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| MEMORANDUM **TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES** |

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| TO: | **Chair and Members Department of Family and Protective Services Council** | agencyseal |
| FROM: | **H. L. Whitman, Jr.**  **DFPS Commissioner** |
| SUBJECT: | **Agenda Item 6b: Recommendation to adopt rule changes in to 40 TAC, Chapters 705, Adult Protective Services and 711, Investigations of Individuals Receiving Services from Certain Providers** |
| DATE: | **July 22, 2016** |

BACKGROUND AND PURPOSE

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), updated Chapters 705 and 711 in Title 40 of the Texas Administrative Code, concerning Adult Protective Services and Investigations in DADS and DSHS Facilities and Related Programs. The purpose of the new rules is to implement Senate Bills 760 and 1880 (84th Legislature), the APS Scope and Jurisdiction Bills, which expanded the APS Provider program's jurisdiction to investigate abuse, neglect, and exploitation. These bills ensure ensured continued State of Texas compliance with the Center for Medicaid and Medicare Services (CMS) requirements for the health and welfare of recipients of home and community-based services (HCBS). The bills (1) expanded the authority of Adult Protective Services (APS) to investigate, inter alia, all home and community-based service providers whether providing services in a traditional or managed care service delivery model, (2) clarified and addressed the gaps and inconsistencies that resulted from evolving service delivery changes and changes in contracting arrangements, and (3) update statutory language and requirements related to provider and agency responsibilities.

These modified rules implement APS's expanded jurisdiction and modify existing DFPS rules, as applicable, to the expanded jurisdiction. These rules will take effect on September 1, 2016. The updates in Chapters 705 and 711 will implement statutory changes as required by the APS Scope and Jurisdiction Bills.

STATUTORY AUTHORITY AND STATUTES AFFECTED

The new section is adopted 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 Department of Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section is adopted under HRC §48.001 which provides APS authority to investigate allegations of abuse, neglect, and exploitation (ANE) of elderly persons and persons with disabilities and HRC §48.252 which provides APS the authority to investigate allegations of ANE of individuals receiving services from certain providers.

COMMENTS AND RESPONSES

The proposed rules were published in the Texas Register on May 20, 2016 (Chapter 705) and May 27, 2016 (Chapter 711). DFPS received comments from the Coalition for Nurses in Advanced Practice. DFPS agrees with and has made all recommended changes proposed. Additionally, DFPS corrected a statutory reference. Responses to comments are noted below.

| **Section Affected and Original Proposal** | **Summary of Commenter’s Concern** | **Department Response and Rationale** |
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| §711.603(8). This rule specifies the contents of an investigative report. | The commenter suggested an addition to the rule pertaining to what APS includes in the investigative report. In addition to including the physician's exam, the commenter proposed adding "other health care professionals" as well. | APS includes physician's exams and documentation from other health care professionals' documentation in its investigative report. This change reflects practice and aligns with other rules proposed. DFPS agrees with the commenter's suggestion and is adopting the section with the suggested changes. |
| §711.3. Provides definitions relevant to the program. | The commenter suggests editorial changes including deleting the apostrophe in physician assistant and ensuring the terms are in alphabetical order. | DFPS agrees with the commenter's suggestion and is adopting the section with the suggested editorial changes. |
| §711.3 (18), Provides definitions relevant to the program. | DFPS observed specific language missing from a citation in this rule. | DFPS is adding "Human Resources Code" to a citation and adopting the section with the editorial change. |

RECOMMENDATION

It is recommended that the Council recommend adoption of these rules, with changes, as they are attached to this memo.

SCHEDULE

| **Milestones (To Be Completed by CPI)** | **Dates** |
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| Proposed rules presented to the Council for recommendation to publish | April 22, 2016 |
| Approval to publish proposed rules received from HHSC | April 22, 2016 |
| Proposed rules published in the *Texas Register* | May 27, 2016 |
| Thirty-day comment period ends | June 27, 2016 |
| Rules presented to the Council for recommendation to adopt | July 22, 2016 |
| Approval to adopt rules received from HHSC |  |
| Adopted rules published in the *Texas Register* |  |
| Effective date |  |

ATTACHMENTS

Attached is a copy of the proposed adopted rules, as recommended for submittal to the *Texas Register*.