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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: | **John J. Specia, Jr. Commissioner** |
| SUBJECT: | **Agenda Item 6e: Recommendation to propose rule changes in 40 TAC, Chapter 748, Minimum Standards for General Residential Operations; and Chapter 749, Minimum Standards for Child-Placing Agencies** |
| DATE: | **October 18, 2013** |

BACKGROUND AND PURPOSE

The Child Care Licensing Division proposes amendments to Chapter 748, Minimum Standards for General Residential Operations; and Chapter 749, Minimum Standards for Child-Placing Agencies; to implement Senate Bill (S.B.) 717 and S.B. 939, which were enacted by the 83rd Legislature, Regular Session, 2013.

S.B. 717 amended the Texas Family Code (TFC) by adding §32.203, which allows a minor to consent to housing or care provided to the minor child and any children of the minor child, through a transitional living program at a general residential operation, child-placing agency, or independent foster home, if the minor is:

1. 16 years of age or older and:
2. resides separate and apart from the minor's parent, managing conservator, or guardian, regardless of whether the parent, managing conservator, or guardian consents to the residence and regardless of the duration of the residence; and
3. manages the minor’s own financial affairs, regardless of the source of income; or
4. unmarried and pregnant or is the parent of a child.

TFC §32.203 further provides that when a child consents to such housing or care, the operation must attempt to notify the child's parent, managing conservator, or guardian regarding the child's location. Thus, DFPS is proposing amendments to Chapters 748 and 749 to require that general residential operations, child-placing agencies, and independent foster homes comply with this new notification requirement.

S.B. 939 amends the Human Resources Code (HRC) by adding Subsection 42.0426(a-1), to require employees of general residential operations, child-placing agencies, and independent foster homes to sign a statement verifying their attendance at the training in the recognition of and procedure for reporting suspected child abuse, neglect, and sexual molestation that is currently required in HRC §42.0426(a). The law also requires that the operation maintain the statement in the employee's personnel record. The proposed rule amendments to Chapters 748 and 749 apply these requirements to general residential operations and child-placing agencies. The amendments to Chapter 749 will serve to impose these same requirements on Independent Foster Homes whose minimum standards are located in Chapter 750, Minimum Standards for Independent Foster Homes, because the rule amendments in Chapter 749 are cross-referenced in Chapter 750.

DETAILED SECTION ANALYSIS AND DISPOSITION TABLE

| **Current Rule Sections** | **Proposed Action; New Rule Section** | **Summary Explanation of Proposed Action** |
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| §748.363 | Amend | The amendment to this rule implements HRC §42.0426(a-1) by adding Subsection (8)(b) to require a general residential operation to include in an employee's personnel record a statement signed and dated by the employee that he has attended training in preventing, identifying, treating, and reporting suspected child abuse, sexual abuse, neglect, and exploitation, as required in §748.881(2) (relating to *What curriculum components must be included in the general pre-service training?*). An additional technical correction is made to this rule section to delete references to “caregivers”, who are not always employees, as this rule is intended to apply solely to the personnel records maintained regarding employees. |
| §748.1205 | Amend | The amendment to this rule implements TFC §32.203 by adding Subsection (a)(15) to require a general residential operation to document in the child's record the attempts to notify a parent of a child when the child consents to housing or care at the operation's transitional living program. |
| §748.1211 | Amend | The amendment to this rule implements TFC §32.203 by adding Subsection (c) to require that a general residential operation attempt to notify a parent when a minor child consents to housing or care at the operation's transitional living program, as provided under TFC §32.203. |
| §749.553 | Amend | This rule specifies what a child-placing agency must include in an employee’s personnel record. The amendments to this rule implement HRC §42.0426(a-1) by adding Subsection (8)(b) that requires an employee's personnel record to include a statement signed and dated by the employee that he has attended training in preventing, identifying, treating, and reporting suspected child abuse, sexual abuse, neglect and exploitation, as required in §749.881(3) (relating to *What curriculum* *components must be included in the general pre-service training?*).  Because the independent foster home minimum standard in §750.201(3) **(relating to *What are the requirements for reports and record keeping?)*** cross-references all rules in Chapter 749, |
| §749.553 (continued) |  | Subchapter D, this rule also applies to personnel records for independent foster homes. |
| §749.1107 | Amend | This rule specifies what a child-placing agency must document in the child's record at admission.  The amendment to this rule implements TFC §32.203 by adding Subsection (a)(15) to require a child-placing agency or independent foster home to document in the child's record at admission the attempts to notify a parent of a child when the child consents to housing or care at the operation's transitional living program.  Because the independent foster home minimum standard in §750.501(1) (regarding *What are the requirements for admission?*) cross-references all rules in Chapter 749, Subchapter H, this rule also applies to what an independent foster home must document in the child's record at admission. |
| §749.1113 | Amend | This rule outlines what information a child-placing agency must share with the parent at the time of placement. The amendment to this rule implements TFC §32.203 by adding Subsection (c) to require that a child-placing agency or independent foster home attempt to notify a parent of a child when the child consents to housing or care at the operation's transitional living program.  Because the independent foster home minimum standard in §750.501(1) (regarding *What are the requirements for admission?*), cross-references all rules in Chapter 749, Subchapter H, this rule also applies to what an independent foster home must share with the parent at the time of placement. |

STATUTORY AUTHORITY AND STATUTES AFFECTED

The modification is proposed under HRC §40.0505 and Government Code §531.0055, which provide that the HHSC Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DFPS; and HRC §40.021, which provides that the DFPS 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 new rules implement HRC §§42.042(a) and 42.0426(a-1), and TFC §32.203.

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.

(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 are that:

* Licensing minimum standards will promote compliance with HRC §42.0426(a-1) and TFC Code §32.203;
* Child Care Licensing will be able to better monitor for the requirement that employees at general residential operations, child-placing agencies, and independent foster homes have attended the required training on preventing, identifying, treating, and reporting suspected child abuse, sexual abuse, neglect and exploitation; and
* Residential child-care facilities would be able to provide homeless and runaway youths, including those with children, with residential services in a transitional living program without having to obtain parental consent to provide these services; and in such circumstances parents will be notified of the child’s whereabouts unless the facility is unable to provide such notice after making a good faith effort to do so.

There is no anticipated economic cost to entities that are required to comply with any of the proposed rule changes.

(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.

(d) Local Employment Impact and Takings Statements. No local employment impact statement was required for these rules. 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 30-day 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*.