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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: | **John J. Specia, Jr. Commissioner** |
| SUBJECT: | **Agenda Item 5d: Recommendation to propose rule changes in 40 TAC, Chapter 745, Licensing** |
| DATE: | **June 14, 2013** |

BACKGROUND AND PURPOSE

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§745.21, 745.8913, 745.8933, and 745.8951, and a new rule at § 745.8920, concerning administrator licensing, in its Licensing chapter. The purpose of the rule changes is to implement Senate Bill (SB) 1733 and SB 162, enacted in the 82nd and 83rd Regular Legislative Sessions, respectively. Both bills amended Chapter 55, Texas Occupations Code, and require administrative rule changes that allow special considerations for military service members, military spouses, and military veterans who apply for a license that an individual must have to participate in a particular business. DFPS issues a child-placing agency administrator’s license and a child care administrator’s license that are subject to the provisions of Chapter 55, Occupations Code.

SB 1733 enacted Occupations Code §55.004, which requires DFPS to adopt rules concerning the issuance of an administrator’s license to a military spouse who applies for a license and either: (1) holds a current administrator’s license in another state that has licensing requirements substantially equivalent to those in Texas; or (2) held an administrator’s license in Texas within five years of the application date that expired while the military spouse lived in another state for at least six months. Such rules must allow for alternative demonstrations of competency by military spouses in order to meet requirements for an administrator’s license.

SB 162 further amended Chapter 55, Occupations Code by: (1) adding definitions of “military spouse,” “military service member,” and “military veteran” in §55.001(1-a), (1-b), and (1-c); (2) requiring an expedited application and licensing process for a military spouse as provided by §55.005; and (3) requiring that verified military service, training, or education be credited toward the licensing requirements for an applicant who is a military service member or military veteran, subject to certain exceptions, as provided by §55.007.

While rule proposals were being drafted for the recent legislation that was passed, CCL noticed some corrections and clarifications that were needed to one division title and one rule to be consistent with Chapter 43, HRC. The title of Division 1 of TAC Chapter 745, Subchapter N (Administrator Licensing) is amended to clarify that it applies to both child-care administrators and child-placing agency administrators. Section 745.8913 is amended to clarify that CCL may:

* waive any prerequisite to getting an administrator’s license (in accordance with HRC §43.0042) for a person (including a military spouse) who currently holds and a valid administrator’s license in another state; and
* issue a provisional license to an applicant for a child-care administrator’s license, in accordance with HRC §43.0081).

DETAILED SECTION ANALYSIS AND DISPOSITION TABLE

| **Current Rule Sections** | **Proposed Action; New Rule Section** | **Summary Explanation of Proposed Action** |
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| §745.21 | Amend | Amends the rule to include definitions of a “military service member,” “military spouse,” and “military veteran” in accordance with Occupations Code §55.001(1-a), (1-b), and (1-c). |
| §745.8913 | Amend | The amendments to this rule implement Occupations Code §55.004 and clarify existing provisions of the rule, as follows:   1. The title of the rule is changed to reflect that some of the provisions in this section will now be applicable to both a child-placing agency administrator’s license as well as a child-care administrator’s license; 2. Subsection (a) is amended to provide that Child Care Licensing (CCL) may waive any prerequisite for either type of administrator’s license if the applicant holds a valid administrator’s license in another state that has licensing requirements substantially equivalent to those in Texas; and 3. Subsection (b) is amended to clarify that CCL may issue a provisional license to certain applicants seeking a child-care administrator's license. |
| §745.8920 | New rule | This new rule implements Occupations Code §§ 55.04 and 55.007, which require that special considerations be given to applicants for an administrator’s license who are military spouses, service members, or veterans.  Subsection (a) authorizes the Assistant Commissioner of CCL or that person’s designee to:   1. allow a military spouse who holds an administrator’s license in another state, or who previously held an administrator’s license in Texas within the past five years that expired while the applicant was in another state for at least six months, to demonstrate competence with respect to a licensing requirement though an appropriate alternative method; and 2. credit verified military service, training, or education toward a licensing requirement for an applicant who is a military service |
| §745.8920 (Continued) |  | member or military veteran, unless that applicant holds a professional or occupational license in another jurisdiction that is restricted.  Subsection (b) provides that no special consideration can be provided under this section to an applicant who is ineligible for an administrator’s license because of a criminal conviction or Central Registry finding, as provided by Chapter 745, Subchapter F, Division 3 of this title (relating to Criminal Convictions and Central Registry Findings of Child Abuse or Neglect. |
| §745.8933 | Amend | This amendment requires that certain information must be included with an application for an administrator’s license to enable DFPS to assess whether a person qualifies as a military spouse, service member, or veteran and whether the person, as a result of that status, is eligible for certain benefits as provided by Chapter 55, Occupations Code.  Subsection (b) is added, and states that a complete application from a military spouse seeking expedited handling of the application, or from any person seeking recognition of their out-of-state administrator’s license, must include, as applicable:  (1) documentation demonstrating status as a military spouse;  (2) documentation related to each administrator’s license currently held outside of Texas; and  (3) a copy of the regulations pertaining to the current out-of-state administrator’s license.  Subsection (c) is added, and states that a complete application from a military spouse, military service member, or military veteran seeking special consideration under new §1745.8920, must include, as applicable, documentation demonstrating status as a military spouse, military service member, or military veteran; documentation related to any professional or occupational license currently held outside of Texas’ and additional documents needed to demonstrate competency by an alternative method, or that verified military service, training, or education should be credited towards a license requirement. |
| §745.8951 | Amend | The amendment implements Occupations Code § 55.005, which requires a state agency to process an application for a military spouse “as soon as practicable.”  The amendment to this rule states that CCL will notify a military spouse of the status of his or her application for an administrator’s license as soon as practicable, but not later than 21 days. |

STATUTORY AUTHORITY AND STATUTES AFFECTED

The modification is proposed under Human Resources Code (H.R.C.) §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 H.R.C. §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 new rules implement Chapter 55 of the Occupations Code.

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 changes would be:

* Compliance with Chapter 55 of the Occupations Code.
* CCL will provide a more flexible and more expedient administrator’s licensing process for applicants who are military spouses, service members, or veterans.

There is no anticipated economic cost to persons who are required to comply with any of the proposed rule changes.

(c) Impact on Business. There is no anticipated adverse impact on small, micro, and large businesses as a result of the proposed rule changes because the proposed rule changes should not affect the cost of doing business.

(d) Local Employment Impact and Takings Statements. No local employment impact statement was required for these rules. The agency is not required to complete a takings impact assessment regarding the proposed sections.

(e) Technology Impact. There is no anticipated impact on technology as a result of the proposed rule changes.

STAKEHOLDER INPUT

Stakeholder input will be obtained during the 30-day 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*.