March 16, 2016

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §§745.21, 745.243, 745.301, 745.303, 745.321, 745.341, 745.343, 745.345, 745.347, 745.351, 745.385, 745.403, 745.439, 745.8521, and new 745.471, 745.473, 745.475, 745.477, 745.479, 745.481, 745.483, 745.485 in Chapter 745, concerning Licensing. The recommended changes are needed to: (1) 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; (2) make conforming changes in Subchapters D and K relating to the implementation of a renewal process; and (3) make other clarifying changes and updates to Subchapters A and D of this chapter, 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: (1) renewal periods; (2) a process for staggered renewals; (3) a process for resolving a late application for renewal; (4) expiration dates; and (5) conditions for renewal.

A summary of the changes related to permit renewal includes: (1) defining the terms "full license," "full permit," and "initial license;" (2) removing references to a "non-expiring" permit or license; (3) requiring the renewal of a full license, certificate, and registration every two years to avoid expiration; (4) designating a "renewal period" during which the operation is to apply for renewal of its permit; (5) allowing an operation 30 additional days after the renewal period to apply for renewal if the operation is late in applying; (6) staggering the renewals so that all affected operations would not have to renew their permits at the same time; (7) outlining what an operation must submit as part of a renewal application; (8) detailing what happens after Licensing receives a renewal application; (9) explaining under what circumstances a permit expires and how an expired permit affects an operation; (10) adding language to indicate a full license is effective as long as it has not expired; (11) clarifying that a permit is subject to renewal requirements even if an enforcement action is being taken by Licensing; (12) requiring a registered home or licensed operation to apply for renewal if the permit is due for renewal while it is voluntarily suspended; and (13) requiring an operation to post the written notice of the permit's renewal.

DFPS is also requesting HHSC to propose changes to Subchapter D of this chapter (relating to 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 rule 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: (1) adding references to "shelter care" to several rules applicable to shelter care operations that lacked those references; (2) clarifying the definition for the term "regulation;" (3) 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; (4) 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; (5) clarifying that Licensing's 10-day time frame for reviewing an application pertains to an application for a compliance certificate; (6) 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; (7) clarifying when Licensing issues an initial license; (8) replacing "initial permit' with "initial license;" (9) removing outdated language that no longer is applicable; and (10) making minor corrections to improve the reader's understanding of the subject matter or to improve sentence flow.

A summary of the changes is as follows:

The amendment to §745.21: (1) adds references to "shelter care operations" to several definitions that lacked those references; (2) defines the terms "full license," "full permit," and "initial license"; and (3) clarifies the definition of "regulation."

The amendment to §745.243: (1) 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; (2) removes the initial license fee as an item required for a completed application for a license (changes to §745.345 of this chapter proposed in this packet require the initial license fee be paid prior to issuance of the initial permit); and (3) makes minor corrections to improve the reader's understanding of the subject matter.

The amendment to §745.301: (1) 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 (2) makes minor corrections to improve the sentence flow.

The amendment to §745.303 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.

The amendment to §745.321: (1) adds "shelter care" to the same places where employer-based child care is referenced since the requirements are the same for both; and (2) makes minor corrections to improve the sentence flow.

The amendment to §745.341: (1) removes the term "non-expiring permit" and includes the terms "initial license," "full license," and "full permit" that were added to §745.21 of this chapter; and (2) adds a reference to "shelter care operations" to the list of operations that receive a full permit.

The amendment to §745.343: (1) removes the term "non-expiring permit" and includes the terms "initial license" and "full license;" and (2) adds language to indicate a full license is effective as long as it has not expired.

The amendment to §745.345: (1) clarifies when Licensing issues an initial license; (2) replaces "initial permit' with "initial license;" and (3) makes minor corrections to improve the reader's understanding of the subject matter.

The amendment to §745.347: (1) replaces "initial permit' with "initial license;" (2) replaces "non-expiring permit" with "full license;" and (3) makes a minor correction to improve the sentence flow.

The amendment to §745.351: (1) replaces "initial permit' with "initial license;" (2) replaces "non-expiring permit" with "full license;" and (3) makes a minor correction to improve the reader's understanding of the subject matter.

The amendment to §745.385 adds language to indicate a license or certificate expires.

The amendment to §745.403 removes outdated references to timeframes that are no longer applicable.

The amendment to §745.439 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: (1) indicates a full license, certificate, or registration will expire if it is not renewed; and (2) conveys that there are no renewal requirements for a compliance certificate or listing.

New §745.473: (1) requires an operation with a permit that requires renewal to apply for its renewal every two years; (2) designates a time frame for the operation's "renewal period" during which the operation is to apply for renewal of its permit; (3) allows an operation 30 additional days after the renewal period to apply for renewal if the operation is late in applying for renewal; and (4) 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: (1) requires a completed renewal application in order for Licensing to evaluate a permit for renewal; and (2) indicates what the operation must submit to Licensing in order for the application to be complete.

New §745.477: (1) details what happens after Licensing receives a renewal application; (2) indicates Licensing will evaluate whether the criteria for renewal are met; (3) 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; (4) allows the operation unlimited attempts to submit any missing information and to correct the deficiencies during the renewal period; (5) 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 (6) provides that CCL may exceed the 15-day limit for good cause.

New §745.479 requires the operation to post the notice of the permit's renewal at the operation.

New §745.481 explains when a permit expires.

New §745.483: (1) requires an operation to cease operating immediately if its permit expires; and (2) requires an operation to submit a new application (as required by §745.243 of this chapter) and pay any necessary fees before resuming operation.

New §745.485 clarifies that a permit is subject to renewal requirements even if Licensing is taking an enforcement action.

The amendment to §745.8521: (1) replaces "non-expiring permit" with "registration or full license;" and (2) requires a registered home or licensed operation to apply for renewal if the permit is due for renewal while it is voluntarily suspended.

While developing the proposed rules for this packet, CCL received feedback from two different workgroups: (1) 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 (2) 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.

Lisa Subia, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections 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.

Ms. Subia also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that the safety of children in care and the quality of their care will be improved. There is not an anticipated adverse on small, or micro-businesses which must comply with the rule sections. The proposed changes do not add fees or require the purchase of any additional material or resources. There is no anticipated economic cost to persons who are required to comply with the proposed sections. The rules relating to permit renewal add a minimal amount of work to providers' workload.

Ms. Subia has determined that the proposed sections 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 Ryan Malsbary at (512) 438-5836 in DFPS's Licensing Division. Electronic comments may be submitted to [CCLRules@dfps.state.tx.us](file:///\\12AUST1001FS02\SHARE10012\Legal\RULES\RULE%20ASSIGNMENTS\0r547%20CCL%20License%20Renewals\Proposed%20Docs\CCLRules@dfps.state.tx.us), Attention: Ryan Malsbary. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-547, 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 745, Licensing

Subchapter A, Precedence and Definitions

Division 3, Definitions for Licensing

TAC Section Number(s) §745.21

Proposed Action

X Amendment

Proposed Date of Adoption:

X Other (Specify)

30 Days After Publication

The amendment 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 amendment implements HRC §42.042.

**§745.21. What do the following words and terms mean when used in this chapter?**

**The following words and terms, when used in this chapter, have the following meanings unless the context clearly indicates otherwise:**

**(1) - (5) (No change.)**

**(6) Child-care facility--An establishment subject to regulation by Licensing which provides assessment, care, training, education, custody, treatment, or supervision for a child who is not related by blood, marriage, or adoption to the owner or operator of the facility, for all or part of the 24-hour day, whether or not the establishment operates for profit or charges for its services. A child-care facility includes the people, administration, governing body, activities on or off the premises, operations, buildings, grounds, equipment, furnishings, and materials. A child-care facility does not include child-placing agencies, listed family homes, [or] employer-based child care operations, or shelter care operations.**

**(7) - (19) (No change.)**

**(20) Full license--The type of full permit that is issued to an operation that requires a license.**

**(21) Full permit--A full permit is valid as long as it does not expire, if applicable, and is not suspended, revoked, or voluntarily surrendered. A full license is a type of full permit. Other types of full permits include listings, registrations, certificates, and compliance certificates. An initial license is not a full permit**.

**(22)[(20)] Governing body--The entity with ultimate authority and responsibility for the operation.**

**(23)[(21)] Governing body designee--The person named on the application as the designated representative of a governing body who is officially authorized by the governing body to speak for and act on its behalf in a specified capacity.**

**(24)[(22)] Household member--An individual, other than the caregiver(s), who resides in an operation.**

**(25) Initial license--A time-limited license that we issue an operation in lieu of a full license so that we can subsequently determine whether to issue or deny a full license to the operation.**

**(26)[(23)] Kindergarten age--As defined in §745.101(1) of this title (relating to What words must I know to understand this subchapter?).**

**(27)[(24)] Licensed administrator--As defined in §745.8905 of this title (relating to What is a licensed administrator?).**

**(28)[(25)] Minimum standards--The rules contained in Chapter 743 of this title (relating to Minimum Standards for Shelter Care), Chapter 744 of this title (relating to Minimum Standards for School-Age and Before or After-School Programs), Chapter 746 of this title (relating to Minimum Standards for Child-Care Centers), Chapter 747 of this title (relating to Minimum Standards for Child-Care Homes), Chapter 748 of this title (relating to Minimum Standards for General Residential Operations), Chapter 749 of this title (relating to Minimum Standards for Child-Placing Agencies), Chapter 750 of this title (relating to Minimum Standards for Independent Foster Homes), and Subchapter D, Division 11 of this chapter (relating to Employer-Based Child Care), which are minimum requirements for permit holders that are enforced by DFPS to protect the health, safety and well-being of children.**

**(29)[(26)] Neglect--As defined in the Texas Family Code, §261.401(3) (relating to Agency Investigation) and §745.8559 of this title (relating to What is neglect?).**

**(30)[(27)] Operation--A person or entity offering a program that may be subject to Licensing's regulation. An operation includes the building and grounds where the program is offered, any person involved in providing the program, and any equipment used in providing the program. An operation includes a child-care facility, child-placing agency, listed family home, [or] employer-based child care operation, or shelter care operation.**

**(31)[(28)] Parent--A person that has legal responsibility for or legal custody of a child, including the managing conservator or legal guardian.**

**(32)[(29)] Permit--A license, certification, registration, listing, compliance certificate, or any other written authorization granted by Licensing to operate a child-care facility, child-placing agency, listed family home, [or] employer-based child care operation, or shelter care operation. This also includes an administrator's license.**

**(33)[(30)] Permit holder--The person or entity granted the permit.**

**(34)[(31)] Pre-kindergarten age--As defined in §745.101(2) of this title (relating to What words must I know to understand this subchapter?).**

**(35)[(32)] Program--Activities and services provided by an operation.**

**(36)[(33)] Regulation--includes the following:**

**(A) The development of rules, including minimum standards, as provided by statutory authority; and**

**(B) The enforcement of these rules and relevant statutes in relation to anyone providing care or a service that is subject to the regulation, including a permit holder, an applicant for a permit, and anyone doing so illegally without a permit.** [**The enforcement of statutes and the development and enforcement of rules, including minimum standards. Regulation includes the licensing, certifying (both state run and employer-based operations), registering, and listing of an operation or the licensing of an administrator.]**

**(37)[(34)] Report--An expression of dissatisfaction or concern about an operation, made known to DFPS staff, that alleges a possible violation of minimum standards or the law and involves risk to a child/children in care.**

**(38)[(35)] Residential child care--As defined in §745.35 of this title (relating to What is residential child care?).**

**(39)[(36)] State Office of Administrative Hearings (SOAH)--See §745.8831 and §745.8833 of this title (relating to What is a due process hearing? and What is the purpose of a due process hearing?).**

**(40)[(37)] Sustained perpetrator--See §745.731 of this title (relating to What are designated perpetrators and sustained perpetrators of child abuse or neglect?).**

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 745, Licensing

Subchapter D, Application Process

Division 3, Submitting the Application Materials

TAC Section Number(s) §745.243

Proposed Action

X Amendment

Proposed Date of Adoption:

X Other (Specify)

30 Days After Publication

The amendment 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 amendment implements HRC §42.042.

§745.243. What does a completed application for a permit include?

Application forms vary according to the type of permit. We will provide you with the required forms. Contact your local Licensing office for additional information. The following table outlines the requirements for a completed application:

|  |  |
| --- | --- |
| Type of Application | Required Application Materials |
| (1) Application for Listing a Family Home | (A) A completed Listing Request Form;  (B) A completed Request for Criminal History and Central Registry Check Form on all applicable persons. See Subchapter F of this chapter (relating to Background Checks);  (C) A completed Controlling Person Form as set forth in Subchapter G of this chapter (relating to Controlling Person and Certain Employment Prohibited); and  (D) The listing fee, if applicable. |
| (2) Application for Registering a Child-Care Home | (A) A completed Registration Request Form;  (B) A completed Request for Criminal History and Central Registry Check Form on all applicable persons. See Subchapter F of this chapter;  (C) A completed Controlling Person Form as set forth in Subchapter G of this chapter;  (D) A notarized Affidavit for Applicants for Employment with a Child-Care Facility or Registered Child-Care Home Form for any employee of the registered child-care home or any applicant you intend to hire;  (E) Proof of current certification in infant/child/adult CPR;  (F) Proof of current certification in first aid, which must include rescue breathing and choking;  (G) The registration fee;  (H) Verification that the applicant completed the required orientation within one year prior to the date of application; [and]  (I) Proof of a high school diploma or high school equivalent**;**[.]  **(J) Proof of required training as required by §747.1007 of this title (relating to What qualifications must I meet to be the primary caregiver of a registered child-care home?); and**  **(K) If the applicant is a for-profit corporation or limited liability company, proof that the corporation or company is not delinquent in paying the franchise tax. For information on the franchise tax, see §745.245 of this title (relating to How do I demonstrate that the governing body is not delinquent in paying the franchise tax?).** |
| (3) Application for Licensing a Child Day-Care Operation | (A) A completed Child Day-Care Licensing Application Form;  (B) A floor plan of the building and surrounding space to be used, including dimensions of the indoor and outdoor space;  (C) A completed Governing Body/Director Designation Form. This form is not required if the governing body is a sole proprietorship and the proprietor is also the director;  (D) Completed background checks on all applicable persons. See Subchapter F of this chapter;  (E) A completed Personal History Statement Form for each applicant that is a sole proprietor or partner, and all persons designated as director or co-director;  (F) A completed Controlling Person Form as set forth in Subchapter G of this chapter;  (G) If the applicant is a for-profit corporation or limited liability company, proof that the corporation or company is not delinquent in paying the franchise tax. For information on franchise tax, see §745.245 of this title (relating to How do I demonstrate that the governing body is not delinquent in paying the franchise tax?);  (H) Except for licensed child-care homes, proof of liability insurance or documentation that the applicant is unable to obtain liability insurance and a copy of the written notice informing the parents that there is no insurance coverage. For further information on liability insurance, see §745.249 and §745.251 of this title (relating to What insurance coverage must I have for my licensed operation? and What are acceptable reasons for not obtaining liability insurance?);  (I) A completed Plan of Operation for Licensed Facilities Form. The plan of operation must show how you **intend** [plan] to comply with the minimum standards; **and**  (J) The application fee**.**[; and]  [(K) The initial license fee.] |
| (4) Application for a Compliance Certificate for a Shelter Care Operation | (A) A completed Shelter Child Care Application Form. If the law requires that the applicant keep the shelter care location confidential, the applicant must include on the application form a valid correspondence address and telephone number, including a method to immediately contact your operation that allows our staff to obtain your location address within 30 minutes; (B) Completed background checks on all applicable persons; (C) If the applicant is a for-profit corporation or limited liability company, proof that the corporation or company is not delinquent in paying the franchise tax. For information on franchise tax, see §745.245 of this title; and (D) The application fee. |
| (5) Application for a Compliance Certificate for an Employer-Based Child Care Operation | (A) A completed Employer-Based Child Care Application Form;  (B) A floor plan of the building and surrounding space to be used, including dimensions of the indoor and outdoor space;  (C) Completed background checks on all applicable persons as required for licensed child-care centers. See Subchapter F of this chapter;  (D) If the applicant is a for-profit corporation or limited liability company, proof that the corporation or company is not delinquent in paying the franchise tax. For information on franchise tax, see §745.245 of this title; and  (E) The application fee. |
| (6)Application for Licensing a Residential Child-Care Operation including a Child-Placing Agency | (A) A completedApplication for aLicense to Operate a Residential Child-Care Facility, orChild-Placing Agency;  (B) A floor plan of the building and surrounding space to be used, including dimensions of the indoor space;  (C) Completed background checks on all applicable persons. See Subchapter F of this chapter;  (D) A completed Controlling Person Form as set forth in Subchapter G of this chapter;  (E) A completed Personal History Statement Form for each applicant that is a sole proprietor or partner, unless you are a licensed administrator;  (F) If the applicant is a for-profit corporation or a limited liability company, proof that the corporation or company is not delinquent in paying the franchise tax. For information on franchise tax, see §745.245 of this title;  (G) Proof of liability insurance or documentation that the applicant is unable to obtain liability insurance and a copy of the written notice informing the parents that there is no insurance coverage. For further information on liability insurance, see §745.249 and §745.251 of this title;  **(H) Written plans that are required by minimum standards, including §748.101 of this title (relating to What plans must I submit for Licensing's approval as part of the application process?) and §749.101 of this title (relating to What plans must I submit for Licensing's approval as part of the application process?);** [Policies, procedures, and documentation required by minimum standard rules;]  **(I)** **Written policies and** **procedures** **that are required by** **minimum standards, including §748.103 of this title (relating to What policies and procedures must I submit for Licensing's approval as part of the application process?) and §749.103 of this title (relating to What policies and procedures must I submit for Licensing's approval as part of the application process?);**  **(J) Documentation that your child-placing agency is legally established to operate in Texas; and** **(K)**[(I)] The application fee**.**[; and]  [(J) The initial license fee, if applicable.] |
| (7) Application for Certifying a Child Day- Care Operation | (A) A completed Child Day-Care Licensing Application Form;  (B) A floor plan of the building and surrounding space to be used, including dimensions of the indoor and outdoor space;  (C) A completed Governing Body/Director Designation Form;  (D) Completed background checks on all applicable persons. See Subchapter F of this chapter;  (E) A completed Personal History Statement Form for all persons designated as director or co-director;  (F) A completed Controlling Person Form as set forth in Subchapter G of this chapter; and  (G) A completed Plan of Operation for Licensed Facilities Form. The plan of operation must show how you **intend** [plan] to comply with the minimum standards. |
| (8)Application for Certifying a Residential Child-Care Operation including a Child-Placing Agency | (A) A completed Application for aLicense to Operate a Residential Child-Care Facility, or Child-Placing Agency;  (B) A floor plan of the building and surrounding space to be used, including dimensions of the indoor space;  **(C) A completed Governing Body/Director Designation Form;**  **(D)**[(C)] Completed background checks on all applicable persons. See Subchapter F of this chapter;  **(E)**[(D)] A completed Controlling Person Form as set forth in Subchapter G of this chapter;  **(F)**[(E)] A completed Personal History Statement Form for each applicant that is a sole proprietor or partner, unless you are a licensed administrator; and  **(G)**[(F)] Policies, procedures, and documentation required by minimum standard rules. |

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 745, Licensing

Subchapter D, Application Process

Division 5, Accepting or Returning the Application

TAC Section Number(s) §745.301, §745.303

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 amendment implements HRC §42.042.

§745.301. How long does Licensing have to review my application and let me know my application status?

(a) **If you are applying for a** **permit** [For all types of permits] other than **a compliance certificate** [employer-based child care], we have 21 days after receiving your application [for a permit] to review the paperwork. After the review, we will notify you in writing that your application is either:

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

(b) **If you are applying for a compliance certificate** [For an employer-based child-care permit], we have 10 days after receiving your application [for a permit] to review the paperwork. After the review, we will notify you in writing that your application is either:

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

§745.303. How many chances do I have to submit all of the required information?

**(a) Unless you are applying for a compliance certificate,** **you** [You] have three times to submit all required material. If we return your application as incomplete three times, you may not apply again until one year from the date that we returned your last application as incomplete.

**(b) If you are applying for a compliance certificate to operate an employer-based child care operation or shelter care operation, you have an unlimited amount of times to submit the required material.**

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 745, Licensing

Subchapter D, Application Process

Division 6, Reviewing the Application for Compliance with Minimum Standards, Rules, and Statutes

TAC Section Number(s) §745.321

Proposed Action

X Amendment

Proposed Date of Adoption:

X Other (Specify)

30 Days After Publication

The amendment 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 amendment implements HRC §42.042.

§745.321. What will Licensing do after accepting my application?

After we accept your application, our process of deciding to issue or deny varies depending on the type of permit you requested. For example, we must conduct an on-site inspection before issuing a compliance certificate,registration**,** or license to determine compliance with licensing minimum standards, rules, and/orstatutes. **We** [However, unless you are applying for an employer-based child-care permit, we] will decide to issue or deny **you a** [the] permit no later than two monthsafter we accept your application**, unless you are applying for an employer-based child care operation or shelter care operation permit**. For an employer-based **child care** [child-care] **operation or shelter care operation** permit, we will decide to issue or deny **you a** [the] permit no later than 30 days after we accept your application.

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 745, Licensing

Subchapter D, Application Process

Division 7, The Decision to Issue or Deny a Permit

TAC Section Number(s) §§745.341, 745.343, 745.345, 745.347, 745.351

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 HRC §§42.042, 42.048, 42.050, and 42.052.

§745.341. What type of permit will Licensing issue me **if I qualify for a permit after my application is accepted**?

(a) We issue a **full** [non-expiring] permit forlisted family homes,registered child-carehomes,employer-based child care **operations, shelter care operations**, and certified operations.

(b) We issue either an initial **license** [permit(time-limited)] or a **full license** [non-expiring permit] to all licensedoperations.

§745.343. What is the difference between an initial **license** and **full license** [non-expiring permit]?

An initial **license** [permit] is a [time-limited] permit allowing you to operate pending the issuance of a **full license** [non-expiring permit]. A **full license** [non-expiring permit] is effective as long as:

(1) - (3) (No change.)

(4) Your permit is not suspended, **expired,** revoked, or voluntarily surrendered.

§745.345. When does Licensing issue **an** initial **license** [licenses]?

We [must] issue **you** an initial license **instead of a full license** when [you meet our Licensing minimum standards, rules, and statutes] **we accept your application and determine that you qualify for a license, you pay the initial license fee,** and one of the following situations exists:

(1) **You have not yet operated with children in care or you have been operating without a license.** [You are not currently in operation but meet the appropriate minimum standards, except those with which compliance cannot be determined in the absence of children;]

[(2) You are operating but not currently licensed;]

**(2)**[(3)] Your operation has changed location **and** [and/or] has made changes in the type of child-care services it offers;

**(3)**[(4)] We licensed you for one type of child care, and you apply to add another type of child care to your program (an initial **license** [permit] is issued for the new type of child care); or

**(4)**[(5)] Change in ownership results in changes in policy and procedure or in the staff who have direct contact with the children. (See §745.437 of this title (relating to What is a change in the ownership of an operation?)).

§745.347. How long is an initial **license** [permit] valid?

An initial **license** [permit] is valid for six months from the date we issue it. We may renew it up to an additional six months. You may only have an initial **license** [permit] for a maximum of one year. The initial **license** [permit] expires when we issue or denyyou a **full license** [non-expiring one], even if the six-month period for **the** initial **license** [permit] has not yet expired at the time the **full license** [non-expiring permit] is issued or denied.

§745.351. If I have an initial **license** [permit], when will I be eligible for a **full license** [non-expiring permit]?

You will be eligible for a **full license** [non-expiring permit] when:

(1) Your initial **license** [permit] has been in effect for at least three months;

(2) - (3) (No change.)

(4) You have paid your **full license** [non-expiring license] fee **in accordance with Subchapter E of this chapter (relating to Fees)**.

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

Chapter 745, Licensing

Subchapter D, Application Process

Division 8, Dual and Multiple Permits

TAC Section Number(s) §745.385

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The amendment 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 amendment implements HRC §§42.042, 42.048, 42.050, and 42.052.

§745.385. Can multiple operations operate under one permit?

(a) (No change.)

(b) A permit that we issued prior to September 1, 2005, that allows multiple residential child-care operations to operate under that permit remains valid regarding the addresses listed on the permit until it **expires or** is revoked or voluntarily relinquished.

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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Division 9, Reapplying for a Permit

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The amendment 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 amendment implements HRC §42.042.

§745.403. Can I apply for another permit after Licensing denies or revokes my permit?

(a) If we revoke your [child day-care] permit or deny you a permit to operate a child **care** [day-care] operation [on or after September 1, 2009], you may not apply for another permit before the fifthanniversary of the date on which the denial or revocation takes effect.

[(b) If we revoke your child day-care permit or deny you a permit to operate a child day-care operation prior to September 1, 2009, you may not apply for another permit before the second anniversary of the date on which the denial or revocation takes effect.]

[(c)If we revoke your residential child-care permit or deny you a permit to operate a residential operation on or after September 1, 2005, you may not apply for another permit before the fifth anniversary of the date on which the denial or revocation takes effect.]

**(b)**[(d)]A revocation or denial takes effect when:

(1) You have waived or exhausted your due process rights regarding the revocation or denial; and

(2) Our revocation or denial of your permit is upheld.

**(c)**[(e)]This rule does not apply if your permit is revoked solely because you have relocated your operation or changed ownership.

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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Chapter 745, Licensing

Subchapter D, Application Process

Division 10, Relocation of Operation

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The amendment 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 amendment implements HRC §42.042.

§745.439. What must I do if the ownership of my employer-based child care **operation or shelter care operation** changes?

(a) - (b) (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.

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

Chapter 745, Licensing

Subchapter D, Application Process

**Division 12, Permit Renewal**

TAC Section Number(s) §§745.471, 745.473, 745.475, 745.477, 745.479, 745.481,745.483, 745.485

Proposed Action

X New

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X Other (Specify)

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The new sections 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 new sections implement HRC §§42.042, 42.048, 42.050, and 42.052.

**§745.471. What types of permits need to be renewed?**

**(a) A full license, certificate, and registration will expire if it is not renewed.**

**(b) There are no renewal requirements for a compliance certificate or listing.**

**§745.473. When do I need to apply to renew my full license, certificate, or registration?**

**(a) If your permit is subject to renewal as outlined in §745.471 of this title (relating to What types of permits need to be renewed?), you must do so every two years. During the year that you must renew your permit, your renewal period:**

**(1) begins 60 calendar days before the anniversary of when we issued your full permit to you; and**

**(2) ends on the date of the anniversary.**

**(b) If you are late in applying for the renewal of your permit, you have 30 additional calendar days after your renewal period to apply for renewal.**

**(c) If we issued your permit on or after December 1, 2017, you must apply to renew it two years from the date we issued it to you and every two years thereafter.**

**(d) If we issued your permit to you prior to December 1, 2017, your first renewal period as described in subsection (a) of this rule will occur in:**

**(1) 2018 if we issued your permit to you in an even-numbered year; or**

**(2) 2019 if we issued your permit to you in an odd-numbered year.**

**§745.475. What does a completed renewal application for a permit include?**

**(a) A completed renewal application includes the following information:**

**(1) Verification that the following information is current and accurate:**

**(A) Your operation's basic information on the DFPS website;**

**(B) The list of controlling persons at your operation;**

**(C) The list of your governing body's members, such as officers and owners, if applicable;**

**(2) Whether your operation continues to need any existing waivers and variances; and**

**(3) A list of all persons who require a background check because of their affiliation with your operation, as described in §745.615 of this chapter (relating to On Whom Must I Request Background Checks?).**

**(b) You must submit a completed renewal application in order for us to evaluate your permit for renewal.**

**§745.477. What happens after Licensing receives my renewal application?**

**(a) After receiving your renewal application, we evaluate whether you:**

**(1) Submitted all documentation and information required by §745.475 of this title (relating to What does a completed renewal application for a permit include?);**

**(2) Are currently meeting all background check requirements; and**

**(3) Have paid:**

**(A) All fees required by Subchapter E of this chapter (relating to Fees); and**

**(B) Each administrative penalty that you owe after waiving or exhausting any due process provided under Tex. Hum. Res. Code §42.078**

**(b) Within 15 days of receiving your renewal application, we will either send you written notice that:**

**(1) We have renewed your permit; or**

**(2) Your renewal application is incomplete, you are not meeting all background check requirements, and/or you have not paid a fee or administrative penalty.**

**(c) If your renewal application is incomplete and you submitted it during the renewal period, you have unlimited attempts to submit the missing information and to correct the deficiencies until the end of the renewal period.**

**(d) If your renewal application is incomplete and you submitted it during the late renewal period, you have 15 days to submit a completed renewal application from the date it was rejected.**

**(e) Notwithstanding any of the other provisions of this subchapter, we may determine that we have good cause to exceed the 15-day timeframe for processing your renewal application in circumstances that would allow us to exceed our timeframes for processing an application for a permit. See §745.327 of this chapter (relating to When does Licensing have good cause for exceeding its timeframes for processing my application?).**

**§745.479. Will I need to post the written notice of my permit's renewal?**

**Yes. Upon receiving the written notice of your permit's renewal, you must post the notice at your operation.**

**§745.481. When does my permit expire?**

**(a) Your permit expires if:**

**(1) you do not submit your renewal application during your renewal period or the late renewal period;**

**(2) you submit your renewal application during the renewal period, we reject your application as incomplete, and you do not submit a completed renewal application before the end of the late renewal period; or**

**(3) you submit your renewal application during the late renewal period, we reject your application as an incomplete application, and you do not submit a completed renewal application within 15 calendar days after rejection.**

**§745.483. What must I do if my permit expired?**

**If your permit expires, your operation must cease operating immediately. Before you can operate again, you will have to submit a new application as required by §745.243 of this chapter (relating to What does a completed application for a permit include?) and pay any necessary fees.**

**§745.485. Do I have to comply with the renewal requirements if Licensing is taking an enforcement action against my permit?**

**Yes, your permit is subject to renewal requirements even if we are taking an enforcement action against your permit.**

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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Chapter 745, Licensing

Subchapter K, Inspections and Investigations

Division 4, Voluntary Actions

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The amendment implement HRC §§42.042, 42.048, 42.050, and 42.052.

§745.8521. How long can I voluntarily suspend my permit?

**(a)** If you are registered or licensed to provide child day care, then you can request suspension of your **registration or full license** [non-expiring permit] for a maximum of 90 days.

**(b)** If you are licensed to provide residential child care, then you can request a suspension of your license for a maximum of two years.

**(c) If your permit is due for renewal while it is voluntarily suspended, you must apply to renew the permit so that it does not expire.**

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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