department recommends adoption of this section with no changes.
§747.3603	No comments	The department recommends adoption of this section with no changes.
§747.3605	No comments	The department recommends adoption of this section with no changes.
§747.3613	No comments	The department recommends adoption of this section with no changes.

Section Affected and Original Proposal	Summary of Commenter's Concern	Department Response and Rationale
§747.3615	No comments	The department recommends adoption of this section with no changes.

RECOMMENDATION

It is recommended that the Council recommend adoption of these rules as they are attached to this memo.

SCHEDULE

Milestones (To Be Completed by CPI)	Dates
Proposed rules presented to the Council for recommendation to publish	October 21, 2011
Approval to publish proposed rules received from HHSC	November 1, 2011
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
Approval to adopt rules received from HHSC	February 2, 2012
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*.