March 14, 2016

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), new §700.1701, in Chapter 700, concerning Child Protective Services. The new section is proposed in Subchapter Q, Purchased Protective Services, in a new Division 1, Residential Child-Care Contracts. All current rules in Subchapter Q are moved to a new Division 2, Post Adoption Services. The purpose of the new section is to comply with the mandates of Senate Bill 830 from the 84th Texas Legislature, Regular Session 2015, which amended Chapter 531 of the Texas Government Code by adding Subchapter Y and also 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.

The summary of the changes is as follows:

New §700.1701: (1) specifies in subsection (a) 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; and (2) specifies in subsection (b) 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.

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.

Lisa Subia, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed new section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Subia also has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the new section 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. There should be no adverse effect on large, small, or micro-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. There is no anticipated economic cost to persons who are required to comply with the proposed new section.

Ms. Subia has determined that the proposed new section does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Jose A. Martinez at (512) 929-6739 in DFPS's Office of Consumer Affairs Division. Electronic comments may be submitted to [Jose.Martinez@dfps.state.tx.us](mailto:Marianne.Mcdonald@dfps.state.tx.us). Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-550, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Title 40, Social Services & Assistance, Part 19, Dept. of Family and Protective Services

Chapter 700, Child Protective Services

Subchapter Q, Purchased Protective Services

**Division 1, Residential Child-Care Contracts**

TAC Section Number(s) §700.1701

Proposed Action

X New

Proposed Date of Adoption:

X Other (Specify)

30 Days After Publication

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide 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 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 new section implements Texas Human Resources Code §40.0041.

**§700.1701. What are the posting requirements for residential child-care facilities who care for children in the conservatorship of the Department of Family and Protective Services related to the Ombudsman For Children and Youth in Foster Care?**

**(a) Residential child-care facilities who care for children in the conservatorship of the Department of Family and Protective Services 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 For Children and Youth in Foster Care.**

**(b) The residential child care facilities must implement procedures to allow children and youth to make complaints in private or in a space that is separate from facility staff, volunteers, or the foster family.**

This agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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