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

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| TO: | **Chair and Members Department of Family and Protective Services Council** | agencyseal |
| FROM: | **Howard G. Baldwin, Jr. Commissioner** |
| SUBJECT: | **Agenda Item 6a: Recommendation to adopt proposed rule changes in 40 TAC, Chapter 727, Licensing of Maternity Facilities, Chapter 745, Licensing** |
| DATE: | **October 19, 2012** |

BACKGROUND AND PURPOSE

The purpose of the rule changes to 40 Texas Administrative Code (TAC) Chapter 727, Licensing of Maternity Facilities, and Chapter 745, Licensing, is to implement legislation passed during the 82nd Legislative Session.

Senate Bill 1178 (82nd Legislature) made changes to the following statutes to delete references to and definitions of maternity homes as a facility licensed and regulated by the Department of Family and Protective Services:

* Repeal of Chapter 249, Health and Safety Code
* Repeal of §42.042(g-2), Human Resources Code
* Amendment of §81.042(e), Health and Safety Code
* Amendment of §411.114, Government Code

As set forth in S.B. 1178 (82nd Legislature), beginning September 1, 2012, all operations formerly licensed as maternity homes now either:

* serve only adults in an unregulated setting; or
* have a residential child-care facility license, if the maternity home is continuing to serve clients younger than 18 years old.

On December 1, 2011, the Department sent a letter to maternity homes notifying them of the changes made by the legislation and outlining the three options each had for continuing to operate after September 1, 2012:

1. Serve only adults and continue to operate, with no license, after September 1, 2012 (six of the eight operations chose this option).
2. Serve children and adults or children only as a General Residential Operation or Independent Foster Home, which required the operation to apply and become licensed as one of these operation types by September 1, 2012 (two of the eight operations chose this option: one is a General Residential Operation, the other an Independent Foster Home).
3. Serve children and adults or children only as a verified foster home under an existing child-placing agency (CPA), which required the operation to become verified by a CPA by September 1, 2012 (no operation chose this option).

In addition, between December 1, 2011, and September 1, 2012, Licensing staff provided technical assistance to each operation on:

* the options available to the maternity home;
* the steps to apply for another license, if applicable; and
* how the facility could continue to care for adults and children.

To finalize the implementation of S.B. 1178 (82nd Legislature), DFPS received approval from the DFPS Council and the Health and Human Services Commission in July 2012 to publish the following changes to administrative rules in the *Texas Register* for public comment:

* repeal all current rules in TAC Chapter 727 and Chapter 745, Subchapter I, all of which are labeled as maternity home minimum standards; and
* amend rules in TAC Chapter 745 to remove references to maternity homes and TAC Chapter 727.

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.

COMMENTS AND RESPONSES

In August 2012, operations licensed as maternity homes received notice of the proposed rule changes and public comment period through the mail and electronic mail. The proposed rules were published in the Texas Register on August 17, 2012*.*

DFPS received comments from two providers of maternity homes: Gladney Center for Adoption; and Lifehouse of Houston. The comments were not specific to any rule that was open for public comment. However, the comments were related to rules in TAC Chapter 748, General Residential Operations, and TAC Chapter 750, Independent Foster Homes, which correspond to the types of facilities that former maternity homes now have a license to operate. The comments on these rules and the Department's response and rationale are outlined below.

**Comment 1:** It appears the minimum standards were written for young children in the conservatorship of DFPS and the needs of clients formerly receiving services at a maternity home are different from clients receiving services at a General Residential Operation (GRO). Many of the clients have lived independently, are in college or are capable of caring for their own basic life needs. The high ratios for these teens, including teens that may be pregnant, is not necessary. GRO minimum standards should be amended as follows:

1. All standards should be more lenient regarding children who are coming from private homes by choice.
2. Allow for more situations when young adults can be admitted into care.
3. Reduce daytime child/caregiver ratios to allow two teens to be counted as one child, if none of the teens require treatment services.
4. Reduce nighttime child/caregiver ratios from 16:1 to 24:1 for sleeping caregivers if none of the teens require treatment services and all of the teens are in their respective sleeping quarters.
5. Allow operations to be out of ratio at any time to enable a normal home-like environment as long as the care and supervision needs of the teens continue to be met and at least one staff member is on the premises and able to respond during an emergency.

**Response:** Senate Bill 1178 deleted maternity homes as a facility type licensed by DFPS as of September 1, 2012. Since the rules open for public comment all relate to the deletion of maternity homes and this comment relates only to recommended changes regarding rules located in Chapter 748 that is not open for public comment, the Department is recommending that the rules be adopted as proposed.

With that said, Child Care Licensing will contact the commenter to (1) provide technical assistance to determine if there are any misunderstandings regarding the current rules; (2) review and clarify recommendations for rule changes to determine if there are any viable changes that would improve upon the regulation of private placements (children not in the conservatorship of DFPS), including pregnant minors, young adults (age 18 – 22 years), and adults (age 23 years and older); and (3) clarify that a facility can request a waiver or variance for any minimum standard at any time. Licensing considers waivers and variances to minimum standards on a case-by-case basis.

**Comment 2:** The minimum standards for General Residential Operations and Independent Foster Homes should be amended to add a subsection to allow for prior maternity homes to continue to serve teens, young adults (aged 18-22 years) and adult women (aged 23 years and older) in the same facility, as the minimum standards do not allow them to care for adult women.

**Response:** Senate Bill 1178 deleted maternity homes as a facility type licensed by DFPS as of September 1, 2012. Since the rules open for public comment all relate to the deletion of maternity homes and this comment relates only recommended changes to rules located in Chapter 748 and Chapter 750 that is not open for public comment, the Department is recommending that the rules be adopted as proposed.

With that said, Child Care Licensing will contact the commenter to (1) provide technical assistance to determine if there are any misunderstandings regarding the current rules; (2) review and clarify recommendations for rule changes to determine if there is a viable change that would allow for prior maternity homes to continue to serve children, young adults, and adult women in the same facility; and (3) clarify that a facility can request a waiver or variance for any minimum standard at any time. Licensing considers waivers and variances to minimum standards on a case-by-case basis.

RECOMMENDATION

It is recommended that the Council recommend adoption of these rules, with or without changes, as they are attached to this memo.

SCHEDULE

| **Milestones** | **Dates** |
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| Proposed rules presented to the Council for recommendation to publish | July 20, 2012 |
| Approval to publish proposed rules received from HHSC | July 30, 2012 |
| Proposed rules published in the *Texas Register* | August 17, 2012 |
| Thirty-day comment period ends | September 17, 2012 |
| Rules presented to the Council for recommendation to adopt | October 19, 2012 |
| Estimated date approval to adopt rules received from HHSC | October 31, 2012 |
| Estimated date adopted rules published in the *Texas Register* | November 9, 2012 |
| Estimated effective date | December 1, 2012 |

ATTACHMENTS

Attached is a copy of the proposed adopted rules, as recommended for submittal to the *Texas Register*.