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| MEMORANDUM **TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES** |

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| TO: | Department of Family and Protective Services Logo**Chair and Members Department of Family and Protective Services Council** |
| FROM: | **H. L. Whitman, Jr.**  **DFPS Commissioner** |
| SUBJECT: | **Agenda Item 5b: Recommendation to propose rule changes in 40 TAC 746, Minimum Standards for Child-Care Centers, related to a comprehensive review** |
| DATE: | **July 22, 2016** |

## BACKGROUND AND PURPOSE

The Child Care Licensing (CCL) Division proposes to amend 40 TAC, Chapter 746, Minimum Standards for Child-Care Centers. Texas Human Resources Code (HRC) §42.042(b) requires CCL to conduct a comprehensive review of all rules and minimum standards every six years. The proposed changes are a result of the comprehensive review of all minimum standards located in Chapter 746.

During this review of standards, CCL's goal was to balance the concerns of child advocacy groups, child-care centers, children, and parents to formulate standards that ensure an appropriate balance between children's health and safety and affordability and availability of care.

In preparation for the review of minimum standards, CCL conducted a web-based survey open to permit holders, caregivers, advocates, parents, CCL staff, and anyone in the general public interested in commenting on the standards. The survey was available for public input from late August through December 2014. The next step in the review was to hold a series of 31 stakeholder forums throughout the state between September and November 2015 to solicit additional input from the public about proposed changes to the minimum standards.

Between the web-based survey and the stakeholder forums, CCL received more than 1,200 comments relating to Chapters 745 (Licensing), 744 (Minimum Standards for School-Age and Before- or After-School Programs), 746, and 747 (Minimum Standards for Child-Care Homes) from stakeholders for consideration in the review. These comments, along with a line-by-line review of all minimum standards conducted by both regional and State Office Licensing staff, formed the basis of the first round of recommendations that were then presented to a temporary workgroup. The temporary workgroup was comprised of approximately 15 participants, including providers from child-care centers, a provider from a school-age and before- and after-school program, a parent, representatives from Licensing, and a representative from the Texas Workforce Commission. The workgroup had an introductory meeting on March 22, 2016, and subsequently met twice on April 5,2016 and May 16,2016 to review and provide comments regarding the recommended changes to Chapter 746 (and Chapters 744 and 747, which will be proposed at a later date).

DFPS received comments related to ratios and group sizes in the surveys and in the forums. After reviewing these comments and the related minimum standards, and weighing the impact to providers and families, DFPS is maintaining the subchapter on ratios and group sizes as they are currently written. In response to the other comments received, DFPS is recommending amending/repealing/adding over 135 minimum standards in Chapter 746. In addition to responding to comments, three other primary goals of this comprehensive review were to (1) make the language of the rules consistent throughout the chapter, (2) delete minimum standards or portions of minimum standards that are duplicative or redundant, and (3) combine minimum standards when appropriate. The last two goals resulted in the deletion of approximately 25 minimum standards. Below is a broad overview of some of the different areas and types of changes that DFPS is recommending:

* Repealing, adding, moving, and modifying definitions. One example is the repeal of §§746.3409 and 746.3411 which defined "sanitizing" and "disinfecting solution" and combining, modifying, and updating these definitions into one definition for "sanitize" and adding it the New §746.123(40);
* Reorganizing Subchapter A by creating three new Divisions: Purpose, Scope, and Definitions. The focus of the reorganization is to provide better clarity and continuity;
* Updating or deleting outdated rules or language in the rules, including:
  + Deleting outdated grandfather clauses (§§746.1019 and 746.1113) and outdated wording ("coin operated pay phone" at §746.4507 and "message pagers" at §746.5621);
  + Updating the immunization minimum standards to be consistent with the current Department of State Health Services rules (§§746.613, 746.615, 746.617, 746.619, 746.621 and 746.623); and
  + Deleting the use of rectal thermometers and allowing the use of tympanic (ear) thermometers (§746.3601);
* Clarifying confusing concepts by:
  + Changing several rules but primarily §746.1403 to explain when substitutes, volunteers, and contractors must comply with the minimum standards that apply to employees and caregivers; and
  + Adding a rule that a sick child may return to care when there is a doctor's statement that the child no longer has the excludable condition, or the child is free of symptoms for 24 hours (§746.3606);
* Strengthening the minimum standards when it is necessary for the safety of children, for example:
  + Adding required operational policies for safe sleep for infants 12 months and younger (§746.501);
  + Not allowing stacked cribs for children tall enough to hit their head on the stacked crib or ceiling (§746.2413); and
  + Not allowing children to sleep in restrictive devices (§746.2426); and
* Allowing more discretion by providers while still ensuring the safety of children, for example:
  + Allowing first aid (but not CPR) to be obtained through self-instructional training (§746.1315);
  + Only requiring cribs for non-walking infants less than 12 months of age (§746.2405); and
  + Allowing the use of hand sanitizers (§746.3420).

## DETAILED SECTION ANALYSIS AND DISPOSITION TABLE

| **Current Rule Sections** | **Proposed Action; New Rule Section** | **Summary Explanation of Proposed Action** |
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| Subchapter A, Purpose and Definitions | Amend | Subchapter A is being renamed "Purpose, Scope, and Definitions" for clarity and better continuity. |
|  | New Division 1, Purpose | This is a New Division. The only rule in this Division is current §746.101. The New Divisions were added for clarity and better continuity. |
| §746.103 | Repeal | This rule regarding pronouns is repealed and its content is being incorporated into New §746.121. |
| §746.105 | Repeal | This rule regarding definitions is repealed and its content is being incorporated into New §746.123. There were many substantive changes made to this rule, including the deletion, addition, and modification of many definitions. |
| §746.107 | Repeal | This rule regarding types of operations and scope is repealed and its content is being incorporated into New §746.111, however, the language in the rule regarding grandfather clauses has been removed because the former types of operations that were licensed by DFPS (group day care homes, kindergarten and nursery schools, and school: grades kindergarten and above) have been issued new licenses as child-care centers. |
| §746.109 | Repeal | This rule regarding permit holders and scope is repealed and its content is being incorporated into New §746.113. |
|  | New Division 2, Scope | This is a New Division. The New Divisions were added for clarity and better continuity. |
|  | New §746.111 | Includes the content from repealed §746.107 with the following substantive changes:   * The language in §746.107 regarding grandfather clauses has been removed because they are no longer relevant; and * Language is being added to clarify that the minimum standards in this chapter also apply to unlicensed centers that require a license under Chapter 42, HRC. |
|  | New §746.113 | Includes the content from repealed §746.109 with the addition of subsection (b) to clarify that the director, owner, operator, and certain controlling persons at an unlicensed center that is subject to Licensing's regulation, are also responsible for following these minimum standards. |
|  | New Division 3, Definitions | This is a New Division. The New Divisions were added for clarity and better continuity. |
|  | New §746.121 | Includes the content from repealed §746.103. |
|  | New §746.123 | Includes the content from repealed §746.105 with the following substantive changes:   * Several terms were removed from this rule and are being incorporated into the only rule where the term is used, including baby bungee jumper, baby walker, caregiver-initiated activities, child-initiated activities, and single-use area; * Several terms were deleted, including child-care location, child passenger safety-seat system (already defined at §746.5607), creative activities, critical illness, group activities, pre-service training, and propped bottle; * Several terms were deleted from other rules and are being incorporated into this definition rule, including CEUs, clock hours, instructor-led training, sanitize (with substantive changes), and self-instructional training; * Several terms were added, including child, employee, permit is no longer valid, premises, and restrictive devices. * The definitions to several terms were modified, including administrative clerical duties, age-appropriate, caregiver (this definition has been substantively changed), Certified Child-Care Professional Credential, child-care center, Child Development Associate Credential, frequent, inflatable, instructor-led training, janitorial duties, regular, self-instructional training, special care needs, and water activities. |
| §746.201 | Amend | Clarifies that the permit holder is responsible for ensuring that the number children in care never exceeds the licensed capacity of the center, even when the children are away from the center (e.g. field trip). |
| §746.301 | Amend | Clarifies this rule by:   * Adding the content of the "child-care location" definition, which is being deleted; and * Requiring Licensing to be notified before a center:   + Offers a get-well care program or nighttime care services; and   + Sells or transfers ownership of the center (which is being incorporated from current §746.303). |
| §746.303 | Amend | Deletes the requirement to notify Licensing before a center sells or transfers ownership of the center, which is being incorporated it into §746.301(10). |
| §746.405 | Amend | Deletes the requirement to post the address of the nearest Licensing office, because the workers are now mobile workers and not at a particular office; and clarifies the wording of the rule for accuracy. |
| §746.501 | Amend | The changes to this rule:   * Add requirements for new operational policies for the suspension and expulsion of children, safe sleep for infants 12 months and younger, and procedures for using insect repellant and sunscreen; * Clarify the language of the rule; and * Incorporates two paragraphs into new subsection (b), which requires notification to parents instead of an operational policy. |
| §746.503 | Amend | Clarifies that a parents signature for the enrollment agreement and the operational policies may be a signature on one document or several documents (this came from §746.2809(c) which is being deleted). |
| §746.505 | Amend | Clarifies that employees must be notified of any changes to the center's operational policies (this was previously required by repealed §746.2813 for changes to discipline and guidance policy); and clarifies the language of the rule. |
| §746.507 | Repeal | This rule is being repealed because it is already clear that operational policies must be shared with employees at §746.901(6). |
| §746.603 | Amend | Clarifies several paragraphs by stating:   * Admission information is that information required in §746.605; * TB screening is only needed if required by DSHS or a local health authority; and * Documentation from a health care professional that allows a deviation from minimum standards must be maintained in the child's record. |
| §746.613 | Amend | This amendment clarifies:   * That current immunization records must be maintained, including records of any exemptions or exceptions; and * The situations where immunizations are not required by the date of admission, including exemptions, exceptions, and provisional enrollment for up to 30 days for homeless children or children in foster care. |
| §746.615 | Repeal and  New §746.615 | This rule incorporates the language from repealed §746.615 and further explains the immunization exemptions and exceptions that are allowed by the DSHS rules. |
| §746.617 | Repeal | The content of this rule will be added to a Helpful Information Box and expounded upon. |
| §746.619 | Repeal | The content of this rule is being incorporated into §746.613, except the provisional delay for the alternate care program (a child's immunization may be obtained upon the child's second visit to the alternate care program) is being deleted, because this exception does not currently exist in law. |
| §746.621 | Repeal | The content of the rule is being incorporated into §746.613(c)(2). |
| §746.623 | Amend | Clarifies the documentation requirements that are acceptable for an immunization record, including:   * What is acceptable as a signature for a health care professional; and * The signature of the health-care professional is not required for an official immunization record generated from a state or local health authority or a school. |
| §746.631 | Amend | Clarifies the language of the rule for ease of understanding. |
| §746.703 | Repeal | The content of this rule is being added to a Helpful Information box after §746.701. |
| §746.705 | Amend | Clarifies how the *Incident/Illness Report* form must be completed. |
| §746.801 | Amend | The amendment clarifies what records must be kept at the center, including:   * Requiring attendance records or time sheets listing all days and hours worked for each employee. This content came from §746.905, which is being deleted; * Deleting several paragraphs because the items are already required to be posted at §746.401, such as group activity plans, daily menus, and the most recent licensing inspection report; * Deleting the requirement of proof of background checks because it is already required at §746.901; and * Deleting a child tracking system because it is already required at §746.631. |
| §746.803 | Amend | Since several items have been deleted from §746.801 because they are already required to be posted, this rule is being updated to clarify that a posted record must also be kept for at least three months from the date the record was created. |
| §746.903 | Repeal | This rule is redundant and is being deleted because the Director's Certificate is already required at §746.1039, and as an employee a Director is already required to receive operational and personnel policies at §746.901(a)(6). |
| §746.905 | Repeal | The content of this rule is being incorporated into §746.801(5). |
| §746.909 | Amend | Clarifies that Licensing may photograph, copy, or scan a center's records. |
| §746.1015 | Amend | Adds citations of the relevant rules regarding the renewal of a director's certificate (for a center licensed for 13 or more children). |
| §746.1017 | Amend | Adds citations of the relevant rules regarding the renewal of a director's certificate (for a center licensed for 12 or fewer children). |
| §746.1019 | Repeal | This rule only contains grandfather clauses that are no longer necessary. |
| §746.1021 | Amend | Substantially modifies the language of the rule for better readability and ease of understanding, without changing the substance of the rule. |
| §746.1029 | Amend | Clarifies that the rule addresses "business" management. |
|  | New §746.1031 | Reorganizes the placement of repealed §746.1043 for better readability and flow of the rules. |
| §746.1031 | Repeal | "Clock hours" is being incorporated into the definitions rule at §746.123 with some modifications for clarity and accuracy. |
| §746.1033 | Repeal | This rule is being deleted because it is not accurate. §746.1317 currently provides criteria for trainers. |
| §746.1035 | Repeal | "CEUs" is being incorporated into the definitions rule at §746.123. |
| §746.1037 | Amend | Incorporates the content from repealed §746.1041; and the wording of the question and the answer is also being modified for ease in understanding the rule. |
| §746.1039 | Amend | The changes clarify that a director must meet these additional qualifications in addition to the employee qualifications (and minimum qualification of a caregiver, if applicable). |
| §746.1041 | Repeal | The content of this rule is being incorporated into §746.1037(c). |
| §746.1043 | Repeal | The content of this rule is being incorporated into New §746.1031. |
| §746.1057 | Amend | Clarifies the language of the rule for better readability and ease of understanding. |
| §746.1101 | Repeal | The content of this rule is being incorporated into the new definition for "employee" and the revamped definition for "caregiver" at §746.123. |
| §746.1103 | Repeal | This rule is being deleted because it is redundant. The information is already included at §746.1105 and §746.1107. However, the graphic with some modifications is being added to a Helpful Information box after §746.1107. |
| §746.1105 | Amend | The introduction to this rule is inaccurate and needs to be deleted. |
| §746.1107 | Amend | This amendment:   * Incorporates the content from §746.1115 into §746.1107(2)(B)(i) to clarify a "high school equivalent", with non-substantive changes for better readability and ease of understanding; and * Adds a "high school equivalent" for home schooling that adequately addresses basic competencies at §746.1107(2)(B)(ii). |
| §746.1109 | Amend | This amendment clarifies that:   * A person under the age of 18 who is hired must not be left alone with an individual child; * Child-care-related career programs may also be approved by charter schools, the Texas Private School Accreditation Commission, or home schools that adequately addresses basic competencies; and * For a person under the age of 18 who attends a home-school that adequately addresses basic competencies and has not graduated, this person must also complete all 24 hours of pre-service training before assuming responsibility of a caregiver. |
| §746.1113 | Repeal | Deleting rule because the grandfather clause is outdated and no longer necessary. |
| §746.1115 | Repeal | The content of this rule is being incorporated into §746.1107(2)(B)(i). |
| §746.1203 | Amend | Clarifies the language of this rule by:   * Deleting "counted in the child/caregiver ratio" because this is the new definition of a caregiver and the language is no longer necessary; * Changing "administrative and clerical functions" to "administrative and clerical duties", because "duties" is what is defined at §746.123; and * Deleting and incorporating the adjectives after "janitorial duties" into the definition for "janitorial duties" at §746.123. |
| §746.1301 | Repeal and New | This rule is being deleted and replaced with a new rule to clarify the understanding of the rule by:   * Deleting the outdated requirement for the training of caregivers hired before September 1, 2011 date; * Clarifying which training requirements are for employees and caregivers; * Deleting the Director training requirements which are already noted at §746.1311; and * Creating a chart for easier readability and understanding. |
| §746.1315 | Amend | Clarifies that first aid training can now be obtained through self-instructional training. |
| §746.1316 | Amend | Makes the use of "employee" consistent throughout the rule; and "owner" has been clarified in the definition of an "employee" at §746.123. An owner is an employee if the owner is ever on site at the center or transports children. |
| §746.1317 | Amend | The amendments to this rule:   * Update the title of the training registry; * Clarify that a Child Development Associate credential must be current; and * Clarify that subsection (d) applies to both instructor-led and self-instructional training, which came from repealed §746.1325(c). |
| §746.1319 | Amend | Clarifies that while Licensing does not approve training resources, training must comply with the criteria specified in §746.1317, required training topics, and documentation requirements. |
| §746.1323 | Amend | Deletes the requirement to adjust the annual training year for employees that obtain training from another center within the last two months before coming to work at the new center. |
| §746.1325 | Repeal | The definitions for self-instructional and instructor-led training are being incorporated into the definitions rule at §746.123; and the content for subsection (c) is being incorporated into §746.1317(d). |
| §746.1401 | Repeal and New | This new rule:   * Incorporates contents of repealed §746.1401 and §746.1403, with substantial clarifications; * Clarifies that volunteers who only supplement ratios for field trips and water activities do not have to comply with minimum standards for employees or caregivers, but they do have to comply with the minimum standards in Subchapter E regarding ratios; and * Clarifies when employees and caregivers must complete orientation and pre-service training by. |
| §746.1403 | Repeal | The content of this rule is being incorporated into New §746.1401. |
| §746.2205 | Amend | Incorporates the definitions for "child-initiated activities" and "caregiver-initiated activities" from the current definitions rule because this is the only rule that discusses these two terms. |
| §746.2401 | Amend | Clarifies the rule by replacing the term "child/ren" with "infant/s". |
| §746.2403 | Amend | Clarifies the rule by replacing the term "children" with "infants", and clarifies the wording of the rule for better readability and ease of understanding. |
| §746.2405 | Amend | Clarifies that cribs are to sleep in and are only required for non-walking infants younger than 12 months of age; and replaces the term "children" with "infants". |
| §746.2407 | Amend | Deletes the term "rockers" from a list of equipment because it is already defined as a "bouncer seat", which is also included in the list of equipment; and replaces "child" with "infant". |
| §746.2409 | Amend | This amendment:   * Incorporates information regarding "port-a-cribs" (which are "non-full-size" cribs as defined by CPSC) from repealed §746.2411 by clarifying that this rule applies to all full-size and non-full-size cribs and must meet the requirements of this rule; * Requires that only mattresses designed specifically for use with this crib model type may be used; * Clarifies that cribs must be labeled with the infant's name; and * Replaces "child" with "infant". |
| §746.2411 | Repeal | This rule is no longer necessary because its content is being incorporated into other rules as follows:   * "Port-a-cribs" into §746.2409, because these cribs must meet all of the requirements in §746.2409; and * "Mesh cribs into new §746.2411. |
| §746.2411 | New | This rule clarifies:   * The term "play yard", which are mesh or fabric sided cribs; * That play yards must be used according to the manufacturer's instructions, including the cleaning of the play yard. * That play yards must have firm, flat mattress that snugly fits the sides of the play yard, the mattresses must be designed by the manufacturer specifically for the play yard model number that is being used; and mattresses must not be supplemented with additional foam material or pads; and * The additional play yard requirements. |
| §746.2413 | Amend | Clarifies that stacking wall cribs are allowed if they are only used for infants that cannot stand or is able to stand without hitting the infant's head on either the top of the crib or the ceiling above the top crib; and replaces "child" with "infant"; and modifies the wording of the rule for easier readability and understanding. |
| §746.2415 | Amend | The amendment:   * Incorporates the content of the deleted definitions for "baby walkers" and "baby doorway jumpers" from the definition sections, since this is the only rule in which these two terms are used; * Changes the term from "baby bungee jumper" to "baby doorway jumpers", which is the equipment that is prohibited; and * Modifies the wording of the rule for better readability and ease of understanding; and * Replaces "children" with "infants". |
| §746.2417 | Amend | Clarifies that when an infant explores outside of the crib, the infant must also be free of restrictive devices; and deletes "confining equipment" because that term is subsumed by "restrictive devices". |
| §746.2419 | Amend | Clarifies that propped bottles are not allowed, and replaces "child/ren" with "infant/s". |
| §746.2421 | Amend | Clarifies the question of the rule for better readability and ease of understanding; and replaces the term "child/ren" with "infant/s". |
| §746.2425 | Amend | Deletes the phrase "other confining equipment" to clarify that an infant must not be sleeping in confining equipment. |
|  | New §746.2426 | Clarifies that infants are not allowed to sleep in restrictive devices. If the infant falls asleep in a restrictive device, then the infant must be removed from the device and placed in a crib as soon as possible. |
| §746.2427 | Amend | Clarifies that infants not yet able to turn over must be placed in a face-up sleeping position unless there is a written statement from a health-care professional stating a different sleeping position is medically necessary; clarifies that infants must sleep in their own cribs; and replaces "child" with "infant". |
| §746.2428 | Amend | Clarifies that swaddling is only allowed if there is a written statement from a health-care professional stating that swaddling a specific child for sleeping purposes is medically necessary. |
| §746.2431 | Amend | Clarifies that the daily reports to parents of infants may be electronic; and replaces "child" with "infant". |
| §746.2501 | Amend | Clarifies the rule by replacing the term "child" with "toddler". |
| §746.2505 | Amend | This amendment:   * Clarifies that toddlers should never be allowed to sleep with or walk around with bottles or training cups; * Clarifies the wording of the rule for better readability and ease of understanding; and * Replaces "child" with "toddler". |
| §746.2507 | Amend | Deletes the required toddler activities of regular meal and snack times and supervised naptime because these activities are redundant as they are already required by §746.3301 and §746.2901, respectively. |
| §746.2509 | Amend | Clarifies the rule by replacing the term "child" with "toddler". |
| §746.2607 | Amend | Deletes the required pre-kindergarten age activities of regular meal and snack times and supervised naptime because these activities are redundant as they are already required by §746.3301 and §746.2901, respectively. |
| §746.2707 | Amend | Deletes the required school-age activities of regular meal and snack times and supervised naptime because these activities are redundant as they are already required by §746.3301 and §746.2901, respectively. |
| §746.2801 | Repeal | The content of this rule is being incorporated into §746.2803. |
| §746.2803 | Amend | Incorporates the content from repealed §746.2801. |
| §746.2805 | Amend | Clarifies that prohibited discipline includes:   * Placing a child in a dark room, whether the door is closed or not; and * Requiring a child to remain in a restrictive device. |
| §746.2809 | Repeal | The contents of this rule are being incorporated into other rules as follows:   * Incorporates subsection (a) into §746.501(7); * Deletes subsection (b) and most of (c) because they are redundant as they are already required by §746.503 and §746.507; and * Incorporates the portion of subsection (c) relating to separate documents into §746.503. |
| §746.2813 | Repeal | The requirement that parents be given a copy of any updated discipline and guidance policy is already required at §746.505, where parents must be notified of all changes to the operational policies. |
| §746.2905 | Amend | Clarifies that children must not be confined in a restrictive device to make the child rest or sleep. |
| §746.2911 | Amend | Clarifies that lowering the lighting in a room requires enough lighting that a person's eyes do not need to adjust for the person to be able to see upon entering the room. |
| §746.3005 | Repeal | This information only references the subchapter regarding ratios and group sizes. Since it provides no additional information, it is not necessary. |
| §746.3117 | Amend | The amendment relates to caregivers in a get-well care program, and:   * Clarifies that these required trainings are in addition to other training requirements; * Makes the language of paragraph (2) consistent with the language of §746.3119(4); and * Updates the total annual training hours required from 20 to 29 hours. This requirement changed in September of 2011, but was never updated in this rule. |
| §746.3119 | Amend | The amendment updates the total annual training hours required for a director of a get-well program from 30 to 40 hours. This requirement changed in September of 2011, but was never updated in this rule. |
| §746.3123 | Amend | Clarifies that these get-well care program requirements are in addition to those that are required throughout the rest of the chapter. |
| §746.3201 | Amend | Deletes the requirement to notify Licensing before offering nighttime care, which is being incorporated into §746.301(7). |
| §746.3203 | Amend | Deletes the statement that a center needs a residential child-care license to exceed the nighttime care limits because this chapter only relates to child-care centers, not residential licensing. |
| §746.3309 | Amend | Deletes "meals" from subsection (d) because parents must not be providing meals for other children. |
| §746.3313 | Amend | Deletes the information relating to posting menus and keeping the menus because it is already required by §746.401(5) and §746.803. However, because of the deletion the question and the rule had to be modified to clarify the remaining issues regarding substituting and rotating menus. |
| §746.3401 | Amend | Makes the term "local sanitation official" consistent throughout the chapter. |
| §746.3405 | Amend | Clarifies the language of the rule for better readability and ease of understanding. |
| §746.3409 | Repeal | The definition for "sanitizing" is being incorporated into the new definition for "sanitize" at §746.123. |
| §746.3411 | Repeal | The definition for "disinfecting solution" is being incorporated into the new definition for "sanitize" at §746.123. |
| §746.3415 | Amend | Clarifies that employees must wash their hands after removing gloves. |
| §746.3419 | Amend | Deletes the statement that pre-moistened towelettes, wipes, and waterless hand cleaners are not a substitute for running water. However, a statement will be added to the Helpful Information box for that the use of hand sanitizers does not substitute for hand washing in the group care setting. |
|  | New §746.3420 | Clarifies that hand sanitizer may be used as a substitute for washing hands under certain conditions:   * Not used for visibly dirty hands; * Only used on children 24 months and older; * Stored out of the reach of children; * Follow the labeling instructions; and * Used only with adult supervision. |
| §746.3421 | Amend | Clarifies the rule by replacing the term "child" with "infant". |
| §746.3501 | Amend | Clarifies that powders may be used for diaper changing without obtaining a parent's written permission. |
| §746.3503 | Amend | Clarifies that to prevent a child from falling from a diaper changing surface that is above the floor level the caregiver's hand must remain on the child "or the caregiver must be facing the child" at all times. |
| §746.3601 | Amend | Updates the language of the rule by deleting the use of rectal temperatures and adding the use of tympanic (ear) temperatures; and also clarifies some of the language of the rule for easier readability. |
|  | New §746.3606 | Clarifies that an ill child may return to the child-care center when:   * The child is free of illness symptoms for 24 hours; or * There is a health-care professional's statement that the child no longer has the excludable disease or condition. |
| §746.3607 | Amend | The order of a caregiver's response to a critical illness or injury has been modified. |
| §746.3701 | Amend | Requires televisions to be anchored, so they cannot tip over. |
| §746.3703 | Amend | Bans the use of e-cigarettes and any type of vapors. |
| §746.3707 | Amend | Adds commissioned security officers as persons who may carry a firearm on the premises of a child-care center; and changes the colloquial term of "law enforcement official" to "peace officer", which is defined at §2.12, Code of Criminal Procedure. |
| §746.3709 | Amend | Clarifies the language of the rule for better readability and ease of understanding. |
| §746.3801 | Amend | Clarifies that insect repellant is not a non-prescription medication. |
| §746.3901 | Amend | Clarifies that the requirements for animals also applies to field trips. |
| §746.4207 | Amend | Simplifies the exemptions to the indoor activity space requirements. |
| §746.4213 | Amend | Incorporates the definition for "single-use areas" because it is not used in any other rule in this chapter. |
| §746.4501 | Amend | Clarifies that manufacturer requirements for safety straps on chairs must be fastened whenever a child is using the chair. |
| §746.4503 | Amend | This amendment:   * Clarifies that a center may require a parent to provide the cot or mat for the child; * Deletes:   + The individual crib requirement because it is already required at §746.2405; and   + The naptime requirements because they are already required at §746.2901; and * Modifies the wording of the rule for better readability and ease of understanding. |
| §746.4507 | Amend | Deletes an outdated reference to coin operated pay phones. |
| §746.4601 | Amend | Clarifies that active play equipment must be used according to the manufacturer's instructions. |
| §746.4607 | Repeal and New | The new rule:   * Incorporates the language of this repealed rule and creates a chart to clarify the maximum height of the highest designated play surface for better readability and ease of understanding; and * Adds a new option for the maximum height of the highest designated play surface to be consistent with the manufacturer's guidelines and the ASTM International Standards. |
| §746.4609 | Amend | Deletes outdated grandfather clauses. |
| §746.4907 | Amend | Deletes an outdated grandfather clause. |
| §746.4971 | Amend | Clarifies that inflatables must be used according to manufacturer's instructions. |
| §746.5009 | Repeal | Deletes the clarification rule that a fence does not relieve caregivers of supervision requirements because this is already clear at §746.1203(4) and §746.1205. |
| §746.5015 | Amend | Clarifies that:   * Children must not be left alone with sprinkler equipment; and * The splash pad/sprinkler play area must be maintained according to manufacturer's instructions. |
| §746.5105 | Amend | Clarifies the language of the rule for better readability and ease of understanding. |
| §746.5305 | Amend | Clarifies that the manufacturer's instructions for mounting a fire extinguisher must be followed. |
| §746.5607 | Amend | Clarifies the term "child passenger safety seat system"; and restructures the rule for better readability and ease of understanding. |
| §746.5621 | Amend | Deleted an outdated reference to message pagers. |

## STATUTORY AUTHORITY AND STATUTES AFFECTED

The modification is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provides 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 Department of 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 modifications implement §42.042.

## FISCAL IMPLICATIONS

(a) Fiscal Impact. For each of the first five years that the rules will be in effect there will not be costs or revenues to state or local government as a result of enforcing or administering this section.

(b) Public Costs and Benefits. 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 (1) there will be clarification of the Minimum Standards for Child-Care Centers resulting in more compliance; (2) DFPS will be in compliance with HRC §42.042(b); and (3) there will be reduced risk to children*.* Other than the cost to an owner of a child-care center as noted in (c) below, there is no anticipated economic cost to individual persons who are required to comply with the proposed sections.

(c) Impact on Business. The only anticipated adverse impact on small or micro businesses is as a result of the proposed rule change to §746.501. The proposed change will impact licensed child-care centers that meet the definition of a small and micro-business. According to the DFPS FY 2015 Annual Report and Data Book as of August 31, 2015 there were 7,888 licensed child-care centers in Texas.

Chapter 2006 of the Government Code defines a small business as one that is for-profit, independently owned, and has fewer than 100 employees or less than six million dollars in annual gross receipts. A small business that has no more than 20 employees is also defined as a micro-business. Based on a 2010 survey conducted by CCL, of the 7,888 centers it is estimated that 55% (or 4,338) are for profit businesses. Of those 4,338 centers, it is estimated that 98% (or 4,251) have fewer than 100 employees. Of the 4,338 centers, it is estimated that 68% (or 2,950) have fewer than 20 employees. So it is estimated that 4,251 child-care centers are small business, and 2,950 child-care centers are micro-businesses.

Licensing staff developed the methodologies used to calculate the fiscal impact of these rules. The impacts were calculated using cost research conducted by staff and assumptions regarding child-care practices. The key assumptions and methodologies are described in detail below, as these underlie the individual impact calculations for the rule that is projected to have a fiscal impact.

For Licensed Child-Care Centers, the staff time required to comply with the standards will impact Directors. For use in this impact analysis, DFPS will use the following mean wages that were obtained from the Texas Workforce Commission's website for Occupational Wages based on 2014 estimates: For all Directors, DFPS is using a $25.57 per hour mean wage from the Occupational Title of Education Administrator, Preschool and Childcare Center.

**Fiscal Impact for Proposed §746.501:** This section adds three new operational policies that must be developed: suspension and expulsion of children; safe sleep for infants 12 months and younger; and procedures for providing and applying insect repellent and sunscreen. The fiscal impact to these centers results from staff time to develop policy regarding these three topics. It is anticipated, after discussing this issue with the temporary workgroup, that a Director, or curriculum developer that is similarly paid, will spend an average of two to four hours developing these three operational policies. Therefore, the approximate one-time cost for the development of these three operational policies is between $51.14 (2 hours X $25.57) and $102.28 (4 hours X $25.57).

The other recommended rule changes should not affect the cost of doing business; does not impose new requirements on any business; and does not require the purchase of any new equipment or any increased staff time in order to comply.

**Regulatory Flexible Analysis:** As previously noted, of the 7,888 child-care centers, it is estimated that 4,251 of them are small business, and 2,950 of them are micro-businesses. The projected fiscal impact on small and micro-businesses for §746.501 is addressed in the foregoing section. DFPS did consider not requiring each of the new operational policies, but ultimately decided that the one-time cost is appropriately small and merited the changes. These new operational policies will ensure the health and safety of children and prevent the inappropriate removal of children from child-care centers.

(d) Local Employment Impact and Takings Statements. The agency is not required to complete a takings impact assessment regarding the proposed section(s).

(e) Technology Impact. There is no anticipated impact on technology as a result of the proposed rule change.

## STAKEHOLDER INPUT

As noted in more detail in the Background and Purpose, the comprehensive review has included a:

* Web-based survey that was available for submission of comments from August - December 2014;
* Series of 31 forums to solicit additional input were held between September - November 2015; and
* Temporary workgroup comprised of providers, advocates, a parent, and CCL and TWC staff that met on April 5 and May 16 of 2016.

## RECOMMENDATION

It is recommended that the Council consider the proposed rule action, as discussed in this memorandum, and that the Council recommend proposal, with or without changes to the rules as they are attached to this memo.

## ATTACHMENTS

Attached is a copy of the proposed change to the rule section as staff recommended for submittal to the *Texas Register*.