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

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| TO: | Department of Family and Protective Services Logo**Chair and Members Department of Family and Protective Services Council** |
| FROM: | **John J. Specia, Jr., Commissioner** |
| SUBJECT: | **Agenda Item 6c #: Recommendation to adopt rule changes in 40 TAC, Rule 700.1502, Foster and Adoptive Home Inquiry and Screening** |
| DATE: | **January 18, 2013** |

## BACKGROUND AND PURPOSE

Child Protective Services (CPS) recommends adoption of amendments to 40 TAC 700.1502, Foster and Adoptive Home Inquiry and Screening. The amendments:

* eliminate the requirement that foster and adoptive applicants have a life expectancy to be able to raise a child into adulthood;
* clarify that a married couple who is not separated must submit a joint application to adopt;
* provide for a waiver to the rule requiring prospective adoptive applicants who are married and separated, but not divorced, to finalize their divorce before the Department of Family and Protective Services (DFPS) Foster and Adoptive (FAD) staff will issue approval to adopt; and
* eliminate the requirement that a couple be married at least two years before they can apply to adopt.

Currently, the rule discourages and prevents grandparents and older relatives from seeking to adopt because of advanced age and the uncertainty that they will live to raise a child into adulthood. It also prevents persons who are married and separated, but not officially divorced, from obtaining approval to adopt and bars couples who have been married less than two years from submitting an adoption application.

The changes are necessary because DFPS does not want to discourage older adults from seeking to adopt or to believe that their advanced age will automatically exclude them from consideration as viable placements for children, especially when those children are relatives.

Additionally, DFPS has re-examined its current requirement that a couple be married for two years before they can apply to adopt. DFPS has 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 a home study provider to thoroughly assess, and recommend approval of, a newly married couple, while providing child placement management staff with the flexibility to issue final approval based on the couple’s ability to parent within the confines of a recent marriage.

DFPS has also re-examined its current requirement for a prospective adoptive parent who is separated but not divorced, to finalize the divorce before they can be approved to adopt. 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.

## 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 implements HRC §40.002.

## COMMENTS AND RESPONSES

The amendments to 40 TAC 700.1502 were presented to the DFPS Council at their meeting on October 19, 2012. They were subsequently published in the Texas Register on November 16, 2012 and opened for public comment. During the comment period, DFPS received comments from Depelchin Children’s Center.

Additionally, DFPS Council members had comments at the October 19, 2012 Council meeting.

The responses to comments are noted in the following chart.

| **Section Affected and Original Proposal** | **Summary of Commenter’s Concern** | **Department Response and Rationale** |
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| § 700.1502(2)(A) | The commenter supports eliminating the requirement that a prospective adoptive parent must have a life expectancy to be able to raise a child to adulthood. | DFPS recommends adopting this amendment without change. |
| §700.1502(2)(B)(i) | The commenter supports clarification that DFPS follows Minimum Standards promulgated by RCCL in relation to married applicants. | DFPS recommends adopting this amendment without change. |
| §700.1502(2)(B)(ii)(I) | The commenter supports the clarification that a married couple who is not separated must both apply to adopt. | DFPS recommends adopting this amendment without change. |
| §700.1502(2)(B)(ii)(lll) | The commenter supports the clarification that a prospective adoptive applicant who is separated but not divorced may seek a waiver to adopt.  However, the commenter also stated that the waiver option and process should extend to families who are working with private child placing agencies while seeking to foster. The commenter further stated that the issue of separated but not divorced couples exists within the entire population of prospective adoptive and foster parents, and that the waiver should extend to foster and adopt situations equally in order to remove barriers to placement. The commenter concluded by stating that without this revision, it would not support the proposed amendment. | DFPS does not agree with the comment requesting that the waiver process also apply to foster parents and recommends adoption of the amendment with no change.  Current Child Care Licensing (CCL) rules preclude an internal waiver process for foster parent verification. 40 TAC 749.2401 is a CCL rule specifically relating to Child Placing Agencies (CPA) which states that a CPA must verify both parties of a married couple as foster parents. If a CPA wants to verify one foster parent of a married couple, the CPA may request a waiver to this rule directly from CCL. |
| §700.1502(2)(C) | 1. The commenter supports the amendment to clarify that generally couples must be married for two years before submitting an application to adopt, but that FAD staff will now accept applications from couples married less than two years and will evaluate each application on an individual basis. | DFPS appreciates this comment. |
| 1. At the October, 2012 Council meeting, one Council member suggested that the language in this amendment may be confusing to CPS workers and should be more specific. There was also discussion of whether or not application materials would need to be changed. | DFPS agrees with the commenter and has clarified the language accordingly. DFPS recommends adopting this amendment with the changes contained herein. Additionally, CPS staff will review application materials and revise them accordingly. |
| 700.1502(2)(D) | At the October, 2012 Council meeting, several council members suggested that the rule packet should discuss adoption by single persons.  One Council member stated that the fact that there are no rules relating to single persons adopting meant that there is no specific prohibition in the rule packet to single persons adopting.  The General Counsel stated that this is true, but did note that CCL rules require all prospective adopters to meet certain licensing standards, including background checks and completion and approval of a home study. | DFPS does not recommend making any changes to this section.  This section was not being changed in the proposed rules, so it was listed in the original rule packet as “no change”. However, the paragraph does address the issue of single individuals adopting, so the original language of this paragraph has been added to the rule packet for clarification purposes. Any further change to this section would be considered a substantive change and could not be made without having to re-propose the rules. CPS staff did agree at the Council Meeting to review this issue in the future to determine if new rules regarding this matter are needed. |

## 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** |
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| 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 |
| Estimated date that DFPS receives approval to adopt rules from HHSC | January 30, 2013 |
| Estimated date the adopted rules published in the *Texas Register* | February 15, 2013 |
| Estimated effective date | March 1, 2013 |

## ATTACHMENTS

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