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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 XX: Recommendation to propose rule changes in 40 TAC, Chapter 745 Licensing, relating to definitions for Licensing, applications, and the renewal of permits.** |
| DATE: | **April 22, 2016** |

## BACKGROUND AND PURPOSE

The Child Care Licensing (CCL) Division proposes to amend Chapter 745, Licensing, Subchapter A (Precedence and Definitions), relating to definitions for Licensing; and Chapter 745, Licensing, Subchapters D (Application Process) and K (Inspections and Investigations), relating to applications and to implement the renewal of permits. The recommended changes are needed to:

* implement recommendations the Sunset Advisory Commission made in the *Department of Family and Protective Services Staff Report with Commission Decisions* published in August 2014 and required by Senate Bill (S.B.) 206, SECTIONS 77, 78, and 79, that was passed by the 84th Texas Legislature in 2015 relating to the renewal of permits;
* make conforming changes in Subchapters D and K relating to the implementation of a renewal process; and
* make other clarifying changes and updates to Subchapters A and D as part of Licensing's comprehensive review of all Licensing rules and minimum standards.

S.B. 206 amended §§42.048, 42.050, and 42.052 of the Human Resources Code (HRC). The amended statute requires a renewal process for child care licenses, certifications, and registrations and directs DFPS to develop rules relating to:

* renewal periods;
* a process for staggered renewals;
* a process for resolving a late application for renewal;
* expiration dates; and
* conditions for renewal.

A summary of the changes related to permit renewal includes:

* Defining the terms "full license," "full permit," and "initial license;"
* Removing references to a "non-expiring" permit or license;
* Requiring the renewal of a full license, certificate, and registration every two years to avoid expiration;
* Designating a "renewal period" during which the operation is to apply for renewal of its permit;
* Allowing an operation 30 additional days after the renewal period to apply for renewal if the operation is late in applying;
* Staggering the renewals so that all affected operations would not have to renew their permits at the same time;
* Outlining what an operation must submit as part of a renewal application;
* Detailing what happens after Licensing receives a renewal application;
* Explaining under what circumstances a permit expires and how an expired permit affects an operation ;
* Adding language to indicate a full license is effective as long as it has not expired;
* Clarifying that a permit is subject to renewal requirements even if an enforcement action is being taken by Licensing;
* Requiring a registered home or licensed operation to apply for renewal if the permit is due for renewal while it is voluntarily suspended; and
* Requiring an operation to post the written notice of the permit's renewal.

DFPS is also requesting HHSC to propose changes to Chapter 745, Subchapter D (Application Process), that are not related to permit renewal. HRC §42.042(b) requires DFPS to evaluate rules at least every six years. In addition, part of Licensing’s business plan is to review, analyze, and update rules to strengthen the protection of children in out-of-home care and improve providers' understanding of the rules. DFPS has revised the proposed rules to clarify and update rules with current laws and practices in the industry. DFPS will request HHSC to propose changes to the remaining Subchapters in Chapter 745 at a later date.

A summary of the changes not related to permit renewal that are being proposed in these rules, includes:

* Adding references to "shelter care" to several rules applicable to shelter care operations that lacked those references;
* Clarifying the definition for the term "regulation;"
* Adding items to the lists of required application materials in order to be consistent with other rule changes that have been made or are being proposed in other rule packets;
* Removing the initial license fee as an item required for a completed application for a license because the fee will be required for issuance of an initial permit;
* Clarifying that Licensing's 10-day time frame for reviewing an application pertains to an application for a compliance certificate;
* Clarifying that an applicant for a compliance certificate has unlimited attempts to submit all of the information and material that is required for Licensing to accept an application;
* Clarifying when Licensing issues an initial license;
* Replacing "initial permit' with "initial license;"
* Removing outdated language that no longer is applicable; and
* Making minor corrections to improve the reader's understanding of the subject matter or to improve sentence flow.

## DETAILED SECTION ANALYSIS AND DISPOSITION TABLE

| **Current Rule Sections** | **Proposed Action; New Rule Section** | **Summary Explanation of Proposed Action** |
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| §745.21 | Amend | This amendment:   * Adds references to "shelter care operations" to several definitions that lacked those references; * Defines the terms "full license," "full permit," and "initial license"; and * Clarifies the definition of "regulation." |
| §745.243 | Amend | This amendment:   * Adds items to the lists of required application materials in order to be consistent with other rule changes that have been made or are being proposed in other rule packets; * Removes the initial license fee as an item required for a completed application for a license (changes to §745.345 proposed in this packet require the initial license fee be paid prior to issuance of the initial permit); and * Makes minor corrections to improve the reader's understanding of the subject matter. |
| §745.301 | Amend | This amendment:   * clarifies that Licensing's 10-day time frame for reviewing an application pertains to both temporary shelter and employer-based child care operations by replacing "employer-based child care" with "compliance certificate;" and * Makes minor corrections to improve the sentence flow. |
| §745.303 | Amend | This amendment clarifies that an applicant for a compliance certificate has unlimited attempts to submit a completed application. The childcare at these operations is derivative of a broader purpose; for example, a domestic violence shelter may have an on-site daycare so that a mother will be able to search for employment or a home. Moreover, Subchapters F and G, HRC, require a streamlined application process for compliance certificates. |
| §745.321 | Amend | This amendment:   * Adds "shelter care" to the same places where employer-based child care is referenced since the requirements are the same for both; and * Makes minor corrections to improve the sentence flow. |
| §745.341 | Amend | This amendment:   * Removes the term "non-expiring permit" and includes the terms "initial license," "full license," and "full permit" that were added to §745.21; and * Adds a reference to "shelter care operations" to the list of operations that receive a full permit. |
| §745.343 | Amend | This amendment:   * Removes the term "non-expiring permit" and includes the terms "initial license" and "full license;" and * Adds language to indicate a full license is effective as long as it has not expired. |
| §745.345 | Amend | This amendment:   * Clarifies when Licensing issues an initial license; * Replaces "initial permit' with "initial license;" and * Makes minor corrections to improve the reader's understanding of the subject matter. |
| §745.347 | Amend | This amendment:   * Replaces "initial permit' with "initial license;" * Replaces "non-expiring permit" with "full license;" and * Makes a minor correction to improve the sentence flow. |
| §745.351 | Amend | This amendment:   * Replaces "initial permit' with "initial license;" * Replaces "non-expiring permit" with "full license;" and * Makes a minor correction to improve the reader's understanding of the subject matter. |
| §745.385 | Amend | This amendment adds language to indicate a license or certificate expires. |
| §745.403 | Amend | This amendment:   * Removes outdated references to timeframes that are no longer applicable; and * Clarifies language to improve the reader’s understanding of the subject matter. |
| §745.439 | Amend | This amendment adds a reference to a "shelter care operation" to ensure shelter care operations are treated the same as employer-based child care operations since they have the same type of permit. |
|  | New §745.471 | This new rule:   * Indicates a full license, certificate, or registration will expire if it is not renewed; and * Conveys that there are no renewal requirements for a compliance certificate or listing. |
|  | New §745.473 | This new rule:   * Requires an operation with a permit that requires renewal to apply for its renewal every two years; * Designates a time frame for the operation's "renewal period" during which the operation is to apply for renewal of its permit; * Allows an operation 30 additional days after the renewal period to apply for renewal if the operation is late in applying for renewal; and * Creates a staggered renewal schedule for existing operations and operations that receive a permit on or after the effective date of these rules. |
|  | New §745.475 | This new rule:   * Requires a completed renewal application in order for Licensing to evaluate a permit for renewal; and * Indicates what the operation must submit to Licensing in order for the application to be complete. |
|  | New §745.477 | This new rule:   * Details what happens after Licensing receives a renewal application; * Indicates Licensing will evaluate whether the criteria for renewal are met; * Indicates how and when Licensing will notify the operation that Licensing has approved the renewal of the permit or that the renewal application is incomplete; * Allows the operation unlimited attempts to submit any missing information and to correct the deficiencies during the renewal period; * Allows the operation 15 days to submit a completed application from the date it was rejected if the application was submitted during the late renewal period; and * Provides that CCL may exceed the 15-day limit for good cause. |
|  | New §745.479 | This new rule requires the operation to post the notice of the permit's renewal at the operation. |
|  | New §745.481 | This new rule explains under what circumstances a permit expires. |
|  | New §745.483 | This new rule:   * Requires an operation to cease operating immediately if its permit expires; and * Requires an operation to submit a new application (as required by §745.243) and pay any necessary fees before resuming operation. |
|  | New §745.485 | This new rule clarifies that a permit is subject to renewal requirements even if Licensing is taking an enforcement action. |
| §745.8521 | Amend | This amendment:   * Replaces "non-expiring permit" with "registration or full license;" and * Requires a registered home or licensed operation to apply for renewal if the permit is due for renewal while it is voluntarily suspended. |

## 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 modifications implement HRC §§42.042, 42.048, 42.050, and 42.052.

## 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 this section. Implementation of a renewal process for licenses, certifications, and registrations requires changes to automation; however, the funding for the IT changes needed to complement the rules relating to permit renewal was provided by the legislature in the last session.

(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 the safety of children in care and the quality of their care will be improved*.*

(c) Impact on Business. There is not an anticipated adverse impact on businesses, including small and micro businesses, which must comply with these rule changes. The rules proposed do not add any fees or require providers to acquire any additional materials or resources in order to comply. The rules relating to permit renewal add a minimal amount of work to providers' workload.

(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

While developing the proposed rules for this packet, CCL received feedback from two different workgroups:

* Between June and September 2015, CCL staff from different areas of the program and parts of the state met three times to develop the renewal policy that would later be incorporated into rule format; and
* On February 2, 2016, CCL met with a workgroup of providers to discuss what renewal policy was developed and how providers would be affected and Licensing incorporated the workgroup's recommendations into 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*.