March 10, 2016

 The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendment to §§711.1402, 711.1404, 711.1408, 711.1413, 711.1414, 711.1415, 711.1417, 711.1427, 711.1429, 711.1431, 711.1432, 711.1434, the repeal and replacement of §711.1406, and the repeal of §711.1411, in Chapter 711, concerning Investigations in Department of Aging and Disability Services (DADS) and Department of State Health Services (DSHS) Facilities and Related Programs. The purpose of the amendments and repeals is to update the terminology and process requirements regarding the due process rights of an employee prior to placement on the Emergency Misconduct Registry (EMR).

 The EMR is a publicly available, searchable database maintained by the Department of Aging and Disability Services pursuant to Chapter 253 of the Texas Health and Safety Code. The EMR is a list of persons who are not permitted to work in certain settings because they have been found to have committed reportable conduct. A finding of reportable conduct is a finding that an employee has been found to have committed certain, more serious abuse, neglect, or exploitation of a person who is elderly or a person with a disability.

 Under authority in Chapter 48 of the Texas Human Resources Code, Subchapter I, DFPS is required to submit the names of certain employees whom Adult Protective Services (APS) has determined committed reportable conduct to DADS for placement on the EMR. If APS determines an employee has committed reportable conduct, the employee is offered a due process hearing prior to placement on the EMR, and if the finding is upheld, the employee is given an opportunity to file for judicial review of the finding.

 The changes make APS' requirements consistent with governing Texas law, the Administrative Procedures Act, found in Chapter 2001 of the Texas Government Code. In addition, they standardize terminology so that the employee's administrative remedies are more clearly explained. They also make modest updates to reflect changes enacted in the 84th Regular Session of the Texas legislature that expanded APS' investigative scope and jurisdiction in certain settings, including some settings in which employees are eligible for potential placement on the EMR. Finally, the changes streamline unnecessary provisions out of the subchapter so that it is easier to follow.

 A summary of the changes follows:

 Amendment to §711.1402 removes definitions of terms not used in the subchapter and updates definitions for changes made in 84th Regular Session, including changes in Senate Bill (SB) 1880 and SB 760: (1) makes definition of "agency" consistent with law; (2) updates terminology from "facility investigation" to "provider investigation" and clarifies meaning; (3) adds definition of "individual receiving services"; and (4) renumbers and makes minor edits.

 Amendments to §711.1404: (1) updates section title so that it is comprehensive; and (2) modifies sections defining physical abuse, sexual abuse, emotional or verbal abuse, neglect, exploitation and financial exploitation for in-home and provider investigations by referring to the identical definitions already in rule. Specifically, for in-home investigations the operative terms are defined in 40 TAC Chapter 705, Subchapter A. For provider investigations the operative terms are defined in Subchapter A of Chapter 711. Rather than repeat the definitions in full, rules were modified to refer back to the definitions in other provisions of the rules.

 The repeal of §711.1406 modifies definitions for provider investigations as described above and combines the remaining subsection into §711.1404 of this chapter.

 New § 711.1406 adds clarity regarding the meaning of the term "agency", the employees of which are potentially subject to the EMR.

 Amendment to §711.1408 has minor rewording for clarity and consistency.

 The repeal of §711.1411 deletes unnecessary provision as the substance of the rule is also covered in §711.1432 of this chapter.

 Amendment to §711.1413: (1) clarifies terminology regarding the "appeal" of a finding of reportable conduct. Terminology was used inconsistently to refer both to the EMR hearing as well as a subsequent request for judicial review; and (2) adds a provision to the notice of finding letter for an employee who is found to have committed reportable conduct, requiring the employee to keep DFPS informed of the employee's current employment and residential contact information.

 Amendment to §711.1414: (1) updates terminology; shortens and clarifies provision; and (2) adds requirement that the employee is responsible for providing DFPS with current telephone numbers in addition to the physical address the employee is already required to provide to DFPS.

 Amendment to §711.1415 updates terminology regarding EMR hearings for consistency.

 Amendment to §711.1417 updates terminology regarding EMR hearings for consistency.

 Amendment to §711.1427 adds requirement that the costs of transcribing testimony from an EMR hearing be paid by the employee seeking judicial review unless the employee establishes indigence.

 Amendment to §711.1429 updates terminology and cross-reference.

 Amendment to §711.1431 makes timelines and requirements for requesting judicial review of a finding of reportable conduct consistent with the Texas Administrative Procedures Act. Specifically: (1) makes the filing of a timely motion for rehearing in accordance with Subchapters F and G of Government Code Chapter 2001 a prerequisite to judicial review; (2) updates the guidance regarding seeking judicial review by referring to the operative law on point, Subchapters F and G of Government Code Chapter 2001; and (3) clarifies the time frame for reporting a finding to the EMR after an order becomes final.

 Amendment to §711.1432 provides clarity regarding the exhaustion of an employee's administrative remedies and DFPS' actions once those rights have been exhausted.

 Amendment to §711.1434 updates terminology.

 Lisa Subia, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed amendments and repeals will be in effect there will not be costs or revenues to state or local government as a result of enforcing or administering the amendments and repeals.

 Ms. Subia also has determined that for each of the first five years that the amendments and repeals will be in effect, the public benefit anticipated as a result of the rule change will be that employees who are potentially subject to the EMR will have a better understanding of the process for disputing a finding made against them that is eligible for the EMR. In addition, employers will have a greater understanding of the process that may lead to an employee's placement on the EMR*.* There is a very small economic cost anticipated to persons who are required to comply with the proposed sections. The amendment to §711.1427 conforms the rules to general civil practice by requiring a petitioner who is seeking judicial review to pay the costs of transcribing the hearing and preparing the record, unless the petitioner is indigent. However for the small number of EMR cases filed in district court each year (with 7 annually being a high number), the petitioner will bear the expense of the transcript of the hearing. Given the wide variety in transcription costs based on variations in hearing length and testimony, specific costs were not estimated at this time. There is no anticipated adverse impact on small or micro businesses as a result of the proposed rule change because the proposed rule change should not affect the cost of doing business; does not impose new requirements on any business; and does not require the purchase of any new equipment or any increased staff time in order to comply.

 Ms. Subia has determined that the proposed amendments and repeals do 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 Audrey Carmical at (512) 438-3854 in DFPS's Legal Services Division. Electronic comments may be submitted to Audrey.Carmical@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-549, 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 711, Investigations in DADS and DSHS Facilities and Related Programs

Subchapter O, Employee Misconduct Registry

TAC Section Number(s) §§711.1402, 711.1404, 711.1408, 711.1413, 711.1414, 711.1415, 711.1417, 711.1427, 711.1429, 711.1431, 711.1432, 711.1434

Proposed Action

X Amendment

Proposed Date of Adoption:

X Other (Specify)

 30 Days After Publication

 The amendments are 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 amendments implement Human Resources Code §§48.401-48.408.

§711.1402. How are the terms in this subchapter defined?

The following words and termswhen used in this subchapter, shall have the following meanings,unless the context clearly indicates otherwise:

 (1) (No change);

 (2) Agency--An entity, person, [or] facility, **or provider,** as defined in **§700.1406 of this chapter** ;

 (3) - (6) (No change.)

 (7) Employee--A person who:

(A) (No change.)

 (B) provides personal care services, active treatment, or any other [personal] services to an individual receiving agency services, an individual who is a child for whom an investigation is authorized under Family Code §261.404, or an individual receiving services through the consumer-directed service option, as defined by Government Code §531.051; and

 (C) - (No change.)

 (8) - (9) (No change.)

(10) **Individual Receiving Services: an individual receiving services as provided in §711.3 of this title (relating to How are the terms in this chapter defined?);** [Facility investigation--An investigation conducted by APS under Chapter 48, Subchapters F and H, Human Resources Code, that involves an employee of one of the following agency types:]

 [(A) a home and community-based services (HCS) provider;]

 [(B) a community center as defined in §531.002, Health and Safety Code;]

 [(C) a licensed intermediate care facility for persons with intellectual disabilities and related conditions (ICF-IID);]

 [(D) a local authority as defined in this chapter;]

 [(E) the Rio Grande State Center;]

 [(F) a state-supported living center; or]

 [(G) a state hospital;]

 [(11) HCSSA--A home and community support services agency, sometimes referred to as a home health agency, licensed under Chapter 142, Health and Safety Code;]

 [(12) HCS--A person or an agency exempt from licensure under §142.003(a)(19), Health and Safety Code, that provides home and community-based services to persons with intellectual disabilities and related conditions;]

 [(13)ICF-IID--An intermediate care facility for individuals with anintellectual disability or related condition. A licensed ICF-IIDis a privately owned and operated facility licensed by the Department of Aging and Disability Services under Chapter 252, Health and Safety Code. A state supported living center operated by DADS or DSHS is also an ICF-IID. A localauthority may also operate an ICF-IID;]

 **(11)**[(14)] In-home investigation--An investigation conducted by APS under Chapter 705 of this title (relating to Adult Protective Services);

 [(15) Person served--An adult or child receiving services from an agency as defined in this subchapter;]

 **(12) Provider investigation--An investigation conducted by APS under Chapter 48, Subchapter F, Human Resources Code, or §261.404, Texas Family Code, as applicable;**

 **(13)**[(16)] Reportable conduct--A confirmed or validated finding of abuse, neglect or exploitation that meets the definition in §48.401(5), Human Resources Code, and as further defined in §711.1408 of this title (relating to What is reportable conduct?);

 [(17) Rio Grande State Center--A facility operated by the Department of State Health Services that provides in-patient mental health services and services through an ICF-IID;]

 [(18) State hospital--A hospital operated by the Department of State Health Services that provides in-patient mental health services; and]

 [(19) State supported living center--An ICF-IID operated by the Department of Aging and Disability Services.]

§711.1404. How are the terms physical abuse, sexual abuse, emotional or verbal abuse, neglect, **exploitation,** and financial exploitation defined for **the purpose of this subchapter** [In-home investigations]?

 **(a)** For In-home investigations, the definitions of physical abuse, sexual abuse, emotional or verbal abuse, neglect, and financial exploitation are **adopted pursuant to §48.002(c), Human Resources Code, and are found in** [defined in] **Subchapter A of** Chapter 705 of this title (relating to Definitions)in the rules adopted pursuant to §48.002(c) of the Human Resources Code. [Additional guidance for some of the terms used in these definitions can be found at §705.1001 of this title (relating to How are the terms in this chapter defined?). The following definitions apply:]

 [(1) "Physical abuse."]

 [(A) When an alleged perpetrator is a caretaker, family member, or other individual who has an ongoing relationship with the alleged victim, physical abuse is defined as any knowing, reckless, or intentional act or failure to act, including unreasonable confinement, corporal punishment, inappropriate or excessive force, or intimidation, which caused physical injury, death, or emotional harm.]

 [(B) When an alleged perpetrator is a paid caretaker, physical abuse is defined as any knowing, reckless, or intentional act or failure to act, including unreasonable confinement, corporal punishment, inappropriate or excessive force, or intimidation, which caused or may have caused physical injury, death, or emotional harm.]

 [(2) "Sexual abuse."]

 [(A) When an alleged perpetrator is a caretaker or paid caretaker, family member, or other individual who has an ongoing relationship with the alleged victim, sexual abuse is defined as nonconsensual sexual activity, which may include, but is not limited to, any activity that would be a sexually-oriented offense per Texas Penal Code, Chapters 21, 22, or 43.]

 [(B) There is no consent when:]

 [(i) the alleged perpetrator knows or should know that the alleged victim is incapable of consenting because of impairment in judgment due to mental or emotional disease or defect;]

 [(ii) consent is induced by force or threat against any person;]

 [(iii) the alleged victim is unconscious or physically unable to resist;]

 [(iv) the alleged perpetrator has intentionally impaired the alleged victim by administering any substance without the person’s knowledge; or]

 [(v) consent is coerced due to fear of retribution or hardship, or by exploiting the emotional dependency of the alleged victim on the alleged perpetrator.]

 [(3) "Emotional or verbal abuse."]

 [(A) When an alleged perpetrator is a caretaker, family member, or other individual who has an ongoing relationship with the alleged victim, emotional or verbal abuse is defined as any act or use of verbal or other communication to threaten violence that makes a reasonable person fearful of imminent physical injury.]

 [(B) When an alleged perpetrator is a paid caretaker, emotional or verbal abuse is defined as any act or communication that is:]

 [(i) used to curse, vilify, humiliate, degrade, or threaten and that results in emotional harm; or]

 [(ii) of such a serious nature that a reasonable person would consider it emotionally harmful.]

 [(4) "Neglect."]

 [(A) When the alleged perpetrator is an alleged victim/perpetrator, neglect is defined as the failure of one’s self to provide the protection, food, shelter, or care necessary to avoid emotional harm or physical injury.]

 [(B) When an alleged perpetrator is a caretaker or paid caretaker, neglect is defined as:]

 [(i) the failure to provide the protection, food, shelter, or care necessary to avoid emotional harm or physical injury; or]

 [(ii) a negligent act or omission that caused or may have caused emotional harm, physical injury, or death.]

 [(5) "Financial exploitation."]

 [(A) When an alleged perpetrator is a caretaker or paid caretaker, family member, or other individual who has an ongoing relationship with the alleged victim, financial exploitation is defined as the illegal or improper act or process of an alleged perpetrator using, or attempting to use, the resources of the alleged victim, including the alleged victim’s social security number or other identifying information, for monetary or personal benefit, profit, or gain without the informed consent of the alleged victim. There is no informed consent when it is:]

 [(i) not voluntary;]

 [(ii) induced by deception or coercion; or]

 [(iii) given by an alleged victim who the actor knows or should have known to be unable to make informed and rational decisions because of diminished capacity or mental disease or defect.]

 [(B) When an alleged perpetrator is a caretaker, family member, or other individual who has an ongoing relationship with the alleged victim, financial exploitation excludes Theft in Chapter 31 of the Texas Penal Code.]

 [(C) When an alleged perpetrator is a paid caretaker, financial exploitation includes, but is not limited to, Theft in Chapter 31 of the Texas Penal Code.]

 **(b)** **For provider investigations-- the definitions of physical abuse, sexual abuse, verbal/emotional abuse, neglect, and exploitation are adopted pursuant to §48.002(b), Human Resources Code, and are found in Subchapter A of this chapter (relating to Introduction).**

**§711.1406. How is the term agency defined for the purpose of this subchapter?**

 **(a) For the purpose of this chapter, the term "agency" has the meaning given by §48.401, Human Resources Code, as further clarified in this rule. Any terms used within the definition of "agency" have the meaning given by statute or elaborated upon by this chapter or chapter 705 of this title. The purpose of this rule is to provide a non-exhaustive list of agencies, the employees of which are subject to being listed on the EMR if they are found to have committed reportable conduct. The list is illustrative and not exclusionary. Employees of agencies not specifically enumerated that are within the meaning of § 48.401 continue to be eligible for the EMR without regard to whether the agency is specifically enumerated below.**

 **(b) The term "agency" means:**

 **(1) a home and community support services agency licensed under Chapter 142, Health and Safety Code;**

 **(2) a person exempt from licensure who provides home health, hospice, habilitation, or personal assistance services only to persons receiving benefits under:**

 **(A) the home and community-based services (HCS) waiver program;**

 **(B) the Texas home living (TxHmL) waiver program;**

 **(C) the STAR + PLUS or other Medicaid managed care program under the program's HCS or TxHmL certification; or**

 **(D) Section 534.152, Government Code;**

 **(3) an intermediate care facility for individuals with an intellectual disability or related conditions (ICF-IID) licensed under Chapter 252, Health and Safety Code; or**

 **(4) a provider investigated by DFPS under Subchapter F, Human Resources Code or §261.404, Family Code. Such providers include:**

 **(A) a facility as defined in §711.3 of this chapter;**

 **(B) a community center, local mental health authority, and local intellectual and developmental disability authority, as defined in § 711.3 of this chapter;**

 **(C) a person who contracts with a health and human services agency or managed care organization to provide home and community-based services (HCBS) as that term is defined in §48.251, Human Resources Code and which is the umbrella term for various long-term services and supports within the Medicaid program, whether delivered in a fee-for-service, managed care, or other service delivery model, and which includes but is not limited to:**

 **(i) Waiver programs including:**

 **(I) community living assistance and support services (CLASS);**

 **(II) Deaf Blind Multiple Disabilities;**

 **(III) HCS;**

 **(IV) TxHmL;**

 **(V) Medically Dependent Child Program (MDCP); and**

 **(VI) Youth Empowerment Services (YES);**

 **(ii) Community First Choice;**

 **(ii) Texas Dual Eligible Integrated Care Project;**

 **(iii) State plan services including:**

 **(I) Community attendant services; and**

 **(II) Personal attendant services;**

 **(iv) Managed Care Programs including:**

 **(I) HCBS - Adult Mental Health;**

 **(II) STAR + PLUS Managed Care program; and**

 **(III) STAR Kid Managed Care program; and**

 **(v) any other program, project, waiver demonstration, or service providing long-term services and supports through the Medicaid program;**

 **(D) a person who contracts with a Medicaid managed care organization to provide behavioral health services as that term is defined in § 48.251 and which include but are not limited to:**

 **(i) Targeted Case Management; and**

 **(ii) Psychiatric Rehabilitation services;**

 **(E) a managed care organization;**

 **(F) an officer, employee, agent, contractor, or subcontractor of a person or entity listed in subsections (A)-(E) above; and**

 **(G) an employee, fiscal agent, case manager, or service coordinator of an individual employer participating in the consumer directed service option, as defined by §531.051, Government Code.**

§711.1408. What is reportable conduct?

 (a) (No change.)

 (b) For purposes of subsection (a) of this section, the terms abuse, neglect, sexual abuse, and financial exploitation have the meanings provided in **Subchapter A of Chapter 705 (relating to Definitions) or Subchapter A of this Chapter and incorporated by reference in** §711.1404 of this title (relating to How are the terms physical abuse, sexual abuse, emotional or verbal abuse, neglect, and financial exploitation defined for **the purpose of this subchapter** [In-home investigations]?) [and §711.1406 of this title (relating to How are the terms abuse, neglect, **exploitation,** and financial exploitation defined for Facilityinvestigations?), depending upon the type of agency for which the employee worked].

 (c) - (d) (No change.)

§711.1413. What notice must DFPS give to an employee before the employee's name is submitted to the Employee Misconduct Registry?

When DFPS determines that an employee committed reportable conduct, DFPS must provide a written "Notice of Finding" to the employee. The notice must include:

 (1) (No change.)

 (2) a statement of the employee's right to **dispute** [appeal] the finding by filing a "Request for EMR Hearing" and the instructions for doing so;

 (3) - (6) (No change.)

 (7) a statement that DFPS reserves the right to make an emergency release of the findings to any subsequent employer of the employee if the employee has access to similar clients or persons served [while the appeal is pending];

 (8) a statement that the employee is responsible for keeping DFPS timely informed of the employee's current [address] **employment and residential contact information, including addresses and phone numbers,** pending the outcome of any appeal filed by the employee; and

 (9) a statement that if the employee fails, without good cause, to file a timely **request for an EMR hearing** [appeal of the Notice of Finding], the employee will be deemed to have waived the employee's rights to **dispute the finding** [appeal] and the employee's name will be submitted to the EMR.

§711.1414. How will the Notice of Finding be provided to an employee and who is responsible for ensuring that the department has a valid mailing address for an employee?

 (a) - (b) (No change.)

 (c) It is the responsibility of the employee [who is investigated for alleged abuse, neglect, or exploitation of a client or person served by an agency subject to this subchapter] to provide the department with a valid address where notice can be mailed or, if no address is available, with valid contact information**, including telephone numbers**. It is also the responsibility of the employee to immediately notify DFPS of any change of address or contact information throughout the investigation and any period of time during which **a dispute of the finding** [an appeal] is pending.

§711.1415. How does an employee **dispute** [appeal] a finding of reportable conduct and what happens if the **"Request for EMR Hearing"** [appeal] is not filed or not filed properly?

 (a) An employee may **dispute** [appeal] a finding of reportable conduct by submitting a Request for EMR Hearing. The Notice of Finding will contain instructions for filing the Request for EMR Hearing.

 (b) The employee will be deemed to have accepted the finding of reportable conduct and DFPS will submit the employee's name for inclusion in the Employee Misconduct Registry if the employee:

 (1) - (2) (No change.)

 (3) files a Request for EMR Hearing, but fails to follow the filing instructions and, as a result, DFPS does not receive the Request for EMR Hearing in a timely manner or cannot determine the matter being **disputed** [appealed].

§711.1417. What is the deadline for filing the Request for EMR Hearing?

 (a) - (c) (No change.)

 (d) If an employee files the Request for EMR Hearing after the deadline, DFPS will notify the employee that the request was not filed by the deadline, no **EMR** [appeal] hearing will be granted, and the employee's name will be submitted for inclusion in the Employee Misconduct Registry.

 (e) (No change.)

§711.1427. How is the EMR hearing conducted?

 (a) - (j) (No change.)

 (k) The hearing will be recorded by audio or video tape in order to preserve a record of the hearing. A transcription of the hearing tape will not be made or provided unless an employee seeks judicial review, as provided in this subchapter. **The costs of transcribing the testimony and preparing the record for judicial review shall be paid by the party who files for judicial review, unless the party establishes indigence as provided in Rule 20 of the Texas Rules of Appellate Procedure.**

(l) (No change.)

§711.1429. How and when is the decision made after the EMR hearing?

 [(a)] The administrative law judge will prepare a "Hearing Order" which will be mailed to the employee at the employee's last known mailing address. The Hearing Order must contain the following:

 (1) separate statements of the findings of fact and conclusions of law that uphold, reverse, or modify the findings as to whether:

 (A) the employee committed abuse, neglect, or financial exploitation [of a client or person served]; and

 (B) (No change.)

 (2) if reportable conduct is found to have occurred:

 (A) (No change.)

 (B) a statement that the finding of reportable conduct will be forwarded to the Department of Aging and Disability Services to be recorded in the Employee Misconduct Registry unless the employee [makes a] timely **files a petition** [request] for judicial review [and the court reverses the finding of reportable conduct] **as provided in §711.1431 of this title (relating to How is judicial review requested?)**.

 (b) (No change.)

§711.1431. How is judicial review requested and what is the deadline?

 (a) **A timely motion for rehearing is a prerequisite to judicial review and must be filed in accordance with Subchapters F and G, Chapter 2001, Government Code.** [To request judicial review of a Hearing Order, the employee must file a petition for judicial review in a Travis County district court, as provided by Government Code, Chapter 2001, Subchapter G.] **The motion for rehearing must be served on the administrative law judge and on DFPS’s attorney of record.**

 (b) **To seek judicial review of a Hearing Order, a party must file a petition for judicial review in a Travis County district court, in accordance with Subchapters F and G, Chapter 2001, Government.** [The petition must be filed with the court no later than the 30th day after the date the Hearing Order becomes final, which is the date that the Hearing Order is received by the employee.]

 (c) (No change.)

 (d) Unless citation for a petition for judicial review is served on DFPS within **90**[45] days after the date on which the **order under review becomes final**[Hearing Order is mailed to the employee], DFPS will submit the employee's name for inclusion in the Employee Misconduct Registry. If valid service of citation is received after the employee's name has been recorded in the registry, DFPS will[ determine whether the lawsuit was timely filed and, if so, immediately] request that the employee's name be removed from the registry pending the outcome of the judicial review **in district court**.

§711.1432. What action does DFPS take when **an employee has exhausted the employee's administrative remedies** [all appeal rights have been exhausted]?

 **(a) An employee has exhausted the employee's administrative remedies if the employee has been found to have committed reportable conduct and the employee has received or is no longer eligible for:**

 **(1) an EMR hearing;**

 **(2) a rehearing of the employee's case following an EMR hearing; or**

 **(3) judicial review.**

 **(b) DFPS takes the following actions once an employee has exhausted the employee's administrative remedies:** [In any case in which an employee filed a timely appeal, DFPS will take the following actions once the appeal has been finally resolved:]

 (1) **modifies** [modify] DFPS's internal records to reflect the **final** outcome **in the case** [of the appeal];

 (2) **provides** [provide] notice of the final outcome **in the case** [of the appeal] to any person or entity that was previously notified of DFPS's findings**, if the finding is modified**; and

 (3) **sends** [send] the employee's name and required information to the Employee Misconduct Registry if the finding of reportable conduct was **sustained** [upheld].

§711.1434. What special considerations apply to employees of state-operated facilities?

 (a) The sole way to **dispute** [appeal] a finding of reportable conduct and submission of the employee's name to the Employee Misconduct Registry is provided by the procedures in this subchapter. **A Request for EMR hearing** [An appeal] filed under this subchapter is not a request for a grievance on disciplinary action from an employer.

 (b) (No change.)

 (c) When an employee files both **a Request of EMR hearing** [an appeal of reportable conduct] under this subchapter and a grievance on disciplinary action based on DFPS's finding of reportable conduct, the EMR [appeal] hearing will take place prior to the grievance hearing.

 (d) (No change.)

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

 Issued in Austin, Texas, on .

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

Chapter 711, Investigations in DADS and DSHS Facilities and Related Programs

Subchapter O, Employee Misconduct Registry

TAC Section Number(s) §§711.1406, 711.1411

Proposed Action

X Repeal

Proposed Date of Adoption:

X Other (Specify)

 30 Days After Publication

 The repeals are 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 repeals implement Human Resources Code §§48.401-48.408.

§711.1406. How are the terms abuse, neglect, and financial exploitation defined for Facilityinvestigations?

§711.1411. Under what circumstances does DFPS submit an employee's name to the Employee Misconduct Registry?

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

 Issued in Austin, Texas, on .