

# 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 6c: Recommendation to propose rule changes in 40 TAC, Part 19, Chapter 700, Subchapter Y, Contracting with Licensed Residential Providers and Chapter 732, Subchapter L, Contract Administration

**DATE:** April 20, 2012



## BACKGROUND AND PURPOSE

The Department of Family and Protective Services (DFPS) proposes the repeal of an outdated subchapter in the agency's rules governing Child Protective Services (CPS) and corresponding updates to its rules governing contracting administration as part of the agency's ongoing efforts to update and improve its rules.

Specifically, DFPS proposes the repeal of Chapter 700, Subchapter Y, Contracting with Licensed Residential Providers, which was originally enacted in 1996. Although there have been updates to the subchapter since the time of its original enactment, state law governing procurement, contract remedies, and contract dispute resolution has changed significantly while the rules have been in effect. Also, DFPS is consolidating all of the rules pertinent to contracts into Chapter 732, Contracted Services, in an on-going effort to consolidate the rules, which will make the agency's overall policies governing contracts more clear for the public. Finally, because of some of the changes in state law to contract remedies and contract dispute resolution, amendments are made in the contract administration chapter itself. The changes are primarily "clean-up" and structural.

## DETAILED SECTION ANALYSIS AND DISPOSITION TABLE

Current Rule Sections	Proposed Action; New Rule Section	Summary Explanation of Proposed Action
700.2501	Repeal	Subsection (a) did not provide any substantive clarification to the public and is unnecessary. The content of subsections (b) and (c), regarding Licensing and general service requirements will be included in any public notice of a DFPS procurement for residential child-care services. The content of subsection (d), regarding contract term, renewal, and amendment is already covered in Chapter 732.
700.2502	Repeal	In accordance with sections 2155.083 and 2155.144 of the Texas Government Code, prerequisites to a residential child-care contract will be set forth in the agency's procurement for the contract.

<b>Current Rule Sections</b>	<b>Proposed Action; New Rule Section</b>	<b>Summary Explanation of Proposed Action</b>
700.2505	Repeal	The content of subsection (a) and relevant portions of subsection (b) are being moved to 40, Texas Administrative Code § 732.269. Portions of subsection (b) are deleted because they no longer reflect current terminology or practice related to contract remedies. Subsections (c)-(e) are repealed because they are covered by and partially in conflict with the DFPS residential contract for child-care services. The content of subsection (f) has been moved to 40 TAC §732.267. The content of subsection (g) has been moved to 40 TAC §732.269.
732.267	Repeal old rule and create new rule	The old rule is repealed, because the appeal process is now governed by Government Code, Chapter 2260, and Subchapter N of the Chapter, relating to Dispute Resolution. The new rule replaces 40 TAC 700.2505(f), and any remedy the agency puts in place against a contractor will remain in effect during the appeal process.
732.268	Repeal	Section 732.268 is being repealed in its entirety. The authority for DFPS to terminate a contract is just one of several remedies available to DFPS when there is a contract violation, and any notice requirements regarding a termination will be contained in the agency's procurement and contract. New § 732.269 explains the remedies that are available to DFPS.
732.269	Repeal old rule and create new rule	The old rule is repealed, because the authority for DFPS to terminate a contract is just one of several remedies available to DFPS when there is a contract violation, and the types of termination will be contained in the agency's procurement and contract. The new rule revamps § 700.2505(a), (b), and (c) to accurately reflect current law and agency practice regarding contract remedies, including a list of the remedies available to DFPS.
732.274	Repeal	Termination as a contract remedy is contained in new § 732.269. The specific terms for terminating a contract will be contained in DFPS' procurement and contract.

<b>Current Rule Sections</b>	<b>Proposed Action; New Rule Section</b>	<b>Summary Explanation of Proposed Action</b>
732.276 and 732.277	Repeal	These rules are repealed in their entirety. "Removal of contractual rights" and "abeyance" are no longer current terminology for agency contractual remedies. They have been replaced by debarment and suspension (for applying for a contract), respectively, which are governed by other state and federal law. All of the procedural requirements and other governing principles are set forth in such other law.

#### STATUTORY AUTHORITY AND STATUTES AFFECTED

The modification 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; Texas Government Code, Chapter 2155, which sets forth a statutory scheme governing state procurements; Texas Government Code, Chapter 2260, which sets forth a statewide contract dispute resolution process.

#### 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.

(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 changes will be increased clarity to the public regarding DFPS' requirements and remedies for all agency contracts. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

(c) Impact on Business. There is no anticipated adverse impact on small, micro, and large businesses as a result of the proposed rule changes because the proposed rule changes should not affect the cost of doing business; do not impose new requirements on any business; and do 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(s).

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

## STAKEHOLDER INPUT

Stakeholder input will be considered as it is received during the period for comments on the rule.

## 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*.