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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., DFPS Commissioner** |
| SUBJECT: | **Agenda Item XX Recommendation to propose rule changes in 40 TAC 745 Licensing, 748 Minimum Standards for General Residential Operations, 749 Minimum Standards for Child-Placing Agencies, and 750 Minimum Standards for Independent Foster Homes, relating to normalcy.** |
| DATE: | **April 22, 2016** |

## BACKGROUND AND PURPOSE

The Child Care Licensing (CCL) Division proposes to amend Chapter 745, Licensing, Chapter 748, Minimum Standards for General Residential Operations (GROs), Chapter 749, Minimum Standards for Child-Placing Agencies (CPAs), and Chapter 750, Minimum Standards for Independent Foster Homes, to implement changes related to normalcy.

"Normalcy" is the ability of a child in care to live as normal a life as possible, including engaging in childhood activities that are suitable for children of the same age, level of maturity, and developmental level as determined by a reasonable and prudent parent standard. The recommended changes are needed to implement Senate Bill (S.B.) 1407 that was passed by the 84th Texas Legislature in 2015 and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy. Some changes to Chapter 749 related to normalcy became effective in December of 2014; these changes need to be updated. In addition, both S.B. 1407 and the federal law also require that normalcy apply to GROs, so Chapter 748 also needs to be updated. Finally, Chapters 745 and 750 are being updated for clarity and consistency.

CCL has met with three different workgroups that have provided input and comments regarding these rules:

* On September 29, 2015, CCL met with a workgroup of providers and advocates that was organized by Texas CASA (Court Appointed Special Advocates);
* On October 7, 2015, CCL met with the Committee for Advancing Residential Practices; and
* On December 16, 2015, CCL met with a workgroup of providers.

A summary of the changes related to normalcy include:

* Creating an independent Normalcy Division in both Chapter 748 and 749 to clarify and highlight the issues and make the rules related to normalcy easier to find;
* Clarifying that children must participate in childhood activities, including unsupervised childhood activities (activities that are away from and not supervised by the operation or foster home) as much as possible;
* Defining "normalcy" and the "reasonable and prudent parent standard";
* Listing items that must be taken into consideration when making a reasonable and prudent decision on whether a child may participate in a childhood activity;
* Clarifying who will make decisions regarding whether a child may participate in a childhood activity;
* Clarifying that a child's participation in childhood activities must be discussed during service planning meetings;
* Clarifying for a GRO that each GRO must designate one or more persons to make these normalcy decisions for a child;
* Clarifying for a GRO which persons may be designated to make normalcy decisions;
* Requiring two hours of pre-service training regarding normalcy for foster parents and certain employees of GROs and CPAs;
* Requiring that two hours of normalcy training be included in the mandated annual training for all caregivers;
* Providing a list of curriculum components that must be included in the pre-service training regarding normalcy and annual normalcy training; and
* Clarifying in Chapter 745 how the reasonable and prudent parent standard will be used by CCL during investigations.

Definitions for "childhood activities" and "unsupervised childhood activities" for both Chapter 748 and Chapter 749 have also been added to the respective definition rules (§§748.43 and 749.43). Since there will be many other changes to the definitions, the definition changes are being proposed in a separate CCL Rule Review packet which is being published in the same issue of the Texas Register. However, for purposes of understanding these proposed changes, the proposed definitions are as follows:

* In Chapter 748:
  + Childhood activities-- Activities that are generally accepted as suitable for children of the same chronological age, level of maturity, and developmental level as determined by a reasonable and prudent parent standard as specified in §748.705 (What is the "reasonable and prudent parent standard"?). Examples of childhood activities include extracurricular activities, in-school and out-of-school activities, enrichment activities, cultural activities, and employment opportunities. Childhood activities include unsupervised childhood activities; and
  + Unsupervised childhood activities-- Childhood activities that a child in care participates in away from the operation and the caregivers. Childhood activities that are sponsored, conducted, or supervised by the operation are not unsupervised childhood activities. Unsupervised activities may include playing sports, going on field trips, spending the night with a friend, going to the mall, or dating. Unsupervised activities may last one or more days.
* In Chapter 749:
  + Childhood activities-- Activities that are generally accepted as suitable for children of the same chronological age, level of maturity, and developmental level as determined by a reasonable and prudent parent standard as specified in §749.2605 (What is the "reasonable and prudent parent standard"?). Examples of childhood activities include extracurricular activities, in-school and out-of-school activities, enrichment activities, cultural activities, and employment opportunities. Childhood activities include unsupervised childhood activities; and
  + Unsupervised childhood activities--Childhood activities that a child in care participates in away from the foster home and the foster parents. Childhood activities that are conducted or supervised by the foster parents or sponsored by the child-placing agency are not unsupervised childhood activities. Unsupervised activities may include playing sports, going on field trips, spending the night with a friend, going to the mall, or dating. Unsupervised activities may last one or more days.

In addition, some minor changes related to normalcy are being made to the Chapter 748 and Chapter 749 rules relating to service planning and children's rights. Since other significant changes are being made to the relevant rules regarding service planning and children's rights, those rules are also being proposed in a separate CCL Rule Review packet that will be published in the same issue of the Texas Register.

Finally, there are some additional changes not related to normalcy that are being proposed in these rules, including:

* Requiring that trauma informed care training be included in the mandated general pre-service training for all caregivers of a GRO;
* Requiring that two hours of trauma informed care training be included in the mandated annual training for all caregivers of a GRO; and
* Updating the language and numbering of tables for consistency and ease of understanding.

## DETAILED SECTION ANALYSIS AND DISPOSITION TABLE

| **Current Rule Sections** | **Proposed Action; New Rule Section** | **Summary Explanation of Proposed Action** |
| --- | --- | --- |
|  | New §745.8561 | This new rule clarifies that CCL will use the reasonable and prudent parent standard when conducting an investigation of a designated person or foster parent that is alleged to have inappropriately:   * Allowed a child to participate in a childhood activity; or * Denied a child access to a childhood activity or activities. |
|  | New §745.8608 | This new rule clarifies that CCL will not take enforcement actions against a GRO or CPA when a designated person or foster parent appropriately uses the reasonable and prudent parent standard when determining whether a child will be allowed to participate in a childhood activity. |
| §748.685 | Amend | This amendment:   * Clarifies that a caregiver must:   + Be aware of a child's special supervision needs; and   + Provide, arrange, or confirm an appropriate method of transportation for an unsupervised childhood activity; and * Moves and revamps the current subsection (d) to the new Division 6, Normalcy. |
|  | New §748.701 | This new rule defines "normalcy". |
|  | New §748.703 | This new rule states that:   * Children must participate in childhood activities, including unsupervised childhood activities, as much as possible; and * Service planning meetings must discuss normalcy for the child. |
|  | New §748.705 | This new rule:   * Defines the "reasonable and prudent parent standard"; and * Lists the items that must be taken into consideration when making a reasonable and prudent decision on whether a child may participate in a childhood activity. |
|  | New §748.707 | This new rule states that;   * A GRO must designate at least one person to make decisions regarding a child's participation in childhood activities; * When making these decisions the designated person must follow the reasonable and prudent parent standard; and * The service plan may not require prior approval of the parent before the designated person may consent to a child's participation in childhood activities. |
|  | New §748.709 | This new rule requires:   * Caregivers hired after August 31, 2016 to receive either a two hour pre-service training or annual training regarding normalcy before the caregiver may be a designated person that makes decisions regarding a child's participation in childhood activities; * A designated person to: * Work at the same location where the child resides; and * Be knowledgeable of the child's current needs and history; and * The name of each designated person to be documented on the face sheet of the child's record. |
| §748.863 | Amend | This amendment requires two additional hours of pre-service training regarding normalcy for child care administrators, professional level service providers, treatment directors, and case managers. |
| §748.868 | Amend | This amendment provides an exemption to the requirement of two additional hours of pre-service training regarding normalcy for child care administrators, professional level service providers, treatment directors, and case managers when the individuals have been trained on normalcy within the last 12 months. |
| §748.881 | Amend | This amendment:   * Adds water safety as a topic that is appropriate for general pre-service training; and * Adds trauma informed care and normalcy as required components for general pre-service training. |
|  | New §748.882 | This new rule lists the curriculum components that must be included in the pre-service training regarding normalcy. |
| §748.931 | Amend | This amendment:   * Requires that the mandatory annual training for caregivers and professional level service providers, treatment directors, and case managers who do not hold a relevant professional license must include two hours of training specific to trauma informed care; * Requires that the mandatory annual training for caregivers, any designated persons, and professional level service providers, treatment directors, and case managers who do not hold a relevant professional license must include two hours of training specific to normalcy; and * Clarifies the language and adds numbering to be more consistent throughout the rule and to make it easier to read. |
|  | New §748.944 | This new rule requires:   * The annual training regarding normalcy to include the curriculum components that are required in §748.882; and * Subsequent training to further develop and refine an employee's knowledge and understanding of normalcy and how it should be implemented. |
| §748.1003 | Amend | This amendment clarifies the language of this rule and deletes an outdated cite. |
| §748.1339 | Amend | This amendment:   * Requires a designated person to be involved in the development of the initial service plan; and * Clarifies that:   + A child that is verbal and developmentally able to participate must be invited to participate in the development of the child's service plan; and   + The service planning meeting must include discussions regarding the child's participation in childhood activities. |
| §748.4701 | Amend | This amendment clarifies the language of this rule and deletes an outdated cite. |
| §749.863 | Amend | This amendment:   * Requires two additional hours of pre-service training regarding normalcy for:   + Foster parents; and   + CPA administrators, treatment directors, child placement staff, child placement management staff, and full-time professional service providers, except those exclusively assigned to provide adoption services; * Updates/changes the language of "pervasive development disorder" to "autism spectrum disorder"; and * Deletes subsection (b) because this language is unnecessary, however, this language will be included in a Helpful Information box within the Minimum Standards. |
| §749.868 | Amend | This amendment provides an exemption to the requirement of two additional hours of pre-service training regarding normalcy for child-placing agency administrators, treatment directors, child placement staff, child placement management staff, and full-time professional service providers when the individuals have been trained on normalcy within the last 12 months. |
|  | New §749.882 | This new rule lists the curriculum components that must be included in the pre-service training regarding normalcy. |
| §749.931 | Amend | This amendment:   * Requires that the mandatory annual training for caregivers/foster parents, child placement staff, child placement management staff other than those exclusively doing adoptions, and executive directors, treatment directors, and full-time professional service providers who do not hold a relevant professional license must include two hours of training specific to normalcy; * Clarifies the language, combines some sections, and adds numbering to be more consistent throughout the rule and to make it easier to read; * Updates/changes the language of "pervasive development disorder" to "autism spectrum disorder"; and * For ease of understanding deletes subsection (8) by incorporating the language into other sections and adding §749.944. |
|  | New §749.943 | This new rule requires:   * The annual training regarding normalcy to include the curriculum components that are required in §749.882; and * Subsequent training to further develop and refine an employee's knowledge and understanding of normalcy and how it should be implemented. |
|  | New §749.944 | This new rule lists the training components that must be included in the mandated annual training related to prevention, recognition, and reporting on child abuse and neglect. This rule is being added so subsection (8) of the table at §749.931 can be deleted to simplify the table and ease of understanding. |
| §749.1311 | Amend | This amendment clarifies that:   * A child that is verbal and developmentally able to participate must be invited to participate in the development of the child's service plan; and * The service planning meeting must include discussions regarding the child's participation in childhood activities. |
| §749.2563 | Amend | This amendment clarifies the language of this rule and deletes an outdated cite. |
| §749.2593 | Amend | This amendment:   * Clarifies that a caregiver must:   + Be aware of a child's special supervision needs; and   + Provide, arrange, or confirm an appropriate method of transportation for an unsupervised childhood activity; and * Moves and revamps the current subsection (d) and (e) to the new Division 7, Normalcy. |
| §749.2594 | Delete | This rule is being moved and revamped into new §749.2607. |
|  | New §749.2601 | This new rule defines "normalcy". |
|  | New §749.2603 | This new rule states that:   * Children must participate in childhood activities, including unsupervised childhood activities, as much as possible; and * Service planning meetings must discuss normalcy for the child. |
|  | New §749.2605 | This new rule:   * Defines the "reasonable and prudent parent standard"; and * Lists the items that must be taken into consideration when making a reasonable and prudent decision on whether a child may participate in a childhood activity. |
|  | New §749.2607 | This new rule states that;   * The foster parents make the decisions regarding a child's participation in childhood activities; * When making this decision the foster parents must follow the reasonable and prudent parent standard; and * The service plan may not require prior approval of the parent before the designated person may consent to a child's participation in childhood activities. |
|  | New §750.1004 | This new rule clarifies that Independent Foster Homes must comply with the new Normalcy Division in Chapter 749. |
| §750.1005 | Amend | This amendment updates a cite. |
| §750.1007 | Amend | This amendment updates a cite. |

## 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 modifications implement HRC §42.042, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

## 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 safety of children in care and the quality of their care will be improved by integrating normalcy and trauma informed care into the minimum standards*.*

(c) Impact on Business. There is an anticipated adverse impact on businesses, including small and micro businesses, which must comply with these rule changes. GROs, CPAs, and independent foster group homes will be impacted. There are no independent foster family homes currently operating, so those homes will not be discussed in the fiscal impact analysis. There is no anticipated economic cost to persons who are required to comply with the proposed sections - other than those persons who have a financial stake in a GRO, CPA, or independent foster group home.

The DFPS 2014 Annual Report and Data Book states that there are 239 GROs and 217 CPAs operating in Texas. Of those CPA, there are 11 CPS regional divisions that operate as certified CPAs. The 11 CPS CPAs will not be discussed in this section of the fiscal impact analysis, because they do not meet the legal definition of a large, small, or micro business.

Licensing has identified the following proposed rules in Chapter 749 as potentially having an adverse fiscal impact on CPAs:

* §748.709. Are there any restrictions on who can be a designated person that makes decisions regarding a child's participation in childhood activities?
* §748.863. What are the pre-service hourly training requirements for caregivers and employees?
* §748.881. What curriculum components must be included in the general pre-service training?
* §748.882. What curriculum components must be included in the pre-service training regarding normalcy?
* §748.931. What are the annual training requirements for caregivers and employees?
* §748.944. What curriculum components must be included in the annual normalcy training?
* §749.863. What are the pre-service hourly training requirements for caregivers and employees?
* §749.882. What curriculum components must be included in the pre-service training regarding normalcy?
* §749.931. What are the annual training requirements for caregivers and employees?
* §749.943. What curriculum components must be included in the annual normalcy training?

Of the GROs and CPAs, the size of the GRO and the CPA and the number of residents and foster and adoptive homes that each operation/agency has varies significantly. A few GROs and CPAs have hundreds of residents or foster/adoptive homes; others GROs or CPAs have 20 to 50 residents or homes, while others have even fewer residents or homes. Given this variation, it is not possible to project the fiscal impact to each GRO and CPA; however, it is possible to project an average "unit cost" for certain types of activities that are newly required by the amended rules.

The fiscal impact to GROs and CPAs primarily results from additional staff time needed to

(1) Attend new pre-service training regarding normalcy; and (2) Update and develop curriculum.

Licensing staff developed the methodologies used to calculate the fiscal impact of these rules. The impacts were calculated using cost research conducted by staff and assumptions regarding child-care practices. The key assumptions and methodologies are described in detail below, as these underlie the individual impact calculations for each rule that are projected to have a fiscal impact on at least some GROs and CPAs.

For GROs, the staff time required to comply with the standards will impact case managers, professional level service providers, treatment directors, and the child-care administrator. For CPAs, the staff time required to comply with the standards will impact child placement staff, child placement management staff, full-time professional service providers, treatment directors, and the child-placing agency administrator. For use in the impact analysis, DFPS calculated hourly wages for each of these categories of GRO and CPA staff, as follows (actual salaries paid to staff by a GRO or a CPA may be greater or less than the averages used for these projections):

For GRO staff:

* Case Managers - The 2016 average salary for FAD Workers (CPS Specialists I - V) was used to determine the salary costs for case managers because it is assumed they perform the functions most similar to those performed by case managers. The Fiscal Year (FY) 2016 average salary for a FAD Worker is $ 43,768 per year or $ 21.04 per hour.
* Professional Level Service Providers and Treatment Directors - The 2016 average salary for Child Protective Services (CPS) Foster and Adoptive Home Development (FAD) Supervisors (CPS Supervisors I - II) was used to determine the salary costs for the professional level service providers and treatment directors, because it is assumed they perform functions similar to those performed by professional level service providers and treatment directors. The FY 2016 average salary for a FAD Supervisor is $52,071 per year or $25.03 per hour.
* Child-Care Administrator - The 2016 average salary for CPS Regional Directors was used to determine the salary costs for the child-care administrator, because it is assumed that this position functions in a similar capacity to that of a child-care administrator. The FY 2016 average salary for a CPS Regional Director is $93,862 per year or $45.13 per hour.

For CPA staff:

* Child Placement Staff - The 2016 average salary for FAD Workers (CPS Specialists I - V) was used to determine the salary costs for the child placement staff because the FAD Workers are the child placement staff for CPS. The FY 2016 average salary for a FAD Worker is $43,768 per year or $21.04 per hour.
* Child Placement Management Staff, Full-Time Professional Service Providers, and Treatment Directors - The 2016 average salary for FAD Supervisors (CPS Supervisors I - II) was used to determine the salary costs for the child placement management staff, full-time professional service providers, and treatment directors because the FAD Supervisor is the position that most often meets the minimum qualifications for and acts as the child placement management staff for CPS. It is assumed that the costs for full-time professional service providers and treatment directors would be similar to the child placement management staff. The FY 2016 average salary for a FAD Supervisor is $52,071 per year or $25.03 per hour.
* CPA Administrator - The 2016 average salary for CPS Regional Directors was used to determine the salary costs for the CPA administrator because the CPS Regional Directors act as the CPA administrator for each CPS region. The FY 2016 average salary for a CPS Regional Director is $93,862 per year or $45.13 per hour.

**Fiscal Impact for Proposed §748.709:** The new rule requires new caregivers to have either a two hour pre-service or annual training regarding normalcy before the caregiver may be a designated person that makes decisions regarding a child's participation in childhood activities. Any costs for annual training is noted in the "Fiscal Impact for Proposed §§748.931 and 748.941" below. Licensing is assuming that most GROs will not designate new caregivers as a person that makes decisions regarding a child's participation in childhood activities. However, in some instances GROs may want to designate new caregivers as a person that makes decisions regarding a child's participation in childhood activities, for example in cottage homes. CCL is assuming that most GROs provide substantially more than the required pre-service training hours, and in these situations CCL is assuming two additional hours of pre-service training regarding normalcy can be incorporated into the current pre-service training. Therefore, CCL does not anticipate any costs regarding this new rule.

**Fiscal Impact for Proposed §748.863:** Revisions to §748.863 amend pre-service training requirements for GRO administrators, professional level service providers, treatment directors, and case managers. The proposed change to this rule requires two new hours of pre-service training regarding normalcy. The training must be completed before the employee can be a designated person that makes decisions regarding a child's participation in childhood activities and within 90 days of hire. There are two costs associated with the increase of general pre-service training hours for GRO employees: the hourly wages paid to the training participants while attending a class and instruction costs.

The average cost of group caregiver training offered by local resource and referral agencies is $ 20 per hour. Licensing assumed that training for these staff is 25 % more expensive than training caregivers given that the level of expertise of trainers is usually higher. As such, the cost of instruction for pre-service training on normalcy would be $ 25 per hour per employee trained.

The training will only apply to new staff. But the cost to train these staff for two hours is estimated as follows:

* Child Care Administrators - $140.26 [(hourly wage of $45.13 X 2 hours of training) + ($25.00 X 2 hours of instruction costs)];
* Professional Level Service Providers and Treatment Directors - $100.06 [(hourly wage of $25.03 X 2 hours of training) + ($25.00 X 2 hours of instruction costs)]; and
* Case Managers - $92.08 [(hourly wage of $21.04 X 2 hours of training) + ($25.00 X 2 hours of instruction costs)]

**Fiscal Impact for Proposed §748.881:** Revisions to this rule require two new curriculum components, normalcy and trauma informed care, to be included in a GRO's general pre-service training that is mandated for caregivers and employees. There is no increase in training hours, so the only fiscal impact relates to the update of the curriculum. The costs for developing the pre-service training curriculum regarding normalcy is included in "Fiscal Impact for Proposed §748.882" below. The costs for developing the annual training curriculum regarding trauma informed care is included in "Fiscal Impact for Proposed §§748.931 and 748.944" below. It should be a minimal impact to incorporate portions of the pre-service training curriculum regarding normalcy and the annual training curriculum regarding trauma informed care into the general pre-service training. In addition, it will be a one-time cost. It is anticipated that a professional level service provider or an employee similarly situated will spend an average of 10 to 20 hours to incorporate the curriculum for each topic into the general pre-service training. Therefore, the one-time cost to update the curriculum regarding these two topics will be between approximately $500.60 [$25.03 (the hourly wage of a professional level service provider) X 10 hours X 2 topics] and $1,001.20 [$25.03 (the hourly wage of a professional level service provider) X 20 hours X 2 topics] per GRO. (Note: GROs that currently contract with DFPS have been required by contract since 2012 to train their staff on trauma informed care.)

**Fiscal Impact for Proposed §748.882:** This new rule specifies the curriculum components that must be included in the pre-service training regarding normalcy for the child care administrator, profession level service providers, treatment director and case managers. The costs for sending these persons to training was discussed in "Fiscal Impact for Proposed §748.863" above. However, if a GRO determines they want to provide this training in-house, then the instruction costs noted above ($50 per each employee for the two hours of training) would no longer be applicable, but the normalcy training curriculum would need to be developed. The training for normalcy must be two hours. CCL is estimating 30 to 50 hours to develop one hour of training. It is anticipated that a professional level service provider or some employee similarly situated will spend an average of 60 hours (30 hours X 2 training hours) to 100 hours (50 hours X 2 training hours) to develop the curriculum. Therefore, the one-time cost to update the curriculum regarding normalcy will be between approximately $1,501.80 [$25.03 (the hourly wage of a professional level service provider) X 60 hours] and $2,503.00 [$25.03 (the hourly wage of a professional level service provider) X 100 hours] per GRO.

**Fiscal Impact for Proposed §§748.931 and 748.944:** Revisions to§748.931 require that the currently mandated annual training for caregivers and employees of GROs must now include training regarding trauma informed care and normalcy. Revisions to §748.944 list the curriculum components that must be included in the required annual normalcy training. There is no increase in the number of annual training hours required; there is only the requirement that training must include two hours of training specific to normalcy and two hours of training specific to trauma informed care. Since there is only a change in the content of the training, there is no fiscal impact in the delivery of the training because the GRO already pays for or delivers the annual training for the same number of training hours. If the GRO is currently paying for outside annual training, then there are no additional costs for the GRO. However, there is a fiscal impact when a GRO actually delivers the training and must now develop a new curriculum for trauma informed care and may need to modify the normalcy curriculum that was developed for the pre-service training, see "Fiscal Impact for Proposed §748.882" above. The training for trauma informed care must be two hours. CCL is estimating 30 to 50 hours to develop one hour of training. To modify the pre-service normalcy curriculum, CCL is estimating it will take 20 hours. It is anticipated that a professional level service provider or some employee similarly situated will spend an average of 80 hours ([30 hours to develop the trauma informed care curriculum X 2 training hours] + 20 hours to modify the normalcy curriculum) to 120 hours ([50 hours to develop the trauma informed care curriculum X 2 training hours] + 20 hours to modify the normalcy curriculum) to develop/modify the curriculum for these two topics. Therefore, the one-time cost to develop/modify the curriculum regarding trauma informed care and normalcy will be between approximately $2,002.40 [$25.03 (the hourly wage of a professional level service provider) X 80 hours] and $3,003.60 [$25.03 (the hourly wage of a professional level service provider) X 120 hours] per GRO. (Note: GROs that currently contract with DFPS have been required by contract since 2012 to train their staff on trauma informed care.)

**Fiscal Impact for Proposed §749.863:**

* Revisions to §749.863 amend pre-service training requirements for two sets of populations: foster parents; and CPA administrators, treatment directors, child placement staff, child placement management staff, and full-time professional service providers, except those exclusively assigned to provide adoption services. This fiscal impact statement is divided into two sections, which explain the fiscal impact for each population:
  + The proposed addition to this rule requires two additional hours of pre-service training regarding normalcy for foster parents. There are 206 private CPAs and 120 of those CPAs contract with CPS to provide foster care services. For the CPAs that contract with CPS, CCL is assuming this new requirement will not result in any new costs. Most, if not all, of the CPAs that contract with CPS already require additional hours of pre-service training to verify a foster home. In addition, H. B. 781 that was passed this session now requires all CPAs that contract with CPS to provide 35 hours of pre-service training to their foster parents. The additional two hours of pre-service training for normalcy can be incorporated into the 35 hours of pre-service training that is now required by H. B. 781 via PRIDE (Parent's Resource for Information, Development, and Education) training or some other similar training module.

Of the remaining 86 CPAs, approximately 50 CPAs provide adoption only services. Generally, the adoption only CPAs do not verify foster homes or verify very few foster homes. The remaining 36 CPAs that provide foster care services are generally small CPAs that do not verify many foster homes. However, for these CPAs, there will be some training instruction costs for the foster parents. The average cost of group training offered by local resource and referral agencies is $20 per hour. As such, the cost of instruction for pre-service training regarding normalcy would be $40 per foster parent trained. Since foster parents are not paid employees, there are no hourly wage costs for foster parents to attend a training class. In some instances CPAs will pay for these training costs for the foster parents; in other instances foster parents must incur their own costs for these trainings.

* + The proposed addition to this rule requires two new hours of pre-service training regarding normalcy for CPA administrators, treatment directors, child placement staff, child placement management staff, and full-time professional service providers, except those exclusively assigned to provide adoption services. The training must be completed before the person can be a designated person that makes decisions regarding a child's participation in childhood activities, or within 90 days of beginning job duties, whichever occurs earlier. There are two costs associated with the increase of general pre-service training hours for CPA employees: the hourly wages paid to the training participants while attending a class and the training instruction cost.

The average cost of group training offered by local resource and referral agencies is $20 per hour. Licensing assumed that training for these staff is 25 % more expensive than training caregivers given that the level of expertise of trainers is usually higher. As such, the cost of instruction for pre-service training regarding normalcy would be $25 per hour per employee trained.

The training will only apply to new staff, but the cost to train these staff for two hours is estimated as follows:

* + - Child Care Administrator - $140.26 [(hourly wage of $45.13 X 2 hours of training) + ($25.00 X 2 hours of instruction costs)];
    - Child Placement Management Staff, Full-Time Professional Service Providers, and Treatment Directors - $100.06 [(hourly wage of $25.03 X 2 hours of training) + ($25.00 X 2 hours of instruction costs)]; and
    - Child Placement Staff - $92.08 [(hourly wage of $21.04 X 2 hours of training) + ($25.00 X 2 hours of instruction costs)]
* While §749.863 is applicable to IFGHs:
  + §749.863(2) related to pre-service training regarding normalcy for foster parents does not apply to IFGHs, because IFGHs do not verify foster homes; and
  + §749.863(3) does apply to IFGHs but Licensing anticipates very few costs, because IFGHs have very few if any of these staff.

**Fiscal Impact for Proposed §749.882:**

* This new rule specifies the curriculum components that must be included in the pre-service training regarding normalcy for foster parents, the childcare administrator, profession level service providers, treatment director, and case managers. The costs for sending these persons to training was discussed in "Fiscal Impact for Proposed §749.863" above. However, if a CPA determines they want to provide this training in-house, then the instruction costs noted above ($40 per foster parent and $50 per each employee for the two hours of training) would no longer be applicable, but the normalcy training curriculum would need to be developed. The training for normalcy must be two hours. CCL is estimating 30 to 50 hours to develop one hour of training. It is anticipated that a child placement management staff or some employee similarly situated will spend an average of 60 hours (30 hours X 2 training hours) to 100 hours (50 hours X 2 training hours) to develop the curriculum. Therefore, the one-time cost to update the curriculum regarding normalcy will be between approximately $1,501.80 [$25.03 (the hourly wage of a child placement management staff) X 60 hours] and $2,503.00 [$25.03 (the hourly wage of a child placement management staff) X 100 hours] per GRO.
* While §749.882 is applicable to IFGHs, it is unlikely that any additional costs will be required of the IFGH. Licensing estimates that the IFGHs are not developing the curriculum for annual training or delivering the actual training, so no costs are anticipated.

**Fiscal Impact for Proposed §§749.931 and 749.943:**

* Revisions to §749.931 require that the currently mandated annual training for caregivers and employees of CPAs must now include training regarding normalcy. Revisions to §749.943 list the curriculum components that must be included in the required annual normalcy training. There is no increase in the number of annual training hours required; there is only the requirement that training must include two hours of training regarding normalcy. Since there is only a change in the content of the training, there is no fiscal impact in the delivery of the training because the CPA already pays for or delivers the annual training for the same number of training hours. If the CPA is currently paying for outside annual training, then there are no additional costs for the CPA. However, there is a small fiscal impact when a CPA actually delivers the training and must now modify the normalcy curriculum that was developed for the pre-service training, see "Fiscal Impact for Proposed §749.882" above. It is anticipated that a child placement management staff or some employee similarly situated will spend 20 hours to modify the pre-service normalcy curriculum into an annual training. Therefore, the one-time cost to modify the curriculum regarding normalcy will be approximately $500.60 [$25.03 (the hourly wage of a child placement management staff) X 20 hours] per CPA.
* While §§749.931 and 749.943 are applicable to IFGHs, it is unlikely that any additional costs will be required of the IFGH. Licensing estimates that the IFGHs are not developing the curriculum for annual training or delivering the actual training, so no costs are anticipated.

An independent foster group home (IFGH) is an operation (not related to a child-placing agency) that provides care for seven to 12 children up to the age of 18 years. As of the date of publication of these rules, there are only two IFGHs operating in Texas. Neither one contracts with the DFPS or provides services to children in the managing conservatorship of DFPS. Although the rules impacting IFGHs are located in Chapter 750, Title 40, Texas Administrative Code, there are numerous standards in Chapter 749 that are adopted by reference in Chapter 750. While some of these rule changes will impact the two IFGHs, Licensing has identified only four rules that may potentially have a fiscal impact upon them: §§749.863, 749.882, 749.931, and 749.943. These rules impact IFGHs because of 40 TAC §750.401(1), which provides that the staff of an IFGH must be trained in accordance with the minimum standards for training in Subchapter F of Chapter 749, Title 40, TAC, which includes §§749.863, 749.882, 749.931, and 749.943. However, even though there is a potential for a fiscal impact, because IFGHs do not have the staff noted in these rules and because IFGHs do not develop curriculum for training, CCL does not anticipate any fiscal impact.

**Regulatory Flexibility Analysis**

As previously noted, the Chapter 748 rule amendments and new rules apply to the approximately 239 GROs. Of the 239 GROs, it is estimated that only 25% (or 60 GROs) are small businesses, and 16% (or 38 GROs) are micro business. These 60 small businesses and 38 micro-businesses fall within the statutory definition, because only these businesses are for-profit businesses.

The Chapter 749 rule amendments and new rules apply to the approximately 206 private CPAs. Of those, only 20 potentially fall within the statutory definition of a small or micro-business, because only 20 of the CPAs are for-profit business. Of these 20 CPAs, it is estimated that almost all of them are small businesses, and probably half are micro-businesses.

The projected economic impact on small and micro-businesses was addressed for both GROs and CPAs in the foregoing section of the preamble. As noted above, with the widely varying number of children cared for by GROs and CPAs, the fiscal impact of these rules to particular GROs and CPAs will vary, with the total dollar impact likely to be greater for GROs and CPAs that serve a larger number of children and less for GROs and CPAs that serve a smaller number of children.

DFPS did not consider any alternatives to the rule amendments being proposed that require additional training for normalcy (which applies to both GROs and CPAs) and trauma informed care (which applies only to GROs) to ameliorate the impact on GROs or CPAs who are small or micro-businesses, because the very purpose of this legislative requirement and these rule changes is to ensure the health and safety of children and to improve their quality of care - regardless of the size of the GRO or CPA. However, DFPS did consider different training times for normalcy, but decided a shorter training period was not adequate, and a longer period was excessive.

(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

CCL has met with three different workgroups that have provided input and comments regarding these rules related to normalcy:

* On September 29, 2015, CCL met with a workgroup of providers and advocates that was organized by CASA (Court Appointed Special Advocates);
* On October 7, 2015, CCL met with the Committee for Advancing Residential Practices; and
* On December 16, 2015, CCL met with a workgroup of providers.

## 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*.