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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. DFPS Commissioner** |
| SUBJECT: | **Agenda Item #\_\_: Recommendation to propose rule changes to 40 TAC, Chapter 700, Subchapter Q relating to Purchased Protective Services and 40 TAC, Chapter 702, Subchapter I relating to Office of Consumer Affairs Services** |
| DATE: | **April 22, 2016** |

## BACKGROUND AND PURPOSE

The Office of Consumer Affairs (OCA) proposes changes to Title 40, Texas Administrative Code (TAC), Chapter 700, Subchapter Q, relating to Purchased Protective Services, and to Title 40, TAC, Chapter 702, Subchapter I, relating to Office of Consumer Affairs Services.

The primary purpose of the amendments is to comply with the mandates of Senate Bill 830 from

the 84th Texas Legislature, Regular Session 2015, which amended Chapter 531 of the Government Code by adding Subchapter Y and further amended Section 40.0041 of the Human Resources Code by adding subsections (g) and (h) concerning the Ombudsman For Children and Youth in Foster Care. Pursuant to the bill, the Health and Human Services Commission was tasked with appointing an ombudsman for children and youth in the conservatorship of DFPS to serve as a neutral party in assisting the children and youth with complaints regarding issues concerning any Health and Human Services (HHSC) agency, including DFPS. Pursuant to the bill, the following new rules are being proposed:

* New rule § 702.815 which clarifies that a current foster child or youth may file complaints with the Health and Human Services Commission's Ombudsman For Children and Youth in Foster Care and explains the types of issues for which the foster children or youth may file a complaint and seek assistance from the office;
* New rule § 702.817 which explains how DFPS will assist the Ombudsman for Children and Youth in Foster Care in reviewing and investigating complaints; and
* New rule § 700.1301 which specifies the duties of residential child-care facilities that house current foster children and youth regarding posting information in the facilities about the Ombudsman for Children and Youth in Foster Care.

In addition to the above changes, the amendments to Title 40, TAC, Chapter 702, Subchapter I also seek to update the rules where they are no longer accurate, as the rules were last amended in

2002. The amendments further seek to conform the rules to OCA's current practice and policy concerning its process for receiving and reviewing complaints regarding case-specific activities of the DFPS program areas as well as reviewing substantiated findings of child abuse or neglect.

## DETAILED SECTION ANALYSIS AND DISPOSITION TABLE

| **Current Rule Sections** | **Proposed Action; New Rule Section** | **Summary Explanation of Proposed Action** |
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| §700.1701 | New | * Subsection (a) of the new rule specifies that residential child-care facilities that care for children in the conservatorship of DFPS must prominently display a sign produced by DFPS or the Ombudsman For Children and Youth in Foster Care related to the existence and contact information for the ombudsman office. * Subsection (b) of the new rule specifies that the residential child care facilities must implement procedures to allow children and youth in the conservatorship of DFPS to make complaints in private or in a space that is separate from facility staff, volunteers, or the foster family. |
| §702.801 | Amend | * The rule has been amended to clarify that OCA only reviews designated perpetrator findings for child abuse and neglect allegations. * The rule has also been amended to update the names of the department and OCA. |
| §702.811 | Amend | * The rule has been amended to update the names of the department and OCA as well as the link to the DFPS public website. |
| §702.813 | Amend | * The rule has been amended to clarify that the following individuals may file complaints with OCA, in addition to the individuals already listed in the rule:   + consumers, service recipients, and persons or entities regulated by DFPS who have a concern or complaint regarding a specific case;   + individuals from the public who have a concern or complaint regarding a specific case, including but not limited to extend family, friends of the family, or foster parents;   + other state agencies when the complaint is regarding a specific case;   + government officials, including judges; and   + former foster children or youth, including youth that are 18 years of age or older and are in extended foster care. * The rule has also been amended to update the names of the department and OCA. |
| §702.815 | Repeal and New | * The current rule has been repealed and incorporated into new rule § 702.819. * New rule § 702.815 explains that children and youth under 18 years of age that are currently in the conservatorship of DFPS may file complaints with HHSC's Ombudsman For Children and Youth in Foster Care regarding any issues that are within the authority of any agency under HHSC, including DFPS, and further provides the various methods of contacting the office to file a complaint. * New rule § 702.815 also explains that current foster youth and children may also contact the office to seek assistance in reporting allegations of abuse or neglect to DFPS. |
| §702.817 | Repeal and New | * The current rule has been repealed and incorporated into new rule § 702.821. * New rule § 702.817 explains that DFPS will assist the Ombudsman For Children and Youth in Foster Care in reviewing and investigating complaints filed by current foster children and youth by:   + collaborating with the office to develop and implement an annual outreach plan to promote awareness of the office among the youth and children;   + providing the office with access to DFPS records relating to complaints, cooperating with the office in responding to questions that the office may have regarding complaints, and providing information requested by the office in order to assist in resolving complaints; and   + cooperating with the office to create consequences, based on the circumstances of the complaint and the severity of the retaliation, for any person who is found to have retaliated against a child or youth in the conservatorship of DFPS because of a complaint made to the office. |
| §702.819 | Repeal and New | * The current rule has been repealed and incorporated into new rule § 702.823. * New rule § 702.819 is the same as current rule § 702.815 except for the following changes:   + clarifying that the Review of Perpetrator Designation is only available for substantiated child abuse and neglect findings;   + clarifying that the complaint process is not available for complaints related to civil rights issues and DFPS personnel issues, or when OCA determines that a review of the complaint would interfere with an ongoing litigation, investigation, or prosecution;   + updating the title of the rule; and   + updating the names of the department and OCA. |
| §702.821 | Repeal and New | * The current rule has been repealed and incorporated into new rule § 702.825. * New rule § 702.821 is the same as current rule § 702.817 except for the following changes:   + updating OCA's toll-free number, fax number, and email, as well as the link to the DFPS public website for purposes of contacting OCA to file a complaint; and   + updating the names of the department and OCA. |
| §702.823 | Repeal and New | * The current rule has been repealed and incorporated into new rule § 702.827. * New rule § 702.823 is the same as current rule § 702.819 except that the names of the department and OCA have been updated. |
| §702.825 | Repeal and New | * The current rule has been repealed and incorporated into new rule § 702.829. * New rule § 702.825 is the same as current rule § 702.821 except for the following changes:   + clarifying that OCA provides a complainant information by mail or telephone regarding the procedures for investigating and resolving a complaint; and   + updating the names of the department and OCA. |
| §702.827 | New | * New rule § 702.827 is the same as current rule § 702.823 except for the following changes:   + clarifying that OCA reviews complaints to determine whether applicable rule and statute were violated in addition to DFPS's policies and procedures;   + clarifying that OCA adheres to confidentiality requirements specified in state and federal law in addition to the Texas Open Records Act;   + deleting the part of subsection (a) that states that OCA does not investigate issues in ongoing or forthcoming litigation or when the complaint relates to a law enforcement investigation or criminal prosecution if OCA determines it would interfere with the litigation and investigation as it has been incorporated into new rule § 702.819;   + clarifying that OCA provides status information on a quarterly basis to *all* persons or entities who file a complaint regarding a specific case, if there is a pending complaint, unless the information would jeopardize an undercover investigation;   + updating the rule to reflect that electronic and paper copies of OCA case files will be purged every two years after the complaint is closed; and   + updating the names of the department and OCA. |
| §702.829 | New | * New rule § 702.829 is the same as current rule § 702.825 except for the following changes:   + clarifying that reports regarding the number, type, and resolution of complaints made against DFPS must be send to the State Office Program Administrators, and not the executive director;   + updating the rule to note that OCA also provides monthly reports to the HHSC's Office of the Ombudsman that is included in the written report to HHSC's executive director; and   + updating the names of department and OCA. |
| §702. 841 | Amend | * The rule has been amended to reflect that a Review of Perpetrator Designation is only available for substantiated findings of child abuse or neglect. * The rule has also been updated to clarify that a review is not available if the request for review is to challenge orders or findings made by the court in which the suit affecting the parent-child relationship has been filed, if there is pending litigation against DFPS that relates to the designation, or if the requestor does not otherwise qualify for a review regardless of if the requestor qualified for an Administrative Review of Investigation Findings (ARIF). * The rule has also been amended to update the names of the department and OCA. |
| §702. 843 | Amend | * The rule has been amended to update OCA's toll-free number, fax number, email, and as well as update the link to the DFPS public website for purposes of contacting OCA to request a Review of Perpetrator Designation. * The rule has also been amended to clarify that a designated perpetrator of child abuse or neglect has 45 days from the date of the ARIF to request a review; and * The rule has been amended to update the names of the department and OCA. |
| §702. 845 | Amend | The rule has been amended to update the name of OCA and to delete the timeframe for acknowledgement of a request for a Review of Perpetrator Designation. |
| §702. 847 | Amend | The rule has been amended to update the names of the department and OCA. |
| §702. 849 | Amend | * The rule has been amended to reflect the current procedure OCA follows once a Review of Perpetrator Designation is complete, including clarifying that:   + if OCA does not concur with the ARIF, the ARIF documents and OCA review material are forwarded to the program assistant commissioner or designee for consideration; and   + if OCA and the CPS assistant commissioner or designee do not agree on the disposition, the case is forwarded to the DFPS general counsel who reviews the case and makes the final decision as the DFPS commissioner's designee. * The rule has also been amended to update the names of the department and OCA. |

## 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 changes implement Texas Government Code §§531.992, 531.993, and 531.995, and Texas Human Resources Code §40.0041.

## FISCAL IMPLICATIONS

(a) Fiscal Impact. For each of the first five years that the rules will be in effect there will not be any significant 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 children and youth in foster care will have an avenue to make complaints regarding any issues or concerns they have while in foster care to an entity that is independent of DFPS in order to ensure that their rights are protected. In addition, the public will benefit because the rules regarding how to make a complaint about DFPS have been updated and clarified. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

(c) Impact on Business. There should be no anticipated adverse impact on small, micro, and large businesses as a result of the proposed rule change other than an extremely nominal cost to residential child-care facilities who care for children in the conservatorship of DFPS to print or copy signs that will be developed by DFPS and the Ombudsman For Children and Youth in Foster Care for posting in the facilities, as required by new rule § 700.1701.

(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

The Department discussed the rule proposal and collaborated with HHSC's Office of the Ombudsman prior to drafting the rules. Additional stakeholder input will be obtained during the public comment period for the 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*.