

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

The Department of Family and Protective Services (DFPS), proposes amendments to §§700.701, 700.703, 700.704, and 700.706; the repeal of §700.702 and §700.705; and new §§700.710, 700.712, 700.714, 700.716, 700.718, 700.720, and 700.722 in Title 40, Texas Administrative Code (TAC), Chapter 700, Subchapter G, relating to Services for Families.

These rules were previously proposed and published in the September 18, 2020 issue of the *Texas Register* (45 TexReg 6587). However, DFPS has made additional edits to the proposed language in §§700.712, 700.718, and 700.720 concerning provision of Family Based Safety Services, including when DFPS closes a case for services, DFPS is re-proposing the rules.

BACKGROUND AND PURPOSE

The purpose of the rule revisions is to separate the Family Based Safety Services and Family Reunification Services rules by creating two separate divisions within the same subchapter. The purpose for separating the content into separate rules and divisions is to ensure that the rules for each type of service are clear and easy for the public to understand. The Family Reunification Services rules are being proposed for adoption in Division 1 of Subchapter G and the Family-Based Safety Services rules are being proposed for adoption in Division 2 of Subchapter G. Child Protective Services (CPS) is also updating the rules to ensure that the rules accurately reflect CPS' current policy and practice, including how CPS administers family reunification and family-based safety services.

SECTION-BY-SECTION SUMMARY

The proposed amendments to §700.701 include: (1) deleting the content concerning family-based safety services; and (2) moving the content concerning family reunification services to newly created Division 1, Family Reunification Services, with minor, non-substantive changes.

§700.702 is being repealed and the content of the rule is being incorporated into new §700.710, concerning Services to Families, and new §700.712, concerning Provision of Family-Based Safety Services, in newly created Division 2, Family Based Safety Services.

The proposed amendments to §700.703 include: (1) deleting outdated content regarding the service levels for family reunification services as reunification services do not contain different service levels; and (2) moving the remaining rule content to newly created Division 1.

The proposed amendments to §700.704 include: (1) deleting the content concerning family-based safety services; and (2) moving the content concerning family reunification services to newly created Division 1 with no changes.

§700.705 is being repealed and the content is being incorporated into new §700.720, concerning Case Closure of Family Based Safety Services Cases, and new §700.722, concerning Case Closure Due to Removal, in newly created Division 2.

The proposed amendments to §700.706 include: (1) updating the rule to specify that when the court dismisses DFPS as conservator from the case, CPS will close its legal case but may continue provide reunification services to the family on a voluntary basis or by initiating court ordered services if the family has not been able to reduce the risk to the child so that the child is safe from abuse and neglect.; and (2) moving the rule content to newly created Division 1.

Proposed new §700.710: (1) incorporates the family-based safety services content from former §700.701(a) Services to Families concerning when family-based safety services are provided to families and children; and (2) incorporates content from former §700.702 Family-Based Safety Services which provides that family-based safety services are protective services provided to a family whose children are not in the conservatorship of DFPS.

Proposed new §700.712 incorporates: (1) the family-based safety services content from former §700.701(b), concerning Services to Families, regarding the criteria for provision of family-based safety services; and (2) the content from former §700.702, concerning Family-Based Safety Services, excluding outdated content regarding service levels as family-based safety services do not contain different service levels. The content incorporated from former §700.702 concerns: (1) when CPS provides family-based safety services, but includes updates to reflect that services are provided to a family when the family needs ongoing assistance and a judge orders services *or* a child in the home is at risk of abuse or neglect; the child cannot remain safely in the home without a safety plan or the family is unable to reduce the risk of abuse or neglect and/or ensure immediate child safety without CPS assistance; and CPS can provide or arrange for services to assist the family; and (2) how CPS provides the services, including directly or through contracts and referrals to community services.

Proposed new §700.714 specifies whom the caseworker is required to contact in the course of a family-based safety services case and how often.

Proposed new §700.716 incorporates the family-based safety services content from former §700.704, concerning Family Service Plan for Family-Based Safety Services Cases, regarding the family service plan with amendments to the timeframes for establishing and reviewing the plan; and with amendments to reflect caseworker actions when establishing the plan and after the plan is established.

Proposed new §700.718: (1) specifies that a parent's failure to participate in services for two consecutive months may result in DFPS seeking a legal action if DFPS determines there is a danger to the child's safety; and (2) indicates that if a family is unwilling to participate in a safety plan to address dangers, DFPS may assess whether it is necessary to seek removal of the child.

Proposed new §700.720: (1) incorporates content from former §700.705(a), concerning Case Closure of Family-Based Safety Services Cases, regarding when CPS can close a case but is being updated to add additional case closure criteria including when at least one child is removed from the home and DFPS is granted temporary managing conservatorship of the child; when CPS determines the family does not meet the criteria for services; when the child will be residing outside of the child's home with a relative or caregiver under a legal or informal agreement; or when the only child or parent receiving services dies and (2) specifies required caseworker actions prior to and after closing a case.

Proposed new §700.722 incorporates the content from former §700.705(b), concerning Case Closure of Family-Based Safety Services Cases, regarding when CPS will close a case due to removal of the child from the home to protect the child from abuse or neglect with clarification that CPS will explore reasonable alternatives for keeping the child safe in the home prior to removal.

FISCAL NOTE

David Kinsey, Chief Financial Officer of DFPS, has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT

DFPS has determined that during the first five years that the proposed rules will be in effect:

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation will not affect the number of employee positions;
- (3) implementation will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the proposed rules will not affect fees paid to the agency;
- (5) the proposed rules will create new regulations to the extent that some of the content in the existing rules is being moved to new rules to separate the family-based safety services content and family reunification content into different rules and divisions in the

same subchapter, as the current rules address both types of services in the same rules. The purpose for separating the content into separate rules and divisions is to ensure that the rules for each type of service are clear and easy for the public to understand. However, the new rules only clarify existing policy and practice without creating additional duties or regulations;

(6) the proposed rules will repeal existing regulations to the extent that the current rules that solely concern Family Based Safety Services (FBSS) are being repealed and the content from those rules is being readopted into new rules in Division 2 in the same subchapter;

(7) the proposed rules will not change the number of individuals subject to the rule; and

(8) the proposed rules will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Mr. Kinsey has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rules do not apply to small or micro-businesses, or rural communities.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with these sections as proposed.

There is no anticipated negative impact on local employment.

COSTS TO REGULATED PERSONS

Pursuant to subsection (c)(7) of Texas Government Code §2001.0045, the statute does not apply to a rule that is adopted by the Department of Family and Protective Services.

PUBLIC BENEFIT

Tiffany Roper, General Counsel of DFPS, determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be that the public will be better informed regarding the current policy and practices of CPS in administering family-based safety services and family reunification services intended to protect children from and reduce the risk of abuse and neglect.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code §2001.0225.

TAKINGS IMPACT ASSESSMENT

DFPS has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments and questions on this proposal must be submitted within 30 days of publication of the proposal in the *Texas Register*. Electronic comments and questions may be submitted to RULES@dfps.texas.gov. Hard copy comments may be submitted to the DFPS Rules Coordinator, Legal Services 19R13, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030.

STATUTORY AUTHORITY

The proposed amended sections implement Subchapter C of the Texas Family Code relating to child and family services.

The modification is proposed under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and adopt rules for the operation and provision of services by the department.

No other statutes, articles, or codes are affected by the proposed rules.

§700.701. Services to Families.

(a) Definition. The Department of Family and Protective Services' (DFPS) Child Protective Services (CPS) Division provides [~~family-based safety services and~~] family reunification services for families. These services are provided to families and children to:

- (1) protect the children from abuse and neglect;
- (2) help the family reduce the risk of abuse and [~~or~~] neglect; and

~~[(3) either:]~~

~~[(A) avert the removal of the children from their home to protect them from abuse or neglect; or]~~

(3) [~~(B)~~] make it possible for the children to return home and live there safely after DFPS has removed them and placed them in substitute care as specified in Subchapters K

and M of this chapter (relating to Court-Related Services and Substitute-Care Placement Services).

~~(b) When a child has returned home, [Criteria. CPS provides family-based safety services or family reunification services when:]~~

~~[(1) a child in the family is at risk of abuse or neglect;]~~

~~[(2) the family cannot reduce the risk of abuse or neglect without CPS assistance; and]~~

~~[(3)] CPS can provide or arrange for services to:~~

~~(1) [(A)] protect the child in the parent's home [or return the child home];~~

~~(2) [(B)] reduce the risk of abuse and neglect; and~~

~~(3) [(C)] enable the family to function effectively without CPS assistance in the future.~~

~~[(c) Family-based safety services and family reunification services. CPS's family-based safety services and family reunification services include:]~~

~~[(1) regular, moderate, and intensive family-based safety services; and]~~

~~[(2) regular, early intensive, and intensive family reunification services.]~~

§700.703. Family Reunification Services.

The Department of Family and Protective Services' (DFPS's) Child Protective Services (CPS) Division provides reunification services to families whose children are returning home at the end of their stay in substitute care. It does not include the services that CPS provides to families over the general course of a child's stay in substitute care, even though those services are usually directed towards family reunification. The purpose of the services is to provide support to the family and the child during the child's transition from living in substitute care to living at home. ~~[There are three levels of family reunification services—regular, intensive early, and intensive, all distinguished by the level of risk in the home. Any of these services may be provided directly or through contracts.]~~

~~[(1) Regular reunification services.]~~

~~[(A) Definition. CPS provides regular reunification services to families whose children are returning home at the end of their stay in substitute care. The purpose of the services is to provide support to the family and the child during the child's transition from living in substitute care to living at home.]~~

~~(1) [(B)] Objectives. The objectives of reunification services are to:~~

(A) [(i)] ensure a smooth transition by helping the family and child prepare for and adjust to the child's return;

(B) [(ii)] help the parents build on family strengths and resources in order to manage the risk of abuse or neglect; and

(C) [(iii)] enable the family to ensure the child's safety without CPS assistance after the case is closed.

(2) [(C)] Criteria. All of the criteria specified in subparagraphs (A) - (D) [~~clauses (i) - (iv)~~] of this paragraph [~~subparagraph~~] must be satisfied before CPS provides reunification services:

(A) [(i)] at least one child was removed from the home;

(B) [(ii)] parents must have a reasonably stable living arrangement;]

(C) [(iii)] parents are working to complete goals listed on the family service plan; and

(D) [(iv)] a target date has been set for the child's transition home or the transition is in process.

~~[(2) Intensive early reunification services.]~~

~~[(A) Definition. Intensive early reunification services are provided to families when a child has been in short term substitute care. In many of these cases the children are returned home by the "14-Day Show Cause Hearing." Risk factors are high in these cases and intensive support services are needed.]~~

~~[(B) Objectives. The objectives of intensive early reunification services are to:]~~

~~[(i) provide immediate services that can help parents build on family strengths and resources in order to reduce the risk of abuse and neglect;]~~

~~[(ii) ensure the earliest possible safe return home of children who come into DFPS conservatorship; and]~~

~~[(iii) enable the family to ensure the child's safety without CPS assistance after the case is closed.]~~

~~[(C) Criteria. All of the criteria specified in clauses (i) - (iv) of this subparagraph must be satisfied before CPS provides intensive early reunification services:]~~

~~[(i) at least one child was removed from the home;]~~

~~[(ii) a plan is in place to ensure the safety of the child;]~~

~~[(iii) intensive services are likely to improve the level of functioning of these families; and]~~

~~[(iv) the parents must have a reasonably stable living arrangement.]~~

~~[(3) Intensive family reunification services.]~~

~~[(A) Definition. CPS provides intensive family reunification services to families whose children have been placed in substitute care for a longer period of time than intensive early reunification cases. Depending on the length of time a child has been in substitute care, the family may need various levels of support to rebuild the parent-child relationship. These families should be provided with a continuum of services through community agencies, CPS services, and extended family support. These resources should be used to assist the child and family through the reunification process.]~~

~~[(B) Objectives. The objectives of intensive family reunification services are to:]~~

~~[(i) ensure a smooth transition by helping the family and child prepare for and adjust to the child's return;]~~

~~[(ii) help the parents build on family strengths and resources in order to reduce the risk of abuse or neglect; and]~~

~~[(iii) enable the family to ensure the child's safety without CPS assistance after the case is closed.]~~

~~[(C) Criteria. All of the criteria specified in clauses (i) - (v) of this subparagraph must be satisfied before CPS provides intensive family reunification services:]~~

~~[(i) at least one child was removed from the home;]~~

~~[(ii) the situation is high risk and the permanency plan is family reunification;]~~

~~[(iii) the parents must have a reasonably stable living arrangement;]~~

~~[(iv) the parents are working to complete goals listed on the family service plan; and]~~

~~[(v) a plan is in place to ensure the safety of the child.]~~

~~*§700.704. Family Service Plan for [Family-Based Safety Services Cases and] Family Reunification Services Cases.*~~

~~(a) Initial time frame. Within 45 days after the case is opened for [family-based safety services, as defined in §700.702 of this title (relating to Family-Based Safety Services), or] family reunification services, as defined in §700.703 of this title (relating to Family Reunification Services), the Department of Family and Protective Services' (DFPS's)~~

Child Protective Services (CPS) Division must establish a detailed written plan of service for the family.

(b) Purposes. The purposes of the family service plan for families receiving ~~[family-based safety services or]~~ family reunification services are to:

(1) - (2) (No change.)

(c) Required content. The family service plan must:

(1) - (7) (No change.)

(8) meet federal and state laws~~[, including the DFPS Licensing Minimum Standards as outlined in the CPS Handbook, Section 6400, Case Planning].~~

(d) - (e) (No change.)

§700.706. Case Closure of Family Reunification Services Cases.

(a) Case closure. If the court has dismissed the Department of Family and Protective Services as conservator, Child Protective Services (CPS) Division will ~~[may]~~ close the legal case. However, CPS may continue to provide services to the family on a voluntary basis or by initiating court ordered services if the family has not been able to reduce the risk to the child so that the child is safe from abuse and neglect. ~~[if:]~~

~~[(1) the family has reduced the risk to the child so that the child is safe from abuse and neglect and the family appears capable of managing the remaining risk without outside assistance; or]~~

~~[(2) the family appears capable of reducing the risk to the child with assistance from sources other than CPS, and is willing and able to rely on that assistance.]~~

(b) (No change.)

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

Filed with the Office of the Secretary of State on May 21, 2021.

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Tiffany Roper

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: July 4, 2021

For further information, please call: (512) 438-3397

40 TAC §700.702, §700.705

The proposed repeals implement Subchapter C of the Texas Family Code, relating to child and family services.

The modification is proposed under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and adopt rules for the operation and provision of services by the department.

No other statutes, articles, or codes are affected by the proposed rules.

§700.702. Family-Based Safety Services.

§700.705. Case Closure of Family-Based Safety Services Cases.

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

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General Counsel

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DIVISION 2. FAMILY-BASED SAFETY SERVICES

40 TAC §§700.710, 700.712, 700.714, 700.716, 700.718, 700.720, 700.722

The proposed new sections implement Subchapter C of the Texas Family Code, relating to child and family services.

The modification is proposed under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and adopt rules for the operation and provision of services by the department.

No other statutes, articles, or codes are affected by the proposed rules.

§700.710.Services to Families.

Family-based safety services are protective services provided to a family whose children are not in the conservatorship of the Department of Family and Protective Services (DFPS). DFPS's Child Protective Services (CPS) Division provides family-based safety services to families and children that need CPS assistance to:

- (1) protect the children from abuse and neglect;
- (2) help the family reduce the risk of future abuse or neglect; and
- (3) prevent the removal of the children from their home.

§700.712.Provision of Family-Based Safety Services.

(a) CPS provides family-based safety services when:

- (1) a child in the family is at risk of abuse or neglect;
- (2) the child cannot remain safely in the home without a Safety Plan, or the family cannot reduce the risk of abuse or neglect and/or ensure immediate child safety without CPS assistance; and

(3) CPS can provide or arrange for services to:

- (A) keep the child safe in the home;
- (B) reduce the risk of abuse or neglect; and
- (C) enable the family to function effectively without CPS assistance in the future.

(b) CPS also provides family-based safety services when a family whose children are not in the conservatorship of the Department needs ongoing CPS assistance and a judge orders a family to participate in the services.

(c) Services may be provided directly or through contracts and may include referrals to community resources.

§700.714. Contacts for Family-Based Safety Services.

(a) After the family-based safety services case is opened, the caseworker will make an initial face-to-face contact with:

(1) each child who will be receiving family-based safety services; and

(2) each parent who will be receiving family-based safety services.

(b) Each month, or more frequently if appropriate, while a family-based safety services case is open, the caseworker must make on-going face-to-face contact with each child and parent in the household of concern who is included on the most recent family service plan as described in §700.704 of this subchapter (relating to Family Service Plan for Family Reunification Services Cases), and with any PCSP caregiver. Whenever possible, the face-to-face contact with the child will be in the home and in private as appropriate for the child's age and development.

§700.716. Family Service Plan for Family-Based Safety Services Cases.

(a) After initial contacts are made, as defined in §700.714, (relating to Contacts for Family-Based Safety Services), the Department of Family and Protective Services' (DFPS's) Child Protective Services (CPS) Division must establish a detailed written service plan and initiate any needed services for the family.

(b) The purposes of the family service plan for families receiving family-based safety services are to:

(1) establish a structured, time-limited process for providing services; and

(2) ensure that services progress as quickly as possible towards enabling the family to:

(A) reduce the risk of abuse or neglect; and

(B) function effectively without CPS assistance.

(c) The family service plan must:

(1) include a statement of CPS concerns;

(2) include family needs and strengths and resources that can be utilized to help the family reduce the risk of abuse and neglect;

(3) identify the goals or changes needed to reduce the level of risk;

(4) specify the required actions the family must complete during the effective period of the plan in order to make the needed changes;

(5) describe the services CPS will provide to help the family complete those actions;

(6) indicate how CPS will evaluate the family's progress in completing each required action and goal;

(7) indicate the period of time and frequency of the required actions and services; and

(8) meet federal and state laws, including the Americans with Disabilities Act.

(d) The caseworker must attempt to work with the parents to develop the family service plan. After completing the plan, the caseworker must ask the parents to sign it, and must give them a copy of it. If either parent will not sign the plan, the caseworker must document on the plan the reasons why a parent will not sign and must give the parent a copy of the plan. The caseworker must ensure that each individual signing the plan understands and agrees to their responsibilities, the potential consequences of non-compliance, and the actions or circumstances needed to complete the plan and close the case with no further involvement by CPS.

(e) Every month while a family-based safety services case is open, the caseworker must:

(1) make reasonable efforts to contact any provider who is providing services as part of the family service plan and obtain information about the family's progress;

(2) gather any other information or documentation from collaterals related to child safety or the family service plan;

(3) evaluate all information gathered and document:

(A) whether family-based safety services are still needed to ensure child safety; and

(B) whether any changes are needed to the family service plan, an existing Safety Plan, or an existing parental child safety placement. The caseworker must document reasons for any changes.

§700.718.Lack or Refusal of Family Participation.

(a) If a parent fails to participate in services for two consecutive months and the Department of Family and Protective Services (DFPS) determines that there are danger indicators impacting child safety, DFPS may seek legal action, such as a court order for removal.

(b) If a family is unwilling to participate in a safety plan to address dangers to the child, DFPS will determine if it is necessary to seek removal of the child from the home.

§700.720. Case Closure of Family-Based Safety Services Cases.

(a) The Department of Family and Protective Services' (DFPS's) Child Protective Services (CPS) Division closes family-based safety services cases when:

(1) CPS determines after the family was referred that the family does not meet the criteria for family-based safety services.

(2) CPS services are no longer needed because the family:

(A) has reduced the risk to the child so that the child is safe from abuse and neglect and the family appears capable of managing the remaining risk without outside assistance; or

(B) appears capable of reducing the risk to the child with assistance from sources other than CPS, and the family is willing and able to rely on that assistance.

(3) The family has moved out of state or cannot be found after reasonable efforts to locate the family.

(4) There is not enough evidence of a threat to the child's immediate and short-term safety for legal intervention and either:

(A) the family refuses to accept further services; or

(B) CPS has already offered or provided all available services that:

(i) are appropriate to the family's needs, or

(ii) the family has requested and is eligible to receive.

(5) The child will be residing outside of the home of the parent under a legal agreement or an informal agreement with a relative or other caregiver.

(6) At least one child is removed from the home and the court grants DFPS temporary managing conservatorship of the child.

(7) The only child or parent receiving services dies.

(b) Before submitting the case to the supervisory for case closure, the caseworker must:

(1) have a closing staffing with the supervisor; and

(2) complete a closing summary that explains the rationale for the closure decision.

(c) After closing the case, the caseworker must send a case closure letter to parents and legal guardians who have been receiving family-based safety services. Case closure letters are not required if the child has been removed from the home, the family cannot be located, or the only child died.

§700.722. Case Closure Due to Removal.

(a) When family-based safety services are provided and the family is still unable to protect a child from abuse or neglect in the immediate or short-term future, CPS staff may initiate an emergency or court-ordered removal of the child from the home. Substitute care services are then provided to the child and family.

(b) Prior to closing a family-based safety services case due to removal of the child as described in §700.714, (relating to Contacts for Family-Based Safety Services), CPS staff will explore reasonable alternatives for keeping the child safe from abuse and neglect in the home. The child is removed only when there is no other reasonable way to protect the child from abuse or neglect in the immediate or short-term future.

(c) Whenever possible, CPS staff, together with the family, make the decision to remove the child from the home.

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

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Tiffany Roper

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: July 4, 2021

For further information, please call: (512) 438-3397