

# MEMORANDUM

TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

TO: **Chair and Members  
Department of Family and Protective Services Council**

FROM: **Howard G. Baldwin, Jr.  
Commissioner**

SUBJECT: **Agenda Item 6c: Recommendation to propose rule changes in 40 TAC, Chapter 744, Minimum Standards for School-Age and Before or After-School Programs; Chapter 746, Minimum Standards for Child-Care Centers; Chapter 747, Minimum Standards for Child-Care Homes; and Chapter 748, General Residential Operations**

DATE: **July 20, 2012**

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## BACKGROUND AND PURPOSE

The Child Care Licensing Division is recommending changes to administrative rules in 40 TAC, Chapter 746, Minimum Standards for Child-Care Centers; Chapter 747, Minimum Standards for Child-Care Homes; and Chapter 748, General Residential Operations; to support and implement new federal regulations related to safety standards for cribs; amend rules related to safe sleep practices; and amend rules to correct minimum standard numbers and cross references.

The Child Care Licensing Division is recommending changes to Chapter 744, Minimum Standards for School-Age and Before or After School Programs; Chapter 746, Minimum Standards for Child-Care Centers; and Chapter 747, Minimum Standards for Child-Care Homes; requiring that child-care homes and centers include procedures in their operation's policies if they conduct health checks of children in care.

### **Crib Safety and Safe Sleeping**

New rules in Chapters 746, 747, and 748 will require child-care centers, child-care homes, and general residential operations to obtain and maintain a certificate of compliance that cribs meet the applicable federal rules at Title 16, Code of Federal Regulations (CFR), Parts 1219 and 1220. These federal rules, adopted by the Consumer Product Safety Commission, concern safety standards for full-size and non-full size cribs manufactured, sold, and used in the United States (U.S.). Beginning June 28, 2011, all cribs sold in the U.S. were required to meet the new federal requirements for overall crib safety. The certificate of compliance will verify that the following new requirements for cribs established by the U.S. Consumer Product Safety Commission (CPSC) have been met:

- 1) Traditional drop-side cribs cannot be made or sold; immobilizers and repair kits are not allowed.
- 2) Wood slats must be made of stronger woods to prevent breakage.

- 3) Crib hardware must have anti-loosening devices to keep it from coming loose or falling off.
- 4) Mattress supports must be more durable.
- 5) Safety testing must be more rigorous.

Federal law also requires that all cribs utilized in child-care facilities, child-care homes, and places of public accommodation (e.g. hotels), meet the new federal requirements in 16 CFR Parts 1219 or 1220, as applicable, by December 28, 2012.

Recommended changes to rules related to safe sleep practices add further clarification on providing a safe sleep environment for infants younger than 12 months of age based on recommendations from *Caring for Our Children, 3<sup>rd</sup> Edition*; and the American Academy of Pediatrics.

### Health Checks

The proposed rules add the requirement that child-care homes and centers include procedures in their operation's policies if they conduct health checks of children in care. A health check is a visual or physical assessment of a child to identify potential concerns about a child's health, including signs or symptoms of illness and injury, in response to changes in the child's behavior since the last date of attendance.

#### DETAILED SECTION ANALYSIS AND DISPOSITION TABLE

<b>Current Rule Sections</b>	<b>Proposed Action; New Rule Section</b>	<b>Summary Explanation of Proposed Action</b>
744.105 (27)	Amend	Adds the term and meaning of "health check" to the list of terms. This change also amends numbering of subsequent definitions in 744.105 (28-49) as a result of adding new (27).
744.501	Amend	Adds the requirement that child-care homes and centers include procedures in their operation's policies when conducting health checks of children in care.
746.105(32)	Amend	Adds the term and meaning of "health check" to the list of terms. This change also amends numbering of subsequent definitions in 746.105 (33-50) as result of adding new (32).
746.501	Amend	Adds the requirement that child-care centers include procedures in their operation's policies when conducting health checks of children in care.
746.801	Amend	Adds the requirement that a certificate of compliance for cribs be maintained at the center.

<b>Current Rule Sections</b>	<b>Proposed Action; New Rule Section</b>	<b>Summary Explanation of Proposed Action</b>
746.2409	Amend	<ul style="list-style-type: none"> <li>• The revision replaces the word “rails” with “gates” and replaces the word “side” with “drop gate”, which provides consistency with the federal rule prohibiting use of traditional drop rails.</li> <li>• Adds a new requirement that a certificate of compliance with federal rule 16 CFR 1219 or 1220, be kept on file for each crib and requires the certificate to be available for review upon request by Licensing. If the crib is a medical device (“hospital crib”) used by a child with special care needs, the rule adds a requirement that written orders from a healthcare professional be on file and available for review upon request from Licensing.</li> </ul>
746.2415(6)	Amend	<p>Amends the rule to:</p> <ul style="list-style-type: none"> <li>• add additional examples of loose bedding, such as blankets and sleep positioning devices; and</li> <li>• increase the age of children that the standard applies to from 6 months to 12 months.</li> </ul> <p>This change is consistent with safe sleep practices endorsed by the American Academy of Pediatrics.</p>
747.105(33)	Amend	<p>Adds the term and meaning of "health check" to the list of terms. This change also amends numbering of subsequent definitions in 747.105 (34-51) as result of adding new (33).</p>
747.501	Amend	<p>Adds a requirement that child-care homes include procedures in their operation policies when conducting health checks on the children in care.</p>
747.801	Amend	<ul style="list-style-type: none"> <li>• Amends the rule to correctly reference current standard numbers and titles.</li> <li>• Adds a requirement that a certificate of compliance for cribs be maintained at the child-care home.</li> </ul>
747.2309	Amend	<ul style="list-style-type: none"> <li>• Amends the rule by replacing the word “rails” with “gates” and replaces the word “side” with “drop gate”, which provides consistency with federal rule prohibiting use of traditional drop rails.</li> <li>• Adds a new requirement that a certificate of compliance with federal rule 16 CFR 1219 or 1220 be kept on file for each crib and requires the certificate to be available for review upon request by Licensing. If the crib is a medical device (“hospital crib”) used by a child with special care needs, the rule adds a requirement that written orders from a healthcare professional be on file and available for review upon request from Licensing.</li> </ul>

Current Rule Sections	Proposed Action; New Rule Section	Summary Explanation of Proposed Action
747.2315(5)	Amend	<p>Amends the rule to:</p> <ul style="list-style-type: none"> <li>• add additional examples of loose bedding, such as blankets and sleep positioning devices; and</li> <li>• increase the age of children that the standard applies to from 6 months to 12 months.</li> </ul> <p>This change is consistent with safe sleep practices endorsed by the American Academy of Pediatrics.</p>
748.1751	Amend	<ul style="list-style-type: none"> <li>• Amends the rule to replace the word “rails” with “gates” and replaces the word “side” with “drop gate”, which provides consistency with federal rule prohibiting use of traditional drop rails.</li> <li>• Adds a new requirement that a certificate of compliance with federal rule 16 CFR 1219 or 1220 be kept on file for each crib and requires the certificate to be available for review upon request by Licensing. If the crib is a medical device (“hospital crib”) used by a child with special care needs, the rule adds a requirement that written orders from a healthcare professional be on file and available for review upon request from Licensing.</li> </ul>
748.1757(c)	Amend	<p>Amends the rule to:</p> <ul style="list-style-type: none"> <li>• add additional examples of loose bedding, such as blankets and sleep positioning devices; and</li> <li>• increases the age of children that the standard applies to from 6 months to 12 months.</li> </ul> <p>This change is consistent with safe sleep practices endorsed by the American Academy of Pediatrics.</p>

#### STATUTORY AUTHORITY AND STATUTES AFFECTED

The modification is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Department of Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

#### FISCAL IMPLICATIONS

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

(b) Public Costs and Benefits. For each of the first five years that the proposed sections will be in effect, the public benefit anticipated as a result of the rule changes in Chapters 746, 747, and

748 relating to crib safety will be that minimum standards reflect and support the mandatory changes in federal law at 16 CFR Parts 1219 and 1220, relating to “Safety Standards for Full-Size Baby Cribs” and “Safety Standards for Non-Full-Size Baby Cribs,” respectively. These federal requirements apply to all sales of cribs in the United States on or after June 28, 2011, and are mandatory for all cribs utilized by child-care centers, child-care homes, and other places of public accommodation by December 28, 2012. In addition, rules changes to Chapters 746, 747, and 748, modify certain terminology for consistency with the mandatory federal crib safety rules and ensure that appropriate documentation regarding crib safety is maintained by child-care providers. The public benefit relating to changes in Chapters 746, 747, and 748 prohibiting the use of loose bedding and other sleeping hazards in the sleeping surfaces for children under 12 months of age will keep children in care safer because they are consistent with safe sleeping practices endorsed by the American Academy of Pediatrics. The public will benefit from rule changes in Chapters 744, 746, and 747 related to health checks because consumers of child-care services will be informed about a child-care operation’s policies and procedures relating to health checks.

Because child-care providers are already obligated under federal law to comply with federal crib rules adopted by the United States Consumer Product Safety Commission by December 28, 2012, there is no anticipated economic cost to persons who are required to comply with the proposed sections for the first five years after the rule is in effect. Child Care Licensing first notified child-care providers of the changes to federal crib regulation via email in June 2011. The notification noted that providers had until December 28, 2012, to comply and that minimum standards would be revised to reflect the changes in the federal requirements. Information regarding the changes to the federal requirements is also available to child-care providers and the general public on the Child Care Licensing website. Child-care providers or other members of the public who are interested in reviewing the impact to persons, including small businesses, that must comply with the federal crib safety rules at 16 CFR Parts 1219 and 1220 should refer to the fiscal impact analysis that accompanied the proposal of the federal rules at Federal Register, Volume 75, No. 141, July 23, 2010, beginning at Page 43308.

(c) Impact on Business. There is no anticipated impact on small and micro businesses as a result of the proposed rule changes because the changes to CCL rules do not impose any requirements that will require additional staff, the purchase of additional equipment, or any other changes to the cost of operations.

(d) Local Employment Impact and Takings Statements. No local employment impact statement was required for this rule. The agency is not required to complete a takings impact assessment regarding the proposed section(s).

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

## STAKEHOLDER INPUT

DFPS shared draft copies of the proposed rule changes with all members of the Committee on Licensing Standards for their review and comment. Stakeholder input will be considered as it is received during the period for comments on the rule.

## RECOMMENDATION

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

## ATTACHMENTS

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