

## **SUBCHAPTER J. ASSISTANCE PROGRAMS FOR RELATIVES AND OTHER CAREGIVERS**

### **DIVISION 1. RELATIVE AND OTHER DESIGNATED CAREGIVER PROGRAM**

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of Family and Protective Services (DFPS), adopts amendments to §§700.1003, 700.1005, 700.1007 and 700.1009, and the repeal of §700.1011, in Title 40, Texas Administrative Code (TAC), Chapter 700, Subchapter J, relating to Child Protective Services, Assistance Programs for Relatives and Other Caregivers. Amendment to §700.1007 is adopted with changes to the proposed text in the June 23, 2017, issue of the *Texas Register* (42 TexReg 3259) and will be republished. The amendments to §§700.1003, 700.1005 and 700.1009, and the repeal of §700.1011 are adopted without changes to the proposed text and will not be republished.

#### **BACKGROUND AND JUSTIFICATION**

The adopted amendments and repeal are necessary in order to implement legislation enacted and appropriations made by the 85th Regular Session of the Texas legislature that take effect September 1, 2017. Specifically, House Bill 4 (H.B. 4) enacted revisions to the assistance program for relatives and other designated caregivers (also known as kinship caregivers) who are providing care to a child or children in the managing conservatorship of DFPS. Senate Bill 1 (S.B. 1), the General Appropriations Act for Fiscal Years 2018-2019, provided funding to implement the revisions contemplated by H.B. 4 (see Sec. 18.01 of S.B. 1).

H.B. 4 replaced a one-time payment to integrate the child into the caregiver's home, as well as an annual reimbursement of up to \$500 for child related expenses while the child is in the managing conservatorship of DFPS, with monthly payments in amounts up to 50 percent of the daily basic foster care reimbursement rate paid to a foster family home. The monthly payments are time-limited and may be paid for up to twelve months. If DFPS determines there is good cause for an exception, payments may be made for up to an additional six months. In addition, the legislation authorized annual reimbursements of up to \$500 if the kinship caregiver assumes permanent legal responsibility for the child. The annual reimbursements may be made for up to three years or until the child's 18th birthday, whichever occurs sooner. Finally, the legislation made additional changes not addressed in rule, such as the creation of civil and criminal penalties for fraudulently receiving assistance from the program. DFPS may at a later date adopt rules concerning the determination of whether fraudulent activity has occurred.

## COMMENT

The 30-day comment period ended July 23, 2017. During this period, DFPS received one comment from the Texas Alliance of Child and Family Services (TACFS) regarding the adoption of these sections.

Comment: The commenter expressed support for the kinship caregiver assistance program and the additional resources that will be provided to caregivers through the program. The commenter offered that relatives caring for children requiring more support, including children with higher levels of need, who choose to go through the verification process shall have the added support and oversight of a child placing agency (CPA), as a CPA could help such kinship caregivers meet the child's needs.

Response: The comment does not relate to any particular language in the proposed rulemaking. Accordingly, the amendments and repeal are adopted without changes relevant to this comment. However, DFPS appreciates the commenter's support and agrees that verification can offer additional stability and services outside of the traditional kinship assistance program. Among other eligibility requirements, kinship caregivers in the kinship assistance program must not be a licensed or verified foster home or group foster home (see §700.1003(b)(4) of this title (relating to What are the eligibility requirements for caregiver assistance)). If a caregiver chooses to go through the verification process, then that caregiver will no longer be eligible for the kinship assistance program. However, the caregiver receives monthly foster care reimbursement as a verified home and may become eligible for the Permanency Care Assistance (PCA) Program. The PCA Program provides cash assistance and other supports for eligible caregivers who become a verified foster parent through CPS or a private Child Placing Agency (see §700.1031 of this title (relating How does a person become eligible for receipt of foster care reimbursement on behalf of a child for at least six consecutive months)).

DFPS is making a nonsubstantive change to §700.1007 as proposed, not in response to any comment, but to clarify how DFPS would implement H.B. 4. Specifically, as proposed, subsection (a)(3) implied that caregivers with whom DFPS placed children prior to September 1, 2017, and who are receiving cash assistance under the current kinship assistance program, would be ineligible under the program as amended by H.B. 4 as of September 1, which is not accurate. The wording could potentially have created confusion regarding legislative intent and agency implementation. The subsection was updated accordingly.

**40 TAC §§700.1003, 700.1005, 700.1007, 700.1009**

STATUTORY AUTHORITY

The 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.

The amendments implement Texas Family Code §264.755 and S.B. 1 (85th R.S.).

*§700.1007. How do caregivers receive the monthly cash payment?*

(a) Caregivers meeting the eligibility requirements specified in §700.1003 of this title (relating to What are the eligibility requirements for caregiver assistance?) are eligible only if:

(1) the household income of the caregiver does not exceed 300% of poverty, as determined by federal poverty guidelines;

(2) the caregiver continues to comply with the signed caregiver assistance agreement; and

(3) the children were placed in the caregiver's home by DFPS.

(b) The monthly cash payment must be distributed to a caregiver on behalf of a child in the managing conservatorship of DFPS in the same manner as to a foster parent receiving foster care reimbursement.

(c) The monthly cash payment may not exceed 50% of the DFPS daily Basic Foster Care Rate paid to a foster home in accordance with §355.7103 of Title 1 (relating to Rate-Setting Methodology for 24-Hour Residential Child-Care Reimbursements). The amount of the monthly cash payment will be published on the DFPS website, and is paid per child in the managing conservatorship of DFPS who is placed in the home of the eligible caregiver.

(d) The monthly cash payment is provided to the caregiver for 12 months, except that DFPS may extend the monthly cash payment for an additional 6 months if DFPS determines good cause exists for the extension. "Good cause" refers to circumstances in which it is in the child's best interest to remain in the home of a caregiver who is receiving monthly cash payments and is generally comprised of actions and steps necessary in order to achieve positive permanency for the child. Good cause may include:

(1) the identification, release, or location of a previously absent parent of the child;

(2) awaiting the expiration of the timeline for an appeal of an order in a suit affecting the parent-child relationship;

(3) the provision of additional time for the caregiver to complete the approval process for adoption of the child;

(4) awaiting the approval of a child's placement from another state pursuant the Interstate Compact on the Placement of Children, as provided in Subchapter B, Chapter 162, Texas Family Code;

(5) a delayed determination of the child's Indian Child status, or awaiting the approval of the Indian Child's Tribe, pursuant the Indian Child Welfare Act, 25 U.S.C. §1901, et seq.; and

(6) any other circumstance surrounding the child or the caregiver that DFPS deems to necessitate the extension.

(e) Any one-time integration payment received by a caregiver who qualified for the payment between June 1, 2017, and September 1, 2017, under rules in existence at that time, must be offset against monthly cash payments for which the caregiver qualifies on or after September 1, 2017.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 11, 2017.

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For further information, please call: (512) 438-4760

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.

The repeal implements Texas Family Code §264.755 and S.B. 1 (85th R.S.).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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