March 15, 2016

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), new §§745.8581, 745.8583, 745.8585, 745.8600, 745.8633, 745.8635, 745.8637, 745.8639, 745.8641, 745.8643, 745.8649, 745.8650, 745.8651, 745.8652, and 745.8654; amendments to §§745.8601, 745.8603, 745.8605, 745.8607, 745.8609, 745.8611, 745.8613, 745.8631, 745.8657, 745.8659 and 745.8713; and the repeal of §§745.8633, 745.8635 and 745.8651 in Chapter 745, concerning Licensing. The purpose of the new sections, amendments, and repeals is to implement recommendations the Sunset Advisory Commission made in the *Department of Family and Protective Services Staff Report with Commission Decisions* published in August 2014, and required by Senate Bill (S.B.) 206, Sections 81 and 82, that was passed by the 84th Texas Legislature in 2015.

These sections respectively created Human Resources Code (HRC) §42.0704 and amended §42.078(a-2).

HRC §42.0704 requires DFPS to adopt rules that outline a general enforcement policy that describes the department's approach to enforcement, including:

(1) A summary of the department's general expectations in enforcing Human Resources Code, Chapter 42; and (2) A methodology for determining appropriate action to take when a permit holder violates Licensing laws or rules that allows the department to consider the circumstances of the particular case, the nature and seriousness of the violation, history of previous violations, and other aggravating and mitigating factors.

HRC §42.0704 also requires the department to develop a plan for strengthening its enforcement efforts and for making objective regulatory decisions. Prior to the effective date of the rules proposed in this rule packet, Licensing will require all Licensing staff to receive training to promote staff's understanding of the policy and their ability to apply it appropriately and clearly explain it to providers. After the initial training, the concepts will be incorporated into Licensing's Basic Skills Development training, which all new Licensing staff receives, moving forward. Licensing's Performance Management Unit (PMU) performs quality assurance activities to ensure Licensing staff are adhering to policy and consistently enforcing licensing laws and regulations and will evaluate the effectiveness of the enforcement policy through a quality assurance review scheduled to be completed in early fiscal year 2018 (one year after implementation of the new enforcement policy). In addition PMU risk analysts conduct neutral assessments of an operation's compliance history when Licensing staff identifies the operation as having a compliance history that is at increased risk for children. As part of this process, PMU provides recommendations for enforcement actions and, six months later, reviews the operation's record to determine what enforcement action was taken and whether risk was reduced. This work enables Licensing to assess the effectiveness of the enforcement policy on an ongoing basis.

The new version of HRC §42.078(a-2) expands the department's authority to impose administrative penalties before taking corrective action to all high risk violations, not just violations related to background checks.

A summary of the changes to create an enforcement framework include: (1) changing the title of Subchapter L from "Remedial Actions" to "Enforcement Actions; (2) defining "technical assistance" and outlining when and why technical assistance is provided; (3) clarifying that enforcement actions are not progressive in nature, meaning they are not necessarily recommended or imposed from least to most restrictive; (4) clarifying that CCL may end an enforcement action at any time to impose a more serious enforcement action; (5) removing the ability to extend an enforcement action ; (6) identifying a voluntary plan of action as a voluntary enforcement action; (7) defining voluntary plan of action as a collaborative effort between CCL and the provider; (8) identifying factors CCL considers when deciding to recommend a voluntary plan of action; (9) limiting the number of times a plan of action may be recommended if an operation has already been on a plan of action for similar issues within the previous year; (10) providing a more clearly defined delineation between evaluation and probation by restricting the circumstances under which CCL may consider imposing evaluation; (11) decreasing the length of time an operation may remain on evaluation to six months; (12) identifying factors CCL considers when deciding to impose evaluation; (13) identifying factors CCL considers when deciding to impose probation; (14) identifying factors CCL considers when deciding to impose each adverse action; and (15) adding language allowing CCL to impose administrative penalties prior to taking corrective action for violations of high risk standards.

A summary of the changes are as follows:

New Division 6, in Subchapter K, to house rules related to technical assistance.

New §745.8581 defines technical assistance and clarifies that technical assistance is not a deficiency or an enforcement action and is not used in lieu of citing a deficiency.

New §745.8583 identifies when and how Licensing may provide technical assistance.

New §745.8585 clarifies that a permit holder may not request an administrative review of Licensing providing technical assistance.

New §745.8600 outlines the general purpose of enforcement actions.

Amendment to §745.8601 clarifies that Licensing may provide technical assistance in response to a deficiency in addition to recommending or imposing another enforcement action.

Amendment to §745.8603: (1) replaces the term "remedial action" with "enforcement action"; (2) adds voluntary actions to the chart in subsection (a) listing the types of enforcement actions Licensing may take; (3) rewords and clarifies that listed family homes are not subject to voluntary or corrective action; (4) adds subsection (b) to clarify that Licensing recommends or imposes enforcement actions based on risk and that CCL does not have to impose a less restrictive action if it is determined that a more restrictive action is warranted; and (5) adds subsection (c) to clarify that Licensing may take multiple actions at the same time.

Amendment to §745.8605 replaces the term "remedial action" with "enforcement action" and deletes outdated date references in regards to operations that are ineligible to receive for a permit for a period of 5 years.

Amendment to §745.8607 replaces the term "remedial action" with "enforcement action". It also clarifies in section (5) that CCL also considers the permit holder's ability to maintain compliance with standards, rules, and laws, when deciding which type of enforcement action to recommend or impose.

Amendment to §745.8609: (1) replaces the term "remedial action" with "enforcement action" (2) adds voluntary actions to section (1) of the chart; and (3) clarifies in section (2) that Licensing notifies a permit holder of the intent to impose adverse action in writing.

Amendment to §745.8611: (1) replaces the term "remedial action" with "enforcement action" and removes language referring to extensions; (2) adds new section (1) "Voluntary Action" to the chart in subsection (a) and includes a maximum timeframe of six months for a voluntary plan of action; (3) makes the following changes to new sections (2) and (3) in the chart in subsection (a): (A) Removes the minimum length of time evaluation and probation may be imposed; (B) Removes language referring to extensions for evaluation and probation; and (C) Reduces the amount of time evaluation may be imposed from a maximum of one year to six months; (4) renumbers existing section (3) to new section (4) and clarifies that the suspension period will be up to 120 days as necessary to resolve the danger or threat of danger; (5) renumbers existing section (4) to new section (5) in the chart in subsection (a); and (6) adds subsection (b) stating that Licensing may end voluntary or corrective action early if compliance is met and maintained, or if compliance is not met and Licensing determines a more restrictive enforcement action is necessary.

Amendment to §745.8613: (1) replaces the term "remedial action" with "enforcement action"; (2) adds new section (1) to the chart in subsection (a) to include voluntary plan of action and clarifies that a permit holder does not have the right to challenge a plan of action, since it is a voluntary action; and (3) renumbers the existing numbers in the chart in subsection (a).

Division 2, in Subchapter L, is being renamed to "Voluntary and Corrective Actions."

Amendment to §745.8631: (1) adds a new section (1) to include a voluntary plan of action and describes a voluntary plan as an action that Licensing recommends and

is a collaborative effort between Licensing and the operation to improve compliance with minimum standards; (2) renumbers existing sections (1) and (2) to new sections (2) and (3); and (3) makes changes regarding evaluation and probation, including: removing language outlining the actions Licensing may take if compliance is not met, or if deficiencies worsen since this information is included in the new proposed §745.8641 of this title (relating to What requirements must I meet during the evaluation or probation period?); and clarifying that Licensing will conduct inspections at least monthly during the evaluation and probation period.

Section §745.8633 is repealed and the content is incorporated into new §745.8641.

New §745.8633 outlines when Licensing may recommend a voluntary plan of action, including: (1) outlining the criteria Licensing considers to determine whether to recommend a plan of action in subsection (a); (2) stating that Licensing may take into consideration the compliance history for each operation the permit holder oversees when determining whether a plan of action is appropriate in subsection (b); and (3) outlining when Licensing may consider imposing a more restrictive enforcement action in lieu of a voluntary plan of action in subsection (c).

Section §745.8635 is repealed and is being proposed with changes in §745.8643.

New §745.8635 outlines when Licensing may impose evaluation, including: (1) listing the circumstances under which Licensing may impose evaluation in subsection (a); and (2) stating that Licensing may impose probation or adverse action if Licensing determines the operation is not eligible for evaluation in subsection (b).

New §745.8637 outlines when Licensing may impose probation, including: (1) listing the circumstances under which Licensing may impose probation in subsection (a);and (2) stating that Licensing may impose adverse action if Licensing determines the operation is not eligible for probation in subsection (b).

New §745.8639 lists the requirements a permit holder must meet during a voluntary plan of action.

New §745.8641 contains the same language as repealed §745.8633. The language remains mostly the same as the repealed rule. However, language has been amended in section (3) to clarify what must be posted during evaluation and probation.

New §745.8643 clarifies that CCL may increase inspections or recommend a more serious enforcement action if an operation does not comply with conditions of evaluation or probation. This language is similar to content in repealed rule §745.8635.

New §745.8649 contains the exact language as repealed §745.8651, which describes types of adverse actions.

New §745.8650 outlines the circumstances under which Licensing may deny a permit.

Section §745.8651 is repealed and re-proposed as the new §745.8649.

New §745.8651 outlines the circumstances under which Licensing may impose an adverse amendment on a permit.

New §745.8652 outlines the circumstances under which Licensing may suspend an operation's permit.

New §745.8654 outlines the circumstances under which Licensing may revoke a permit.

Amendment to §745.8657 updates the department's name and a program offered through a different state agency.

Amendment to §745.8659 removes the requirement for the department publish adverse actions in a local newspaper and publish denials when the operation was previously operating. Licensing posts information regarding suspensions and revocations on the department's public website per the requirements in Human Resources Code §42.025 and §42.077.

Amendment to §745.8713: (1) adds that Licensing may impose an administrative penalty for a violation of a high risk standard; and (2) deletes old subsection (2) since new subsections (2)(A) and (2)(B) sufficiently address the issue of timely submitting information required to conduct a background and criminal history check.

Lisa Subia, Chief Financial Officer of DFPS, has determined that for the first five-year period the amendments, new, and repeals will be in effect, there will not be costs or revenues to state or local government as a result of enforcing or administering the sections.

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 amendments, new, and repealed rules will be: (1) compliance with HRC §42.0704 and §42.078(a-2); (2) implementation of the Sunset Recommendations; (3) transparency between providers, the public, and CCL staff who will have a common understanding of the decision making process as it relates to enforcement actions; (4) improved consistency in decision-making; and (5) increased use of voluntary plans of action will reduce the number of corrective action imposed or adverse actions taken. There is no anticipated economic cost to persons who are required to comply with the proposed section. There is no anticipated adverse impact on small or micro businesses as a result of the proposed rule changes because the proposed rule changes should not affect the cost of doing business; 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 impact on technology as a result of the proposed rule change.

Ms. Subia has determined that the proposed amendments, new and repeal 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 submitted via electronically to [CCLRules@dfps.state.tx](mailto:CCLRules@dfps.state.tx).us, DFPS's Child Care Licensing Division, attention: Jennifer Ritter and Aimee Perry. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-548, 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 K, Inspections and Investigations

**Division 6, Technical Assistance**

TAC Section Number(s) §§745.8581, 745.8583, 745.8585

Proposed Action

X New

Proposed Date of Adoption:

X Other (Specify)

30 Days After Publication

The new sections 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 sections implement the HRC §§42.042 and 42.0704.

**§745.8581 What is technical assistance?**

**Technical assistance is information we provide to help you improve or maintain compliance with minimum standards, rules, and laws. Technical assistance itself is not a deficiency or enforcement action, and we do not use it in lieu of citing a deficiency of a minimum standard.**

**§745.8583 When does Licensing provide technical assistance?**

**We may provide technical assistance in writing or in person:**

**(1) at any time during an inspection or investigation;**

**(2) as part of the ongoing regulatory process; or**

**(3) at your request.**

**§745.8585 May I request an administrative review for technical assistance offered?**

**No. We provide technical assistance in order to help you with your compliance with minimum standards and other laws. Technical assistance does not include a decision or action you may challenge through an administrative review. If we offer you technical assistance in addition to citing you for a deficiency in a minimum standard, you would have the right to request an administrative review related to the deficiency, but not the technical assistance.**

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 L, **Enforcement** [Remedial] Actions

Division 1, Overview of **Enforcement** [Remedial] Actions

TAC Section Number(s) §§745.8600, 745.8601, 745.8603, 745.8605, 745.8607, 745.8609, 745.8611, 745.8613

Proposed Action

X Amendment

X New

Proposed Date of Adoption:

X Other (Specify)

30 Days After Publication

The amendments and new section 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 amendments and new section implement the HRC §§42.042 and 42.0704.

**§745.8600. What is the general purpose of the rules in this subchapter?**

**(a) The rules in this subchapter contain:**

**(1) the different types of actions that we use to enforce the requirements in rules, minimum standards, and statute; and**

**(2) the criteria that we use to determine what type of enforcement action we will take in specific circumstances.**

**(b) Our goal with respect to enforcement is to ensure the safety of children in care that is subject to our regulation. Our use of enforcement actions is tailored toward the objective of safety and not to be punitive in nature.**

§745.8601. What happens if I am deficient in a minimum standard, rule, law, specific term of my permit, or condition of evaluation, probation, or suspension?

**If you are deficient in a minimum standard, rule, law, specific term of your permit, or a condition of evaluation, probation, or suspension, we may offer one or both of the following:** [We may make recommendations and/or impose remedial actions for any deficiency.]

**(1) offer technical assistance; or**

**(2) recommend or impose an enforcement action against your permit.**

§745.8603. What **enforcement** [remedial] actions may Licensing **recommend or** impose?

**(a) We may recommend a voluntary plan of action or impose a more serious enforcement action as outlined in the following chart:**

[There are four types of remedial actions: corrective, adverse, judicial, and monetary actions. These actions are:]

|  |  |
| --- | --- |
| Types of **Enforcement** [Remedial] Actions | Description |
| (1) **Voluntary and** Corrective Actions | These actions address your deficiency without requiring you to close. **Listed family homes are not subject to voluntary or corrective actions.** [We do not impose them against listed family homes.] |
| (2) Adverse Actions | These actions address your deficiency and may require you to close and/or add permanent restrictions or conditions to your permit. |
| (3) Judicial Actions | A court may impose these actions, including closure, when we request a court order to address your deficiency. |
| (4) Monetary Actions | These actions are fines or penalties that we may impose as provided by the Human Resources Code, §42.075 and §42.078. |

**(b) We may impose an action listed in subsection (a) of this rule any time we determine there is a reason for imposing the action. We will choose the action based on its appropriateness in relation to the situation we are seeking to address. We do not have to recommend or impose a less restrictive action if we determine that a more restrictive action is more appropriate.**

**(c) In some situations, we may take multiple types of actions against your operation at the same time. For example, if you continue to operate pending the appeal of a denial, we may pursue a judicial action in order to prevent you from operating illegally.**

§745.8605. When can Licensing **recommend or impose an enforcement** [take remedial] action against **my operation** [me]?

We can **recommend** **or** impose **an enforcement** [a remedial] action any time we find one of the following:

(1) - (14) (No change.)

(15) **You apply for a permit to operate a child-care operation within five years after** [For residential child-care operations on or after September 1, 2005, and all other child-care operations on or after September 1, 2011]:

(A) - (B) (No change.)

(16) - (25) (No change.)

§745.8607. How will Licensing decide which type of **enforcement** [remedial] action to **recommend or** impose?

We decide to **recommend or impose** [take remedial] **enforcement** actions based upon **our** [an] assessment of the following:

(1) - (4) (No change.)

(5) Whether you demonstrate **the** responsibility **and ability to maintain** [for] compliance with minimum standards, rules, and laws;

(6) - (8) (No change.)

## §745.8609. How will I know when Licensing is recommending or imposing an enforcement [taking remedial] action against my operation [me]?

We will notify you in the following manner:

|  |  |
| --- | --- |
| Type of Enforcement [Remedial] Action | Type of Notice [Licensing provides notice of the remedial action] |
| (1) **Voluntary and** Corrective Action | In writing at least 15 days before the start date of the **voluntary plan of action,** evaluation**,** or probation. |
| (2) Adverse Action | In **writing, delivered in** person**,** and/or by registered or certified mail that a specific type of adverse action is being taken against you and the start date of the action. |
| (3) Judicial Action | As required by the Rules of Civil Procedure for any hearings on judicial actions that we request a court to enforce. |
| (4) Monetary Action/Administrative Penalties | In writing at least 14 days after the recommendation for an administrative penalty is issued. |
| (5) Monetary Action/Civil Penalties | As required by the Rules of Civil Procedure for any hearings on civil penalties that we request a court to enforce. |

§745.8611. **How long do enforcement**[For remedial] actions that cover a specific period of time [(e. g. evaluation, probation, suspension, etc.), how long do they] last [and can they be extended]?

**(a)** The following chart describes [when corrective actions are taken and] the length of time **that we may recommend or impose an** **enforcement action** [they can be imposed]:

|  |  |
| --- | --- |
| Type of Enforcement [Remedial] Action/Specific Action | Period of Time [and Extensions] |
| **(1) Voluntary Action/Voluntary Plan of Action** | **Six months.** |
| **(2)**[(1)] Corrective Action/  Evaluation | **Six months.** [An evaluation period will be between 30 days and six months. We may extend an evaluation period for up to an additional six months. If there is an extension, a new corrective action plan may be developed. The maximum amount of time an operation may be on evaluation is one year.] |
| **(3)**[(2)] Corrective Action/  Probation | **One year.** [A probation period will be between 30 days and one year. We may extend a probation period beyond the original probationary period, as long as the probationary period is not longer than one year, including extensions. If there is an extension, a new corrective action plan may be developed.] |
| **(4)**[(3)] Adverse Action/  Suspension | **Up to 120 days.** The suspension period will be the time we estimate **is necessary to resolve the danger or threat of danger to the health or safety of children in your operation.** [you need to correct the deficiencies, and we need to determine that there is compliance with the applicable standards. The suspension will be less than 120 days, though we may extend it up to a maximum amount of 120 days.] |
| **(5)**[(4)] Judicial Action/  Temporary Restraining Order | The court order will specify the timeframe and usually set a date for a hearing on whether you should continue to operate. The court may grant an extension as required by the law and will be noted in a new order. |

**(b) We may end a voluntary or corrective action early if we determine:**

**(1) that you meet minimum standards and/or the imposed conditions and we are able to evaluate for ongoing compliance; or**

**(2) your compliance does not improve and a more restrictive enforcement action is necessary.**

§745.8613. What rights do I have [if I disagree with the decision of Licensing] to **challenge an enforcement action** [impose a remedial action]?

(a) The rights you have vary depending upon the type of action **that we recommend or take** [imposed] against you. The chart in this subsection describes your rights **to challenge** [for] each type of **enforcement** [remedial] action:

|  |  |
| --- | --- |
| Type of Enforcement [Remedial] Action | Rights **to challenge an Enforcement**[When You Disagree With a Remedial] Action |
| **(1) Voluntary Action/Plan of Action** | **You may not challenge a plan of action, since it is voluntary.** |
| **(2)**[(1)] Corrective Action | If we decide to impose a corrective action, then you have a right to an administrative review regarding the entire action or any of the conditions imposed as part of the action. |
| **(3)**[(2)] Adverse Action | If we decide to impose an adverse action, then you have a right to an administrative review and a due process hearing before the State Office of Administrative Hearings. |
| **(4)**[(3)] Judicial Action | If we attempt to have the court impose a judicial action, then your rights are before the court. |
| **(5)**[(4)] Monetary Action/  Administrative Penalties | If we attempt to impose administrative penalties, then you have the right to a due process hearing before the State Office of Administrative Hearings. In addition,see the Human Resources Code, §42.078 for your rights. |
| **(6)**[(5)] Monetary Action/  Civil Penalties | If we attempt to have the court impose civil penalties, then your rights are before the court. |

(b) (No change.)

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 L, **Enforcement**[Remedial] Actions

Division 2, **Voluntary and** Corrective Actions

TAC Section Number(s) §§745.8631, 745.8633, 745.8635, 745.8637, 745.8639, 745.8641, 745.8643

Proposed Action

X Amendment

X New

Proposed Date of Adoption:

X Other (Specify)

30 Days After Publication

The amendments and new sections 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 amendments and new sections implement the HRC §§42.042 and 42.0704.

§745.8631. What **types of voluntary or** corrective actions may Licensing **recommend or** impose?

We may **recommend or** impose the following **types of voluntary or** corrective actions:

|  |  |
| --- | --- |
| **Type of Enforcement Action/Specific** **Action** [Corrective] Actions] | Description of **Enforcement** [Corrective] Action |
| **(1) Voluntary Plan of Action/Plan of Action** | **A voluntary plan of action is a collaborative effort between Licensing and your operation. We will work with you to develop a plan to help you improve your operation's compliance with minimum standards and to reduce risk. We will inspect your operation more frequently to evaluate compliance with minimum standards.** |
| **(2)**[(1)] **Corrective Action**/Evaluation | If we place you on evaluation, then we will impose a corrective action plan. We **will** [may] impose conditions beyond the minimum standards and the basic permit requirements **in order help you improve your operation's compliance with identified standards so that your operation is no longer deficient and you reduce risk at your operation.** We will inspect your operation **at least monthly** [more frequently] to **evaluate** [improve] compliance with minimum standards **and conditions imposed as part of the corrective action plan**. [If compliance gets worse or standard deficiencies become more serious during the evaluation period, we may change the conditions and increase the inspections required by the corrective action plan.] |
| **(3)**[(2)] **Corrective Action/**Probation | If we place you on probation, then we will impose a corrective action plan that is more restrictive and intense than an evaluation. We **will** [may] impose conditions beyond the minimum standards and the basic permit requirements **in order to help you improve your operation's compliance with identified standards so that your operation is no longer deficient and you reduce risk at you operation**. We will inspect your operation **at least monthly to evaluate** [more frequently to improve] compliance with standards **and conditions imposed as part of the corrective action plan**. [If compliance gets worse or standard deficiencies become more serious, we may change the conditions and increase the inspections required by the corrective action plan.] |

**§745.8633. When may Licensing recommend a voluntary plan of action?**

**(a) We may recommend a voluntary plan of action for your operation for an**

**issue identified in §745.8605 of this title (relating to When can Licensing** **recommend or impose an enforcement** **action against** **my operation?) if we determine that:**

* 1. **You:**

**(A) demonstrate the ability to identify risk;**

**(B) accept responsibility for correcting deficiencies; and**

**(C) have the ability to make corrections;**

**(2) If applicable, your operation has a history of making corrections to maintain**

**compliance;**

**(3) Your operation will be able to mitigate risk by following the plan in addition to complying with minimum standards; and**

**(4) Your operation has not participated in a voluntary plan of action during the previous 12 months for similar issues.**

**(b) If you have multiple operations we may consider the factors listed in section (a) of this section for each of your operations when determining your eligibility to participate in a voluntary plan of action;**

**(c) We will impose a more restrictive enforcement action instead of recommending a voluntary plan of action when appropriate under the criteria for that enforcement action.**

**§745.8635. When may Licensing place my operation on evaluation?**

**(a) We may place your operation on evaluation for an issue identified in**

**§745.8605 of this title (relating to When can Licensing** **recommend or impose an enforcement** **action against** **my operation?) if:**

**(1) you are eligible to participate in a plan of action but refuse to do so;**

**(2) your operation is unable to resolve its deficiencies and reduce risk through your implementation or failure to implement the plan;**

**(3) you have not completed a voluntary plan of action or evaluation for**

**similar deficiencies within the previous 12 months; or**

**(4) a more restrictive enforcement action is necessary to reduce risk.**

**(b) If we determine that you are not eligible for evaluation, we will consider imposing probation or an adverse action.**

**§745.8637. When may Licensing place my operation on probation?**

**(a) We may place your operation on probation for an issue identified in §745.8605 of this title (relating to When can Licensing** **recommend or impose an enforcement** **action against** **my operation?) if we determine that:**

**(1) your operation does not qualify for a less restrictive enforcement**

**action;**

**(2) you have not demonstrated the ability to make the necessary**

**changes to address risk, but express a willingness to comply and make corrections;**

**(3) your operation will be able to mitigate risk by complying with the**

**conditions identified in the plan in addition to minimum standards; and**

**(4) a more restrictive enforcement action is not necessary to reduce risk.**

**(b) If we determine that are you not eligible for probation, we will consider imposing an adverse action.**

**§745.8639. What requirements must I meet during a voluntary plan of action?**

**You must:**

**(1) correct your operation's deficiencies with minimum standards and reduce risk; and**

**(2) maintain compliance with all other Licensing statutes, rules, and minimum standards.**

**§745.8641. What requirements must I meet during the evaluation or probation period?**

**You must:**

**(1) comply with all of the conditions imposed by the corrective action plan;**

**(2) correct the minimum standards that were deficient;**

**(3) unless you are an independent or agency foster family home, post the evaluation letter or the probation notice in a prominent place(s) near all public entrances; and**

**(4) maintain compliance with all other Licensing statutes, rules, and minimum standards.**

**§745.8643. What may Licensing do if my operation's compliance with standards does not improve as a result of the voluntary or corrective action?**

**If your operation's compliance with minimum standards does not improve sufficiently to reduce risk at your operation as a result of the voluntary or corrective action, we will reevaluate your plan to determine the appropriateness of its terms and conditions. As a result, we may:**

1. **recommend or impose additional conditions and/or increase inspections;**

**or**

1. **impose a more serious enforcement action.**

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 L, **Enforcement**[Remedial] Actions

Division 2, Corrective Actions

TAC Section Number(s) §§745.8633, 745.8635

Proposed Action

X Repeal

Proposed Date of Adoption:

X Other (Specify)

30 Days After Publication

The repeals 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 repeals implement the HRC §§42.042 and 42.0704.

§745.8633. What requirements must I meet during the evaluation or probation period?

§745.8635. What happens if I do not comply with the terms and conditions of the evaluation or probation?

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 L, **Enforcement**[Remedial] Actions

Division 3, Adverse Actions

TAC Section Number(s) §§745.8649, 745.8650, 745.8651, 745.8652, 745.8654, 745.8657, 745.8659

Proposed Action

X Amendment

X New

Proposed Date of Adoption:

X Other (Specify)

30 Days After Publication

The amendments and new sections 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 amendments and new sections implement the HRC §§42.042 and 42.0704.

**§745.8649. What adverse actions may Licensing impose?**

**We may impose the following adverse actions:**

|  |  |
| --- | --- |
| **Adverse Action** | **Description of Adverse Action** |
| **(1) Denial** | **You apply for a permit or an amendment of your permit, and we refuse to grant it.** |
| **(2) Adverse Amendment** | **After the issuance of your permit, we void your current permit and reissue a new permit with new or additional restrictions or conditions.** |
| **(3) Suspension** | **We take away your authority to operate for a specific period of time, so you can correct deficiencies. You must close your operation during a suspension.** |
| **(4) Revocation** | **We cancel your permit, and you must close.** |

**§745.8650. When may Licensing deny me a permit?**

**We may deny you a permit for an issue identified in §745.8605 of this title (relating to When can Licensing** **recommend or impose an enforcement** **action against** **my operation?) if we determine that:**

**(1) a background check result makes you ineligible for a permit, because either the result is ineligible for a risk evaluation or the Department of Family and Protective Services Central Background Check Unit informs us that it will not approve a risk evaluation as provided in Subchapter F of this chapter (relating to Background Checks);**

**(2) your operation does not demonstrate the ability to comply with minimum standards and other applicable laws during your initial permit period, if applicable;**

**(3) the results of a public hearing make you ineligible for a permit;**

**(4) your operation presents an immediate threat to the health or safety of children; or**

**(5) You are otherwise ineligible for a permit because of a criteria identified in §745.8605 of this Chapter.**

**§745.8651. . When may Licensing impose an adverse amendment on my permit?**

**We may impose an adverse amendment on your permit for an issue identified in §745.8605 of this title (relating to When can Licensing** **recommend or impose an enforcement** **action against** **my operation?) if we determine:**

**(1) that an amendment on your permit will mitigate any risks;**

**(2) the amendment would be the most effective enforcement action for addressing risk at your operation; and**

**(3) you are capable of following the restrictions of the amendment.**

**§745.8652. When will Licensing suspend my permit?**

**We may suspend your permit for an issue identified in 745.8605 of this title (relating to When can Licensing** **recommend or impose an enforcement** **action against** **my operation?) if we determine that:**

**(1) your operation will pose a danger or threat of danger to the health or safety of children in your operation's care until the issue is resolved;**

**(2) you cannot correct the issue while children are in care, but you can do so during a specific period of time;**

**(3) you are capable of making the necessary corrections while your permit is suspended; and**

**(4) there are no additional concerns about your compliance history that would make revocation a more appropriate enforcement action for the health or safety of children.**

**§745.8654 When may Licensing revoke my permit?**

**We may revoke your permit for an issue identified in 745.8605 of this title (relating to When can Licensing** **recommend or impose an enforcement** **action against** **my operation?) if we determine that:**

**(1) your operation is ineligible for corrective action;**

**(2) we cannot address the risk at your operation by taking corrective action or another type of adverse action;**

**(3) a background check result or a finding of abuse or neglect makes you ineligible for a permit, either because the result is ineligible for a risk evaluation or the Department of Family and Protective Services (DFPS) Central Background Check Unit informs us that it will not approve a risk evaluation as provided in Subchapter F of this chapter (relating to Background Checks); or**

**(4) revocation is otherwise necessary to address the issue identified in 745.8605 of this chapter.**

§745.8657. Will Licensing inform anyone that they are attempting to deny, suspend, or revoke my permit?

Yes, the fact that we are attempting to enforce any adverse action against you is available to the public. If you are a child day-care operation participating in the Child Care **Services** [Management] Program or the Child and Adult Care Food Program, we will inform the staff of those programs of any suspension or revocation that we are attempting to enforce. If a child in your care is in the custody of **Department of Family and Protective Services (DFPS)** [PRS], then we will also inform the Child Protective Services Division of **DFPS** [PRS], and, as appropriate, any other state or federal programs. We will tell these programs that we are attempting to suspend or revoke your permit, that you may request an administrative review and a due process hearing concerning this action, and whether you may care for children pending the administrative review and due process hearing.

§745.8659. Will there be any publication of the denial, suspension, or revocation of my permit?

(a) If you waive the administrative review and due process hearing or if the denial, suspension, or revocation is upheld in the process, we will publish a notice of the adverse action taken against you[(1) On] on DFPS's Internet website along with other information regarding your child-care services**.**[; or]

[(2) In the section of a local newspaper of general circulation in the county where your operation is located.]

[(b)For a denial, we will publish the notice only if you were previously operating.]

**(b)**[(c)]In addition, we will send notification of the outcomes of the administrative review and the due process hearing to those state and federal programs and agencies that we previously informed of the adverse action.

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

Chapter 745, Licensing

Subchapter L, **Enforcement**[Remedial] Actions

Division 3, Adverse Actions

TAC Section Number(s) §745.8651

Proposed Action

X Repeal

Proposed Date of Adoption:

X Other (Specify)

30 Days After Publication

The repeal 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 repeal implements the HRC §§42.042 and 42.0704.

§745.8651. What adverse actions may Licensing impose?

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

Chapter 745, Licensing

Subchapter L, **Enforcement**[Remedial] Actions

Division 5, Monetary Actions

TAC Section Number(s) §§745.8713

Proposed Action

X Amendment

Proposed Date of Adoption:

X Other (Specify)

30 Days After Publication

The amendment 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 the HRC §§42.042) and42.078(a-2).

§745.8713. When may Licensing impose a monetary penalty before a corrective action?

We may impose a monetary penalty before imposing a corrective action any time we find [one of the following]:

**(1) a violation of a high risk standard, as identified on the DFPS public website, along with the Licensing enforcement methodology; or**

**(2) one of the following:**

**(A)**[(1)] a failure to timely submit the information required to conduct a background and criminal history check under Subchapter F of this chapter (relating to Background Checks) on two or more occasions;

[(2) A failure to timely submit the information required to conduct a background and criminal history check under Subchapter F of this chapter before the 30th day after the date we notify you that the information is overdue;] **(B)**[(3)] except as provided in §745.626 of this title (relating to How soon after I request a background check on a person can that person provide direct care or have direct access to a child?), you knowingly allow a person to be present in your child-care operation before you have received the results of the person’s background and criminal history check;

**(C)**[(4)] You knowingly allow a person to be present in your child-care operation after you have received the person’s background and criminal history check, if the results contain criminal history or central registry findings that preclude the person from being present in the child-care operation; or

**(D)**[(5)] You violate a condition or restriction we have placed on a person’s presence at your child-care operation as part of a pending or approved risk evaluation of the person’s background and criminal history or central registry findings.

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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