March 10, 2016

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), new §750.1004; and amendments to §750.1005 and §750.1007, in Chapter 750, concerning Minimum Standards for Independent Foster Homes (IFGH). The purpose of the new rule and amendments 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 and for clarity and consistency.

"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 were 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.

An independent foster group home (IFGH) is an operation (not related to a child-placing agency) that provides care for seven to 12 children up to the age of 18 years. As of the date of publication of these rules, there are only two IFGHs operating in Texas. Neither one contracts with the DFPS or provides services to children in the managing conservatorship of DFPS. Although the rules impacting IFGHs are located in Chapter 750, there are numerous standards in Chapter 749 of this title (relating to Minimum Standards for Child-Placing Agencies), that are adopted by reference in Chapter 750.

A summary of the changes related to normalcy that are being proposed in Chapter 749 and will be published in the same issue of the *Texas Register* include: (1) clarifying that childrenmust participate in childhood activities, including unsupervised childhood activities (activities that are away from and not supervised by the foster home); (2) defining "normalcy" and the "reasonable and prudent parent standard"; (3) listing items that must be taken into consideration when making a reasonable and prudent decision on whether a child may participate in a childhood activity; (4) clarifying who will make decisions regarding whether a child may participate in a childhood activity; (5) clarifying that a child's participation in childhood activities must be discussed during service planning meetings; (6)requiring two hours of pre-service training regarding normalcy for foster parents; (7) requiring that two hours of normalcy training be included in the mandated annual training for all caregivers; and (8) providing a list of curriculum components that must be included in the general pre-service and annual normalcy training.

New §750.1004 clarifies that IFGHs must comply with the new Normalcy Division in Chapter 749.

Section §750.1005 is an amendment to update a cite.

Section §750.1007 is an amendment to update a cite.

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

Ms. Subia also has determined that for each year of the first five years the new section and amendments are in effect, the public benefit anticipated as a result of enforcing the new section and amendments will be that the safety of children in care and the quality of their care will be improved by integrating normalcy into the minimum standards. While some of these rule changes will impact IFGHs, Licensing has identified only four of the proposed rules that are being proposed in the same issue of the *Texas Register* that have the potential of a fiscal impact upon IFGHs: §749.863 of this title (relating to What are the pre-service hourly training requirements for caregivers and employees?), §749.882 of this title (relating to What curriculum components must be included in the pre-service training regarding normalcy?), §749.931 of this title (relating to What are the annual training requirements for caregivers and employees?), and §749.943 of this title (relating to What curriculum components must be included in the annual normalcy training?). These rules impact IFGHs because of §750.401(1) of this title (relating to What are the requirements for training and professional development?), which provides that the staff of an IFGH must be trained in accordance with the minimum standards for training in Subchapter F of Chapter 749 of this title (relating to Training and Professional Development), which includes §§749.863, 749.882, 749.931, and 749.943. However, even though there is a potential for a fiscal impact, because IFGHs do not have the staff noted in these rules and because IFGHs do not develop curriculum for training, CCL does not anticipate any fiscal impact. Therefore, there will be no effect on small or micro-businesses because the proposed changes do not impose new requirements on any businesses that 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 changes in the rules.

Ms. Subia has determined that the proposed new section and amendments 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 750, Minimum Standards for Independent Foster Homes

Subchapter M, Capacity and Child/Caregiver Ratio; Supervision; Respite Child-Care Services; and Foster Family Relationships

TAC Section Number(s) §750.1004, 750.1005, 750.1007

Proposed Action

X New

X Amendment

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 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.

**§750.1004. What are the requirements for normalcy?**

**You must comply with Division 7, Subchapter M of Chapter 749 of this title (relating to Normalcy).**

§750.1005. What are the requirements for respite child-care services?

(a) You must comply with Division **8** [7], Subchapter M of Chapter 749 of this title (relating to Respite Child-Care Services), with the exception of §749.2627 of this title (relating to What must occur before one of my foster homes accepts a child for respite services?).

(b) (No change.)

§750.1007. What are the requirements for foster family relationships?

You must comply with:

(1) Division **9** [8], Subchapter M of Chapter 749 of this title (relating to Agency-Foster Family Relationship), with the exception of §749.2655 of this title (relating to When must a foster home notify you of changes that affect the foster home?); and

(2) (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.

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