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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 6d: Recommendation to propose rule changes in 40 TAC, Chapter 744, Minimum Standards for School-age and Before or After-School Programs; Chapter 746, Minimum Standards For Child-Care Centers; and Chapter 747, Minimum Standards For Child-Care Homes** |
| DATE: | **October 18, 2013** |

BACKGROUND AND PURPOSE

The Child Care Licensing Division proposes amendments to Chapter 744, Minimum Standards for School-age and Before or After-School Programs; Chapter 746, Minimum Standards for Child-Care Centers; and Chapter 747, Minimum Standards for Child-Care Homes; to implement Senate Bill (S.B.) 939 and House Bill (H.B.) 1741, which were enacted by the 83rd Legislature, Regular Session, 2013.

S.B. 939 added Human Resources Code (HRC) §42.0426(a-1), which requires employees of school-age and before or after-school programs, child-care centers, and licensed child-care homes to sign a statement verifying their attendance at the training in the recognition of and procedure for reporting suspected child abuse, neglect, and sexual molestation that is currently required in HRC §42.0426(a). The law also requires that the operation maintain the statement in the employee’s personnel record. The proposed rule amendments to Chapters 744, 746, and 747, would apply these requirements to school-age programs, before or after- school programs, child-care centers, and licensed child-care homes.

H.B. 1741 added HRC §42.0424, which:

(1) defines “electronic child safety alarm;”

(2) requires licensed child-care centers to equip each vehicle used to transport children with an electronic child safety alarm system if the vehicle is designed to seat eight or more persons and is purchased or leased on or after December 31, 2013; and

(3) requires licensed child-care centers to ensure that the alarm is properly maintained and used while transporting children in care.

Proposed rule amendments to Chapter 746 apply these requirements to child-care centers.

DETAILED SECTION ANALYSIS AND DISPOSITION TABLE

| **Current Rule Sections** | **Proposed Action; New Rule Section** | **Summary Explanation of Proposed Action** |
| --- | --- | --- |
| §744.901 | Amend | The amendments to this rule implement HRC §42.0426(a-1) by adding Paragraph (10) to require that a school-age and before or after-school program must include in an employee's personnel record a statement signed and dated by the employee verifying the date the employee attended training that includes an overview of symptoms of child abuse, neglect, and sexual abuse and the responsibility for reporting these, as required in §744.1303 (relating to What should orientation to my operation include?). |
| §746. 801 | Amend | The amendments to this rule supports implementation of HRC §42.0424 by adding Paragraph (26) to require the child-care center to maintain certain documentation for a vehicle that is used to transport children in care, unless the vehicle is equipped with an electronic child safety alarm or is not designed to seat eight or more persons. |
| §746.901 | Amend | The amendments to this rule implement HRC §42.0426(a-1) by adding Paragraph (10) to require licensed child-care centers to include in the employee's personnel record a statement signed and dated by the employee verifying the date the employee attended training that includes an overview of symptoms of child abuse, neglect, and sexual abuse and the responsibility for reporting these as required in §746.1303 (relating to What should orientation to my child-care center include?). |
|  | New  §746.5623 | This rule defines an electronic child safety alarm in accordance with HRC §42.0424. |
|  | New  §746.5625 | This rule implements HRC §42.0424 by requiring licensed child-care centers to:   * equip each vehicle used to transport children with an electronic child safety alarm system if the vehicle is designed to seat eight or more persons and is purchased or leased on or after December 31, 2013; and * ensure that the alarm is properly maintained and used while transporting children in care. |
|  | New  §746.5627 | This rule supports implementation of HRC §42.0424 by requiring licensed child-care centers to maintain documentation of a vehicle used to transport children in care, unless the vehicle is:   * equipped with an electronic child safety alarm;or * not designed to seat eight or more persons. |
| §747.901 | Amend | The amendments to this rule implement HRC §42.0426(a-1) by adding Paragraph (9) to require that a licensed child-care home must include in an employee's personnel record a statement signed and dated by the employee verifying the date the employee attended training that includes an overview of symptoms of child abuse, neglect, and sexual abuse and the responsibility for reporting these, as required in §747.1305 (relating to What should orientation to my child-care home include?). |

STATUTORY AUTHORITY AND STATUTES AFFECTED

The modification is proposed under HRC §40.0505 and Government Code §531.0055, which provide that the HHSC Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DFPS; and HRC §40.021, which provides that the DFPS 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 HRC §§42.042(a), 42.0426(a-1), and 42.0424.

FISCAL IMPLICATIONS

(a) Fiscal Impact. For each of the first five years that the rules regarding HRC §2.0426(a-1) and §42.0424 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:

* to promote compliance with HRC §42.0426(a-1) and §42.0424;
* to enable Child Care Licensing to better monitor for the requirement that employees at school-age programs, before or after-school programs, child-care centers, and licensed child-care homes have had the required training in the recognition of and procedure for reporting suspected child abuse, neglect, and sexual molestation; and
* to ensure that child-care centers who purchase or lease certain vehicles for the transport of children have an additional safeguard to help ensure that no child is left unattended in a parked vehicle operated by the child-care center.

Proposed §746.5625 (relating to When must I install and use an electronic child safety alarm in a vehicle?), will have a fiscal impact on persons who must comply with this rule, as detailed below under the heading "Impact to Business".

There are no direct costs to persons other than child-care providers as a result of the proposed rules; however, consumers of child-care services may experience nominal increases in the cost of care to the extent that any given child-care center may pass any increased costs of installing electronic child safety alarms on to its consumers. The amount of such increase, if any, is impossible to estimate given the variability in the number of vehicles each child-care center will buy or lease on or after December 31, 2013.

(c) Impact on Business. There is no anticipated adverse impact on small, micro, and large businesses as a result of the proposed rule changes regarding §42.0426(a-1) because the proposed rule changes should not affect the cost of doing business.

There is an anticipated adverse impact on small, micro, and large businesses as a result of the proposed rule change in Chapter 746, Minimum Standards for Child-Care Centers, to implement HRC §42.0424, because the proposed rule change will require a child-care center to install an electronic child safety alarm in each vehicle if the vehicle seats eight or more persons, is used to transport children in care, and is bought or leased on or after December 31, 2013.

The cost of an electronic child safety alarm ranges from $119.95 to $299.95 according to the costs provided by three different alarm manufacturers. The average cost of installing an electronic child safety alarm ranges from $65/hour to $100/hour and the average installation time is 1 to 2 hours/vehicle according to costs provided by three different manufacturers, two child-care operators, and one vehicle vendor in Texas. Based on these numbers, Licensing estimates that the cost for operations to comply with the proposed rule ranges from $185.00 to $500.00 for each vehicle that is subject to the rule. The cost for each child-care center will depend on the number of vehicles used to transport children for which an alarm is required if the vehicle is purchased or leased after December 31, 2013.

The DFPS FY 2012 data book reflects 8,104 licensed child-care centers in Texas, many of which are either a small business or micro-business as defined in Chapter 2006, Government Code. Chapter 2006 defines a small business as one that is for-profit, independently owned, and has fewer than 100 employees or less than six million dollars in annual gross receipts. A small business that has no more than 20 employees is further defined as a micro-business. Based on a survey of child-care providers conducted in 2010, DFPS estimates that roughly 55% of child-care centers are for-profit businesses and that roughly 70% are independently owned. Approximately 98% of child-care centers have fewer than 100 employees and roughly 68% have no more than 20 employees. Chapter 2006 requires that an agency prepare a Regulatory Flexibility Analysis (RFA) for any rule that has a negative economic impact on small businesses, unless consideration of alternative methods of achieving the rule's purpose would not be consistent with the health, safety, and environmental and economic welfare of the state. Because §746.5625 is required by HRC § 42.0424, the changes are considered, *per se,* to be necessary for the health and safety of the children served by child-care centers subject to these rules. Accordingly, no RFA was prepared prior to proposal of these rules.

(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*.