

# 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 7c: Recommendation to adopt rule  
changes in 40 TAC, Chapter 748, General Residential  
Operations; and Chapter 749, Child-Placing  
Agencies; regarding training and handguns**

DATE: **January 20, 2012**



## BACKGROUND AND PURPOSE

The purpose of the rule changes to Chapters 748 and 749 is to implement legislation passed during the 82nd Legislative Session.

Senate Bill (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 new law.

S.B. 471 requires child-placing agencies to have specific policies and training related to child abuse and neglect.

House Bill (H.B.) 2560 prohibits Child Care Licensing from banning handguns in foster parent vehicles if the handgun is in the possession and control of the foster parent and the foster parent is licensed to carry the handgun.

## 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 4 comments regarding the rule changes. For Chapter 748, one residential child

care provider opposed the proposed trainer minimum qualifications for transportation safety training. For Chapter 749, one residential child care provider and one anonymous commenter opposed changes to requirements related to firearms in a vehicle when transporting foster children. Also, one residential child care provider requested clarification on proposed new policy and training requirements related to child abuse/neglect. Responses to comments are noted below.

<b>Section Affected and Original Proposal</b>	<b>Summary of Commenter's Concern</b>	<b>Department Response and Rationale</b>
§748.941	One commenter requested that a licensed child care administrator with a valid license and good driving record be able to conduct transportation safety training, stating that the current proposed requirements are too restrictive.	<p>The department recommends adoption of this section with no changes.</p> <p>This rule addresses instructor requirements for annual training. Since transportation safety training is required by Human Resources Code §42.0421, the instructor for transportation safety training must meet one of the qualifications now specified in law as added by Senate Bill 265 passed during the 82<sup>nd</sup> Legislative Session. However, a child care administrator will in many instances be able to conduct transportation safety training because the administrator will already meet one or more of the qualifications.</p>
§749.339	One commenter noted an error and requested clarification on a proposed new policy content requirement related to child abuse/neglect: "Strategies for coordination between the center and appropriate community organizations."	The department recommends adoption of this section with a change to paragraph (18), subparagraph (D), replacing "center" with "child-placing agency." The proposed rule incorrectly referred to a day care center instead of a child-placing agency. The department does not recommend revising the requirement to be more prescriptive at this time. Instead, Child Care Licensing staff will offer technical assistance as needed, individualized to the services offered by the operation and the resources available in the community.

<b>Section Affected and Original Proposal</b>	<b>Summary of Commenter's Concern</b>	<b>Department Response and Rationale</b>
§749.931	One commenter requested clarification on a proposed new training requirement related to child abuse/neglect: "Community organizations that have training programs available to child-placing agency staff members, children, and parents."	The department recommends adoption of this section with no changes.  Instead of revising the requirement to be more prescriptive, Child Care Licensing staff will offer technical assistance as needed, individualized to the services offered by the operation and the resources available in the community.
§749.939	No comments	The department recommends adoption of this section with no changes.
§749.2967	Two commenters expressed concern about any type of weapon being in a vehicle when a foster child is being transported.	The department recommends adoption of this section with no changes.  H.B. 2560 prohibits Child Care Licensing from banning handguns in foster parent vehicles if the handgun is in the possession and control of the foster parent and the foster parent is licensed to carry the handgun. The proposed rule conforms to the law.

## RECOMMENDATION

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

## SCHEDULE

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