

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 6b: Recommendation to propose rule changes
in 40 TAC (Chapter 727, Licensing of Maternity Facilities,
Chapter 745, Licensing)**

DATE: July 20, 2012



BACKGROUND AND PURPOSE

The Child Care Licensing Program is proposing changes to 40 Texas Administrative Code (TAC) Chapter 727, Licensing of Maternity Facilities, and Chapter 745, Licensing. The purpose of the proposal is to implement legislation passed during the 82nd Legislative Session.

Senate Bill 1178 (82nd Legislature) made changes to the following statutes to delete references to and definitions of maternity homes as a facility licensed and regulated by the Department of Family and Protective Services:

- Repeal of Chapter 249, Health and Safety Code
- Repeal of §42.042(g-2), Human Resources Code
- Amendment of §81.042(e), Health and Safety Code
- Amendment of §411.114, Government Code

As set forth in S.B. 1178 (82nd Legislature), beginning September 1, 2012, all maternity homes will either:

- serve only adults in an unregulated setting; or
- obtain a residential child-care facility license, if the maternity home wishes to continue serving clients younger than 18 years old.

To implement this legislation, Child Care Licensing is proposing to:

- repeal all current rules in TAC Chapter 727 and Chapter 745, Subchapter I, all of which are labeled as maternity home minimum standards; and
- amend rules in TAC Chapter 745 to remove references to maternity homes and TAC Chapter 727.

DETAILED SECTION ANALYSIS AND DISPOSITION TABLE

Current Rule Sections	Proposed Action; New Rule Section	Summary Explanation of Proposed Action
Chapter 727, Licensing of Maternity Facilities	Repeal	Repeals Chapter 727 as this chapter currently houses the majority of maternity home minimum standards.

Current Rule Sections	Proposed Action; New Rule Section	Summary Explanation of Proposed Action
Chapter 745, Subchapter A, Division 1, Precedence, §745.1	Repeal	Repeals Chapter 745, Subchapter A, Division 1, as this division only has one rule: §745.1. This rule outlines that rules in Chapter 745 take precedence over rules in TAC Chapters 720 and 727. Chapter 720 was repealed on January 1, 2007, and Child Care Licensing is proposing that Chapter 727 be repealed as part of this rule package. Therefore, this rule is no longer needed. Because §745.1 is the only rule in this division, the division must be repealed.
§745.21	Amend	<p>This rule defines the terms used throughout Chapter 745, Licensing. The proposed changes will delete maternity home references and maternity home minimum standard references in several definitions</p> <p>Additionally, the proposed changes will update the title of Chapter 748 from "General Residential Operations and Residential Treatment Centers" to "General Residential Operations" in §745.21(25).</p>
§745.31, §745.37, §745.41, §745.243, §745.273, §745.345, §745.349, and §745.509	Amend	<p>Senate Bill (S.B.) 1178 repealed the statutes authorizing DFPS to regulate maternity homes. The repeal is effective September 1, 2012.</p> <p>The references to maternity homes are being deleted in all of these rules.</p>
Chapter 745, Subchapter I, Maternity Home Minimum Standards, §745.8001 and §745.8003	Repeal	Repeals Chapter 745, Subchapter I, as this chapter currently consists of only two rules. Both rules are maternity home minimum standards.
§745.8903	Amend	The cross reference in this rule was wrong and needs to be updated.

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.

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 change will be that Child Care Licensing will focus its efforts on regulating businesses that serve children, not adults, as some maternity homes only serve adult clients. As outlined in S.B. 1178, if a licensed maternity home chooses to serve children after September 1, 2012, the maternity home can apply to convert their license to a residential child-care facility license through an abbreviated application and licensure process without paying any application or license fees. Continuing to regulate the care of children in these facilities, while allowing for an abbreviated licensure conversion process, will ensure that children are still protected in out-of-home care while minimizing or eliminating the impact on businesses.

(c) Impact on Business. There is no anticipated adverse or economic 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. The proposed changes will reduce impact in business, as maternity homes caring for adult clients will no longer be regulated by the government.

(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 changes.

STAKEHOLDER INPUT

DFPS shared draft copies of the proposed rule changes with all members of the Committee on Licensing Standards for their review and comment. Stakeholder input will be obtained during the public comment period.

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*.