#### MEMORANDUM

**TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES**

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| **TO:**  **Chair and Members  Department of Family and Protective Services Council**  **FROM: John J. Specia, Jr. Commissioner**  **SUBJECT:**  **Agenda Item 6b: Recommendation to adopt rule changes in 40 TAC, Chapter 745, Licensing; Chapter 748, General Residential Operations; Chapter 749, Child-Placing Agencies; and Chapter 750, Independent Foster Homes related to controlling persons**  **DATE: January 18, 2012** | agencyseal |

## BACKGROUND AND PURPOSE

The Child Care Licensing (CCL) Program is recommending adoption of proposed rule amendments to 40 Texas Administrative Code (TAC), Chapter 745, Licensing; Chapter 748, General Residential Operations; Chapter 749, Child-Placing Agencies; and Chapter 750, Independent Foster Homes. The purpose of the amendments is to implement legislation passed during the 82nd Legislative Session.

Senate Bill (S.B.) 1178, 82nd Legislature, 2011, made changes to Chapter 42 of the Human Resources Code (HRC) in regards to who is ineligible to be a controlling person at an operation regulated by CCL. A "controlling person*"* as defined by HRC [§42.002(18)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.002) is "a person who, either alone or in connection with others, has the ability to directly or indirectly influence or direct the management, expenditures, or policies" of a child care operation. In October 2011, CCL amended administrative rules to implement the legislation (the rules became effective March 1, 2012).

The adoption of these proposed rules will further support the implementation of S.B. 1178 by:

* outlining in what circumstances a person is prohibited from being a controlling person, when CCL will make this determination, and updating/amending §745.915; and
* amending residential child-care minimum standard rules in Chapters 748, 749, and 750 to require residential child-care operations to notify CCL when:
  + a new person becomes a controlling person at the operation; or
  + a person ceases to be a controlling person at the operation.

The changes recommended for adoption in Chapters 748, 749, and 750 are to ensure that CCL has the most current information on controlling persons at an operation, so CCL can comply with requirements in law and administrative rule to ensure that an individual who is a controlling person at an operation is eligible to be a controlling person. Additionally, this requirement currently exists in day-care minimum standards. For the purpose of complying with the law and administrative rules, it is beneficial to CCL for the minimum standards for both day-care and residential child-care operations to be consistent.

CCL is also recommending adoption of amendments to the titles for:

* Chapter 745, Subchapter G, from *"Controlling Person and Certain Employment Prohibited"* to "*Controlling Persons*."
* Chapter 748, from "*General Residential Operations" to* "*Minimum Standards for General Residential Operations*."
* Chapter 749, from "*Child-Placing Agencies"* to "*Minimum Standards for Child-Placing Agencies."*
* Chapter 750, from "*Independent Foster Homes"* to "*Minimum Standards for Independent Foster Homes*."

## 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 amendments and new rules also implement HRC §§42.042, 42.062, and 42.072(c-1)

COMMENTS AND RESPONSES

Child Care Licensing presented the proposed rules to the DFPS Council at their meeting on October 19, 2012. Following the council meeting, Licensing notified the following stakeholders of the proposed rules and public comment period:

* Licensed child care centers
* Licensed, registered, and listed child care homes
* General residential operations
* School-Age and Before or After-School Programs
* Child Placing Agencies
* Independent Foster Homes
* Subscribers to the DFPS Latest Child Care Regulations email notification list

Licensing provided notification to all providers by mailing a postcard in early November. Licensing also notified all stakeholders by email on November 17, 2012. The notification provided stakeholders with an email address, mailing address, and phone number to direct comments on the proposed rules.

The proposed rules were published in the Texas Register on November 16, 2012, and were open to comment until December 17, 2012*.* DFPS received one comment regarding §745.911.

The response to the comment is noted below.

| **Section Affected and Original Proposal** | **Summary of Commenter’s Concern** | **Department Response and Rationale** |
| --- | --- | --- |
| Chapter 745, Subchapter G | None | The department recommends adoption of this section with no changes. |
| §745.903 | None | The department recommends adoption of this section with no changes. |
| §745.911 | The commenter expressed concern that the use of the term “sustained” in section 1 of the rule may lead to confusion and misinterpretation as some people may interpret the word to mean “allow.” The commenter suggested changing the term “sustained” to “denied” to ensure consistent application and interpretation of the rule. | The department recommends adoption of this rule with no changes. 40 TAC §745.911 must be read in context of other rules related to controlling persons, including §745.907(b), which describes that a designated controlling person becomes sustained when the revocation or voluntary closure described in §745.905 is final and after due process rights have been waived or upheld. |
| §745.913 | None | The department recommends adoption of this section with no changes. |
| §745.915 | None | The department recommends adoption of this section with no changes. |
| Chapter 748 General Residential Operations | None | The department recommends adoption of this section with no changes. |
| §748.103 | None | The department recommends adoption of this section with no changes. |
| Chapter 749, Child-Placing Agencies | None | The department recommends adoption of this section with no changes. |
| §749.103 | None | The department recommends adoption of this section with no changes. |
| Chapter 750, Independent Foster Homes | None | The department recommends adoption of this section with no changes. |
| §750.103 | None | The department recommends adoption of this section with no changes. |

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 | October 19, 2012 |
| Approval to publish proposed rules received from HHSC | October 31, 2012 |
| Proposed rules published in the *Texas Register* | November 16, 2012 |
| Thirty-day comment period ends | December 17, 2012 |
| Rules presented to the Council for recommendation to adopt | January 18, 2013 |
| Projected date approval to adopt rules received from HHSC | January 30, 2013 |
| Projected date adopted rules published in the *Texas Register* | February 15, 2013 |
| Projected effective date | March 1, 2013 |

ATTACHMENTS

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