July 8, 2016

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§744.401, 744.403, 744.605, 744.901, 744.1303, 744.1305, 744.1307, 744.1309, 744.1311, 744.2301, 744.2401, 744.2507, 744.2523, 744.3551, 744.3553, 744.3559, and 744.3561; new §744.2667 and §744.2669; and repeal of §744.3555, in Chapter 744, concerning Minimum Standards for School-Age and Before or After-School Programs. The amendments to §§744.401, 744.403, 744.605, 744.1303, 744.1305, 744.1309, 744.1311, 744.2301, 744.2523, 744.3551, 744.3553, and 744.3559; and new §744.2669 are adopted with changes to the proposed text published in the May 20, 2016, issue of the *Texas Register* (41 TexReg 3651). The amendments to §§744.901, 744.1307, 744.2401, 744.2507, and 744.3561; new §744.2667; and the repeal of §744.3555 are adopted without changes to the proposed text and will not be republished.

The justification of the amendments, new rules, and repeal is to implement needed changes to comply with the Child Care and Development Block Grant Act of 2014.

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, 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 Child Care Licensing (CCL) and this chapter relate to the following topics: health and safety requirements and training on those requirements.

The changes related to training will impact School-Age and Before and After-School Programs (BAPs and SAPs). The new health and safety training requirements mandated by the Act include the following topics for orientation and annual training: (1) more robust emergency preparedness plans; (2) administering medication; (3) food allergies; (4) building and physical premises safety; (5) handling, storing, and disposing of hazardous materials; and (6) precautions in transporting children if the program 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 BAPs and SAPs. The health and safety requirements correlate to some of the training topics, including requiring operations to (1) 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 (2) use, store, and dispose of hazardous materials as recommended by the manufacturer.

The summary of the changes follows:

The amendments to §744.401: (1) adds a list of each child's food allergies that require an emergency plan; (2) updates the name of the *Parent Notification Poster*, and (3) makes other wording changes for consistency.

The amendments to §744.403: clarifies that for a list of each child's food allergies that require an emergency plan: (1) the program must post the list during all hours of operation where you prepare food and in each room where the child may spend time; (2) the posting must be in a place where employees may easily view the list; (3) if a parent requests it, the program must maintain the privacy of the child (for example, a clipboard hung on the wall with a cover sheet over the list); and (4) the program must make sure all caregivers and employees that prepare and serve food are made aware of each child's food allergies. The amendment also deletes the posting information about an emergency evacuation and relocation plan because it is duplicative.

The amendment to §744.605 adds a requirement for programs to obtain a completed food allergy emergency plan before admitting a child into care, if applicable.

The amendment to §744.901 updates a cite and makes the language consistent. The amendments to §744.1303: (1) adds six topics that must be covered in the orientation of employees hired after September 1, 2016; (2) clarifies the wording to be consistent with the current wording of the operational policies rule; (3) adds components that must be addressed in the overview of prevention, recognition, and reporting of child abuse and neglect; and (4) requires programs to share the emergency preparedness plan with all employees.

The amendment to §744.1305 updates the existing language for a current training topic.

The amendment to §744.1307 clarifies when a caregiver is exempt from pre-service training.

The amendments to §744.1309: (1) adds six topics that must be covered in the annual training of caregivers and site directors; (2) deletes a redundant paragraph about transportation safety training; and (3) increases from 50% to 80% the amount of annual training hours that may be obtained through self-instructional training, but no more than three hours of the self-instructional training may come from a person reading written materials or watching a video on their own.

The amendments to §744.1311: (1) adds six topics that must be covered in the annual training of operation directors and program directors; (2) deletes a redundant paragraph about transportation safety training; and (3) increases from 50% to 80% the amount of annual training hours that may be obtained through self-instructional training, but no more than three hours of the self-instructional training may come from a person reading written materials or watching a video on their own.

The amendment to §744.2301: adds the requirement that caregivers must have a copy of a child's food allergy emergency plan and medications, if applicable, when going on field trips; and deletes and outdated term.

The amendments to §744.2401: (1) adds that children must not be served foods identified on their food allergy emergency plan; and (2) deletes the requirement "you must not use food as . . . punishment", because this requirement is already noted in §744.2105.

The amendment to §744.2507 requires a program to use, store, and dispose of hazardous materials as recommended by the manufacturer to ensure a healthy environment for children.

The amendment to §744.2523 clarifies in more detail what the universal precautions as outlined by the Centers for Disease Control (CDC) entail, including placing gloves contaminated with blood in a tied, sealed, or otherwise closed plastic bag and discarding them immediately.

New §744.2667 defines a food allergy emergency plan, including a list of foods a child is allergic too, possible symptoms, and what steps to take if there is an allergic reaction.

New §744.2669 requires: (1) a food allergy emergency plan for each child with a known food allergy that has been diagnosed by a health-care professional; and (2) the plan to be signed by the child's health care professional and a parent.

The amendment to §744.3551 clarifies in more detail what an emergency preparedness plan is by distinguishing between an evacuation, relocation, and sheltering/lock-down.

The amendments to §744.3553 adds to the requirements for an emergency preparedness plan to also include: (1) the staff responsibility in a sheltering/lock-down emergency for the orderly movement of children to a designated location within the operation where children should gather; (2) how staff will continue to care for children until each child has been released; and (3) how children will be reunified with their parents as the evacuation, relocation, or sheltering/lock-down is lifted.

The repeal of §744.3555 is because all of the information is already included in §744.1303(4) and §744.507.

The amendment to §744.3559: (1) requires four practice sheltering drills for severe weather each year; (2) requires four practice lock-down drills for endangering persons each year; and (3) adds the "sheltering" and "lock-down" language for clarification.

The amendment to §744.3561 clarifies the wording of an emergency evacuation and relocation diagram and where the diagram should be posted.

The sections will function so that: (1) DFPS will be in compliance with the Act; (2) there will be clarification regarding health and safety requirements and training on those requirements; and (3) there will be a reduced risk to children.

The proposed rules were published in the Texas Register on May 20, 2016. DFPS submitted rule changes for 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. DFPS received approximately 31 comments regarding 41 rule changes. Many of the rule changes are intertwined with the same or similar topics across the chapters. For example, while the comments touched upon 41 different rules, the rules only related to 12 different topics. We received comments from Better Beginnings Children's Center, The Ginger Bread House, Adventure Discovery Centers, First Church Preschool at First Christian Church, Flamingo Island Preschool, Adventure Discovery Centers, Camp Fire First Texas, Dallas AEYC, UTA, Eastfield College, Caring Corner, Kids Only, Copperfield Church Weekday Preschool, and Adventure Discovery Centers. Most of the comments were from centers and related to Chapter 746, though the responses were fairly varied in relation to the topics. There was also a workgroup that met on April 5 and May 16, 2016 to discuss the recommended changes to the minimum standards. While both workgroup meetings were prior to the 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. The workgroup commented on several rules. Most of the comments from home providers were related to the cost of background checks. Responses to comments are noted below.

Comments concerning §744.401: The workgroup had several comments and questions about this rule: (1) what constitutes permission; (2) not posting would not be safe for the children; (3) would an opt out clause work; (4) how does a program post the list; (5) how discreet should the posting be; and (6) posting where food is "served" might be confusing. 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.

Response: DFPS agrees with the commenters and rewrote the rule to clarify that: (1) the list only includes those food allergies that require an emergency plan; and (2) deletes the parent's permission requirement, but allows a parent to request that the posting protect the privacy of their child - see §744.403.

Comments concerning §744.403 and §744.605: The workgroup had several comments and questions about this rule: (1) what constitutes permission; (2) not posting would not be safe for the children; (3) would an opt out clause work; (4) how does a program post the list; (5) how discreet should the posting be; and (6) posting where food is "served" might be confusing.

Response concerning §744.403: DFPS agrees with the commenters and rewrote the rule to simplify it and clarify that: (1) the list must be posted where the program prepares food and in each room where the child may spend time; (2) the posting must be in a place easily viewed by employees; (3) 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 (4) the program must make sure that all caregivers and employees that prepare and serve food are made aware of each child's food allergies.

Response concerning §744.605: 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 §744.403.

Comment concerning §744.1303: 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.

Response: 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 deleing 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.

Comment concerning §744.1305: 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.

Response: DFPS agrees with the commenter and has moved the six topics from this rule to §744.1303.

No comments concerning §744.1309, however, DFPS is recommending a change. 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.

No comments concerning §744.1311, however, DFPS is recommending a change. 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.

No comments concerning §744.2301, however, DFPS determined that the outdated term "message pager" needed to be deleted from paragraph (8).

Comment concerning §744.2523: The workgroup commented that they wanted further clarification on what "sealed" meant.

Response: DFPS agrees with the commenter and has clarified the term "sealed".

Comment concerning §744.2669: 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.

Response: 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.

Comment concerning §744.3551: A comment at the DFPS Council Meeting suggested that adding "lock-down" to "sheltering" would clarify the term.

Response: DFPS agrees with the commenter and has changed the term "sheltering" to "sheltering/lock-down".

No comments concerning §744.3553, however, based on the comment to §744.3551, DFPS has changed the term "sheltering" to "sheltering/lock-down".

Comment concerning §744.3559: The workgroup commented that it would be helpful to distinguish between sheltering for weather and dangerous persons, and adding drills for dangerous persons.

Response: DFPS agrees with the commenter and has distinguished between "sheltering" for weather situations and "lock-down" for dangerous persons; and are requiring four drills for each, every year.

Comments not applicable: There were eight commenters that provided comments on rules that were not proposed nor are they out for public comment: (1) six commenters stated they were in favor of lowering child/caregiver ratios; (2) one commenter stated discrimination language needed to be beefed up over 5 different chapters, and provided quite a few comments on Chapter 749; and (3) one commenter had no comments that were forwarded.

Response: Since these comments were related to rules that were not out for public comment, DFPS cannot take any action.