July 8, 2016

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§747.401, 747.605, 747.901, 747.1007, 747.1107, 747.1119, 747.1309, 747.1401, 747.1403, 747.2901, 747.3101, 747.3203, 747.3221, 747.3307, 747.5001, 747.5003, and 747.5005; new §§747.1301, 747.1303, 747.1305, 747.1307, 747.3617, and 747.3619; and repeal of §§747.1109, 747.1301, 747.1303, 747.1305, 747.1307, and 747.2713 in Chapter 747, concerning Minimum Standards for Child-Care Homes. The amendments to §§747.401, 747.605, 747.1401, 747.2901, 747.3221, 747.3307, 747.5001, 747.5003, and 747.5005; and new §747.1301 and §747.3619 are adopted with changes to the proposed text published in the May 20, 2016, issue of the *Texas Register* (41 TexReg 3672). The amendments §§747.901, 747.1007, 747.1107, 747.1119, 747.1309, 747.1403, 747.3101, and 747.3203; and new §§747.1303, 747.1305, 747.1307, 747.3617, and repeal of §§747.1109, 747.1301, 747.1303, 747.1305, 747.1307, and 747.2713 are adopted without changes to the proposed text and will not be republished.

The purpose of the amendments, new sections and repeals is to implement needed changes to comply with the Child Care and Development Block Grant Act of 2014.

The Child Care and Development Block Grant (CCDBG) Act of 2014 (the "Act") is the first comprehensive revision of the Child Care and Development Fund (CCDF) program since 1998. (The CCDF is codified in 42 USC §9857 et seq.) The Texas Workforce Commission (TWC) administers the CCDF, which is the primary federal funding source devoted to providing low-income families with access to child care. The Act makes significant reforms to the CCDF programs to raise the health, safety, and quality of child care. The Act does this by mandating that states comply with a multitude of additional requirements in order to continue receiving the CCDF funding. Although TWC is the lead agency for determining eligibility and distributing the subsidy monies, DFPS is the agency responsible for licensing child care operations, establishing health and safety regulations, and monitoring eligible operations for compliance. Many of the Act's additional requirements relate to the responsibilities of DFPS. The provisions of the Act that have a significant impact on Child Care Licensing (CCL) and this chapter relate to the following topics: health and safety requirements and training on those requirements.

The changes related to training will impact Licensed Child-Care Homes (LCCHs) and Registered Child-Car Homes (RCCHs). The new health and safety training requirements mandated by the Act include the following topics for orientation and annual training: (1) more robust emergency preparedness plans; (2) administering medication; (3) food allergies; (4) building and physical premises safety; and (5) handling, storing, and disposing of hazardous materials.

There are also some topics required by the Act that are already required in annual training, but are not currently required in the orientation for LCCHs and RCCHs. The new and additional health and safety training requirements for LCCHs and RCCHs are: (1) recognizing and preventing shaken baby syndrome; (2) safe sleep practices; (3) understanding early childhood brain development; and (4) precautions in transporting children if the home transports a child whose chronological or developmental age is younger than nine years old.

In addition to the training requirements the Act increases health and safety requirements for LCCHs and RCCHs. The health and safety requirements correlate to some of the training topics. The changes to the minimum standards support the health and safety requirements, including requiring homes to: (1) obtain food allergy emergency plans for children with known food allergies, post a list of food allergies at the home, and carry the child's emergency plan on field trips; and (2) use, store, and dispose of hazardous materials as recommended by the manufacturer.

The summary of the changes are:

The amendment to §747.401 for food allergies that require an emergency plan requires a home to either: (1) post the list of each child's food allergies in a prominent place during all hours of operation, and if a parent requests it, maintain privacy for the child (for example, a clipboard hung on the wall with a cover sheet over the list); or (2) make sure all caregivers and employees that prepare and serve food are made aware of each child's food allergies.

The amendment to §747.605 adds a requirement for homes to obtain a completed food allergy emergency plan before admitting a child into care, if applicable.

The amendment to §747.901 updates a cite and makes the language consistent.

The amendment to §747.1007 requires an additional qualification for a primary caregiver of a RCCH to include proof of training on ten new topics.

The amendment to §747.1107 requires an additional qualification for a primary caregiver of a LCCH to include proof of training on ten new topics.

The repeal of §747.1109 deletes an outdated grandfather rule.

The amendment to §747.1119 corrects a cite.

The repeal of §747.1301 moves the content of this rule to new §747.1303.

New §747.1301: (1) includes the content of previous §747.1305; (2) clarifies the wording to be consistent with the current wording of the operational policies rule; (3) adds components that must be addressed in the overview of prevention, recognition, and reporting of child abuse and neglect; and (4) adds nine new orientation topics for caregivers.

The repeal of §747.1303 moves the content of this rule to new §747.1307.

New §747.1303 includes the content of previous §747.1301.

The repeal of §747.1305 moves the content of this rule to new §747.1301.

New §747.1305: (1) includes the content of previous §747.1307; (2) adds six topics that must be covered in the annual training of caregivers; and (3) deletes a redundant paragraph about transportation safety training.

The repeal of §747.1307 moves the content of this rule to new §747.1305, with one minor modification.

New §747.1307: (1) includes most of the content of previous §747.1303 with one minor modification; (2) deletes the pre-application course content from previous §747.1303 because it is already required at §747.1007; and (3) adds a reference to the transportation safety training requirement.

The amendment to §747.1309: (1) adds six topics that must be covered in the annual training of primary caregivers; and (2) deletes a redundant paragraph about transportation safety training.

The amendment to §747.1401 updates some cites; replaces "physician" with "health-care professional"; and clarifies the language in the rule.

The amendment to §747.1403 deletes a reference to a rule and spells out all but one of the requirements of the deleted reference to include: (1) an overview of the home's policies; (2) an overview of child abuse and neglect, including reporting; (3) the procedures to follow in an emergency; and (4) the location and use of fire extinguishers and first-aid equipment. The deleted requirement for an overview of the minimum standards is no longer needed, because this new rule only applies to household members.

The repeal of §747.2713 because the information is already included in §747.503, §747.1301(2), and §747.1403(1).

The amendment to §747.2901: (1) adds the requirement that caregivers must have a copy of a child's food allergy emergency plan and medications, if applicable, when going on field trips; (2) makes the language consistent; and (3) deletes an outdated term.

The amendment to §747.3101: (1) adds that children must not be served foods identified on their food allergy emergency plan; and (2) deletes the requirement "you must not use food as . . . punishment", because this requirement is already noted in §747.2705.

The amendment to §747.3203 clarifies that a child-care home must use, store, and dispose of hazardous materials as recommended by the manufacturer.

The amendment to §747.3221 clarifies that caregivers must follow universal precautions as outlined by the CDC when handling bodily fluids that may contain blood, including placing gloves contaminated with blood in a tied, sealed, or otherwise closed plastic bag and discarding them immediately.

The amendment to §747.3307 clarifies that a child's soiled clothing must be placed in a tied, sealed, or otherwise closed plastic bag and be sent home with the child.

New §747.3617 defines a food allergy emergency plan, including a list of foods a child is allergic too, possible symptoms, and what steps to take if there is an allergic reaction.

New §747.3619 requires: (1) a food allergy emergency plan for each child with a known food allergy that has been diagnosed by a health-care professional; and (2) the plan to be signed by the child's health care professional and a parent, posted if the parent consents, and taken on field trips.

The amendment to §747.5001 clarifies in more detail what an emergency preparedness plan is by distinguishing between an evacuation, relocation, and sheltering/lock-down.

The amendment to §747.5003 adds to the requirements for the emergency prepared plan to also include: (1) staff's responsibility in a sheltering/lock-down emergency for the orderly movement of children to a designated location within the home where children should gather; (2) how staff will continue to care for children until each child has been released; and (3) how children will be reunified with their parents as the evacuation, relocation, or sheltering/lock-down is lifted.

The amendment to §747.5005: (1) requires four practice sheltering drills for severe weather each year; (2) requires four practice lock-down drills for endangering persons each year; and (3) adds the "sheltering" language for clarification.

The sections will function so that: (1) DFPS will be in compliance with the Act; (2) there will be clarification regarding health and safety requirements and training on those requirements; and (3) there will be a reduced risk to children.

The proposed rules were published in the *Texas Register* on May 20, 2016. DFPS submitted rule changes for Chapter 744, Minimum Standards for School-Age and Before- and After-School Programs, Chapter 745, Licensing, Chapter 746, Minimum Standards for Child-Care Centers, and Chapter 747 Minimum Standards for Child Care Homes. DFPS received approximately 31 comments regarding 41 rule changes. Many of the rule changes are intertwined with the same or similar topics across the chapters. For example, while the comments touched upon 41 different rules, the rules only related to 12 different topics. We received comments from Better Beginnings Children's Center, The Ginger Bread House, Adventure Discovery Centers, First Church Preschool at First Christian Church, Flamingo Island Preschool, Adventure Discovery Centers, Camp Fire First Texas, Dallas AEYC, UTA, Eastfield College, Caring Corner, Kids Only, Copperfield Church Weekday Preschool, and Adventure Discovery Centers. Most of the comments were from centers and related to Chapter 746, though the responses were fairly varied in relation to the topics. There was also a workgroup that met on April 5 and May 16, 2016 to discuss the recommended changes to the minimum standards. While both workgroup meetings were prior to the publication of the rules in the *Texas Register*, the rule process was too far along to modify the rules before publication. However, the comments from the workgroup have been treated as comments made during the public comment period. The workgroup commented on several rules. Most of the comments from home providers were related to the cost of background checks. Responses to comments are noted below.

Comments concerning §747.401: One commenter thanked DFPS for addressing food allergies and said she has seen excellent methods of posting food allergies.

Response: Based on the comments to a similar rule in Chapter 746 (§746.403) and the fact that Licensed and Registered Homes have substantially less employees and are smaller in size, DFPS is clarifying that: (1) the list only includes those food allergies that require an emergency plan; (2) deletes the parent's permission requirement; and (3) requires the home to either post the list in a prominent place during all hours of operation, but if a parent requests it you must maintain the child's privacy (for example, a clipboard hung on the wall with a cover sheet over it), or make sure that all caregivers and employees that prepare and serve food are made aware of each child's food allergies.

No comments concerning §747.605, however, based on the comments to a similar rule in Chapter 746 (§746.403) DFPS deletes the parent's permission requirement, but §747.401 allows a parent to request that the home protect the privacy of their child.

Comments concerning §747.1007 and §747.1107: The commenter stated that caregivers need more than a high school diploma.

Response: DFPS recommends that this rule be adopted with no changes. DFPS was not recommending changes to the high school diploma requirements, but adding federal mandated training requirements. DFPS is recommending no changes because: (1) this change adds mandated training requirements; (2) current rules allow for a student in a child-care-related career program to develop on the job skills in the center with teacher oversight and instruction. To require higher than a high school diploma would eliminate this program, which is able to provide enhanced training and develop long term staff; (3) there are required hours of annual training for all caregivers to further staff development; and (4) increased education will require a significant increase in costs for providers, and ultimately the parents. Note: The commenter may have also been commenting on Chapters 744 and/or 746, however, the rules related to diploma requirements in those Chapters were not proposed nor are they open for public comment.

No comments concerning §747.1301, however, DFPS is deleting the word "internal" from "procedures for reporting child abuse or neglect" at §747.1301(3)(C) to eliminate any confusion that a home may create internal policies to limit or delegate reporting.

Comments concerning §747.1401: One commenter stated "physician" should be changed to "health-care professional" to be more inclusive of advanced practice nurses.

Response: DFPS agrees with the commenter and has made this change.

No comments concerning §747.2901, however, DFPS determined that the outdated term "message pager" needed to be deleted from paragraph (8).

Comments concerning §747.3221: The workgroup commented that they wanted further clarification on what "sealed" meant.

Response: DFPS agrees with the commenter and has clarified the term "sealed".

Comments concerning §747.3307: The workgroup commented that they wanted further clarification on what "sealed" meant. Another commenter wanted to be able to wash soiled clothes to be more home/parent friendly.

Response: DFPS agrees with the commenter and has clarified the term "sealed". DFPS does not agree with washing soiled clothes because of the high possibility of infection and cross contamination.

No comments concerning §747.3619, however, based on the comments related to a similar rule in Chapter 746 (§746.3819), DFPS clarified that a child's food allergy must be diagnosed by a health-care professional. DFPS also deleted language requiring the plan to be posted and to be taken on field trips, because these requirements are already included at §747.401 and §747.2901.

Comments concerning §747.5001: A comment at the DFPS Council Meeting suggested that adding "lock-down" to "sheltering" would clarify the term.

Response: DFPS agrees with the commenter and has changed the term "sheltering" to "sheltering/lock-down".

No comments concerning §747.5003, however, based on the comment to §747.5001 DFPS has changed the term "sheltering" to "sheltering/lock-down".

Comments concerning §747.5005: The workgroup commented that it would be helpful to distinguish between sheltering for weather and dangerous persons and adding drills for dangerous persons.

Response: DFPS agrees with the commenter and has distinguished between "sheltering" for weather situations and "lock-down" for dangerous persons; and are requiring four drills for each, every year.

Comments not applicable: There were eight commenters that provided comments on rules that were not proposed nor are they out for public comment: (1) six commenters stated they were in favor of lowering child/caregiver ratios; (2) one commenter stated discrimination language needed to be beefed up over 5 different chapters, and provided quite a few comments on Chapter 749; and (3) one commenter had no comments that were forwarded.

Response: Since these comments were related to rules that were not out for public comment, DFPS cannot take any action.