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

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| TO: | **Chair and Members Department of Family and Protective Services Council** | agencyseal |
| FROM: | **H. L. Whitman, Jr.**  **DFPS Commissioner** |
| SUBJECT: | **Agenda Item 6a: Recommendation to adopt rule changes in 40 TAC 744 Minimum Standards for School-Age and Before- and After-School Programs, 745 Licensing, 746 Minimum Standards for Child Care Centers, and 747 Minimum Standards for Child-Care Homes, relating to health and safety requirements, training on the health and safety requirements, and background checks** |
| DATE: | **July 22, 2016** |

BACKGROUND AND PURPOSE

The Child Care Licensing (CCL) Division is recommending the adoption of repeals, amendments, and new rules in Chapter 744, Minimum Standards for School-Age and Before- and After-School Programs, Chapter 745, Licensing, Chapter 746, Minimum Standards for Child-Care Centers, and Chapter 747 Minimum Standards for Child Care Homes, to implement needed changes to comply with the Child Care and Development Block Grant Act of 2014 and Senate Bill 1496, 84th Regular Legislative Session.

The Child Care and Development Block Grant (CCDBG) Act of 2014 (the "Act") is the first comprehensive revision of the Child Care and Development Fund (CCDF) program since 1998. (The CCDF is codified in 42 USC §9857 et seq.) The Texas Workforce Commission (TWC) administers the CCDF, which is the primary federal funding source devoted to providing low-income families with access to child care. The Act makes significant reforms to the CCDF programs to raise the health, safety, and quality of child care. The Act does this by mandating that states comply with a multitude of additional requirements in order to continue receiving the CCDF funding. Although TWC is the lead agency for determining eligibility and distributing the subsidy monies, the Department of Family and Protective Services (DFPS) is the agency responsible for licensing child care operations, establishing health and safety regulations, and monitoring eligible operations for compliance. Many of the Act's additional requirements relate to the responsibilities of DFPS.

The provisions of the Act that have a significant impact on the Child Care Licensing (CCL) relate to the following topics: health and safety requirements, training on the health and safety requirements, and background checks.

The changes related to training will impact Licensed Child Care Centers (LCCCs), Before-School and After-School Programs (BAPs and SAPs), Licensed Child Care Homes (LCCHs), and Registered Child Care Homes (RCCHs). The new health and safety training requirements mandated by the Act include the following topics for orientation and annual training for all four types of operations:

* More robust emergency preparedness plans;
* Administering medication;
* Food allergies;
* Building and physical premises safety;
* Handling, storing, and disposing of hazardous materials; and
* Precautions in transporting children if the operation transports a child whose chronological or developmental age is younger than nine years old.

There were also some topics required by the Act that are already required in annual training, but are not currently required in the orientation for LCCHs and RCCHs. The new and additional health and safety training requirements for LCCHs and RCCHs are:

* Recognizing and preventing shaken baby syndrome;
* Safe sleep practices;
* Understanding early childhood brain development; and
* Precautions in transporting children if the home transports a child whose chronological or developmental age is younger than nine years old.

In addition to the training requirements the Act increases health and safety requirements for all four types of operations. The health and safety requirements correlate to some of the training topics, including requiring operations to:

* Obtain food allergy emergency plans for children with known food allergies, post a list of food allergies at the operation, and carry the child's emergency plan on field trips; and
* Use, store, and dispose of hazardous materials as recommended by the manufacturer.

With respect to background checks, Senate Bill (S.B.) 1496, 84th Regular Legislative Session, amended HRC §§42.0523 and 42.056 in order to comply with the Act's requirements. A summary of the background check changes in response to the Act and S.B. 1496 include:

* Requiring Listed Family Homes that provide care to unrelated children to pay biennial background check fees of $ 2.00 per person; and
* Requiring Licensed Child Care Homes, Registered Child Care Homes, and Listed Family Homes that provide care to unrelated children to request fingerprint-based criminal history checks (these homes were previously only required to request name-based criminal history checks). There is also a transitional rule which clarifies which persons are required to have a fingerprint-based criminal history check and when the request for the checks are due.

A temporary workgroup comprised of 15 participants, including providers from child-care centers, a provider from a school-age and before- or after-school program, a parent, representatives from Licensing, and a representative from the Texas Workforce Commission met twice on April 5, 2016 and May 16, 2016 to review and provide comments on these rule recommendations. While both workgroup meetings were prior to publication of the rules in the *Texas Register*, the rule process was too far along to modify the rules before publication. However, the comments from the workgroup have been treated as comments made during the public comment period.

STATUTORY AUTHORITY AND STATUTES AFFECTED

The new section is adopted 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 DFPS; and HRC §40.021, which provides that the DFPS 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 DFPS.

The modifications implement HRC §§42.042, 42.0421, 42.0523, and 42.056 and portions of the Child Care and Development Block Grant of 2014, which is codified at 42 USC §9857 et seq.

COMMENTS AND RESPONSES

The proposed rules were published in the Texas Register on May 20, 2016*.* DFPS received approximately 31 comments regarding 41 rule changes. Many of the rule changes are intertwined with the same or similar topics. For example, while the comments touched upon 41 different rules, the rules only related to 12 different topics. Most of the comments were from centers and related to Chapter 746, though the responses were fairly varied in relation to the topics. The workgroup also provided quite a few comments to several rules and usually several comments per rule. Most of the comments from home providers were related to the cost of background checks. Responses to comments are noted below.

| **Section Affected and Original Proposal** | **Summary of Commenter’s Concern** | **Department Response and Rationale** |
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| §744.401 - Adds to the posting requirements a list of each child's food allergies with the parent's permission. | See comments for §744.403 and §744.2669. | DFPS agrees with the commenters and rewrote the rule to clarify that:   * The list only includes those food allergies that require an emergency plan; and * Deletes the parent's permission requirement, but allows a parent to request that the posting protect the privacy of their child - see §744.403. |
| §744.403 - Clarifies that the list of each child's food allergies must be posted with the parent's permission where food is prepared and served and in each room where the child may spend time. | The workgroup had several comments about this rule:   * What constitutes permission? * Not posting would not be safe for the children. * Would an opt out clause work? * How does a program post the list? * How discreet should the posting be? * Posting where food is "served" might be confusing. | DFPS agrees with the commenters and rewrote the rule to simplify it and clarify that:   * The list must be posted where the program prepares food and in each room where the child may spend time; * The posting must be in a place easily viewed by employees; * If requested by the parent, the program must maintain the child's privacy (for example, a clipboard hung on the wall with a cover sheet over the list); and * The program must make sure that all caregivers and employees that prepare and serve food are made aware of each child's food allergies. |
| §744.605 - Adds to the admission information that must be obtained to include a completed food allergy emergency plan and a parent's permission to post it, if applicable. | See comments for §744.403 | DFPS agrees with the commenters and deleted the parent's permission requirement, but allows a parent to request that the posting protect the privacy of their child - see §744.403. |
| §744.1303 - The proposed changes to the rule are not relevant to the particular comment. | The workgroup that met on 4/5/16 recommended moving six newly proposed pre-service training topics in §744.1305 to this orientation rule. It was felt that this information needed to be provided at orientation instead of pre-service training. | DFPS agrees with the commenter and has moved the six topics from §744.1305 to this rule.  Even though there was no comment on the issue, DFPS is also deleting the word "internal" from "procedures for reporting child abuse or neglect" at §744.1303(a)(3)(C) to eliminate any confusion that a program may create internal policies to limit or delegate reporting. |
| §744.1305 - The proposed change adds six topics that must be covered in the pre-service training for caregivers hired after 9/1/16. | The workgroup that met on 4/5/16 recommended moving these six newly proposed pre-service training topics to §744.1303, the orientation rule. It was felt that this information needed to be provided at orientation instead of pre-service training. | DFPS agrees with the commenter and has moved the six topics from this rule to §744.1303. |
| §744.1309 - The changes to this rule addsd six topics that must be covered in the annual training for caregivers; and increases from 50% to 80% the amount of annual training that may be obtained through self-instructional training. | No comments. | This rule increases from 50% to 80% the amount of annual training hours that may be obtained through self-instructional training. Based on the comments that were made in a similar rule in Chapter 746 (§746.1309), DFPS is clarifying that no more than three hours of the self-instructional training hours may come from a person reading written materials or watching a video on their own. |
| §744.1311 - The changes to this rule adds six topics that must be covered in the annual training for operation and program directors; and increases from 50% to 80% the amount of annual training that may be obtained through self-instructional training. | No comments. | This rule increases from 50% to 80% the amount of annual training hours that may be obtained through self-instructional training. Based on the comments that were made in a similar rule in Chapter 746 (§746.1309), DFPS is clarifying that no more than three hours of the self-instructional training hours may come from a person reading written materials or watching a video on their own. |
| §744.2301 - Adds a requirement that caregivers must have a copy of the child's food allergy emergency plan and medications when going on a field trip. | No Comment. | Though there were no comments, DFPS determined that the outdated term "message pager" needed to be deleted from paragraph (8). |
| §744.2523 - This change clarifies in more detail what the CDC universal precautions entail, including placing gloves in a sealed plastic bag and discarding them immediately. | The workgroup commented that they wanted further clarification on what "sealed" meant. | DFPS agrees with the commenter and has clarified the term "sealed". |
| §744.2669 - This new rule requires a food allergy emergency plan for each child with a known food allergy. The plan must be signed and dated by the child's parent and health-care professional, kept in the child's file, posted, and carried on field trips. | One commenter applauded the new emphasis on food allergies.  There were two commenters who suggested clarifying that a food allergy emergency plan should only apply to an allergy diagnosed from a doctor; otherwise, parents could state a child has an undiagnosed allergy. | DFPS agrees with the commenter and has clarified that the food allergy must have been diagnosed by a health-care professional.  DFPS also deleted language requiring the plan to be posted and to be taken on field trips, because these requirements are already included at §744.401 and §744.2301. |
| §744.3551 - The change clarifies the emergency preparedness plan by distinguishing between an evacuation, relocation, and sheltering. | A comment at the DFPS Council Meeting suggested that adding "lock-down" to "sheltering" would clarify the term. | DFPS agrees with the commenter and has changed the term "sheltering" to "sheltering/lock-down". |
| §744.3553 - The change adds to the requirements of an emergency preparedness plan to also include staff responsibility in a sheltering emergency. | No comment. | Based on the comment to §744.3551, DFPS has changed the term "sheltering" to "sheltering/lock-down". |
| §744.3559 - The change adds the sheltering language for clarification. | The workgroup commented that it would be helpful to distinguish between sheltering for weather and dangerous persons, and adding drills for dangerous persons. | DFPS agrees with the commenter and has distinguished between "sheltering" for weather situations and "lock-down" for dangerous persons; and is requiring four drills for each, every year. |
| §745.615 - This change requires Licensed Child-Care Homes, Registered Child-Care Homes, and Listed Family Homes that provide care to unrelated children to request fingerprint-based criminal history checks on family members living in the home. Previously, these homes only had to have name-based criminal history checks unless they lived outside of the state in the last five years. | There was one comment that was in favor of fingerprint-based background checks for all types of care; and two comments that were not clear.  Six commenters were against the fingerprint-based background checks because of the financial burden (primarily a one-time cost of approximately $41.25 per person in the home that needs the check). Suggestions were made for the state to pay these costs, exclude those living in Texas for more than 5 years, and exclude those in business for over 10 years. | DFPS recommends that this rule be adopted with no changes, because this requirement is needed to comply with the CCDBG Act of 2014 and is mandated by Senate Bill 1496, 84th Regular Legislative Session, which amended Human Resources Code §§42.0523 and 42.056. |
| §746.401 - Adds to the posting requirements a list of each child's food allergies with the parent's permission. | See comments for §746.403 and §746.3819. | DFPS agrees with the commenters and rewrote the rule to clarify that:   * The list only includes those food allergies that require an emergency plan; and * Deletes the parent's permission requirement, but allows a parent to request that the posting protect the privacy of their child - see §746.403. |
| §746.403 - Clarifies that the list of each child's food allergies must be posted with the parent's permission where food is prepared and served and in each room where the child may spend time. | The workgroup had several comments about this rule:   * What constitutes permission? * Not posting would not be safe for the children. * Would an opt out clause work? * How does a center post the list? * How discreet should the posting be? * Posting where food is "served" might be confusing. | DFPS agrees with the commenters and rewrote the rule to simplify it and clarify that:   * The list must be posted where the center prepares food and in each room where the child may spend time; * The posting must be in a place easily viewed by employees; * If requested by the parent, the center must maintain the child's privacy (for example, a clipboard hung on the wall with a cover sheet over the list); and * The center must make sure that all caregivers and employees that prepare and serve food are made aware of each child's food allergies. |
| §746.605 - Adds to the admission information that must be obtained to include a completed food allergy emergency plan and a parent's permission to post it, if applicable. | See comments for §746.403 | DFPS agrees with the commenters and deletes the parent's permission requirement, but allows a parent to request that the posting protect the privacy of their child - see §746.403. |
| §746.1303 - The proposed changes to the rule are not relevant to the particular comment. | The workgroup that met on 4/5/16 recommended moving the newly proposed six pre-service training topics in §746.1305 to this orientation rule. It was felt that this information needed to be provided at orientation instead of pre-service training. | DFPS agrees with the commenter and has moved the six topics from §746.1305 to this orientation rule.  Even though there was no comment on the issue, DFPS is also deleting the word "internal" from "procedures for reporting child abuse or neglect" at §746.1303(a)(3)(C) to eliminate any confusion that centers may create internal policies to limit or delegate reporting. |
| §746.1305 - The proposed change adds six topics that must be covered in the pre-service training for caregivers hired after 9/1/16. | The workgroup that met on 4/5/16 recommended moving these newly proposed six pre-service training topics to §746.1303, the orientation rule. It was felt that this information needed to be provided at orientation instead of pre-service training. | DFPS agrees with the commenter and has moved the six topics from this rule to §746.1303. |
| §746.1307 - The change clarifies what types of training may exempt a caregiver from pre-service training. | There was one commenter that did not believe anyone should be exempt from training. | DFPS recommends that this rule be adopted with no changes.  There are limited exemptions from pre-service training (two years prior experience or 24 hours of documented training). With the clarification, the exemptions are more appropriate. In addition, a center may require more training and does not have to allow exemptions of their employees. In other words, a center could require higher standards than these minimum standards. |
| §746.1309 - The changes to this rule adds six topics that must be covered in the annual training for caregivers; and increases from 50% to 80% the amount of annual training that may be obtained through self-instructional training. | Regarding allowing a 50% to 80% increase for self-instructional training, there were:   * Eight commenters (one of those commenters had an additional six co-signees) that were not in favor of this change because in their opinion the training registry may suffer; in person training promotes better understanding, is more effective, provides better guidance and practice; the small number of training hours and minimal education mandates a high quality and effective training; and self-instructional training (including individuals reading materials) is generally a lower quality of training; * One commenter was in favor of the change, but worried that the quality would not be high and it would be abused; and * One commenter was in favor of the change.   Cont. | During the survey and the forums of the comprehensive review, there were eleven requests for a higher percentage of self-instructional hours due to high turnover, time, and costs. There were two requests to mandate that 50% of the training be conducted by individuals on the Texas Trainer Registry. Note: Many of the trainers on the registry offer self-instructional, web-based training.  DFPS understands that some training may not be of the highest quality, but that is true for both instructor-led and self-instructional training. The Agri-Life training on the other hand, has been widely praised as very good training, even though it is self-instructional. Most, if not all, professions are allowing web-based training and not mandating in-person training. The problems appear to be: (1) how to make sure training of any kind is quality training; and (2) caregivers simply reading materials or watching videos on their own have limited, value especially for newer caregivers.  The 50% to 80% change was made to the child-care home minimum standards in 2012 with no noticeable increase in complaints regarding quality of training.  DFPS is recommending an increase of 50% to 80% for the amount of annual training hours that may be obtained through self-instructional training, but making the following changes:  Cont. |
| §746.1309 - Cont. | There was one comment that stated 24 hours of annual training was too low.  There were two similar comments that wanted clarification on whether (1) this rule is requiring more or less training, but the commenter did say that the training seemed reasonable; and (2) the 24 hours of annual training was in addition to the 24 hours of pre-service training that is required. | * No more than three hours of the self-instructional training hours may come from a person reading written materials or watching a video on their own; and * During the comprehensive review of Chapter 746 there will be further clarification that directors must ensure that caregivers receive appropriate and quality training.   The 24 hours of annual training is mandated by statute and cannot be changed.  The change to this rule does not require additional hours of training, but does require additional curriculum topics to be covered within the current number of annual training hours. Also, §746.1313 already clarifies that in addition to the pre-service training, the 24 hours of annual training must be obtained within the first 12 months from the date of employment.  Even though there were no comments on the issue, DFPS is also deleting the word "internal" from "procedures for reporting child abuse or neglect" at §746.1309(d)(3) to eliminate any confusion that a center may create internal policies to limit or delegate reporting. |
| §746.1311 - The changes to this rule adds six topics that must be covered in the annual training for a director; and increases from 50% to 80% the amount of annual training that may be obtained through self-instructional training. | See Comments from §746.1309 regarding allowing a 50% to 80% increase for self-instructional training. | Based on the comments and responses that were made to §746.1309, DFPS is recommending an increase of 50% to 80% for the amount of annual training hours that may be obtained through self-instructional training, no more than three hours of the self-instructional training hours may come from a person reading written materials or watching a video on their own.  Though there was no comment, DFPS is deleting the word "internal" before "procedures for reporting child abuse or neglect" at §746.1311(d)(3) to eliminate any confusion that a center may create internal policies to limit or delegate reporting. |
| §746.3001 - Adds a requirement that caregivers must have a copy of the child's food allergy emergency plan and medications when going on a field trip. | No Comment. | Though there were no comments, DFPS determined that the outdated term "message pager" needed to be deleted from paragraph (8). |
| §746.3425 - This change clarifies that caregivers must follow the CDC universal precautions when handling bodily fluids, including placing gloves in a sealed plastic bag and discarding them immediately. | The workgroup commented that they wanted further clarification on what "sealed" meant. | DFPS agrees with the commenter and has clarified the term "sealed". |
| §746.3819 - This new rule requires a food allergy emergency plan for each child with a known food allergy. The plan must be signed and dated by the child's parent and health-care professional, kept in the child's file, posted, and carried on field trips. | One commenter applauded the new emphasis on food allergies.  There were two commenters who suggested clarifying that a food allergy emergency plan should only apply to an allergy diagnosed from a doctor; otherwise, parents could state a child has an undiagnosed allergy. | DFPS agrees with the commenters and has clarified that the food allergy must have been diagnosed by a health-care professional.  DFPS also deleted language requiring the plan to be posted and to be taken on field trips, because these requirements are already included at §746.401 and §746.3001. |
| §746.5201 - The change clarifies the emergency preparedness plan by distinguishing between an evacuation, relocation, and sheltering. | A comment at the DFPS Council Meeting suggested that adding "lock-down" to "sheltering" would clarify the term. | DFPS agrees with the commenter and has changed the term "sheltering" to "sheltering/lock-down". |
| §746.5202 - The change adds to the requirements of an emergency preparedness plan to also include staff responsibility in a sheltering emergency. | One commenter supported the change to emergency preparedness plan and looking at active shooter scenarios.  One commenter asked if car seats were required for relocation, because the costs and storage would be difficult, and they don't have buses. The commenter wanted the rule to be more specific. | Based on the comment to §746.5201 DFPS has changed the term "sheltering" to "sheltering/lock-down".  But DFPS does not believe it would be beneficial to make this rule more specific. Because centers have varying capacity and are located in both urban and rural counties, it is important that centers have flexibility in establishing the emergency preparedness plans. For relocation, the important thing is to have a plan that is worked out in advance for how to relocate the children safely in an emergency. A center does not have to have a bus, just a plan on how the relocation will happen. |
| §746.5205 - The change adds the sheltering language for clarification. | The workgroup commented that it would be helpful to distinguish between sheltering for weather and dangerous persons, and adding drills for dangerous persons. | DFPS agrees with the commenter and has distinguished between "sheltering" for weather situations and "lock-down" for dangerous persons; and is requiring four drills for each, every year. |
| §747.401 - Adds to the posting requirements a list of each child's food allergies with the parent's permission. | One commenter thanked DFPS for addressing food allergies and said she has seen excellent methods of posting food allergies. | Based on the comments to a similar rule in Chapter 746 (§746.403) and the fact that Licensed and Registered Homes have substantially less employees and are smaller in size, DFPS is clarifying that:   * The list only includes those food allergies that require an emergency plan; * Deletes the parent's permission requirement; and * The home must either post the list in a prominent place during all hours of the operation, but if a parent requests it the home must maintain the child's privacy (for example, a clipboard hung on the wall with a cover sheet over it); or make sure that all caregivers and employees that prepare and serve food are made aware of each child's food allergies. |
| §747.605 - Adds to the admission information that must be obtained to include a completed food allergy emergency plan and a parent's permission to post it, if applicable. | No comment. | Based on the comments to a similar rule in Chapter 746 (§746.403), DFPS is deleting the parent's permission requirement, but §747.401 allows a parent to request that the operation protect the privacy of their child. |
| §747.1007 - The proposed change requires an additional qualification for a primary caregiver of a *registered* child-care home to include proof of training on the new topics. | The commenter stated that caregivers need more than a high school diploma. | DFPS recommends that this rule be adopted with no changes.  DFPS was not recommending changes to the high school diploma requirements, but adding federal mandated training requirements. DFPS is recommending no changes because:   * This change is adding mandated training requirements; * Current rules allow for a student in a child-care-related career program to develop on the job skills in the center with teacher oversight and instruction. To require higher than a high school diploma would eliminate this program, which is able to provide enhanced training and develop long term staff; * There are required hours of annual training for all caregivers to further staff development; and * Increased education will require a significant increase in costs for providers, and ultimately the parents.   Note: The commenter may have also been commenting on Chapters 744 and/or 746. But the rules related to diploma requirements in those chapters were not proposed nor are they open for public comment. |
| §747.1107- The proposed change requires an additional qualification for a primary caregiver of a *licensed* child-care home to include proof of training on the new topics. | The commenter stated that caregivers need more than a high school diploma. | DFPS recommends that this rule be adopted with no changes.  DFPS was not recommending changes to the high school diploma requirements, but adding federal mandated training requirements. DFPS is recommending no changes because:   * This change is adding mandated training requirements; * Current rules allow for a student in a child-care-related career program to develop on the job skills in the center with teacher oversight and instruction. To require higher than a high school diploma would eliminate this program, which is able to provide enhanced training and develop long term staff; * There are required hours of annual training for all caregivers to further staff development; and * Increased education will require a significant increase in costs for providers, and ultimately the parents.   Note: The commenter may have also been commenting on Chapters 744 and/or 746. But the rules related to diploma requirements in those chapters were not proposed nor are they open for public comment. |
| §747.1301(3)(C) - Adds components that must be addressed in the overview of prevention, recognition, and reporting of child abuse and neglect. | No Comment. | Even though there were no comments on the issue, DFPS is deleting the word "internal" from "procedures for reporting child abuse or neglect" at §747.1301(3)(C) to eliminate any confusion that a home may create internal policies to limit or delegate reporting. |
| §747.1401 - The changes update some outdated cites and clarifies the language of the rule. | One commenter stated "physician" should be changed to "health-care professional" to be more inclusive of advanced practice nurses. | DFPS agrees with the commenter and has made this change. |
| §747.2901 - Adds a requirement that caregivers must have a copy of the child's food allergy emergency plan and medications when going on a field trip. | No Comment. | Though there were no comments, DFPS determined that the outdated term "message pager" needed to be deleted from paragraph (8). |
| §747.3221 - This change clarifies that caregivers must follow the CDC universal precautions when handling bodily fluids, including placing gloves in a sealed plastic bag and discarding them immediately. | The workgroup commented that they wanted further clarification on what "sealed" meant. | DFPS agrees with the commenter and has clarified the term "sealed". |
| §747.3307 - This change clarifies that soiled clothes must be placed in a sealed plastic bag and sent home with the child. | The workgroup commented that they wanted further clarification on what "sealed" meant.  Another commenter wanted to be able to wash soiled clothes to be more home/parent friendly. | DFPS agrees with the commenter and has clarified the term "sealed".  DFPS does not agree with washing soiled clothes because of the high possibility of infection and cross contamination. |
| §747.3619 - A new rule that requires a food allergy emergency plan for each child with a known food allergy. The plan must be signed and dated by the child's parent and health-care professional, kept in the child's file, posted, and carried on field trips. | No comment. | Based on the comments related to a similar rule in Chapter 746 (§746.3819), DFPS clarified that a child's food allergy must be diagnosed by a health-care professional.  DFPS also deleted language requiring the plan to be posted and to be taken on field trips, because these requirements are already included at §747.401 and §747.2901. |
| §747.5001 - The change clarifies the emergency preparedness plan by distinguishing between and evacuation, relocation, and sheltering. | A comment at the DFPS Council Meeting suggested that adding "lock-down" to "sheltering" would clarify the term. | DFPS agrees with the commenter and has changed the term "sheltering" to "sheltering/lock-down". |
| §747.5003 - The change adds to the requirements of an emergency preparedness plan to also include staff responsibility in a sheltering emergency. | No comment. | Based on the comment to §747.5001 DFPS has changed the term "sheltering" to "sheltering/lock-down". |
| §747.5005 - The change adds the sheltering language for clarification. | The workgroup commented that it would be helpful to distinguish between sheltering for weather and dangerous persons and adding drills for dangerous persons. | DFPS agrees with the commenter and has distinguished between "sheltering" for weather situations and "lock-down" for dangerous persons; and is requiring four drills for each, every year. |
| Not Applicable | There were eight commenters that provided comments on rules that were not proposed nor are they out for public comment:   * Six commenters stated they were in favor of lowering child/caregiver ratios; * One commenter stated discrimination language needed to be beefed up over 5 different chapters, and provided quite a few comments on Chapter 749; and * One commenter had no comments that were forwarded. | Since these comments were related to rules that were not out for public comment, DFPS cannot take any action. |

RECOMMENDATION

It is recommended that the Council recommend adoption of these rules, with or without changes, as they are attached to this memo.

SCHEDULE

| **Milestones (To Be Completed by CPI)** | **Dates** |
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| Proposed rules presented to the Council for recommendation to publish | April 22, 2016 |
| Approval to publish proposed rules received from HHSC | April 22, 2010 |
| Proposed rules published in the *Texas Register* | May 20, 2016 |
| Thirty-day comment period ends | June 20, 2016 |
| Rules presented to the Council for recommendation to adopt | July 22, 2016 |
| Approval to adopt rules received from HHSC |  |
| Adopted rules published in the *Texas Register* |  |
| Effective date |  |

ATTACHMENTS

Attached is a copy of the proposed adopted rules, as recommended for submittal to the *Texas Register*.