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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: | **John J. Specia, Jr., Commissioner** |
| SUBJECT: | **Agenda Item 6b: Recommendation to propose rule changes in 40 TAC, Chapter 700, Subchapter E, relating to Alternative Response** |
| DATE: | **October 18, 2013** |

## BACKGROUND AND PURPOSE

**Description of and Legal Background for Alternative Response**

This rule initiative implements the provisions of Senate Bill (S.B.) 423, enacted in the 83rd Regular Session of the Texas legislature. S.B. 423 amended §261.3015 of the Texas Family Code to authorize DFPS to conduct an alternative response to an investigation that otherwise meets the criteria for a CPS investigation. An alternative response is a protective intervention that involves an assessment of the family, including a safety assessment, and the provision of agreed-upon services and supports. The key differences from a traditional investigation are:

* There will not be a formal finding about whether abuse/neglect occurred and, thus, no designation of a perpetrator because such administrative findings are not necessary to keep the child safe in these cases;
* As there is no designated perpetrator, there will not be anyone added to the central registry as a result of the intervention; and
* Family engagement will be undertaken in a less adversarial, more collaborative approach.

There are many anticipated benefits from implementing the alternative response initiative. Studies from states that have implemented an alternative (or differential) response process have shown that a child’s safety is not compromised and found that families on the alternative track felt more engaged and involved with decisions made about their children. Caseworkers have reported that families on the alternative track were more cooperative and willing to accept services.

Studies also indicate that having an alternative response system generally contains costs. Since there is no formal finding of abuse or neglect or designation of a perpetrator in a case following the alternative track, costly and time consuming administrative reviews and hearings are eliminated from these cases. Moreover, studies have shown that states with an alternative response system reduce costs over time because families following the alternative track are less likely to have a subsequent report or investigation.

Recognizing the benefits of alternative response, in 2011, Congress amended the Child Abuse Prevention and Treatment Act (CAPTA), mandating that all states receiving CAPTA funding have some type of alternative response (referred to as “differential response” in CAPTA) process in place by September 1, 2011.

**DFPS Implementation**

DFPS currently meets the CAPTA requirements through its investigative screening process which was originally implemented in 2006 pursuant to §261.3015 of the Family Code. Using the authority under the Family Code to create a “flexible response system” for investigations, there are currently two different tracks a report can follow after it is referred to CPS from statewide intake. Reports involving serious abuse allegations or young children are immediately referred for a traditional investigation while reports requiring a less immediate response are referred for a formal screening. With a formal screening, trained screeners do preliminary information gathering on a report. Based on the information they gather, if the report does not meet the criteria to warrant an investigation, the screener refers the family to any available and needed community resources and then closes the case without an investigation. Otherwise, the screener refers the case to be assigned for a traditional investigation.

The alternative response initiative implemented by these rules would work within the already established formal screening process. Serious abuse cases that do not meet the criteria for an initial formal screening will continue to be referred for a traditional investigation that follows all of the current policies and procedures.

For cases that are eligible to be screened, screeners will continue to follow the same standards and procedures in closing cases that do not need further action. But when a screener determines that further action is needed, they will now have two options. Cases meeting specified criteria will be referred to an alternative response, with all other cases referred to a traditional investigation.

Like cases on the investigative track, those referred to an alternative response will have an assessment of the family including a safety assessment and, if appropriate, service planning and some form of ongoing CPS involvement for a limited period of time. However, the form of the assessment, service planning, and CPS involvement may be different from a traditional investigation and there will not be any formal abuse or neglect finding or designation of a perpetrator.

Under the proposed alternative response model, a case in the alternative response track may be reassigned to the investigation track if a caseworker determines that the case is more serious than originally identified, there is an imminent safety threat to the child, or the case no longer meets the alternative response criteria for some other reason. There will be a process to refer the case for an investigation after taking any protective actions that are immediately necessary. Under the currently contemplated model, however, once a case is assigned for an investigation it will stay on that track.

## DETAILED SECTION ANALYSIS AND DISPOSITION TABLE

| **Current Rule Sections** | **Proposed Action; New Rule Section** | **Summary Explanation of Proposed Action** |
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| 700.507 | Repeal and reenact as new | Repeals current section. The re-enacted section sets forth all the actions DFPS is authorized to take in response to a report that initially appears to meet the criteria for an investigation by CPS, which are:   * Closure of the intake report without further action by CPS if formal screening staff or a CPS supervisor determine after contacting a professional or other credible source that the child’s safety can be assured without an investigation or alternative response; * A preliminary investigation and administrative closure of the case when CPS determines the allegations have already been investigated, that it lacks jurisdiction to investigate, or initial, credible contacts refute the allegations of abuse or neglect or risk thereof and the children in the family appear to be safe from abuse and neglect and risk thereof in the foreseeable future; * An abbreviated investigation with a disposition of “ruled out” if CPS staff determine that no abuse or neglect has occurred and that is unlikely any abuse or neglect will occur in the foreseeable future; * A thorough investigation resulting in a case disposition and role designation for each alleged perpetrator and alleged victim; or * An alternative response as provided in new Division 2 of the Subchapter.   The rule also clarifies the circumstances under which DFPS is not required to interview a person who is otherwise required to be interviewed to complete a thorough investigation. |
|  | New 700.551 | Provides a general overview and definition of an alternative response. |
|  | New 700.553 | Describes the types of cases that may be handled as an alternative response if they are within CPS’ jurisdiction to investigate.  Excludes cases from being conducted as an alternative response if any alleged victim is under the age of six, the case is assigned a Priority I, there is an open investigation or conservatorship case involving the family, or any of the following factors are present:   * Current allegation or risk of sexual abuse; * Current allegations of an abuse or neglect-related child fatality or a household member who is a designated perpetrator of physical abuse that led to a child fatality; * A risk of serious physical injury or immediate serious harm to a child who is the subject of the alternative response; * The case is a facility investigation, including a school investigation; or * The alleged perpetrator is a foster parent or prospective adoptive parent.   Authorizes DFPS to exclude a case from alternative response on the basis of the identified factors at any point at which DFPS gains the information necessary to determine that the case is excluded. |
|  | New 700.555 | Grants DFPS the sole discretion to transfer a case initially assigned for an alternative response to be conducted as an investigation; identifies factors DFPS may consider in determining when to make such a transfer. |
|  | New 700.557 | Clarifies that unless otherwise provided or clearly indicated by context, an alternative response is governed exclusively by the provisions in §261.3015, Texas Family Code, and Division 2 of Subchapter E, Chapter 700, Texas Administrative Code. |
|  | New 700.559 | Sets out the basic components of an alternative response, which are:   * Assessment of the family, including a safety assessment; and * The provision of services and supports in collaboration with the family. |
|  | New 700.561 | Clarifies that DFPS staff conducting an alternative response may take any necessary protective action and may gather information from any person in like manner and to the same extent authorized for a case that is handled as an investigation; provides that information gathering should generally be undertaken in collaboration with families; allows DFPS staff conducting an alternative response to take necessary protective actions prior to or after initiating a transfer to an investigation; specifies that DFPS is not required to involve an absent parent when conducting an alternative response. |
|  | New 700.563 | Requires DFPS to maintain a written record of an alternative response. |
|  | New 700.565 | Specifies that DFPS maintains and releases confidential alternative response records as it does case records generated in an investigation, but that alternative response records will not be released in response to a request for information received pursuant to §261.308(e), Texas Family Code. |
|  | New 700.567 | Outlines the actions taken by DFPS upon closure of an alternative response, which are: written notification of case completion and, if appropriate and in consultation with the family, referral for additional services from the Family Based Safety Services division. |

## 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.

These rules implement §261.3015, Texas Family Code and 42 U.S.C. §5016a(b)(2)(B)(v).

## 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 these sections. Although there may be some cost savings from reduced recidivism and decrease in administrative costs for reviews and hearings, those savings are speculative at this point and not likely to result until the expiration of the first five years the program is in effect.

(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 will be that child safety will not be compromised; families will have a tailored response to less serious allegations of abuse and neglect; some caseworkers may have increased job satisfaction from a non-adversarial program to assess and assist families; there may be an increase in receptivity of community partners to CPS because it can offer families a protective intervention that does not result in a case disposition and in which families may be more motivated to engage in services*.* 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 changes because the proposed rule changes should not affect the cost of doing business; do not impose new requirements on any business; and do not require the purchase of any new equipment or any increased staff time in order to comply.

(d) Local Employment Impact and Takings Statements. The agency is not required to complete a takings impact assessment regarding the proposed sections.

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

## STAKEHOLDER INPUT

Stakeholder input will be obtained during the period for public comment following publication of the proposed rules.

## 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*.