

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 7a: Recommendation to adopt 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: April 20, 2012



BACKGROUND AND PURPOSE

The Child Protective Services Division recommends adoption of amendments to rules in Title 40, Chapter 700, Subchapters H and J of the Texas Administrative Code. The 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 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). 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.

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.

COMMENTS AND RESPONSES

The proposed rules were published in the *Texas Register* on February 17, 2012. DFPS received six comments opposing the adoption of the proposed rule changes, including comments from the organizations Embrace Waiting Children, Inc., and Family by Choice, Inc. All commenters objected to the lowering of the maximum reimbursable amounts for nonrecurring expenses. Five of the six commenters expressed their views that the new ceilings would not be sufficient to cover actual expenses and speculated that the lowered amounts would serve as a disincentive to future families considering making a permanent legal commitment to children in the Department's care. Four of the six commenters commented that the relatively small savings to the state that will result from the reduced appropriations for this purpose are insignificant compared to the savings to the state and the positive impact on the future lives of children when families have the means to offer a child a permanent home.

The Department acknowledges that the actual non-recurring expenses of some families who adopt a child or assume permanent managing conservatorship of a child may exceed the lowered maximum reimbursable amounts for nonrecurring expenses. The Department further acknowledges the possibility that the lowered amounts could discourage some families from pursuing adoption or permanent managing conservatorship of a child in the Department's care. Nonetheless, the Department must reduce the maximum reimbursable amounts for the nonrecurring expenses of adoption in order to not exceed the sums appropriated to the Department for this purpose. Further, the Department has determined that it is appropriate to make the maximum ceiling amount for reimbursement of nonrecurring expenses the same in both the Adoption Assistance and Permanency Care Assistance programs in order to remove a potential monetary disincentive to choosing adoption over permanent managing conservatorship when both options are legally viable.

RECOMMENDATION

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

SCHEDULE

Milestones	Dates
Proposed rules presented to the Council for recommendation to publish	January 20, 2012
Approval to publish proposed rules received from HHSC	January 31, 2012
Proposed rules published in the <i>Texas Register</i>	February 17, 2012
Thirty-day comment period ends	March 19, 2012
Rules presented to the Council for recommendation to adopt	April 20, 2012
Estimated date the approval to adopt rules received from HHSC	May 1, 2012
Estimated date the adopted rules published in the <i>Texas Register</i>	May 18, 2012
Estimated effective date	June 1, 2012

ATTACHMENTS

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