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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 6a: Recommendation to propose rule changes in 40 TAC, Chapter 700, Child Protective Services, related to day care assistance for foster parents and other caregivers** |
| DATE: | **October 18, 2013** |

## BACKGROUND AND PURPOSE

The 83rd Legislature, Regular Session, 2013, passed Senate Bill (S.B.) 430 requiring the Department of Family and Protective Services (DFPS) to implement a process to verify that each foster parent and kinship caregiver (also referred to as “relative or other designated caregiver”) seeking monetary assistance for day care has attempted to find day care services through community services, such as Head Start or pre-K. The bill stemmed from a Legislative Budget Board (LBB) Government Effectiveness and Efficiency Report recommendation to contain DFPS day care costs. Specifically, the LBB recommended that the legislature amend statute and require DFPS to standardize the process of verifying that caregivers eligible for foster and relative day care cannot be served through any other community resources.

S.B. 430 enacted the requirement for a verification process in DFPS’ rules and further instructed that the rules specify the documentation requirements in order for the foster parent and kinship caregiver to comply with the verification requirement. The bill prohibited DFPS from offering monetary assistance for day care unless the caregiver submits the required documentation or DFPS determines that a waiver of the requirement is necessary to make an emergency placement in the best interest of the child. The proposed rules implement the required verification process and specify the criteria for granting a waiver of a verification requirement.

The proposal also places existing policy in rules with respect to (1) the eligibility requirements for offering day care services to foster parents, and (2) the ability of the Assistant Commissioner for Child Protective Services to grant a good-cause waiver to the current eligibility requirements for receipt of day care services by both foster parents and kinship caregivers that are unrelated to SB 430.

## DETAILED SECTION ANALYSIS AND DISPOSITION TABLE

| **Rule Sections** | **Proposed Action; New Rule Section** | **Summary Explanation of Proposed Action** |
| --- | --- | --- |
| 700.332 | New Rule | Defines relevant terms.  Provides that for a foster parent to be eligible for day care, the following criteria must be met:   * Each foster parent works outside the home full-time; * Foster parent is a resident of Texas; * Foster parent provides written verification of attempts to secure community resources.   Requires the creation of a priority system in policy. Authorizes DFPS to waive the requirement of written verification of attempts to secure community resources if the requirement would interfere with an emergency placement in the child’s best interest. Provides that the Assistant Commissioner of CPS may also grant a good cause waiver of any of the requirements other than the written verification requirement if certain criteria are met. |
| 700.1013 | Amend | Defines relevant terms.  Amends current eligibility criteria to add a requirement that the caregiver provide written verification of attempts to secure community resources.  Leaves intact the requirement for the creation of a priority system in policy. Authorizes DFPS to waive the requirement of written verification of attempts to secure community resources if the requirement would interfere with an emergency placement in the child’s best interest. Provides that the Assistant Commissioner of CPS may also grant a good cause waiver of any of the other current requirements if certain criteria are met. |

## 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 changes are proposed in order to implement §§ 264.124 and 264.755(d) and (e), of the Texas Family 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. Although the GEER Report suggested that cost savings may result from a standardized verification process, that conclusion remains speculative at this point, and the bill did not project any cost savings as a result of standardizing the verification process.

(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 more foster parents and kinship caregivers may avail themselves of community day care resources and DFPS day care costs could experience a concomitant reduction*.* 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 30-day comment period following publication of the proposed rule.

## 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*.