February 11, 2016

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), new §745.8561 and §745.8608 in Chapter 745, concerning Licensing. The purpose of the new rules are 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.

"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.

Child Care Licensing (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 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.

One of the changes related to normalcy includes a definition for the "reasonable and prudent standard". The changes to Chapter 745 clarify how the reasonable and prudent parent standard will be used by CCL during investigations and when imposing an enforcement action.

Rule §745.8561 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.

Rule §745.8608 clarifies that CCL will not take enforcement actions against a General Residential Operations (GRO) or Child-Placing Agency (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.

Lisa Subia, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed new sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the new sections.

Ms. Subia also has determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be that the safety of children in care and the quality of their care will be improved by integrating the use of "reasonable and prudent parent standard" into Chapter 745. There will be no effect on small or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed new sections.

Ms. Subia has determined that the proposed new 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 [CCLRules@dfps.state.tx.us](mailto:CCLRules@dfps.state.tx.us). Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-543, 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*.

Chapter 745, Licensing

Subchapter K, Inspections and Investigations

Division 5, Abuse and Neglect

TAC Section Number(s) §745.8561

Proposed Action

X New

Proposed Date of Adoption:

X Other (Specify)

30 Days After Publication

The new section 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 new section implements 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.

**§745.8561. When will Licensing use the "reasonable and prudent parent standard" in conducting an investigation of a child-placing agency or general residential operation?**

**We will use the "reasonable and prudent parent standard" when we investigate whether:**

**(1) A child-placing agency or general residential operation was deficient in a standard, rule, or other law because a foster parent or designated person:**

**(A) Allowed a child to participate in a childhood activity; or**

**(B) Denied a child access to a childhood activity or activities; or**

**(2) A foster parent or designated person breached a duty in §745.8559 of this title (relating to What is neglect?) by allowing a child to participate in a childhood activity.**

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 .

Chapter 745, Licensing

Subchapter L, Remedial Actions

Division 1, Overview of Remedial Actions

TAC Section Number(s) §745.8608

Proposed Action

X New

Proposed Date of Adoption:

X Other (Specify)

30 Days After Publication

The new section 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 new section implements 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.

**§745.8608. How will Licensing implement the "reasonable and prudent parent standard" when determining whether to impose an enforcement action against a child-placing agency or general residential operation?**

**We will not impose an enforcement action against a child-placing agency or general residential operation based on the conduct of a foster parent or designated person who appropriately followed the reasonable and prudent parent standard when determining whether a child will be allowed to participate in a childhood activity.**

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 .