|  |
| --- |
| MEMORANDUM **TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES** |

|  |  |
| --- | --- |
| TO: | Department of Family and Protective Services Logo**Chair and Members Department of Family and Protective Services Council** |
| FROM: | **Howard G. Baldwin, Jr. Commissioner** |
| SUBJECT: | **Agenda Item 5c: Recommendation to propose rule changes in 40 TAC, Rule 700.1502, Foster and Adoptive Home Inquiry and Screening** |
| DATE: | **October 19, 2012** |

## BACKGROUND AND PURPOSE

The Child Protective Services (CPS) Division recommends amendments to rule 40 Texas Administrative Code (TAC) §700.1502, Foster and Adoptive Home Inquiry and Screening. The recommended amendments provide for a general clean-up of language to ensure consistency with current agency policy and with language commonly used by Foster and Adoptive (FAD) staff.

The recommended amendments also provide for flexibility relating to the age of parents to adopt, a length of marriage requirement, and divorce finalization requirements that had previously rendered certain prospective adoptive parents ineligible for approval to adopt.

DFPS is deleting its requirement that foster and adoptive applicants must have a life expectancy to be able to raise a child to adulthood. The DFPS age requirements go further than what is currently mandated by minimum standards. A good number of grandparents and older relatives are applying to adopt relatives, and DFPS does not want to discourage older family members from being considered as possible placements, nor does DFPS want older family members to believe that their age automatically disqualifies them from consideration.

The current rule requires couples to be married for two years before the Department of Family and Protective Services (DFPS) will accept an adoption application. At the time that this length of marriage requirement was originally adopted, DFPS concluded that two years was reasonable given the need for martial relationships to stabilize and for couples to give ample thought to the impact of adoption on their family.

DFPS has since determined that there are exceptional cases in which a couple has not been married two years, but has achieved the appropriate level of stability necessary to serve as adoptive parents. Accordingly, the amendments create the ability for FAD staff to thoroughly assess a couple’s relationship and if they determine that it is appropriate, to accept an adoption application from a couple married less than two years.

Additionally, the current rule requires for a prospective adoptive parent who is separated but not divorced, to finalize the divorce prior to submitting an adoption application. The amendments will enable the CPS Assistant Commissioner, or designee, to grant a waiver to the divorce finalization requirement when FAD staff have determined that it is in the “best interests” of a child to do so.

The recommended amendments will open up the adoption process and likely result in increasing the number of approved adoptive homes. The amendments will also allow CPS to make decisions on whether to approve or deny an adoption application based on a “best interests” assessment of a child.

None of the proposed amendments impact prospective foster parents. The waiver process for foster parents is controlled by Residential Child Care Licensing (RCCL) and FAD staff will continue to submit waivers as appropriate to RCCL.

## DETAILED SECTION ANALYSIS AND DISPOSITION TABLE

| **Current Rule Sections** | **Proposed Action; New Rule Section** | **Summary Explanation of Proposed Action** |
| --- | --- | --- |
| §700.1502 | Amend | Amends the rule to be consistent with current agency language.  §700.1502(2) clarifies that DFPS will screen foster and adoptive homes consistent with the current Child Care Licensing Minimum Standards relating to screening foster parents and adoptive parents. The relevant standards can be found at §749.2447 for foster parents, and §749.3623 for adoptive parents.  *Age for Foster and Adoptive Parents.* At §700.1502(2)(A) DFPS is deleting its requirement that foster and adoptive applicants must have a life expectancy to be able to raise a child to adulthood. The current minimum standards regarding health status for adoption do require the screening to look at age and health issues and there “must be a plan in place to ensure the child will be raised in a stable and consistent environment to adulthood.” There is no such discussion in the screening requirements for foster parents. The DFPS age requirements go further than what is currently mandated by minimum standards. In addition, a good number of grandparents and older relatives are applying to adopt relatives, and DFPS does not want to discourage older family members from being considered as possible placements, nor does DFPS wand older family members to believe that their age automatically disqualifies them from consideration. |
| §700.1502 cont. | Amend | *Marriage for Foster and Adoptive Parents.* At §700.1502(2)(B) the current rules require married foster and adoptive parents to apply and be verified/approved jointly. The current minimum standards only require this for foster parents; it is not required for adoptive parents. DFPS is clarifying that for foster parents the minimum standard to verify both spouses (§749.2401) is still a requirement. However, for adoptive parents DFPS is instituting more flexible rules:   1. If an adoptive applicant is married but not separated, then both spouses have to be approved for adoption. 2. If an adoptive applicant is separated but not divorced, he or she may submit an application, but the divorce must be finalized before the home is approved. However, a new waiver process is being implemented.   The CPS Commissioner, or a designee, may issue a waiver to the rule that prospective adoptive applicants who are separated but not divorced must finalize their divorce before the home is approved. The waiver may be granted if it is established that it is in the “best interests” of a child to do so.  The amendment also provides examples of factors that may be used in the “best interests” analysis. Factors include, but are not limited to, family relationship between the prospective applicant and the child, prior relationship between the prospective applicant and the child, and the applicant’s ability to meet the child’s needs as set forth in the home screening. |
| §700.1502 cont. | Amend | *Length of Marriage for Adoptive Parents.* At §700.1502(2)(C) the previous requirement that a couple be married at least two years before submitting an application to adopt is amended. The amendment clarifies that generally couples must be married for at least two years, but that FAD staff will now accept applications from those who do not meet the preferred length of marriage requirement. The amendment also creates an obligation for FAD staff to conduct an assessment of the stability of the couple’s relationship and their reasons for wanting to adopt before allowing the couple to continue in the adoption approval process.  *Discipline.* At §700.1502(2)(K)(iii) DFPS is clarifying that the CCL minimum standards regarding discipline will be followed. These standards can be found at 40 TAC Chapter 749, Child Placing Agencies, Subchapter K, Foster Care Services: Daily Care, Problem Management, Division 6, Discipline and Punishment, §749.1951 - §749.1961. |

## 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. The proposed changes will allow for exceptions to be made based on the best interest of children.

The amendment also implements HRC §40.002.

## 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 exceptions can be made for separated and not divorced adoptive applicants when in the best interest of a child. Additionally, couples not married for more than two years will be able to submit an application for adoption if DFPS staff assesses the couple's relationship to be stable. Finally, grandparents and older relatives will be more likely to apply to adopt relatives and can be approved when in the best interest of children. 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 change because the proposed rule change should not affect the cost of doing business; does not impose new requirements on any business; and does 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 sections.

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

## STAKEHOLDER INPUT

Stakeholder input will be obtained during the public comment period.

## RECOMMENDATION

It is recommended that the Council consider the proposed rule amendments, as discussed in this memorandum, and that the Council recommend publication of the rule amendments as proposed.

## ATTACHMENTS

Attached is a copy of the proposed change to the rule section as staff recommended for submittal to the *Texas Register*.