June 20, 2016

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§700.332, 700.802, 700.804, 700.821, 700.825, 700.850, 700.851, 700.863, 700.880, 700.881, 700.1013, 700.1025, 700.1027, 700.1029, 700.1031, 700.1037, 700.1039, 700.1041, 700.1043, 700.1045, 700.1047, 700.1049, 700.1051, 700.1053, 700.1726, 700.1728, 700.1731, and 700.1733; new §§700.334, 700.883, 700.1059, 700.1061, and 700.1727 in Chapter 700, concerning Child Protective Services. The amendments and new sections are proposed in Subchapter C relating to Eligibility for Child Protective Services; Subchapter H relating to the Adoption Assistance Program; Division 1 of Subchapter J relating to the Relative And Other Designated Caregiver Program; Division 2 of Subchapter J relating to the Permanency Care Assistance Program; and Division 2 of Subchapter Q relating to Post-Permanency Services.

The primary purpose of the revisions is to ensure that the rules regarding eligibility for financial assistance and services for foster families, kinship families, and families that assume legal responsibility of children in the conservatorship of DFPS are consistent with federal mandates as well as DFPS's current policies and practices. In addition, the changes are intended to aid in public understanding of DFPS's eligibility criteria for the financial assistance and services. The practice and policy shifts that are being proposed in the rules are as follows:

(1) New rule §700.883 which states that in limited circumstances, an adoptive parent who took conservatorship of the child prior to the finalization of the adoption, may qualify for adoption assistance benefits through the fair hearing process at DFPS's discretion and in limited circumstances if specific criteria have been met. While this new rule is somewhat of a shift in current practice, DFPS has previously interpreted the existing rules pertaining to adoption assistance to permit adoptive parents to file for a fair hearing in such situations when the parent otherwise meets the criteria for adoption assistance benefits. This rule clarifies and makes explicit that interpretation.

(2) New rule §700.1059 which provides that a relative or fictive kin who was granted permanent managing conservatorship of a child prior to signing a permanency care assistance agreement, may still receive benefits on behalf of the child through the fair hearing process if the child meets all eligibility requirements and the caregiver shows that there is good reason to excuse the failure to sign the agreement prior to the grant of conservatorship. Federal law and guidance require DFPS to offer a fair hearing as a procedural protection in cases in which benefits are denied, including denial of permanency care assistance benefits. Further, the adoption assistance rules explicitly permit reversal of a denial of adoption assistance if there is good reason to excuse failure to have signed an adoption assistance agreement; however, the existing permanency care assistance rules do not have a similar provision, although legally DFPS has interpreted federal requirements to supersede the state rules on this point. As such, this new rule clarifies DFPS's current practice and implements federal law and guidance.

(3) New rule §700.1061 which states that if the child's permanent managing conservator dies or becomes incapacitated, permanency care assistance benefit may continue to an individual that is subsequently granted permanent managing conservatorship of the child if that person was named as the successor in the original permanency care assistance agreement or in an amendment to that agreement. This proposed addition is made pursuant to the mandates of federal legislation, Preventing Sex Trafficking and Strengthening Families Act (H.R. 4980) from the 113th United States Congress, which became public law on September 29, 2014.

(4) Amendments to existing rules §§700.1726, 700.1728, and 700.1731 and new rule §700.1727 which clarify that children in permanent managing conservatorships, with non-parent relatives and fictive kin, are eligible to receive various post permanency services similar to post-adopt services, if specific criteria has been met. The purpose of these proposed rules is to ensure that children that exit into conservatorship receive the same services as children that exit into an adoptive placement in order to help the children and families adjust to the permanency, cope with any history of abuse in the child's background, cope with mental health issues the child may have, and avoid permanent or long-term removal of the children from their family.

The other rule changes primarily consist of updating and clarifying the agency's existing rules.

A summary of the changes is as follows:

The amendment to §700.332 incorporates policy-based eligibility criteria and restrictions for foster child day care, including eligibility requirements related to the child, the purposes for which care may be authorized, and the types of centers and homes that may be utilized.

New §700.334 adds eligibility criteria for special needs foster child day care to the agency's publicly adopted rules.

The amendment to §700.802 clarifies that children with special needs who are not adopted from DFPS conservatorship must meet the criteria of §700.803(b) of this title to be eligible for Title IV-E adoption assistance.

The amendment to §700.804: (1) provides that in order for a child to qualify as a child with special needs, the child must be in the managing conservatorship of DFPS from the time of adoptive placement until consummation of the adoption, unless it is a subsequent adoption; and (2) changes the term "handicapping condition" to "disabling condition" to reflect current terminology.

The amendment to §700.821 (1) provides clarity regarding the current federal requirement that to be eligible for Title IV-E Medicaid and monthly adoption assistance payments, the adoption assistance agreement must be signed before consummation of the adoption; and (2) makes additional clarifying edits related to the underlying federal requirements.

The amendment to §700.825: (1) conforms the rule to the federal definition of "applicable child;" (2) deletes the requirement in subsections (b) and (c) that the child meet one of the criteria of §700.821(c) of this title to be considered an applicable child becausethe language is duplicative of §700.821; and (3) deletes the effective date of October 1, 2009, for subsections (b) and (c) since it has passed.

The amendment to §700.850 clarifies subsection (c) to specify that claims for reimbursement received later than 18 month after the adoption is finalized may be referred to the Texas Comptroller of Public Accounts for processing as a miscellaneous claim to allow for flexibility in filing the claims.

The amendment to §700.851 modifies subsection (a)(1) to clarify that the child must be adoptively placed in the home after the child's 16th birthday but before the child's 18th birthday to qualify for extended adoption assistance benefits to reflect the legislative intent of extended adoption assistance benefits which is to promote the adoption of older children.

The amendment to §700.863 provides clarity that a child who has been receiving adoption assistance benefits under a signed adoption assistance agreement would remain eligible for adoption assistance benefits in a subsequent adoption when certain conditions are met, even if the child is not in the conservatorship of DFPS from the time of adoptive placement until the consummation of the subsequent adoption.

The amendment to §700.880 clarifies that a fair hearing to appeal the denial, suspension, reduction, or termination of adoption assistance benefits is also available as provided in new rule §700.883 under this title (relating to "Can I still get adoption assistance benefits if I assume legal responsibility of a child in DFPS conservatorship before the adoption is finalized?").

The amendment to §700.881 changes the term "handicapping condition" to "disabling condition" to reflect current terminology.

New §700.883 permits, in extremely limited circumstances, an adoptive parent who intervenes in a court proceeding and assumes permanent managing conservatorship of a child prior to the adoption being finalized to apply for adoption assistance benefits at DFPS's discretion if certain criteria enumerated in the rule are met.

The amendment to §700.1013 incorporates policy-based eligibility criteria and restrictions for kinship day care, including eligibility requirements related to the child, the purposes for which care may be authorized, and the types of centers and homes that may be utilized.

The amendment to §700.1025: (1) clarifies that the maximum amount of reimbursement a permanent managing conservator may receive for nonrecurring expenses related to becoming the permanent managing conservator; and (2) updates the terminology used to refer to a permanent managing conservator and permanent managing conservatorship to be consistent throughout the rule.

The amendment to §700.1027: (1) adds the definition for a successor guardian to the

rule to explain when an individual who was subsequently granted permanent managing conservatorship of a child after the death or incapacitation of the initial permanent managing conservator is entitled to receive permanency care assistance benefits for that child; and (2) updates terminology used to refer to the permanency care assistance agreement and terminology and definitions used to refer to the relative or fictive kin who is granted permanent managing conservatorship of a child that was previously in the conservatorship of DFPS.

The amendment to §700.1029 updates terminology used to refer to the permanency care assistance agreement, terminology used to refer to the relative or fictive kin who is granted permanent managing conservatorship of a child that was previously in the conservatorship of DFPS, and terminology used when a child is returned to the home the child was originally removed from.

The amendment to §700.1031: (1) updates subsection (b) of the rule to clarify that the simplest way for relatives and fictive kin to be eligible for foster care reimbursement payments is to become verified as foster parents; and (2) updates subsection (d) of the rule to clarify that a person who has been awarded sole or joint managing conservatorship of a child in a temporary or final order is not entitled to foster care reimbursements for that child.

The amendment to §700.1037: (1) updates subsection (d) with a reference to new §700.1059 (relating to Can a child still get benefits if a permanency care assistance agreement was not signed before the permanent kinship conservator was granted permanent managing conservatorship of the child?) to clarify when an individual may receive permanency care assistance benefits even if the individual did not sign a permanency care assistance agreement prior to being granted permanent managing conservatorship; and (2) updates terminology used to refer to the permanency care assistance agreement and terminology used to refer to the relative or fictive kin that is granted permanent managing conservatorship of a child that was previously in the conservatorship of DFPS.

The amendment to §700.1039 updates terminology used to refer to the permanency care assistance agreement and terminology used to refer to the relative or fictive kin that is granted permanent managing conservatorship of a child that was previously in the conservatorship of DFPS.

The amendment to §700.1041: (1) updates subsection (a) with a reference to new §700.1059 (relating to Can a child still get benefits if a permanency care assistance agreement was not signed before the permanent kinship conservator was granted permanent managing conservatorship of the child?) to clarify that in limited circumstances an individual may receive permanency care assistance benefits even if the individual did not sign a permanency care assistance agreement prior to the grant of permanent managing conservatorship; and (2) updates terminology used to refer to the permanency care assistance agreement and terminology used to refer to the relative or fictive kin who is granted permanent managing conservatorship of a child that was previously in the conservatorship of DFPS.

The amendment to §700.1043: (1) updates terminology used to refer to the relative or fictive kin who is granted permanent managing conservatorship of a child that was previously in the conservatorship of DFPS; and (2) deletes content regarding the maximum amount of reimbursement a permanent managing conservator is entitled to receive for permanency care assistance agreements signed prior to and post August 1, 2012 as all agreements now signed will be after 2012.

The amendment to §700.1045 updates terminology used to refer to the permanency care assistance agreement; and terminology used to refer to the relative or fictive kin who is granted permanent managing conservatorship of a child that was previously in the conservatorship of DFPS.

The amendment to §700.1047: (1) clarifies that if the permanent kinship conservator dies or becomes incapacitated and a successor guardian assumes legal custody of the child, the permanency care assistance agreement is terminated and the successor guardian must enter into a new agreement with DFPS in order to receive permanency care assistance on behalf of the child; and (2) updates terminology used to refer to the permanency care assistance agreement and terminology used to refer to the relative or fictive kin who is granted permanent managing conservatorship of a child that was previously in the conservatorship of DFPS.

The amendment to §700.1049: (1) specifies that a permanent kinship conservator who enters into a permanency care assistance agreement is responsible for notifying DFPS when he or she has identified a potential successor guardian; and (2) updates terminology used to refer to the permanency care assistance agreement and terminology used to refer to the relative or fictive kin who is granted permanent managing conservatorship of a child that was previously in the conservatorship of DFPS.

The amendment to §700.1051 updates terminology used to refer to the permanency care assistance agreement and terminology used to refer to the relative or fictive kin who is granted permanent managing conservatorship of a child that was previously in the conservatorship of DFPS.

The amendment to §700.1053: (1) clarifies that the permanent kinship conservator must be granted permanent managing conservatorship of the youth after the child's 16th birthday to receive extended permanency care assistance to reflect the legislative intent of promoting permanency of older children; and (2) updates terminology used to refer to the relative or fictive kin who is granted permanent managing conservatorship of a child that was previously in the conservatorship of DFPS.

New §700.1059: (1) provides that a permanent kinship conservator who did not sign a permanency care assistance agreement before being granted permanent managing conservatorship of a child may still receive permanency care assistance benefits if the conservator requests a fair hearing, shows that there is good reason to excuse the failure to have signed the agreement, and meets the eligibility requirements for permanency care assistance benefits; and (2) further provides that if DFPS agrees that the child is eligible for benefits and the failure to have signed a permanency care assistance agreement should be excused, DFPS and the conservator can sign an agreed order and forgo the fair hearing; however, the hearing officer must approve the agreed order and the conservator must sign an agreement consistent with the provisions of the order prior to receiving benefits.

New §700.1061: (1) provides that a child remains eligible for permanency care assistance benefits when the child's permanent kinship conservator dies or becomes incapacitated and a successor guardian assumes legal responsibility of the child as long as the successor guardian was named by the permanent kinship conservator in the original permanency care assistance agreement or in an amendment to that agreement as a potential successor guardian to receive permanency care assistance benefits on the child's behalf; meets all DFPS standards regarding background checks; signs a permanency care assistance agreement with DFPS; and submits to DFPS proof demonstrating that he or she has been granted permanent managing conservatorship of the child by the court; and (2) specifies when the successor guardian will start receiving payments, when retroactive payments may be granted, and the terms and conditions of the agreement.

The amendment to §700.1726 specifies that post-permanency services are provided to families that have been granted permanent managing conservatorship of a child previously in the conservatorship of DFPS, in addition to adoptive families.

New §700.1727 provides the types of post-permanency services available to adoptive families and families that were granted permanent managing conservatorship of a child previously in the conservatorship of DFPS.

The amendment to §700.1728 includes the eligibility criteria for post-permanency services available to families that were granted permanent managing conservatorship of a child previously in the conservatorship of the department.

The amendment to §700.1731: (1) specifies that families granted permanent managing conservatorship of a child previously in the conservatorship of the department are eligible to receive post-permanency counseling services; and (2) includes the maximum length of time post-permanency counseling services are provided for and the procedure for seeking an extension of services.

The amendment to §700.1733 clarifies that Residential Treatment Services are only available for adopted children.

Lisa Subia, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed amendments and new sections will be in effect, DFPS anticipates the following costs to state government as a result of enforcing or administering the proposed rule changes:

(1) DFPS does not anticipate any costs associated with implementing existing rules §700.332 and §700.1013 and proposed rule §700.334 relating to day care eligibility as the rule changes merely update the agency's rules to conform with current practice and policy, consistently with the requirements of the Administrative Procedure Act. There is no fiscal impact because the eligibility limitations and clarifications are currently applied across the state; they just have not previously been incorporated into the agency's rules, which is the purpose of the changes in this portion of the rule packet.

(2) DFPS anticipates that any costs associated with proposed rule §700.883 relating to the eligibility of an adoptive parent to request adoption assistance benefits through a fair hearing if the parent assumed legal responsibility of the child prior to consummation will be negligible. While exact costs of awarding benefits to these individuals cannot be determined, DFPS has only awarded adoption assistance benefits in these situations approximately four times in the last ten years.

(3) DFPS does not anticipate any additional costs pursuant to proposed rule §700.1059 which permits a permanent managing conservator to request permanency care assistance benefits through a fair hearing for failure to sign a permanency care assistance agreement prior to the grant of conservatorship. As DFPS currently interprets federal law and guidance and existing agency rules to require a fair hearing in such situations, the fair hearing officers who receive these applications already approve payment of the benefits if the child is otherwise eligible.

(4) DFPS estimates that the cost of continuing permanency care assistance benefits to a subsequent conservator appointed upon the death or incapacitation of the original conservator pursuant to proposed rule §700.1061 will be negligible as additional payments will not be made to the subsequent conservator but rather, the conservator will continue receiving payments that DFPS had already allocated towards the original conservator. While the subsequent conservator will be entitled to a one-time reimbursement of nonrecurring expenses related to the cost of assuming legal custody of the child, this one time reimbursement is limited to $1,200 per child. As approximately only 3,071 children have exited DFPS's care into a permanent managing conservatorship with a relative caregiver since fiscal year 2011, DFPS anticipates that the cost of providing non-recurring expenses to a subsequent conservator in the event that the original conservator dies or becomes incapacitated will be negligible.

(5) DFPS estimates that the cost for providing post-permanency services statewide to kinship conservators for a full fiscal year, pursuant to amendments to existing rules §§700.1726, 700.1728, 700.1731, and new rule §700.1727 will be $600,000. This amount has already been identified for the corresponding Request for Proposals (RFP). Ms. Subia also has determined that 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 the public will be aware of the types of funding and services that are available to foster families, kinship families, and families that adopt or are granted permanent managing conservatorship of children previously in the conservatorship of DFPS. There is no anticipated economic cost to the public to comply with the proposed sections. There is no anticipated adverse impact on small, micro, and large businesses as a result of the proposed rule changes because the proposed rule changes should not affect the cost of doing business, do not impose new requirements on any business, and do not require the purchase of any new equipment or any increased staff time in order to comply. No local employment impact statement was required for these rules. The agency is not required to complete a takings impact assessment regarding the proposed sections. There is no anticipated impact on technology as a result of the proposed rule changes.

Ms. Subia has determined that the proposed amendments and 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 Sophia Karimjee at (512) 438-4358 in DFPS's Legal Services Division. Electronic comments may be submitted to [Sophia.Karimjee@dfps.state.tx.us](mailto:Sophia.Karimjee@dfps.state.tx.us). Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-557, 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 700, Child Protective Services

Subchapter C, Eligibility for Child Protective Services

TAC Section Number(s) §700.332, §700.334

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 amendment and new section implement Texas Family Code §264.124.

§700.332. Eligibility for Foster Care Day Care Services.

(a) In this **subchapter** [section], the following terms have the following meanings:

(1) - (2) (No Change.)

**(3)** **"School-aged child" means a child who has reached the age of 6 by September 1 of the current year or who enrolls in school and reaches the age of 6 during the school year.**

(b) To the extent funds are available **and in accordance with any priority system established under subsection (e)**, DFPS may provide day care **for authorized purposes** to a foster parent if:

(1) **the child is 13 years or younger and either:**

**(A) placed in a foster family home or foster group home where** each foster parent in the home works outside the home 40 hours per week or more; **or**

**(B) the child of a parent who is a minor in foster care if the child:**

**(i) is not in the conservatorship of DFPS;**

**(ii) resides with the child's minor parent in a foster home where all caregivers are employed full-time;**

**(iii) receives primary care from the minor parent outside of school hours;**

**(iv) needs day care to allow the minor parent to remain in school and complete the minor parent's educational goals; and**

**(v) has a minor parent who is unable to access child care through a Texas Workforce Commission work or training program or through a school-based operation.**

(2) the foster parent is a resident of Texas; [and]

**(3) the child's service level is basic;**

**(4) the child is in DFPS' managing conservatorship and not in an adoptive placement; and**

**(5)** [(3)] **there is no other available type of day care provided by the community, and** the foster parent verifies in writing that the foster parent has attempted to find appropriate day-care services for the child through community services, including:

(A) Head Start programs;

(B) Prekindergarten classes;

(C) Early education programs offered in public schools; and

(D) Any other available and appropriate resources in the foster parent’s community.

**(c)** **Day care for foster parents is authorized for the purpose of providing daily supervision:**

**(1) during the foster parents' work hours; or**

**(2) while the foster parents are attending judicial reviews, case conferences, or foster parent training.**

**(d) Day care for foster parents is not authorized for the following:**

**(1) full-time day care during school holidays;**

**(2) teacher in-service days;**

**(3) inclement-weather days;**

**(4) short breaks between semesters in a year-round school program;**

**(5) part-time care; or**

**(6) after-school care for school-aged children.**

**(e)** [(c)]To monitor the spending of funds, a priority system among foster parents will also be established in policy. The priority system will be based upon need, but at a minimum will require:

(1) a determination by DFPS that the provision of day care is critical to maintaining the placement of the child with the foster parent; and

(2) at least one child placed by DFPS:

(A) is under six years of age [or over six years of age but in day care during a scheduled break in the public school system]; or

(B) has a developmental delay (including physical, emotional, and cognitive or language) or physical disability.

**(f)** [(d)] Notwithstanding any other provision of this section, if DFPS determines that requiring the written verification of a foster parent’s attempts to find appropriate community day-care services would prevent an emergency placement in the child’s best interest, DFPS may waive the submission of the written verification of the foster parent’s attempts. DFPS is authorized to require the submission of the written verification at any point following the initial authorization of day-care services.

**(g)** [(e)] The Assistant Commissioner for Child Protective Services may grant a good cause waiver of any of the requirements in [paragraphs (1) and (2) of] subsection (b) **or (d)** of this section, if that person determines that:

(1) the placement cannot be sustained or is unlikely to be sustained if the foster parent cannot receive day care;

(2) there is no reasonable alternative to the provision of day care, such as a change in working hours; and

(3) day care services are only authorized in increments that are commensurate with the hours and days the foster parent and caregivers must be outside the home for employment.

**(h) For a child who becomes ineligible during the term of a prior authorization, DFPS may in its discretion permit day care to continue through the end of the previously authorized period.**

**(i) DFPS pays for day care only in licensed child-care centers and registered child-care homes that are contracted through the local child care management service agency, unless care is self-arranged and DFPS gives prior approval to pay day care in the arrangement.**

**§700.334. Eligibility for Special Needs Foster Child Day Care Services**

**(a) To the extent funds are available, DFPS may provide special needs foster child day care services for authorized purposes to a foster parent if the child:**

**(1) meets all eligibility requirements in §700.332 of this title (relating to Eligibility for Foster Care Day Care Services);**

**(2) is placed in a foster family or foster group home;**

**(3) has a billing service level of Basic or receives an approved waiver of the required basic service level through the regional day care coordinator;**

**(4) is age 5 or younger;**

**(5) has been diagnosed by a professional as having a developmental delay, which is documented in the case record, in at least one of the following areas: physical, social, emotional, cognitive or language development; and**

**(6) has a service plan that specifies:**

**(A) the need for therapeutic or habilitative child day care; and**

**(B) how therapeutic child day care will meet specific needs related to the child's developmental delays that cannot be met by the foster parents.**

**(b) DFPS pays for special needs foster child day care only in licensed child-care centers and registered child-care homes that are contracted through the local child care management service agency, provide services beyond basic supervision, and are certified to provide care for children with special needs.**

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 700, Child Protective Services

Subchapter H, Adoption Assistance Program

Division 1, Program Description and Definitions

TAC Section Number(s) §700.802, §700.804

Proposed Action

X Amendment

Proposed Date of Adoption:

X Other (Specify)

30 Days After Publication

The amendments 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 implement Texas Family Code §162.301 and §162.304.

§700.802. What is adoption assistance?

(a) - (c) (No Change.)

(d) If you adopt a child with special needs who is not in the conservatorship of DFPS on the day immediately preceding the date of adoption, and you reside in Texas, you may be entitled to receive one or more of the three types of adoption assistance benefits, depending upon whether some or all of the eligibility criteria for receipt of Title IV-E adoption assistance benefits are satisfied, as described in Division 2 of this subchapter (relating to Title IV-E Eligibility Requirements) **and as long as the criteria specified in subsection (b) of §700.803 of this title (relating to What are the eligibility criteria for receipt of adoption assistance for children adopted from the conservatorship of DFPS?) are satisfied**.

(e) (No Change.)

§700.804. Who is a child withspecial needs?

Achild with special needs is one who meets all of the criteria in this section:

(1) At the time the adoptive placement agreement is signed, the child is less than 18 years old and meets at least one of the following conditions:

(A) **Except as provided in §700.863 (relating to Does a child remain eligible for benefits in a subsequent adoption?) and §700.883 of this title (relating to Can I still get adoption assistance benefits if I assume legal responsibility of a child in DFPS conservatorship before the adoption is finalized?),** [On the day immediately preceding the date of adoption,] the child was in the managing conservatorship of DFPS or an authorized entity **from the time of adoptive placement until the consummation of the adoption**, and:

(i)- (iii) (No Change.)

(iv)the child has a verifiable physical, mental, or emotional **disabling** [handicapping] condition, as established by an appropriately qualified professional through a diagnosis that addresses:

(I)(No Change.)

(II)that the condition is **disabling** [handicapping]; or

(B) (No Change.)

(2) - (3) (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 700, Child Protective Services

Subchapter H, Adoption Assistance Program

Division 2, Title IV-E Eligibility Requirements

TAC Section Number(s) §§700.821, 700.825

Proposed Action

X Amendment

Proposed Date of Adoption:

X Other (Specify)

30 Days After Publication

The amendments 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 implement Texas Family Code §162.301 and §162.304.

§700.821. What are the additional Title IV-E eligibility requirements for Medicaid and monthly assistance payments?

(a) In addition to the requirements in §700.820 of this title (relating to What are the Title IV-E eligibility requirements for reimbursement of nonrecurring expenses?), to be eligible for Medicaid and monthly assistance benefits, the child with special needs you adopt must be in an adoptive placement**, you must sign an adoption assistance agreement before the adoption is final** and **the child** must meet the requirements in either subsection (b) or (c) of this section, depending upon whether the child is an applicable child, as that term is defined in §700.825 of this title (relating to Who is considered an applicable child?).

(b) (No Change.)

(c) A child who is an applicable child must meet one of the following conditions:

(1) **At the time the adoptive placement is made, the** [The] child **is** [was] in the managing conservatorship of a public child welfare agency, an LCPA, or an authorized entity **pursuant to an involuntary removal as provided in §700.823 of this title (relating to What is necessary for a court order to be considered a removal?)** [at the time the adoptive placement is made];

(2) - (4) No change.

§700.825. Who is considered an applicable child?

(a) Subject to exceptions in **subsections** [subsection] (b) **and (c)** of this section, an "applicable child" is a child for whom an adoption assistance agreement is entered into during the federal fiscal year listed in the figure in this subsection and who will have attained the age listed in the same figure in this subsection prior to the end of that federal fiscal year, as follows:

|  |  |  |
| --- | --- | --- |
| Adoption Assistance Agreement entered into during the Federal Fiscal Year listed below | Child attains applicable age | By September 30 of the year listed below |
| October 1, 2009 - September 30, 2010 | 16 years of age | 2010 |
| October 1, 2010 - September 30, 2011 | 14 years of age | 2011 |
| October 1, 2011 - September 30, 2012 | 12 years of age | 2012 |
| October 1, 2012 - September 30, 2013 | 10 years of age | 2013 |
| October 1, 2013 - September 30, 2014 | 8 years of age | 2014 |
| October 1, 2014 - September 30, 2015 | 6 years of age | 2015 |
| October 1, 2015 - September 30, 2016 | 4 years of age | 2016 |
| October 1, 2016 - September 30, 2017 | 2 years of age | 2017 |
| October 1, 2017 and thereafter | Any age | Every child is now an applicable child |

(b) [Notwithstanding subsection (a) of this section, beginning October 1, 2009, the term "applicable child" shall include a child who meets one of the following criteria:]

[(1)] The child meets the "duration in care" exception because the child:

**(1)** [(A)] has been in the conservatorship of DFPS for at least 60 consecutive months;

**(2)** [(B)] is considered a child with special needs under §700.804 of this title (relating to Who is a child with special needs?); and

[(C) meets one of the criteria in §700.821(c) of this title (relating to What are the additional Title IV-E eligibility requirements for Medicaid and monthly assistance payments?); or]

**(c)** [(2)] The child meets the "member of a sibling group" exception because the child:

**(1)** [(A)] is the sibling of a child who meets the definition of "applicable child" in subsection (a) of this section or the duration in care exception in paragraph (1) of this subsection; **and**

**(2)** [(B)] is to be placed in the same adoptive placement as an applicable child who is their sibling**.**[; and]

[(C) meets one of the criteria in §700.821(c) of this title.]

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 700, Child Protective Services

Subchapter H, Adoption Assistance Program

Division 3, Application Process, Agreements, and Benefits

TAC Section Number(s) §700.850, §700.851

Proposed Action

X Amendment

Proposed Date of Adoption:

X Other (Specify)

30 Days After Publication

The amendments 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 to §700.850 implement Texas Family Code §162.301 and §162.304 and the amendments to §700.851 implements Texas Family Code §162.3041.

§700.850. How do I get reimbursement of nonrecurring expenses?

(a) - (b) (No Change.)

(c) We must receive your claim for reimbursement no later than 18 months after the adoption is finalized. **A claim for reimbursement received later than 18 months after the adoption is finalized may be referred to the Texas Comptroller of Public Accounts for processing as a miscellaneous claim.** If your right to reimbursement is authorized by a DFPShearing order after the adoption is final, we must receive your claim as soon as possible.

(d) (No Change.)

§700.851. How can my child qualify for extended adoption assistance benefits?

(a) In order to qualify for extended adoption assistance benefits:

(1) **The child must be adoptively placed in your home [**Your child must be the subject of an existing adoption assistance agreement that was initially entered into] after the child's 16th birthday and prior to the child's 18th birthday; and

(2) (No Change)

(b) - (c) (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 700, Child Protective Services

Subchapter H, Adoption Assistance Program

Division 4, Changes in Circumstances

TAC Section Number(s) §700.863

Proposed Action

X Amendment

Proposed Date of Adoption:

X Other (Specify)

30 Days After Publication

The amendments 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 to §700.863 implement Texas Family Code §162.301 & §162.304.

§700.863. Does a child remain eligible for benefits in a subsequent adoption?

(a) Yes; if you live in Texas and plan to adopt a child that had been receiving adoption assistance under a signed adoption assistance agreement, that child can remain eligible for adoption assistance benefits **even if the child is not in the conservatorship of DFPS from the time of adoptive placement until the consummation of the adoption,** if the following conditions are met:

(1) - (3) (No Change.)

(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 700, Child Protective Services

Subchapter H, Adoption Assistance Program

Division 5, Appeals and Hearings

TAC Section Number(s) §§700.880, 700.881, 700.883

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 Texas Family Code §162.301 & §162.304.

§700.880. What are my rights to appeal a DFPSdecision regarding adoption assistance benefits?

(a) You have the right to request a hearing whenever adoption assistance benefits are denied, delayed, suspended, reduced, or terminated **or** [. A hearing is also available] when the processing of your application is unreasonably delayed. **A hearing is also available as provided in § 700.883 of this title (relating to Can I still get adoption assistance benefits if I assume legal responsibility of a child in DFPS conservatorship before the adoption is finalized?)**. The hearing, as described in §730.1102 of this title (relating to Definitions), provides you the opportunity to appeal a decision made in a local DFPSoffice to a higher authority within DFPS.

(b) - (e) (No Change.)

§700.881. Can my child still get benefits if I did not sign an adoption assistanceagreement before the adoption?

(a) Yes, but only after you request a hearing and show that there is good reason to excuse your failure to have a signed adoption assistanceagreement. Some good reasons that provide for a hearing are:

(1) - (2) (No Change.)

(3) The child's physical, mental, or emotional **disabling** [handicapping] condition could not be diagnosed before the adoption, but was later diagnosed by an appropriately qualified professional as having existed prior to the consummation of the adoption.

(4) - (5) (No Change.)

(b) - (c) (No Change.)

**§700.883. Can I still get adoption assistance benefits if I assume legal responsibility of a child in DFPS conservatorship before the adoption is finalized?**

**Generally not. However, in limited circumstances you may qualify for adoption assistance benefits at DFPS's discretion, if you request a fair hearing and the hearing officer finds that the following criteria have been met:**

**(1) You were awarded permanent managing conservatorship of the child;**

**(2) The child was in the managing conservatorship of DFPS on the day immediately prior to the court awarding you permanent managing conservatorship of the child;**

**(3) You have an approved adoptive home study or approved adoption evaluation recommending adoption of the child by you;**

**(4) There is no information regarding your history, including information obtained from a state child abuse and neglect registry check or criminal background check that would make you ineligible to adopt a child who was in the conservatorship of DFPS;**

**(5) There are no other factors that would make you ineligible to adopt a child who was in DFPS conservatorship;**

**(6) The child was eligible for adoption and otherwise would have met the criteria for special needs as described in §700.804 of this title (relating to Who is a child with special needs?) on the day that you assumed legal responsibility of the child from the conservatorship of DFPS; and**

**(7) The intended permanent plan for the child was adoption, and DFPS would have placed the child in your home for adoption if you had not assumed legal responsibility prior to consummation.**

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 700, Child Protective Services

Subchapter J, Assistance Programs for Relatives and Other Caregivers

Division 1, Relative and Other Designated Caregiver Program

TAC Section Number(s) §700.1013

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 Texas Family Code §264.755.

§700.1013. Who is eligible for child-care services?

(a) (No Change.)

(b)To the extent funds are available, **and in accordance with any priority system established under subsection (e),** DFPS may provide child-care services to a caregiver who meets the requirements in §700.1003 of this title (relating to What are the eligibility requirements for caregiver assistance?) if:

(1) (No Change.)

(2) the caregiver is a resident of Texas; [and]

(3) **the child is in DFPS' managing conservatorship;**

**(4) the child is 13 years old or younger, or is younger than 18 years old if the child has a developmental delay or a physical disability;**

**(5) the child is not receiving adoption assistance; and**

**(6)** the caregiver verifies in writing that the caregiver has attempted to find appropriate day-care services for the child through community services, including:

(A) Head Start programs;

(B) Prekindergarten classes;

(C) Early education programs offered in public schools; and

(D) Any other available and appropriate resources in the caregiver’s community.

(c) **Day care for caregivers is authorized for the purpose of providing daily supervision:**

**(1) during the caregivers' work hours; or**

**(2) while the caregivers are attending judicial reviews, case conferences, or kinship caregiver training.**

**(d) To the extent funds are available, day care may also be authorized for the following:**

**(1) full-time day care during spring break and summer vacation for children who attend school full-time; and**

**(2) after-school day care.**

**(e)** To monitor the spending of funds, a priority system among caregivers will also be established in policy. The priority system will be based upon need, but at a minimum will require:

(1) a determination by DFPS that the provision of day careis critical to maintaining the placement of the child with the caregiver; and

(2) at least one child placed by DFPS is:

(A) under six years of age or over six years of age but in day care during a scheduled break in the public school system;or

(B)at least one child placed by DFPS has a developmental delay (including physical, emotional, and cognitive or language) or physical disability.

**(f)** [(d)] Notwithstanding any other provision of this section, if DFPS determines that requiring the written verification of a caregiver’s attempts to find appropriate community day-care services would prevent an emergency placement in the child’s best interest, DFPS may waive the submission of the written verification of the caregiver’s attempts. DFPS is authorized to require the submission of the written verification at any point following the initial authorization of day care services.

**(g)** [(e)] The Assistant Commissioner for Child Protective Services may grant a good cause waiver of any of the requirements in [paragraphs (1) and (2) of] subsection (b) of this section if that person determines that:

(1) the placement cannot be sustained or is unlikely to be sustained if the caregivers cannot receive day care;

(2) there is no reasonable alternative to the provision of day care, such as a change in working hours; and

(3) day care services are only authorized in increments that are commensurate with the hours and days the relative caregiver must be outside the home for employment.

**(h) DFPS pays for day care only in licensed child-care centers and registered child-care homes that are contracted through the local child care management service agency, unless care is self-arranged and DFPS gives prior approval to pay day care in the arrangement.**

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 700, Child Protective Services

Subchapter J, Assistance Programs for Relatives and Other Caregivers

Division 2, Permanency Care Assistance Program

TAC Section Number(s) §§700.1025, 700.1027, 700.1029, 700.1031, 700.1037, 700.1039, 700.1041, 700.1043, 700.1045, 700.1047, 700.1049, 700.1051, 700.1053, 700.1059, 700.1061

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 to §§700.1025, 700.1027, 700.1029, 700.1031, 700.1037, 700.1041, 700.1043, 700.1045, 700.1047, 700.1049, and 700.1051 and new sections §700.1059 and §700.1061 implement Texas Family Code §§264.760, 264.851, 264.852, 264.8521, and 264.853. The amendments to §700.1039 implement Texas Family Code §264.854. The amendments to §700.1053 implement Texas Family Code §264.855.

§700.1025. What is the Permanency Care Assistance Program?

(a) The permanency care assistance program provides the following benefits to certain individuals who assume **permanent** managing conservatorship of a child who was previously in the temporary or permanent managing conservatorship of DFPS, provided that all of the eligibility criteria in this division are satisfied:

(1) - (2) (No Change.)

(3) a one-time reimbursement of nonrecurring expenses relating to the legal process of becoming the **permanent** managing conservator of the child, not to exceed **$1,200** [$2,000] per child.

(b) - (c) (No Change.)

§700.1027. What definitions apply to this division?

The following terms have the following meanings in this division:

(1) Deferred permanency care **assistance** agreement--A type of permanency care **assistance** agreement that may be entered into when a **kinship caregiver** [prospective permanent custodian] meets the eligibility criteria for receipt of permanency care assistance, but does not need any assistance at the time the agreement is signed; a deferred permanency care **assistance** agreement allows a person to preserve eligibility to receive permanency care assistance in the future, should the need for such assistance arise.

(2) - (3) (No Change.)

(4) Permanency care **assistance** agreement--A negotiated, written and legally binding agreement that is signed by DFPS and a prospective permanent **kinship conservator** [custodian] setting forth the specific terms and conditions of the agreement, including the types and amounts of permanency care assistance benefits that will be provided under the agreement.

(5) Permanent **kinship conservator** [custodian]--A **relative or other individual with a prior longstanding and significant relationship to a child** [person who is granted managing conservatorship of a child] who was in the temporary or permanent managing conservatorship of DFPS immediately prior to **permanent** managing conservatorship being granted to that person**.**[;] **The** [the] term does not include a parent of the child or other person from whom the child was legally removed by DFPS.

(6) Prospective permanent **kinship conservator** [custodian]--A **relative or other individual with a prior longstanding and significant relationship to a child who was in the temporary or permanent managing conservatorship of DFPS** [person] who has demonstrated a strong commitment to caring permanently for **the** [a] child [in the temporary or permanent managing conservatorship of DFPS] and who applies for or has entered into **a** [an agreement with DFPS for] permanency care assistance **agreement with DFPS**, but has not yet been **granted permanent** [named the] managing **conservatorship** [conservator] of the child.

**(7) Successor guardian--A person who:**

**(A) was named as a successor to the permanent kinship conservator in the permanency care assistance agreement or in an amendment to that agreement;**

**(B) is granted legal custody of the child upon the death or incapacitation of the permanent kinship conservator;**

**(C) meets all DFPS standards regarding background checks;**

**(D) signs a new permanency care assistance agreement with DFPS; and**

**(E) receives permanency care assistance for the child.**

§700.1029. What are the eligibility criteria for receipt of permanency care assistance?

(a) To receive permanency care assistance for a child, a person must:

(1) become the permanent **kinship conservator** [custodian] of a child who meets all of the eligibility criteria in subsection (b) or (c) of this section; and

(2) enter into a permanency care **assistance** agreement with DFPS on behalf of the child prior to becoming the child's permanent **kinship conservator** [custodian].

(b) A child is eligible to be the subject of a permanency care **assistance** agreement if all of the following eligibility criteria apply to that child:

(1) the child's prospective permanent **kinship conservator** [custodian]:

(A) - (B) (No Change.)

(2) the child's prospective permanent **kinship conservator** [custodian] must have been eligible for the receipt of foster care reimbursements on behalf of the child who is the subject of the permanency care **assistance** agreement for at least six consecutive months prior to the effective date of the permanency care **assistance** agreement;

(3) the child has demonstrated a strong attachment to the prospective permanent **kinship conservator** [custodian] and that person has a strong commitment to caring permanently for the child;

(4) at the time the permanency care assistance agreement is signed, DFPS has determined that neither adoption nor **reunification** [return of the child to the home from which the child was removed] are appropriate permanency options; and

(5) if the child will be at least 14 years of age at the time the permanency care **assistance** agreement is signed, DFPS has consulted with the child about the prospective permanent **kinship conservator's** [custodian's] commitment to assume **permanent** managing conservatorship of the child.

(c) If a prospective permanent **kinship conservator** [custodian] or permanent **kinship conservator** [custodian] has entered into a permanency care assistance agreement on behalf of one child for whom all the eligibility criteria in subsection (b) of this section are satisfied, that same **individual** [custodian] will be eligible to receive permanency care assistance on behalf of a sibling of the child if all of the following criteria apply to the sibling child:

(1) the sibling must have been placed in the home of the same **individual** [custodian] by DFPS; and

(2) DFPS has temporary or permanent managing conservatorship of the sibling child at the time the permanency care **assistance** agreement is signed with respect to the sibling child.

(d) (No Change.)

§700.1031. How does a person become eligible for receipt of foster care reimbursement on behalf of a child for at least six consecutive months?

(a) (No Change.)

(b) **The** [For most relatives or other individuals with whom a child in DFPS conservatorship is placed, the] simplest way for relatives or other individuals to become eligible to receive foster care reimbursement on behalf of that child is to become a verified foster parent through Child Protective Services or a private child-placing agency and to enter into a Placement Authorization agreement with DFPS to provide 24-hour residential care for the child.

(c) (No Change.)

(d) A person who has been awarded sole or joint managing conservatorship of a child in a temporary or final order is not entitled to foster care reimbursements **for that child**.

§700.1037. What is the process for entering into a permanency care **assistance** agreement?

(a) At least 30 days prior to the date on which a prospective permanent **kinship conservator** [custodian] anticipates being granted **permanent** managing conservatorship of the child by the court, the prospective permanent **kinship conservator** [custodian] must complete an application for permanency care assistance, which can be obtained from the child's caseworker. In addition to documenting the eligibility criteria for the receipt of permanency care assistance, as specified in this subchapter, the application may request additional information that will be used to negotiate the amount of monthly payments for which the person may be eligible.

(b) After receiving a completed application, and prior to the date on which **permanent** managing conservatorship is awarded to the prospective permanent **kinship conservator** [custodian], DFPS will notify the applicant of whether or not benefits are approved and, if so, negotiate the terms of the permanency care **assistance** agreement with the prospective permanent **kinship conservator** [custodian].

(c) Notwithstanding subsection (a) of this section, if through no fault of the prospective permanent **kinship conservator** [custodian] there is insufficient time to submit the application at least 30 days prior to the date of an anticipated award of **permanent** managing conservatorship by the court, the application should be submitted as soon as possible and DFPS will expedite its handling of the application.

(d) **The prospective permanent kinship conservator must sign a permanency care assistance agreement** [Under no circumstances may a person be paid permanency care assistance if the permanency care agreement is not signed] prior to [the person] becoming the child's **permanent kinship** [managing] conservator. **Exceptions can be made to this requirement only in certain circumstances, as described in §700.1059 of this title (relating to Can a child still get benefits if a permanency care assistance agreement was not signed before the permanent kinship conservator was granted permanent managing conservatorship of the child?).**

§700.1039. What is the amount of monthly payments that a permanent **kinship conservator** [custodian] may receive under a permanency care **assistance** agreement?

(a) The amount of monthly payments that will be paid to a permanent **kinship conservator** [custodian] will be negotiated between DFPS and the prospective permanent **kinship conservator** [custodian] prior to the signing of the permanency care **assistance** agreement, based on the criteria specified in subsection (b) of this section, subject to the maximum monthly payment amounts specified in subsection (c) of this section. These amounts may be periodically re-negotiated as circumstances change.

(b) The following factors are considered when negotiating the amount of monthly permanency care assistance payments to be made:

(1) the child's present need for services will be assessed in relation to the **permanent kinship conservator's** [family's] income, expenses, circumstances, and plans for the future;

(2) benefits are intended only to assist the permanent **kinship conservator** [custodian] in meeting the child's needs and the permanent **kinship conservator's** [custodian's] responsibilities for meeting those needs;

(3) (No Change.)

(4) whether a publicly funded source may be used to meet the child's needs, even if the permanent **kinship conservator** [custodian] does not choose to take advantage of the publicly funded source; and

(5) (No Change.)

(c) The maximum monthly payment amount depends upon the child's authorized service level (ASL) at the time the permanency care **assistance** agreement is negotiated. The payment ceiling for a child whose ASL is Basic Care is $400 per month; the payment ceiling for a child whose ASL is Moderate, Specialized or Intense is $545 per month.

§700.1041. What is the effective date of a permanency care **assistance** agreement and when will benefits begin?

(a) Although the permanency care **assistance** agreement must be signed prior to the prospective permanent **kinship conservator** [custodian] being awarded **permanent** managing conservatorship of the child, **except as provided in §700.1059 of this title (relating to Can a child still get benefits if a permanency care assistance agreement was not signed before the permanent kinship conservator was granted permanent managing conservatorship of the child?),** the agreement does not become effective until the date that **permanent** managing conservatorship is granted to the permanent **kinship conservator** [custodian] by the court.

(b) Permanency **care assistance** benefits are available beginning in the first month following the date upon which the agreement becomes effective.

(c) Under no circumstances may a permanent **kinship conservator** [custodian] receive both foster care reimbursement and monthly permanency care **assistance** payments for the same time period on behalf of the same child.

§700.1043. How and when is a permanent **kinship conservator** [custodian] reimbursed for the costs of the nonrecurring expenses associated with obtaining **permanent** managing conservatorship **of the child** and how are these expenses calculated?

(a) A permanent **kinship conservator** [custodian] who has entered into a permanency care **assistance** agreement will not be reimbursed for nonrecurring expenses associated with obtaining **permanent** managing conservatorship of the child who is the subject of the agreement until after that person becomes the child's **permanent** managing conservator.

(b) To obtain reimbursement, the permanent **kinship conservator** [custodian] must submit receipts or other proof of payment, such as cancelled checks, to DFPS.

(c) The nonrecurring expenses for which a person may be reimbursed include only those expenses incurred directly by the permanent **kinship conservator** [custodian], or for which the permanent **kinship conservator** [custodian] was required to reimburse a third party, that were reasonable and necessary to complete the legal process of becoming the child's **permanent** **kinship** [managing] conservator. Such expenses may include the costs of obtaining a home study, legal fees, court costs, health and psychological examinations, and transportation and reasonable costs of lodging and food for the permanent **kinship conservator** [custodian] or the child.

(d) The permanent **kinship conservator** [custodian] must submit a claim for reimbursement and receipts or other proof of payment no more than 18 months after obtaining **permanent** managing conservatorship of the child.

(e) **The** [For permanency care agreements signed prior to August 1, 2012, themaximum amount that you may be reimbursed for nonrecurring expenses is $2,000 per child covered by a permanency care agreement. For permanency care agreements signed on or after August 1, 2012, the] maximum amount that **a permanent kinship conservator** [you] may be reimbursed for nonrecurring expenses is $1,200 per child covered by a permanency care **assistance** agreement.

§700.1045. If no assistance is needed at the time a person becomes the permanent **kinship conservator** [custodian], can that person still enter into a permanency care **assistance** agreement?

Yes. If a prospective permanent **kinship conservator** [custodian] meets the eligibility criteria for permanency care assistance, but does not need any monetary assistance or Medicaid to meet the child's needs at the time the court awards **permanent** managing conservatorship of the child, that person may enter into a deferred permanency care **assistance** agreement to preserve eligibility to receive permanency care assistance benefits for the child in the future, should the need arise.

§700.1047. How long does the permanency care **assistance** agreement remain in effect?

(a) Unless there is a change in circumstances that affects a person's continuing eligibility for benefits, as provided in subsection (b) of this section, a permanency care **assistance** agreement remains in effect at least through the end of the month in which the child turns 18 years, and possibly longer if the child and family are eligible for extended permanency care assistance after age 18, as specified in §700.1053 of this title (relating to Who is eligible for extended permanency care assistance?).

(b) A permanency care assistance agreement may be terminated before a child turns 18 years when any of the following occurs:

(1) the prospective permanent **kinship conservator** [custodian] is not granted managing conservatorship of the child;

(2) DFPS determines that the permanent **kinship conservator** [custodian] was mistakenly determined to be eligible for permanency care assistance;

(3) the permanent **kinship conservator** [custodian] is no longer legally responsible for the child's care due to a change in legal status prior to the child reaching the age of 18 years;

(4) the permanent **kinship conservator** [custodian] is no longer providing any care or other support to the child;

(5) (No Change.)

(6) the permanent **kinship conservator** [custodian] requests that the agreement be terminated.

(c) If the child who is the subject of the permanency care **assistance** agreement is over the age of 18 years, and the child's family is receiving benefits under §700.1053 of this title, the agreement and benefits may be terminated if the child no longer meets the eligibility conditions in §700.1053(b) of this title.

(d) If a person receives monthly payments for a period of time for which the **permanency care assistance** agreement could have been terminated, DFPS may require that person to repay the total amount of benefits for which the person was not eligible or may deduct the amount of any overpayment from any future benefits under a repayment plan.

**(e) In the event the permanent kinship conservator dies or becomes incapacitated and a successor guardian assumes legal custody of the child, the permanency care assistance agreement is terminated and the successor guardian must enter into a new agreement with DFPS in order to receive permanency care assistance on behalf of the child, as specified in §700.1061 of this title (relating to Does a child remain eligible for permanency care assistance benefits in the event that the permanent kinship conservator dies or becomes incapacitated?).**

§700.1049. What happens if a family's circumstances change after the permanency care **assistance** agreement is signed?

(a) Each permanent **kinship conservator** [custodian] who enters into a permanency care **assistance** agreement is responsible for notifying DFPS when any of the following changes in circumstances occur with respect to the permanent **kinship conservator** [custodian] or the child who is the subject of the agreement:

(1) - (2) (No Change.)

(3) the child is no longer living with the permanent **kinship conservator** [custodian];

(4) there is a change in the child's legal status; [or]

(5) **the permanent kinship conservator has identified a potential successor guardian; or**

**(6)** there is any change in circumstances that would warrant termination of the

permanency care assistance agreement, as described in §700.1047 of this title (relating to How long does the permanency care **assistance** agreement remain in effect?).

(b) If the permanent **kinship conservator** [custodian] is not already receiving the maximum monthly assistance payment allowable for the child, the **conservator** [custodian] may submit a written request to increase the monthly assistance payments, specifying the change in circumstances that may justify an increase in the payment amount. Any request for an increase in the monthly payment amount is subject to the same requirements and limitations described in §700.1039 of this title (relating to What is the amount of monthly payments that a permanent **kinship conservator** [custodian] may receive under a permanency care **assistance** agreement?).

(c) DFPS may periodically require a permanent **kinship conservator** [custodian] to recertify continued eligibility for the receipt of benefits as provided under the permanency care **assistance** agreement and these rules. A request for recertification must be completed and returned to DFPS within 60 days of receipt. Failure to promptly provide the recertification information may result in an overpayment, which DFPS may require the permanent **kinship conservator** [custodian] to repay or which DFPS may deduct from any future benefits under a repayment plan.

(d) DFPS may periodically require documentation from **the permanent kinship conservator** [you] that is sufficient to demonstrate that the child who is the subject of the permanency care **assistance** agreement and who has attained the minimum age for compulsory school attendance in Texas or the child's state of residence is a full-time elementary or secondary student as that term is defined in §700.1027 of this title (relating to What definitions apply to this division?). DFPS may require such documentation to include proof sufficient to demonstrate that **the** [your] child is rendered incapable of being a full-time elementary or secondary student because of a medical condition.

§700.1051. Is a permanent **kinship conservator** [custodian] still eligible to receive permanency care assistance from Texas if the **conservator** [custodian] moves **outside the** [to another] state?

Yes. DFPS will continue to provide the monthly assistance payments specified in the permanency care **assistance** agreement no matter where the permanent **kinship conservator** [custodian] resides, provided the permanent **kinship conservator** [custodian] notifies DFPS of any change of address**.**[;] DFPS provides Texas Medicaid coverage only if the state to which the **permanent** **kinship conservator** custodian moves does not agree to cover the child who is the subject of the permanency **care assistance** agreement under its state Medicaid program.

§700.1053. Who is eligible for extended permanency care assistance?

(a) **Youth are eligible to** [A person who was the child's permanent custodian before the child turned 18 years may] continue **receiving** [to receive] permanency care assistance [for the continued support of the young adult] from the youth's 18th birthday through the last day of the month in which the youth turns 21 **if the following criteria are met:**

(1) The **permanent kinship conservator is granted permanent managing conservatorship of the youth** [permanency care assistance agreement was first entered into on behalf of the child] after the child's 16th birthday and **before** [prior to] the child's 18th birthday; and

(2) The permanent **kinship conservator** [custodian] provides sufficient documentation on a periodic basis as required by the permanency care assistance agreement to demonstrate that the youth is:

(A) - (E) (No Change.)

(b) - (c) (No Change.)

**§700.1059. Can a child still get benefits if a permanency care assistance agreement was not signed before the permanent kinship conservator was granted permanent managing conservatorship of the child?**

**(a) Yes, but only after the permanent kinship conservator requests a fair hearing and shows that there is good reason to excuse the failure to have signed a permanency care assistance agreement. Some good reasons that allow for a fair hearing are:**

**(1) DFPS did not inform the permanent kinship conservator of the permanency care assistance program before the court granted him or her permanent managing conservatorship of the child;**

**(2) The court awarded the permanent kinship conservator permanent managing conservatorship of the child without prior notice;**

**(3) DFPS knew facts relevant to the child's eligibility for permanency care assistance but did not disclose them to the permanent kinship conservator before the court awarded him or her permanent managing conservatorship of the child; or**

**(4) DFPS made an error in determining that the child was not eligible before the court granted permanent managing conservatorship of the child to the permanent kinship conservator.**

**(b) In the hearing, the permanent kinship conservator has the burden to prove both:**

**(1) the reason for not having signed a permanency care assistance agreement before being awarded permanent managing conservatorship of the child; and**

**(2) that the child meets all eligibility requirements.**

**(c) If DFPS agrees that the child is eligible and the failure to have signed a permanency care assistance agreement should be excused, DFPS and the permanent kinship conservator can sign an agreed order and avoid having a fair hearing. The hearing officer must approve the agreed order, and the permanent kinship conservator must sign a permanency care assistance agreement consistent with its provisions, before he or she can receive benefits.**

**§700.1061. Does a child remain eligible for permanency care assistance payments in the event that the permanent kinship conservator dies or becomes incapacitated?**

**(a) Yes. Permanency care assistance payments may continue to a successor guardian if the successor guardian meets the definition in §700.1027(7) of this title (relating to What definitions apply to this division?).**

**(b) The successor guardian cannot begin receiving permanency care assistance payments from DFPS until the individual has signed a permanency care assistance agreement and has assumed permanent managing conservatorship of the child.**

**(c) If the successor guardian signs the permanency care assistance agreement after being granted legal custody of the child by the court, DFPS may, for good cause, grant retroactive benefits back to the date permanent managing conservatorship was granted, for a period not to exceed 12 months, if the successor guardian can demonstrate that:**

**(1) DFPS caused a delay in the activation of benefits; or**

**(2) The successor guardian's failure to sign a permanency care assistance**

**agreement prior to being granted permanent managing conservatorship of the child was because the successor guardian was not aware that the child remained eligible for continuation of benefits in a subsequent conservatorship.**

**(d) The terms and conditions of the permanency care assistance agreement originally signed by the previous permanent kinship conservator will also apply to the successor guardian. This means that the successor guardian:**

**(1) is entitled to a one-time reimbursement of nonrecurring expenses not to**

**exceed $1,200 per child;**

**(2) is entitled to receive the child’s benefits for the same duration**

**determined in the original agreement signed by the previous permanent kinship conservator;**

**(3) may exercise his or her right to a fair hearing if benefits are denied,**

**delayed, suspended, or reduced; and**

**(4) must abide by the same conditions for continuation of permanency care**

**assistance payments, including, but not limited to, annual notification, certification, and documentation requirements.**

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 700, Child Protective Services

Subchapter Q, Purchased Protective Services

**Division 2, Post-Permanency Services**

TAC Section Number(s) §§700.1726, 700.1727, 700.1728, 700.1731, 700.1733

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 Texas Family Code §162.306.

§700.1726. What are **post-permanency** [postadoption] services?

**Post-permanency** [Postadoption] services arepurchased client services [thatconsist of counseling, educational, and supportive services] provided to an adoptive family **or a family that was granted permanent managing conservatorship of a child** to help the [adopted] child and the family:

(1)adjust to the adoption **or permanent managing conservatorship**;

(2)- (4) (No Changes.)

**§700.1727. What types of post-permanency services are available?**

**The following post-permanency services may be authorized subject to funding and any additional eligibility criteria specified in this division (relating to Post-Permanency Services).**

**(1) support groups;**

**(2) parent/caregiver training;**

**(3) post-permanency counseling;**

**(4) therapeutic or specialized camps;**

**(5) intermittent alternate care (respite);**

**(6) crisis intervention;**

**(7) residential treatment services; and**

**(8) other services approved by the Department of Family and Protective Services.**

§700.1728. Who **is** **eligible** [Is Eligible] for **post-permanency services** [Postadoption Services]?

(a) The Department of Family and Protective Services' **(DFPS's)** [(DFPS')] provision of purchased **post-permanency** [postadoption] services is subject to the availability of funds appropriated for that purpose. When funds are available, and subject to any additional eligibility requirements for specific types of **post-permanency** [postadoption] services as provided in **(DFPS's)** [(DFPS')] rules, DFPS provides purchased **post-permanency** [postadoption] services to **the** [an adopted] child and the child's [adoptive] family if each of the following four conditions is satisfied:

(1) either:

(A) the department **or a licensed Texas child-placing agency** served as the child's managing conservator**,** [and] placed the child for adoption**, and the placement resulted in a court-order consummating the adoption. If a licensed Texas child-placing agency served as the child's managing conservator and placed the child for adoption, the department must be providing Title IV-E adoption assistance to the child**; or

(B) **the department or** a licensed Texas child-placing agency served as the child's managing conservator **and a kinship caregiver was granted permanent managing conservatorship of the child with or without permanency care assistance** [placed the child for adoption, and the department is currently providing Title IV-E adoption assistance to the child];

[(2)] [the department's or the child-placing agency's placement resulted in a court-order consummating the adoption;]

**(2)** [(3)] **if the child was adopted,** the adoption is still intact **of if the child is in a**

**permanent managing conservatorship the child is still with that caregiver;**[, and]

**(3)** the adoptive **parent** [parents] **or permanent managing conservator, as**

**applicable, has** [have] requested **post-permanency** [postadoption] services; and

(4) the [adopted] child is under 18. **If determined necessary by DFPS, services may continue for up to 90 days past the child's 18th birthday in order to ensure an orderly termination of services.**

(b) (No Change.)

§700.1731. Who is **eligible** [Eligible] for **post-permanency** [Postadoption] counseling[Counseling]?

**(a)** **Post-permanency counseling includes:**

**(1) Diagnostic and assessment services;**

**(2) Individual, group, and family counseling; and**

**(3) Day treatment.**

**(b) Post-permanency** [The following individuals may be eligible for postadoption] counseling **is provided as follows**:

(1) **Post-permanency** [Adopted children and adoptive parents. Postadoption]counseling services are ordinarily restricted to **a child who was in the conservatorship of the Department of Family and Protective Services and was adopted or exited into a permanent managing conservatorship and the child's adoptive parents or permanent managing conservator, as applicable,** [adopted children and adoptive parents who] **if they** meet the requirements for client eligibility specified in §700.1728of this title (relating to Who is **eligible** [Eligible] for **post-permanency services** [Postadoption Services]?).

(2) [Siblings. ]Siblings under 18, however, may also receive **post-permanency** [postadoption]counseling services if:

(A) they are living in the [adoptive family's] household; and

(B) their need for counseling stems from the [adopted] child's placement in the family.

(3) [Additional restriction on diagnostic and assessment services. ]Diagnostic and assessment services are restricted to **the** adopted **child or child placed in a permanent managing conservatorship** [children]. For **the** [an adopted] child to receive diagnostic and assessment services, the child's case record must include written documentation that the child is not eligible to receive diagnostic testing under state or federal programs that provide such testing through the child's school.

**(c) The services listed in subsection (a) of this section are provided for the following length of time:**

**(1) up to 12 hours per a 12 month period for diagnostic and assessment services.**

**(2) up to 12 hours per family member for any combination of counseling services received per a 6 month period.**

**(3) up to 2 weeks of daily intensive treatment for the child over a 6 month period.**

**(d) Notwithstanding subsection (b) of this section, a caregiver may submit a written request justifying the need to exceed the maximum length of services to the Child Protective Services (CPS) Regional Liaison and the CPS Contract Manager at least 10 calendar days prior to the need for the service.**

§700.1733. Who is Eligible forResidential Treatment Services?

(a) Client eligibility.Only adopted children are eligible for residential treatment servicesthrough the **post-permanency** [postadoption-]services program. To qualify, **an adopted** [a] child:

(1) - (3) (No Change.)

(b)- (c) (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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