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

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| TO: | **Chair and Members Department of Family and Protective Services Council** | agencyseal |
| FROM: | **Howard G. Baldwin, Jr. Commissioner** |
| SUBJECT: | **Agenda Item 6c: Recommendation to adopt rule changes in 40 TAC, Part 19, Chapter 700, Child Protective Services; Chapter 702, General Administration; and Chapter 705, Adult Protective Services, relating to the prioritization of requests to release certain case records maintained by the Department of Family and Protective Services (DFPS)** |
| DATE: | **October 19, 2012** |

BACKGROUND AND PURPOSE

House Bill (HB) 3234, enacted by the 82nd Legislature, added Texas Family Code § 264.0145, which requires DFPS to establish guidelines by rule for assigning priorities to requests for the redaction and release of confidential client case records, including records requested by former foster youth who are adults at the time of the request. This rule action would add new 40 TAC §702.223, which establishes the order of priority for fulfilling requests for client records in the Child Protective Services, Child Care Licensing, and Adult Protective Services programs. A conforming amendment is made to both 40 TAC §700.205(c) and 40 TAC §705.7111, which currently set similar priorities for client records in the CPS and APS programs, respectively. The current prioritization rule for CPS does not separately prioritize requests from former foster youth as a stand-alone category of requests.

Prior to enactment of HB 3234, some advocates for young adults exiting the foster care system expressed concern to DFPS about the length of time that young adults must wait to obtain a copy of their case records from DFPS. Prior to this expressed concern, the turn-around time for fulfilling such requests could be two or more years. Due to a restructuring of the records redaction process and implementation of a number of efficiencies in the past two years, the Records Management Group has decreased the average turn-around time for fulfilling such records requests to 45 days or less. These improvements have been noted by stakeholders who have expressed their appreciation for the faster handling of client records for former foster youth.

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. This modification implements Section 264.0145, Family Code, which requires the department to adopt rules concerning the prioritization of requests for client case records.

COMMENTS AND RESPONSES

The rules were presented to the DFPS Council at their meeting on July 20, 2012. At the meeting, public testimony from Texans Care for Children was received regarding §702.223.

The proposed rules were published in the Texas Register on August 16, 2012*.* DFPS received no comments regarding the rule changes, other than the public testimony at he Council meeting.

| **Section Affected and Original Proposal** | **Summary of Commenter’s Concern** | **Department Response and Rationale** |
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| 700.205(c) | None | The department recommends adoption of this section with no changes. |
| 702.223 | DFPS received one comment (public testimony), which supports the timely provision of records to an adult who was previously a victim of child abuse or neglect, but expressed concern that such information can be detrimental to the requestor’s well-being if not presented in a supportive and therapeutic environment. | The department recommends adoption of this section with no changes.  However, DFPS recognizes that the case file of a former foster child contains sensitive information that may be detrimental to an individual's emotional well-being. DFPS met with the commenter to discuss ways to mitigate this issue without delaying the record's dissemination or incurring any additional costs. It was agreed that supportive information would be added to both the acknowledgment letter that is sent to a requestor following the receipt of a request for records, as well as the letter sent to the requestor when the records are released. DFPS will also explore adding supportive information to the website provided for use by former foster youth. |
| 705.7111(c) | None | The department recommends adoption of this section with no changes. |

RECOMMENDATION

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

SCHEDULE

| **Milestones** | **Dates** |
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| Proposed rules presented to the Council for recommendation to publish | July 20,2012 |
| Approval to publish proposed rules received from HHSC | August 3, 2012 |
| Proposed rules published in the *Texas Register* | August 16, 2012 |
| Thirty-day comment period ends | September 17, 2012 |
| Rules presented to the Council for recommendation to adopt | October 19, 2012 |
| Estimated date the approval to adopt rules received from HHSC | October 31, 2012 |
| Estimated date the adopted rules are published in the*Texas Register* | November 9, 2012 |
| Effective date | December 1, 2012 |

ATTACHMENTS

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