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

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| TO: | Department of Family and Protective Services Logo**Chair and Members Department of Family and Protective Services Council** |
| FROM: | **Howard G. Baldwin, Jr. Commissioner** |
| SUBJECT: | **Agenda Item 5a: Recommendation to propose rule changes in 40 TAC, Chapter 745, Licensing, to clarify confidentiality requirements relating to Child Care Licensing abuse or neglect investigation records** |
| DATE: | **October 19, 2012** |

## BACKGROUND AND PURPOSE

The Child Care Licensing (CCL) Program is recommending changes to 40 Texas Administrative Code (TAC) Chapter 745, Licensing. The recommended changes clarify confidentiality requirements relating to CCL abuse or neglect investigation records.

**Who Has Access to Confidential Records**

CCL abuse or neglect investigation records are confidential and are only released to certain individuals authorized to request the record as specified in §745.8491.

Currently, the rule permits a parent of the child who is the subject of the investigation to obtain confidential information. CCL is amending the rule to also permit a parent of the child who is an alleged perpetrator in the investigation to obtain confidential information from the record.

Currently, the rule permits an operation to obtain confidential records if the operation was cited for abuse and neglect during the investigation. CCL is amending the rule to permit the operation to obtain confidential records if the operation was cited for any deficiency as a result of the investigation. The current language says if an operation was cited for "abuse or neglect," but CCL may also cite an operation for other deficiencies as a result of an abuse/neglect investigation. This change would allow an operation to obtain information related to the incident so that the operation could better address problems with its compliance and/or challenge the deficiencies at an administrative review.

The rule amendment also adds language that allows, with a signed release from an operation, a single-source continuum contractor (SSCC) for foster care redesign that subcontracts with the operation to obtain abuse/neglect investigation information when the operation is cited for a deficiency as a result of the investigation. This addition is necessary so that a SSCC for foster-care redesign can have access to all information applicable to operations that it contracts with in order to monitor their performance. The SSCC would need to see information about an investigation that occurred at an operation in order for the SSCC to do its part in safeguarding the safety of the children there.

The proposed rule amendment also allows prospective adoptive parents to examine CCL abuse or neglect records related to the child they plan to adopt whether the child is the subject of the investigation or an alleged perpetrator in the investigation. This is in accordance with Texas Family Code §162.006 which gives prospective adoptive parents the authority to review such records. The purpose of this addition is to allow prospective adoptive parents have information applicable to children they are considering adopting.

Finally, the rule also clarifies that a parent of a child who is not the subject of or the alleged perpetrator in the investigation but was a collateral witness during the investigation is entitled to the portion of the record related to their child. The reason for this change is to make language consistent between this item in the rule and the item being added for prospective adoptive parents. If a child witnessed an incident that was investigated for possible child abuse or neglect, the child’s parents should have access to otherwise confidential information specifically related to the child.

**Information that is Not Releasable and Certain Exceptions**

Certain information contained in an abuse or neglect record is not releasable to anyone, even some of the individuals authorized to request the record under §745.8491. Currently, §745.8493 prohibits the release of the identity of the reporter. CCL is clarifying that any information that identifies the reporter is prohibited from release.

CCL is also amending the rule to prohibit the release of children’s identities, except to the parent or prospective adoptive parent, or an operation (or the SSCC) that was cited for a deficiency as a result of the investigation.

Even though certain information is not releasable, there are certain parties under specific situations that are also entitled to this “super” confidential information (e.g. DFPS staff, law enforcement, state legislators, or individuals with court orders).

Finally, DFPS has the authority to withhold any information in its records that the agency deems is necessary to ensure the safety of an individual.

## DETAILED SECTION ANALYSIS AND DISPOSITION TABLE

| **Current Rule Sections** | **Proposed Action; New Rule Section** | **Summary Explanation of Proposed Action** |
| --- | --- | --- |
| §745.8491 | Amend | This rule outlines who can obtain confidential information from an abuse or neglect investigation that is not in the operation’s monitoring file. The proposed changes will:   * Add language that the parent of the child who is an alleged perpetrator in the investigation has the right to the abuse/neglect investigation information; * Amend language that currently states that records will be released to an operation who is “cited for abuse or neglect” to “cited for a deficiency”; |
| §745.8491 (cont'd) |  | * Add language that with a signed release from the operation, a SSCC for foster care redesign that subcontracts with the operation has the right to the abuse/neglect investigation information when the operation is “cited for a deficiency” as a result of the investigation; * Add language to allow prospective adoptive parents to review CCL abuse or neglect records relevant to the child they plan to adopt who is either the subject of the investigation or is an alleged perpetrator in the investigation; and * Add language that the parent of a child who is not the subject of or the alleged perpetrator in the investigation but was a collateral witness during the investigation is entitled to the portion of the investigation record related to their child. |
| §745.8493 | Amend | Section (a) of this rule outlines which portions of abuse or neglect investigation records are generally confidential and not releasable to anyone. The proposed changes will:   * Clarify that in addition to the reporter’s name being confidential, any information that identifies the reporter is also confidential; and * Prohibit the release of identities of children except to the parent or prospective adoptive parent, or an operation that was cited for a deficiency as a result of the investigation.   Section (b) of this rule outlines the situations where the information in (a) can be released to certain parties (e.g. DFPS staff, law enforcement, state legislators, or as court ordered).  Section (c) of this rule allows DFPS to withhold information in its records if the agency deems it necessary to ensure the safety of an individual. |

## 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.

The amendments also implement HRC §40.005 and §42.042.

## 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 change will be that

* Parents and prospective adoptive parents will have access to important information regarding a child’s abuse or neglect history with Licensing;

An operation and the SSCC will have the opportunity to review the record that resulted in a minimum standard citation the operation received during the course of an investigation;

* A child’s identity will be protected and kept confidential; and
* An individual’s safety may be considered in a request for confidential records.

There is no anticipated economic cost to persons who are required to comply with the proposed sections.

(c) Impact on Business. There is no anticipated adverse impact on small, micro, and large businesses as a result of the proposed rule change because the proposed rule change should not affect the cost of doing business; does not impose new requirements on any business; and does not require the purchase of any new equipment or any increased staff time in order to comply.

(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 obtained during the public comment period.

## 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*.