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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 MembersDepartment of Family and Protective Services Council** |
| FROM: | **John J. Specia, Jr., DFPS Commissioner** |
| SUBJECT: | **Agenda Item Recommendation to propose rule changes in 40 TAC 749, Minimum Standards for Child-Placing Agencies, related to a comprehensive review** |
| DATE: | **April 22, 2016** |

## BACKGROUND AND PURPOSE

The Child Care Licensing (CCL) Division proposes to amend 40 TAC, Chapter 749, Minimum Standards for Child-Placing Agencies. Texas Human Resources Code (HRC) §42.042(b) requires CCL to conduct a comprehensive review of all rules and minimum standards every six years. The proposed changes are a result of the comprehensive review of all minimum standards located in Chapter 749.

During this review of standards, CCL's goal was to balance the concerns of child advocacy groups, child-placing agencies, foster parents, children, and biological parents to formulate standards that promote the safety of every child in care.

In preparation for the review of minimum standards, CCL conducted a web-based survey open to permit holders, caregivers, advocates, parents, and anyone in the general public interested in commenting on the standards. The survey was available for public input from late August through December 2014. The next step in the review was to hold a series of 13 stakeholder forums throughout the state between September and November 2015 to solicit additional input from the public about proposed changes to the minimum standards.

Between the web-based survey and the stakeholder forums, CCL received almost three hundred comments (for both Chapters 748 and 749) from stakeholders for consideration in the review. These comments, along with a line-by-line review of all minimum standards conducted by both regional and State Office Licensing staff, formed the basis of the first round of recommendations that were then presented to a temporary workgroup. The temporary workgroup, comprised of 13 participants, including providers from child-placing agencies and general residential operations and representatives from Child Protective Services, Residential Contracts, and Licensing, met twice on December 16,2015 and February 2,2016. The workgroup reviewed and provided additional comments regarding the recommendations.

DFPS received some comments related to adoption services in the surveys and in the forums. After reviewing these comments and the related current minimum standards, DFPS decided to maintain the adoption minimum standards as they are currently written. However, DFPS will continue to look at minimum standard changes related to adoption over the next year to determine whether to propose any changes. Toward that end, DFPS will hold workgroup meetings with providers and clients for further guidance on recommended changes.

This comprehensive review includes changes to over two hundred minimum standards. Some of the changes are minimal (e.g. changing a cite to a rule, or deleting a masculine pronoun); other changes are small but have more of an impact (e.g. changing the treatment service terminology of "mental retardation" to "intellectual disability"); and still other changes are more complex and will have a wider impact. Below is a broad overview of some of the different areas and types of changes that DFPS is recommending:

* Updating definitions and treatment service types;
* A rewrite and reorganization of the Divisions 1, 2, and 8 of Subchapter C, Organization and Responsibilities, relating to Permit Holder Responsibilities; Governing Body; and Policies and Procedures. The focus of the rewrite and the reorganization is to clarify:
	+ The plans, policies, and procedures that are required during the application process; and
	+ A CPA's operational responsibilities, including responsibilities for notifications to Licensing. The rewrite is also intended to clarify confusion over a "permit holder's" and "governing body's" responsibilities;
* Clarifying training requirements, for example:
	+ Only permitting 10 hours of non-required pre-service training to be carried over to use as annual training during the upcoming year; and
	+ Increasing the number of annual training hours that may come from self- instructional training from 1/3 to 1/2;
* Continuing to modify the rules to improve normalcy for children, for example:
	+ Changing the Children's Rights rule to make the rights easier to understand and find by modifying the language of some of the rights and listing the rights under seven different categories (e.g. Safety and Care, Living a Normal Life, Discipline, etc.);
	+ Requiring a child 14 and older to review and sign the child's service plan;
	+ Allowing more discretion by foster parents when monitoring the use of trampolines for older children; and
	+ Allowing more discretion by foster parents when monitoring swimming activities for older children who are competent swimmers;
* Clarify service planning requirements, for example:
	+ Increasing the time to complete a service plan from 40 days to 45 days;
	+ Permitting foster parent and parent notifications for a service planning meeting to come from other parties;
	+ Permitting multiple meetings to complete the service planning meeting requirements; and
	+ Permitting a single service plan to continue throughout the time a child is in residential care as long as the CPA completes a preliminary service plan at admittance and continues to review and update the plan;
* Strengthening the minimum standards when it is necessary for the safety of children, for example:
	+ Requiring older runaway children to be reported missing within two hours (this is already the requirement for younger children);
	+ Restricting the use of e-cigarettes or any kind of vapors; and
	+ Requiring transfer/closing summaries of foster homes to include a recommendation for verification in the future, including whether there would be any recommended limitations or restrictions on the verification; and
* Allowing more discretion by providers while still ensuring the safety of children, for example:
	+ Clarifying that electronic and digital signatures, including e-mail and electronic approvals, are appropriate;
	+ Shortening the experience requirements for child placement staff and child placement management staff;
	+ Clarifying that an emergency admission includes when a CPA has 72 hours to place a child; and
	+ Modifying the requirement of a face-to-face contact every 15 days for children with primary medical needs to "twice every month with no more than 20 days between visits".

## DETAILED SECTION ANALYSIS AND DISPOSITION TABLE

| **Current Rule Sections** | **Proposed Action; New Rule Section** | **Summary Explanation of Proposed Action** |
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| §749.43 | Amend | Clarifies the definitions by:* Updating definitions;
* Deleting definitions that are not used in this Chapter;
* Moving definitions from other Subchapters that are used throughout the Chapter (e.g. chemical restraint, corrective or adverse action, emergency medication, etc.);
* Adding and clarifying definitions regarding "normalcy" issues (e.g. childhood activities and unsupervised childhood activities); and
* Adding definitions to clarify "permit holder" and "governing body" (e.g. corporation or other type of business entity, owner, and partnership).
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| §749.61 | Amend | Updates the names and description of the types of treatment services to be consistent with the DSM-5. |
| Subchapter C, Division 1, Permit Holder Responsibilities | Repeal | Rewrites and reorganizes Divisions 1, 2, and 8 of Subchapter C to clarify: * The plans, policies, and procedures that are required during the application process; and
* A CPA's operational responsibilities, including responsibilities for notifications to Licensing. The rewrite is also intended to clarify confusion over a "permit holder's" and "governing body's" responsibilities.
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| §749.101 | Repeal | Repeals this rule because:* Portions of the rule are unnecessary or duplicative; and
* The other requirements are incorporated into §745.243, New §749.101, New §749.103, New §749.105, New §749.139, New §749.153, §749.667, and §749.669.
 |
| §749.103 | Repeal | Repeals this rule because:* Portions of the rule are unnecessary or duplicative; and
* The other requirements are incorporated into New §749.153.
 |
|  | Subchapter C, New Division 1, Plans and Policies Required During the Application Process | Creates a new Division that will clarify the policies that are required during the application process. |
|  | New §749.101 | Clarifies the plans that are required for the application process by: * Incorporating portions of repealed §749.101 and §749.163; and
* Adding a requirement that the operation plan must include a list of persons or officers and their titles that comprise the governing body, if applicable.
 |
|  | New §749.103 | Clarifies the policies that are required for the application process by accumulating a complete list and referencing the relevant minimum standard. |
| §749.105 | Repeal and New  | Creates a new rule by:* Including the content of the repealed version of this rule with non-substantive modifications; and
* Adding the written staffing plan and requirements from repealed §749.601.
 |
| §749.107 | Repeal and New  | Creates a new rule by:* Including the content of the repealed version of this rule with non-substantive modifications; and
* Adding conflict of interest policies from repealed §§749.131 and 749.681.
 |
|  | New §749.109 | Includes the content from repealed §749.333 with non-substantive modifications to the rule. |
|  | New §749.111 | Includes the content from repealed §749.335 with non-substantive modifications to the rule. |
|  | New §749.113 | Includes the content from repealed §749.339 [except paragraph (18) which was incorporated into New §749.135] with non-substantive modifications to the rule. |
|  | New §749.115 | Includes the content from repealed§749.341 with non-substantive modifications to the rule. |
|  | New §749.117 | Includes the content from repealed §749.343 with non-substantive modifications to the rule. |
|  | New §749.119 | Includes the content from repealed §749.345 with non-substantive modifications to the rule; and deletes the section regarding "respective rights and responsibilities" because it is already included in New §749.121. |
|  | New §749.121 | Includes the content from repealed §749.347 with non-substantive modifications to the rule. |
|  | New §749.123 | Includes the content from repealed §749.349 with non-substantive modifications to the rule; and deletes subsection (a) because these standards are already required for all children, not just children receiving treatment services.  |
|  | New §749.125 | Includes the content from repealed §749.351 with non-substantive modifications to the rule. |
|  | New §749.127 | Includes the content from repealed §749.353 with non-substantive modifications to the rule. |
|  | New §749.129 | Includes the content from repealed §749.355 with non-substantive modifications to the rule. |
|  | New §749.131 | Includes the content from repealed §749.357 with non-substantive modifications to the rule; and deletes paragraph (4) because the "plan for review of adoption plans" was confusing and duplicative. Adoption plans already have to be reviewed.  |
|  | New §749.133 | Includes the content from repealed§749.359 with non-substantive modifications to the rule. |
|  | New §749.135 | Creates and independent abuse and neglect policy section that's content was derived from repealed §749.339(18).  |
|  | New §749.137 | Includes the content from repealed §749.331(a) and (d) with non-substantive modifications to these subsections.  |
|  | New §749.139 | Includes the content from repealed §749.331(b) with significant clarifications to explain how a CPA's plans, policies, and procedures must be adopted by a sole proprietor, partnership, or corporation.  |
|  | New §749.141 | Clarifies that Licensing may cite standards in Division 1 for deficiencies after the application process is granted. |
| Subchapter C, Division 2, Governing Body | Repeal | Rewrites and reorganizes Divisions 1, 2, and 8 of Subchapter C to clarify: * The plans, policies, and procedures that are required during the application process; and
* A CPA's operational responsibilities, including responsibilities for notifications to Licensing. The rewrite is also intended to clarify confusion over a "permit holder's" and "governing body's" responsibilities.
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| §749.131 | Repeal | Repeals this rule because:* A grandfather clause is outdated and is no longer needed;
* Portions of the rule are unnecessary or duplicative; and
* The other requirements are incorporated into New §749.107, New §749.139, New §749.151, and §749.161.
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| §749.133 | Repeal | The content of this rule is incorporated into New §749.153. |
|  | Subchapter C, New Division 2, Operational Responsibilities and Notifications | Creates a new Division that will clarify a CPA's operational responsibilities, including responsibilities for notifications to Licensing.  |
|  | New §749.151 | Includes portions of the content from repealed §749.103 with significant modifications, including the combining of some paragraphs and the deletion of some paragraphs because they were unnecessary and/or duplicative.  |
|  | New §749.153 | Includes: * Portions of the content from repealed §749.103, §749.133, §749.507, and §749.681;
* Additions of items consistent with New §749.101 and New §749.103; and
* Modifications to the timeframes for notification to Licensing for consistency.
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| §749.161 | Repeal and New | Creates a new rule by:* Incorporating portions of the content of this repealed version;
* Deleting portions of the content of this repealed version because it was unnecessary and duplicative; and
* Adding portions of the content from repealed §749.163 to New §749.161.
 |
| §749.163 | Repeal  | Incorporates the content of this repealed version into two New rules: §749.101 and §749.161. |
|  | New §749.304 | Incorporates portions of the content from §749.305 into this New rule to clarify where the main and branch offices must be located, but this is a non-substantive change.  |
| §749.305 | Amend | Clarifies this rule by:* Moving the location of the main and branch offices content to New §749.304;
* Deleting an outdated grandfather clause; and
* Modifying the language for clarity, including the caseload limits when offices share the same administrator and/or treatment director.
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| §749.307 | Amend | Clarifies the language of the rule for consistency. |
| Subchapter C,Division 8, Policies and Procedures | Repeal | Rewrites and reorganizes Divisions 1, 2, and 8 of Subchapter C to clarify: * The plans, policies, and procedures that are required during the application process; and
* A CPA's operational responsibilities, including responsibilities for notifications to Licensing. The rewrite is also intended to clarify confusion over a "permit holder's" and "governing body's" responsibilities.
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| §749.331 | Repeal | Incorporates the content of this rule into four New rules: §749.137, §749.139, §749.153, and §749.529. One subsection was deleted as unnecessary.  |
| §749.333 | Repeal | Incorporates the content of this rule into New §749.109. |
| §749.335 | Repeal | Incorporates the content of this rule into New §749.111. |
| §749.337 | Repeal | Incorporates the majority of the content of this rule into §749.1113, except subsection (c) is deleted because it was unnecessary and duplicative. |
| §749.339 | Repeal | Incorporates the majority of the content of this rule into New §749.113, except paragraph (18) which is incorporated into New §749.135. |
| §749.341 | Repeal | Incorporates the content of this rule into New §749.115. |
| §749.343 | Repeal | Incorporates the content of this rule into New §749.117. |
| §749.345 | Repeal | Incorporates the content of this rule into New §749.119. |
| §749.347 | Repeal | Incorporates the content of this rule into New §749.121. |
| §749.349 | Repeal | Incorporates the content of this rule into New §749.123. |
| §749.351 | Repeal | Incorporates the content of this rule into New §749.125. |
| §749.353  | Repeal | Incorporates the content of this rule into New §749.127. |
| §749.355 | Repeal | Incorporates the content of this rule into New §749.129. |
| §749.357 | Repeal | Incorporates the content of this rule into New §749.131. |
| §749.359 | Repeal | Incorporates the content of this rule into New §749.133. |
| §749.421 | Amend | Adds young adults to the list of adult clients; and clarifies the language of the rule to make it easier to understand. |
| §749.423 | Amend | Clarifies that when informing adult clients of their rights, the:* Information must be in writing;
* Procedures for making complaints to us only relates to violations of minimum standards; and
* Information regarding other entities where complaints may be filed must include phone numbers and addresses.
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| §749.425 | Amend | Clarifies the language of the rule to make it easier to understand. |
| §749.501 | Amend | Clarifies that serious incidents are those incidents noted in §749.503. |
| §749.503 | Amend | Clarifies several issues, including:* Requiring a child death to be reported to law enforcement within one hour after the child's death, and reported to Licensing and the parents within two hours after the child's death;
* Making the language for "substantial physical injury" consistent with the new definition for that term;
* Requiring child-on-child physical abuse and sexual abuse to be reported when a CPA or foster parent becomes aware of it;
* Clarifying that a serious incident includes when law enforcement responds to an alleged incident at the foster home;
* Requiring the absence of a 13 year old or older from a foster home that cannot be located to be reported to Licensing, the parents, and law enforcement no later than two hours from the when the absence is discovered [Note: This is already the requirement for children younger than 13.];
* Subsection (b) regarding foster parents reporting to the Hotline was deleted and moved to §749.509;
* Adding a subsection from repealed §749.507 stating medical incidents that don't rise to the level of a serious incident don't have to be reported to Licensing, but they must be documented;
* Adding language requiring a report to the Hotline if there is reason to believe an adult resident has been abused, neglected, or exploited; and
* Making the language in these sections consistent with the rest of the Chapter.
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| §749.507 | Repeal | Incorporates the content of this rule into two New rules: §749.153 and §749.503. |
| §749.509 | Amend | Clarifies the rule to:* Add the requirement that foster parents must report directly to the Hotline if an incident involves a child under their care, which is being moved from current §749.503; and
* Delete the requirement for reporting to licensing in writing, because those issues are now included in New §749.153.
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| §749.513 | Amend | Clarifies the language of the rule for consistency throughout the Chapter. |
| §749.515 | Amend | Clarifies that incident reports must be easily accessible to Licensing; and deletes a subsection because it is unnecessary and duplicative. |
|  | New §749.529 | Includes the content from portions of repealed §749.331. |
| §749.531 | Repeal | Incorporates the content of this Repeal into two New rules: §749.531 and §749.533. |
| §749.533 | Repeal | Incorporates the content of this Repeal into New §749.531. |
|  | New §749.531 | Includes the content from portions of repealed §749.531 and §749.533 with non-substantive modifications.  |
|  | New §749.533 | Includes the content of repealed §749.531 with non-substantive modifications. |
|  | New §749.534 | Clarifies that electronic signatures, approvals by e-mail, and electronic approvals are allowed.  |
| §749.535 | Amend | Clarifies that no written summaries are required, and the records from the foster parents must be submitted within 15 days from the end of the month. |
| §749.539 | Amend | Clarifies that disaster and emergency plans must be maintained at the main office, relevant branch office, or in a central administratively designated location.  |
| §749.551 | Amend | Clarifies that all active personnel records must be maintained at the main office or keep individual personnel records at the office where each person is working. In addition, the master list of active and archived personnel records must be kept at the main office and must include a notation of the location of those records.  |
| §749.553 | Amend | Clarifies:* That employees must sign a statement documenting that the employee has read the operational policies;
* What must go into personnel record regarding training;
* Deletes a signed statement requirement regarding the employee's training on abuse and neglect, because it has been clarified what must go into a personnel record regarding training;
* The name of the Hotline.
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| §749.571 | Amend | Deletes an outdated an unnecessary cite to a rule. |
| §749.573 | Amend | Clarifies that the master list of active client records must include a notation of the location of those records. |
| §749.577 | Amend | Deletes the requirement that active child records must include the "date of each data entry and the name of the person who makes the data entry". |
| §749.581 | Amend | Clarifies that archived client records must be maintained at the main office, the branch office that served the client, or in a central administratively designated location. In addition, the master list of archived client records must include a notation of the location of those records. |
| §749.585 | Amend | Clarifies the langue of the rule. |
| §749.601 | Repeal | Incorporates the content of this repealed rule into New §749.105(3). |
| §749.633 | Amend | Deletes a confusing caveat in the rule. |
| §749.635 | Amend | Adds to the responsibilities (or assignments) of a child-placing agency administrator to administer and manage the approved plans for evaluating the effectiveness of a CPA's system to comply with standards and the plan to investigate Minimum Standards. |
| §749.663 | Amend | Clarifies that child placement staff have the responsibility for conducting and documenting foster home supervisory visits.  |
| §749.667 | Amend | Clarifies the language of the rule, and that child placement management staff must directly perform the responsibilities of the child placement staff in the, as appropriate. |
| §749.669 | Amend | Clarifies the language of the rule, including making the "re-evaluated" language consistent throughout the Chapter. |
| §749.671 | Repeal | Incorporates this definition for "corrective and adverse action" into the Definition rule at §749.43. |
| §749.673 | Amend | Clarifies the qualifications chart for child placement staff by:* Reducing the professional qualifications (years of experience) for:
	+ Options 2 and 3 (now combined with Option 1 into New Option 1) from two years to one year; and
	+ Option 4 (now Option 2) from three years to two years;
* Combining Options 1, 2, and 3 into New Option 1 because the professional qualifications are now the same; and
* Expanding the type of experience required for the New Options to include experience at a general residential operation, as a department conservatorship caseworker, or as a department adoptive home development worker; and the experience must be in conducting assessments, service planning, or case management duties; or
	+ For New Option 1, one year of experience working under the direct supervision of child placement management staff; or
	+ For New Option 2, two years of experience working under the direct supervision of child placement management staff.
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| §749.675 | Amend | Clarifies the qualifications chart for child placement management staff by:* Reducing the professional qualifications (years of experience) for:
	+ Option 1 from two years to one year;
	+ Options 2 and 3 (now combined into New Option 2) from three years to two years and four years to two years, respectively; and
	+ Option 4 (New Option 2) from five years to three years;
* Combining Options 2 and 3 into new Option 2 because the professional qualifications are now the same;
* Expanding the type of experience required for the New Options to include experience at a general residential operation, as department conservatorship caseworker, or as a department adoptive home development worker; and the experience must be in conducting assessments, service planning, or case management duties; and
* Modifying where the nine credit hours on family and individual function and interaction may come from. They may come from undergraduate OR graduate level courses.
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| §749.679 | Amend | Adds a reference to clarify that while there is no specific caseload compliance requirements, §749.305 does have caseload limits for offices that share the same administrator and/or treatment director. |
| §749.681 | Repeal | Incorporates the content of this repealed rule into New §749.107. |
| §749.725 | Amend | Updates treatment services terminology. |
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| §749.761 | Amend | Deletes a subsection regarding requirements for volunteers that provide short-term services through an organization and incorporates it into §749.767; deletes a masculine pronoun; and updates the name of the Hotline. |
| §749.767 | Amend | Includes content from §749.761 and clarifies that a CPA must determine that that the program for a volunteer that provides short-term services through and organization is adequate to protect the health and safety of children.  |
| §749.769 | Repeal and New  | Deletes the current rule and is replaced with a new rule to clarify that no person may provide services to an agency if that person is on probation or parole or is performing community service through the courts because of a criminal activity. The prohibition applies to a person who meets the definition of a volunteer or any other person not compensated, including persons providing any type of service even if that person does not have unsupervised access to children in care. |
| §749.771 | Repeal | Deletes an outdated rule that does not appear to be used anymore. |
| §749.801 | Amend | Incorporates the description of the acronym CEU into §749.935, which is the only place it is used; and clarifies the definition of "instructor-led training".  |
| §749.861 | Amend | Clarifies that for a caregiver that doesn't have current experience caring for a child with treatment needs, the CPA's prescribed caregiver experience regimen (which is already required) must now specifically include eight hours of observations and interactions with children receiving similar treatment services.  |
| §749.867 | Amend | Clarifies the language of the rule and deletes masculine pronouns. |
| §749.869 | Amend | Clarifies that a qualified instructor for pre-service training must have adequate knowledge and experience in the topic to be delivered.  |
| §749.881 | Amend | Adds water safety as an appropriate curriculum topic for the general pre-service training as it relates to the needs of children for whom a caregiver will be providing care; and deletes normalcy in this rule because it is now a separate mandated two hour pre-service training.  |
| §749.901 | Amend | Adds a component to the pre-service training regarding emergency behavior intervention, which will require addressing the circumstances when all de-escalation strategies fail. |
| §749.933 | Amend | Clarifies the "within 12-months" language for when an employee's or caregiver's annual training must be completed. |
| §749.935 | Amend | Clarifies certain aspects of the rule by:* Spelling out the acronym CEU;
* Limiting to 10 hours the amount of non-required pre-service training hours that may be carried over and counted for annual training hours;
* Stating that the "required" pre-service training hours may not be counted for annual training hours; and
* Increasing from one-third to one-half the number of annual training hours that may come from self-instructional hours; and clarifying that no more than three of those self-instructional hours may come from reading materials.
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| §749.937 | Amend | Clarifies that while Licensing does not approve or endorse training resources, the requirements for a CPA to ensure reliable training relevant to the population of children served applies to both: * Employees and caregivers; and
* Instructor-led training and self-instructional training.
 |
| §749.939 | Amend | Clarifies that transportation safety training must be instructor-led. |
| §749.941 | Amend | Adds water safety and administration of medication as training topics appropriate for annual training; and deletes trauma informed care and normalcy in this rule because they are now mandated topics for annual training.  |
| §749.945 | Amend | Deletes masculine pronouns; and clarifies the psychotropic medication training must be met. |
| §749.1003 | Repeal and New | Creates a new rule by:Modifying the language of the repealed rule by: * Dividing the children rights into seven categories (e.g. Safety and Care, Living a Normal Life, Discipline, etc.) to make the rights easier to understand and find;
* Changing the "right to be free from discrimination" to the "right to fair treatment" and deleting the laundry list of discrimination grounds; and
* Improving the readability of the rule overall.
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| §749.1005 | Amend | Clarifies that a timely signed copy of the "CPS Rights of Children and Youth in Foster Care" will meet the Licensing requirements in this rule. |
| §749.1007 | Amend | Clarifies that appropriate home schooling will meet the educational rights of a child. |
| §749.1011 | Amend | Requires a revaluation by child placement management staff when restrictions are imposed on a child's contact with siblings for more than 60 days (it is currently 90 days). The wording of this rule was also modified to be consistent with other re-evaluations in this Chapter.  |
| §749.1021 | Amend | Clarifies that the list of the techniques that may not be used on a child is not an exhaustive list. |
| §749.1107 | Amend | Deletes the requirement to document:* The child's birthplace; and
* Court orders establishing the managing conservator of the child.
 |
| §749.1109 | Amend | Adds the Texas Family Code §32.203 requirement that in certain instances a child 16 years or older may sign a placement agreement for a transitional living program without the consent of the child's parent. |
| §749.1111 | Amend | Clarifies that during orientation a child must be provided information on how to make complaints to outside agencies and how to contact outside parties to a child's case. |
| §749.1113 | Amend | Amends this rule by:* Adding the content of most of repealed §749.337 to provide parents with relevant policies;
* Deleting the requirement that parents must be able to determine whether a program is appropriate for a child and can meet the child needs; and
* Adding the policies and explanations that must be provided to a child that signs a placement agreement as specified in §749.1109.
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| §749.1115 | Amend | Clarifies that one of the special needs that must be shared with caregivers is supervision needs; and the sharing of all special needs must be documented. |
| §749.1131 | Amend | Clarifies that the admission assessment must be completed prior to admission. |
| §749.1133 | Amend | Amends the language of the rule to:* Delete redundant phrases that are already clarified by a definition; and
* Clarify that an assessment must establish how the needs of the child can be met.
 |
| §749.1135 | Amend | Amends the language of the rule to:* Allow any health care professional to evaluate whether foster parents have been trained to meet the needs of a child with primary medical needs and demonstrate competency;
* Delete a supervision requirement, because the is already required to be reviewed for all children; and
* Update the treatment services terminology, delete a masculine pronoun, and correct a cite to a rule.
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| §§749.1151 and749.1153 | Amend | Deletes a masculine pronoun and changes an acronym in each rule. |
| §749.1183 | Amend | Adds to the list of situations that constitute an emergency admission to include, "if you must place a child within 72 hours"; clarifies the wording of the rule; and deletes a masculine pronoun. |
| §749.1187 | Amend | Makes the terminology for psychiatric evaluation, psychological evaluation, and psychosocial assessment consistent throughout the Chapter. |
| §749.1291 | Amend | * Clarifies that for all contacts with children in care at least half of them must occur in the foster home; and
* Changes the requirement for face-to-face contacts every 15 days for children with primary medical needs to "twice every month with no more than 20 days between visits".
 |
| §749.1301 | Amend | Clarifies that the preliminary service plan addressing the immediate needs of the child must be completed within 72 hours; and an example of an immediate need is supervision requirements. |
| §749.1307 | Amend | Clarifies that the initial service plan must be completed within 45 days (currently 40 days). |
| §749.1309 | Amend | Updates the items that are needed for an initial service plan, including:* Updating the psychiatric evaluation, psychological evaluation, and psychosocial assessment language;
* Deleting redundant phrases that are already included in the definitions; and
* Clarifying references and other language for consistency.
 |
|  | New §749.1312 | Clarifies that the service planning team may meet in one meeting, two or more meetings, or in separate meetings to discuss and develop a child's service plan, provided that each service planning team member is informed of the discussion and comments regarding the child's service plan that were made in each meeting. |
| §749.1313 | Amend | Clarifies that notice to the parents and foster parents regarding the service planning meeting may be given by someone else as long as the CPA has documentation that the notice was given and was timely.  |
| §749.1317 | Amend | Updates treatment services terminology. |
| §749.1321 | Amend | Requires all children 14 years and older to review and sign the initial service plan. If the child disagrees with the plan or refuses to sign it, this information must be documented. |
| §749.1323 | Amend | Clarifies that the service plan must be implemented within 15 days (currently 10days) after the date of the scheduled service planning meeting involving the parents, foster parents, and the child. |
| §749.1331 | Amend | Updates treatment services terminology. |
| §749.1335 | Amend | Removes the requirement to determine for children receiving treatment services whether the placement should continue, change the child's treatment service designation, transfer the child to a least restrictive setting, or refer the child to an inpatient hospital. This is being deleted because permanency goals should be considered for all children and are broader than this list. |
|  | New §749.1336 | Clarifies that a single service plan that continues throughout the time a child is in residential care is allowed as long as the CPA completes a preliminary service plan at admittance and complies with the review and update rules in this Division.  |
| §749.1339 | Amend | Updates treatment services terminology. |
| §§749.1363, 749.1369, and749.1371 | Amend | Deletes masculine pronouns in each rule. |
| §749.1401 | Amend | Clarifies what has to be included in a child's record regarding a medical exam. The requirements for the "date of examination" and "procedures completed" are being deleted because these requirements will be in the results of the medical examination. There is also clarification regarding documenting the date and time of an injury or illness resulting in a medical exam. |
| §749.1409 | Amend | Clarifies what has to be included in a child's record regarding a dental exam. The requirements for the "date of examination" and "procedures completed" are being deleted because these requirements will be in the results of the dental examination. |
| §749.1415 | Amend | Clarifies the language of this rule. |
| §749.1421 | Amend | Clarifies that the immunization requirements of DSHS must be met, instead of referencing the HRC; and deletes a duplicative statement regarding a child's health passport meeting Licensing documentation standards. |
| §749.1423 | Amend | Clarifies the exemptions and exceptions to the immunization requirements. |
| §749.1425 | Amend | Clarifies the documentation requirements that are acceptable for an immunization record, including documentation of the name and address of the health-care professional (previously it only said RN) that administered the vaccine.  |
| §749.1433 | Amend | Corrects a cite to a rule. |
| §749.1463 | Amend | Clarifies that these requirements only apply to the administration of prescription medication. |
| §749.1469 | Amend | Adds a requirement to inform a child's physician of any non-prescription medication or supplement to make sure there are no contraindications with other medications. |
| §749.1503 | Amend | Clarifies that for a child that is on a self-medication program the CPA/foster parents must ensure there is a system for reviewing the child's medication each day.  |
| §749.1521 | Amend | Clarifies the rule by:* Removing the requirement to store medications "for external use only" separately from other medications; and
* Incorporating the content of repealed §749.1523 (the requirement to destroy outdated medication within 30 days) into this rule.
 |
| §749.1523 | Repeal | Incorporates the content for this Repeal into §749.1521. |
| §749.1541 | Amend | Changes this rule by:* Replacing "vitamin" with "supplement", which has been defined in §749.43 as "vitamins, herbs, and any supplement labeled dietary supplement";
* Clarifying that a medication record does not have to be updated immediately but "within 24 hours of administering medication";
* Requiring the documentation of a non-prescription medication or supplement that is given to a child and how often the child receives the medication or supplement (no cumulative record is required); and
* Requiring documentation in the medical record of any prohibited supplements.
 |
| §749.1581 | Amend | Clarifies the meaning of an "adverse reaction" to a medication; and adds a requirement to immediately report the reaction to the child's parent. |
| §749.1583 | Amend | Clarifies the meaning of a medication "side effect"; and adds a requirement to immediately report serious side effects to the child's parent. |
| §749.1803 | Amend | Clarifies that infant care items necessary for diaper changing must be kept out of the reach of children, but do not need to be in locked storage. |
| §749.1813 | Amend | Clarifies the language in this rule to be consistent with the Day Care requirements.  |
| §749.1815 | Amend | Clarifies that a health-care professional's sleeping orders for an infant must be kept in the child's record.  |
| §749.1819 | Amend | Deletes a masculine pronoun. |
| §749.1863 | Amend | Clarifies the language of the rule. |
| §749.1891 | Amend | Clarifies that additional educational facilities or programs are allowed if approved by the child's service planning team. The justification and the approval must be kept in the child's record.  |
| §749.1893 | Amend | Clarifies: * That extracurricular activities must be determined by a reasonable and prudent parent standard;
* That a caregiver must provide notice to the parent of the child of any scheduled ARD, IEP, or ITP meetings; and
* Acronyms.
 |
| §749.1895 | Amend | Updates treatment services terminology and deletes a masculine pronoun. |
| §§749.1921, 749.1923, and 749.1925 | Amend | Updates treatment services terminology in each rule. |
| §749.1957 | Amend | Clarifies the language for prohibited discipline techniques to include not screaming at a child. |
| §749.1959 | Amend | Changes the time from 30 days to 14 days that a foster parent may restrict a child's activities without a review by the child placement management staff or a treatment director. |
| §749.1961 | Amend | Updates a cite to a rule. |
| §749.2001 | Amend | Removes most of the definitions from this section and incorporates them into §749.43, because the terms that are being incorporated are used in more than this one Subchapter. |
| §749.2151 | Amend | Deletes a masculine pronoun. |
| §749.2201 | Amend | Clarifies that a personal restraint must be monitored to make sure the restraint is being performed appropriately. |
| §749.2203 | Amend | Deletes masculine pronouns. |
| §749.2231 | Amend | Clarifies that in an emergency behavior intervention (EBI), a child must have bathroom privileges "as needed". |
| §749.2305 | Amend | Adds to the documentation requirements for an EBI to include:* The names of any witnesses to the EBI, including child witnesses in the home; and
* The name of the medical provider, if medical treatment or assistance was obtained for the child.
 |
| §749.2403 | Amend | Deletes an outdated grandfather clause. |
| §749.2445 | Amend | Clarifies that only a prospective foster family's domestic violence history needs to be reported to Licensing, not all criminal history.  |
| §749.2447 | Amend | Amends the rule to:* Clarify in paragraph (7) that all criminal history results must be assessed in relation to the whole home screening;
* Clarify in paragraph (19) that persons supporting foster parents during an unexpected event or crisis situation must have a fingerprint-based criminal history check before acting as a caregiver; and
* Renumber paragraphs (6), (7), (22), and (23) for ease in referencing these standards.
 |
| §749.2451 | Amend | Deletes the outdated language of "attempts to interview". In the past some interviews of adult children were not mandated, but now all adult children must be interviewed.  |
| §749.2453 | Amend | Clarifies the foster home screening update requirements to be consistent with §749.2803, when new or temporary verifications are needed. |
| §749.2471 | Amend | Deletes an unnecessary reference and updates a cite to a rule. |
| §749.2475 | Amend | Adds to the background information that must be shared with other CPAs, including:* A plan to achieve compliance; and
* Adverse action plans.
 |
| §749.2487 | Amend | Clarifies that the agreement between the foster parents and the CPA must be signed.  |
| §749.2488 | Amend | Adds the requirement to give verified foster parents copies of the CPA's policies concerning "the rights and responsibilities of the CPA and the foster parents", which was deleted from repealed §749.347(b).  |
| §749.2497 | Amend | Adds to the information that must be included in a transfer/closing summary: * Any plan to achieve compliance or other development plan that was in place within the previous 12 months of the transfer/closing;
* Any adverse action plan; and
* A statement of whether the CPA would recommend the foster home for verification in the future, including limitations or restrictions on the verification and the basis for the recommendation
 |
| §749.2599 | Amend | Clarifies terminology. |
| §749.2623 | Amend | Clarifies that a CPA must inform a child of the plan for respite care before the CPA places the child in respite care. |
| §749.2635 | Amend | Updates a cite to a rule. |
| §749.2655 | Amend | Clarifies the notification requirements of certain changes in a foster home, including referencing a cite to the rule with the definition of "a major life change in the foster family" instead of repeating the definition in this rule. |
| §749.2803 | Amend | Amends the rule that affects a foster home's verification to make it more accurate and easier to understand by:* Deleting confusing terminology like "the conditions of a foster home", "is only valid until", and "prior to";
* Making it consistent with the definition of "a major life change in the foster family" at §749.2805(a); and
* Clarifying the wording.
 |
| §749.2805 | Amend | Clarifies that a "major life change in the foster family" includes a significant change in a work schedule. |
| §749.2815 | Amend | Clarifies that:* Child placement staff must conduct the supervisory visits;
* Any significant change in finances is an issue related to the stress levels of foster parents that must be reviewed during supervisory visits; and
* The names of all household members present at the supervisory visit must be documented.
 |
| §749.2902 | Repeal and New | Replaces the current requirements for a health inspection with a new rule that mirrors §749.2903 (fire inspection/evaluation) and allows child placement management staff to conduct a health and safety evaluation using a DFPS checklist.  |
| §749.2903 | Amend | Clarifies that when a foster home changes a type of verification, then the foster home must meet the relevant fire safety measures required for the new type of foster home. |
| §§749.2904, 749.2905, 749.2909, and749.2911 | Amend | Makes the language in this Chapter regarding a "local health authority or state or local authority" consistent. |
| §749.2913 | Amend | Clarifies that fire extinguishers must have a maintenance check once a year by a person qualified to inspect fire extinguishers. |
| §749.2917 | Amend | Clarifies the language of the rule and deletes the requirement that ferrets must be vaccinated, because this is not required by the Health and Safety Code. |
| §749.2931 | Amend | Clarifies that e-cigarettes and vaporizers, like tobacco products, are also prohibited. |
| §749.2961 | Amend | Clarifies that the adult supervising a child that is using a weapon must be knowledgeable about the weapon. |
| §749.3027 | Amend | Corrects a typographical error and deletes a masculine pronoun. |
| §749.3031 | Amend | Clarifies that mattresses must not be on the floor. |
| §749.3039 | Amend | Allows more discretion by the foster parents when monitoring the use of trampolines for older children.  |
| §749.3061 | Amend | Deletes subsection (a), because it is already noted in §749.3063(a)(1). |
| §749.3075 | Amend | Clarifies the language of the rule and updates terminology. |
| §749.3103 | Amend | Makes the language in this Chapter regarding a "child passenger seat system" consistent. |
| §749.3133 | Amend | Allows more discretion by the foster parents when monitoring swimming activities for older children who are competent swimmers; and deletes an outdated grandfather clause. |
| §749.3135 | Amend | Allows more discretion by the foster parents when monitoring swimming activities for older children who are competent swimmers. |
| §749.3137 | Amend | * Clarifies the chart by:
	+ Deleting the middle "children in the group" column, because the swimming ratio and supervising the number of children in the group were the same;
	+ Deleting the cite to §749.2563 and incorporating the requirement from that rule into the chart; and
	+ Lowering the swimming ratios for foster group homes from 8:1 to 6:1 to be consistent with the swimming ratios for foster family homes;
* Clarifies that subsection (b) always requires at least two adults to supervise four or more children if all four children are actually in the water;
* Clarifies subsection (d) to state that even if a lifeguard is counted in the swimming ratio, one caregiver must always be present and the lifeguard cannot be the only person counted in the swimming ratio; and
* Deletes language in subsection (e), because unsupervised childhood swimming activities will be made by foster parents using a reasonable and prudent parent standard.
 |
| §749.3139 | Amend | Changes "water activities" to "swimming activities" to make the language in the Chapter consistent. |
|  | New §749.3151 | Clarifies that the rules in this Division do not apply to swimming activities away from the foster parents and the foster home.  |
| §749.4153 | Amend | Updates a cite to a rule. |
| §749.4259 | Amend | Changes "therapy" to "counseling" to make the language in the Chapter consistent. |

## 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.

## 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: (1) There will be clarification of the Minimum Standards for Child-Placing Agencies (CPAs); (2) DFPS will be in compliance with HRC §42.042(b); and (3) There will be a reduced risk to children*.* Other than the owners of a CPA as noted in (c) below, there is no anticipated economic cost to individual persons who are required to comply with the proposed sections.

(c) Impact on Business. There is no anticipated adverse impact on small or micro businesses as a result of the proposed rule changes. The recommended rule changes should not affect the cost of doing business; do not require the purchase of any new equipment or any increased staff time in order to comply; and while there are some new requirements, these requirements should not require additional costs 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

As noted in more detail in the Background and Purpose, the comprehensive review has included:

* A web-based survey that was available for submission of comments from August - December 2014;
* A series of 13 forums to solicit additional input were held between September and November 2015; and
* Temporary workgroups comprised of GRO and CPA providers, Child Protective Services (CPS), CPS Contracts, and Licensing met on December 16, 2015 and February 2, 2016.

## 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*.