July 8, 2016

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §745.505 and §745.615; and new §745.616 in Chapter 745, concerning Licensing, without changes to the proposed text published in the May 20, 2016, issue of the *Texas Register* (41 TexReg 3660) and will not be republished.

The justification of the amendments and new section is to implement needed changes to comply with the Child Care and Development Block Grant Act of 2014 and Senate Bill (S.B) 1496, 84th Regular Legislative Session.

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 background checks.

In regards to background checks, Senate Bill (S.B.) 1496, 84th Regular Legislative Session, amended HRC §42.0523 and §42.056 in order to comply with the Act's requirements. A summary of the background check changes in response to the Act and S.B. 1496 include: (1) requiring Listed Family Homes that provide care to unrelated children to pay biennial background check fees of $2.00 per person; and (2) requiring Licensed Child-Care Homes, Registered Child-Care Homes, and Listed Family Homes that provide care to unrelated children to obtain fingerprint-based criminal history checks (these homes were previously only required to have name-based criminal history checks). There is also a transitional rule which clarifies which persons are required to have a fingerprint-based criminal history check and when the checks are due.

The summary of the changes follows:

The amendment to §745.505 requires Listed Family Homes that provide care to unrelated children to pay biennial background check fees of $2.00 per person.

The amendment to §745.615 requires Licensed Child-Care Homes, Registered Child-Care Homes, and Listed Family Homes that provide care to unrelated children, to request fingerprint-based criminal history checks.

New §745.616 clarifies which persons in these homes are required to have a fingerprint-based criminal history check and when the request for checks are due.

The sections will function so that: (1) DFPS will be in compliance with the Act; (2) DFPS will be in compliance with HRC §42.056 (S.B. 1496); (3) there will be clarification regarding background checks; and (4) there will be a reduced risk to children.

During the public comment period, DFPS received one comment that was in favor of fingerprint-based background checks for all types of care; and two comments that were not clear. There were six commenters that were against the fingerprint-based background checks because of the financial burden (primarily a one-time cost of approximately $41.25 per person in the home that needs the check). Suggestions were made for the state to pay these costs, exclude those living in Texas for more than five years, and exclude those in business for over 10 years.

Response concerning §745.615: DFPS recommends that this rule be adopted with no changes, because this requirement is needed to comply with the Act and is mandated by Senate Bill 1496, 84th Regular Legislative Session, which amended Human Resources Code §42.0523 and §42.056.