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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 5a: Recommendation to propose rule changes in 40 TAC, Chapter 700, Child Protective Services, related to the release of findings of abuse or neglect about a designated perpetrator to outside parties** |
| DATE: | **June 14, 2013** |

## BACKGROUND AND PURPOSE

The Child Protective Services (CPS) Program is proposing a rule amendment to 40 Texas Administrative Code (TAC), § 700.602(c) relating to the release of a sustained finding about a perpetrator to an outside party. The proposed rule change provides for a general clean-up of language to ensure consistency with current agency policy.

The current CPS policy states that the agency may release findings of abuse or neglect of a perpetrator to a party outside DFPS, including employers, licensing boards, or other entities who have control over a designated perpetrator’s access to a children or vulnerable adults, if CPS determines that the perpetrator poses a substantial risk to such children or vulnerable adults. The findings may be released on a non-emergency or emergency basis. Before the region may release the findings on a non-emergency basis, DFPS must:

* have a sustained finding against a perpetrator, which means that the finding was upheld following an offer of a due process hearing; and
* have determined that the sustained perpetrator poses a substantial risk of harm to one or more children or vulnerable adults to whom the perpetrator has access.

Currently, the rule in §700.602(c) does not include a risk of harm assessment in the criteria for non-emergency release of sustained findings about a perpetrator to an outside party. The proposed rule change to §700.602(c) adds the risk of harm assessment to the criteria. The proposed rule change will be consistent with the agency policy.

## DETAILED SECTION ANALYSIS AND DISPOSITION TABLE

| **Current Rule Sections** | **Proposed Action; New Rule Section** | **Summary Explanation of Proposed Action** |
| --- | --- | --- |
| 700.602(c) | Amend | The proposed rule clarifies the requirement that DFPS may conduct a non-emergency release of an abuse/neglect finding when there is both a sustained finding against a perpetrator and evidence that of the perpetrator poses a substantial risk of harm to one or more children or vulnerable adults. |

## 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 the public has better notice regarding the basis for the release by DFPS of a sustained finding of abuse or neglect to a person or entity that has control over a perpetrator’s access to children or vulnerable adults.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 section(s).

(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 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*.