March 14, 2016

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§749.863, 749.931, 749.1311, 749.2563, and 749.2593; new §§749.868, 749.882, 749.943, 749.944, 749.2601, 749.2603, 749.2605, and 749.2607; and repeal §749.2594, in Chapter 749, concerning Minimum Standards for Child-Placing Agencies. The purpose of the amendments, new rules and repeal are to implement Senate Bill (S.B.) 1407 that was passed by the 84th Texas Legislature in 2015 and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy and for clarity and consistency. In December of 2014, some changes to Chapter 749 related to normalcy became effective; these changes need to be updated.

"Normalcy" is the ability of a child in care to live as normal a life as possible, including engaging in childhood activities that are suitable for children of the same age, level of maturity, and developmental level as determined by a reasonable and prudent parent standard.

Child Care Licensing (CCL) has met with three different workgroups that have provided input and comments regarding these rules related to normalcy. On September 29, 2015, CCL met with a workgroup of providers and advocates that were organized by CASA (Court Appointed Special Advocates); On October 7, 2015, CCL met with the Committee for Advancing Residential Practices; and on December 16, 2015, CCL met with a workgroup of providers.

A summary of the changes related to normalcy include: (1) creating an independent Normalcy Division in Chapter 749 to clarify and highlight the issues and make the rules related to normalcy easier to find; (2) clarifying that children must participate in childhood activities, including unsupervised childhood activities (activities that are away from and not supervised by the foster home) as much as possible; (3) defining "normalcy" and the "reasonable and prudent parent standard"; (4) listing items that must be taken into consideration when making a reasonable and prudent decision on whether a child may participate in a childhood activity; (5) clarifying who will make decisions regarding whether a child may participate in a childhood activity; (6) clarifying that a child's participation in childhood activities must be discussed during service planning meetings; (7) requiring two hours of pre-service training regarding normalcy for foster parents and certain employees of CPAs; (8) requiring that two hours of normalcy training be included in the mandated annual training for all caregivers; and (9) providing a list of curriculum components that must be included in the general pre-service and annual normalcy training.

Definitions for "childhood activities" and "unsupervised childhood activities" have been added to the definitions in §749.43 of this title (relating to What do certain words and terms mean in this chapter?). Since there will be many other changes to definitions in §749.43, the definition changes are being proposed in a different set of rules that will also make changes to Chapter 749 and be published in the same issue of the *Texas Register*. However, for purposes of understanding these proposed changes the proposed §749.43 definitions are as follows: (1) childhood activities-- activities that are generally accepted as suitable for children of the same chronological age, level of maturity, and developmental level as determined by a reasonable and prudent parent standard as specified in §749.2605 of this title (relating to What is the "reasonable and prudent parent standard"?). Examples of childhood activities include extracurricular activities, in-school and out-of-school activities, enrichment activities, cultural activities, and employment opportunities. Childhood activities include unsupervised childhood activities; and (2) unsupervised childhood activities--childhood activities that a child in care participates in away from the foster home and the foster parents. Childhood activities that are conducted or supervised by the foster parents or sponsored by the child-placing agency are not unsupervised childhood activities. Unsupervised activities may include playing sports, going on field trips, spending the night with a friend, going to the mall, or dating. Unsupervised activities may last one or more days.

In addition, some minor changes related to normalcy are being made to the Chapter 749 rules relating to service planning and children's rights. Since there are other more significant changes being made to the service planning and children's rights rules, those rules are also being proposed in a different set of rules that will also make changes to Chapter 749 and be published in the same issue of the *Texas Register*.

Finally, there are some additional rule review changes not related to normalcy that are being proposed in these rules, which consists of updating the language and numbering of tables for consistency and ease of understanding.

A summary of the changes follows:

The amendment to §749.863: (1) requires two additional hours of pre-service training regarding normalcy for foster parents, Child-Placing Agency (CPA) administrators, treatment directors, child placement staff, child placement management staff, and full-time professional service providers, except those exclusively assigned to provide adoption services; (2) updates/changes the language of "mental retardation" to "intellectual disabilities", and "pervasive development disorder" to "autism spectrum disorder"; and (3) deletes subsection (b) because this language is unnecessary. There is no need to exempt caregivers exclusively caring with primary medical needs from the training requirement because the provision contains no requirement for those caregivers. However, this language will be included in a Helpful Information box within the Minimum Standards.

New §749.868 provides an exemption to the requirement of two additional hours of pre-service training regarding normalcy for child-placing agency administrators, treatment directors, child placement staff, child placement management staff, or full-time professional service providers when the individuals have been trained on normalcy within the last 12 months.

New §749.882 lists the curriculum components that must be included in the pre-service training regarding normalcy.

The amendment to §749.931: (1) requires that the mandatory annual training for caregivers/foster parents, child placement staff, child placement management staff other than those exclusively doing adoptions, and executive director, treatment directors, and full-time professional service providers who do not hold a relevant professional license must include two hours of training specific to normalcy; (2) clarifies the language, combines some sections, and adds numbering to be more consistent throughout the rule and to make it easier to read; (3) updates/changes the language of "pervasive development disorder" to "autism spectrum disorder"; and (4) for ease of understanding deletes subsection (8) by incorporating the language into other sections and adding §749.944.

New §749.943 requires: (1) annual training regarding normalcy to include the curriculum components that are required in §749.882; and (2) subsequent training to further develop and refine an employee's knowledge and understanding of normalcy and how it should be implemented.

New §749.944 lists the training components that must be included in the mandated annual training related to prevention, recognition, and reporting on child abuse and neglect. This rule is being added so subsection (8) of the table at §749.931 can be deleted to simplify the table and ease of understanding.

The amendment to §749.1311 clarifies that: (1) a child that is verbal and developmentally able to participate must be invited to participate in the development of the child's service plan; and (2) the service planning meeting must include discussions regarding the child's participation in childhood activities.

The amendment to §749.2563 clarifies the language of this rule and deletes an outdated cite.

The amendment to §749.2593: (1) clarifies that a caregiver must be aware of a child's special supervision needs; and provide, arrange, or confirm an appropriate method of transportation for an unsupervised childhood activity; and (2) moves and revamps the current subsection (d) and (e) to the new Division 7, Normalcy.

The language of the repeal of §749.2594 is being moved and revamped into new §749.2607.

New §749.2601 defines "normalcy."

New §749.2603 states that: (1) children must participate in childhood activities, including unsupervised childhood activities, as much as possible; and (2) service planning meetings must discuss normalcy for the child.

New §749.2605: (1) defines the "reasonable and prudent parent standard"; (2) lists the items that must be taken into consideration when making a reasonable and prudent decision on whether a child may participate in a childhood activity; and (3) provides a presumption that a reasonable and prudent parent would include a child in care in foster family activities to the same extent as a child born to the foster family.

New §749.2607 states that: (1) the foster parents make the decisions regarding a child's participation in childhood activities; (2) when making this decision the foster parents must follow the reasonable and prudent parent standard; and (3) the service plan may not require prior approval ofthe parent before the designated person may consent to a child's participation in childhood activities.

Lisa Subia, Chief Financial Officer of DFPS, has determined that for each of the first five years that the amendments, new, and repeal will be in effect, there will not be costs or revenues to state or local government as a result of enforcing or administering the sections.

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 amendments, new, and repeal rules will be that the safety of children in care and the quality of their care will be improved by integrating normalcy into the minimum standards. There is an anticipated adverse impact on businesses, including small and micro-businesses, which must comply with the proposed rule changes. CPAs will be impacted. The DFPS 2014 Annual Report and Data Book states that there are 217 CPAs operating in Texas. Of those CPAs, there are 11 CPS regional divisions that operate as certified CPAs. The 11 CPS CPAs will not be discussed in this section of the fiscal impact analysis, because they do not meet the legal definition of a large, small or micro business. There is no anticipated economic cost to persons who are required to comply with the proposed rule changes, other than the persons who have a financial stake in a CPA.

Licensing has identified four proposed rules in Chapter 749 as potentially having an adverse fiscal impact on CPAs. The rules are discussed herein.

The size of the CPA and the number of foster and adopted homes that each CPA has varies significantly. A few CPAs have hundreds of foster and adoptive homes; others CPAs have 20 to 50 foster and adoptive homes, while others have even fewer foster and adoptive homes. Given this variation, it is not possible to project the fiscal impact to each CPA; however, it is possible to project an average "unit cost" for certain types of activities that are newly required by the amendments, new, and repeal rules.

The fiscal impact to CPAs primarily results from additional staff time needed to

(1) attend new pre-service training regarding normalcy; and (2) update and develop curriculum.

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

For CPAs, the staff time required to comply with the standards will impact child placement staff, child placement management staff, full-time professional service providers, treatment directors, and the child-placing agency administrators. For use in the impact analysis, DFPS calculated hourly wages for each of these categories of CPA staff, as follows (actual salaries paid to staff by a CPA may be greater or less than the averages used for these projections):

(1) Child Placement Staff - The 2016 average salary for Foster and Adoptive Development (FAD) Workers (CPS Specialists I - V) was used to determine the salary costs for the child placement staff because the FAD Workers are the child placement staff for CPS. The Fiscal Year (FY) 2016 average salary for a FAD Worker is $43,768 per year or $21.04 per hour.

(2) Child Placement Management Staff, Full-Time Professional Service Providers, and Treatment Directors - The 2016 average salary for FAD Supervisors (CPS Supervisors I - II) was used to determine the salary costs for the child placement management staff, full-time professional service providers, and treatment directors because the FAD Supervisor is the position that most often meets the minimum qualifications for and acts as the child placement management staff for CPS. It is assumed that the costs for full-time professional service providers and treatment directors would be similar to the child placement management staff. The FY 2016 average salary for a FAD Supervisor is $52,071 per year or $25.03 per hour.

(3) CPA Administrator - The 2016 average salary for CPS Regional Directors was used to determine the salary costs for the CPA administrator because the CPS Regional Directors act as the CPA administrator for each CPS region. The FY 2016 average salary for a CPS Regional Director is $93,862 per year or $45.13 per hour.

Fiscal Impact for Proposed §749.863: Revisions to §749.863 add pre-service training requirements regarding normalcy for two sets of populations: foster parents; and CPA administrators, treatment directors, child placement staff, child placement management staff, and full-time professional service providers, except those exclusively assigned to provide adoption services. This fiscal impact statement is divided into two sections, which explain the fiscal impact for each population:

(1) The proposed addition to this rule requires two additional hours of pre-service training regarding normalcy for foster parents. There are 206 private CPAs and 120 of those CPAs contract with CPS to provide foster care services. For the CPAs that contract with CPS, CCL is assuming this new requirement will not result in any new costs. Most, if not all, of the CPAs that contract with CPS already require additional hours of pre-service training to verify a foster home. In addition, H. B. 781 that was passed by the 84th Texas Legislative (2015) session now requires all CPAs that contract with CPS to provide 35 hours of pre-service training to their foster parents. The additional two hours of pre-service training for normalcy can be incorporated into the 35 hours of pre-service training that is now required by H. B. 781 via Parent Resources for Information, Development and Education (PRIDE) training or some other similar training module. Of the remaining 86 CPAs, approximately 50 CPAs provide adoption only services. Generally, the adoption only CPAs do not verify foster homes or verify very few foster homes. The remaining 36 CPAs that provide foster care services are generally small CPAs that do not verify many foster homes. However, for these CPAs, there will be some training instruction costs for the foster parents. The average cost of group training offered by local resource and referral agencies is $20 per hour. As such, the cost of instruction for pre-service training regarding normalcy would be $40 per foster parent trained. Since foster parents are not paid employees, there are no hourly wage costs for foster parents to attend a training class. In some instances CPAs will pay for these training costs for the foster parents; in other instances foster parents must incur their own costs for these trainings.

(2) The proposed addition to this rule requires two new hours of pre-service training regarding normalcy for CPA administrators, treatment directors, child placement staff, child placement management staff, and full-time professional service providers, except those exclusively assigned to provide adoption services. The training must be completed before the person can be a designated person that makes decisions regarding a child's participation in childhood activities, or within 90 days of beginning job duties, whichever occurs earlier. There are two costs associated with the additional two hours of general pre-service training regarding normalcy for CPA employees: the hourly wages paid to the training participants while attending a class and the training instruction cost. The average cost of group training offered by local resource and referral agencies is $20 per hour. Licensing assumed that training for these staff is 25% more expensive than training caregivers given that the level of expertise of trainers is usually higher. As such, the cost of instruction for pre-service training regarding normalcy would be $25 per hour per employee trained. The training will only apply to new staff. But the cost to train these staff for two hours is estimated as follows: (1) Child Care Administrator - $140.26 {(hourly wage of $45.13 X 2 hours of training) + ($25.00 X 2 hours of instruction costs)}; (2) Child Placement Management Staff, Full-Time Professional Service Providers, and Treatment Directors - $100.06 {(hourly wage of $25.03 X 2 hours of training) + ($25.00 X 2 hours of instruction costs)}; and (3) Child Placement Staff - $92.08 {(hourly wage of $21.04 X 2 hours of training) + ($25.00 X 2 hours of instruction costs)}.

Fiscal Impact for Proposed §749.882: This new rule specifies the curriculum components that must be included in the pre-service training regarding normalcy for foster parents, the child care administrator, profession level service providers, treatment director and case managers. The costs for sending these persons to training was discussed in "Fiscal Impact for Proposed §749.863" herein. However, if a CPA determines they want to provide this training in-house, then the instruction costs noted herein ($40 per foster parent and $50 per each employee for the two hours of training) would no longer be applicable, but the normalcy training curriculum would need to be developed. The training for normalcy must be two hours. CCL is estimating 30 to 50 hours to develop one hour of training. It is anticipated that a child placement management staff or some employee similarly situated will spend an average of 60 hours (30 hours X 2 training hours) to 100 hours (50 hours X 2 training hours) to develop the curriculum. Therefore, the one-time cost to update the curriculum regarding normalcy will be between approximately $1,501.80 {$25.03 (the hourly wage of a child placement management staff) X 60 hours} and $2,503.00 {$25.03 (the hourly wage of a child placement management staff) X 100 hours} per CPA.

Fiscal Impact for Proposed §749.931 and §749.943: Revisions to §749.931 require that the currently mandated annual training for caregivers and employees of CPAs must now include training regarding normalcy. Revisions to §749.943 list the curriculum components that must be included in the required annual normalcy training. There is no increase in the number of annual training hours required; there is only the requirement that training must include two hours of training regarding normalcy. Since there is only a change in the content of the training, there is no fiscal impact in the delivery of the training because the CPA already pays for or delivers the annual training for the same number of training hours. If the CPA is currently paying for outside annual training, then there are no additional costs for the CPA. However, there is a small fiscal impact when a CPA actually delivers the training and must now modify the normalcy curriculum that was developed for the pre-service training, see "Fiscal Impact for Proposed §749.882" herein. It is anticipated that a child placement management staff or some employee similarly situated will spend 20 hours to modify the pre-service normalcy curriculum into an annual training. Therefore, the one-time cost to modify the curriculum regarding normalcy will be $500.60 {$25.03 (the hourly wage of a child placement management staff) X 20 hours} per CPA.

Regulatory Flexibility Analysis - The amendments, new and repeal rules apply to the approximately 206 private CPAs. Of those, only 20 potentially fall within the statutory definition of a small or micro-business, because only 20 of the CPAs are for-profit business. Of these 20 CPAs, it is estimated that almost all of them are small businesses, and probably half are micro-businesses.

The projected economic impact on small and micro-businesses was addressed for CPAs in the foregoing section of the preamble. As noted herein, with the widely varying number of children cared for by CPAs, the fiscal impact of these rules to particular CPAs will vary, with the total dollar impact likely to be greater for CPAs that serve a larger number of children and less for CPAs that serve a smaller number of children.

DFPS did not consider any alternatives to the amendments, new or repeal rules being proposed that require additional training for normalcy to ameliorate the impact on CPAs who are small or micro-businesses, because the very purpose of this legislative requirement and these rule changes is to ensure the health and safety of children and to improve their quality of care - regardless of the size of the CPA. However, DFPS did consider different training times for normalcy, but decided a shorter training time frame was not adequate, and a longer time frame was excessive.

Ms. Subia has determined that the proposed amendments, new and repeal 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 Gerry Williams at (512) 438-5559 in DFPS's Child Care Licensing Division. Electronic comments may be submitted to [CCLRules@DFPS.state.tx.us](mailto:CCLRules@DFPS.state.tx.us). Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-543, 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 749, Minimum Standards for Child-Placing Agencies

Subchapter F, Training and Professional Development

Division 3, Pre-Service Experience and Training

TAC Section Number(s) §749.863, §749.868

Proposed Action

X Amendment

X New

Proposed Date of Adoption:

X Other (Specify)

September 1, 2016

The amendment and new section are 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 and new section implement HRC §42.042, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

§749.863. What are the pre-service hourly training requirements for caregivers and employees?

(a) Caregivers and certain employees must complete the following training hours before the noted timeframe:

|  |  |  |  |
| --- | --- | --- | --- |
| Who is required to receive the training? | What type of pre-service training? | How many hours of training are **required** [needed]? | When must the training be completed? |
| (1) All caregivers | General pre-service training | 8 hours | Before this person can be the only caregiver responsible for a child in care |
| **(2) Foster parents** | **Pre-service training regarding normalcy** | **2 hours** | **Before this foster parent can be responsible for a child in care** |
| **(3) Child-placing agency administrators, treatment directors, child placement staff, child placement management staff, and full-time professional service providers, except those exclusively assigned to provide adoption services** | **Pre-service training regarding normalcy** | **2 hours** | **Before the person can be a designated person that makes decisions regarding a child's participation in childhood activities, and within 90 days of beginning job duties** |
| **(4)**[[2]] Caregivers caring for children receiving only child care services or programmatic services | Pre-service training regarding emergency behavior intervention | 8 hours | At least 4 hours of training before the person can be the only caregiver responsible for a child in care, and all 8 hours of training within 90 days of being responsible for a child in care |
| **(5)**[(3)] Caregivers caring for children receiving treatment services for emotional disorders, **intellectual disabilities** [mental retardation], or **autism spectrum disorder** [pervasive developmental disorders] | Pre-service training regarding emergency behavior intervention | 16 hours, however, if your agency prohibits the use of emergency behavior intervention, then only 8 hours of training are needed | At least half of the required hours of training before the person can be the only caregiver responsible for a child in care, and all of the required hours of training within 90 days of being responsible for a child in care |
| **(6)** [(4)] Child-placing agency administrators, treatment directors, child placement staff, child placement management staff, and full-time professional service providers, except those exclusively assigned to provide adoption services, or those exclusively assigned to children receiving treatment services for primary medical needs | Pre-service training regarding emergency behavior intervention | 8 hours | All 8 hours of training within 90 days of beginning job duties |

(b) [Caregivers exclusively caring for children receiving treatment services for primary medical needs are exempt from pre-service emergency behavior intervention training requirements.]

[(c)]You must document the completion of each training requirement in the appropriate personnel record.

**§749.868. Must I provide pre-service training regarding normalcy to a child-placing agency administrator, treatment director, child placement staff, child placement management staff, or full-time professional service provider who was previously employed by a residential child-care operation?**

**(a) A child-placing agency administrator, treatment director, child placement staff, child placement management staff, or full-time professional service provider is exempt from completing the pre-service training regarding normalcy if the person:**

**(1) Has been employed by a residential child-care operation during the past 12 months;**

**(2) Has received training during the past 12 months on normalcy; and**

**(3) Can document that the training has been received.**

**(b) You must document the exemption factors in the appropriate personnel record.**

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 749, Minimum Standards for Child-Placing Agencies

Subchapter F, Training and Professional Development

Division 4, General Pre-Service Training

TAC Section Number(s) §749.882

Proposed Action

X New

Proposed Date of Adoption:

X Other (Specify)

September 1, 2016

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 HRC §42.042, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

**§749.882. What curriculum components must be included in the pre-service training regarding normalcy?**

**The pre-service training regarding normalcy must include the following components:**

**(1) A discussion of the definitions of normalcy and the reasonable and prudent parent standard;**

**(2) The developmental stages of children, including a discussion of the cognitive, social, emotional, and physical development of children;**

**(3) Age appropriate activities for children, including unsupervised childhood activities;**

**(4) The benefits of childhood activities to a child's well-being, mental health, and social, emotional, and developmental growth;**

**(5) How to apply the reasonable and prudent parent standard to make decisions; and**

**(6) The child's and the caregiver's responsibilities when participating in childhood activities.**

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 749, Minimum Standards for Child-Placing Agencies

Subchapter F, Training and Professional Development

Division 6, Annual Training

TAC Section Number(s) §§749.931, 749.943, 749.944

Proposed Action

X Amendment

X New

Proposed Date of Adoption:

X Other (Specify)

September 1, 2016

The amendment and 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 amendment and new sections implements HRC §42.042, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

§749.931. What are the annual training requirements for caregivers and employees?

(a)Caregivers and employees must complete the following training hours:

|  |  |
| --- | --- |
| Who is required to receive the annual training? | How many hours of annual training are **required** [needed]? |
| (1) Caregivers caring for children receiving only child-care services, programmatic services, and/or treatment services for primary medical needs | (A) For homes with two foster parents, the foster parents must receive a total of 20 hours**.** **Of the 20 hours, the training must include:** [of annual training, of which]  **(i) Four** [four] hours for each foster parent **of** [must be on] training specific to the emergency behavior interventions allowed by your agency**;**[, and one]  **(ii) One** hour for each foster parent **of** [must be on] training specific to trauma informed care**;**[.]  **(iii) Two hours for each foster parent of training specific to normalcy; and**  **(iv)** The **appropriate distribution of the** remaining **6** [10] hours [must be distributed appropriately], and each foster parent must receive some amount of the remaining training **hours**.  (B) For all other caregivers, **including a foster parent in a one-parent foster home,** [each caregiver must receive] 20 hours**.** [of annual training, of which] **Of the 20 hours, the training must include:**  **(i) Four** [four] hours **of** [must be on] training specific to the emergency behavior interventions allowed by your agency**;**[, and two]  **(ii) Two** hours **of** [must be on] training specific to trauma informed care**; and**[.]  **(iii) Two hours of training specific to normalcy.**  (C) For foster group homes only, each person's annual **required** training **hours** must **also** include two hours of transportation safety training if the person transports a child in care whose chronological or developmental age is younger than nine years old.  (D) Caregivers exclusively caring for children receiving treatment services for primary medical needs are exempt from emergency behavior intervention training requirements. |
| (2) Caregivers caring for children receiving treatment services for emotional disorders, intellectual disabilities, or **autism spectrum disorder**[pervasive developmental disorders] | (A) For homes with two foster parents, the foster parents must receive a total of 50 hours**.** [of annual training, of which] **Of the 50 hours, the training must include:**  **(i) Eight** [eight] hours for each foster parent [must be on] **of** training specific to the emergency behavior interventions allowed by your agency**;** [, and two]  **(ii) Two** hours for each foster parent **of** [must be on] training specific to trauma informed care**;**[.]  **(iii) Two hours for each foster parent of training specific to normalcy; and**  **(iv)** The **appropriate distribution of the** remaining **26** [30]hours [must be distributed appropriately], and each foster parent must receive some amount of the remainingtraining **hours**.  (B) [For homes with one foster parent, 30 hours, of which eight hours must be on training specific to the emergency behavior interventions allowed by your agency, and two hours must be on training specific to trauma informed care.]  [(C)] **For all** [All]other caregivers, **including a foster parent in a one-parent foster home,** 30 **hours. Of the 30 hours, the training must include:** [of which]  **(i) Eight** [eight] hours **of** [must be on]training specific to the emergency behavior interventions allowed by your agency**;** [, and two]  **(ii) Two** hours **of** [must be on]training specific to trauma informed care**;** [.] **and**  **(iii) Two hours of training specific to normalcy.**  **(C)**[(D)] For foster group homes only, each person's annual **required** training **hours** must **also** include two hours of transportation safety training if the person transports a child in care whose chronological or developmental age is younger than nine years old. |
| (3) Child placement staff with less than one year of child-placing experience | (A) 30 hours**.** **Of the 30 hours, the training must include:**[for the initial year, of which two hours must be on training specific to trauma informed care;]  **(i) One hour of training on prevention, recognition, and reporting on child abuse and neglect;**  **(ii) Two hours of training specific to trauma informed care;**  **(iii) Two hours of training specific to normalcy; and**  **(iv) Two hours of transportation safety training if the person transports a child placed in a foster group home whose chronological or developmental age is younger than nine years old.**  (B) [20 hours after the initial year, of which two hours must be on training specific to trauma informed care; and]  [(C)] There are no annual training requirements for emergency behavior interventions. However, if there is a substantial change in techniques, types of intervention, or agency policies regarding emergency behavior intervention, then the staff must be re-trained.  [(D) Annual training must include two hours of transportation safety training if the person transports a child placed in a foster group home whose chronological or developmental age is younger than nine years old.] |
| (4) Child placement staff with at least one year of child-placing experience **and all child placement management staff, except those exclusively assigned to provide** **adoption services** | **(A)** 20 hours**.** **Of the 20 hours, the training must include:** [,of which]  **(i)** **One hour of training on prevention, recognition, and reporting on child abuse and neglect;**  **(ii)** **Two** [two] hours **of** [must be on] training specific to trauma informed care**;**[,]  **(iii) Two hours of training specific to normalcy; and**  **(iv)** **Two** [andtwo] hours of transportation safety training if the person transports a child placed in a foster group home whose chronological or developmental age is younger than nine years old.  **(B)**There are no annual training requirements for emergency behavior interventions. However, if there is a substantial change in techniques, types of intervention, or agency policies regarding emergency behavior intervention, then the staff must be re-trained. |
| [(5) Child placement management staff] | [20 hours, of which two hours must be on training specific to trauma informed care, andtwo hours of transportation safety training if the person transports a child placed in a foster group home whose chronological or developmental age is younger than nine years old.There are no annual training requirements for emergency behavior interventions. However, if there is a substantial change in techniques, types of intervention, or agency policies regarding emergency behavior intervention, then the staff must be re-trained.] |
| **(5)**[(6)] Child-placing agency administrators, executive directors, treatment directors, and full-time professional service providers who hold a relevant professional license | (A) 15 hours[, however, annual training hours used to maintain a person's relevant professional license may be used to complete these hours]. **Of the 15 hours, the training must include:**  **(i) One hour of training on prevention, recognition, and reporting on child abuse and neglect. This requirement does not apply to executive directors; and**  **(ii) Two hours of transportation safety training if the person transports a child placed in a foster group home whose chronological or developmental age is younger than nine years old.**  **(B) Annual training hours used to maintain a person's relevant professional license may be used to complete these hours, as long as they include the necessary components of subsection (A) or those components are completed separately.**  **(C)** There are no annual training requirements for emergency behavior interventions. However, if there is a substantial change in techniques, types of intervention, or agency policies regarding emergency behavior intervention, then the staff must be re-trained.  [(C) Annual training must include two hours of transportation safety training if the person transports a child placed in a foster group home whose chronological or developmental age is younger than nine years old.] |
| **(6)**[(7)] Executive directors, treatment directors, and full-time professional service providers who do not hold a relevant professional license | **(A)** 20 hours**.** **Of the** **20 hours, the training must include** [,of which]**:**  **(i) One hour of training on prevention, recognition, and reporting on child abuse and neglect. This requirement does not apply to executive directors;**  **(ii)** **Two** [two] hours **of** [must be on] training specific to trauma informed care**;** [,]  **(iii) Two hours of training specific to normalcy;** and  **(iv)** **Two** [two] hours of transportation safety training if the person transports a child placed in a foster group home whose chronological or developmental age is younger than nine years old.  **(B)** There are no annual training requirements for emergency behavior interventions. However, if there is a substantial change in techniques, types of intervention, or agency policies regarding emergency behavior intervention, then the staff must be re-trained. |
| [(8) Child-placing agency administrators, child placement staff, child placement management staff, treatment directors, and full-time professional service providers] | [At least one hour of annual training must focus on prevention, recognition, and reporting of child abuse and neglect, including:]  [(A) Factors indicating a child is at risk for abuse or neglect;]  [(B) Warning signs indicating a child may be a victim of abuse or neglect;]  [(C) Internal procedures for reporting child abuse or neglect; and]  [(D) Community organizations that have training programs available to child-placing agency staff members, children, and parents.] |

(b) (No change.)

**§749.943. What curriculum components must be included in the annual normalcy training?**

**(a) The annual training regarding normalcy must include the curriculum components covered in the pre-service training regarding normalcy, see §749.882 of this title (relating to What curriculum components must be included in the pre-service training regarding normalcy?).**

**(b) Subsequent annual training regarding normalcy should further develop and refine an employee's knowledge and understanding of normalcy and how it should be implemented.**

**§749.944. What curriculum components must be included in the annual training related to prevention, recognition, and reporting on child abuse and neglect?**

**The training related to prevention, recognition, and reporting on child abuse and neglect must include the following components:**

**(1) The factors indicating a child is at risk for abuse or neglect;**

**(2) The warning signs indicating a child may be a victim of abuse or neglect;**

**(3) The procedures for reporting child abuse or neglect; and**

**(4) A list of community organizations that have training programs available to child-placing agency staff members, children, and parents.**

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 .

Chapter 749, Minimum Standards for Child-Placing Agencies

Subchapter I, Foster Care Services: Service Planning, Discharge

Division 1, Service Plans

TAC Section Number(s) §749.1311

Proposed Action

X Amendment

Proposed Date of Adoption:

X Other (Specify)

September 1, 2016

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, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

§749.1311. Who must be involved in developing an initial service plan?

(a) (No change.)

(b) The child, **if verbal and developmentally able to participate** [as appropriate], the parents, and the foster parents must be invited to the service planningmeeting and should participate and provide input into the development of the service plan**,** **including discussions regarding the child's participation in childhood activities**.

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 .

Chapter 749, Minimum Standards for Child-Placing Agencies

Subchapter M, Foster Homes: Screenings and Verifications

Division 5, Capacity and Child/Caregiver Ratio

TAC Section Number(s) §749.2563

Proposed Action

X Amendment

Proposed Date of Adoption:

X Other (Specify)

September 1, 2016

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, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

§749.2563. How do I determine child/caregiver ratio for a foster group home?

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

(c) [A child may be away from the foster home and caregivers in order to participate in an approved unsupervised activity as outlined in §749.2593(d) of this title (relating to What responsibilities does a caregiver have when supervising a child?).] A child does not count in the child/caregiver ratio while participating in an approved unsupervised **childhood** activity.

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 749, Minimum Standards for Child-Placing Agencies

Subchapter M, Foster Homes: Screenings and Verifications

Division 6, Supervision

TAC Section Number(s) §749.2593

Proposed Action

X Amendment

Proposed Date of Adoption:

X Other (Specify)

September 1, 2016

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, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

§749.2593. What responsibilities does a caregiver have when supervising a child?

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

(c) Caregivers counted in the child/caregiver ratio must:

(1) Be aware of the children's habits, interests, and any special needs**,** **including any special supervision needs**;

(2) - (6) (No change.)

[(d) Children in care must participate in normal childhood activities, including unsupervised activities, as much as possible. Service planning meetings, and any decision making regarding the child's need for supervision, must include discussions and consideration of normalcy for the child. Moreover, the child's service plan must specify the general parameters within which the foster parent is empowered to make decisions regarding childhood activities. The child may participate in unsupervised activities approved by the foster parent in accordance with subsection (e) of this section, and §749.2594 of this title (relating to Who should make the decision regarding a foster child's participation in childhood activities?).]

[(e) Foster parents should use a "reasonable and prudent parent" standard to decide whether a child may participate in an unsupervised activity:]

[(1) In making this decision a "reasonable and prudent parent" standard includes the assessment of the:]

[(A) Child's age;]

[(B) Child's abilities;]

[(C) Child's physical, mental, emotional, and social needs;]

[(D) Whether the activity is a normal childhood activity;]

[(E) Desires of the child;]

[(F) Surrounding circumstances, hazards, and risks of the activity;]

[(G) Other adults or children involved in the activity;]

[(H) Outside supervision of the activity, if available and appropriate; and]

[(I) Supervision instructions in the child's service plan.]

**(d)**[(2)] When a child participates in an unsupervised **childhood** activity, the caregiver must:

**(1)**[(A)] Know where the child is scheduled to be;

**(2)**[(B)] Give the child a specific time to return to the foster home or the caregiver's location;

**(3)**[(C)] **Provide, arrange, or confirm an appropriate method of transportation to and from the activity;**

**(4)** Give the child a way to contact the caregiver in an emergency; and

**(5)**[(D)] Be available to respond if the child contacts the caregiver and needs immediate assistance.

**(e)**[(f)] Caregivers that supervise a child receiving treatment services must maintain progress notes for the child, at a frequency determined by the service planning team. Caregivers must sign and date each progress note at the time the progress note is completed. Progress notes must be available for Licensing staff to review.

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 749, Minimum Standards for Child-Placing Agencies

Subchapter M, Foster Homes: Screenings and Verifications

Division 6, Supervision

TAC Section Number(s) §749.2594

Proposed Action

X Repeal

Proposed Date of Adoption:

X Other (Specify)

September 1, 2016

The repeal 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 repeal implements HRC §42.042, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

§749.2594 Who should make the decision regarding a foster child's participation in childhood activities?

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 749, Minimum Standards for Child-Placing Agencies

Subchapter M, Foster Homes: Screenings and Verifications

**Division 7, Normalcy**

TAC Section Number(s) §§749.2601, 749.2603, 749.2605, 749.2607

Proposed Action

X New

Proposed Date of Adoption:

X Other (Specify)

September 1, 2016

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, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

**§749.2601. What is "normalcy"?**

**Normalcy is the ability of a child in care to live as normal a life as possible, including:**

**(1) Engaging in childhood activities that are suitable for children of the same age, level of maturity, and developmental level as determined by a reasonable and prudent parent standard; and**

**(2) Having normal interaction and experiences within a foster family and participating in foster family activities.**

**§749.2603. Are children in care required to participate in childhood activities?**

**(a) Children in care must participate in childhood activities, including unsupervised childhood activities, as much as possible.**

**(b) Service planning meetings, and any decision making regarding the child's need for supervision, must include discussions on how normalcy for the child can be achieved, and discussions, if applicable, regarding a child's refusal to participate in childhood activities. The child's service plan must specify whether there are any restrictions on the child's participation in these activities and whether the activities may extend into sleeping hours.**

**§749.2605. What is the "reasonable and prudent parent standard"?**

**(a) The reasonable and prudent parent standard is the standard of care that a parent of reasonable judgment, skill, and caution would use to maintain the health, safety, and best interest of the child and encourage the emotional and developmental growth of the child. This standard applies to decisions about allowing a child to participate in normal childhood activities.**

**(b) When using the reasonable and prudent parent standard, a foster parent must take into consideration the following when deciding whether a child may participate in normal childhood activities:**

**(1) The child's age and level of maturity;**

**(2) The child's cognitive, social, emotional, and physical development level;**

**(3) The child's behavioral history and ability to participate in a proposed activity;**

**(4) The child's overall abilities;**

**(5) Whether the activity is a normal childhood activity;**

**(6) The child's desires;**

**(7) The surrounding circumstances, hazards, and risks of the activity;**

**(8) Outside supervision of the activity, if available and appropriate;**

**(9) The supervision instructions in the child's service plan; and**

**(10) The importance of providing the child with the most normal family-like living experience possible.**

**(c) There is a presumption that a reasonable and prudent parent would include the child in normal interactions and experiences within the foster family and allow the child to participate in foster family activities, to the same extent as a similarly situated child born to the family.**

**§749.2607. Who makes the decision regarding a foster child's participation in childhood activities?**

**(a) Except as otherwise provided in subsection (c) of this section, a foster parent makes decisions regarding a child's participation in childhood activities.**

**(b) When making decisions regarding a foster child's participation in childhood activities, the foster parent must follow the reasonable and prudent parent standard.**

**(c) The service plan may not require the prior approval of the parent before the foster parent may consent to a foster child's participation in childhood activities. However, if the parent provides notice in advance that the child is prohibited from participating in a specific activity, the foster parent must follow the parent's decision.**

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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