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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 MembersDepartment of Family and Protective Services Council** |
| FROM: | **John J. Specia, Jr., DFPS Commissioner** |
| SUBJECT: | **Agenda Item Recommendation to propose rule changes in 40 TAC 744 Minimum Standards for School-Age and Before- and After-School Programs, 745 Licensing, 746 Minimum Standards for Child-Care Centers, and 747 Minimum Standards for Child Care Homes, relating to health and safety requirements, training on the health and safety requirements, and background checks** |
| DATE: | **April 22, 2016** |

## BACKGROUND AND PURPOSE

The Child Care Licensing (CCL) Division proposes to amend Chapter 744, Minimum Standards for School-Age and Before- and After-School Programs, Chapter 745, Licensing, Chapter 746, Minimum Standards for Child-Care Centers, and Chapter 747 Minimum Standards for Child Care Homes, to implement needed changes to comply with the Child Care and Development Block Grant Act of 2014 and Senate Bill 1496, 84th Regular Legislative Session.

The Child Care and Development Block Grant (CCDBG) Act of 2014 (the "Act") is the first comprehensive revision of the Child Care and Development Fund (CCDF) program since 1998. (The CCDF is codified in 42 USC §9857 et seq.) The Texas Workforce Commission (TWC) administers the CCDF, which is the primary federal funding source devoted to providing low-income families with access to child care. The Act makes significant reforms to the CCDF programs to raise the health, safety, and quality of child care. The Act does this by mandating that states comply with a multitude of additional requirements in order to continue receiving CCDF funding. Although TWC is the lead agency for determining eligibility and distributing the subsidy monies, the Department of Family and Protective Services (DFPS) is the agency responsible for licensing child care operations, establishing health and safety regulations, and monitoring eligible operations for compliance. Many of the Act's additional requirements relate to the responsibilities of DFPS.

The provisions of the Act that have a significant impact on the Child Care Licensing (CCL) relate to the following topics: health and safety requirements, training on the health and safety requirements, and background checks.

The changes related to training will impact Licensed Child Care Centers (LCCCs), Before-School and After-School Programs (BAPs) and School-Age Programs (SAPs), Licensed Child Care Homes (LCCHs), and Registered Child Care Homes (RCCHs). The new health and safety training requirements mandated by the Act include the following topics for pre-service training for LCCCs and BAPs and SAPs, orientation for LCCHs and RCCHs (LCCHs and RCCHs only have orientation requirements; they do not have pre-service training requirements), and annual training for all of the affected operation types:

* Food allergies;
* Handling, storing, and disposing of hazardous materials;
* More robust emergency preparedness plans;
* Administering medication; and
* Building and physical premises safety.

There were also some topics required by the Act that are already required in annual training, but are not currently required in the pre-service training for LCCCs and BAPs and SAPs, or orientation for LCCHs and RCCHs. The new and additional health and safety training requirements for pre-service training and orientation are as follows:

* For LCCCs and BAPs and SAPs, there is a new pre-service training requirement for precautions in transporting children if the operation transports a child whose chronological or developmental age is younger than nine years old; and
* For LCCHs and RCCHs, there are new orientation training requirements for:
	+ Recognizing and preventing shaken baby syndrome;
	+ Safe sleep practices;
	+ Understanding early childhood brain development; and
	+ Precautions in transporting children if the home transports a child whose chronological or developmental age is younger than nine years old.

In addition to the training requirements the Act increases health and safety requirements for all affected operation types. The health and safety requirements correlate to some of the training topics, including requiring operations to:

* Obtain food allergy emergency plans for children with known food allergies, post a list of food allergies at the operation, and carry the child's emergency plan on field trips; and
* Use, store, and dispose of hazardous materials as recommended by the manufacturer.

Finally, there will be additional requirements of the Act addressed in future rulemaking.

With respect to background checks, Senate Bill (S.B.) 1496, 84th Regular Legislative Session, amended HRC §§42.0523 and 42.056 in order to comply with the Act's requirements. A summary of the background check changes in response to the Act and S.B. 1496 include:

* Requiring Listed Family Homes that provide care to unrelated children to pay biennial background check fees of $ 2.00 per person; and
* Requiring Licensed Child Care Homes, Registered Child Care Homes, and Listed Family Homes that provide care to unrelated children to request fingerprint-based criminal history checks (these homes were previously only required to request name-based criminal history checks). There is also a transitional rule which clarifies which persons are required to have a fingerprint-based criminal history check and when the request for the checks are due.

## DETAILED SECTION ANALYSIS AND DISPOSITION TABLE

| **Current Rule Sections** | **Proposed Action; New Rule Section** | **Summary Explanation of Proposed Action** |
| --- | --- | --- |
| §744.401 | Amend | This change:* Adds a list of each child's food allergies (with a parent's permission) to the school-age and before and after-school program's posting requirements;
* Updates the name of the *Parent Notification Poster*; and
* Makes other wording changes for consistency.
 |
| §744.403 | Amend | This change:* Clarifies that the list of each child's food allergies must be posted (with a parent's permission) where food is prepared and in each room where the child may spend time; and
* Deletes the posting information about an emergency evacuation and relocation plan because it is duplicative.
 |
| §744.605 | Amend | This change adds a requirement for programs to obtain a completed food allergy emergency plan before admitting a child into care, if applicable; and if a parent wants the information posted, permission from the parent to post the information.  |
| §744.901 | Amend | This change updates a cite and makes the language consistent. |
| §744.1303 | Amend | This change: * Clarifies the wording to be consistent with the current wording of the operational policies rule;
* Adds components that must be addressed in the overview of prevention, recognition, and reporting of child abuse and neglect; and
* Requires programs to share the emergency preparedness plan with all employees.
 |
| §744.1305 | Amend | This change adds six topics that must be covered in the pre-service training of caregivers hired after 9/1/16; and updates the existing language for a current training topic.  |
| §744.1307 | Amend | This change clarifies when a caregiver is exempt from pre-service training. |
| §744.1309 | Amend | This change:* Adds six topics that must be covered in the annual training of caregivers and site directors;
* Deletes a redundant paragraph about transportation safety training; and
* Increases from 50% to 80% the amount of annual training hours that may be obtained through self-instructional training.
 |
| §744.1311 | Amend | This change:* Adds six topics that must be covered in the annual training of operation directors and program directors;
* Deletes a redundant paragraph about transportation safety training; and
* Increases from 50% to 80% the amount of annual training hours that may be obtained through self-instructional training.
 |
| §744.2301 | Amend | This change adds the requirement that caregivers must have a copy of a child's food allergy emergency plan and medications, if applicable, when going on field trips. |
| §744.2401 | Amend | This change: * Adds that children must not be served foods identified on their food allergy emergency plan; and
* Deletes the requirement "you must not use food as . . . punishment", because this requirement is already noted in §744.2105.
 |
| §744.2507 | Amend | This change requires a program to use, store, and dispose of hazardous materials as recommended by the manufacturer. |
| §744.2523 | Amend | This change clarifies in more detail what the universal precautions as outlined by the Centers for Disease Control (CDC) entail, including placing gloves contaminated with blood in a sealed plastic bag and discarding them immediately. |
|  | New §744.2667 | This new rule defines a food allergy emergency plan, including a list of foods a child is allergic too, possible symptoms, and what steps to take if there is an allergic reaction. |
|  | New §744.2669 | This new rule requires:* A food allergy emergency plan for each child with a known food allergy; and
* The plan to be signed by the child's health care professional and a parent, posted if the parent consents, and taken on field trips.
 |
| §744.3551 | Amend | This change clarifies in more detail what an emergency preparedness plan is by distinguishing between an evacuation, relocation, and sheltering. |
| §744.3553 | Amend | This change adds to the requirements for an emergency preparedness plan to also include:* The staff responsibility in a sheltering emergency for the orderly movement of children to a designated location within the operation where children should gather;
* How staff will continue to care for children until each child has been released; and
* How children will be reunified with their parents at evacuation, relocation, or when sheltering is lifted.
 |
| §744.3555 | Repeal | This rule is being repealed because all of the information is already included in §744.1303(4) and §744.507. |
| §744.3559 | Amend | This change adds the "sheltering" language for clarification.  |
| §744.3561 | Amend | This change clarifies the wording of an emergency evacuation and relocation diagram and where the diagram should be posted. |
| §745.505 | Amend | This change requires Listed Family Homes that provide care to unrelated children to pay biennial background check fees of $ 2.00 per person. |
| §745.615 | Amend | This change requires Licensed Child Care Homes, Registered Child Care Homes, and Listed Family Homes that provide care to unrelated children, to request fingerprint-based criminal history checks. |
|  | New §745.616 | This transitional rule clarifies which persons in these homes are required to have a fingerprint-based criminal history check and when the request for the checks are due.  |
| §746.401 | Amend | This change:* Adds a list of each child's food allergies (with a parent's permission) to a licensed child-care center's posting requirements;
* Updates the name of the *Parent Notification Poster*, and
* Makes other wording changes for consistency.
 |
| §746.403 | Amend | This change:* Clarifies that the list of each child's food allergies must be posted (with a parent's permission) where food is prepared and in each room where the child may spend time; and
* Deletes the posting information about an emergency evacuation and relocation plan because it is duplicative.
 |
| §746.605 | Amend | This change adds a requirement for centers to obtain a completed food allergy emergency plan before admitting a child into care, if applicable; and if a parent wants the information posted, permission from the parent to post the information.  |
| §746.901 | Amend | This change updates a cite and makes the language consistent. |
| §746.1303 | Amend | This change: * Clarifies the wording to be consistent with the current wording of the operational policies rule;
* Adds components that must be addressed in the overview of prevention, recognition, and reporting of child abuse and neglect; and
* Requires centers to share the emergency preparedness plan with all employees.
 |
| §746.1305 | Amend | This change adds six topics that must be covered in the pre-service training of caregivers hired after 9/1/16; and updates the existing language for a current training topic.  |
| §746.1307 | Amend | This change clarifies when a caregiver is exempt from pre-service training. |
| §746.1309 | Amend | This change:* Adds six topics that must be covered in the annual training for *caregivers*;
* Deletes a redundant paragraph about transportation safety training; and
* Increases from 50% to 80% the amount of annual training hours that may be obtained through self-instructional training.
 |
| §746.1311 | Amend | This change:* Adds six topics that must be covered in the annual training for *child-care center directors*;
* Deletes a redundant paragraph about transportation safety training; and
* Increases from 50% to 80% the amount of annual training hours that may be obtained through self-instructional training.
 |
| §746.3001 | Amend | This change adds the requirement that caregivers must have a copy of a child's food allergy emergency plan and medications, if applicable, when going on field trips. |
| §746.3301 | Amend | This change: * Adds that children must not be served foods identified on their food allergy emergency plan; and
* Deletes the requirement "you must not use food as . . . punishment", because this requirement is already noted in §746.2805.
 |
| §746.3407 | Amend | This change requires a child-care center to use, store, and dispose of hazardous materials as recommended by the manufacturer.  |
| §746.3425 | Amend | This change clarifies that caregivers must follow universal precautions as outlined by the CDC when handling bodily fluids that may contain blood, including placing gloves contaminated with blood in a sealed plastic bag and discarding them immediately.  |
| §746.3505 | Amend | This change clarifies that a child's soiled clothing must be placed in a sealed plastic bag and be sent home with the child. |
|  | New §746.3817 | This new rule defines a food allergy emergency plan, including a list of foods a child is allergic too, possible symptoms, and what steps to take if there is an allergic reaction. |
|  | New §746.3819 | This new rule requires:* A food allergy emergency plan for each child with a known food allergy; and
* The plan to be signed by the child's health care professional and a parent, posted if the parent consents, and taken on field trips.
 |
| §746.5201 | Amend | This change clarifies in more detail what an emergency preparedness plan is by distinguishing between an evacuation, relocation, and sheltering. |
| §746.5202 | Amend | This change adds to the requirements for an emergency preparedness plan to also include:* The staff responsibility in a sheltering emergency for the orderly movement of children to a designated location within the center where children should gather;
* How staff will continue to care for children until each child has been released; and
* How children will be reunified with their parents at evacuation, relocation, or when sheltering is lifted.
 |
| §746.5203 | Repeal | This rule is being repealed because all of the information is already included in §746.1303(4) and §746.507. |
| §746.5205 | Amend | This change adds the "sheltering" language for clarification.  |
| §746.5207 | Amend | This change clarifies the wording of an emergency evacuation and relocation diagram and where the diagram should be posted. |
| §747.401 | Amend | This change adds a list of each child's food allergies (with a parent's permission) to a home's posting requirements, and requires it to be posted where food is prepared and served and in a prominent place where caregivers may easily view it. |
| §747.605 | Amend | This change adds a requirement for homes to obtain a completed food allergy emergency plan before admitting a child into care, if applicable, and if a parent wants the information posted, permission from a parent to post the information. |
| §747.901 | Amend | This change updates a cite and makes the language consistent. |
| §747.1007 | Amend | This change requires an additional qualification for a *primary caregiver of a registered child-care home* to include proof of training on ten new topics.  |
| §747.1107 | Amend | This change requires an additional qualification for a *primary caregiver of a licensed child-care home* to include proof of training on ten new topics.  |
| §747.1109 | Repeal | This repeal deletes an outdated grandfather rule. |
| §747.1119 | Amend | This change corrects an outdated cite. |
| §747.1301 | Repeal andNew | * This repeal moves the content of this previous rule to new §747.1303; and
* The new rule:
	+ Includes the content of previous §747.1305;
	+ Clarifies the wording to be consistent with the current wording of the operational policies rule;
	+ Adds components that must be addressed in the overview of prevention, recognition, and reporting of child abuse and neglect; and
	+ Adds 9 new orientation topics for caregivers.
 |
| §747.1303 | Repeal andNew | * This repeal moves the content of this previous rule to new §747.1307; and
* The new rule includes the content of previous §747.1301.
 |
| §747.1305 | Repeal andNew | * This repeal moves the content of this previous rule to new §747.1301; and
* The new rule:
* Includes the content of previous §747.1307;
* Adds six topics that must be covered in the annual training of caregivers; and
* Deletes a redundant paragraph about transportation safety training.
 |
| §747.1307 | Repeal andNew | * This repeal moves the content of this previous rule to new §747.1305; and
* The new rule:
	+ Includes most of the content of previous §747.1303 with one minor modification;
	+ Deletes the pre-application course content from previous §747.1303 because it is already required at §747.1007; and
	+ Adds a reference to the transportation safety training requirement.
 |
| §747.1309 | Amend | This change:* Adds six topics that must be covered in the annual training of primary caregivers; and
* Deletes a redundant paragraph about transportation safety training.
 |
| §747.1401 | Amend | This change updates some outdated cites and clarifies the language in the rule. |
| §747.1403 | Amend | This change deletes a reference to a rule and spells out all of the requirements in the deleted reference (except one) to include:* An overview of the home's policies;
* An overview of child abuse and neglect, including reporting;
* The procedures to follow in an emergency; and
* The location and use of fire extinguishers and first-aid equipment.

The deleted requirement for an overview of the minimum standards is no longer needed, because this new rule only applies to household members.  |
| §747.2713 | Repeal | This rule is being repealed because the information is already included in §747.503, §747.1301(2), and §747.1403(1). |
| §747.2901 | Amend | This change adds the requirement that caregivers must have a copy of a child's food allergy emergency plan and medications, if applicable, when going on field trips; and makes the language consistent. |
| §747.3101 | Amend | This change: * Adds that children must not be served foods identified on their food allergy emergency plan; and
* Deletes the requirement "you must not use food as . . . punishment", because this requirement is already noted in §747.2705.
 |
| §747.3203 | Amend | This change clarifies that a child-care home must use, store, and dispose of hazardous materials as recommended by the manufacturer.  |
| §747.3221 | Amend | This change clarifies that caregivers must follow universal precautions as outlined by the CDC when handling bodily fluids that may contain blood, including placing gloves contaminated with blood in a sealed plastic bag and discarding them immediately.  |
| §747.3307 | Amend | This change clarifies that a child's soiled clothing must be placed in a sealed plastic bag and be sent home with the child. |
|  | New §747.3617 | This new rule defines a food allergy emergency plan, including a list of foods a child is allergic too, possible symptoms, and what steps to take if there is an allergic reaction. |
|  | New §747.3619 | This new rule requires:* A food allergy emergency plan for each child with a known food allergy; and
* The plan to be signed by the child's health care professional and a parent, posted if the parent consents, and taken on field trips.
 |
| §747.5001 | Amend | This change clarifies in more detail what an emergency preparedness plan is by distinguishing between an evacuation, relocation, and sheltering. |
| §747.5003 | Amend | This change adds to the requirements for an emergency preparedness plan to also include:* The staff responsibility in a sheltering emergency for the orderly movement of children to a designated location within the home where children should gather;
* How staff will continue to care for children until each child has been released; and
* How children will be reunified with their parents at evacuation, relocation, or when sheltering is lifted.
 |
| §747.5005 | Amend | This change adds the "sheltering" language for clarification. |

## 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 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 modifications implement HRC §§42.042, 42.0421, 42.0523, and 42.056 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

## 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 local government as a result of enforcing or administering this section. According to the DFPS Centralized Background Check Unit (CBCU), implementation of the legislation requiring fingerprint-based criminal history checks for additional persons will increase the CBCU's workload; however, the Legislature provided an FTE to cover the increase in the workload.

(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:

* Compliance with the Child Care and Development Block Grant Act of 2014;
* Compliance with HRC §42.056 (S.B. 1496);
* Clarification regarding health and safety requirements, training on those requirements, and background checks; and
* Reduced risk to children.

(c) Impact on Business. There is an anticipated economic cost for persons required to comply with some of the proposed rule changes. The proposed changes are anticipated to have an adverse impact on businesses, including small and micro-businesses. The proposed changes will impact five types of operations. Specifically, the proposed changes to:

* Chapter 744 will impact School Age Programs and Before and After School Programs;
* Chapter 745 will impact Licensed Child-Care Homes, Registered Child-Care Homes; and Listed Family Homes;
* Chapter 746 will impact Licensed Child-Care Centers; and
* Chapter 747 will impact Licensed Child-Care Homes and Registered Child-Care Homes.

According to the FY 2015 DFPS Annual Report and Data Book as of August 31, 2015 there were:

* 1,551 School Age Programs and Before and After School Programs;
* 1,720 Licensed Child-Care Homes;
* 4,678 Registered Child-Care Homes;
* 5,026 Listed Family Homes; and
* 7,888 Licensed Child-Care Centers.

Chapter 2006 of the Government Code defines a small business as one that is for-profit, independently owned, and has fewer than 100 employees or less than six million dollars in annual gross receipts. A small business that has no more than 20 employees is also defined as a micro-business. A 2010 survey conducted by CCL indicated that approximately 55% of Licensed Child Care Centers and School Age Programs and Before and After School Programs are for profit businesses, 70% are independently owned, 98% have fewer than 100 employees, and 68% have fewer than 20 employees. CCL is assuming virtually all three types of Homes meet the definition of a small and micro-business.

CCL has identified the following proposed rules as potentially having an adverse fiscal impact on these operations:

* §744.1305. What must be covered in the eight clock hours of pre-service training?
* §744.1309. How many clock hours of annual training must be obtained by caregivers and site directors?
* §744.1311. How many clock hours of annual training must an operation director or a program director obtain each year?
* §745.505. What fees must I pay to list my family home and maintain the listing?
* §745.615. On whom must I request background checks?
* §746.1305. What must be covered in pre-service training for caregivers?
* §746.1309. How many clock hours of annual training must be obtained by caregivers?
* §746.1311. How many clock hours of annual training must child-care center director obtain each year?
* §747.1007. What qualifications must I meet to be the primary caregiver of a registered child-care home?
* §747.1107. What qualifications must I meet to be the primary caregiver of a licensed child-care home?
* §747.1301. What must orientation for caregivers at my child-care home include?
* §747.1305. What topics must the annual training for caregivers include?
* §747.1309. What topics must my annual training include?

The fiscal impact to these operations primarily results from (1) additional staff time to attend training (excluding Listed Family Homes); (2) additional staff time to develop or modify curriculum (excluding Listed Family Homes); (3) background check fees for Listed Family Homes; and (4) costs for fingerprint-based criminal history checks for all three types of Homes.

Licensing staff developed the methodologies used to calculate the fiscal impact of these rules. The impacts were calculated using cost research conducted by staff and assumptions regarding child-care practices. The key assumptions and methodologies are described in detail below, as these underlie the individual impact calculations for each rule that are projected to have a fiscal impact on at least some operations.

For Licensed Child-Care Centers and School Age Programs and Before and After School Programs, the staff time required to comply with the standards will impact Directors and caregivers. For Licensed Child-Care Homes and Registered Homes, the staff time required to comply with the standards will impact Primary Caregivers and other caregivers. For use in this impact analysis, DFPS will use the following mean wages that were obtained from the Texas Workforce Commission's website for Occupational Wages based on 2014 estimates:

* For all Directors and Primary Caregivers DFPS is using a $24.27 per hour mean wage from the Occupational Title of Education Administrator, Preschool and Childcare Center; and
* For all caregivers (other than a Primary Caregiver) DFPS is using a $9.49 per hour mean wage from the Occupational Title of Childcare Workers.

**Fiscal Impact for Proposed §744.1305(b).** This section adds six additional topics that must be covered in the pre-service training for caregivers hired on or after September 1, 2016. One of the six topics is precautions in transporting children and is only required for operations that transport children whose chronological or developmental age is younger than nine years old. There is no increase in the number of pre-service training hours required; there is only a change in the content of the required training. Any costs associated with this rule change depends upon whether a program pays for outside training, utilizes free training in the community, or provides in-house training to the caregivers. For programs that:

(1) Pay for outside training to obtain pre-service training for caregivers, there are no additional costs associated with this change in training content;

(2) Utilize free training in the community (for example AgriLife training modules) to obtain pre-service training for caregivers, the only additional costs with this change in training content relates to the new topic regarding precautions in transporting children. For example, the relevant AgriLife training modules that could be used to comply with five of the six additional topics are free. However, the AgriLife training module relating to transporting children has a $14.00 cost. Therefore, it is anticipated that each program that transports children whose chronological or developmental age is younger that nine year old will need to pay the $14.00 costs for the transportation module for each caregiver.

(3) Provide in-house pre-service training to caregivers, there are costs associated with modifying their current pre-service curriculum for these six topics. However, the time to modify the curriculum is not anticipated to be extensive, because the program will have already developed new curriculum for annual training on these six topics, see "Fiscal Impact for Proposed §744.1309(d)". It is anticipated that a director, or curriculum developer that is similarly paid, will spend approximately 20 hours to modify the pre-service training curriculum. Therefore, the approximate one-time cost to modify the pre-service training curriculum is $485.40 (20 X $24.27).

**Fiscal Impact for Proposed §744.1309(d).** This section adds six additional topics that must be covered in the annual training for caregivers and site directors. There is no increase in the number of annual training hours required; there is only a change in the content of the required training. Any costs associated with this rule change depends on whether a program pays for outside training, utilizes free training in the community, or provides in-house training to the caregivers and site directors. For programs that:

(1) Pay for outside training or utilize free training in the community to obtain annual training for caregivers and site directors, there are possible costs with employees that may take more than the mandated 15 hours of annual training to comply with the six additional topics. For example, the training modules with AgriLife are two hours each. It is anticipated that five AgriLife modules will be needed to comply with the six additional topics. These ten hours of AgriLife training plus the already mandated six hours of annual training [§744.1309(c)] would mean that a caregiver or site director would be taking 16 hours of annual training instead of the 15 hours of mandated annual training. It is anticipated that each program would need to pay each caregiver or site director $9.49 per hour and site director $24.27 per hour for each additional training hour that is taken. It is anticipated that over time more training modules will be created that will have a shorter time frame for training on these six topics. When that happens, these costs would no longer be associated with this rule change; and

(2) Provide annual in-house training to caregivers and site directors, there are costs associated with developing new curriculum for these six topics. This section does not mandate a time frame for training on these six topics. However, for purposes of estimating a cost for developing training on these topics, it is assumed that training on these six topics will be two to three hours. A common industry standard is 40 hours to develop one hour of curriculum for face-to-face training. It is anticipated that a director, or curriculum developer that is similarly paid, will spend an average of 80 to 120 hours to develop the two to three hour curriculum on these six topics. Therefore, the approximate one-time cost for the development of the annual curriculum is between $1,941.60 (80 X $24.27) and $2,912.40 (120 X $24.27).

**Fiscal Impact for Proposed §744.1311(d).** This section adds six additional topics that must be covered in the annual training for an operation or program director. There is no increase in the number of annual training hours required; there is only a change in the content of the required training. For programs that pay for outside training or utilize free training in the community to obtain annual training for operation and program directors, there are no additional costs associated with this change in training content. For programs that actually provide annual in-house training to operation and program directors, there are costs associated with developing new curriculum for these six topics. However, the program will have already developed the same curriculum for caregivers in response to §744.1309, see "Fiscal Impact for Proposed §744.1309(d)". Therefore, CCL assumes there will be no costs associated with this rule change.

**Fiscal Impact for Proposed §745.505.** This section requires a listed family home that provides care to unrelated children to pay a background check fee of $ 2.00 per person biennially. The total impact will depend upon how many household members a listed family home has that are required to receive a background check.

**Fiscal Impact for Proposed §745.615.** This section requires licensed child-care homes, registered child-care homes, and listed family homes to request fingerprint-based criminal history checks on certain persons at a cost of $ 41.25 per person. This is generally a one-time cost. Once a person has undergone an initial fingerprint-based criminal history check, the person is not required to re-request fingerprints in the future provided the person does not move out-of-state after the initial check and the person undergoes name-based background checks at least every two years. The total impact will depend upon how many employees a licensed child-care home or registered child-care home has and how many household members each home (licensed child-care home, registered child-care home, or listed family home) has that are required to have a fingerprint-based criminal history check.

**Fiscal Impact for Proposed §746.1305(c).** This section adds six additional topics that must be covered in the pre-service training for caregivers hired on or after September 1, 2016. One of the six topics is precautions in transporting children and is only required for centers that transport children whose chronological or developmental age is younger than nine years old. There is no increase in the number of pre-service training hours required; there is only a change in the content of the required training. Any costs associated with the rule change depends on whether a center pays for outside training, utilizes free training in the community, or provides in-house training to the caregivers. For centers that:

(1) Pay for outside training to obtain pre-service training for caregivers, there are no additional costs associated with this change in training content;

(2) Utilize free training in the community (for example AgriLife training modules) to obtain pre-service training for caregivers, the only additional costs with this change in training content relates to the new topic regarding precautions in transporting children. For example, the relevant AgriLife training modules that could be used to comply with five of the six additional topics are free. However, the AgriLife training module relating to transporting children has a $14.00 cost. Therefore, it is anticipated that each center that transports children whose chronological or developmental age is younger that nine years old will need to pay the $14.00 costs for the transportation module for each caregiver; and

 (3) Provide in-house pre-service training to caregivers, there are costs associated with modifying their current pre-service curriculum for these six topics. However, the time to modify the curriculum is not anticipated to be extensive, because the center will have already developed new curriculum for annual training on these six topics, see "Fiscal Impact for Proposed §746.1309(f)". It is anticipated that a director, or curriculum developer that is similarly paid, will spend approximately 20 hours to modify the pre-service training curriculum. Therefore, the approximate one-time cost to modify the pre-service training curriculum is $485.40 (20 X $24.27).

**Fiscal Impact for Proposed §746.1309(f).** This section adds six additional topics that must be covered in the annual training for caregivers. There is no increase in the number of annual training hours required; there is only a change in the content of the required training. Any costs associated with the rule change depends on whether a center pays for outside training, utilizes free training in the community, or provides in-house training to the caregivers. For centers that:

(1) Pay for outside training or utilize free training in the community to obtain annual training for caregivers, there are no additional costs associated with this change in training content; and

(2) Provide annual in-house training to caregivers, there are costs associated with centers developing new curriculum for these six topics. This section does not mandate a time frame for training on these six topics. However, for purposes of estimating a cost for developing training on these topics, it is assumed that training on these six topics will be two to three hours. A common industry standard is 40 hours to develop one hour of curriculum for face-to-face training. It is anticipated that a director, or curriculum developer that is similarly paid, will spend an average of 80 to 120 hours to develop the two to three hour curriculum on these six topics. Therefore, the approximate one-time cost for the development of the annual curriculum is between $1,941.60 (80 X $24.27) and $2,912.40 (120 X $24.27).

**Fiscal Impact for Proposed §746.1311(f).** This section adds six additional topics that must be covered in the annual training for a child-care center director. There is no increase in the number of annual training hours required; there is only a change in the content of the required training. For centers that pay for outside training or utilize free training in the community to obtain annual training for a director, there are no additional costs associated with this change in training content. For centers that provide annual in-house training to directors, there are costs associated with centers developing new curriculum for these six topics. However, the center will have already developed the same curriculum for caregivers in response to §746.1309, see "Fiscal Impact for Proposed §746.1309(f)". Therefore, CCL assumes there will be no additional costs associated with this rule change.

**Fiscal Impact for Proposed §747.1007.** This section adds to the qualification requirements for primary caregivers in a registered child-care home (the primary caregiver is also the person that obtains the registration for the home) to include proof of training in ten different topics. One of the ten topics is precautions in transporting children and is only required for homes that transport children whose chronological or developmental age is younger than nine years old. These qualifications will be needed before the primary caregiver will be able to obtain the registration. There are two possible costs associated with the trainings: the costs for the time it takes a primary caregiver to participate in the trainings, and the costs for the actual training. While attending or participating in these trainings will take some time, it is not assumed that the primary caregiver as the applicant will pay oneself for this time. These costs associated with paying for the trainings are minimal, as well. There are free training modules available from AgriLife to cover all of the topics except for the topic related to precautions in transporting children. This particular topic will cost the primary caregiver $14.00 to enroll in the training.

**Fiscal Impact for Proposed §747.1107.** This section adds to the qualification requirements for primary caregivers in a licensed child-care home (the primary caregiver is also the person that obtains the license for the home) to include proof of training in ten different topics. One of the ten topics is precautions in transporting children and is only required for homes that transport children whose chronological or developmental age is younger than nine years old. These qualifications will be needed before the primary caregiver will be able to obtain the license. There are two possible costs associated with the trainings: the costs for the time it takes a primary caregiver to participate in the trainings, and the costs for the actual training. While attending or participating in these trainings will take some time, it is not assumed that the primary caregiver as the applicant will pay oneself for this time. These cost associated with paying for the trainings are minimal, as well. There are free training modules available from AgriLife to cover all of the topics except for the topic related to precautions in transporting children. This particular topic will cost the primary caregiver $14.00 to enroll in the training.

**Fiscal Impact for Proposed §747.1301.** This section adds nine topics that must be covered in the orientation for caregivers of homes. There are costs associated with modifying the current orientation to include these nine additional topics. This section does not mandate a time frame for training on these nine topics. However, for purposes of estimating a cost for developing orientation on these topics, it is assumed that orientation on these six topics will be for three to four hours. A common industry standard is 40 hours to develop one hour of curriculum for face-to-face training. This same standard is being used to modify the orientation. It is anticipated that a primary caregiver, or a curriculum developer that is similarly paid, will spend an average of 120 to 160 hours to develop the three to four hour orientation on these nine topics. Therefore, the approximate one-time cost for the development of the orientation is between $2,912.40 (120 X $24.27) and $3,883.20 (160 X $24.27). [Note: It was not assumed that homes had already developed annual trainings on any of these topics, because in most homes it is assumed that annual trainings are obtained from outside sources.]

**Fiscal Impact for Proposed §747.1305(e).** This section adds six additional topics that must be covered in the annual training for caregivers. There is no increase in the number of annual training hours required; there is only a change in the content of the required training. Any costs associated with this rule change depends on the type of home (licensed or registered) and whether a home pays for outside training, utilizes free training in the community, or provides in-house training to the caregivers.

(1) For licensed child-care homes that pay for outside training or utilize free training in the community to obtain the mandated 24 hours of annual training for caregivers, there are no additional costs associated with this change in training content.

(2) For registered child-care homes that pay for outside training or utilize free training in the community to obtain the mandated 15 hours of annual training for caregivers, there are possible costs with employees that may take more than the mandated 15 hours to comply with the six additional topics. For example, the training modules with AgriLife are two hours each. It is anticipated that five AgriLife modules will be needed to comply with the six additional topics. These ten hours (five modules X two hours each) of AgriLife training plus the already mandated six hours of annual training at §744.1309(c) and mandated one hour of training for caregivers of homes that provide care to children younger than 24 months at §744.1309(d), would mean that a caregiver would be taking 16 or 17 hours of annual training instead of the 15 hours of mandated annual training. It is anticipated that each program would need to pay each caregiver $9.49 per hour for each additional training hour that is taken. It is anticipated that over time more training modules will be created that will have a shorter time frame for training on these six topics. When that happens, these costs would no longer be associated with this rule change; and

(3) It is not assumed that many licensed child-care homes and registered child care homes provide direct training to caregivers. However, if they do, there are costs associated with developing new curriculum for these six topics. This section does not mandate a time frame for training on these six topics. However, for purposes of estimating a cost for developing training on these topics, it is assumed that training on these six topics will be for two to three hours. A common industry standard is 40 hours to develop one hour of curriculum for face-to-face training. It is anticipated that a primary caregiver, or curriculum developer that is similarly paid, will spend an average of 80 to 120 hours to develop the two to three hour curriculum on these six topics. Therefore, the approximate one-time cost for the development of the annual curriculum is between $1,941.60 (80 X $24.27) and $2,912.40 (120 X $24.27).

**Fiscal Impact for Proposed §747.1309(e).** This section adds six additional topics that must be covered in the annual training hours for a primary caregiver. There is no increase in the number of annual training hours required; there is only a change in the content of the required training. For homes that pay for outside training or utilize free training in the community to obtain annual training for a primary caregiver, there are no additional costs associated with this change in training content. It is not assumed that many licensed child-care homes and registered child care homes provide direct training to caregivers. However, for homes that provide annual in-house training to primary caregivers, there are costs associated with developing new curriculum for these six topics. However, the home will have already developed the same curriculum for caregivers in response to §747.1305, see "Fiscal Impact for Proposed §747.1305(e)". Therefore, CCL assumes there will be no additional costs associated with this rule change.

**Regulatory Flexibility Analysis:** A regulatory flexibility analysis is not required for the proposed rules with fiscal implications because the proposed rules are specifically required by state law (S.B. 1496) and federal law (The Child Care and Development Block Grant of 2014). Therefore, the proposed rules are consistent with the health and safety of children, whom the laws were intended to protect.

(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

Stakeholder input will be obtained during the 30-day public comment period and the provider workgroup meetings scheduled for March 22, 2016, April 5, 2016, and April 28, 2016.

## 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*.