

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 19. EDUCATION

PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 230. PROFESSIONAL EDUCATOR PREPARATION AND CERTIFICATION

SUBCHAPTER C. ASSESSMENT OF EDUCATORS

19 TAC §230.21, §230.25

The State Board for Educator Certification (SBEC) adopts amendments to 19 TAC §230.21 and §230.25, concerning professional educator preparation and certification. The amendment to §230.21 is adopted with changes to the proposed text as published in the March 11, 2016, issue of the *Texas Register* (41 TexReg 1772). The amendment to §230.25 is adopted without changes to the proposed text as published in the March 11, 2016, issue of the *Texas Register* (41 TexReg 1772) and will not be republished. The sections establish guidelines and procedures for the assessment of educators. The adopted amendments to 19 TAC §230.21 and §230.25 implement the requirement from the 84th Texas Legislature, Regular Session, 2015, to enforce a limit of five attempts on any certification examination, unless the SBEC approves an additional attempt based on an individual's demonstration of good cause. The adopted amendments to 19 TAC §230.21 and §230.25 also implement a clarification from the 84th Texas Legislature, Regular Session, 2015, that the commissioner of education approves the satisfactory level of performance required for certification examinations.

REASONED JUSTIFICATION. The SBEC rules in 19 TAC Chapter 230, Professional Educator Preparation and Certification, Subchapter C, provide for rules that establish guidelines and procedures for the assessment of educators. The adopted amendments to 19 TAC Chapter 230, Subchapter C, identify changes based on recent legislation passed during the 84th Texas Legislature, Regular Session, 2015, and reflect input received from the SBEC, stakeholders, and Texas Education Agency (TEA) staff.

§230.21. *Educator Assessment*

Subsection (a) was removed because the basic skills assessment that was required for admission to an educator preparation program (EPP) is described in 19 TAC Chapter 227. Subsections (b)-(e) were relettered accordingly.

In accordance with the TEC, §21.048, as amended by House Bill (HB) 2205, 84th Texas Legislature, Regular Session, 2015, language was amended in adopted subsection (a) to limit the

number of times an individual may retake a certification examination to four unless the limitation is waived for good cause. A candidate seeking a waiver of the limitation is responsible for providing proof of the good cause.

Adopted subsection (a)(1) was added to define an examination retake. An examination retake is defined as a second or subsequent attempt to pass any examination required for the issuance of a certificate, including an individual core subject examination that is part of the overall examination required for the issuance of a Core Subjects certificate. An examination score that is cancelled is not considered an examination retake.

Adopted subsection (a)(2) was added to define good cause in one of six ways. The first four ways are based on the candidate's highest score on an examination and a conditional standard error of measurement (CSEM) table that will be published annually on the TEA website. A CSEM is the measure of the precision of scores for an assessment based on a specific score point and the design of the assessment. CSEM are used in this context to determine how likely a candidate can pass an examination on his or her next attempt if a candidate completed a number of clock-hours of additional educational activity. If a candidate's highest examination score is within one, two, or three CSEMs from passing, the candidate needs to participate in 50, 100, or 150 clock-hours of additional educational activity, respectively. If a candidate's highest examination score is not within three CSEMs from passing, the candidate needs to participate in 200 clock-hours of additional educational activity.

If a candidate needs a waiver for more than one of the individual core subject examinations that are part of the overall examination required for the issuance of a Core Subjects certificate, the fifth way of determining good cause is the combination of the number of clock-hours of educational activities required for each individual core subject examination as described in the first four ways of determining good cause. The maximum number of required clock-hours may not exceed 300 clock-hours. The number of clock-hours for each examination may be divided equally based on the number of examinations in the waiver request, but the number of clock-hours for an examination shall not be less than 50 for each examination.

The sixth way of determining good cause is if a CSEM is not appropriate for an examination. One reason a CSEM may not be appropriate for an examination is if an examination does not use a scale score. The examinations that are currently used for certification and do not use a scale score are the Texas Assessment of Sign Communication examinations and the language examinations administered by the American Council for the Teaching of Foreign Languages. A second reason a CSEM may not be appropriate for an examination is if an examination does not have enough test takers to determine a CSEM. The examinations that are currently used for certification and have very low numbers of

test takers are the Languages other than English Latin examination and the examinations administered by the American Association of Family and Consumer Sciences. In the event that a candidate is not successful after five attempts on an examination that did not have a CSEM, the candidate will request a waiver, and TEA staff will identify individuals who are familiar and knowledgeable with the examination content. These individuals review the candidate's performance on the five most recent examinations, identify the areas of deficit, and determine the number of clock-hours of additional educational activity required to demonstrate good cause.

Adopted subsection (a)(3) was added to define educational activity. An educational activity is provided by an approved EPP or an approved continuing professional education (CPE) provider or sponsor. Approved CPEs currently include all accredited institutions of higher education, education service centers, Texas public school districts, accredited private schools, and non-profit organizations that have offered professional development in Texas for at least five years. Approved CPEs also currently include private entities and individuals who have been approved by TEA staff to offer CPE activities. An educational activity needs to be directly related to the knowledge and skill competencies in which the candidate answered less than 70 percent of questions correctly on the past five examinations. A competency is a grouping of knowledge and skills on a certification examination that defines what an entry-level educator in Texas public schools should know and be able to do. To provide consistency among candidates when identifying deficit competencies, a candidate adds the number of questions answered correctly in each competency on each of the five most recent examinations, adds the number of questions asked for each competency on each of the five most recent examinations, and then, for each competency, divides the total number of questions answered correctly by the total number of questions asked. If a candidate did not correctly answer 70 percent of the questions in a competency across the past five examinations, the candidate will identify the competency as a deficit area that should be addressed by an educational activity.

Adopted subsection (a)(4) was added to identify how a candidate must document an educational activity. This documentation includes the provider, sponsor, or program's name, address, telephone number, and email address; the name of the educational activity; the competency or competencies addressed by the educational activity; the provider, sponsor, or program's description of the educational activity; and the provider, sponsor, or program's written verification of the dates of participation in and the number of clock-hours completed for the educational activity.

One semester credit hour earned at an accredited institution of higher education is equivalent to 15 clock-hours. Clock-hours completed before the most recent examination attempt or after a request for a waiver is submitted do not count toward meeting the educational activity required to show good cause for a waiver.

Adopted subsection (a)(5) was added to identify how a candidate requests a waiver. A candidate seeking certification based on the completion of an EPP needs the approval of an EPP to request a waiver. Candidates seeking certification through routes other than an EPP need to meet the eligibility requirements of the appropriate route. A candidate needs to pay a waiver request fee of \$160, which is the same amount for an out-of-state/out-of-country review of credentials. A candidate needs to request a waiver on a form developed by TEA staff and approved by the SBEC. Waiver requests are not accepted for 45

calendar days after the fourth unsuccessful retake, 90 calendar days after a denied waiver request, or 180 calendar days after the most recent unsuccessful attempt that was the result of an approved waiver request. After a waiver request is received by TEA staff, the request is reviewed and TEA staff makes a decision to approve or deny the request based on the criteria in adopted §230.21(a)(2)-(5). An applicant who does not meet the criteria in adopted §230.21(a)(2)-(5) may appeal to the SBEC for a final determination of good cause. A determination by the SBEC is final and may not be appealed.

Since published as proposed, a technical edit in subsection (a)(5)(B) was made to clarify that individuals are required to pay the \$160 waiver request fee beginning September 1, 2016.

In accordance with the TEC, §21.048, as amended by HB 2205, 84th Texas Legislature, Regular Session, 2015, language was amended in adopted subsection (d) to clarify that the commissioner of education approves the satisfactory level of performance required for each certification examination. The adopted amendment does not change the authority of the SBEC to approve a schedule of examination fees and a plan for administering the examinations. Adopted subsection (e) establishes in rule the list of appropriate examinations required for certification.

Minor technical edits were made in subsections (f) and (g) to conform to *Texas Register* style and format requirements and update cross references.

§230.25. Test Exemptions for Persons with a Hearing Impairment

Minor technical edits were made in subsection (b)(2) to align terminology with current SBEC rules.

SUMMARY OF COMMENTS AND BOARD RESPONSES. The public comment period on the proposal began March 11, 2016, and ended April 11, 2016. The SBEC also provided an opportunity for registered oral and written comments at the April 15, 2016, meeting in accordance with the SBEC board operating policies and procedures. Following is a summary of the public comments received and corresponding board responses regarding the proposed amendments to 19 TAC §230.21 and §230.25.

Comment: Three individuals commented that there should be a provision to allow candidates an opportunity to attempt a test after their fifth attempt. The individuals suggested that good cause for allowing another attempt could be that the candidate almost passed the test or has made progress toward passing the test.

Board Response: As the comments relate to creating a provision to allow candidates an opportunity to attempt a test after their fifth attempt, the SBEC agreed. The proposed amendments create such a provision. As the comments relate to defining good cause as how close a candidate came to passing a test, the SBEC agreed. The proposed amendments would require a candidate to present evidence of the number of hours of educational activities that are correlated to how close a candidate's score was to passing. As the comments relate to how much progress has been made toward passing the test, the SBEC disagreed because the proposed amendments take into account a candidate's highest score and evidence of a candidate's efforts to improve his or her understanding of the knowledge and skills assessed on the test.

Comment: Three individuals commented that there should not be a limit of five attempts for certification examinations.

Board Response: HB 2205, 84th Texas Legislature, Regular Session, 2015, mandates a limit of five attempts for certification examinations. The proposed amendments would provide an opportunity for individuals to request a waiver from the limitation.

The SBOE took no action on the review of the proposed amendments to 19 TAC §230.21 and §230.25 at the July 22, 2016, SBOE meeting.

STATUTORY AUTHORITY. The amendments are adopted under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.031(b), which states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; §21.041(a), which allows the SBEC to adopt rules as necessary for its own procedures; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.041(b)(7), which requires the SBEC to propose rules that provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by the Texas Government Code, Chapter 2001; §21.041(b)(8), which requires the SBEC to propose rules that provide for the enforcement of an educator's code of ethics; §21.041(c), which requires the SBEC to propose a rule adopting a fee for the issuance and maintenance of an educator certificate that is adequate to cover the cost of administration of the TEC, Chapter 21, Subchapter B; §21.045(a)(1), as amended by House Bill (HB) 2205, 84th Texas Legislature, Regular Session, 2015, which authorizes the SBEC to propose rules necessary to establish standards to govern the continuing accountability of all educator preparation programs based on the following information that is disaggregated with respect to race, sex, and ethnicity: results of the certification examinations prescribed under the TEC, §21.048(a); §21.048(a), as amended by HB 2205, 84th Texas Legislature, Regular Session, 2015, which requires the SBEC to propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC, specifies that the commissioner of education shall determine the satisfactory level of performance required for each certification examination, and that the commissioner shall require a satisfactory level of examination performance in each core subject covered by the generalist certification examination; §21.048(a-1), as amended by HB 2205, 84th Texas Legislature, Regular Session, 2015, which states that the SBEC may not require that more than 45 days elapse before a person may retake an examination and a person may not retake an examination more than four times, unless the SBEC waives the limitation for good cause as prescribed by the SBEC; §21.048(a-2), as added by HB 2205, 84th Texas Legislature, Regular Session, 2015, which states that for purposes of the limitation imposed by Subsection (a-1) on the number of administrations of an examination, a person who initially took an examination before September 1, 2015, may retake the examination up to four times after that date, regardless of the number of times that the person attempted to perform satisfactorily on the examination before that date. This subsection expires September 1, 2018; §21.048(b), which states that the SBEC may not

administer a written examination to determine the competence or level of performance of an educator who has a hearing impairment unless the examination has been field tested to determine its appropriateness, reliability, and validity as applied to, and minimum acceptable performance scores for, persons with hearing impairments; §21.048(c), which states that an educator who has a hearing impairment is exempt from taking a written examination for a period ending on the first anniversary of the date on which the SBEC determines, on the basis of appropriate field tests, that the examination complies with the standards specified in subsection (b) of this section; §21.048(c-1), as amended by HB 2205, 84th Texas Legislature, Regular Session, 2015, which states that the results of an examination administered under this section are confidential and are not subject to disclosure under the Texas Government Code, Chapter 552, unless the disclosure is regarding notification to a parent of the assignment of an uncertified teacher to a classroom as required by the TEC, §21.057; and §21.048(d), which states the definitions for hearing impairment, reliability, and validity when used in the TEC, §21.048; and the Texas Occupations Code (TOC), §54.003(a), which defines "dyslexia" as having the same meaning assigned by the TEC, §51.970; §54.003(b), which states that, for each licensing examination administered by a state agency, the agency shall provide reasonable examination accommodations to an examinee diagnosed as having dyslexia; and §54.003(c), which states that each state agency shall adopt rules necessary to implement the TOC, §54.003, including rules to establish the eligibility criteria an examinee must meet for accommodation under the TOC, §54.003.

CROSS REFERENCE TO STATUTE. The adopted amendments implement the TEC, §§21.031; 21.041(a), (b)(1), (4), (7), and (8), and (c); 21.045(a)(1), as amended by HB 2205, 84th Texas Legislature, Regular Session, 2015; 21.048, as amended by HB 2205, 84th Texas Legislature, Regular Session, 2015; and the TOC, §54.003.

§230.21. Educator Assessment.

(a) A candidate seeking certification as an educator must pass the examination(s) required by the Texas Education Code (TEC), §21.048, and the State Board for Educator Certification (SBEC) in §233.1(e) of this title (relating to General Authority) and shall not retake an examination more than four times, unless the limitation is waived for good cause. The burden of proof shall be upon the candidate to demonstrate good cause.

(1) For the purposes of the retake limitation described by the TEC, §21.048, an examination retake is defined as a second or subsequent attempt to pass any examination required for the issuance of a certificate, including an individual core subject examination that is part of the overall examination required for the issuance of a Core Subjects certificate as described in §233.2 of this title (relating to Core Subjects; Generalist). An examination score that is cancelled is not considered an examination retake.

(2) Good cause is:

(A) the candidate's highest score on an examination is within one conditional standard error of measurement (CSEM) of passing and the candidate has completed 50 clock-hours of educational activities. CSEMs will be published annually on the Texas Education Agency (TEA) website;

(B) the candidate's highest score on an examination is within two CSEMs of passing and the candidate has completed 100 clock-hours of educational activities;

(C) the candidate's highest score on an examination is within three CSEMs of passing and the candidate has completed 150 clock-hours of educational activities;

(D) the candidate's highest score on an examination is not within three CSEMs of passing and the candidate has completed 200 clock-hours of educational activities;

(E) if the candidate needs a waiver for more than one of the individual core subject examinations that are part of the overall examination required for the issuance of a Core Subjects certificate, the candidate has completed the number of clock-hours of educational activities required for each individual core subject examination as described in subparagraphs (A)-(D) of this paragraph up to a maximum of 300 clock-hours. The number of clock-hours for each examination may be divided equally based on the number of examinations in the waiver request, but the number of clock-hours for an examination shall not be less than 50; or

(F) if a CSEM is not appropriate for an examination, the TEA staff will identify individuals who are familiar and knowledgeable with the examination content to review the candidate's performance on the five most recent examinations, identify the deficit competency or competencies, and determine the number of clock-hours of educational activities required.

(3) Educational activities are defined as:

(A) institutes, workshops, seminars, conferences, interactive distance learning, video conferencing, online activities, undergraduate courses, graduate courses, training programs, in-service, or staff development given by an approved continuing professional education provider or sponsor, pursuant to §232.17 of this title (relating to Pre-Approved Professional Education Provider or Sponsor) and §232.19 of this title (relating to Approval of Private Companies, Private Entities, and Individuals), or an approved educator preparation program (EPP), pursuant to §228.10 of this title (relating to Approval Process); and

(B) being directly related to the knowledge and skills included in the certification examination competency or competencies in which the candidate answered less than 70 percent of competency questions correctly. The formula for identifying a deficit competency is the combined total of correct answers for each competency on the five most recent examinations divided by the combined total of questions for each competency on the five most recent examinations.

(4) Documentation of educational activities that a candidate must submit includes:

(A) the provider, sponsor, or program's name, address, telephone number, and email address. The TEA staff may contact the provider, sponsor, or program to verify an educational activity;

(B) the name of the educational activity (e.g., course title, course number);

(C) the competency or competencies addressed by the educational activity as determined by the formula described in paragraph (3)(B) of this subsection;

(D) the provider, sponsor, or program's description of the educational activity (e.g., syllabus, course outline, program of study); and

(E) the provider, sponsor, or program's written verification of the candidate's completion of the educational activity (e.g., transcript, certificate of completion). The written verification must include:

(i) the provider, sponsor, or program's name;

(ii) the candidate's name;

(iii) the name of the educational activity;

(iv) the date(s) of the educational activity; and

(v) the number of clock-hours completed for the educational activity. Clock-hours completed before the most recent examination attempt or after a request for a waiver is submitted shall not be included. One semester credit hour earned at an accredited institution of higher education is equivalent to 15 clock-hours.

(5) To request a waiver of the limitation, a candidate must meet the following conditions:

(A) the candidate is otherwise eligible to take an examination. A candidate seeking a certificate based on completion of an EPP must have the approval of an EPP to request a waiver;

(B) beginning September 1, 2016, the candidate pays the non-refundable waiver request fee of \$160;

(C) the candidate requests the waiver of the limitation in writing on forms developed by the TEA staff; and

(D) the request for the waiver is postmarked not earlier than:

(i) 45 calendar days after an unsuccessful attempt at the fourth retake of an examination as defined in the TEC, §21.048; or

(ii) 90 calendar days after the date of the most recent denied waiver of the limitation request; or

(iii) 180 calendar days after the date of the most recent unsuccessful examination attempt that was the result of the most recently approved request for waiver of the limitation.

(6) The TEA staff shall administratively approve each application that meets the criteria specified in paragraphs (2)-(5) of this subsection.

(7) An applicant who does not meet the criteria in paragraphs (2)-(5) of this subsection may appeal to the SBEC for a final determination of good cause. A determination by the SBEC is final and may not be appealed.

(b) A candidate seeking a standard certificate as an educator based on completion of an approved EPP may take the appropriate certification examination(s) required by subsection (a) of this section only at such time as the EPP determines the candidate's readiness to take the examinations, or upon successful completion of the EPP, whichever comes first.

(c) The holder of a lifetime Texas certificate effective before February 1, 1986, must pass examinations prescribed by the SBEC to be eligible for continued certification, unless the individual has passed the Texas Examination of Current Administrators and Teachers (TECAT).

(d) The commissioner of education approves the satisfactory level of performance required for certification examinations, and the SBEC approves a schedule of examination fees and a plan for administering the examinations.

(e) The appropriate examination(s) required for certification are specified in the figure provided in this subsection. Figure: 19 TAC §230.21(e)

(f) Scores from examinations required under this title must be made available to the examinee, the TEA staff, and, if appropriate, the EPP from which the examinee will seek a recommendation for certification.

(g) The following provisions concern test security and confidential integrity.

(1) An educator who participates in the development, design, construction, review, field testing, or validation of an examination shall not reveal or cause to be revealed the contents of the examination to any other person.

(2) An educator who administers an examination shall not:

(A) allow or cause an unauthorized person to view any part of the examination;

(B) copy, reproduce, or cause to be copied or reproduced any part of the examination;

(C) reveal or cause to be revealed the contents of the examination;

(D) correct, alter, or cause to be corrected or altered any response to a test item contained in the examination;

(E) provide assistance with any response to a test item contained in the examination or cause assistance to be provided; or

(F) deviate from the rules governing administration of the examination.

(3) An educator who violates subsection (a) or (b) of this section is subject to sanction in accordance with the provisions of the TEC, §21.041(b)(7), and Chapter 249 of this title (relating to Disciplinary Proceedings, Sanctions, and Contested Cases).

(4) An educator who is an examinee shall not:

(A) copy, reproduce, or cause to be copied or reproduced any test item contained in the examination;

(B) provide assistance with any response to a test item contained in the examination, or cause assistance to be provided;

(C) solicit or accept assistance with any response to a test item contained in the examination;

(D) deviate from the rules governing administration of the examination; or

(E) otherwise engage in conduct that amounts to cheating, deception, or fraud.

(5) An educator who violates this subsection is subject to:

(A) sanction in accordance with the provisions of the TEC, §21.041(b)(7), and Chapter 249 of this title;

(B) voiding of a score from an examination in which a violation specified in this subsection occurred; and

(C) disallowance and exclusion from future examinations either in perpetuity or for a period of time that serves the best interests of the education profession.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 232. GENERAL CERTIFICATION PROVISIONS

SUBCHAPTER A. CERTIFICATE RENEWAL AND CONTINUING PROFESSIONAL EDUCATION REQUIREMENTS

The State Board for Educator Certification (SBEC) adopts amendments to 19 TAC §§232.7, 232.9, 232.11, 232.13, 232.15, 232.17, 232.19, 232.21, and 232.23 and repeal of 19 TAC §232.27, concerning certificate renewal and continuing professional education (CPE) requirements. The amendments to §§232.7, 232.9, 232.11, 232.21, and 232.23 are adopted with changes to the proposed text as published in the March 11, 2016, issue of the *Texas Register* (41 TexReg 1777). The amendments to §§232.13, 232.15, 232.17, and 232.19 and repeal of §232.27 are adopted without changes to the proposed text as published in the March 11, 2016, issue of the *Texas Register* (41 TexReg 1777) and will not be republished. The sections establish the renewal requirements relating to types and classes of certificates issued and CPE. The adopted amendments to 19 TAC §§232.7, 232.9, 232.11, 232.13, 232.15, 232.17, 232.19, 232.21, and 232.23 implement the requirement from the 84th Texas Legislature, Regular Session, 2015, to allow educators to receive credit for completion of an instructional course on the use of an automated external defibrillator (AED) and further clarify certificate renewal and CPE requirements. The adopted repeal of 19 TAC §232.27 further clarifies certificate renewal and CPE requirements.

REASONED JUSTIFICATION. Current 19 TAC Chapter 232, General Certification Provisions, establishes the renewal requirements relating to types and classes of certificates issued, CPE, and national criminal history record information review.

The adopted rule actions amend 19 TAC §§232.7, 232.9, 232.11, 232.13, 232.15, 232.17, 232.19, 232.21, and 232.23 and repeal 19 TAC §232.27. The adopted rule actions to 19 TAC Chapter 232 identify necessary changes based on recent legislation passed during the 84th Texas Legislature, Regular Session, 2015, and reflect input received from the SBEC and Texas Education Agency (TEA) staff-convened stakeholder meetings. The adopted rule actions also result from the SBEC's rule review of 19 TAC Chapter 232 conducted in accordance with Texas Government Code, §2001.039.

§232.7. Requirements for Certificate Renewal

Language was amended to delete subsection (c) that required licensure, certification, or registration to be current and in good standing before career and technical education (CTE) certificates could be renewed. This rule change was necessary to ensure no classroom certificate area is treated differently from others as it relates to certificate renewal requirements. Because current CPE requirements state that at least 80% of the hours should be directly related to the certificate(s) being renewed, the SBEC believed that CTE certificate holders can maintain fo-

cused training in their area(s) of certification and remain current in the knowledge and skills necessary to successfully deliver instruction and positively influence student learning.

Since published as proposed, language in subsection (a)(2) was moved to new subsection (b) to clarify the criteria by which TEA staff administratively approve requests for hardship exemptions to renewal requirements because it is more efficient for TEA staff to administratively approve hardship exemption requests than for each request to be approved by the SBEC. Current subsection (b) was relettered accordingly. In addition, subsection (e), which requires the staying of a renewal while an educator who is a respondent in a disciplinary proceeding is waiting for the resolution of the disciplinary action, was deleted so that educators are not sanctioned before a disciplinary proceeding is completed.

§232.9. *Inactive Status and Late Renewal*

Language was amended in subsection (d) to require a person whose certificate has become inactive because of failure to renew to verify through an affidavit that the person is in compliance with renewal requirements. Adopted new subsection (e) confirms that TEA staff is responsible for completing audits of educator CPE hours. The auditing procedures is dependent on the availability of TEA resources and may include random audits. TEA staff are responsible for contacting educators directly and providing them with all information needed to submit required documentation for completion of certificate renewal audits. The language also confirms that the TEA staff may require written documentation of all activities applied toward CPE requirements. These adopted changes clarify the process to reactivate an inactive certificate as well as the process that TEA staff use to verify that the renewal requirements have been met.

Since published as proposed, language from subsection (b) was amended and included in subsection (a) to clarify the actions taken by TEA staff and an educator when a certificate is placed on inactive status. This rule change is necessary because it was not clear when TEA staff needed to notify an educator regarding an inactive certificate. Language was also amended in subsection (a) to remove the reference to procedures adopted by TEA staff because the language is redundant to the application process that is referenced in this subsection. Subsection (b) was deleted because the procedures approved by SBEC are redundant to the TEA staff notification process described in subsection (a). Language was amended in subsection (a) to clarify that TEA staff administratively approve reactivation requests based on the requirements described in 19 TAC §232.7 because it is more efficient for TEA staff to administratively approve reactivation requests than for each request to be approved by the SBEC. Language was amended in adopted new subsection (c) to remove the reference to the manner by which an individual verifies that he or she is in compliance with renewal requirements because the language is redundant to the affidavit process that is referenced in this subsection. In addition, adopted subsection (f), which restates other rules regarding educator certification sanctions related to falsifying information submitted on a renewal affidavit, was deleted because the language is redundant to rules described in 19 TAC Chapter 249.

§232.11. *Number and Content of Required Continuing Professional Education Hours*

Language was amended in subsection (c) to clarify that at least 80% of the required CPE activities be directly related to the renewal of the certificate(s) being renewed and focus on the standards required for initial issuance of the certificate(s). As a re-

sult of SB 382, 84th Texas Legislature, Regular Session, 2015, adopted new subsection (h) was added to allow an educator to receive credit toward CPE requirements by completing an instructional course on the use of an AED that meets specified AED training guidelines. Adopted new subsection (i) allows educators to receive CPE credit for completing suicide prevention training that meets the guidelines in the TEC, §21.451, as amended by House Bill 2186, 84th Texas Legislature, Regular Session, 2015.

Since published as proposed, a minor technical edit was made in subsections (h) and (i) to change the word *towards* to *toward*.

§232.13. *Number of Required Continuing Professional Education Hours by Classes of Certificates*

Language was amended in subsections (c) and (d) to match current wording in subsections (e), (f), and (g) that clearly states the 200-clock-hour CPE requirement. Language was also amended in subsections (c) and (d) to reference the renewal requirements that are specific to the school counselor and school librarian certificates. These adopted changes clarify and align the requirements for certification renewal.

§232.15. *Types of Acceptable Continuing Professional Education Activities*

Language was amended in subsection (a)(1) and (3) to clarify that the activities need to be in the content area knowledge and skills related to the certificate(s) being renewed. This adopted change aligns the types of acceptable CPE activities.

§232.17. *Pre-Approved Professional Education Provider or Sponsor*

Language was amended in subsection (a)(5) to include Texas public open-enrollment charter schools to the list of pre-approved professional education providers or sponsors. This adopted change allows certified educators employed by an open-enrollment charter school to receive CPE credit for acceptable CPE activities provided by their employer.

§232.19. *Approval of Private Companies, Private Entities, and Individuals*

Language was amended to clarify that this section is only for private companies, private entities, and individuals who seek to provide CPE on their own behalf and not through the sponsorship of a pre-approved provider or sponsor.

§232.21. *Provider Registration Requirements*

Language was amended in subsection (c) to require providers to maintain a record of CPE activity for a period of seven years after the activity. This adopted change assists TEA staff in confirming CPE credits when auditing an educator's renewal requirements. Language was amended in subsection (d) to clarify that the withdrawal of approval to provide CPE does not entitle a provider or sponsor to a contested-case hearing before the SBEC. Adopted new subsection (f) allows TEA staff to review the documentation that is required for provider or sponsor approval. If TEA staff determines that a provider or sponsor is operating in violation of applicable laws or rules, the TEA staff may withdraw the approval that had been granted.

Since published as proposed, in response to stakeholder input, subsection (g) was added to specify the procedures and jurisdiction for investigating complaints and/or violations of any applicable provision under this chapter as it relates to a CPE provider or sponsor approval. This rule change is necessary because

it allows a provider or sponsor an opportunity to respond to alleged violations of rule before a final decision regarding the allegations is made. Also since published as proposed, language was amended in subsection (e) to clarify that violations of rules in this chapter could result in the withdrawal of approval to provide continuing professional education. This rule change is necessary because it defines the jurisdiction of TEA staff in investigating alleged violations. Language was also amended in subsections (e) and (f) to clarify that a provider or sponsor must come into compliance with the provisions of this chapter in order to be eligible for approval. This rule change is congruent with subsection (g).

§232.23. Verification of Renewal Requirements

Current subsection (c) was replaced to confirm that TEA staff is responsible for completing audits of educator CPE hours. The auditing procedures are dependent on the availability of TEA resources and may include random audits. TEA staff are responsible for contacting educators directly and providing them with all information needed to submit required documentation for completion of certificate renewal audits. The language also confirms that the TEA staff may require written documentation of all activities applied toward CPE requirements. Language in subsection (b) was moved to adopted new subsection (d).

Since published as proposed, subsection (d), which restates other rules regarding educator certification sanctions related to falsifying information submitted on a renewal affidavit, was deleted because the language was redundant to rules described in 19 TAC Chapter 249.

SUMMARY OF COMMENTS AND BOARD RESPONSES. The public comment period on the proposal began March 11, 2016, and ended April 11, 2016. The SBEC also provided an opportunity for registered oral and written comments at the April 15, 2016, meeting in accordance with the SBEC board operating policies and procedures. Following is a summary of the public comments received and corresponding board responses regarding the proposed amendments to 19 TAC §§232.7, 232.9, 232.11, 232.13, 232.15, 232.17, 232.19, 232.21, and 232.23 and repeal of 19 TAC §232.27.

Comment: One individual commented that a certificate should be automatically extended to the end of the academic year if an educator is planning to retire at the end of the academic year. The individual added that if a certificate was extended in this manner, it would not be allowed to be renewed. The individual also commented that an educator should be allowed to pay for the number of years he or she plans to use a certificate if the educator does not plan to use the certificate for all five years.

Board Response: The SBEC disagreed. The anticipated costs associated with modifying and connecting various technology systems within and across multiple agencies would outweigh the anticipated benefits to individuals seeking an extension of certifications and/or a proration of certification fees.

Comment: One individual commented that an educator should not be required to renew his or her certificate after the first five-year renewal period because it is redundant and expensive.

Board Response: The SBEC disagreed. All educators who have been issued a standard certificate are required to participate in a minimum number of CPE requirements that are directly related to the certificate that qualifies an individual to be hired as an educator. Because the Texas Essential Knowledge and Skills and other components of the required curriculum are continually

updated, educators need to stay abreast of these changes as well as other knowledge and skills they need to be effective in their respective roles. Most practicing educators should be able to meet the minimum requirements at no cost through the CPE activities that are offered through their school or district. For educators who are not currently employed in a school or district, there are a number of CPE activities that are provided at little or no cost to the educator.

The SBOE took no action on the review of the proposed amendments to 19 TAC §§232.7, 232.9, 232.11, 232.13, 232.15, 232.17, 232.19, 232.21, and 232.23 and repeal of 19 TAC §232.27 at the July 22, 2016, SBOE meeting.

19 TAC §§232.7, 232.9, 232.11, 232.13, 232.15, 232.17, 232.19, 232.21, 232.23

STATUTORY AUTHORITY. The amendments are adopted under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; §21.0031(f), which clarifies and places certain limits on provisions authorizing termination of an educator's contract for failure to maintain a valid certificate; §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.031(b), which states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.041(b)(7), which requires the SBEC to propose rules that provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by the Texas Government Code, Chapter 2001; §21.041(b)(8), which requires the SBEC to propose rules that provide for the enforcement of an educator's code of ethics; §21.041(b)(9), which requires the SBEC to propose rules that provide for continuing education requirements; §21.054, which requires classroom teachers, principals, and school counselors to earn continuing professional education units in specific areas and options for meeting those requirements and directs the SBEC to propose rules relating to continuing education courses and programs for educators; and §21.0541, as added by Senate Bill (SB) 382, 84th Texas Legislature, Regular Session, 2015, which requires the SBEC to adopt rules that allow an educator to receive credit towards the educator's continuing education requirements for completion of an instructional course on the use of an automated external defibrillator that meets the guidelines for automated external defibrillator training approved under the Texas Health and Safety Code, §779.002; and the Texas Occu-

pations Code (TOC), §55.002, as amended by SB 1307, 84th Texas Legislature, Regular Session, 2015, which exempts a military service member from increased fees or penalties resulting from failing to timely renew a license; and §55.003, as amended by SB 1307, 84th Texas Legislature, Regular Session, 2015, which grants an extension of two years of additional time to complete license renewal and continuing education requirements to a military service member.

CROSS REFERENCE TO STATUTE. The adopted amendments implement the TEC, §§21.003(a), 21.0031(f), 21.031, 21.041(b)(1)-(4) and (7)-(9), 21.054; and 21.0541, as added by SB 382, 84th Texas Legislature, Regular Session, 2015; and the TOC, §55.002, as amended by SB 1307, 84th Texas Legislature, Regular Session, 2015; and §55.003, as amended by SB 1307, 84th Texas Legislature, Regular Session, 2015.

§232.7. Requirements for Certificate Renewal.

(a) The Texas Education Agency (TEA) staff shall develop procedures to:

- (1) notify educators at least six months prior to the expiration of the renewal period to the email address as specified in §230.91 of this title (relating to Procedures in General);
- (2) confirm compliance with all renewal requirements pursuant to this subchapter;
- (3) notify educators who are not renewed due to noncompliance with this section; and
- (4) verify that educators applying for reactivation of certificate(s) under §232.9 of this title (relating to Inactive Status and Late Renewal) are in compliance with subsection (c)(2)-(6) of this section.

(b) The TEA staff shall administratively approve each hardship exemption request that meets the criteria specified in paragraphs (1)-(3) of this subsection.

(1) A hardship exemption must be due to one of the following circumstances that prevented the educator's completion of renewal requirements:

- (A) catastrophic illness or injury of the educator;
- (B) catastrophic illness or injury of an immediate family member; or
- (C) military service of the educator.

(2) The request for a hardship exemption must include documentation from a licensed physician or verified military records.

(3) The request for the amount of time allowed for renewal is equal to:

- (A) the amount of time that a licensed physician determined that the educator was not able to complete renewal requirements due to the educator's catastrophic illness or injury; or
- (B) the amount of time that a licensed physician determined that the educator was not able to complete renewal requirements due to the catastrophic illness or injury of an immediate family member; or
- (C) two years of additional time for a military service member, in accordance with the Texas Occupations Code, §55.003.

(4) If a hardship exemption request is approved, the educator must pay the appropriate renewal fee, pursuant to §232.25 of this title (relating to Fees Payable Upon Certificate Renewal or Reactivation).

(c) To be eligible for renewal, an educator must:

(1) satisfy continuing professional education requirements, pursuant to §232.11 of this title (relating to Number and Content of Required Continuing Professional Education Hours);

(2) hold a valid standard certificate that is not currently suspended and has not been surrendered in lieu of revocation or revoked by lawful authority;

(3) not be a respondent in a disciplinary proceeding under Chapter 249 of this title (relating to Disciplinary Proceedings, Sanctions, and Contested Cases);

(4) successfully resolve any reported criminal history, as defined by §249.3 of this title (relating to Definitions);

(5) not be in default on a guaranteed student loan reported by the Texas Guaranteed Student Loan Corporation or a judgment debt for a student loan owed to the Texas Higher Education Coordinating Board, unless repayment arrangements have been made;

(6) not be in arrears of child support, pursuant to the Texas Family Code, Chapter 232;

(7) pay the renewal fee, pursuant to §232.25 of this title, which shall be a single fee regardless of the number of certificates being renewed; and

(8) submit fingerprints in accordance with §232.35(c) of this title (relating to Submission of Required Information) and the TEC, §22.0831.

(d) The TEA staff shall renew the certificate(s) of an educator who meets all requirements of this subchapter.

§232.9. Inactive Status and Late Renewal.

(a) The certificate(s) of an educator holding a valid standard certificate who does not satisfy the requirements of this subchapter shall be placed on inactive status, subject to the requirements of the Texas Education Code, §21.0031(f). Texas Education Agency (TEA) staff shall notify a person by email of the reason(s) for denying the renewal and the actions or conditions required for removal from inactive status. At any time, the educator may apply to have his or her certificate(s) reactivated and submit the reactivation fee. The TEA staff shall administratively approve reactivation of the educator's certificate(s) subject to verification that the educator is in compliance with §232.7 of this title (relating to Requirements for Certificate Renewal). The renewal date of a reactivated certificate(s) shall be five years after the last day of the certificate holder's next birth month.

(b) A person who satisfies all requirements for renewal after the renewal date of a certificate shall pay a late renewal fee in addition to the standard renewal fee. A person whose certificate has become inactive because of failure to renew shall also pay a reactivation fee. The amount of these fees shall be as provided in §230.101 of this title (relating to Schedule of Fees for Certification Services).

(c) If a person does not satisfy the required continuing professional education (CPE) hours at the expiration of the renewal period, the person may have the certificate(s) removed from inactive status and reactivated by verifying through an affidavit whether he or she is in compliance with renewal requirements, including CPE hours, and paying any applicable fee(s).

(d) The TEA staff shall be responsible for auditing compliance with renewal requirements. The TEA audit procedures shall be based on available resources and may include random audits. The TEA staff shall contact an educator selected for an audit of his or her renewal requirements and provide the educator with information needed to submit the documentation that supports certificate renewal. The TEA staff

at any time may review the documentation required for renewal under this subchapter, which may include the documentation described in §232.15 of this title (relating to Types of Acceptable Continuing Professional Education Activities) and §232.21 of this title (relating to Provider Registration Requirements).

§232.11. Number and Content of Required Continuing Professional Education Hours.

(a) The appropriate number of clock-hours of continuing professional education (CPE), as specified in §232.13 of this title (relating to Number of Required Continuing Professional Education Hours by Classes of Certificates), must be completed during each five-year renewal period.

(b) One semester credit hour earned at an accredited institution of higher education is equivalent to 15 CPE clock-hours.

(c) At least 80% of the CPE activities shall be directly related to the certificate(s) being renewed and focus on the standards required for the initial issuance of the certificate(s), including:

- (1) content area knowledge and skills;
- (2) professional ethics and standards of conduct;
- (3) professional development, which should encompass topics such as the following:

- (A) district and campus priorities and objectives;
- (B) child development, including research on how children learn;
- (C) classroom management;
- (D) applicable federal and state laws;
- (E) diversity and special needs of student populations;
- (F) increasing and maintaining parental involvement;
- (G) integration of technology into educational practices;
- (H) ensuring that students read on or above grade level;
- (I) diagnosing and removing obstacles to student achievement; and
- (J) instructional practices.

(4) Not more than 25% of the CPE activities for a classroom teacher shall include instruction regarding:

- (A) collecting and analyzing information that will improve effectiveness in the classroom;
- (B) recognizing early warning indicators that a student may be at risk of dropping out of school;
- (C) integrating technology into classroom instruction; and
- (D) educating diverse student populations, including:
 - (i) students with disabilities, including mental health disorders;
 - (ii) students who are educationally disadvantaged;
 - (iii) students of limited English proficiency; and
 - (iv) students at risk of dropping out of school.

(5) Not more than 25% of the CPE activities for a principal shall include instruction regarding:

- (A) effective and efficient management, including:

- (i) collecting and analyzing information;
- (ii) making decisions and managing time; and
- (iii) supervising student discipline and managing behavior;

(B) recognizing early warning indicators that a student may be at risk of dropping out of school;

(C) integrating technology into campus curriculum and instruction; and

- (D) educating diverse student populations, including:
 - (i) students with disabilities, including mental health disorders;
 - (ii) students who are educationally disadvantaged;
 - (iii) students of limited English proficiency; and
 - (iv) students at risk of dropping out of school.

(6) Not more than 25% of the CPE activities for a school counselor shall include instruction regarding:

- (A) assisting students in developing high school graduation plans;
- (B) implementing dropout prevention strategies; and
- (C) informing students concerning:
 - (i) college admissions, including college financial aid resources and application procedures; and
 - (ii) career opportunities.

(d) Educators are encouraged to identify CPE activities based on results of his or her annual appraisal required under the Texas Education Code, Chapter 21, Subchapter H.

(e) The required CPE for educators who teach students with dyslexia must include training regarding new research and practices in educating students with dyslexia. The required training may be satisfied through an online course approved by Texas Education Agency staff.

(f) An educator eligible to renew multiple classes of certificates issued during the same renewal period may satisfy the requirements specified in §232.13 of this title for any class of certificate issued for less than the full five-year period by completing a prorated number of the required CPE clock-hours. Educators must complete a minimum of one-fifth of the additional CPE clock-hours for each full calendar year that the additional class of certificate is valid.

(g) An educator may fulfill up to 12 clock-hours of required CPE activities by participating in a mental health first aid training program offered by a local mental health authority under the Texas Health and Safety Code, §1001.203. The number of clock-hours of CPE an educator may fulfill under this subsection may not exceed the number of clock-hours the educator actually spends participating in a mental health first aid training program.

(h) An educator may receive credit toward CPE requirements for completion of an instructional course on the use of an automated external defibrillator (AED) that meets the guidelines for AED training approved under Texas Health and Safety Code, §779.002, in accordance with the Texas Education Code (TEC), §21.0541.

(i) An educator may receive credit toward CPE requirements for completion of suicide prevention training that meets the guidelines for suicide prevention training approved under the TEC, §21.451.

§232.21. *Provider Registration Requirements.*

(a) Procedures adopted by the Texas Education Agency (TEA) staff require all pre-approved and all other continuing professional education (CPE) providers or sponsors to register with the State Board for Educator Certification (SBEC) by submitting the relevant sections of the provider registration form designated by the TEA staff in order to accomplish any or all of the following, as applicable:

- (1) notify the TEA staff of the intent to offer CPE activities;
- (2) affirm compliance with all applicable statutes and rules;
- (3) prohibit discrimination in the provision of CPE activities to any certified educator;
- (4) document that each CPE activity:

(A) complies with applicable SBEC rules codified in the Texas Administrative Code, Title 19, Part 7;

(B) contributes to the advancement of professional knowledge and skills identified by standards adopted by the SBEC for each certificate;

(C) is developed and presented by persons who are appropriately knowledgeable in the subject matter of the training being offered; and

(D) specifies the content under §232.11 of this title (relating to Number and Content of Required Continuing Professional Education Hours) and number of creditable CPE clock-hours; and

(5) on a biennial or more frequent basis, conduct a comprehensive, in-depth self-study to assess the CPE needs and priorities of educators served by the provider as well as the quality of the CPE activities offered.

(b) At the conclusion of each activity offered for CPE credit, the provider or sponsor must provide to each educator in attendance written documentation listing, at a minimum, the provider's name and provider number, the educator's name, the date and content of the activity, and the number of clock-hours that count toward satisfying CPE requirements.

(c) All providers are required to maintain a record of CPE activities that includes a list of attendees, the date and content of the activity, and the number of clock-hours that count toward satisfying CPE requirements. Providers shall retain a record of CPE activity for a period of seven years after the activity is completed.

(d) A provider or sponsor that is not granted approval or has its approval withdrawn by the TEA staff is not entitled to a contested-case hearing before the SBEC or a person designated by the SBEC to conduct contested-case hearings.

(e) The TEA staff shall investigate complaints against a provider or sponsor alleging noncompliance with this section. If the investigation determines that the provider or sponsor is operating in violation of any applicable provision under this chapter, the TEA staff may withdraw the approval granted under this section to the provider or sponsor until the provider or sponsor can demonstrate compliance.

(f) The TEA staff at any time may review the documentation required for provider registration under this section. If a review determines that the provider or sponsor is operating in violation of any applicable provision under this chapter, the TEA staff may withdraw the approval granted under this section to the provider or sponsor until the provider or sponsor can demonstrate compliance.

(g) Before withdrawing approval under subsection (e) or (f) of this section, TEA staff will notify the provider or sponsor in writing that

an alleged violation has occurred, provide a summary of the allegation, and request that the provider or sponsor respond to the allegation.

(1) A provider or sponsor shall:

(A) cooperate fully with any TEA investigation or review; and

(B) respond within 21 business days of receipt of requests for information regarding the allegation and other requests for information from the TEA, except where:

(i) TEA staff imposes a different response date; or

(ii) the provider or sponsor is unable to meet the initial response date and requests and receives a different response date from TEA staff.

(2) TEA staff may request further information from the provider or sponsor.

(3) If a provider or sponsor fails to comply with paragraph (1)(B) of this subsection, the TEA may deem admitted the violation of rules under this chapter.

(4) Upon completion of an investigation or review, TEA staff will notify the provider or sponsor in writing of the findings.

(A) If TEA staff finds that a violation occurred, the notice will specify each rule that was violated and that the approval granted under this section has been withdrawn until the provider or sponsor can demonstrate compliance.

(B) If TEA staff finds that no violation has occurred, the notice will specify that no rule was violated.

§232.23. *Verification of Renewal Requirements.*

(a) Written documentation of completion of all activities applied toward continuing professional education (CPE) requirements shall be maintained by each educator.

(b) By the date renewal is required, the educator shall verify through an affidavit in a manner determined by the Texas Education Agency (TEA) staff whether he or she is in compliance with renewal requirements, including CPE.

(c) The TEA staff shall be responsible for auditing compliance with renewal requirements. The TEA audit procedures shall be based on available resources and may include random audits. The TEA staff shall contact an educator selected for an audit of his or her renewal requirements and provide the educator with information needed to submit the documentation that supports certificate renewal. The TEA staff at any time may review the documentation required for renewal under this subchapter, which may include the documentation described in §232.15 of this title (relating to Types of Acceptable Continuing Professional Education Activities) and §232.21 of this title (relating to Provider Registration Requirements).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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State Board for Educator Certification

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Proposal publication date: March 11, 2016

For further information, please call: (512) 475-1497

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19 TAC §232.27

STATUTORY AUTHORITY. The repeal is adopted under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; §21.0031(f), which clarifies and places certain limits on provisions authorizing termination of an educator's contract for failure to maintain a valid certificate; §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.031(b), which states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.041(b)(7), which requires the SBEC to propose rules that provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by the Texas Government Code, Chapter 2001; §21.041(b)(8), which requires the SBEC to propose rules that provide for the enforcement of an educator's code of ethics; §21.041(b)(9), which requires the SBEC to propose rules that provide for continuing education requirements; §21.054, which requires classroom teachers, principals, and school counselors to earn continuing professional education units in specific areas and options for meeting those requirements and directs the SBEC to propose rules relating to continuing education courses and programs for educators; and §21.0541, as added by Senate Bill (SB) 382, 84th Texas Legislature, Regular Session, 2015, which requires the SBEC to adopt rules that allow an educator to receive credit towards the educator's continuing education requirements for completion of an instructional course on the use of an automated external defibrillator that meets the guidelines for automated external defibrillator training approved under the Texas Health and Safety Code, §779.002; and the Texas Occupations Code (TOC), §55.002, as amended by SB 1307, 84th Texas Legislature, Regular Session, 2015, which exempts a military service member from increased fees or penalties resulting from failing to timely renew a license; and §55.003, as amended by SB 1307, 84th Texas Legislature, Regular Session, 2015, which grants an extension of two years of additional time to complete license renewal and continuing education requirements to a military service member.

CROSS REFERENCE TO STATUTE. The adopted repeal implements the TEC, §§21.003(a), 21.0031(f), 21.031, 21.041(b)(1)-(4) and (7)-(9), 21.054; and 21.0541, as added by SB 382, 84th Texas Legislature, Regular Session, 2015; and the TOC, §55.002, as amended by SB 1307, 84th Texas

Legislature, Regular Session, 2015; and §55.003, as amended by SB 1307, 84th Texas Legislature, Regular Session, 2015.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 234. MILITARY SERVICE MEMBERS, MILITARY SPOUSES, AND MILITARY VETERANS

19 TAC §§234.1, 234.3, 234.5, 234.7

The State Board for Educator Certification (SBEC) adopts new 19 TAC §§234.1, 234.3, 234.5, and 234.7, concerning requirements for military service members, military spouses, and military veterans. New §§234.1, 234.3, 234.5, and 234.7 are adopted without changes to the proposed text as published in the March 11, 2016, issue of the *Texas Register* (41 TexReg 1784) and will not be republished. The sections establish requirements for the certification of a military service member, military veteran, or military spouse and the renewal and continuing education requirements for military service members. Adopted new 19 TAC §§234.1, 234.3, 234.5, and 234.7 address recent legislation, consolidate rules specific to the military community into one chapter, and streamline future military-related rulemaking opportunities.

REASONED JUSTIFICATION. The 84th Texas Legislature, Regular Session, 2015, passed Senate Bill (SB) 807, which requires all state licensing agencies to adopt rules that implement the requirements of the Texas Occupations Code (TOC), Chapter 55, regarding the licensing of military service members, military spouses, and military veterans and the waiving of licensing and application fees paid to the state. The 84th Texas Legislature also passed SB 1307, which clarifies definitions of military spouses and military veterans in key sections of the TOC, allows for the adoption of rules to establish alternative methods for military groups to meet requirements for licensure, grants the executive director of a state agency to review applicant credentials and waive requirements for licensure, and incorporates the use of verified military service to satisfy apprenticeship requirements for licensure.

In addition, the 84th Texas Legislature passed House Bill 2014, which allows military service members seeking certification in career and technical education to substitute experience in a particular trade for the license or professional credential in the specific trade.

Adopted new 19 TAC Chapter 234 consolidates all military-related provisions into one chapter. The military-related provisions currently outlined in 19 TAC §230.15, Certification of Military Service Members, Military Spouses, and Military Veterans, and 19 TAC §232.27, Renewal and Continuing Education Requirements

for Military Service Members, will be repealed as applicable from 19 TAC Chapter 230 and 19 TAC Chapter 232. These provisions are incorporated into the new military chapter as adopted new 19 TAC §234.5 and 19 TAC §234.7, respectively. Adopted new 19 TAC §234.5(g) and (h) satisfy the provisions in SB 807 and align with current SBEC rules.

Adopted new 19 TAC Chapter 234 also streamlines future military-related rulemaking opportunities by having all military-related provisions in one chapter.

SUMMARY OF COMMENTS AND BOARD RESPONSES. The public comment period on the proposal began March 11, 2016, and ended April 11, 2016. The SBEC also provided an opportunity for registered oral and written comments at the April 15, 2016, meeting in accordance with the SBEC board operating policies and procedures. No comments were received regarding proposed new 19 TAC §§234.1, 234.3, 234.5, and 234.7.

The SBOE took no action on the review of proposed new 19 TAC §§234.1, 234.3, 234.5, and 234.7 at the July 22, 2016, SBOE meeting.

STATUTORY AUTHORITY. The new sections are adopted under the Texas Education Code (TEC), §21.041(b)(2), which requires the State Board for Educator Certification (SBEC) to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.044(a), which requires the SBEC to propose rules establishing training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program; and §21.054, which requires classroom teachers, principals, and school counselors to earn continuing professional education units in specific areas and options for meeting those requirements and directs the SBEC to propose rules relating to continuing education courses and programs for educators; and the Texas Occupations Code (TOC), §55.001, as amended by Senate Bill (SB) 1307, 84th Texas Legislature, Regular Session, 2015, which defines *active duty*, *armed forces of the United States*, *license*, *military service member*, *military spouse*, *military veteran*, and *state agency*; §55.002, as amended by SB 1307, 84th Texas Legislature, Regular Session, 2015, which exempts a military service member from increased fees or penalties resulting from failing to timely renew a license; §55.003, as amended by SB 1307, 84th Texas Legislature, Regular Session, 2015, which grants an extension of two years of additional time to complete license renewal and continuing education requirements to a military service member; §55.004, as amended by SB 1307 and House Bill (HB) 3742, 84th Texas Legislature, Regular Session, 2015, which provides an alternative licensing procedure for military service members, military veterans, and military spouses; §55.005, as amended by SB 1307, 84th Texas Legislature, Regular Session, 2015, which provides an expedited licensing procedure for military service members, military veterans, and military spouses; §55.006, as amended by SB 1307, 84th Texas Legislature, Regular Session, 2015, which provides for renewal of an expedited license issued to a military service member, military veteran, or military spouse; §55.007, which provides that verified military service, training, and education be credited toward licensing requirements; §55.008, as amended by SB 1296 and SB 1307, 84th Texas Legislature, Regular Session, 2015, which requires state agencies to credit military service, training or education toward apprenticeship requirements for applicants with military experience; and §55.009, as added

by SB 807 and SB 1307, 84th Texas Legislature, Regular Session, 2015, which waives the license application and examination fees for certain military service members, military veterans, and military spouses and requires a state agency that issues a license to prominently post a notice of the provisions in the TOC, Chapter 55, that are available to military service members, military veterans, and military spouses on the home page of the agency's website.

CROSS REFERENCE TO STATUTE. The adopted new sections implement the TEC, §§21.041(b)(2) and (4); 21.044(a); and 21.054; and Texas Occupations Code, §§55.001-55.003, 55.005, and 55.006, as amended by SB 1307, 84th Texas Legislature, Regular Session, 2015; 55.004, as amended by SB 1307 and HB 3742, 84th Texas Legislature, Regular Session, 2015; 55.007; 55.008, as amended by SB 1296 and SB 1307, 84th Texas Legislature, Regular Session, 2015; and 55.009, as added by SB 807 and SB 1307, 84th Texas Legislature, Regular Session, 2015.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201603993

Cristina De La Fuente-Valadez

Director, Rulemaking, Texas Education Agency

State Board for Educator Certification

Effective date: August 28, 2016

Proposal publication date: March 11, 2016

For further information, please call: (512) 475-1497



CHAPTER 241. PRINCIPAL CERTIFICATE

The State Board for Educator Certification (SBEC) adopts the repeal of 19 TAC §241.15 and new 19 TAC §241.15, concerning the principal certificate. The repeal of and new §241.15 are adopted without changes to the proposed text as published in the March 11, 2016, issue of the *Texas Register* (41 TexReg 1786) and will not be republished. The section provides standards required for the principal certificate. The adopted new section updates the standards required for principal certification, including those standards taught by principal preparation programs and tested on the state certification examination, and align the standards with the commissioner of education's principal appraisal standards.

REASONED JUSTIFICATION. In December 2014, Texas Education Agency (TEA) staff held a stakeholder meeting to discuss the rules in 19 TAC Chapter 241 as part of the rule review process. During the review process, the stakeholder group determined that the principal certificate standards in 19 TAC §241.15 needed to be modernized and aligned with the commissioner's principal appraisal standards found in 19 TAC Chapter 149.

At its March 2015 meeting, the SBEC approved the standards review committee for 19 TAC Chapter 241. The committee met in April 2015 to develop recommended changes to the principal standards. The committee subsequently worked with TEA staff to provide additional feedback prior to presenting draft rule changes to the SBEC at the December 2015 meeting. The

adopted rule actions repeal the current principal standards and replace them with new principal standards.

Adopted new 19 TAC §241.15 better aligns the standards with the knowledge and skills required for today's principals and with the commissioner's principal appraisal standards. The adopted new section also elevates school culture and instructional leadership as two areas of principal development that should receive additional and focused attention by preparation programs. The adopted rule actions also result from the SBEC's rule review of 19 TAC Chapter 241 conducted in accordance with Texas Government Code, §2001.039.

SUMMARY OF COMMENTS AND BOARD RESPONSES. The public comment period on the proposal began March 11, 2016, and ended April 11, 2016. The SBEC also provided an opportunity for registered oral and written comments at the April 15, 2016, meeting in accordance with the SBEC board operating policies and procedures. No comments were received regarding the proposed repeal of and new 19 TAC §241.15.

The SBOE took no action on the review of proposed repeal of and new 19 TAC §241.15 at the July 22, 2016, SBOE meeting.

19 TAC §241.15

STATUTORY AUTHORITY. The repeal is adopted under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; §21.041(b)(4), which requires the State Board for Educator Certification (SBEC) to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.046(b), which states that the qualifications for certification as a principal must be sufficiently flexible so that an outstanding teacher may qualify by substituting approved experience and professional training for part of the educational requirements; §21.046(c), which states that because an effective principal is essential to school improvement, the SBEC shall ensure that each candidate for certification as a principal is of the highest caliber and that multi-level screening processes, validated comprehensive assessment programs, and flexible internships with successful mentors exist to determine whether a candidate for certification as a principal possesses the essential knowledge, skills, and leadership capabilities necessary for success; and §21.046(d), which states that in creating the qualifications for certification as a principal, the SBEC shall consider the knowledge, skills, and proficiencies for principals as developed by relevant national organizations and the State Board of Education.

CROSS REFERENCE TO STATUTE. The adopted repeal implements the TEC, §§21.003(a), 21.041(b)(4), and 21.046(b)-(d).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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State Board for Educator Certification
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For further information, please call: (512) 475-1497



19 TAC §241.15

STATUTORY AUTHORITY. The new section is adopted under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; §21.041(b)(4), which requires the State Board for Educator Certification (SBEC) to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.046(b), which states that the qualifications for certification as a principal must be sufficiently flexible so that an outstanding teacher may qualify by substituting approved experience and professional training for part of the educational requirements; §21.046(c), which states that because an effective principal is essential to school improvement, the SBEC shall ensure that each candidate for certification as a principal is of the highest caliber and that multi-level screening processes, validated comprehensive assessment programs, and flexible internships with successful mentors exist to determine whether a candidate for certification as a principal possesses the essential knowledge, skills, and leadership capabilities necessary for success; and §21.046(d), which states that in creating the qualifications for certification as a principal, the SBEC shall consider the knowledge, skills, and proficiencies for principals as developed by relevant national organizations and the State Board of Education.

CROSS REFERENCE TO STATUTE. The adopted new section implements the TEC, §§21.003(a), 21.041(b)(4), and 21.046(b)-(d).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Director, Rulemaking, Texas Education Agency
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TITLE 22. EXAMINING BOARDS

PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

The Texas Board of Veterinary Medical Examiners (Board) adopts amendments to §573.10, concerning Supervision of Non-Veterinarians, §573.14, concerning Alternate Therapies, §573.15, concerning Use of Ultrasound in Diagnosis, §573.29, concerning Complaint Information, §573.41, Use of Prescription Drugs, §573.44, Compounding Drugs, §573.45, Extra-Label or Off-Label Use of Drugs, §573.51, Rabies Control, §573.52, Veterinarian Patient Record Keeping, §573.53, Equine Dental Provider Patient Record Keeping, §573.65, Proof of Acceptable Continuing Education, and §573.69, Conditions Relative to License Suspension. The amendments are adopted without changes to the proposed text as published in the June 10, 2016, issue of the *Texas Register* (41 TexReg 4153) and will not be republished.

One comment was received on the adoption of rule 573.41, regarding Use of Prescription Drugs. The commenter recommends that the rule incorporate the Texas Pharmacy Act's licensure requirements and limit relationships between veterinarians and pharmacies or, in the alternative, require disclosure of any remunerative arrangements between a veterinarian and a pharmacy. The Board respectfully declines to make the amendments that the commenter suggests, as they are outside the scope of the Board's proposed amendments to the rule.

No other comments were received regarding the adoption of the amendments to the rules.

In general, the purpose of these amendments to 22 TAC Chapter 573 is to implement changes resulting from the Board's review of the chapter under Texas Government Code §2001.039. The notice of intention to review the chapter was published in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8705). No comments were received in response to the notice. The notice of the adopted rule review was published in the March 18, 2016, issue of the *Texas Register* (41 TexReg 2180).

Overall, the adopted amendments make clarifications and technical corrections.

The amendment to §573.10 serves to make all items in the list parallel. The amendments to §§573.14, 573.15, and 573.41 conform the term "veterinarian-client-patient relationship" to its appearance in the Veterinary Licensing Act. The amendment to §573.29 clarifies what is required on a licensee's notice to clients about complaint information. The amendments to §573.44 and §573.45 conform the term "food-producing animals" to its appearance in the Veterinary Licensing Act. The amendment to §573.51 modernizes the language of the rule.

The amendments to §573.52 and §573.53 will reflect the original intent of the rule to require a veterinarian or an equine dental provider to maintain patient records for a minimum of five years from the date of the last treatment. The amendments to §573.65 are technical corrections as is the amendment to §573.69.

SUBCHAPTER B. SUPERVISION OF PERSONNEL

22 TAC §§573.10, 573.14, 573.15

The amendments are adopted under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; §801.151(c), which

states that the Board shall adopt rules to protect the public; and §801.151(d), which states that the Board may adopt rules regarding the work of a person who works under the supervision of a veterinarian.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

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For further information, please call: (512) 305-7563



SUBCHAPTER C. RESPONSIBILITIES TO CLIENTS

22 TAC §573.29

The amendment is adopted under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(c), which states that the Board shall adopt rules to protect the public; and §801.203, which states that the Board by rule shall establish methods by which consumers and service recipients are notified of how to direct a complaint to the Board.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. PRESCRIBING AND/OR DISPENSING MEDICATION

22 TAC §§573.41, 573.44, 573.45

The amendments are adopted under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; and §801.151(c), which states that the Board shall adopt rules to protect the public.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. RECORDS KEEPING

22 TAC §§573.51 - 573.53

The amendments are adopted under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; and §801.151(c), which states that the Board shall adopt rules to protect the public.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER G. OTHER PROVISIONS

22 TAC §§573.65, §573.69

The amendments are adopted under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; and §801.307, which states that the Board may adopt rules relating to continuing education.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 305-7563



22 TAC §573.82

The Texas Board of Veterinary Medical Examiners (Board) adopts new §573.82, concerning Laser Therapy. The new rule

is adopted without changes to the proposed text as published in the June 10, 2016, issue of the *Texas Register* (41 TexReg 4156) and will not be republished.

The Board adopts this new rule to comply with Texas Occupations Code §801.151(c)(2), which requires the Board to adopt rules ensuring that laser therapy is performed only by a veterinarian or under the supervision of a veterinarian.

The Board received two comments in response to the proposal. The commenters express concern that laser therapy should be treated as the other treatments listed as "alternative treatments" in Texas Occupations Code §801.151(c)(2), specifically suggesting that pet owners should be informed that laser therapy is an alternative therapy. The commenters also suggest that laser therapy has not been shown to be effective.

The Board respectfully disagrees with the suggestion that the rule as proposed treats laser therapy differently than other treatments adopted under the same statutory authority. Rule 573.15, regarding Use of Ultrasound in Diagnosis or Therapy, does not require written consent from the client or notification that the use of ultrasound is an alternative therapy.

The commenters also express concern that laser therapy has not been shown to be effective. The Board respectfully disagrees with this position, and notes that laser therapy has been proved efficacious for such treatments as pain management and wound healing.

The new rule is adopted under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; and §801.151(c), which states that the Board shall adopt rules to protect the public and to ensure that laser therapy is performed only by a veterinarian or under the supervision of a veterinarian.

No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
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For further information, please call: (512) 305-7563



CHAPTER 577. GENERAL ADMINISTRATIVE DUTIES

SUBCHAPTER B. STAFF

22 TAC §577.15

The Texas Board of Veterinary Medical Examiners (Board) adopts amendments to §577.15, concerning the Fee Schedule. The amendments are adopted with one technical change to the proposed text published in the June 10, 2016, issue of the *Texas Register* (41 TexReg 4157). The change adds a comma to the fee for the Equine Dental Certification approval review process.

Although the change to the proposed text is a technical change, the rule will be republished.

In accordance with Senate Bill 195, passed during the 84th Legislative Session, the amendments increase the renewal fee for certain veterinary licenses by \$7.85. Senate Bill 195 transfers the Texas Prescription Program (TPP) from the Department of Public Safety to the Texas State Board of Pharmacy (TSBP) and authorizes the Board to collect a fee in an amount sufficient to cover the cost of administering the TPP. Fees collected for the purpose of administering TPP are transferred to the TSBP.

No comments were received regarding the adoption of the amendments to the rule.

The amendments are adopted under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; and §801.154(a), which states that the board by rule shall set fees in amounts that are reasonable and necessary so that the fees, in the aggregate, cover the costs of administering this chapter. The amendments are also adopted under the authority of Texas Occupations Code 554.006, as amended by Senate Bill 195, which authorizes the Board to increase fees for the purpose of funding the TPP.

No other statutes, articles or codes are affected by the adoption.

§577.15. Fee Schedule.

The Texas Board of Veterinary Medical Examiners has established the following fixed fees as reasonable and necessary for the administration of its functions. Other variable fees exist, including but not limited to costs as described in §575.10 of this title (relating to Costs of Administrative Hearings), and are not included in this schedule.

Figure: 22 TAC §577.15

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

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For further information, please call: (512) 305-7563



PART 29. TEXAS BOARD OF PROFESSIONAL LAND SURVEYING

CHAPTER 661. GENERAL RULES OF PROCEDURES AND PRACTICES

SUBCHAPTER C. DEFINITIONS OF TERMS

22 TAC §661.31

The Texas Board of Professional Land Surveying (Board) adopts an amendment to §661.31, concerning Definitions, with changes to the proposed text as published in the February 5, 2016, issue of the *Texas Register* (41 TexReg 910)

The amendment proposed to §661.31 is intended to clarify the definition of "direct supervision" by specifying that the professional land surveyor is to be in the firm's office or in the field. This will allow the land surveyor to be familiar with the project he/she is supervising and better able to provide direction and instructions.

Comments were received by the Board stating that the proposed change of §661.31(6) conflicts with the previously proposed rule §661.57(2) (being withdrawn) in regards to "Being on site either in the Firm office or in the field." The Board agreed with the comments and addressed them by removing part of the previously proposed language. No comments were submitted regarding the proposed change to §661.31(4) thus no changes to the previously proposed language were made.

The rule amendments are adopted under Texas Occupations Code §1071.151, §1071.252, and Government Code §2001.004.

§661.31. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act--The Professional Land Surveying Practices Act and Amendment.

(2) Board seal--The seal of the Board shall be as authorized by the Board.

(3) Certificate of registration and certificate of licensure--A license to practice professional land surveying in Texas. A certificate of licensure is a license to practice state land surveying in Texas.

(4) Construction estimate--"construction estimate", as used in §1071.004 of the Act, means a depiction of a possible easement route for planning purposes.

(5) Contested case--A proceeding, including, but not restricted to, ratemaking and licensing, in which the legal rights, duties, or privileges of a party are to be determined by the Board after an opportunity for adjudicative hearing.

(6) Direct supervision--To be able to recognize and respond to any problem that may arise; give instruction for the solution to a problem; give instructions for such research of adequate thoroughness to support collection of relevant data; the placement of all monuments; the preparation and delivery of all Documents.

(7) Firm--Any business entity including but not limited to a partnership, limited partnership, association, corporation, limited liability company, limited liability partnership and/ or other entity conducting business under an assumed name.

(8) Offer of surveying services--Any form of advertisement which contains the firm contact information and offers land surveying services, including but not limited to verbal offer, hard copy, electronic web site, telephone listing, written proposal or other marketing materials.

(9) Renewal--The payment of a fee annually as set by the Board within the limits of the law for the certificate of registration or the certificate of licensure.

(10) Report--Survey drawing, written description, and/or separate narrative depicting the results of a land survey performed and conducted pursuant to this Act.

(11) Rule--Any Board statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the Board. The term includes

the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of the Board and not affecting the private rights or procedures.

(12) Seal--An embossed or stamped design authorized by the Board that authenticates, confirms, or attests that a person is authorized to offer and practice land surveying services to the public in the State of Texas and has legal consequence when applied.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Tony Estrada

Executive Director

Texas Board of Professional Land Surveying

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For further information, please call: (512) 239-5263



SUBCHAPTER D. APPLICATIONS, EXAMINATIONS, AND LICENSING

22 TAC §661.55

The Texas Board of Professional Land Surveying (Board) adopts an amendment to §661.55, concerning Registration of Land Surveying Firms, with changes to the proposed text as published in the February 5, 2016, issue of the *Texas Register* (41 TexReg 911).

The amendment to §661.55(g) clarifies that the statement signed on behalf of the firm is to be submitted to the Board and requires the responsible party signing the oath to indicate their position with the firm. The new subsection, §661.55(h), would require the submission of a newly signed oath if the responsible party leaves the firm.

A comment was received by the Board suggesting that the addition of the proposed language in subsection (h) was unnecessary. The Board agreed with the comment and removed the proposed language. No comments were submitted regarding the proposed amendment to subsection (g) thus no change was made to the previously proposed amendment.

The amendments are adopted under Texas Occupations Code §§1071.101, 1071.151 and 1071.452.

§661.55. *Registration of Land Surveying Firms.*

(a) A Firm shall not offer land surveying services until the Firm applies for and receives a Firm Registration Certificate with the Board, which identifies:

(1) The business and legal names and addresses of the association, partnership, or corporation;

(2) The names and license numbers of all persons registered or licensed under this Act employed by the association, partnership, or corporation.

(b) A person registered or licensed under the Act shall ensure that any Firm employing them complies with the filing requirements set forth in subsection (a) of this section.

(c) A person registered or licensed under the Act and employed by a Firm shall notify the Board in writing within five (5) business days prior to leaving employment or no later than five (5) business days after leaving employment.

(d) The Board may refuse to issue or renew and may suspend or revoke the registration of a firm and may impose an administrative penalty against the owner of a firm for a violation of this chapter by an employee, agent, or other representative of the entity, including a registered professional land surveyor employed by the entity at the time of the violation.

(e) The Board may refer to the Texas Attorney General for appropriate action any person registered or licensed under the Act or any Firm offering surveying services that fails to comply with this section.

(f) A nonrefundable fee, as established by the Board, will be submitted with the registration form.

(g) At the time the firm receives a certificate of registration, before it can offer land surveying services, a responsible party on behalf of the firm shall sign the following and submit it to the Board: I, _____, _____, (state position with Firm) on behalf of _____, Business Entity Certificate Number _____, hereby affirm that this Business Entity will always place the interest of the public above all others in our practice of Professional Land Surveying and this Business Entity will adhere to the Texas Professional Land Surveying Practices Act and General Rules of Procedures and Practices adopted by the Board.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Tony Estrada

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Texas Board of Professional Land Surveying

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For further information, please call: (512) 239-5263



SUBCHAPTER E. CONTESTED CASES

22 TAC §661.99

The Texas Board of Professional Land Surveying (Board) adopts an amendment to §661.99, concerning Sanctions and Penalty Matrix, without changes to the proposed text as published in the February 5, 2016, issue of the *Texas Register* (41 TexReg 912)

The amendment to §661.99 adds a penalty matrix and reflects language adopted after the major rule revision in August 2013.

No comments regarding the proposal were received by the Board.

The amendments are adopted under Texas Occupations Code §§1071.101, 1071.151 and 1071.452.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 663. STANDARDS OF PROFESSIONAL RESPONSIBILITY AND RULES OF CONDUCT

The Texas Board of Professional Land Surveying (Board) adopts the repeal of §663.14 and replaces it with new §663.11, concerning Criminal Convictions, without changes to the proposed text and adopts an amendment to §663.19, concerning Survey Drawing/Written Description/Report, with changes to the proposed text as published in the February 5, 2016, issue of the *Texas Register* (41 TexReg 913).

The Board is renumbering §663.14 to §663.11 because the rule currently falls under the subchapter labeled Professional and Technical Standards. Criminal convictions are not a standard and so the rule should be moved outside that subchapter.

The amendment to §663.19, Survey Drawing/Written/Description/Report, removes the "/", a typographical error, from between "Written" and "Description". The amendment to §663.19(e) would require the land surveyor to not only describe the monuments found, or placed, but to also describe how the monument is traceable to the responsible registrant or employer.

Comments were submitted to the Board in favor of the proposed amendment to §663.19(e). However, after further consideration, the Board voted to remove the proposed language.

SUBCHAPTER A. GENERAL PRACTICE STANDARDS

22 TAC §663.11

The new section is adopted under Texas Occupations Code §§1071.101, 1071.151 and 1071.452.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. PROFESSIONAL AND TECHNICAL STANDARDS

22 TAC §663.14

The repeal of §663.14 is adopted under Texas Occupations Code §§1071.101, 1071.151, and 1071.452.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 239-5263



22 TAC §663.19

The amendments are adopted under Texas Occupations Code §§1071.101, 1071.151 and 1071.452.

§663.19. Survey Drawing/Written Description/Report.

(a) All reports shall delineate the relationship between record monuments and the location of the boundaries surveyed; such relationship shall be shown on the survey drawing, if a drawing is prepared, and/or separate report and recited in the description with the appropriate record references recited thereon and therein.

(b) Every description prepared for the purpose of defining boundaries shall provide a definite and unambiguous identification of the location of such boundaries and shall describe all monuments found or placed.

(c) Courses shall be referenced by notation upon the survey drawing to an identifiable and monumented line or an established geodetic system for directional control.

(d) The survey drawing shall bear the Firm name and Firm Registration Number, the land surveyor's name, address, and phone number who is responsible for the land survey, his/her official seal, his/her original signature (see §661.46 of this title (relating to Seal and Oath), and date surveyed.

(e) Boundary monuments found or placed by the land surveyor shall be described upon the survey drawing. The land surveyor shall note upon the survey drawing, which monuments were found, which monuments were placed as a result of his/her survey, and other monuments of record dignity relied upon to establish the corners of the property surveyed.

(f) A reference shall be cited on the drawing and prepared description to the record instrument that defines the location of adjoining boundaries.

(g) If any report consists of more than one part, each part shall note the existence of the other part or parts.

(h) If a land surveyor provides a written narrative in lieu of a drawing/sketch to report the results of a survey, the written narrative shall contain sufficient information to demonstrate the survey was conducted in compliance with the Act and rules of the Board.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Tony Estrada
Executive Director
Texas Board of Professional Land Surveying
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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES

SUBCHAPTER K. MOBILE SOURCE INCENTIVE PROGRAMS

DIVISION 8. DRAYAGE TRUCK INCENTIVE PROGRAM

30 TAC §114.680, §114.682

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §114.680, concerning Definitions, and §114.682, concerning Eligible Vehicle Models.

Section 114.680 and §114.682 are adopted *without changes* to the proposed text as published in the March 18, 2016, issue of the *Texas Register* (41 TexReg 2127) and will not be republished.

The amendments will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan.

Background and Summary of the Factual Basis for the Proposed Rules

The rulemaking amends existing rules implementing the Drayage Truck Incentive Program (DTIP) established under Texas Health and Safety Code (THSC), Chapter 386, Subchapter D-1.

Under THSC, §386.183(f), the commission may modify the DTIP to improve its effectiveness or further the goals of the Texas Emissions Reduction Plan (TERP). The amendments to the DTIP rules are intended to improve the effectiveness of the DTIP to reduce emissions at and near seaports and rail yards in the state's nonattainment areas. The amendments include non-road cargo handling equipment as eligible for replacement under the program and remove the requirement that the drayage truck being purchased must have a day cab only. In addition, language is added to the definition of a seaport to include publicly or privately owned property within a ship channel security district established under Texas Water Code (TWC), Chapter 68. The Houston Ship Channel Security District (HSCSD) is the only district established in Texas under this provision.

Section by Section Discussion

§114.680, Definitions

Section 114.680(1) is amended to remove the definition term, "Day cab," under the DTIP and replace it with the term, "Cargo

handling equipment." The removal of "Day cab" is made because, with the change to §114.682 to remove the requirement that a new drayage truck purchased under the DTIP have a day cab only, the definition is no longer needed. The term "Cargo handling equipment" is added in conjunction with the addition of cargo handling equipment to §114.682 as eligible for replacement and purchase under the DTIP. The definition of cargo handling equipment includes any heavy-duty, non-road, self-propelled vehicle or equipment used at a seaport or rail yard to lift or move cargo, such as containerized, bulk, or break-bulk goods. The equipment includes, but is not limited to, rubber-tired gantry cranes, yard trucks, top handlers, side handlers, reach stackers, forklifts, loaders, and aerial lifts.

Section 114.680(6) is amended to add language to the definition of "Seaport" to include publicly or privately owned property within a ship channel security district established under TWC, Chapter 68.

In the Port of Houston area, there are multiple businesses and facilities with substantial drayage truck activity located in proximity to, but not at, the cargo transfer locations. The HSCSD includes property where many businesses and facilities associated with port activities in some manner are located and provides an appropriate defined boundary that can be used to delineate an expanded area considered a seaport under the DTIP. The addition to the definition of "Seaport" in §114.680(6) makes drayage trucks operating on or transgressing through the properties included in the HSCSD eligible for replacement under the DTIP.

§114.682, Eligible Vehicle Models

Section 114.682(a)(1) is amended to remove the requirement that a heavy-duty on-road vehicle eligible for purchase under the DTIP have a day cab only. Based on visits to many of the rail and port facilities and discussion with port administrators and drayage truck owners, the commission has determined that the goals of the DTIP will be better addressed by allowing on-road heavy-duty vehicles with sleeper cabs to be eligible for purchase under the program. The commission has determined that a number of the drayage truck owners are individual truck owners who contract to provide drayage services and that use vehicles with sleeper berths. The day cab requirement is removed in order to improve the ability of the DTIP to achieve its goals and the goals of the TERP.

Section 114.682(a)(3) and (b)(3) are amended to add "other cargo handling equipment" to the list of drayage truck models eligible for replacement and purchase under the DTIP. Along with the addition of a definition for cargo handling equipment in §114.680, this change expands the program to include replacement and purchase of heavy-duty non-road, self-propelled vehicles or equipment used at a seaport or rail yard to lift or move cargo, such as containerized, bulk, or break-bulk goods. As noted under the definition, this equipment includes, but is not limited to, rubber-tired gantry cranes, yard trucks, top handlers, side handlers, reach stackers, forklifts, loaders, and aerial lifts. The commission has determined that expanding the program to include other cargo handling equipment at seaports and rail yards helps achieve the goals of the DTIP and the TERP by further reducing the concentrated emissions associated with the movement of cargo at those facilities.

Final Regulatory Impact Analysis Determination

The commission reviewed the rulemaking in light of the regulatory impact analysis (RIA) requirements of Texas Government Code, §2001.0225, and determined that this rule action is

not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The rules add or revise eligibility requirements for a voluntary grant program. Because the proposed rules place no involuntary requirements on the regulated community, the rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. In addition, the amendments do not place additional financial burdens on the regulated community.

In addition, a RIA is not required because the rules do not meet any of the four applicability criteria for requiring a RIA of a "major environmental rule" as defined in the Texas Government Code. Texas Government Code, §2001.0225, applies only to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not exceed a standard set by federal law. In addition, this rulemaking does not exceed an express requirement of state law and is not proposed solely under the general powers of the agency, but is specifically authorized by the provisions cited in the Statutory Authority section of this preamble. Finally, this rulemaking does not exceed a requirement of a delegation agreement or contract to implement a state and federal program.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the RIA.

Takings Impact Assessment

The commission evaluated this rulemaking action and performed an analysis of whether the rules are subject to Texas Government Code, Chapter 2007. The rules make revisions to voluntary programs and only affect motor vehicles and equipment that are not considered to be private real property. The promulgation and enforcement of the rules are neither a statutory nor a constitutional taking because the rules do not affect private real property. Therefore, the rules do not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the rulemaking and found the rulemaking is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), concerning rules subject to the Texas Coastal Management Program (CMP), and, therefore, require that goals and policies of the CMP be considered during the rulemaking process. The commission reviewed this action for consistency and determined the rulemaking for Chapter 114 does not impact any CMP goals or policies, because it revises voluntary incentive grant programs and does not govern air pollution emissions.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received on the CMP.

Public Comment

The commission held public hearings on April 12, 2016, in Austin and on April 14, 2016, in Houston. The comment period closed on April 18, 2016. The commission received comments from North Central Texas Council of Governments (NCTCOG), Port of Houston Authority (POHA), Regional Transportation Council of the Dallas-Fort Worth Metropolitan Planning Organization (RTC), and Texas Farm Patch LLC (TFP). NCTCOG, RTC, and POHA commented in support of the rulemaking. NCTCOG recommended additional changes to the rules. NCTCOG, RTC, and TFP also provided recommendations that were outside of the scope of this rulemaking.

Response to Comments

Comment

NCTCOG and POHA commented in support of the rule changes. NCTCOG agreed that the revisions are key to reducing emissions from all vehicles employed in drayage activities and best accomplishing the goals of the program. POHA expressed appreciation that the commission recognizes emissions in the port sector and that there is a program like this, because there are plenty of diesel engines in the port area.

Response

The commission appreciates the support expressed for the rulemaking. No changes to the proposed text were made as a result of these comments.

Comment

POHA commented in support of the change to §114.680(1) to remove the definition of "Day cab" and the change to §114.682(a)(1) to remove the requirement that a heavy-duty on-road vehicle eligible for purchase under the DTIP have a day cab only. POHA explained that it supports the change because the majority of drayage truck owners are independent owner-operators and that the truck owners want to be as flexible as possible in what they want to do with their trucks. POHA further commented that removing the day cab requirement will give the truck owners some comfort in knowing that after they meet their grant requirements they could use those trucks for long-haul purposes and any other purpose where a sleeper cab would help them. POHA stated that, at the same time, the change will help ensure that the DTIP results in more emissions reductions.

Response

The commission appreciates the POHA's support for the changes. The commission agrees that the removal of the day cab requirement will encourage more independent owner-operators to participate in the DTIP. The commission also hopes that after completion of the grant commitment period participants will continue to use the grant-funded vehicles in the areas where the use of the lower-emitting vehicles can help keep the air clean. No changes to the proposed text were made as a result of these comments.

Comment

POHA also commented in support of adding a new definition of "Cargo handling equipment" to §114.680(1) and to adding "other cargo handling equipment" to the list of drayage trucks

eligible for purchase under §114.682(a)(3) and to the list of drayage trucks eligible for replacement under §114.682(b)(3). POHA commented that adding cargo handling equipment to the DTIP will give POHA and its tenants and any other port-related facilities an additional opportunity to reduce emissions.

Response

The commission appreciates the support expressed for the addition of the term cargo handling equipment and agrees that this change will provide port facilities an additional opportunity to reduce emissions. No changes were made to the proposed text in response to the comments.

Comment

NCTCOG recommended that §114.680(4) containing the definition of "Non-road yard truck" be deleted. NCTCOG recommended that non-road yard trucks be specifically integrated into the new definition of "Cargo handling equipment" added to §114.680(1). NCTCOG commented that integrating non-road yard trucks into the definition of cargo handling equipment would define all non-road equipment together and could be more simply referenced. NCTCOG also recommended that §114.682(a)(2), listing a non-road yard truck as eligible for purchase under the DTIP, and §114.682(a)(3), listing other cargo handling equipment as eligible for purchase under the DTIP, be combined because non-road yard trucks are a type of cargo handling equipment and therefore do not need to be listed as a distinct vehicle type.

Response

The commission agrees that non-road yard trucks are a type of cargo handling equipment. However, the commission does not agree with the proposed changes. The commission anticipates continuing to consider non-road yard trucks separate from other cargo handling equipment when establishing standardized usage rates and grant amounts, and in allowing for possible replacement of an on-road vehicle with a non-road yard truck. Retaining the separate definition of a non-road yard truck in §114.680(4) and separate listing of non-road yard trucks as eligible for purchase in §114.682(a)(2) will help the commission with implementation of the program. No changes to the proposed text were made as a result of this comment.

Comment

NCTCOG recommended additional expansion of the definition of "Seaport" under §114.680(6), or addition of another definition, to accommodate eligibility of inland ports and airports to ensure that all major freight hubs would be eligible for funding. NCTCOG commented that the drayage trucks and cargo handling equipment targeted by the DTIP are critical to operations at all of these types of facilities and ensuring eligibility for all locations would best ensure that funded projects address emissions from the highest-polluting, highest-activity vehicles and equipment, regardless of whether they operate at facilities specifically accessible by air, rail, or ocean. NCTCOG provided a suggested definition of "Logistic center/intermodal facility" be added to the rules. *"Logistic center/intermodal facility- Any publically or privately owned property associated with the primary movement of cargo or materials to or from a multi-modal facility, including structures and property devoted to receiving, handling, consolidating, and loading or delivery through the use of drayage truck operations."*

Response

The commission agrees that reducing emissions from vehicles and equipment operating at a wide range of freight hubs will help improve air quality in the nonattainment areas and other affected counties. However, the rule language implements the specific provisions of THSC, §386.183(a)(2)(B), requiring that drayage trucks funded under the program must be operated in and within a maximum distance of a seaport or rail yard in a nonattainment area of this state. Also, the other TERP incentive programs, including the Diesel Emissions Reduction Incentive (DERI) Program established under THSC, Chapter 386, Subchapter C, are available to provide funding for replacement of heavy-duty on-road vehicles and non-road equipment in the nonattainment areas and other affected areas, including vehicles and equipment operating at inland ports and airports. No changes to the proposed text were made in response to these comments.

Comment

NCTCOG recommended streamlining §114.682 by deleting §114.682(c) requiring that replacement drayage trucks have an engine model year 2010 or later and that the drayage truck being replaced have an engine of model year 2006 or earlier. NCTCOG further recommended that those requirements then be added to §114.682(a)(1) and (b)(1), respectively.

Response

The commission does not agree with the changes proposed by NCTCOG. Section 114.682(c) pertains to the model year of the drayage truck engine, while §114.682(a) and (b) pertain to the model year of the drayage truck. The eligibility requirements for the model year of the drayage truck engine are listed separate from the requirements for the model year of the drayage truck in order to make sure that the different requirements are clearly understood. Combining the provisions could make the provisions less clear. No changes to the proposed text were made as a result of this comment.

Comment

NCTCOG commented that for consistency of requirements between on-road vehicles and non-road equipment, the commission should add emissions tier certification requirements to §114.682(a)(2), which lists non-road yard trucks as eligible for purchase under the program. NCTCOG commented that this change would create consistency with the DTIP guidelines, *Texas Emissions Reduction Plan: Guidelines for the Drayage Truck Incentive Program (RG-524)*, which specify that eligible non-road yard trucks must be certified under an EPA certificate of conformity to meet the final Tier 4 non-road engine emission standards.

Response

The commission does not agree with the change recommended by NCTCOG. Under §114.682(c), the drayage truck purchased must have an engine of model year 2010 or later. This provision in the rules implements a statutory requirement established in THSC, §386.182(b). The implementation deadline for meeting the final federal Tier 4 emission standards for a heavy-duty non-road engine in certain horsepower categories was extended through 2014. Therefore, a non-road yard truck with a non-road engine of model year 2010 or later still might not meet the latest federal emission standards or otherwise be certified to a nitrogen oxides emission rate that is substantially lower than the engine on a non-road yard truck being replaced. In recognition of this issue, the commission determined it was appropriate to

include supplemental criteria in the DTIP guidelines to also require that the engine on a non-road yard truck purchased under the program meet the final federal Tier 4 emission standards, to help ensure that the project would result in a significant reduction in emissions and that the engine would meet the latest federal emission standards. It is not necessary to add the language proposed by NCTCOG to the rules in order for the supplemental criteria already included in the guidelines to apply. No changes to the proposed text were made as a result of this comment.

Comment

POHA commented in support of the addition of other cargo handling equipment as eligible for purchase under §114.682(a)(3) and eligible for replacement under §114.682(b)(3). POHA commented that the changes will give the POHA, its tenants, and any other port-related facilities the opportunity to reduce emissions.

Response

The commission appreciates the support expressed for the addition of other cargo handling equipment as eligible under the DTIP. No changes to the proposed text were made as a result of this comment.

Comment

NCTCOG recommended that eligible technologies for new drayage trucks or cargo handling equipment should include, but not be limited to, alternative fuel vehicles, battery-electric trucks, fuel-cell trucks, and battery-electric trucks utilizing fuel cells or internal combustion engines acting as range extenders.

Response

The commission agrees that providing for a full range of fuel options can help encourage potential applicants to apply to the DTIP. The DTIP is fuel-neutral and any fuel type or power source is already eligible if the drayage truck and engine otherwise meet the eligibility criteria. No changes to the proposed text were made as a result of this comment.

Comment

NCTCOG recommended that the commission consider a revision that would give preference to projects involving use of zero or near-zero emission vehicles. NCTCOG commented that the EPA has recently initiated such preferential consideration in the Clean Diesel Funding Assistance Program Announcement, in which the cleanest technologies qualify for slightly higher funding levels. NCTCOG expressed its opinion that such a change would support commercialization of near-zero emission technologies, encourage program applicants to consider the cleanest available technology options, and contribute to additional incremental emission reductions.

Response

The commission agrees that increased use of zero or near-zero emission vehicles could further contribute to achieving emission reductions. However, in implementing the DTIP and other TERP incentive programs, the commission has remained fuel-neutral unless the legislature has specifically directed that certain fuels and types of engines be targeted. Under this approach, the commission has encouraged applicants to select the type of technology that the applicant determines will work best for its particular needs, as long as the project meets the eligibility criteria. No changes to the proposed text were made as a result of this comment.

Comment

NCTCOG and RTC commented in support of the TERP and encouraged the commission to request full funding of the program as budgets are prepared for the next biennium.

Response

The commission appreciates the comments in support of funding the TERP programs; however, these comments are outside of the scope of this rulemaking. Decisions on appropriation levels are made by the Texas Legislature. Also, how the commission structures the biennial appropriations request is guided by direction from the Legislature Budget Board (LBB). The commission will continue to work with members of the legislature and the LBB regarding the appropriation funding levels for the TERP programs. No changes to the proposed text were made in response to these comments.

Comment

TFP requested that the commission include Atascosa County as an eligible county for the program. TFP commented that it is a grower, packer, shipper operation that sells fresh Texas produce to HEB, Walmart, Kroger, Target, and some other smaller retailers. TFP explained that it is currently upgrading irrigation pumps and well motors from diesel to electric and old tractors to newer, more energy efficient ones. TFP commented that this program may help in its quest to achieve the upgrades and make Texas a better place to live and work.

Response

The commission appreciates TFP's efforts to upgrade its equipment; however, this recommendation is outside of the scope of this rulemaking. The counties eligible for operation of grant-funded vehicles and equipment are included in the DTIP guidelines and are not listed in the rules. In addition, the equipment identified by TFP does not meet the definition of a drayage truck and is not eligible under the DTIP. TFP might be confusing the DTIP with the TERP DERI Program established under THSC, Chapter 386, Subchapter C, which includes funding for replacement or upgrade of irrigation pumps and tractors. The counties eligible for operation of grant-funded vehicles under the DERI Program include nonattainment areas and affected counties listed in THSC, §386.051(2). Atascosa County is not included in that list of eligible counties. Under THSC, §386.051(2)(Z), the commission may designate additional affected counties by rule. However, any consideration of adding counties to the list would be separate from this rulemaking. No changes to the proposed text were made as a result of this comment.

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of the state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendments are also adopted under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC; THSC, §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; THSC, §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the

control of the state's air; and THSC, Chapter 386, which establishes the Texas Emissions Reduction Plan.

The amendments implement the Drayage Truck Incentive Program established under THSC, Chapter 386, Subchapter D-1.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-2613



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

34 TAC §3.364

The Comptroller of Public Accounts adopts amendments to §3.364, concerning professional employer services, with changes to the proposed text as published in the March 25, 2016, issue of the *Texas Register* (41 TexReg 2309). The amendments implement Senate Bill 1286, 83rd Legislature, 2013 (SB 1286). The title of this section is amended to "Professional Employer Services" to reflect the changes to the Labor Code made by SB 1286. Definitions are amended and new terminology is introduced to reflect the conforming changes to Tax Code, §151.057 made by SB 1286.

No comments were received regarding adoption of the amendment. Subsection (a)(5)(A) was revised to delete the word "even," which was inadvertently left in the proposed amendment.

Subsection (a) is amended to incorporate new terminology and definitions. Existing paragraphs (1) and (2) are deleted and new paragraphs (1) - (4) are added.

New paragraph (1) defines the term "client" to mean any person who enters into a professional employer services agreement with a professional employer organization. This definition is based upon Labor Code, §91.001(3).

New paragraph (2) defines the term "coemployer" to mean a professional employer organization or a client that is a party to a co-employment relationship. This definition restates Labor Code, §91.001(3-a).

New paragraph (3) defines the term "coemployment relationship" to mean a contractual relationship between a client and a professional employer organization that involves the sharing of employment responsibilities with or allocation of employment responsibilities to covered employees in accordance with a professional

employer services agreement. This definition is based upon Labor Code, §91.001(3-b).

New paragraph (4) defines "covered employee." This definition implements Labor Code, §91.001(7-a) and §91.0012 and incorporates guidance previously provided in the definition of the term "assigned employee," which is deleted. Subsequent paragraphs are renumbered accordingly.

Renumbered paragraph (5) (formerly paragraph (3)) defines the term "independent contractor." This paragraph is amended to replace the phrase in subparagraph (A) from "is paid by the job even when consideration is based on a time-measure basis" to "is paid by the job, not by the hour or some other time measured basis." This amendment is made to reflect the definition set out in Labor Code, §91.001(10)(A).

Paragraphs (4) and (5), defining shared employment relationship and staff leasing company, respectively, are deleted.

Paragraph (6) is amended to define the term "professional employer organization." The term "staff leasing services" and its definition are deleted. A professional employer organization is described in Tax Code, §151.057 as a business that offers professional employer services and is licensed under Labor Code, Chapter 91, or is exempt from the licensing requirements of Labor Code, Chapter 91. Currently, the Labor Code does not exempt any professional employer organizations from the licensing requirements of Chapter 91. Consequently, this portion of the definition is not included in the rule.

New paragraph (7) defines the term "professional employer services" to mean services provided through coemployment relationships in which all or a majority of the employees providing services to a client or to a division or work unit of a client are covered employees. The term does not include temporary help; an independent contractor; the provision of services that otherwise meet the definition of "professional employer services" by one person solely to other persons who are related to the service provider by common ownership; or a temporary common worker employer as defined by Labor Code, Chapter 92. This definition is based upon Labor Code, §91.001(14).

New paragraph (8) defines the term "temporary help" to mean an arrangement by which an organization hires its own employees and assigns them to a company to support or supplement the company's work force in a special work situation, including: an employee absence; a temporary skill shortage; a seasonal workload; or a special assignment or project. The definition is based on the definition given in Labor Code, §91.001(16).

Subsection (b), which sets out the responsibilities of persons providing staff leasing services, is amended to implement the terminology of Labor Code, Chapter 91 and Tax Code, §151.057. No substantive change is intended as a result of these revisions.

Subsection (c), which relates to independent contractors, is amended to replace the terms "staff leasing services" and "staff leasing company" with the terms "professional employer services" and "professional employer organization." All other changes in subsection (c) reflect the changes in terminology made to Tax Code, §151.057 by SB 1286 and are not substantive in nature.

The amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §151.057 (Services by Employees).

§3.364. *Professional Employer Services.*

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Client--Any person who enters into a professional employer services agreement with a professional employer organization.

(2) Coemployer--A professional employer organization or a client that is a party to a coemployment relationship.

(3) Coemployment relationship--A contractual relationship between a client and a professional employer organization that involves the sharing of employment responsibilities with or allocation of employment responsibilities to covered employees in accordance with a professional employer services agreement and the provisions of Labor Code, Chapter 91.

(4) Covered employee--An individual having a coemployment relationship with a professional employer organization and a client. The term does not include an independent contractor, a temporary common worker as defined by Labor Code, Chapter 92, or an employee providing temporary help.

(5) Independent contractor--A person who contracts to perform work or provide a service for the benefit of another and who:

(A) is paid by the job, not by the hour or some other time measured basis;

(B) is free to hire as many helpers as the person desires and to determine what each helper will be paid;

(C) is free to work for other customers, or to send helpers to work for other customers, while under contract to the hiring customer; and

(D) is in control of the details of the work and the right to terminate the employment of its employees.

(6) Professional employer organization--A business entity that offers professional employer services and is licensed under Labor Code, Chapter 91.

(7) Professional employer services--Services provided to a client by a professional employer organization through a coemployment relationship when a majority of the employees providing services to the client, or to a division or work unit of the client, are covered employees. The term does not include:

(A) temporary help;

(B) the provision of services by an independent contractor;

(C) the provision of services that otherwise meet the definition of "professional employer services" by one person solely to other persons who are related to the service provider by common ownership; or

(D) services provided by a temporary common worker employer as defined by Labor Code, Chapter 92.

(8) Temporary help--An arrangement by which an organization hires its own employees and assigns them to a company to support or supplement the company's work force in a special work situation, including:

(A) an employee absence;

(B) a temporary skill shortage;

(C) a seasonal workload; or

(D) a special assignment or project.

(b) Tax responsibilities of professional employer organizations.

(1) Sales tax is not due on professional employer services if all of the following conditions are met:

(A) at least 75% of the covered employees providing services under the professional employer services agreement were previously employees of the client for a period of at least three months immediately prior to commencement of the professional employer services agreement;

(B) none of the covered employees were employed previously:

(i) by the company providing professional employer services under the agreement unless the previous employment was through a coemployment relationship; or

(ii) by a person that previously provided or currently provides taxable services to the client; and

(C) a coemployment relationship exists between the client and the professional employer organization as to the covered employees.

(2) The following are exceptions to paragraph (1) of this subsection.

(A) A professional employer services agreement must comply only with paragraph (1)(B) and (C) of this subsection when the client has been in operation for less than a year; provided that a client that has been in existence less than a year solely due to a change in legal entity, merger, or corporate reorganization must meet all three conditions. In the latter situation, the combined experience of all entities involved in such legal change, merger, or corporate reorganization will be considered when applying the tests set forth in paragraph (1) of this subsection.

(B) When a professional employer organization enters into an agreement with a client that previously was in a coemployment relationship with another professional employer organization immediately prior to the effective date of such new agreement, the employees that were subject to the coemployment relationship will be considered employees of the client in meeting the requirement in paragraph (1)(A) of this subsection.

(C) A professional employer services agreement that has met the qualifications in paragraph (1) of this subsection will not have to re-qualify if a covered employee is fired or resigns and is replaced. However, an agreement must re-qualify under paragraph (1) if, within six months after it is entered into, all of the covered employees or an identifiable segment of the covered employees are replaced by:

(i) employees previously employed by the professional employer organization unless the previous employment was through a coemployment relationship with another client; or

(ii) employees of an entity that previously provided or currently provides taxable services to the client.

(D) If the scope of an existing professional employer services agreement is expanded to increase the volume of services of the type already provided by the professional employer organization by adding employees to perform the same work functions of employees already under the agreement (for example, another shift is added), the

amended agreement must meet the qualifications in paragraph (1)(B)(i) and (C) of this subsection.

(E) If the scope of an existing professional employer services agreement is expanded to include services not previously provided by the professional employer organization by adding employees to perform functions that are not currently performed by employees under the agreement (for example, employees are added to perform debt collection services for a client who previously had not performed those services in house), the amended agreement must meet the qualifications in paragraph (1)(B) and (C) of this subsection.

(3) The client and the professional employer organization must sign a written certification that the professional employer services agreement or amendments to the agreement meet the requirements and conditions set out in this section, and both parties must retain a copy of the certification in their files.

(4) If an agreement does not meet the conditions for exemption set out in subsection (b) of this section, taxable services as defined in Tax Code, §151.0101, performed under the agreement are subject to sales tax, unless purchased for resale as provided in §3.285 of this title (relating to Sales for Resale; Resale Certificates).

(5) When both nontaxable professional employer services and taxable services are being performed under the same agreement, the parties to the agreement should separately identify the taxable from nontaxable services in the agreement and the charges applicable to each. Failure to separate the charges will result in the entire agreement being presumed to be for taxable services. Documentation that clearly defines the work being performed should be retained by both parties to show that had the nontaxable professional employer services and taxable services been performed independently of each other, the cost of each would be reasonably near the allocation of charges. Examples of acceptable documentation include written agreements, which detail the scope of work, bid sheets, tally sheets, payroll records, and job descriptions. If there is not a written agreement signed by both parties clearly showing agreement as to the taxable and nontaxable work being performed, the customer and the service provider may prepare a written certification verifying the allocation of nontaxable professional employer services and taxable services. All services performed will be presumed to be taxable if the parties fail to provide the written certification. The comptroller may recalculate the charges if the allocation appears unreasonable and either party may be held responsible for the additional tax due.

(c) Independent contractor. Professional employer services do not include services performed by an independent contractor regardless of the status of the contractor as a licensed professional employer organization.

(d) Temporary help service. For information on the taxability of services performed by a temporary help service, see §3.356 of this title (relating to Real Property Service).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Lita Gonzalez

General Counsel

Comptroller of Public Accounts

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For further information, please call: (512) 475-0387

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER I. VALUATION PROCEDURES

34 TAC §9.4009

The Comptroller of Public Accounts adopts amendments of §9.4009, concerning appraisal of recreation, park, and scenic land, with changes to the proposed text as published in the June 24, 2016, issue of the *Texas Register* (41 TexReg 4621). We are also adopting amendments to the title of Subchapter I from Validation Procedures to Valuation Procedures. These amendments are to correct the title and to reflect updates and revisions to the guidelines for the appraisal of recreational, park, and scenic land.

The amendment adopts guidelines for the appraisal of recreational, park, and scenic land. The guidelines specify the methods to apply and procedures to use in appraising land that qualifies for special appraisal as recreational, park, and scenic land. The amendment provides that appraisal districts are required to follow the procedures and methods set out in the guidelines.

No comments were received regarding adoption of the amendment. However, several minor changes were made to the guidelines to correct punctuation, typographical, and other non-substantive errors.

These amendments are adopted under Tax Code, §5.05 (Appraisal Manuals and Other Materials) and §23.83 (Appraisal of Restricted Land) which provide the comptroller with the authority to prepare and issue publications relating to the appraisal of property and to promulgate rules specifying the methods to apply and the procedures to use in appraising recreational, park, or scenic lands, respectively, for ad valorem tax purposes.

These amendments implement Tax Code, §23.83 (Appraisal of Restricted Land).

§9.4009. Appraisal of Recreational, Park, and Scenic Land.

Adoption of the "Guidelines for the Appraisal of Recreational, Park, and Scenic Land." These guidelines specify the methods to apply and the procedures to use in appraising land that qualifies for special appraisal as recreational, park, and scenic land. Appraisal districts are required to follow the procedures and methods set out in these guidelines. The Comptroller of Public Accounts adopts by reference the Guidelines for the Appraisal of Recreational, Park, and Scenic Land. The guidelines are accessible on our website. Copies of the guidelines can be obtained from the Comptroller of Public Accounts, Property Tax Assistance Division, P.O. Box 13528, Austin, Texas 78711-3528. Copies also may be requested by calling our toll-free number 1-800-252-9121. In Austin, call (512) 305-9999.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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34 TAC §9.4010

The Comptroller of Public Accounts adopts amendments to §9.4010, concerning appraisal of public access airport property, without changes to the proposed text as published in the June 24, 2016, issue of the *Texas Register* (41 TexReg 4622). We are also adopting amendments to the title of Subchapter I from Validation Procedures to Valuation Procedures. These amendments are to correct the title and to reflect updates and revisions to the guidelines for the appraisal of public access airport property.

The amendment adopts guidelines for the valuation of public access airport property. The guidelines specify the methods to apply and procedures to use in appraising property that qualifies for special appraisal as public access airport property. The amendment provides that appraisal districts are required to follow the procedures and methods set out in the guidelines.

No comments were received regarding adoption of the amendment.

The amendments are adopted under Tax Code, §5.05 (Appraisal Manuals and Other Materials) and §23.93(e) (Appraisal of Restricted Land) which provide the comptroller with the authority to prepare and issue publications relating to the appraisal of property and to promulgate rules specifying the methods to apply and the procedures to use in appraising public access airport property, respectively, for ad valorem tax purposes.

The amendments implement Tax Code, §23.93 (Appraisal of Restricted Land).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 705. ADULT PROTECTIVE SERVICES

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§705.1001, 705.2105, 705.2107, 705.3102, 705.4103, 705.4105, 705.4107, 705.6101, 705.7103, and 705.7105; new §705.2103; and the repeal of §705.2103 without changes to the proposed text as published in the May 20, 2016, issue of the *Texas Register* (41 TexReg 3641). The text of the rules will not be republished.

The justification of the amendments, new rules, and repeal is to implement Senate Bills 760 and 1880 (84th Legislature), the APS Scope and Jurisdiction Bills, which expanded the APS Provider (formally Facility) program's jurisdiction to investigate abuse, neglect, and exploitation. These bills ensured 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 Adult Protective Services (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.

The adopted rules will implement APS's expanded jurisdiction and modify existing DFPS rules, as applicable, to the expanded jurisdiction. These rules will take effect on September 1, 2016. The updates in Chapters 705 will implement statutory changes as required by the APS Scope and Jurisdiction Bills.

A summary of the changes are as follows:

The amendment to §705.1001 updates and adds definitions for emergency protective services, home and community support services agencies (HCSSA) agency, paid caretaker, protective services, and purchased client services, and removes definitions of terms not used in this subchapter.

Section 705.2103 is repealed and new §705.2103 updates who is eligible for purchased client services and when purchased client services are available.

The amendment to §705.2105 and §705.2107 updates terms and establishes who is eligible for purchased client services and when purchased client services are available.

The amendment to §705.3102 clarifies when APS can apply for a protective order.

The amendment to §705.4103 clarifies the circumstances in which a designated perpetrator has the right to appeal a validated finding.

The amendment to §705.4105 clarifies to whom APS may release the findings of an investigation when the findings of the investigation are valid.

The amendment to §705.4107 updates language.

The amendment to §705.6101 clarifies when APS uses assessments in an in-home case and when a case worker must consult with a supervisor.

The amendment to §705.7103 deletes outdated language.

The amendment to §705.7105 updates terms to align with APS Scope and Jurisdiction bills. In particular the APS Provider program's expanded authority to investigate providers; make minor edits.

The sections will function by expanding the authority of DFPS to investigate abuse, neglect, and exploitation of individuals receiving services from certain providers

No comments were received regarding adoption of the sections.

SUBCHAPTER A. DEFINITIONS

40 TAC §705.1001

The amendment 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC Chapter 48, as amended by S.B. 1880 and S.B. 760, notably Subchapter F, §§48.251 - 48.258 and Family Code §261.404.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Trevor Woodruff

General Counsel

Department of Family and Protective Services

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For further information, please call: (512) 438-3803



SUBCHAPTER D. ELIGIBILITY

40 TAC §705.2103

The repeal 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC Chapter 48, as amended by S.B. 1880 and S.B. 760, notably Subchapter F, §§48.251 - 48.258 and Family Code §261.404.

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40 TAC §§705.2103, 705.2105, 705.2107

The new section and amendments are 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the DFPS Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section and amendments implement HRC Chapter 48, as amended by S.B. 1880 and S.B. 760, notably Subchapter F, §§48.251 - 48.258 and Family Code §261.404.

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SUBCHAPTER G. FAMILY VIOLENCE

40 TAC §705.3102

The amendment 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the DFPS Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC Chapter 48, as amended by S.B. 1880 and S.B. 760, notably Subchapter F, §§48.251 - 48.258 and Family Code §261.404.

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SUBCHAPTER J. RELEASE HEARINGS

40 TAC §§705.4103, 705.4105, 705.4107

The amendments are 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the DFPS Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC Chapter 48, as amended by S.B. 1880 and S.B. 760, notably Subchapter F, §§48.251 - 48.258 and Family Code §261.404.

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SUBCHAPTER L. RISK ASSESSMENT

40 TAC §705.6101

The amendment 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services 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 the department.

The amendment implements HRC Chapter 48, as amended by S.B. 1880 and S.B. 760, notably Subchapter F, §§48.251 - 48.258 and Family Code §261.404.

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SUBCHAPTER M. CONFIDENTIALITY AND RELEASE OF RECORDS

40 TAC §§705.7103, §705.7105

The amendments are 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the DFPS Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC Chapter 48, as amended by S.B. 1880 and S.B. 760, notably Subchapter F, §§48.251 - 48.258 and Family Code §261.404.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 711. INVESTIGATIONS OF INDIVIDUALS RECEIVING SERVICES FROM CERTAIN PROVIDERS

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 - 711.1003, 711.1005, 711.1007, 711.1009, 711.1011 - 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 the amendment to §711.603 are adopted with changes to the proposed text as 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 - 711.1003, 711.1005, 711.1007, 711.1009, 711.1011 - 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 re-

ceiving 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, 711.1203, 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 professionals" 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.

SUBCHAPTER A. INTRODUCTION

40 TAC §§711.1, 711.3, 711.5, 711.7, 711.11, 711.13, 711.17, 711.19, 711.21, 711.23

The amendments and new section are 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the DFPS Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new section implement HRC Chapter 48, as amended by S.B. 1880 and S.B. 760, notably Subchapter F, §§48.251 - 48.258 and Family Code §261.404.

§711.3. *How are the terms in this chapter defined?*

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

- (1) Adult--An adult is a person:
 - (A) 18 years of age or older; or
 - (B) under 18 years of age who:
 - (i) is or has been married; or
 - (ii) has had the disabilities of minority removed pursuant to the Texas Family Code, Chapter 31.
- (2) APS--Adult Protective Services, a division of DFPS.
- (3) Agent--An individual (e.g., student, volunteer), not employed by but working under the auspices of a service provider.
- (4) Allegation--A report by an individual that an individual receiving services has been or is in a state of abuse, neglect, or exploitation as defined by this subchapter.
- (5) Alleged perpetrator-- A direct provider alleged to have committed an act of abuse, neglect, or exploitation.
- (6) Child--A person under 18 years of age who:
 - (A) is not and has not been married; or

(B) has not had the disabilities of minority removed pursuant to the Texas Family Code, Chapter 31.

(7) Clinical practice--Relates to the demonstration of professional competence of a licensed professional as described by the appropriate licensing professional board.

(8) Community center--A community mental health center; community center for individuals with intellectual or developmental disabilities; or community mental health center and community center for individuals with intellectual or developmental disabilities, established under the Health and Safety Code, Title 7, Chapter 534, Subchapter A.

(9) Consumer Directed Services (CDS) employer--A consumer directed services client or their legally authorized representative.

(10) DADS--Department of Aging and Disability Services.

(11) DFPS--Department of Family and Protective Services.

(12) DSHS--Department of State Health Services.

(13) Designated Perpetrator--A direct provider who has committed an act of abuse, neglect, or exploitation.

(14) Direct Provider--A person, employee, agent, contractor, or subcontractor of a service provider responsible for providing services to an individual receiving services.

(15) Emergency order for protective services--A court order for protective services obtained under Human Resources Code, §48.208.

(16) Facility--

(A) DADS and DSHS central offices, state supported living centers, state hospitals, the Rio Grande State Center, the Waco Center for Youth, the El Paso Psychiatric Center, and community services operated by DADS or DSHS;

(B) A person contracting with a health and human services agency to provide inpatient mental health services; and

(C) Intermediate care facilities for individuals with an intellectual disability or related conditions (ICF-IID) licensed under Chapter 252, Health and Safety Code.

(17) HHSC--Health and Human Services Commission.

(18) Home and community-based services--Have the meaning given to them in Human Resources Code §48.251(a)(5) as services provided in the home or community in accordance with 42 U.S.C. §1315, 42 U.S.C. §1315a, 42 U.S.C. §1396a, or 42 U.S.C. §1396n.

(19) Home and community-based services (HCS) waiver program--The Medicaid program authorized under §1915(c) of the federal Social Security Act (42 U.S.C. §1396n(c)) for the provision of services to persons with an intellectual or developmental disability described by §534.001(11)(B), Government Code.

(20) Home and community support services agency (HCSSA)--An agency licensed under Chapter 142, Health and Safety Code.

(21) ICF-IID--A licensed intermediate care facility for individuals with an intellectual disability or related conditions as described in Chapter 252, Health and Safety Code.

(22) Incitement--To spur to action or instigate into activity; the term implies responsibility for initiating another's actions.

(23) Individual receiving services--

(A) An adult or child who receives services from a provider as that term is defined in §48.251(a)(9), Human Resources Code.

(B) An adult or child who lives in a residence that is owned, operated, or controlled by an HCS waiver program provider regardless of whether the individual is receiving HCS waiver program services; or

(C) A child receiving services from a HCSSA.

(24) Investigator--An employee of Adult Protective Services who has:

(A) demonstrated competence and expertise in conducting investigations; and

(B) received training on techniques for communicating effectively with individuals with a disability.

(25) Limited Service Provider--An entity that contracts with a service provider to provide services.

(26) Local authority-- Either:

(A) a local mental health authority designated by the HHSC executive commissioner in accordance with §533.035, Health and Safety Code, and as defined by §531.002, Health and Safety Code; or

(B) a local intellectual and developmental disability authority designated by the HHSC executive commissioner in accordance with §533A.035, Health and Safety Code, and as defined by §531.002, Health and Safety Code.

(27) Non-serious physical injury--

(A) In state supported living centers and state hospitals only, any injury requiring minor first aid and determined not to be serious by a registered nurse, advanced practice registered nurse (APRN), or physician.

(B) For all other service providers any injury determined not to be serious by the appropriate medical personnel. Examples of non-serious physical injury include:

(i) superficial laceration;

(ii) contusion two and one-half inches in diameter or smaller; or

(iii) abrasion.

(28) Perpetrator-- A direct provider who has committed or alleged to have committed an act of abuse, neglect, or exploitation.

(29) Preponderance of evidence--Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

(30) Prevention and management of aggressive behavior (PMAB)--DADS and DSHS' proprietary risk management program that uses the least intrusive, most effective options to reduce the risk of injury for persons served and staff from acts or potential acts of aggression.

(31) Provider--A provider is:

(A) a facility;

(B) a community center, local mental health authority, and local intellectual and developmental disability authority;

(C) a person who contracts with a health and human services agency or managed care organization to provide home and community-based services;

(D) a person who contracts with a Medicaid managed care organization to provide behavioral health services;

(E) a managed care organization;

(F) an officer, employee, agent, contractor, or subcontractor of a person or entity listed in subparagraphs (A)-(E) of this paragraph; and

(G) an employee, fiscal agent, case manager, or service coordinator of an individual employer participating in the consumer-directed service option, as defined by §531.051, Government Code.

(32) Reporter--The person, who may be anonymous, making an allegation.

(33) Serious physical injury--

(A) In state supported living centers and state hospitals only, any injury requiring medical intervention or hospitalization or any injury determined to be serious by a physician or APRN. Medical intervention is treatment by a licensed medical doctor, osteopath, podiatrist, dentist, physician assistant, or APRN. For the purposes of this subchapter, medical intervention does not include first aid, an examination, diagnostics (e.g., x-ray, blood test), or the prescribing of oral or topical medication;

(B) For all other service providers, any injury determined to be serious by the appropriate medical personnel. Examples of serious physical injury include:

- (i) fracture;
- (ii) dislocation of any joint;
- (iii) internal injury;
- (iv) contusion larger than two and one-half inches in diameter;
- (v) concussion;
- (vi) second or third degree burn; or
- (vii) any laceration requiring sutures or wound closure.

(34) Service Provider--A provider, HCSSA, or HCS waiver program provider responsible for employing, contracting with, or supervising the direct provider.

(35) Sexually transmitted disease--Any infection with or without symptoms or clinical manifestations that can be transmitted from one person to another by sexual contact.

(36) Texas Home Living (TxHmL) waiver program--The Medicaid program authorized under §1915(c) of the federal Social Security Act (42 U.S.C. §1396n(c)) for the provision of services to persons with an intellectual or developmental disability described by §534.001(11)(D), Government Code.

(37) Victim--An individual receiving services who is alleged to have been abused, neglected, or exploited.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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40 TAC §§711.3, 711.9, 711.15, 711.25

The repeals are 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the DFPS Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC Chapter 48, as amended by S.B. 1880 and S.B. 760, notably Subchapter F, §§48.251 - 48.258 and Family Code §261.404.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. DUTY TO REPORT

40 TAC §711.201

The amendment 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC Chapter 48, as amended by S.B. 1880 and S.B. 760, notably Subchapter F, §§48.251 - 48.258 and Family Code §261.404.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. CONDUCTING THE INVESTIGATION

40 TAC §§711.401, 711.405, 711.407, 711.409, 711.411

The repeals are 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the DFPS Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC Chapter 48, as amended by S.B. 1880 and S.B. 760, notably Subchapter F, §§48.251 - 48.258 and Family Code §261.404.

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40 TAC §§711.401, 711.403, 711.405, 711.419, 711.423

The amendments and new sections are 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the DFPS Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new sections implement HRC Chapter 48, as amended by S.B. 1880 and S.B. 760, notably Subchapter F, §§48.251 - 48.258 and Family Code §261.404.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER G. RELEASE OF REPORT AND FINDINGS

40 TAC §§711.603, 711.605, 711.609, 711.611, 711.613

The amendments and new section are 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new section implement HRC Chapter 48, as amended by S.B. 1880 and S.B. 760, notably Subchapter F, §§48.251 - 48.258 and Family Code §261.404.

§711.603. *What is included in the investigative report?*

The investigative report includes the following:

- (1) a statement of the allegation(s);
- (2) a summary of the investigation;
- (3) an analysis of the evidence, including:
 - (A) factual information related to what occurred;
 - (B) how the evidence was weighed; and
 - (C) what testimony was considered credible;
- (4) a finding that the allegation is confirmed, unconfirmed, inconclusive, or unfounded;
- (5) concerns and recommendations, if any, resulting from the investigation;
- (6) the name of the perpetrator or alleged perpetrator, designated in accordance with §711.423 of this title (relating to Is the investigator required to designate a perpetrator or alleged perpetrator?);
- (7) a recommended classification for each allegation assigned in accordance with §711.425 of this title (relating to How are allegations classified?);
- (8) the physician's or other health care professional's exam and treatment of abuse/neglect related injuries documented on the DADS or DSHS Client Injury/Incident Report for state supported living centers or state hospitals;
- (9) photographs relevant to the investigation, including photographs showing the existence of injuries or the non-existence of injuries, when appropriate;
- (10) all witness statements and supporting documents; and

(11) a signed and dated Client Abuse and Neglect Report (AN-1-A) form, as appropriate, reflecting the information contained in paragraphs (4), (6), and (7) of this section.

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40 TAC §§711.605, §711.607

The repeals are 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the DFPS Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implements HRC Chapter 48, as amended by S.B. 1880 and S.B. 760, notably Subchapter F, §§48.251 - 48.258 and Family Code §261.404.

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SUBCHAPTER I. PROVISION OF SERVICES

40 TAC §§711.801, 711.802, 711.804, 711.806

The amendments and new sections are 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner

regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new sections implement HRC Chapter 48, as amended by S.B. 1880 and S.B. 760, notably Subchapter F, §§48.251 - 48.258 and Family Code §261.404.

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SUBCHAPTER J. APPEALING THE INVESTIGATION FINDING

40 TAC §§711.901, 711.903, 711.905, 711.907, 711.909, 711.911, 711.913, 711.915

The new sections are 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the DFPS Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC Chapter 48, as amended by S.B. 1880 and S.B. 760, notably Subchapter F, §§48.251 - 48.258 and Family Code §261.404.

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SUBCHAPTER K. REQUESTING A REVIEW OF FINDING IF YOU ARE THE ADMINISTRATOR OR CONTRACTOR CEO

40 TAC §§711.1001 - 711.1003, 711.1005, 711.1007, 711.1009, 711.1011 - 711.1013, 711.1015

The repeals are 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the DFPS Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC Chapter 48, as amended by S.B. 1880 and S.B. 760, notably Subchapter F, §§48.251 - 48.258 and Family Code §261.404.

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SUBCHAPTER M. REQUESTING AN APPEAL IF YOU ARE THE REPORTER, ALLEGED VICTIM, LEGAL GUARDIAN, OR WITH DISABILITY RIGHTS TEXAS

40 TAC §§711.1201, 711.1203, 711.1205, 711.1207, 711.1209

The repeals are 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the DFPS Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC Chapter 48, as amended by S.B. 1880 and S.B. 760, notably Subchapter F, §§48.251 - 48.258 and Family Code §261.404.

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CHAPTER 744. MINIMUM STANDARDS FOR SCHOOL-AGE AND BEFORE OR AFTER-SCHOOL PROGRAMS

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, and 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 (3) the program must ensure all caregivers and employees who prepare and serve food are 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 top-

ics. 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, and if a parent requests it, 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 ensure that all caregivers and employees who prepare and serve food are 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: (1) 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; (2) specifying September 1, 2016; and making minor clarifications to §744.1303(b)(3) and (4) to be consistent with similar rules in Chapter 746 and 747.

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.

SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION

DIVISION 3. REQUIRED POSTINGS

40 TAC §744.401, §744.403

The amendments are 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§744.401. *What items must I post at my operation at all times?*

You must post the following items:

- (1) Your license;
- (2) The letter or form from the most recent Licensing inspection or investigation;
- (3) The Licensing notice *Keeping Children Safe*;
- (4) Your emergency evacuation and relocation diagram as specified in §744.3561 of this title (relating to Must I have an emergency evacuation and relocation diagram?);
- (5) The daily menu, including all snacks and meals served by the operation;
- (6) The Licensing *Parent Notification Poster*;
- (7) Telephone numbers specified in §744.405 of this title (relating to What telephone numbers must I post and where must I post them?);
- (8) A list of each child's food allergies that require an emergency plan, as specified in §744.2669 of this title (relating to When must I have a food allergy emergency plan for a child?); and

(9) Any other Licensing notices with specific instructions to post the notice.

§744.403. *When and where must these items be posted?*

(a) Unless otherwise specified, the items specified in §744.401 of this title (relating to What items must I post at my operation at all times?) must be available by posting or placing in a binder, in a prominent and publicly accessible place where employees, parents, and others may easily view them at all times.

(b) For a list of each child's food allergies that require an emergency plan:

(1) You 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, and if a parent requests it, you must maintain privacy for the child (for example, a clipboard hung on the wall with a cover sheet over the list); and

(3) You must ensure that all caregivers and employees who prepare and serve food are aware of each child's food allergies.

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SUBCHAPTER C. RECORD KEEPING

DIVISION 1. RECORDS OF CHILDREN

40 TAC §744.605

The amendment 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§744.605. *What admission information must I obtain for each child?*

You must obtain at least the following information before admitting a child to the operation:

- (1) The child's name and birth date;
- (2) The child's home address and telephone number;
- (3) Date of the child's admission to the operation;

- (4) Name and address of parent(s);
- (5) Telephone numbers at which parent(s) can be reached while the child is in care;
- (6) Name, address, and telephone number of another responsible individual (friend or relative) who should be contacted in an emergency when the parent cannot be reached;
- (7) Names and telephone numbers of persons other than a parent to whom the child may be released;
- (8) Permission for transportation, if provided;
- (9) Permission for field trips, if provided;
- (10) Permission for participation in water activities, if provided;
- (11) Name, address, and telephone number of the child's physician or an emergency-care facility;
- (12) Authorization to obtain emergency medical care and to transport the child for emergency medical treatment;
- (13) A statement of the child's special problems or special care needs. This includes, but is not limited to, allergies, existing illness, previous serious illness and injuries, hospitalizations during the past 12 months, and any medications prescribed for continuous, long-term use;
- (14) The name and telephone number of the school that a school-age child attends, unless the operation is located at the child's school;
- (15) Permission for a school-age child to ride a bus, walk to or from school or home, or to be released to the care of a sibling under 18 years old, if applicable; and
- (16) A completed food allergy emergency plan for the child, if applicable.

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DIVISION 4. PERSONNEL RECORDS

40 TAC §744.901

The amendment 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules

governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

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SUBCHAPTER D. PERSONNEL DIVISION 4. PROFESSIONAL DEVELOPMENT

40 TAC §§744.1303, 744.1305, 744.1307, 744.1309, 744.1311

The amendments are 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§744.1303. What must orientation for employees at my operation include?

- (a) Your orientation for employees must include at least the following:
 - (1) An overview of the minimum standards found in this chapter;
 - (2) An overview of operational policies, including discipline and guidance practices and procedures for the release of children;
 - (3) An overview regarding the prevention, recognition, and reporting of child abuse and neglect including:
 - (A) Factors indicating a child is at risk of abuse or neglect;
 - (B) Warning signs indicating a child may be a victim of abuse or neglect;
 - (C) Procedures for reporting child abuse or neglect; and
 - (D) Community organizations that have training programs available to child-care center staff members, children, and parents;

(4) An overview of the procedures to follow in handling emergencies, which includes sharing the emergency preparedness plan with all employees. Emergencies may include, but are not limited to, fire, explosion, tornado, toxic fumes, volatile persons, and severe injury or illness of a child or adult; and

(5) The location and use of fire extinguishers and first-aid equipment.

(b) For employees you hire on or after September 1, 2016, your orientation must also cover the following areas:

(1) Administering medication, if applicable, including compliance with §744.2653 of this title (relating to What authorization must I obtain before administering a medication to a child in my care?);

(2) Preventing and responding to emergencies due to food or an allergic reaction;

(3) Understanding building and physical premises safety, including identification and protection from hazards that can cause bodily injury such as electric hazards, bodies of water, and vehicular traffic;

(4) Handling, storing, and disposing of hazardous materials, including compliance with §744.2523 of this title (relating to Must caregivers wear gloves when handling blood or bodily fluids containing blood?); and

(5) Precautions in transporting children, if your operation transports a child whose chronological or developmental age is younger than nine years old.

§744.1305. *What must be covered in the eight clock hours of pre-service training for caregivers?*

Before a caregiver can be counted in the child/caregiver ratio, the caregiver must complete eight clock hours of pre-service training that covers the following areas:

(1) Developmental stages of children;

(2) Age-appropriate activities for children;

(3) Positive guidance and discipline of children;

(4) Fostering children's self-esteem;

(5) Supervision and safety practices in the care of children;

(6) Positive interaction with children; and

(7) Preventing and controlling the spread of communicable diseases, including immunizations.

§744.1309. *How many clock hours of annual training must be obtained by caregivers and site directors?*

(a) Each caregiver and site director must obtain at least 15 clock hours of training each year relevant to the age of the children for whom the person provides care.

(b) The 15 clock hours of annual training are exclusive of requirements for orientation, pre-service training, CPR and first aid training, transportation safety training, and high school child-care work-study classes.

(c) At least six clock hours of the annual training hours must be in one or more of the following topics:

(1) Child growth and development;

(2) Guidance and discipline;

(3) Age-appropriate curriculum; and

(4) Teacher-child interaction.

(d) While there are no clock hour requirements for the topics in this subsection, the annual training hours must also include training on the following topics:

(1) Emergency preparedness;

(2) Preventing and controlling the spread of communicable diseases, including immunizations;

(3) Administering medication, if applicable, including compliance with §744.2653 of this title (relating to What authorization must I obtain before administering a medication to a child in my care?);

(4) Preventing and responding to emergencies due to food or an allergic reaction;

(5) Understanding building and physical premises safety, including identification and protection from hazards that can cause bodily injury such as electric hazards, bodies of water, and vehicular traffic; and

(6) Handling, storing, and disposing of hazardous materials including compliance with §744.2523 of this title (relating to Must caregivers wear gloves when handling blood or bodily fluids containing blood?).

(e) The remaining annual training hours must be in one or more of the following topics:

(1) Care of children with special needs;

(2) Child health (for example, nutrition or physical activity);

(3) Safety;

(4) Risk management;

(5) Identification and care of ill children;

(6) Cultural diversity for children and families;

(7) Professional development (for example, effective communication with families and time and stress management);

(8) Topics relevant to the particular age group the caregiver is assigned;

(9) Planning developmentally appropriate learning activities; and

(10) Minimum standards and how they apply to the caregiver.

(f) No more than 80% of the annual training hours may be obtained through self-instructional training. 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.

§744.1311. *How many clock hours of training must an operation director or a program director obtain each year?*

(a) An operation director and/or a program director must obtain at least 20 clock hours of training each year relevant to the age of the children for whom the operation provides care.

(b) The 20 clock hours of annual training are exclusive of any requirements for orientation, pre-service training, CPR and first aid training, and transportation safety training.

(c) At least six clock hours of the annual training hours must be in one or more of the following topics:

(1) Child growth and development;

(2) Guidance and discipline;

- (3) Age-appropriate curriculum;
- (4) Teacher-child interaction; and
- (5) Serving children with special care needs.

(d) While there are no clock hour requirements for the topics in this subsection, the annual training hours must also include training on the following topics:

- (1) Emergency preparedness;
- (2) Preventing and controlling the spread of communicable diseases, including immunizations;
- (3) Administering medication, if applicable, including compliance with §744.2653 of this title (relating to What authorization must I obtain before administering a medication to a child in my care?);
- (4) Preventing and responding to emergencies due to food or an allergic reaction;
- (5) Understanding building and physical premises safety, including identification and protection from hazards that can cause bodily injury such as electric hazards, bodies of water, and vehicular traffic; and
- (6) Handling, storing, and disposing of hazardous materials including compliance with §744.2523 of this title (relating to Must caregivers wear gloves when handling blood or bodily fluids containing blood?).

(e) An operation director or program director with:

- (1) Five or fewer years of experience as a designated director of an operation or as a program director must complete at least six clock hours of the annual training hours in management techniques, leadership, or staff supervision; or
- (2) More than five years of experience as a designated director of an operation or as a program director must complete at least three clock hours of the annual training hours in management techniques, leadership, or staff supervision.

(f) The remainder of the 20 clock hours of annual training must be selected from the training topics specified in §744.1309(e) of this title (relating to How many clock hours of annual training must be obtained by caregivers and site directors?).

(g) An operation director or program director may obtain clock hours or CEUs from the same sources as caregivers.

(h) Training hours may not be earned for presenting training to others.

(i) No more than 80% of the annual training hours may be obtained through self-instructional training. 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 agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER I. FIELD TRIPS

40 TAC §744.2301

The amendment 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§744.2301. May I take children away from my operation for field trips?

Yes. You must ensure the safety of all children on field trips or excursions and during any transportation provided by the operation. Anytime you take a child on a field trip, you must comply with each of the following requirements:

- (1) You must have signed permission from the parent to take a child on a field trip, including permission to transport the child, if applicable;
- (2) One or more caregivers must carry emergency medical consent forms and emergency contact information for each child on the field trip;
- (3) Caregivers must have a written list of all children on the field trip and must check the list frequently to account for the presence of all children;
- (4) Caregivers must have a first-aid kit immediately available on field trips;
- (5) Caregivers must have a copy of a child's food allergy emergency plan and allergy medications, if applicable;
- (6) Each child must wear a shirt, nametag, or other identification listing the name of the operation and the operation's telephone number;
- (7) Each caregiver must be easily identifiable by all children on the field trip by wearing a hat, operation tee-shirt, brightly-colored clothes, or other easily spotted identification;
- (8) Each caregiver supervising a field trip must have transportation available, a communication device such as a cellular phone or two-way radio available, or an alternate plan for transportation at the field-trip location in case of emergency; and
- (9) Caregivers with training in CPR and first aid with rescue breathing and choking must be present on the field trip.

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SUBCHAPTER J. NUTRITION AND FOOD SERVICE

40 TAC §744.2401

The amendment 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

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SUBCHAPTER K. HEALTH PRACTICES DIVISION 1. ENVIRONMENTAL HEALTH

40 TAC §744.2507, §744.2523

The amendments are 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules

governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§744.2523. Must caregivers wear gloves when handling blood or bodily fluids containing blood?

Yes. Caregivers must follow universal precautions outlined by the Centers for Disease Control (CDC) when handling blood, vomit, or other bodily fluids that may contain blood including:

- (1) Using disposable, nonporous gloves;
- (2) Placing gloves contaminated with blood in a tied, sealed, or otherwise closed plastic bag and discarding them immediately;
- (3) Discarding all other gloves immediately after one use; and
- (4) Washing hands after using and disposing of the gloves.

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SUBCHAPTER L. SAFETY PRACTICES DIVISION 2. MEDICATION AND MEDICAL ASSISTANCE

40 TAC §744.2667, §744.2669

The new sections are 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§744.2669. When must I have a food allergy emergency plan for a child?

You must have a food allergy emergency plan for each child with a known food allergy that has been diagnosed by a health-care professional. The child's health care professional and parent must sign and date the plan. You must keep a copy of the plan in the child's file.

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SUBCHAPTER P. FIRE SAFETY AND EMERGENCY PRACTICES

DIVISION 2. EMERGENCY PREPAREDNESS

40 TAC §§744.3551, 744.3553, 744.3559, 744.3561

The amendments are 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§744.3551. What is an emergency preparedness plan?

An emergency preparedness plan is designed to ensure the safety of children during an emergency by addressing staff responsibility and facility readiness with respect to emergency evacuation, relocation, and sheltering/lock-down. The plan addresses the types of responses to emergencies most likely to occur in your area including:

- (1) An evacuation of the children and caregivers to a designated safe area in an emergency such as a fire or gas leak;
- (2) A relocation of the children and caregivers to a designated, alternate shelter in an emergency such as a flood, a hurricane, medical emergency, or communicable disease outbreak; and
- (3) The sheltering and lock-down of children and caregivers within the operation to temporarily protect them from situations such as a tornado, volatile person on the premises, or an endangering person in the area.

§744.3553. What must my emergency preparedness plan include?

Your emergency preparedness plan must include written procedures for:

- (1) Evacuation, relocation, and sheltering/lock-down of children including:
 - (A) The first responsibility of staff in an emergency evacuation or relocation is to move the children to a designated safe area or alternate shelter known to all employees, caregivers, parents, and volunteers;

- (B) How children will be evacuated or relocated to the designated safe area or alternate shelter, including but not limited to specific procedures for evacuating and relocating children with limited mobility or who otherwise may need assistance in an emergency, such as children who have mental, visual, or hearing impairments;

- (C) An emergency evacuation and relocation diagram as outlined in §744.3561 of this title (relating to Must I have an emergency evacuation and relocation diagram?);

- (D) 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;

- (E) Name and address of the alternate shelter away from the operation you will use as needed; and

- (F) How children in attendance at the time of the emergency will be accounted for at the designated safe area or alternate shelter;

- (2) Communication, including:

- (A) The emergency telephone number that is on file with us; and

- (B) How you will communicate with local authorities (such as fire, law enforcement, emergency medical services, health department), parents, and us; and

- (3) How your staff will evacuate and relocate with the essential documentation including:

- (A) Parent and emergency contact telephone numbers for each child in care;

- (B) Authorization for emergency care for each child in care; and

- (C) The child tracking system information for children in care;

- (4) How your staff will continue to care for children until each child has been released; and

- (5) How you will reunify the children with their parents as the evacuation, relocation, or sheltering/lock-down is lifted.

§744.3559. Must I practice my emergency preparedness plan?

The following components of your operation's emergency preparedness plan must be practiced as specified below:

- (1) You must practice a fire drill every month. The children must be able to safely exit the building within three minutes;

- (2) You must practice a sheltering drill for severe weather at least four times in a calendar year;

- (3) You must practice a lock-down drill for a volatile or endangering person on the premises or in the area at least four times in a calendar year; and

- (4) You must document these drills, including the date of the drill, time of the drill, and length of time for the evacuation, sheltering, or lock-down to take place.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Trevor Woodruff
General Counsel
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40 TAC §744.3555

The repeal 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 745. LICENSING

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §745.505 and §745.615; and new §745.616 in Chapter 745, concerning Licensing, without changes to the proposed text published in the May 20, 2016, issue of the *Texas Register* (41 TexReg 3660) and will not be republished.

The justification of the amendments and new section is to implement needed changes to comply with the Child Care and Development Block Grant Act of 2014 and Senate Bill (S.B) 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,

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 background checks.

In regards 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: (1) requiring Listed Family Homes that provide care to unrelated children to pay biennial background check fees of \$2.00 per person; and (2) requiring Licensed Child-Care Homes, Registered Child-Care Homes, and Listed Family Homes that provide care to unrelated children to obtain fingerprint-based criminal history checks (these homes were previously only required to have 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 checks are due.

The summary of the changes follows:

The amendment to §745.505 requires Listed Family Homes that provide care to unrelated children to pay biennial background check fees of \$2.00 per person.

The amendment to §745.615 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.

New §745.616 clarifies which persons in these homes are required to have a fingerprint-based criminal history check and when the request for checks are due.

The sections will function so that: (1) DFPS will be in compliance with the Act; (2) DFPS will be in compliance with HRC §42.056 (S.B. 1496); (3) there will be clarification regarding background checks; and (4) there will be a reduced risk to children.

During the public comment period, DFPS received one comment that was in favor of fingerprint-based background checks for all types of care; and two comments that were not clear. There were six commenters that 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 five years, and exclude those in business for over 10 years.

Response concerning §745.615: DFPS recommends that this rule be adopted with no changes, because this requirement is needed to comply with the Act and is mandated by Senate Bill 1496, 84th Regular Legislative Session, which amended Human Resources Code §42.0523 and §42.056.

SUBCHAPTER E. FEES

40 TAC §745.505

The amendment 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the

Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §§42.042, 42.0421, 42.0523, and 42.056 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. BACKGROUND CHECKS DIVISION 2. REQUESTING BACKGROUND CHECKS

40 TAC §745.615, §745.616

The amendment and new section are 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

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

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CHAPTER 745. LICENSING

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services

(DFPS), new §§745.8581, 745.8583, 745.8585, 745.8600, 745.8633, 745.8635, 745.8637, 745.8639, 745.8641, 745.8643, 745.8649, 745.8650, 745.8651, 745.8652, and 745.8654; amendments to §§745.8601, 745.8603, 745.8605, 745.8607, 745.8609, 745.8611, 745.8613, 745.8631, 745.8657, 745.8659, and 745.8713; and the repeal of §§745.8633, 745.8635, and 745.8651 in Chapter 745, concerning Licensing. New §§745.8581, 745.8585, 745.8635, 745.8639, and 745.8641 are adopted with changes to the proposed text as published in the in May 27, 2016, issue of the *Texas Register* (41 TexReg 3896). New §§745.8583, 745.8600, 745.8633, 745.8637, 745.8643, 745.8649, 745.8650, 745.8651, 745.8652, and 745.8654; amendments to §§745.8601, 745.8603, 745.8605, 745.8607, 745.8609, 745.8611, 745.8613, 745.8631, 745.8657, 745.8659, and 745.8713; and the repeal of §§745.8633, 745.8635, and 745.8651 are adopted without changes to the proposed text and will not be republished.

The justification of the new sections, amendments, and repeals is to implement recommendations the Sunset Advisory Commission made in the *Department of Family and Protective Services Staff Report with Commission Decisions* published in August 2014, and required by Senate Bill (S.B.) 206, Sections 81 and 82, that was passed by the 84th Texas Legislature in 2015. These sections respectively created Human Resources Code (HRC) §42.0704 and amended §42.078(a-2).

HRC §42.0704 requires DFPS to adopt rules that outline a general enforcement policy that describes the department's approach to enforcement, including:

(1) A summary of the department's general expectations in enforcing Human Resources Code, Chapter 42; and (2) A methodology for determining appropriate action to take when a permit holder violates Licensing laws or rules that allows the department to consider the circumstances of the particular case, the nature and seriousness of the violation, history of previous violations, and other aggravating and mitigating factors.

HRC §42.0704 also requires the department to develop a plan for strengthening its enforcement efforts and for making objective regulatory decisions. Prior to the effective date of the rules adopted in this rule packet, Licensing will require all Licensing staff to receive training to promote staff's understanding of the policy and their ability to apply it appropriately and clearly explain it to providers. After the initial training, the concepts will be incorporated into Licensing's Basic Skills Development training, which all new Licensing staff receives, moving forward. Licensing's Performance Management Unit (PMU) performs quality assurance activities to ensure Licensing staff are adhering to policy and consistently enforcing licensing laws and regulations and will evaluate the effectiveness of the enforcement policy through a quality assurance review scheduled to be completed in early fiscal year 2018 (one year after implementation of the new enforcement policy). In addition PMU risk analysts conduct neutral assessments of an operation's compliance history when Licensing staff identifies the operation as having a compliance history that is at increased risk for children. As part of this process, PMU provides recommendations for enforcement actions and, six months later, reviews the operation's record to determine what enforcement action was taken and whether risk was reduced. This work enables Licensing to assess the effectiveness of the enforcement policy on an ongoing basis.

The new version of HRC §42.078(a-2) expands the department's authority to impose administrative penalties before taking correc-

tive action to all high risk violations, not just violations related to background checks.

A summary of the changes to create an enforcement framework include: (1) changing the title of Subchapter L from "Remedial Actions" to "Enforcement Actions; (2) defining "technical assistance" and outlining when and why technical assistance is provided; (3) clarifying that enforcement actions are not progressive in nature, meaning they are not necessarily recommended or imposed from least to most restrictive; (4) clarifying that CCL may end an enforcement action at any time to impose a more serious enforcement action; (5) removing the ability to extend an enforcement action; (6) identifying a voluntary plan of action as a voluntary enforcement action; (7) defining voluntary plan of action as a collaborative effort between CCL and the provider; (8) identifying factors CCL considers when deciding to recommend a voluntary plan of action; (9) limiting the number of times a plan of action may be recommended if an operation has already been on a plan of action for similar issues within the previous year; (10) providing a more clearly defined delineation between evaluation and probation by restricting the circumstances under which CCL may consider imposing evaluation; (11) decreasing the length of time an operation may remain on evaluation to six months; (12) identifying factors CCL considers when deciding to impose evaluation; (13) identifying factors CCL considers when deciding to impose probation; (14) identifying factors CCL considers when deciding to impose each adverse action; and (15) adding language allowing CCL to impose administrative penalties prior to taking corrective action for violations of high risk standards.

A summary of the changes are as follows:

New Division 6, in Subchapter K, to house rules related to technical assistance.

New §745.8581 defines technical assistance and clarifies that technical assistance is not a deficiency or an enforcement action and is not used in lieu of citing a deficiency.

New §745.8583 identifies when and how Licensing may provide technical assistance.

New §745.8585 clarifies that a permit holder may not request an administrative review of Licensing providing technical assistance.

New §745.8600 outlines the general purpose of enforcement actions.

Amendment to §745.8601 clarifies that Licensing may provide technical assistance in response to a deficiency in addition to recommending or imposing another enforcement action.

Amendment to §745.8603: (1) replaces the term "remedial action" with "enforcement action"; (2) adds voluntary actions to the chart in subsection (a) listing the types of enforcement actions Licensing may take; (3) rewords and clarifies that listed family homes are not subject to voluntary or corrective action; (4) adds subsection (b) to clarify that Licensing recommends or imposes enforcement actions based on risk and that CCL does not have to impose a less restrictive action if it is determined that a more restrictive action is warranted; and (5) adds subsection (c) to clarify that Licensing may take multiple actions at the same time.

Amendment to §745.8605 replaces the term "remedial action" with "enforcement action" and deletes outdated date references in regards to operations that are ineligible to receive for a permit for a period of 5 years.

Amendment to §745.8607 replaces the term "remedial action" with "enforcement action". It also clarifies in section (5) that CCL also considers the permit holder's ability to maintain compliance with standards, rules, and laws, when deciding which type of enforcement action to recommend or impose.

Amendment to §745.8609: (1) replaces the term "remedial action" with "enforcement action" (2) adds voluntary actions to section (1) of the chart; and (3) clarifies in section (2) that Licensing notifies a permit holder of the intent to impose adverse action in writing.

Amendment to §745.8611: (1) replaces the term "remedial action" with "enforcement action" and removes language referring to extensions; (2) adds new section (1) "Voluntary Action" to the chart in subsection (a) and includes a maximum timeframe of six months for a voluntary plan of action; (3) makes the following changes to new sections (2) and (3) in the chart in subsection (a): (A) Removes the minimum length of time evaluation and probation may be imposed; (B) Removes language referring to extensions for evaluation and probation; and (C) Reduces the amount of time evaluation may be imposed from a maximum of one year to six months; (4) renumbers existing section (3) to new section (4) and clarifies that the suspension period will be up to 120 days as necessary to resolve the danger or threat of danger; (5) renumbers existing section (4) to new section (5) in the chart in subsection (a); and (6) adds subsection (b) stating that Licensing may end voluntary or corrective action early if compliance is met and maintained, or if compliance is not met and Licensing determines a more restrictive enforcement action is necessary.

Amendment to §745.8613: (1) replaces the term "remedial action" with "enforcement action"; (2) adds new section (1) to the chart in subsection (a) to include voluntary plan of action and clarifies that a permit holder does not have the right to challenge a plan of action, since it is a voluntary action; and (3) renumbers the existing numbers in the chart in subsection (a).

Division 2, in Subchapter L, is being renamed to "Voluntary and Corrective Actions."

Amendment to §745.8631: (1) adds a new section (1) to include a voluntary plan of action and describes a voluntary plan as an action that Licensing recommends and is a collaborative effort between Licensing and the operation to improve compliance; (2) renumbers existing sections (1) and (2) to new sections (2) and (3); and (3) makes changes regarding evaluation and probation, including: removing language outlining the actions Licensing may take if compliance is not met, or if deficiencies worsen since this information is included in the new §745.8641 of this title (relating to What requirements must I meet during the evaluation or probation period?); and clarifying that Licensing will conduct inspections at least monthly during the evaluation and probation period.

Section §745.8633 is repealed and the content is incorporated into new §745.8641.

New §745.8633 outlines when Licensing may recommend a voluntary plan of action, including: (1) outlining the criteria Licensing considers to determine whether to recommend a plan of action in subsection (a); (2) stating that Licensing may take into consideration the compliance history for each operation the permit holder oversees when determining whether a plan of action is appropriate in subsection (b); and (3) outlining when Licensing may consider imposing a more restrictive enforcement action in lieu of a voluntary plan of action in subsection (c).

Section §745.8635 is repealed and text is being incorporated with changes in §745.8643.

New §745.8635 outlines when Licensing may impose evaluation, including: (1) listing the circumstances under which Licensing may impose evaluation in subsection (a); and (2) stating that Licensing may impose probation or adverse action if Licensing determines the operation is not eligible for evaluation in subsection (b).

New §745.8637 outlines when Licensing may impose probation, including: (1) listing the circumstances under which Licensing may impose probation in subsection (a); and (2) stating that Licensing may impose adverse action if Licensing determines the operation is not eligible for probation in subsection (b).

New §745.8639 lists the requirements a permit holder must meet during a voluntary plan of action.

New §745.8641 contains the same language as repealed §745.8633. The language remains mostly the same as the repealed rule. However, language has been amended in paragraph (3) to clarify what must be posted during evaluation and probation.

New §745.8643 clarifies that CCL may increase inspections or recommend a more serious enforcement action if an operation does not comply with conditions of evaluation or probation. This language is similar to content in repealed rule §745.8635.

New §745.8649 contains the exact language as repealed §745.8651, which describes types of adverse actions.

New §745.8650 outlines the circumstances under which Licensing may deny a permit.

Section §745.8651 is repealed and text moved to new §745.8649.

New §745.8651 outlines the circumstances under which Licensing may impose an adverse amendment on a permit.

New §745.8652 outlines the circumstances under which Licensing may suspend an operation's permit.

New §745.8654 outlines the circumstances under which Licensing may revoke a permit.

Amendment to §745.8657 updates the department's name and a program offered through a different state agency.

Amendment to §745.8659 removes the requirement for the department publish adverse actions in a local newspaper and publish denials when the operation was previously operating. Licensing posts information regarding suspensions and revocations on the department's public website per the requirements in Human Resources Code §42.025 and §42.077.

Amendment to §745.8713: (1) adds that Licensing may impose an administrative penalty for a violation of a high risk standard; and (2) deletes old paragraph (2) since new subparagraph (2)(A) and (2)(B) sufficiently address the issue of timely submitting information required to conduct a background and criminal history check.

The sections will function by enforcing: (1) compliance with HRC §42.0704 and §42.078(a-2); (2) implementation of the Sunset Recommendations; (3) transparency between providers, the public, and CCL staff who will have a common understanding of the decision making process as it relates to enforcement actions; (4) improved consistency in decision-making; and

(5) increased use of voluntary plans of action will reduce the number of corrective action imposed or adverse actions taken.

During the public comment period, DFPS received one comment from the Texas Press Association regarding §745.8659. The Texas Press Association opposes the removal of the requirement of DFPS to publish notice in a local newspaper when there is an adverse action against a facility. The Association believes that much of the populace does not have access to the internet and requiring consumers to search the internet as well as the DFPS website for operations with an adverse action unfairly burdens the public.

Response: DFPS has had the option to publish notice on the department's Internet website since the passage of Senate Bill 68 by the 81st Legislature. Since September 1, 2009, when the amended statute took effect, the Department has primarily published notice on the agency website. The notice remains on the agency website list for five years and is easily accessible from the *Search Texas Child Care* feature which provides the public, including families looking for child care, information about all child care operations and homes regulated by DFPS and is the most used feature on the agency website. Both Internet service and public access to computers, through libraries and other locations such as the YMCA, is increasing. While few or no families would be able to search prior issues of newspapers for the compliance history of an operation, even those families who do not own a computer of their own are likely to be able to search DFPS' public website. The department recommends adoption of this rule with no changes.

Although no comments were received regarding the other rules, DFPS is making the following revisions:

§745.8581: The department recommends deleting language that suggests deficiencies are limited to deficiencies related to Minimum Standards. An operation may be deficient in Minimum Standards, as well as laws, rules, specific permit terms, or conditions of evaluation, probation, or suspension, as articulated in a more general rule (745.8601) and otherwise adopting this section with no changes. Aligning the language throughout all the rules will aid in public understanding.

§745.8585: The department recommends clarifying language related to deficiencies. See §745.8581.

§745.8635: The department recommends: (1) changing the wording in paragraph (a)(2) for clarification; (2) modifying the language in (a)(3) to make it clear operations may still be placed on evaluation if they have attempted to address the same issues through a voluntary plan of action, assuming evaluation is otherwise appropriate; and (3) correcting a technical error in (a)(4) and making the language consistent with the parallel provision in §745.8637.

§745.8639: The department recommends clarifying language related to deficiencies. See §745.8581.

§745.8641: The department recommends clarifying language related to deficiencies. See §745.8581.

SUBCHAPTER K. INSPECTIONS AND INVESTIGATIONS

DIVISION 6. TECHNICAL ASSISTANCE

40 TAC §§745.8581, 745.8583, 745.8585

The new sections are 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement the HRC §42.042 and §42.0704.

§745.8581. *What is technical assistance?*

Technical assistance is information we provide to help you improve or maintain compliance with minimum standards, rules, and laws. Technical assistance itself is not a deficiency or enforcement action, and we do not use it in lieu of citing a deficiency.

§745.8585. *May I request an administrative review for technical assistance offered?*

No. We provide technical assistance in order to help you with your compliance with minimum standards and other laws. Technical assistance does not include a decision or action you may challenge through an administrative review. If we offer you technical assistance in addition to citing you for a deficiency, you would have the right to request an administrative review related to the deficiency, but not the technical assistance.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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General Counsel

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SUBCHAPTER L. ENFORCEMENT ACTIONS DIVISION 1. OVERVIEW OF ENFORCEMENT ACTIONS

40 TAC §§745.8600, 745.8601, 745.8603, 745.8605, 745.8607, 745.8609, 745.8611, 745.8613

The amendments and new section are 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new section implement the HRC §42.042 and §42.0704.

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DIVISION 2. VOLUNTARY AND CORRECTIVE ACTIONS

40 TAC §§745.8631, 745.8633, 745.8635, 745.8637, 745.8639, 745.8641, 745.8643

The amendments and new sections are 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new sections implement the HRC §42.042 and §42.0704.

§745.8635. *When may Licensing place my operation on evaluation?*

(a) We may place your operation on evaluation for an issue identified in §745.8605 of this title (relating to When can Licensing recommend or impose an enforcement action against my operation?) if:

(1) you are eligible to participate in a plan of action but refuse to do so;

(2) your operation is unable to resolve its deficiencies and reduce risk through your implementation of or failure to implement the plan;

(3) you have not completed evaluation for similar deficiencies within the previous 12 months; or

(4) a more restrictive enforcement action is not necessary to reduce risk.

(b) If we determine that you are not eligible for evaluation, we will consider imposing probation or an adverse action.

§745.8639. *What requirements must I meet during a voluntary plan of action?*

You must:

(1) correct your operation's deficiencies and reduce risk; and

(2) maintain compliance with all other Licensing statutes, rules, and minimum standards.

§745.8641. *What requirements must I meet during the evaluation or probation period?*

You must:

- (1) comply with all of the conditions imposed by the corrective action plan;
- (2) correct the deficiencies;
- (3) unless you are an independent or agency foster family home, post the evaluation letter or the probation notice in a prominent place(s) near all public entrances; and
- (4) maintain compliance with all other Licensing statutes, rules, and minimum standards.

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DIVISION 2. CORRECTIVE ACTIONS

40 TAC §745.8633, §745.8635

The repeals are 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement the HRC §42.042 and §42.0704.

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DIVISION 3. ADVERSE ACTIONS

40 TAC §§745.8649 - 745.8652, 745.8654, 745.8657, 745.8659

The amendments and new sections are 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new sections implement the HRC §42.042 and §42.0704.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Trevor Woodruff
General Counsel
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40 TAC §745.8651

The repeal 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements the HRC §42.042 and §42.0704.

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DIVISION 5. MONETARY ACTIONS

40 TAC §745.8713

The amendment 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

the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements the HRC §42.042 and §42.078(a-2).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 746. MINIMUM STANDARDS FOR CHILD-CARE CENTERS

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§746.401, 746.403, 746.605, 746.901, 746.1303, 746.1305, 746.1307, 746.1309, 746.1311, 746.3001, 746.3301, 746.3407, 746.3425, 746.3505, 746.5201, 746.5202, 746.5205, and 746.5207; new §746.3817 and §746.3819; and the repeal of §746.5203, in Chapter 746, concerning Minimum Standards for Child-Care Centers. The amendments to §§746.401, 746.403, 746.605, 746.1303, 746.1305, 746.1309, 746.1311, 746.3001, 746.3425, 746.5201, 746.5202, and 746.5205, and new §746.3819 are adopted with changes to the proposed text published in the May 20, 2016, issue of the *Texas Register* (41 TexReg 3663). The amendments to §§746.901, 746.1307, 746.3301, 746.3407, 746.3505, and 746.5207; new §746.3817; and the repeal of §746.5203 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 Licensed Child Care Centers. 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 center 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 Licensed Child-Care Centers. The health and safety requirements correlate to some of the training topics. The changes to the minimum standards support the health and safety requirements, 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 are:

The amendments to §746.401: (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 amendment to §746.403 clarifies that for a list of each child's food allergies that require an emergency plan: (1) the center must post the list during all hours of operation where your 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, and if a parent requests it, the center must maintain the privacy of the child (for example, a clipboard hung on the wall with a cover sheet over the list); and (3) the center must ensure all caregivers and employees who prepare and serve food are 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 §746.605 adds a requirement for centers to obtain a completed food allergy emergency plan before admitting a child into care, if applicable.

The amendment to §746.901 updates a cite and makes the language consistent.

The amendments to §746.1303: (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 centers to share the emergency preparedness plan with all employees.

The amendment to §746.1305 updates the existing language for a current training topic.

The amendment to §746.1307 clarifies when a caregiver is exempt from pre-service training.

The amendments to §746.1309: (1) adds six topics that must be covered in the annual training of caregivers; (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 §746.1311: (1) adds six topics that must be covered in the annual training for child-care center 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 §746.3001 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 §746.3301: (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 §746.2805.

The amendment to §746.3407 requires a child-care center to use, store, and dispose of hazardous materials as recommended by the manufacturer.

The amendment to §746.3425 clarifies that caregivers must follow universal precautions as outlined by the CDC when handling bodily fluids that may contain blood, including placing gloves contaminated with blood in a tied, sealed, or otherwise closed plastic bag and discarding them immediately.

The amendment to §746.3505 clarifies that a child's soiled clothing must be placed in a sealed plastic bag and be sent home with the child.

New §746.3817 defines a food allergy emergency plan, including a list of foods a child is allergic to, possible symptoms, and what steps to take if there is an allergic reaction.

New §746.3819 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 §746.5201 clarifies in more detail what an emergency preparedness plan is by distinguishing between an evacuation, relocation, and sheltering/lock-down.

The amendments to §746.5202 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 center 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 §746.5203 is because all of the information is already included in §746.1303(4) and §746.507.

The amendment to §746.5205: (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 §746.5207 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 the 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 §746.401: 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 center 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: The 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 §746.403.

Comments concerning §746.403 and §746.605: 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 center post the list; (5) how discreet should the posting be; and (6) posting where food is "served" might be confusing.

Response concerning §746.403: DFPS agrees with the commenters and rewrote the rule to simplify it and clarify that: (1) the list must be posted where the center prepares food and in each

room where the child may spend time; (2) the posting must be in a place easily viewed by employees, and if a parent requests it, the center must maintain the child's privacy (for example, a clipboard hung on the wall with a cover sheet over the list); and (3) the center must ensure that all caregivers and employees who prepare and serve food are aware of each child's food allergies.

Response concerning §746.605: 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 §746.403.

Comments concerning §746.1303: 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.

Response: 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.

Comments concerning §746.1305: 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.

Response: DFPS agrees with the commenter and has moved the six topics from this rule to §746.1303.

Comments concerning §746.1307: There was one commenter that did not believe anyone should be exempt from training.

Response: 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.

Comments concerning §746.1309: Regarding allowing a 50% to 80% increase for self-instructional training, there were: (1) 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; (2) one commenter was in favor of the change, but worried that the quality would not be high and it would be abused; and (3) one commenter was in favor of the change.

Response concerning §746.1309 regarding allowing a 50% to 80% increase for self-instructional training: 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. Also, 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. 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.

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: (1) 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 (2) during the comprehensive review of Chapter 746 there will be further clarification that the directors must ensure that caregivers receive appropriate and quality training.

More comments concerning §746.1309: There was one comment that stated 24 hours of annual training was too low.

Response: The 24 hours of annual training is mandated by statute and cannot be changed.

More comments concerning §746.1309: 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.

Response: 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.

Comments concerning §746.1311: Regarding allowing a 50% to 80% increase for self-instructional training, there were: (1) 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; (2) one commenter was in favor of the change, but worried that the quality would not be high and it would be abused; and (3) one commenter was in favor of the change.

Response: 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, and 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.

No comments concerning §746.3001, however, DFPS determined that the outdated term "message pager" needed to be deleted from paragraph (8).

Comments concerning §746.3425: The workgroup commented that they wanted further clarification on what "sealed" meant.

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

Comments concerning §746.3819: 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 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.

Comments concerning §746.5201: 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".

Comments concerning §746.5202: 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.

Response: Based on the comment to §746.5201 DFPS has changed the term "sheltering" to "sheltering/lock-down". However, 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 doesn't have to have a bus, just a plan on how the relocation will happen.

Comments concerning §746.5205: 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 Chap-

ter 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.

SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION

DIVISION 3. REQUIRED POSTINGS

40 TAC §746.401, §746.403

The amendments are 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§746.401. What items must I post at my child-care center at all times?

You must post the following items:

- (1) The child-care center's license;
- (2) The letter or form from the most recent Licensing inspection or investigation;
- (3) The Licensing notice Keeping Children Safe;
- (4) Your emergency evacuation and relocation diagram as specified in §746.5207 of this title (relating to Must I have an emergency evacuation and relocation diagram?);
- (5) The activity plan for each group of children in the child-care center;
- (6) The daily menu, including all snacks and meals served by the child-care center;
- (7) The Licensing Parent Notification Poster;
- (8) Telephone numbers specified in §746.405 of this title (relating to What telephone numbers must I post and where must I post them?);
- (9) A list entitled "Current Employees." The list must be at least 8 1/2 inches by 11 inches in size, printed legibly, and must include each employee's first and last name;
- (10) A list of each child's food allergies that require an emergency plan, as specified in §746.3819 of this title (relating to When must I have a food allergy emergency plan for a child?); and
- (11) Any other Licensing notices with specific instructions to post the notice.

§746.403. When and where must these items be posted?

- (a) Unless otherwise specified, the items specified in §746.401 of this title (relating to What items must I post at my child-care center at all times?) must be posted at all times, in a prominent and publicly accessible place where employees, parents, and others may easily view them.

(b) For a list of each child's food allergies that require an emergency plan:

(1) You 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, and if a parent requests it, you must maintain privacy for the child (for example, a clipboard hung on the wall with a cover sheet over the list); and

(3) You must ensure that all caregivers and employees who prepare and serve food are aware of each child's food allergies.

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SUBCHAPTER C. RECORD KEEPING

DIVISION 1. RECORDS OF CHILDREN

40 TAC §746.605

The amendment 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§746.605. *What admission information must I obtain for each child?*

You must obtain at least the following information before admitting a child to care:

- (1) The child's name and birth date;
- (2) The child's home address and telephone number;
- (3) Date of the child's admission to the child-care center;
- (4) Name and address of parent(s);
- (5) Telephone numbers at which parent(s) can be reached while the child is in care;
- (6) Name, address, and telephone number of another responsible individual (friend or relative) who should be contacted in an emergency when the parent cannot be reached;

(7) Names and telephone numbers of persons other than a parent to whom the child may be released;

(8) Permission for transportation, if provided;

(9) Permission for field trips, if provided;

(10) Permission for participation in water activities, if provided;

(11) Name, address, and telephone number of the child's physician or an emergency-care facility;

(12) Authorization to obtain emergency medical care and to transport the child for emergency medical treatment;

(13) A statement of the child's special care needs. This includes, but is not limited to, allergies, existing illness, previous serious illness and injuries, hospitalizations during the past 12 months, and any medications prescribed for continuous, long-term use;

(14) The name and telephone number of the school that a school-age child attends, unless the operation is located at the child's school;

(15) Permission for a school-age child to ride a bus, walk to or from school or home, or to be released to the care of a sibling under 18 years old, if applicable; and

(16) A completed food allergy emergency plan for the child, if applicable.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 4. PERSONNEL RECORDS

40 TAC §746.901

The amendment 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

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SUBCHAPTER D. PERSONNEL

DIVISION 4. PROFESSIONAL DEVELOPMENT

40 TAC §§746.1303, 746.1305, 746.1307, 746.1309, 746.1311

The amendments are 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§746.1303. What must orientation for employees at my child-care center include?

(a) Your orientation for employees must include at least the following:

(1) An overview of the minimum standards found in this chapter;

(2) An overview of your operational policies, including discipline and guidance practices and procedures for the release of children;

(3) An overview of your policy on the prevention, recognition, and reporting of child abuse and neglect, including:

(A) Factors indicating a child is at risk of abuse or neglect;

(B) Warning signs indicating a child may be a victim of abuse or neglect;

(C) Procedures for reporting child abuse or neglect; and

(D) Community organizations that have training programs available to child-care center staff members, children, and parents;

(4) An overview of the procedures to follow in handling emergencies, which includes sharing the emergency preparedness plan with all employees. Emergencies may include, but are not limited to, fire, explosion, tornado, toxic fumes, volatile persons, and severe injury or illness of a child or adult; and

(5) The location and use of fire extinguishers and first-aid equipment.

(b) For employees you hire on or after September 1, 2016, your orientation must also cover the following areas:

(1) Administering medication, if applicable, including compliance with §746.3803 of this title (relating to What authorization must I obtain before administering a medication to a child in my care?);

(2) Preventing and responding to emergencies due to food or an allergic reaction;

(3) Understanding building and physical premises safety, including identification and protection from hazards that can cause bodily injury such as electric hazards, bodies of water, and vehicular traffic;

(4) Handling, storing, and disposing of hazardous materials including compliance with §746.3425 of this title (relating to Must caregivers wear gloves when handling blood or bodily fluids containing blood?); and

(5) Precautions in transporting children if your center transports a child whose chronological or developmental age is younger than nine years old.

§746.1305. What must be covered in pre-service training for caregivers?

(a) Pre-service training for caregivers must cover the following areas:

(1) Developmental stages of children;

(2) Age-appropriate activities for children;

(3) Positive guidance and discipline of children;

(4) Fostering children's self-esteem;

(5) Supervision and safety practices in the care of children;

(6) Positive interaction with children; and

(7) Preventing and controlling the spread of communicable diseases, including immunizations.

(b) If a caregiver provides care for children younger than 24 months of age, one hour of that caregiver's pre-service training must cover the following topics:

(1) Recognizing and preventing shaken baby syndrome and abusive head trauma;

(2) Understanding and using safe sleep practices and preventing sudden infant death syndrome (SIDS); and

(3) Understanding early childhood brain development.

§746.1309. How many clock hours of annual training must be obtained by caregivers?

(a) Each caregiver must obtain at least 24 clock hours of training each year relevant to the age of the children for whom the caregiver provides care.

(b) The 24 clock hours of annual training are exclusive of any requirements for orientation, pre-service training, CPR and first aid training, transportation safety training, and high school child-care work-study classes.

(c) At least six clock hours of the annual training hours must be in one or more of the following topics:

(1) Child growth and development;

(2) Guidance and discipline;

(3) Age-appropriate curriculum; and

(4) Teacher-child interaction.

(d) At least one clock hour of the annual training hours must focus on prevention, recognition, and reporting of child abuse and neglect, including:

- (1) Factors indicating a child is at risk for abuse or neglect;
- (2) Warning signs indicating a child may be a victim of abuse or neglect;
- (3) Procedures for reporting child abuse or neglect; and
- (4) Community organizations that have training programs available to child-care center staff members, children, and parents.

(e) If a caregiver provides care for children younger than 24 months of age, one clock hour of the annual training hours must cover the following topics:

- (1) Recognizing and preventing shaken baby syndrome and abusive head trauma;
- (2) Understanding and using safe sleep practices and preventing sudden infant death syndrome (SIDS); and
- (3) Understanding early childhood brain development.

(f) While there are no clock hour requirements for the topics in this subsection, the annual training hours must also include training on the following topics:

- (1) Emergency preparedness;
- (2) Preventing the spread of communicable diseases, including immunizations;
- (3) Administering medication, if applicable, including compliance with §746.3803 of this title (relating to What authorization must I obtain before administering a medication to a child in my care?);
- (4) Preventing and controlling and responding to emergencies due to food or an allergic reaction;
- (5) Understanding building and physical premises safety, including identification and protection from hazards that can cause bodily injury such as electric hazards, bodies of water, and vehicular traffic; and
- (6) Handling, storing, and disposing of hazardous materials including compliance with §746.3425 of this title (relating to Must caregivers wear gloves when handling blood or bodily fluids containing blood?).

(g) The remaining annual training hours must be in one or more of the following topics:

- (1) Care of children with special needs;
- (2) Child health (for example, nutrition and activity);
- (3) Safety;
- (4) Risk management;
- (5) Identification and care of ill children;
- (6) Cultural diversity for children and families;
- (7) Professional development (for example, effective communication with families and time and stress management);
- (8) Topics relevant to the particular age group the caregiver is assigned (for example, caregivers assigned to an infant or toddler group should receive training on biting and toilet training);

(9) Planning developmentally appropriate learning activities;

- (10) Observation and assessment;
- (11) Attachment and responsive care giving; and
- (12) Minimum standards and how they apply to the caregiver.

(h) No more than 80% of the annual training hours may be obtained through self-instructional training. 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.

§746.1311. *How many clock hours of training must my child-care center director obtain each year?*

(a) The child-care center director must obtain at least 30 clock hours of training each year relevant to the age of the children for whom the child-care center provides care.

(b) The 30 clock hours of annual training are exclusive of any requirements for orientation, pre-service training, CPR and first aid training, and transportation safety training.

(c) At least six clock hours of the annual training hours must be in one or more of the following topics:

- (1) Child growth and development;
- (2) Guidance and discipline;
- (3) Age-appropriate curriculum;
- (4) Teacher-child interaction; and
- (5) Serving children with special care needs.

(d) At least one clock hour of the annual training hours must focus on prevention, recognition, and reporting of child abuse and neglect, including:

- (1) Factors indicating a child is at risk for abuse or neglect;
- (2) Warning signs indicating a child may be a victim of abuse or neglect;
- (3) Procedures for reporting child abuse or neglect; and
- (4) Community organizations that have training programs available to child-care center staff members, children, and parents.

(e) If the center provides care for children younger than 24 months of age, one hour of the annual training hours must cover the following topics:

- (1) Recognizing and preventing shaken baby syndrome and abusive head trauma;
- (2) Understanding and using safe sleep practices and preventing sudden infant death syndrome (SIDS); and
- (3) Understanding early childhood brain development.

(f) While there are no clock hour requirements for the topics in this subsection, the annual training hours must also include training on the following topics:

- (1) Emergency preparedness;
- (2) Preventing and controlling the spread of communicable diseases, including immunizations;
- (3) Administering medication, if applicable, including compliance with §746.3803 of this title (relating to What authorization must I obtain before administering a medication to a child in my care?);

(4) Preventing and responding to emergencies due to food or an allergic reaction;

(5) Understanding building and physical premises safety, including identification and protection from hazards that can cause bodily injury such as electric hazards, bodies of water, and vehicular traffic; and

(6) Handling, storing, and disposing of hazardous materials including compliance with §746.3425 of this title (relating to Must caregivers wear gloves when handling blood or bodily fluids containing blood?).

(g) A director with:

(1) Five or fewer years of experience as a designated director of a child-care center must complete at least six clock hours of the annual training hours in management techniques, leadership, or staff supervision; or

(2) More than five years of experience as a designated director of a child-care center must complete at least three clock hours of the annual training hours in management techniques, leadership, or staff supervision.

(h) The remainder of the 30 clock hours of annual training must be selected from the training topics specified in §746.1309(g) of this title (relating to How many clock hours of annual training must be obtained by caregivers?).

(i) The director may obtain clock hours or CEUs from the same sources as caregivers.

(j) Training hours may not be earned for presenting training to others.

(k) No more than 80% of the annual training hours may be obtained through self-instructional training. 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.

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SUBCHAPTER N. FIELD TRIPS

40 TAC §746.3001

The amendment 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules

governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§746.3001. May I take children away from my child-care center for field trips?

Yes. You must ensure the safety of all children on field trips or excursions and during any transportation provided by the child-care center. Anytime you take a child on a field trip, you must comply with each of the following requirements:

(1) You must have signed permission from the parent to take a child on a field trip, including permission to transport the child, if applicable;

(2) One or more caregivers must carry emergency medical consent forms and emergency contact information for each child on the field trip;

(3) Caregivers must have a written list of all children on the field trip and must check the list frequently to account for the presence of all children;

(4) Caregivers must have a first-aid kit immediately available on field trips;

(5) Caregivers must have a copy of a child's food allergy emergency plan and allergy medications, if applicable;

(6) Each child must wear a shirt, nametag, or other identification listing the name of the child-care center and the child-care center's telephone number;

(7) Each caregiver must be easily identifiable by all children on the field trip by wearing a hat, child-care center tee-shirt, brightly-colored clothes, or other easily spotted identification;

(8) Each caregiver supervising a field trip must have transportation available, a communication device such as a cellular phone or two-way radio available, or an alternate plan for transportation at the field-trip location in case of emergency; and

(9) Caregivers with training in CPR and first aid with rescue breathing and choking must be present on the field trip.

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SUBCHAPTER Q. NUTRITION AND FOOD SERVICE

40 TAC §746.3301

The amendment 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

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SUBCHAPTER R. HEALTH PRACTICES

DIVISION 1. ENVIRONMENTAL HEALTH

40 TAC §746.3407, §746.3425

The amendments are 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§746.3425. Must caregivers wear gloves when handling blood or bodily fluids containing blood?

Yes. Caregivers must follow universal precautions outlined by the Centers for Disease Control (CDC) when handling blood, vomit, or other bodily fluids that may contain blood including:

- (1) Using disposable, nonporous gloves;
 - (2) Placing gloves contaminated with blood in a tied, sealed, or otherwise closed plastic bag and discarding them immediately;
 - (3) Discarding all other gloves immediately after one use;
- and
- (4) Washing hands after using and disposing of the gloves.

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DIVISION 2. DIAPER CHANGING

40 TAC §746.3505

The amendment 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

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SUBCHAPTER S. SAFETY PRACTICES

DIVISION 2. MEDICATIONS AND MEDICAL ASSISTANCE

40 TAC §746.3817, §746.3819

The new sections are 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules

governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§746.3819. *When must I have a food allergy emergency plan for a child?*

You must have a food allergy emergency plan for each child with a known food allergy that has been diagnosed by a health-care professional. The child's health care professional and parent must sign and date the plan. You must keep a copy of the plan in the child's file.

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SUBCHAPTER W. FIRE SAFETY AND EMERGENCY PRACTICES DIVISION 2. EMERGENCY PREPAREDNESS

40 TAC §§746.5201, 746.5202, 746.5205, 746.5207

The amendments are 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§746.5201. *What is an emergency preparedness plan?*

An emergency preparedness plan is designed to ensure the safety of children during an emergency by addressing staff responsibility and facility readiness with respect to emergency evacuation, relocation, and sheltering/lock-down. The plan addresses the types of responses to emergencies most likely to occur in your area, including:

- (1) An evacuation of the children and caregivers to a designated safe area in an emergency such as a fire or gas leak;
- (2) A relocation of the children and caregivers to a designated, alternate shelter in an emergency such as a flood, a hurricane, medical emergency, or communicable disease outbreak; and
- (3) The sheltering and lock-down of children and caregivers within the center to temporarily protect them from situations

such as a tornado, volatile person on the premises, or an endangering person in the area.

§746.5202. *What must my emergency preparedness plan include?*

Your emergency preparedness plan must include written procedures for:

(1) Evacuation, relocation, and sheltering/lock-down of children including:

(A) The first responsibility of staff in an emergency evacuation or relocation is to move the children to a designated safe area or alternate shelter known to all employees, caregivers, parents, and volunteers;

(B) How children will be evacuated or relocated to the designated safe area or alternate shelter, including specific procedures for evacuating and relocating children who are under 24 months of age, who have limited mobility, or who otherwise may need assistance in an emergency, such as children who have mental, visual, or hearing impairments;

(C) The staff responsibility in a sheltering/lock-down emergency for the orderly movement of children to a designated location within the center where children should gather;

(D) An emergency evacuation and relocation diagram as outlined in §746.5207 of this title (relating to Must I have an emergency evacuation and relocation diagram?);

(E) Name and address of the alternate shelter away from the center you will use as needed; and

(F) How children in attendance at the time of the emergency will be accounted for at the designated safe area or alternate shelter.

(2) Communication, including:

(A) The emergency telephone number that is on file with us; and

(B) How you will communicate with local authorities (such as fire, law enforcement, emergency medical services, health department), parents and us; and

(3) How your staff will evacuate and relocate with the essential documentation including:

(A) Parent and emergency contact telephone numbers for each child in care;

(B) Authorization for emergency care for each child in care; and

(C) The child tracking system information for children in care;

(4) How your staff will continue to care for the children until each child has been released; and

(5) How you will reunify the children with their parents as the evacuation, relocation, or sheltering/lock-down is lifted.

§746.5205. *Must I practice my emergency preparedness plan?*

Yes, the following components of your center's emergency preparedness plan must be practiced as specified below:

(1) You must practice a fire drill every month. The children must be able to safely exit the building within three minutes;

(2) You must practice a sheltering drill for severe weather at least four times in a calendar year;

(3) You must practice a lock-down drill for a volatile or endangering person on the premises or in the area at least four times in a calendar year; and

(4) You must document these drills, including the date of the drill, time of the drill, and length of the time for the evacuation, sheltering, or lock-down to take place.

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40 TAC §746.5203

The repeal 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

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CHAPTER 747. MINIMUM STANDARDS FOR CHILD-CARE HOMES

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§747.401, 747.605, 747.901, 747.1007, 747.1107, 747.1119, 747.1309, 747.1401, 747.1403, 747.2901, 747.3101, 747.3203, 747.3221, 747.3307, 747.5001, 747.5003, and 747.5005; new §§747.1301, 747.1303, 747.1305, 747.1307, 747.3617, and 747.3619; and repeal of §§747.1109, 747.1301, 747.1303, 747.1305, 747.1307, and 747.2713 in

Chapter 747, concerning Minimum Standards for Child-Care Homes. The amendments to §§747.401, 747.605, 747.1401, 747.2901, 747.3221, 747.3307, 747.5001, 747.5003, and 747.5005; and new §747.1301 and §747.3619 are adopted with changes to the proposed text published in the May 20, 2016, issue of the *Texas Register* (41 TexReg 3672). The amendments to §§747.901, 747.1007, 747.1107, 747.1119, 747.1309, 747.1403, 747.3101, and 747.3203; and new §§747.1303, 747.1305, 747.1307, and 747.3617; and repeal of §§747.1109, 747.1301, 747.1303, 747.1305, 747.1307, and 747.2713 are adopted without changes to the proposed text and will not be republished.

The purpose of the amendments, new sections and repeals 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 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: (1) more robust emergency preparedness plans; (2) administering medication; (3) food allergies; (4) building and physical premises safety; and (5) handling, storing, and disposing of hazardous materials.

There are 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: (1) recognizing and preventing shaken baby syndrome; (2) safe sleep practices; (3) understanding early childhood brain development; and (4) 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 LCCHs and RCCHs. The health and safety requirements correlate to some of the training topics. The changes to the minimum standards support the health and safety requirements, including requiring homes to: (1) obtain food allergy emergency plans for children with known food allergies, post a list of food allergies at the home, 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 are:

The amendment to §747.401 for food allergies that require an emergency plan requires a home to either: (1) post the list of each child's food allergies in a prominent place during all hours of operation, and if a parent requests it, the home must maintain privacy for the child (for example, a clipboard hung on the wall with a cover sheet over the list); or (2) ensure all caregivers and employees who prepare and serve food are aware of each child's food allergies.

The amendment to §747.605 adds a requirement for homes to obtain a completed food allergy emergency plan before admitting a child into care, if applicable.

The amendment to §747.901 updates a cite and makes the language consistent.

The amendment to §747.1007 requires an additional qualification for a primary caregiver of a RCCH to include proof of training on ten new topics.

The amendment to §747.1107 requires an additional qualification for a primary caregiver of a LCCH to include proof of training on ten new topics.

The repeal of §747.1109 deletes an outdated grandfather rule.

The amendment to §747.1119 corrects a cite.

The repeal of §747.1301 moves the content of this rule to new §747.1303.

New §747.1301: (1) includes the content of previous §747.1305; (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) adds nine new orientation topics for caregivers.

The repeal of §747.1303 moves the content of this rule to new §747.1307.

New §747.1303 includes the content of previous §747.1301.

The repeal of §747.1305 moves the content of this rule to new §747.1301.

New §747.1305: (1) includes the content of previous §747.1307; (2) adds six topics that must be covered in the annual training of caregivers; and (3) deletes a redundant paragraph about transportation safety training.

The repeal of §747.1307 moves the content of this rule to new §747.1305, with one minor modification.

New §747.1307: (1) includes most of the content of previous §747.1303 with one minor modification; (2) deletes the pre-application course content from previous §747.1303 because it is already required at §747.1007; and (3) adds a reference to the transportation safety training requirement.

The amendment to §747.1309: (1) adds six topics that must be covered in the annual training of primary caregivers; and (2) deletes a redundant paragraph about transportation safety training.

The amendment to §747.1401 updates some cites; replaces "physician" with "health-care professional"; and clarifies the language in the rule.

The amendment to §747.1403 deletes a reference to a rule and spells out all but one of the requirements of the deleted refer-

ence to include: (1) an overview of the home's policies; (2) an overview of child abuse and neglect, including reporting; (3) the procedures to follow in an emergency; and (4) the location and use of fire extinguishers and first-aid equipment. The deleted requirement for an overview of the minimum standards is no longer needed, because this new rule only applies to household members.

The repeal of §747.2713 is necessary because the information is already included in §747.503, §747.1301(2), and §747.1403(1).

The amendment to §747.2901: (1) 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; (2) makes the language consistent; and (3) deletes an outdated term.

The amendment to §747.3101: (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 §747.2705.

The amendment to §747.3203 clarifies that a child-care home must use, store, and dispose of hazardous materials as recommended by the manufacturer.

The amendment to §747.3221 clarifies that caregivers must follow universal precautions as outlined by the CDC when handling bodily fluids that may contain blood, including placing gloves contaminated with blood in a tied, sealed, or otherwise closed plastic bag and discarding them immediately.

The amendment to §747.3307 clarifies that a child's soiled clothing must be placed in a tied, sealed, or otherwise closed plastic bag and be sent home with the child.

New §747.3617 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 §747.3619 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, posted if the parent consents, and taken on field trips.

The amendment to §747.5001 clarifies in more detail what an emergency preparedness plan is by distinguishing between an evacuation, relocation, and sheltering/lock-down.

The amendment to §747.5003 adds to the requirements for the emergency prepared plan to also include: (1) staff's responsibility in a sheltering/lock-down emergency for the orderly movement of children to a designated location within the home 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 amendment to §747.5005: (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" language for clarification.

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 §747.401: One commenter thanked DFPS for addressing food allergies and said she has seen excellent methods of posting food allergies.

Response: 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: (1) the list only includes those food allergies that require an emergency plan; (2) deletes the parent's permission requirement; and (3) requires the home to either post the list in a prominent place during all hours of operation, but if a parent requests it, you must maintain the child's privacy (for example, a clipboard hung on the wall with a cover sheet over it), or ensure that all caregivers and employees who prepare and serve food are aware of each child's food allergies.

No comments concerning §747.605, however, based on the comments to a similar rule in Chapter 746 (§746.403) DFPS deletes the parent's permission requirement, but §747.401 allows a parent to request that the home protect the privacy of their child.

Comments concerning §747.1007 and §747.1107: The commenter stated that caregivers need more than a high school diploma.

Response: 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: (1) this change adds mandated training requirements; (2) 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; (3) there are required hours of annual training for all caregivers to further staff development;

and (4) 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, however, the rules related to diploma requirements in those chapters were not proposed nor are they open for public comment.

No comments concerning §747.1301, however, 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.

Comments concerning §747.1401: One commenter stated "physician" should be changed to "health-care professional" to be more inclusive of advanced practice nurses.

Response: DFPS agrees with the commenter and has made this change.

No comments concerning §747.2901, however, DFPS determined that the outdated term "message pager" needed to be deleted from paragraph (8).

Comments concerning §747.3221: The workgroup commented that they wanted further clarification on what "sealed" meant.

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

Comments concerning §747.3307: 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.

Response: 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.

No comments concerning §747.3619, however, 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.

Comments concerning §747.5001: 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 §747.5003, however, based on the comment to §747.5001, DFPS has changed the term "sheltering" to "sheltering/lock-down".

Comments concerning §747.5005: 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 is 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.

SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION

DIVISION 3. REQUIRED POSTINGS

40 TAC §747.401

The amendment 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§747.401. What items must I post at my child-care home during hours of operation?

(a) You must post the following in a prominent and publicly accessible place where parents and others may easily view them during all hours of operation:

- (1) The child-care home's license or registration certificate;
- (2) The letter or form from the most recent Licensing inspection or investigation;
- (3) The Licensing notice *Keeping Children Safe*;
- (4) Telephone numbers specified in this division;
- (5) A list of your employees, as defined in §745.21 of this title (relating to What do the following word and terms mean when used in this chapter?). The list must be printed on paper at least 8 1/2 inches by 11 inches in size and must include each employee's first and last name; and
- (6) Any other Licensing notices requiring posting.

(b) For food allergies that require an emergency plan, you must either:

- (1) Post the list of each child's food allergies in a prominent place during all hours of operation, and if a parent requests it, you must maintain privacy for the child (for example, a clipboard hung on the wall with a cover sheet over the list); or
- (2) Ensure that all caregivers and employees who prepare and serve food are aware of each child's food allergies.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. RECORD KEEPING

DIVISION 1. RECORDS OF CHILDREN

40 TAC §747.605

The amendment 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§747.605. What admission information must I obtain for each child?

You must obtain at least the following information before admitting a child to care:

- (1) The child's name and birth date;
- (2) The child's home address and telephone number;
- (3) Date of the child's admission to the child-care home;
- (4) Name and address of parent(s);
- (5) Telephone numbers at which parent(s) can be reached while the child is in care;
- (6) Name, address, and telephone number of another responsible individual (friend or relative) who should be contacted in an emergency when the parent cannot be reached;
- (7) Names and telephone numbers of persons other than a parent to whom the child may be released;
- (8) Permission for transportation, if provided;
- (9) Permission for field trips, if provided;
- (10) Permission for participation in water activities, if provided;
- (11) Name, address, and telephone number of the child's physician or an emergency-care facility;
- (12) Authorization to obtain emergency medical care and to transport the child for emergency medical treatment;
- (13) A statement of the child's special care needs. This includes, but is not limited to, allergies, existing illness, previous serious illness and injuries, hospitalizations during the past 12 months, and any medications prescribed for continuous, long-term use;
- (14) The name and telephone number of the school a school-age child attends;

(15) Permission for a school-age child to ride a bus, walk to or from school or home, or to be released to the care of a sibling under 18 years old, if applicable; and

(16) A completed food allergy emergency plan for the child, if applicable.

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DIVISION 4. RECORDS ON CAREGIVERS AND HOUSEHOLD MEMBERS

40 TAC §747.901

The amendment 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

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SUBCHAPTER D. PERSONNEL DIVISION 1. PRIMARY CAREGIVER OF A REGISTERED CHILD-CARE HOME

40 TAC §747.1007

The amendment 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

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DIVISION 2. PRIMARY CAREGIVER OF A LICENSED CHILD-CARE HOME

40 TAC §747.1107, §747.1119

The amendments are 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

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40 TAC §747.1109

The repeal 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

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DIVISION 4. PROFESSIONAL DEVELOPMENT

40 TAC §§747.1301, 747.1303, 747.1305, 747.1307

The repeals are 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

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40 TAC §§747.1301, 747.1303, 747.1305, 747.1307, 747.1309

The new sections and amendment are 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections and amendment implement HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§747.1301. What must orientation for caregivers at my child-care home include?

Orientation for caregivers at your child-care home must include at least the following:

- (1) An overview of the minimum standards found in this chapter;
- (2) An overview of your operational policies, including discipline and guidance practices and procedures for the release of children, and the provision of copies of these practices and procedures;
- (3) An overview regarding the prevention, recognition, and reporting of child abuse and neglect, including:
 - (A) Factors indicating a child is at risk of abuse or neglect;
 - (B) Warning signs indicating a child may be a victim of abuse or neglect;
 - (C) Procedures for reporting child abuse or neglect; and
 - (D) Community organizations that have training programs available to child-care staff, children, and parents;
- (4) An overview of your home's Emergency Preparedness Plan;
- (5) Locating and using fire extinguishers and first-aid equipment;
- (6) Recognizing and preventing shaken baby syndrome and abusive head trauma;
- (7) Understanding and using safe sleep practices and preventing sudden infant death syndrome (SIDS);
- (8) Understanding early childhood brain development;
- (9) Preventing and controlling the spread of communicable diseases, including immunizations;
- (10) Administering medication, if applicable, including compliance with §747.3603 of this title (relating to What authorization must I obtain before administering a medication to a child in my care?);
- (11) Preventing and responding to emergencies due to food or an allergic reaction;
- (12) Understanding building and physical premises safety, including identification and protection from hazards that can cause bodily injury such as electric hazards, bodies of water, and vehicular traffic;

(13) Handling, storing, and disposing of hazardous materials including compliance with §747.3221 of this title (relating to Must caregivers wear gloves when handling blood or bodily fluids containing blood?); and

(14) Precautions in transporting children if your child-care home transports a child whose chronological or developmental age is younger than nine years old.

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DIVISION 5. HOUSEHOLD MEMBERS, VOLUNTEERS, AND PEOPLE WHO OFFER CONTRACTED SERVICES

40 TAC §747.1401, §747.1403

The amendments are 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§747.1401. Must members of my household meet specific qualifications?

(a) For each household member that you are required to request a background check on, as specified in Subchapter F of Chapter 745 of this title (relating to Background Checks), the member must:

(1) Provide a copy of a health card or health-care professional's statement verifying they are free of active tuberculosis if required by the regional Texas Department of State Health Services or local health authority; and

(2) Complete orientation to your child-care home as specified in §747.1403 of this title (relating to What must orientation for household members at my child-care home include?).

(b) Any household member who is counted in the child-care-giver ratio on more than ten separate occasions in one training year, whether paid or unpaid, must meet the minimum qualifications for assistant caregivers and training requirements for caregivers as specified in this subchapter.

(c) Any household member who is left in charge of the child-care home in the absence of the primary caregiver, whether paid or unpaid, must meet the minimum qualifications for a substitute caregiver and training requirements for caregivers specified in this subchapter.

(d) A household member who is 14 years old or older, but is not regularly or frequently staying or working at the child-care home while children are in care, is not required to meet the qualifications or training requirements for caregivers specified in this subchapter, but must never be left alone with a child in care.

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SUBCHAPTER L. DISCIPLINE

40 TAC §747.2713

The repeal 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

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SUBCHAPTER N. FIELD TRIPS

40 TAC §747.2901

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Com-

missioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§747.2901. May I take children away from my child-care home for field trips?

(a) Yes. You must ensure the children's safety on field trips and excursions and during any transportation provided by the child-care home. Anytime you take a child on a field trip you must comply with each of the following requirements:

(1) You must have signed permission from the parent to take a child away from your child-care home, including permission to transport the child, if applicable;

(2) You must carry emergency medical consent forms and emergency contact information for each child on the field trip;

(3) You must have a written list of all children on the field trip and must check the list frequently to account for the presence of all children on the field trip;

(4) You must have a first-aid kit immediately available on all field trips;

(5) You must have a copy of a child's food allergy emergency plan and allergy medications, if applicable;

(6) Each child must wear a shirt, name tag, or other identification listing the name and telephone number of the child-care home;

(7) Each caregiver must be easily identifiable by all children on the field trip, by wearing a hat, specialized tee-shirt, brightly colored clothes, or other easily spotted identification;

(8) Each caregiver supervising a field trip must have transportation available, a communication device such as a cellular phone or two-way radio available, or an alternate plan for transportation at the field trip location in case of emergency; and

(9) You must ensure that a caregiver trained in CPR and first aid with rescue breathing and choking is present on the field trip.

(b) A walk around the caregiver's neighborhood must comply only with paragraphs (2), (5) and (9) of subsection (a) of this section.

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SUBCHAPTER Q. NUTRITION AND FOOD SERVICE

40 TAC §747.3101

The amendment 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

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SUBCHAPTER R. HEALTH PRACTICES
DIVISION 1. ENVIRONMENTAL HEALTH

40 TAC §747.3203, §747.3221

The amendments are 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§747.3221. Must caregivers wear gloves when handling blood or bodily fluids containing blood?

Yes, caregivers must follow universal precautions outlined by the Centers for Disease Control (CDC) when handling blood, vomit, or other bodily fluids that may contain blood including:

- (1) Using disposable, nonporous gloves;

(2) Placing gloves contaminated with blood in a tied, sealed, or otherwise closed plastic bag and discarding them immediately;

(3) Discarding all other gloves immediately after one use; and

(4) Washing your hands with soap and running water after using and disposing of the gloves.

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DIVISION 2. DIAPER CHANGING

40 TAC §747.3307

The amendment 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§747.3307. What must I do to prevent the spread of germs when diapering children?

(a) You must wash your hands after each diaper change. Refer to §747.3215 of this title (relating to How must children and caregivers wash their hands?).

(b) You must wash the infant's hands or see that the child's hands are washed after each diaper change. Refer to §747.3217 of this title (relating to How must I wash an infant's hands?).

(c) If you use disposable gloves, you must discard them after each diaper change and wash your hands as specified in §747.3215 of this title.

(d) You must cover containers used for soiled diapers or keep them in a sanitary manner, such as placing soiled diapers in sealed bags.

(e) You must sanitize the diapering surface after each use, as specified in §747.3205 of this title (relating to What does Licensing mean when it refers to "sanitizing"?), or use a clean, disposable covering on the diapering surface that must be changed after each use.

(f) You must place soiled clothing in a tied, sealed, or otherwise closed plastic bag to be sent home with the child.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER S. SAFETY PRACTICES DIVISION 2. MEDICATION AND MEDICAL ASSISTANCE

40 TAC §747.3617, §747.3619

The new sections are 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§747.3619. When is this plan required?

A food allergy emergency plan is required for each child with a known food allergy that has been diagnosed by a health-care professional. The child's health care professional and parent must sign and date the plan. You must keep a copy of the plan in the child's file.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER W. FIRE SAFETY AND EMERGENCY PRACTICES DIVISION 2. EMERGENCY PREPAREDNESS

40 TAC §§747.5001, 747.5003, 747.5005

The amendments are 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 the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§747.5001. What is an emergency preparedness plan?

An emergency preparedness plan is designed to ensure the safety of children during an emergency by addressing staff responsibility and your home's readiness with respect to emergency evacuation, relocation, and sheltering/lock-down. The plan addresses the types of responses to emergencies most likely to occur in your area including:

- (1) An evacuation of your home to a designated safe area in an emergency such as a fire or gas leak;
- (2) A relocation of the children and caregivers to a designated, alternate shelter in an emergency such as a flood, a hurricane, medical emergency, or communicable disease outbreak; and
- (3) The sheltering and lock-down of children and caregivers within your home to temporarily protect them from situations such as a tornado, volatile person on the premises, or an endangering person in the area.

§747.5003. What must my emergency preparedness plan include?

Your emergency preparedness plan must include written procedures for:

- (1) Evacuation, relocation, and sheltering/lock-down of children, including:
 - (A) Your first responsibility in an emergency evacuation or relocation is to move the children to a designated safe area or alternate shelter known to all household members, caregivers, parents, and volunteers;
 - (B) How children will be evacuated or relocated to the designated safe area or alternate shelter, including specific procedures for evacuating or relocating children who are under 24 months of age, who have limited mobility, or who otherwise may need assistance in an emergency, such as children who have mental, visual, or hearing impairments;
 - (C) An emergency evacuation and relocation diagram as outlined in §747.5007 of this title (relating to Must I have an emergency evacuation and relocation diagram?);
 - (D) The caregivers' responsibility in a sheltering/lock-down emergency for the orderly movement of children to a designated location in your home where children should gather;

(E) Name and address of the alternate shelter away from your home you will use as needed; and

(F) How children in attendance at the time of the emergency will be accounted for at the designated safe area or alternate shelter;

(2) Communication, including:

(A) The emergency telephone number that is on file with us; and

(B) How you will communicate with local authorities (such as fire, law enforcement, emergency medical services, and health department), parents, and us;

(3) How you will evacuate and relocate with the essential documentation including:

(A) Parent and emergency contact telephone numbers for each child in care;

(B) Authorization for emergency care for each child in care; and

(C) The attendance record information for children in care at the time of the emergency;

(4) How you will continue to care for the children until each child has been released; and

(5) How you will reunify the children with their parents as the evacuation, relocation, or sheltering/lock-down is lifted.

§747.5005. Must I practice my emergency preparedness plan?

Yes, the following components of your home's emergency preparedness plan must be practiced as follows:

(1) You must practice a fire drill every month. The children must be able to safely exit the child-care home within three minutes; and

(2) You must practice a sheltering drill for severe weather at least four times in a calendar year; and

(3) You must practice a lock-down drill for a volatile or endangering person on the premises or in the area at least four times in a calendar year.

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