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

|  |  |
| --- | --- |
| TO: | Department of Family and Protective Services Logo**Chair and MembersDepartment of Family and Protective Services Council** |
| FROM: | **John J. Specia, Jr.Commissioner** |
| SUBJECT: | **Agenda Item 5b: Recommendation to propose rule changes in 40 TAC, Chapter 700, Subchapter Z, Title IV-A Emergency Assistance Program** |
| DATE: | **June 14, 2013** |

## BACKGROUND AND PURPOSE

The Department of Family and Protective Services (DFPS) implemented the Title IV-A Emergency Assistance (EA) program in 1994 in cooperation with the designated single state agency for Title IV-A of the Social Security Act, which is now the Health and Human Services Commission. Rules implementing this program are located in Subchapter Z, Chapter 700, Title 40 of the Texas Administrative Code.

When Congress replaced Title IV-A with the Temporary Assistance for Needy Families (TANF) block grant, they included a provision to allow states to claim TANF funds for programs authorized under prior law, which includes the DFPS Emergency Assistance program.

In 1995 and again in 1997, the state submitted amendments to the Texas Title IV-A State Plan that changed the eligibility requirements. Both sets of amendments were approved by the Administration for Children and Families. DFPS modified its rules in Subchapter Z after the 1995 state plan amendment; however, the rules were not updated to incorporate the 1997 amendments.

Klynveld, Peat, Marwick, Goerdeler (KPMG), auditors that perform an annual state audit of DFPS, identified the discrepancy between the state plan and the DFPS rules in Subchapter Z during the 2012 audit. These rule changes update Subchapter Z to be consistent with the current Title IV-A State Plan.

DFPS funds a portion of the following staff and services with TANF/EA funds:

* Statewide Intake direct delivery staff, program support, training and call center operations
* CPS direct delivery staff that handle investigations, family based safety services, conservatorship services, foster/adoptive home development, kinship development and liaison with the courts
* CPS program support and training
* CPS substance abuse prevention & treatment services
* CPS purchased services for children in substitute care and their families
* Foster care payments for children not eligible for Title IV-E and non-IV-E allowable costs for Title IV-E eligible children
* Indirect administration costs

## DETAILED SECTION ANALYSIS AND DISPOSITION TABLE

| **Current Rule Sections** | **Proposed Action; New Rule Section** | **Summary Explanation of Proposed Action** |
| --- | --- | --- |
| 700.2701 | Amend | Deletes obsolete reference to Department of Human Services, since programmatic responsibility for this subchapter transferred to DFPS; and replaces references to specific provisions in federal law with more general references to Title IV-A and the approved state plan. |
| 700.2703 | Amend | Revises eligibility requirements to comply with the 1997 state plan amendment and also updates the name of the department. |
| 700.2705 | Amend | Deletes reference to a 12-month limit for service provision. |

## 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 rule implements federal statutes that govern TANF at 42 U.S.C. §§601, et. seq. Specifically, 42 U.S.C. §604(a)(2) allows states to use TANF funds to carry out any program or activity that the state conducted under its pre-1996 programs, which includes the use of Emergency Assistance funds for staff and services. The rule also implements § 40.002, Human Resources Code, which designates DFPS to be the state agency to cooperate with the federal government in the administration of programs under Parts B and E, Title IV, Social Security Act (42 U.S.C. Sections 620 et seq. and 670 et seq.) and other federal law for which the department has administrative responsibility.

## 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 rules will be consistent with the Title IV-A State Plan. 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.

(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*.