March 24, 2016

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §745.505, §745.615 and new §745.616 in Chapter 745, concerning Licensing. The purpose of the amendments and new section is to implement needed changes to comply with the Child Care and Development Block Grant Act of 2014 and Senate Bill (S.B) 1496, 84th Regular Legislative Session.

The Child Care and Development Block Grant (CCDBG) Act of 2014 (the "Act") is the first comprehensive revision of the Child Care and Development Fund (CCDF) program since 1998. (The CCDF is codified in 42 USC §9857 et seq.) The Texas Workforce Commission (TWC) administers the CCDF, which is the primary federal funding source devoted to providing low-income families with access to child care. The Act makes significant reforms to the CCDF programs to raise the health, safety, and quality of child care. The Act does this by mandating that states comply with a multitude of additional requirements in order to continue receiving CCDF funding. Although TWC is the lead agency for determining eligibility and distributing the subsidy monies, DFPS is the agency responsible for licensing child care operations, establishing health and safety regulations, and monitoring eligible operations for compliance. Many of the Act's additional requirements relate to the responsibilities of DFPS. The provisions of the Act that have a significant impact on Child Care Licensing (CCL) and this chapter relate to background checks. Finally, there will be additional requirements of the Act addressed in future rulemaking.

In regards to background checks, Senate Bill (S.B.) 1496, 84th Regular Legislative Session, amended HRC §§42.0523 and 42.056 in order to comply with the Act's requirements. A summary of the background check changes in response to the Act and S.B. 1496 include: (1) requiring Listed Family Homes that provide care to unrelated children to pay biennial background check fees of $2.00 per person; and (2) requiring Licensed Child-Care Homes, Registered Child-Care Homes, and Listed Family Homes that provide care to unrelated children to obtain fingerprint-based criminal history checks (these homes were previously only required to have name-based criminal history checks). There is also a transitional rule which clarifies which persons are required to have a fingerprint-based criminal history check and when the checks are due.

The summary of the changes are:

The amendment to §745.505 requires Listed Family Homes that provide care to unrelated children to pay biennial background check fees of $2.00 per person.

The amendment to §745.615 requires Licensed Child-Care Homes, Registered Child-Care Homes, and Listed Family Homes that provide care to unrelated children, to request fingerprint-based criminal history checks.

New §745.616 clarifies which persons in these homes are required to have a fingerprint-based criminal history check and when the request for checks are due.

Lisa Subia, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. According to the DFPS Centralized Background Check Unit (CBCU), implementation of the legislation requiring fingerprint-based criminal history checks for additional persons will increase the CBCU's workload; however, the Legislature provided an FTE to cover the increase in the workload.

Ms. Subia also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that: (1) DFPS will be in compliance with the Child Care and Development Block Grant Act of 2014; (2) DFPS will be in compliance with HRC §42.056 (S.B. 1496); (3) there will be clarification regarding background checks; and (4) there will be a reduced risk to children.

There is an anticipated economic cost for persons required to comply with some of the proposed rule changes. The proposed changes are anticipated to have an adverse impact on businesses, including small and micro-businesses. The proposed changes will impact Licensed Child-Care Homes, Registered Child-Care Homes, and Listed Family Homes. According to the FY 2015 DFPS Annual Report and Data Book as of August 31, 2015 there were: (1) 1,720 Licensed Child-Care Homes; (2) 4,678 Registered Child-Care Homes; and (3) 5,026 Listed Family Homes.

Chapter 2006 of the Government Code defines a small business as one that is for-profit, independently owned, and has fewer than 100 employees or less than six million dollars in annual gross receipts. A small business that has no more than 20 employees is also defined as a micro-business. CCL is assuming virtually all Homes (Licensed Child-Care Homes, Registered Child-Care Homes, and Listed Family Homes) meet the definitions of a small and micro-business.

The fiscal impact to these operations results from (1) background check fees for Listed Family Homes; and (2) costs for fingerprint-based criminal history checks for all three types of Homes.

The size of Licensed Child-Care Homes and Registered Child-Care Homes and the number of their employees vary. Also, for all Homes, the number of household members varies. Given these variations, it is not possible to project the fiscal impact to each home; however, it is possible to project an average "unit cost" for background checks that are newly required by the rules proposed.

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 is projected to have a fiscal impact on at least some operations.

Fiscal Impact for Proposed §745.505.This section requires a listed family home that provides care to unrelated children to pay a background check fee of $2.00 per person biennially. The total impact will depend upon how many household members a listed family home has that are required to receive a background check.

Fiscal Impact for Proposed §745.615.This section requires licensed child-care homes, registered child-care homes, and listed family homes to request fingerprint-based criminal history checks on certain persons at a cost of $41.25 per person. This is generally a one-time cost. Once a person has undergone an initial fingerprint-based criminal history check, the person is not required to re-request fingerprints in the future provided the person does not move out-of-state after the initial check and the person undergoes name-based background checks at least every two years. The total impact will depend upon how many employees a Licensed Child-Care Home or Registered Child-Care Home has and how many household members each home (Licensed Child-Care Home, Registered Child-Care Home, or Listed Family Home) has that are required to have a fingerprint-based criminal history check.

Regulatory Flexibility Analysis:A regulatory flexibility analysis is not required for the proposed rules with fiscal implications because the proposed rules are specifically required by state law (S.B. 1496) and federal law (The Child Care and Development Block Grant of 2014). Therefore, the proposed rules are consistent with the health and safety of children, whom the laws were intended to protect.

Ms. Subia has determined that the proposed sections do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Gerry Williams at (512) 438-5559 in DFPS's Child Care Licensing Division. Electronic comments may be submitted to [CCRules@dfps.state.tx.us](mailto:CCRules@dfps.state.tx.us) . Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-551, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Title 40, Social Services & Assistance, Part 19, Dept. of Family and Protective Services

Chapter 745, Licensing

Subchapter E, Fees

TAC Section Number(s) §745.505

Proposed Action

X Amendment

Proposed Date of Adoption:

X Other (Specify)

30 Days After Publication

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the 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 amendment implements HRC §§42.042, 42.0421, 42.0523, and 42.056 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§745.505. What fees must I pay to list my family home and maintain the listing?

(a) The following chart contains the fees required for listed family homes, when the fees are due, and the consequences for failure to pay the fees on time**:**[. Note that for listed family homes the fees for background checks are included in the $20 application and annual fees.]

|  |  |  |
| --- | --- | --- |
| Type and Amount  of Fee | When the Fee is Due | Consequences for Failure to Pay Fee on Time |
| (1) Application/request processing fee: $20 | Before we accept your application/request for a listing | We will return your application/request as incomplete. |
| (2) Annual listing fee: $20 | On the anniversary date of your listing | If you do not pay your fee when it is due, your listing is automatically suspended until you pay your fee. If you do not pay your fee within six months of when your suspension begins, your license is automatically revoked. |
| **(3) Background Check fee: $2 per person** | **At the time you request a background check or on a monthly or quarterly basis** | **We may suspend or revoke your listing.** |

(b) **The fees listed in subsection (a) of this section are waived for a person with a listing who only provides child care to a related child in the child's own home as approved by the Texas Workforce Commission's Listed Family Home Fee Waiver Authorization form.** [A listed family home in which a relative child-care provider cares for the child(ren) in the child(ren)'s own home is exempt from paying fees.]

This agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Issued in Austin, Texas, on .

Title 40, Social Services & Assistance, Part 19, Dept. of Family and Protective Services

Chapter 745, Licensing

Subchapter F, Background Checks

Division 2, Requesting Background Checks

TAC Section Number(s) §§745.615, 745.616

Proposed Action

X Amendment

X New

Proposed Date of Adoption:

X Other (Specify)

30 Days After Publication

The amendment and new are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the 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 amendment and new rule implement HRC §§42.042, 42.0421, 42.0523, and 42.056 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§745.615. On whom must I request background checks?

(a) (No change.)

(b) In addition to any other background check required by this section, you must request fingerprint-based criminal history checks on the following:

(1) If you are a permit holder, or applicant for a permit, for a child-placing agency, general residential operation, independent foster home, child-care center, before or after-school program, [or] school-age program, **licensed child-care home, registered child-care home, or listed family home providing care to unrelated children, then** you must request a fingerprint-based criminal history check for each person who is required to have a name-based background check under subsection (a)(1)-(6) of this section; and

(2) (No change.)

(c) - (d) (No change.)

**§745.616. Transitional rule for requesting fingerprint-based criminal history checks for listed family homes, registered child-care homes, and licensed child-care homes as required by the 84th Texas Legislature.**

**(a) The 84th Texas Legislature enacted changes to Human Resources Code (HRC) §42.056, imposing new fingerprint-based criminal history check (fingerprint-based check) requirements on certain persons affiliated with listed family homes that provide care to unrelated children, registered child-care homes, and licensed child-care homes who had not previously been required to undergo these checks. See S. B. 1496, 84th Regular Legislative Session. The purpose of this transitional rule is to provide guidance on when a fingerprint-based check should be requested and when Licensing will begin to cite a home for a violation of minimum standards for failing to request a required fingerprint-based check. This rule applies only to listed family homes, registered child-care homes, or licensed child-care homes, and only with respect to persons who were not previously required to undergo a fingerprint-based check under HRC §42.056, as that statute existed before the changes from S. B. 1496 became effective on September 1, 2016.**

**(b) Beginning September 1, 2016, before we issue you a permit to operate a listed family home, registered child-care home, or licensed child-care home you must:**

**(1) Request fingerprint-based checks for all persons listed in §745.615(a)(1) - (6) of this title (relating to On whom must I request background checks?); and**

**(2) Request these fingerprint-based checks when you request the initial background checks that you must request according to §745.625(a) of this title (relating to When must I submit a request for an initial or renewal background check?).**

**(c) For listed family homes, registered child-care homes, or licensed child-care homes that have been issued a permit to operate a home before September 1, 2016, you must request fingerprint-based checks for all persons listed in §745.615(a)(1) - (6) who do not already have a valid fingerprint-based check on file, in accordance with the timeframes listed below:**

|  |  |
| --- | --- |
| **Persons Requiring a Fingerprint-Based Check:** | **When the Request for a Fingerprint-Based Check is Due:** |
| **(1) Persons whose initial or last name-based background check renewal was run (or was due to be run) between September 1, 2014 and August 31, 2015** | **At the time the person's name-based background check is due for renewal.** |
| **(2) Persons whose initial or last name-based background check renewal was run (or was due to be run) between September 1, 2015 and August 31, 2016** | **If your last name begins with:**  **(A) A through F, December 1, 2016;**  **(B) G through L, March 1, 2017;**  **(C) M through R, June 1, 2017; and**  **(D) S through Z, August 1, 2017.** |
| **(3) Any person who will be turning 14 years of age and:**   * **Is counted in the child/caregiver ratio;** * **Has unsupervised access to children in care; or** * **Resides at the home** | **Within 90 days before or after the child's 14th birthday.** |
| **(4) Anyone for whom:**   * **You have requested a risk evaluation; and** * **A risk evaluation is pending** | **Before the risk evaluation decision may be issued.** |

**(d) For persons described in subsection (b) of this section, Licensing will begin citing new homes for violation of minimum standards for any deficiencies relating to fingerprint-based checks after September 1, 2016.**

**(e) For persons described in subsection (c) of this section, Licensing will provide technical assistance to listed family homes, registered child-care homes, or licensed child-care homes until September 1, 2017, and will begin citing operations for violation of minimum standards for any deficiencies relating to fingerprint-based checks after September 1, 2017.**

**(f) This rule expires on December 31, 2017.**

This agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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