July 8, 2016

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§746.401, 746.403, 746.605, 746.901, 746.1303, 746.1305, 746.1307, 746.1309, 746.1311, 746.3001, 746.3301, 746.3407, 746.3425, 746.3505, 746.5201, 746.5202, 746.5205, and 746.5207; new §746.3817 and §746.3819; and repeal of §746.5203, in Chapter 746, concerning Minimum Standards for Child-Care Centers. The amendment to §§746.401, 746.403, 746.605, 746.1303, 746.1305, 746.1309, 746.1311, 746.3001, 746.3425, 746.5201, 746.5202, and 746.5205; and new §746.3819 are adopted with changes to the proposed text published in the May 20, 2016, issue of the *Texas Register* (41 TexReg 3663). The amendments to §§746.901, 746.1307, 746.3301, 746.3407, 746.3505, and 746.5207; new §746.3817; and the repeal of §746.5203 are adopted without changes to the proposed text and will not be republished.

The justification of the amendments, new rules and repeal 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 Centers. 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; (5) handling, storing, and disposing of hazardous materials; and (6) precautions in transporting children if the center 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 Licensed Child-Care Centers. 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 operations to (1) obtain food allergy emergency plans for children with known food allergies, post a list of food allergies at the operation, 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 amendments to §746.401: (1) adds a list of each child's food allergies that require an emergency plan; (2) updates the name of the *Parent Notification Poster*, and (3) makes other wording changes for consistency.

The amendment to §746.403 clarifies that for a list of each child's food allergies that require an emergency plan: (1) the center must post the list during all hours of operation where your prepare food and in each room where the child may spend time; (2) the posting must be in a place where employees may easily view the list; (3) if a parent requests it, the center must maintain the privacy of the child (for example, a clipboard hung on the wall with a cover sheet over the list); and (4) the center must make sure all caregivers and employees that prepare and serve food are made aware of each child's food allergies. The amendment also deletes the posting information about an emergency evacuation and relocation plan because it is duplicative.

The amendment to §746.605 adds a requirement for centers to obtain a completed food allergy emergency plan before admitting a child into care, if applicable.

The amendment to §746.901 updates a cite and makes the language consistent. The amendments to §746.1303: (1) adds six topics that must be covered in the orientation of employees hired after September 1, 2016; (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) requires centers to share the emergency preparedness plan with all employees.

The amendment to §746.1305 updates the existing language for a current training topic.

The amendment to §746.1307 clarifies when a caregiver is exempt from pre-service training.

The amendments to §746.1309: (1) adds six topics that must be covered in the annual training of caregivers; (2) deletes a redundant paragraph about transportation safety training; and (3) increases from 50% to 80% the amount of annual training hours that may be obtained through self-instructional training, but no more than three hours of the self-instructional training may come from a person reading written materials or watching a video on their own.

The amendments to §746.1311: (1) adds six topics that must be covered in the annual training for child-care center directors; (2) deletes a redundant paragraph about transportation safety training; and (3) increases from 50% to 80% the amount of annual training hours that may be obtained through self-instructional training, but no more than three hours of the self-instructional training may come from a person reading written materials or watching a video on their own.

The amendment to §746.3001 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; and deletes and outdated term.

The amendments to §746.3301: (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 §746.2805.

The amendment to §746.3407 requires a child-care center to use, store, and dispose of hazardous materials as recommended by the manufacturer.

The amendment to §746.3425 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 §746.3505 clarifies that a child's soiled clothing must be placed in a sealed plastic bag and be sent home with the child.

New §746.3817 defines a food allergy emergency plan, including a list of foods a child is allergic to, possible symptoms, and what steps to take if there is an allergic reaction.

New §746.3819 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.

The amendment to §746.5201 clarifies in more detail what an emergency preparedness plan is by distinguishing between an evacuation, relocation, and sheltering/lock-down.

The amendments to §746.5202 adds to the requirements for an emergency preparedness plan to also include: (1) the staff responsibility in a sheltering/lock-down emergency for the orderly movement of children to a designated location within the center 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 repeal of §746.5203 is because all of the information is already included in §746.1303(4) and §746.507.

The amendment to §746.5205: (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" and "lock-down" language for clarification.

The amendment to §746.5207 clarifies the wording of an emergency evacuation and relocation diagram and where the diagram should be posted.

The sections will function so that: (1) DFPS will be in compliance with the Act; (2) there will be clarification regarding the 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 §746.401: The workgroup had several comments and questions about this rule: (1) what constitutes permission; (2) not posting would not be safe for the children; (3) would an opt out clause work; (4) how does a center post the list; (5) how discreet should the posting be; and (6) posting where food is "served" might be confusing; One commenter applauded the new emphasis on food allergies. There were two commenters who suggested clarifying that a food allergy emergency plan should only apply to an allergy diagnosed from a doctor; otherwise parents could state a child has an undiagnosed allergy.

Response: The DFPS agrees with the commenters and rewrote the rule to clarify that: (1) the list only includes those food allergies that require an emergency plan; and (2) deletes the parent's permission requirement, but allows a parent to request that the posting protect the privacy of their child - see §746.403.

Comments concerning §746.403 and §746.605: The workgroup had several comments and questions about this rule: (1) what constitutes permission; (2) not posting would not be safe for the children; (3) would an opt out clause work; (4) how does a center post the list; (5) how discreet should the posting be; and (6) posting where food is "served" might be confusing.

Response concerning §746.403: DFPS agrees with the commenters and rewrote the rule to simplify it and clarify that: (1) the list must be posted where the center prepares food and in each room where the child may spend time; (2) the posting must be in a place easily viewed by employees; (3) if requested by the parent, the center must maintain the child's privacy (for example, a clipboard hung on the wall with a cover sheet over the list); and (4) the center must make sure that all caregivers and employees that prepare and serve food are made aware of each child's food allergies.

Response concerning §746.605: DFPS agrees with the commenters and deletes the parent's permission requirement, but allows a parent to request that the posting protect the privacy of their child - see §746.403.

Comments concerning §746.1303: The workgroup that met on 4/5/16 recommended moving the newly proposed six pre-service training topics in §746.1305 to this orientation rule. It was felt that this information needed to be provided at orientation instead of pre-service training.

Response: DFPS agrees with the commenter and has moved the six topics from §746.1305 to this orientation rule. Even though there was no comment on the issue, DFPS is also deleing the word "internal" from "procedures for reporting child abuse or neglect" at §746.1303(a)(3)(C) to eliminate any confusion that centers may create internal policies to limit or delegate reporting.

Comments concerning §746.1305: The workgroup that met on 4/5/16 recommended moving these newly proposed six pre-service training topics to §746.1303, the orientation rule. It was felt that this information needed to be provided at orientation instead of pre-service training.

Response: DFPS agrees with the commenter and has moved the six topics from this rule to §746.1303.

Comments concerning §746.1307: There was one commenter that did not believe anyone should be exempt from training.

Response: DFPS recommends that this rule be adopted with no changes. There are limited exemptions from pre-service training (two years prior experience or 24 hours of documented training). With the clarification, the exemptions are more appropriate. In addition, a Center may require more training and does not have to allow exemptions of their employees. In other words, a Center could require higher standards than these minimum standards.

Comments concerning §746.1309: Regarding allowing a 50% to 80% increase for self-instructional training, there were: (1) eight commenters (one of those commenters had an additional six co-signees) that were not in favor of this change because in their opinion the training registry may suffer; in person training promotes better understanding, is more effective, provides better guidance and practice; the small number of training hours and minimal education mandates a high quality and effective training; and self-instructional training (including individuals reading materials) is generally a lower quality of training; (2) one commenter was in favor of the change, but worried that the quality would not be high and it would be abused; and (3) one commenter was in favor of the change.

Response concerning §746.1309 regarding allowing a 50% to 80% increase for self-instructional training: During the survey and the forums of the comprehensive review, there were eleven requests for a higher percentage of self-instructional hours due to high turnover, time, and costs. There were two requests to mandate that 50% of the training be conducted by individuals on the Texas Trainer Registry. Note: Many of the trainers on the registry offer self-instructional, web-based training.

DFPS understands that some training may not be of the highest quality, but that is true for both instructor-led and self-instructional training. The Agri-Life training on the other hand, has been widely praised as very good training, even though it is self-instructional. Most, if not all, professions are allowing web-based training and not mandating in-person training. Also, the 50% to 80% change was made to the child-care home minimum standards in 2012 with no noticeable increase in complaints regarding quality of training. The problems appear to be: (1) how to make sure training of any kind is quality training; and (2) caregivers simply reading materials or watching videos on their own have limited, value especially for newer caregivers.

DFPS is recommending an increase of 50% to 80% for the amount of annual training hours that may be obtained through self-instructional training, but making the following changes: (1) no more than three hours of the self-instructional training hours may come from a person reading written materials or watching a video on their own; and (2) during the comprehensive review of Chapter 746 there will be further clarification that the directors must ensure that caregivers receive appropriate and quality training.

More comments concerning §746.1309: There was one comment that stated 24 hours of annual training was too low.

Response: The 24 hours of annual training is mandated by statute and cannot be changed.

More comments concerning §746.1309: There were two similar comments that wanted clarification on whether (1) this rule is requiring more or less training, but the commenter did say that the training seemed reasonable; and (2) the 24 hours of annual training was in addition to the 24 hours of pre-service training that is required.

Response: The change to this rule does not require additional hours of training, but does require additional curriculum topics to be covered within the current number of annual training hours. Also, §746.1313 already clarifies that in addition to the pre-service training, the 24 hours of annual training must be obtained within the first 12 months from the date of employment. Even though there were no comments on the issue, DFPS is also deleing the word "internal" from "procedures for reporting child abuse or neglect" at §746.1309(d)(3) to eliminate any confusion that a center may create internal policies to limit or delegate reporting.

Comments concerning §746.1311: Regarding allowing a 50% to 80% increase for self-instructional training, there were: (1) eight commenters (one of those commenters had an additional six co-signees) that were not in favor of this change because in their opinion the training registry may suffer; in person training promotes better understanding, is more effective, provides better guidance and practice; the small number of training hours and minimal education mandates a high quality and effective training; and self-instructional training (including individuals reading materials) is generally a lower quality of training; (2) one commenter was in favor of the change, but worried that the quality would not be high and it would be abused; and (3) one commenter was in favor of the change.

Response: Based on the comments and responses that were made to §746.1309, DFPS is recommending an increase of 50% to 80% for the amount of annual training hours that may be obtained through self-instructional training, and no more than three hours of the self-instructional training hours may come from a person reading written materials or watching a video on their own. Though there was no comment, DFPS is deleting the word "internal" before "procedures for reporting child abuse or neglect" at §746.1311(d)(3) to eliminate any confusion that a center may create internal policies to limit or delegate reporting.

No comments concerning §746.3001, however, DFPS determined that the outdated term "message pager" needed to be deleted from paragraph (8).

Comments concerning §746.3425: 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 §746.3819: One commenter applauded the new emphasis on food allergies. There were two commenters who suggested clarifying that a food allergy emergency plan should only apply to an allergy diagnosed from a doctor; otherwise parents could state a child has an undiagnosed allergy.

Response: DFPS agrees with the commenters and has clarified that the food allergy must have been 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 §746.401 and §746.3001.

Comments concerning §746.5201: 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".

Comments concerning §746.5202: One commenter supported the change to emergency preparedness plan and looking at active shooter scenarios. One commenter asked if car seats were required for relocation, because the costs and storage would be difficult, and they don't have buses. The commenter wanted the rule to be more specific.

Response: Based on the comment to §746.5201 DFPS has changed the term "sheltering" to "sheltering/lock-down". However, DFPS does not believe it would be beneficial to make this rule more specific. Because centers have varying capacity and are located in both urban and rural counties, it is important that centers have flexibility in establishing the emergency preparedness plans. For relocation, the important thing is to have a plan that is worked out in advance for how to relocate the children safely in an emergency. A center doesn't have to have a bus, just a plan on how the relocation will happen.

Comments concerning §746.5205: 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.