#### MEMORANDUM

**TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES**

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| **TO:**  **Chair and Members  Department of Family and Protective Services Council**  **FROM: Howard G. Baldwin, Jr. Commissioner**  **SUBJECT:**  **Agenda Item 5b: Recommendation to propose rule changes in 40 TAC, Chapter 745, Licensing; Chapter 748, General Residential Operations; Chapter 749, Child-Placing Agencies; and Chapter 750, Independent Foster Homes related to controlling persons**  **DATE: October 19, 2012** | agencyseal |

## BACKGROUND AND PURPOSE

The Child Care Licensing (CCL) Program is proposing changes to 40 Texas Administrative Code (TAC), Chapter 745, Licensing; Chapter 748, General Residential Operations; Chapter 749, Child-Placing Agencies; and Chapter 750, Independent Foster Homes. The purpose of the proposed amendments is to implement legislation passed during the 82nd Legislative Session.

Senate Bill (S.B.) 1178, 82nd Legislature, 2011, made changes to Chapter 42 of the Human Resources Code (HRC) in regards to who is ineligible to be a controlling person at an operation regulated by CCL. A "controlling person*"* as defined by HRC [§42.002(18)](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.42.htm#42.002) is "a person who, either alone or in connection with others, has the ability to directly or indirectly influence or direct the management, expenditures, or policies" of a child care operation.

Earlier this year, CCL amended administrative rules to implement the legislation (the rules became effective March 1, 2012). The changes in this proposal will further support the implementation of S.B. 1178 by:

* outlining in what circumstances a person is prohibited from being a controlling person, when CCL will make this determination, and updating/amending §745.915; and
* amending residential child-care minimum standard rules in Chapters 748, 749, and 750 to require residential child-care operations to notify CCL when:
  + a new person becomes a controlling person at the operation; or
  + a person ceases to be a controlling person at the operation.

The proposed rule changes to Chapters 748, 749, and 750 are to ensure that CCL has the most current information on controlling persons at an operation, so CCL can comply with requirements in law and administrative rule to ensure that an individual who is a controlling person at an operation is eligible to be a controlling person. Additionally, this requirement currently exists in day-care minimum standards. For the purpose of complying with the law and administrative rules, it is beneficial to CCL for the minimum standards for both day-care and residential child-care operations to be consistent.

CCL is also proposing to amend the titles for:

* Chapter 745, Subchapter G, from *"Controlling Person and Certain Employment Prohibited"* to "*Controlling Persons*."
* Chapter 748, from "*General Residential Operations" to* "*Minimum Standards for General Residential Operations*."
* Chapter 749, from "*Child-Placing Agencies"* to "*Minimum Standards for Child-Placing Agencies."*
* Chapter 750, from "*Independent Foster Homes"* to "*Minimum Standards for Independent Foster Homes*."

## DETAILED SECTION ANALYSIS AND DISPOSITION TABLE

| **Current Rule Sections** | **Proposed Action; New Rule Section** | **Summary Explanation of Proposed Action** |
| --- | --- | --- |
| Chapter 745, Subchapter G | Amend | Change the title of Subchapter G from *“Controlling Person and Certain Employment Prohibited”* to *“Controlling Persons”*. The 82nd Legislative Session changed the controlling person statute. While certain persons are precluded from being a controlling person, those same persons are not precluded from being employed in child-care. |
| §745.903 | Amend | Change the question from *“****When must I submit to Licensing information about a person whom I consider to be a controlling person at my child-care operation?”* to *“****When and how must I submit controlling-person information to Licensing?”*. The response would then specify that in addition to submitting a controlling person form, an operation can submit controlling person information through the DFPS website. |
| §745.911 | Repeal and New | This new rule outlines in what circumstances a person may not serve as a controlling person at a child-care operation. The new rule also clarifies the language and makes the rule consistent with other rules in this Subchapter. |
| §745.913 | Repeal and New | This new rule simplifies the times when CCL checks whether a person is ineligible to serve as a controlling person at a child-care operation. |
| §745.915 | Amend | The 82nd Legislative Session changed the controlling person statute. While certain persons are precluded from being a controlling person, those same persons are not precluded from being employed in child-care. The changes to this rule clarify this issue. |
| Chapter 748 General Residential Operations | Amend | Change the title from *"General Residential Operations"* to *"Minimum Standards for General Residential Operations*.*"* |
| §748.103 | Amend | This rule outlines the operational responsibilities of a permit holder of a General Residential Operation. The proposed change adds a requirement that the permit holder notify CCL when either of the following occur:   * a new individual becomes a controlling person at the operation; or * an individual ceases to be a controlling person at the operation. |
| Chapter 749, Child-Placing Agencies | Amend | Change the title from "*Child-Placing Agencies*" to "*Minimum Standards for Child-Placing Agencies*." |
| §749.103 | Amend | This rule outlines the operational responsibilities of a permit holder of a Child-Placing Agency. The proposed change adds a requirement that the permit holder notify CCL when either of the following occur:   * a new individual becomes a controlling person at the child-placing agency; or * an individual ceases to be a controlling person at the child-placing agency. |
| Chapter 750, Independent Foster Homes | Amend | Change the title from "*Independent Foster Homes*” to “*Minimum Standards for Independent Foster Homes*." |
| §750.103 | Amend | This rule outlines the operational responsibilities of a permit holder of an Independent Foster Home. The proposed change adds a requirement that the permit holder notify CCL when either of the following occur:   * a new individual becomes a controlling person at the independent foster home; or * an individual ceases to be a controlling person at the independent foster home. |

## 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 and new rules also implement HRC §§42.042, 42.062, and 42.072(c-1)

## 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:

* the public will have a clearer understanding of who can serve as controlling persons; and
* children will be safer in regulated child-care settings because Child Care Licensing will have the most current information on controlling persons at residential child-care facilities. This will ensure that persons that are controlling persons at an operation are eligible to be a controlling person.

(c) Impact on Business. There is no anticipated adverse economic impact on small, micro, and large businesses as a result of the proposed rule changes because the proposed rule changes should not affect the cost of doing business.

The amendments to Chapter 745 outline requirements currently in statute and clarify what steps CCL staff (not operations) takes to assess whether the person meets the requirement in law.

While the amendments to Chapters 748, 749, and 750 do require operations to report additional information CCL, reporting this information will not require the purchase of any new equipment or any additional staff time in order to comply. Most controlling persons are also members of the operation's governing body, and operations currently are required to notify CCL of changes to the governing body.

(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 changes.

## STAKEHOLDER INPUT

The agency 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*.