July 6, 2016

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§711.1, 711.5, 711.7, 711.11, 711.13, 711.17, 711.19, 711.21, 711.23, 711.201, 711.403, 711.419, 711.423, 711.603, 711.609, 711.611, 711.613, 711.801, and 711.802; the repeal of 711.3, 711.9, 711.15, 711.25, 711.401, 711.405, 711.407, 711.409, 711.411, 711.605, 711.607, 711.1001, 711.1002, 711.1003, 711.1005, 711.1007, 711.1009, 711.1011, 711.1012, 711.1013, 711.1015, 711.1201, 711.1203, 711.1205, 711.1207, and 711.1209; and new 711.3, 711.401, 711.405, 711.605, 711.804, 711.806, 711.901, 711.903, 711.905, 711.907, 711.909, 711.911, 711.913, and 711.915 in Chapter 711, concerning Investigations in Department of Aging and Disability Services (DADS) and Department of State Health Services (DSHS) Facilities and Related Programs. New §711.3 and amendment to §711.603 are adopted with changes to the proposed text published in the May 27, 2016, issue of the *Texas Register* (41 TexReg 3876). Amendments to §§711.1, 711.5, 711.7, 711.11, 711.13, 711.17, 711.19, 711.21, 711.23, 711.201, 711.403, 711.419, 711.423, 711.609, 711.611, 711.613, 711.801, and 711.802; the repeal of 711.3, 711.9, 711.15, 711.25, 711.401, 711.405, 711.407, 711.409, 711.411, 711.605, 711.607, 711.1001, 711.1002, 711.1003, 711.1005, 711.1007, 711.1009, 711.1011, 711.1012, 711.1013, 711.1015, 711.1201, 711.1203, 711.1205, 711.1207, and 711.1209; and new 711.401, 711.405, 711.605, 711.804, 711.806, 711.901, 711.903, 711.905, 711.907, 711.909, 711.911, 711.913, and 711.915 are adopted without changes to the proposed text and will not be republished.

The justification of the amendments, new rules, and repeals is to implement Senate Bills (SB) 760 and 1880, 84th Legislature (Adult Protection Services (APS) Scope and Jurisdiction Bills), which expanded the APS Provider (formally APS Facility) program's jurisdiction to investigate abuse, neglect, and exploitation. These bills ensure continued State of Texas compliance with the Center for Medicaid and Medicare Services (CMS) requirements for the health and welfare of recipients of home and community-based services (HCBS). The bills (1) expanded the authority of APS to investigate, inter alia, all home and community-based service providers whether providing services in a traditional or managed care service delivery model, (2) clarified and addressed the gaps and inconsistencies that resulted from evolving service delivery changes and changes in contracting arrangements, and (3) updated statutory language and requirements related to provider and agency responsibilities.

These amendments, new rules, and repeals implement APS's expanded jurisdiction and modify existing rules to reflect such expansion, as applicable. These rules will take effect on September 1, 2016. The updates in Chapter 711 will implement statutory changes as required by the APS Scope and Jurisdiction Bills.

A summary of the changes are as follows:

DFPS is changing the chapter title to Investigations of Individuals Receiving Services from Certain Providers: (1) conforms with the name used in the APS Scope and Jurisdiction Bills; and (2) reflects APS's expanded authority to investigate individuals receiving services from certain providers.

Amendments to §711.1: (1) updates the purpose to align the section with APS Scope and Jurisdiction Bills; and (2) describes APS's expanded investigatory authority

Section 711.3 is being repealed and new §711.3 updates terms and abbreviations to align with APS Scope and Jurisdiction bills and other clarifications made in this rule proposal including: direct provider, facility, home and community-based services, individual receiving services, limited service provider, non-serious physical injury, provider, serious physical injury, and service provider.

Amendment to §711.5: (1) updates and clarifies what APS investigates; (2) deletes provision on sexual exploitation as it is subsumed within the definition of sexual abuse; and (3) deletes the term "person served" and uses statutory term "individual receiving services" instead to define whom can be an alleged victim.

Amendments to §711.7: (1) updates and clarifies what APS does not investigate; (2) deletes confusing examples; (3) expands exclusion of investigating business or operational issues related to managed care or consumer directed services; and (4) expands exclusion of investigating clinical issues to all licensed professionals rather than just specific ones.

The repeal of §711.9 deletes guidance that will be written into policy as it was confusing and rarely applicable.

Amendment to §711.11: (1) updates and clarifies language to more appropriately align with APS Scope and Jurisdiction Bills; and (2) expands rule citations for restraints for new providers resulting from APS expanded authority.

Amendments to §711.13: (1) updates and clarifies language to more appropriately align with APS Scope and Jurisdiction Bills; and (2) updates the definition of sexual exploitation as part of sexual abuse definition in paragraph (a)(8).

The repeal of §711.15 moves the content of the rule into §711.13(a)(8) as part of the sexual abuse definition.

Amendment to §711.17 updates and clarifies language to more appropriately align with APS Scope and Jurisdiction Bills.

Amendments to §711.19 updates language to more appropriately align with APS Scope and Jurisdiction Bills, and clarifies confusing examples.

Amendments to §711.21: (1) updates and clarifies who is an alleged perpetrator of exploitation to align with APS Scope and Jurisdiction Bills; and (2) expands definition of exploitation to include attempted exploitation and theft in a home or community setting other than HCS and TxHml waiver programs.

Amendments to §711.23: (1) updates and clarifies language to more appropriately align with APS Scope and Jurisdiction Bills; (2) clarifies what is not considered abuse, neglect, or exploitation; and (3) expands rule citations for new providers resulting from APS expanded authority.

Section 711.25 is repealed because it expires September 1, 2016.

Amendments to §711.201: (1) clarifies reporting requirements; and (2) maintains one hour notification for facilities, community centers, local authorities, and HCS/TxHmL waiver programs.

Section 711.401 is repealed and new §711.401: (1) updates the notification chart of whom APS notifies following an intake of an allegation of abuse, neglect, or exploitation; and (2) updates the requirements for APS notification to providers, law enforcement, and the Office of Inspector General (OIG).

Amendment to §711.403 clarifies steps taken when a general complaint is received.

Section 711.405 is repealed and new §711.405 clarifies what action is taken if the alleged perpetrator is a licensed professional.

The repeal of §§711.407, 711.409 and 711.411 consolidates all affected rules into §711.405.

Amendment to §711.419 clarifies who is notified of investigation extensions.

Amendment to §711.423 updates terms related to unknown perpetrator and system issues.

Amendment to §711.603 clarifies what is included in the investigation report.

Section 711.605 is repealed and new §711.605 clarifies and updates who receives the investigation report.

The repeal of §711.607 moves the content of the rule §711.605.

Amendments to §711.609 and §711.611 updates and clarifies how the reporter and alleged victim, guardian, or parent are notified of the finding and how to appeal.

Amendment to §711.613 clarifies when the report can be released by the service provider.

Amendments to §711.801 and §711.802 clarifies: (1) what steps an investigator takes if an individual receiving services from an HCS waiver program provider requires emergency protective services; and (2) what steps an investigator takes if an individual receiving services from an ICF-IID provider requires emergency protective services.

New §711.804 and §711.806 identifies what steps an investigator takes if an individual, adult or child, living in an HCS waiver provider home but not receiving HCS waiver services requires emergency protective services.

New Subchapter J, Appealing the Investigation Finding, provides rules for appealing the investigation finding.

New §711.901 defines and describes an appeal of the investigation finding.

New §711.903 clarifies how an appeal of the investigation finding affects an act of reportable conduct.

New §711.905 clarifies who may request an appeal of the investigation finding.

New §711.907 describes how a qualified party requests an appeal of the investigation finding.

New §711.909 describes the timeline for an appeal of the investigation finding.

New §711.911 describes how and when an appeal of the investigation finding is conducted.

New §711.913 describes the process for the administrator of a state-operated facility to contest a decision of the APS Assistant Commissioner.

New §711.915 describes when a finding may be changed without an appeal of the investigation finding.

The repeal of Subchapter K consists of §§711.1001, 711.1002, 711.1003, 711.1005, 711.1007, 711.1009, 711.1011, 711.1012, 711.1013, 711.1015: the substance of this subchapter has been maintained but has been updated, consolidated, and clarified for APS's expanded authority in new Subchapter J.

The repeal of Subchapter M consists of §§711.1201, 711.12013, 711.1205, 711.1207, 711.1209: the substance of this subchapter has been maintained but has been updated, consolidated, and clarified for APS's expanded authority in new Subchapter J.

The sections will function by implementing DFPS's expanded authority to investigate abuse, neglect, and exploitation of individuals receiving services from certain providers.

During the public comment period, DFPS received comments from the Coalition for Nurses in Advanced Practice. A summary of the comments and DFPS’s response follows:

Comments concerning §711.3: The commenter suggests editorial changes including deleting the apostrophe in physician assistant and ensuring the terms are in alphabetical order.

Response: DFPS agrees with the commenter's suggestion and is adopting the section with the suggested editorial changes.

In addition, DFPS is adding "Human Resources Code" to a citation in §711.3(18), and adopting the section.

Comment concerning §711.603(8): The commenter suggested additions to the rule pertaining to what APS includes in the investigative report; in addition to including the physicians exam, the commenter proposed adding "other health care professional's" as well.

Response: DFPS agrees with the commenter's suggestion and is adopting the section with the suggested changes. Other health care professionals in addition to physicians document exam and treatment of abuse/neglect injuries and APS includes this documentation in its investigative report. This change reflects practice as well as corresponds with other rules proposed.