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

Chapter 705, Adult Protective Services

Subchapter A, Definitions

TAC Section Number(s) §705.1001

Final Action

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September 1, 2016

The amendment 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 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 Chapter 48, as amended by S.B. 1880 and S.B. 760, notably Subchapter F, §§48.251 - 48.258 and Family Code §261.404.

§705.1001. How are the terms in this chapter defined? The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (4) (No change.)

(5) Alleged victim/perpetrator--An adult with a disability or aged 65 or older who has been reported to APS to be in a state of or at risk of self-neglect.

(6) - (14) (No change).

(15) Emergency Protective Services-- Services provided to an alleged victim subject to an investigation conducted under Subchapter F, Chapter 48, Human Resources Code, to alleviate danger of serious harm or death.

(16)Emotional harm--A highly unpleasant mental reaction with observable signs of distress, such as anguish, grief, fright, humiliation, or fury.

(17) Home and community support services agency (HCSSA)-- An agency licensed under Chapter 142, Health and Safety Code.

(18)Intimidation--Behavior by actions or words creating fear of physical injury, death, or abandonment.

(19)Ongoing relationship--A personal relationship that includes:

(A) frequent and regular interaction;

(B) a reasonable assumption that the interaction will continue; and

(C) an establishment of trust, beyond a commercial or contractual agreement.

(20)Paid caretaker--

(A) An employee of a home and community support services agency (HCSSA) providing non-Medicaid services to an alleged victim; or

(B) An individual or family member privately hired and receiving monetary compensation to provide personal care services, as defined in §142.001(22-a) of the Health and Safety Code, to an alleged victim.

(21)Person with a disability--An adult with a physical, mental, or developmental disability that substantially impairs the adult's ability to adequately provide for his own care or protection.

(22)Physical injury--Physical pain, harm, illness, or any impairment of physical condition.

(23)Protective services--The services furnished by DFPS or by a protective services agency to an alleged or designated victim (including a designated victim/perpetrator) or to the alleged or designated victim's relative or caretaker if DFPS determines the services are necessary to prevent the designated victim from being in or returning to a state of abuse, neglect, or financial exploitation. These services may include social casework, case management, and arranging for psychiatric and health evaluation, home care, day care, social services, health care, respite services, and other services consistent with Human Resources Code, Chapter 48. The term does not include the investigation of an allegation of abuse, neglect, or financial exploitation. (Human Resources Code, §48.002)

(24) Purchased Client Services-- A type of protective service provided in accordance with Human Resources Code §48.002(a)(5), including, but not limited to, emergency shelter, medical, and psychiatric assessments, in-home care, residential care, heavy housecleaning, minor home repairs, money management, transportation, emergency food, medication, and other supplies.

(25)Reporter--A person who makes a report to DFPS about a situation of alleged abuse, neglect, or financial exploitation of an alleged victim.

(26)Serious harm--In danger of sustaining significant physical injury or death; or danger of imminent impoverishment or deprivation of basic needs.

(27)Substantially impairs--When a disability grossly and chronically diminishes an adult’s physical or mental ability to live independently or provide self-care as determined through observation, diagnosis, evaluation, or assessment.

(28)Sustained perpetrator--A designated perpetrator whose validated finding of abuse, neglect, or financial exploitation of a designated victim has been sustained by an administrative law judge in a due process hearing, including a release hearing or Employee Misconduct Registry (EMR) hearing, or the designated perpetrator has waived the right to a hearing.

(29)Unreasonable confinement--An act that results in a forced isolation from the people one would normally associate with, including friends, family, neighbors, and professionals; an inappropriate restriction of movement; or the use of any inappropriate restraint.

This agency certifies that legal counsel has reviewed the adoption 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 705, Adult Protective Services

Subchapter D, Eligibility

TAC Section Number(s) §705.2103

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The repeal 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 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 Chapter 48, as amended by S.B. 1880 and S.B. 760, notably Subchapter F, §§48.251 - 48.258 and Family Code §261.404.

§705.2103. What are emergency client services?

This agency certifies that legal counsel has reviewed the adoption 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 705, Adult Protective Services

Subchapter D, Eligibility

TAC Section Number(s) §705.2103, 705.2105, 705.2107

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The new section and amendments are 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 Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the DFPS Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section and amendments implement HRC Chapter 48, as amended by S.B. 1880 and S.B. 760, notably Subchapter F, §§48.251 - 48.258 and Family Code §261.404.

§705.2103. Who is eligible for emergency protective services?

Emergency protective services may be offered to:

(1) An individual receiving services from a provider as defined by Human Resources Code §48.251(a)(9); or

(2) An adult who lives in a residence that is owned, operated, or controlled by a provider of home and community-based services under the home and community-based services waiver program described by §534.001(11)(B), Government Code, regardless of whether the adult is receiving services under that waiver program from the provider.

§705.2105. Who is eligible for purchased client services?

To be eligible for purchased client services, an alleged victim must be receiving protective services in accordance with Human Resources Code, §48.002(a)(5) and §48.205.The alleged victim musthave a service plan developed by DFPS under these sections indicatingthat client services are needed to remedy abuse, neglect, or financial exploitation.

§705.2107. When are purchased client services available?

(a) State and local resources must be used before purchased client services are expended.

(b) Not allpurchased client services are available in all geographic areas of the state. DFPS may limit the units of service or length of time that clients can receive purchased client services, based upon service plans, availability of funds, and availability of service providers.

(c) If the region does not have sufficient funds to provide purchased client services to all eligible clients, the client will not be able to receive purchased client services at the time the clientis determined eligible. Clients who are still in need of purchased client services when services are available will be given priority based upon the date of the service plan indicating the need for purchased client services.

This agency certifies that legal counsel has reviewed the adoption 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 705, Adult Protective Services

Subchapter G, Family Violence

TAC Section Number(s) §705.3102

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The amendment 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 Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the DFPS Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC Chapter 48, as amended by S.B. 1880 and S.B. 760, notably Subchapter F, §§48.251 - 48.258 and Family Code §261.404.

§705.3102. Can DFPS apply for protective orders?

When APSstaff validate an allegation that an alleged victimis a victim of family violence as specified in the Texas Family Code, §71.004, DFPSmay apply for a protective order to protect the victim. Before filing the protective order, the APScaseworker contacts the victim and a non-abusive adult member of the household, if available:

(1) (No change.)

(2) to request assistance in developing a safety plan for the protection of the victim and any non-abusive household members.

This agency certifies that legal counsel has reviewed the adoption 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 705, Adult Protective Services

Subchapter J, Release Hearings

TAC Section Number(s) §705.4103, 705.4105, 705.4107

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The amendments implement HRC Chapter 48, as amended by S.B. 1880 and S.B. 760, notably Subchapter F, §§48.251 - 48.258 and Family Code §261.404.

§705.4103. Does the designated perpetrator have the right to appeal?

(a)When APS staff validates an allegation of abuse, neglect, or financial exploitation against a designated perpetrator and an entity or employer (such as a contracting agency or senior center) allows such designated perpetrator to have access to adults with disabilities, adults aged 65 or older, or children, then the APS caseworker may notify the entity of the findings by complying with this subchapter. If the findings are to be released to any entity or employer, the designated perpetrator must be given prior written notification, except in emergencies, and an opportunity to request an Administrative Review of Investigative Findings and a hearing before the State Office of Administrative Hearings.

(b) - (d) (No change.)

§705.4105. How is the designated perpetrator notified of the intent to release?

(a) The caseworker must give written notification to each designated perpetrator if:

(1) (No change.)

(2) the findings are to be released outside of DFPS to an entity or employer which allows the designated perpetrator access to adults with disabilities, adults aged 65 or older, or children; and

(3) (No change.)

(b) Written notification must include:

(1) (No change.)

(2) the entity or employer to which the findings will be released;

(3) - (8) (No change.)

§705.4107. What is the designated perpetrator's role during an administrative review?

(a) (No change.)

(b) The designated perpetrator is responsible for:

(1) any costs incurred for the review, except for interpreter services provided by DFPS.

(2) (No change.)

This agency certifies that legal counsel has reviewed the adoption 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 705, Adult Protective Services

Subchapter L, Risk Assessment

TAC Section Number(s) §705.6101

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The amendment implements HRC Chapter 48, as amended by S.B. 1880 and S.B. 760, notably Subchapter F, §§48.251 - 48.258 and Family Code §261.404.

§705.6101. What assessments does APS use in an in-home case?

(a) APS uses assessments to determine whether an elderly person or individual with a disability is in imminent danger of abuse, neglect, or financial exploitation or is in a state of abuse, neglect, or financial exploitation and needs protective services.

(b) - (d) (No change.)

This agency certifies that legal counsel has reviewed the adoption 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 705, Adult Protective Services

Subchapter M, Confidentiality and Release of Records

TAC Section Number(s) §705.7103, 705.7105

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The amendments implement HRC Chapter 48, as amended by S.B. 1880 and S.B. 760, notably Subchapter F, §§48.251 - 48.258 and Family Code §261.404.

§705.7103. To whichinvestigations does this subchapter apply?

These rules apply to investigations conducted by the Department of Family and Protective Services Adult Protective Services staff under Chapter 48 of the Human Resources Code and §261.404 of the Texas Family Code.

§705.7105. Which definitions apply to this subchapter?

The following words and terms have the following meanings unless the context clearly indicates otherwise:

(1) Adult Protective Services (APS) client--An elderly person or person with a disability as defined in Human Resources Code, §48.002(1) and (8), or a person under age 18 years receiving services from certain providers as described in §261.404 of the Texas Family Code.

(2) Case records--All records described in §48.101 or §48.102 of the Human Resources Code, which were collected, developed, or used in an abuse, neglect, or exploitation investigation, or in providing services as a result of an investigation, and which are under the custody and control of DFPS.

(3) - (4) (No change.)

(5) Report--An allegation of abuse, neglect, or exploitation, as described in §48.002 of the Human Resources Code, this Chapter, and Chapter 711 of this title (relating to Investigations of Individuals Receiving Services from Certain Providers) made to DFPS.

(6) (No change.)

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

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