

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of Family and Protective Services (DFPS), adopts amendment §700.108 and new §§700.110, 700.1335, 700.1337, 700.2365, and 700.2367, in Title 40, Texas Administrative Code (TAC), Chapter 700, relating to Child Protective Services, in Subchapters A relating to Administration, M relating to Substitute Care Services, and W, relating to Service Level System. New §700.2365 is adopted with changes to the proposed text in the June 23, 2017, issue of the *Texas Register* (42 TexReg 3256) and will be republished. The amendments to §700.108 and new §§700.110, 700.1335, 700.1337, and 700.2367 are adopted without changes to the proposed text and will not be republished.

BACKGROUND AND JUSTIFICATION

The adopted amendment and new sections are necessary to comply with the 2018-19 General Appropriations Act (Article II, Department of Family and Protective Services, Senate Bill 1, 85th Legislature, Regular Session, 2017).

HHSC Rate Setting will be setting new rates and DFPS needs to develop corresponding rules in order to describe the underlying pilots, services, and rate.

COMMENTS

The 30-day comment period ended July 23, 2017. During this period, DFPS received comments regarding the adoption of these sections from the Texas Alliance of Child and Family Services and a Residential Treatment Center. The commenters had numerous questions and comments about the proposed rules.

Comments concerning §700.110(a)(1) relating to the Integrated Care Coordination (ICC) pilot: The commenters expressed support for the ICC program and requested clarification of the phrase "responsibility for all child welfare related tasks and activities under federal and state law" in §700.110(a)(1), specifically inquiring as to whether the term included all court-related work and permanency recommendations.

Response: DFPS adopts this rule without changes. The department appreciates the interest of the provider community in the ICC program, and intends for the term in question to include all court-related and permanency-related functions, with DFPS

retaining some authority to potentially review or object to a permanency goal. A dispute resolution process will be put in place for when the ICC provider and DFPS do not agree.

Comments concerning §700.1335(b) relating to the Treatment Foster Family Care Program and the requirement that caregivers who participate in the program have "specialized training" in providing services to certain children: The commenters questioned whether DFPS would issue more guidance regarding how the training will be developed and whether there would be specified requirements for the training.

Response: DFPS adopts this rule without changes. DFPS intends to further develop specific requirements as part of the procurement and contracting process.

Comments concerning §700.1335(b)(1) and the requirement that caregivers who participate in the Treatment Foster Family Care Program have specialized training in providing services to certain children, including 24-hour supervision to ensure the child's safety. The commenters requested clarification of whether 24-hour supervision included awake night caregivers.

Response: DFPS adopts this rule without changes. DFPS agrees that the program would be utilized only in foster family homes, which under current law do not specifically require awake night supervision.

Comments concerning §700.1335(b)(3) and the requirement that caregivers who participate in the program be able to provide time-limited services which include wrap-around services designed to transition children to a permanent and stable placement, inquiring as to whether this refers to a specific clinical methodology or the general concept of wrap-around services.

Response: DFPS adopts this rule without changes. The department will further develop specific requirements as part of the procurement and contracting process.

Comments concerning §700.1335(c) relating to the Treatment Foster Family Care Program and the total number of children that can be allowed in the home, including biological and adopted children: The commenters were concerned that limitations in those areas would significantly impact foster parent recruitment options.

Response: DFPS adopts this rule without changes. Other than the stipulations that relate to the foster family home definition which limits foster family homes to no more than 6 total children, the only additional stipulation specific to the program is the two-foster-child maximum set forth in the rule in §700.1335(c)(2). DFPS has

concluded that the two-foster-child limit is appropriate given the focus of the program and the need for additional supervision and care.

Comments concerning §700.1335(d)(3) relating to the Treatment Foster Family Care Program and the requirement that child placing agencies providing Treatment Foster Family Care Services have a standardized case load to support this population of children, requesting information regarding what the standardized requirement will be.

Response: DFPS adopts this rule without changes. The department will further develop any specific case load requirements as part of the procurement and contracting process.

General comment inquiring as to "what is the required pass-thru amount for foster parents?"

Response: DFPS will not address this matter in the rule. The department will further develop specific requirements as part of the procurement and contracting process.

Comments concerning §700.2365(2) relating to the Intense Plus Service Level and the requirement that providers deliver therapies "including but not limited to" certain specified therapies: The commenters are concerned that the listed therapies are extremely costly and very limited statewide, with minimal access to Medicaid providers who deliver these services, and requested clarification regarding whether Medicaid billing is eligible for various therapy requirements.

Response: DFPS agrees the rule as proposed was unclear and will be making changes to this paragraph. The intent was to specify that if Medicaid funds a research supported program, the provider should utilize it but not to require each provider to provide all of the listed services. The language has been modified accordingly.

Comments concerning §700.2365(3) relating to the service level and the requirement that providers continue to care for a child following psychiatric or medical hospitalization: The commenters request clarification regarding whether the bed would remain open when the child is in the hospital and whether the provider would be reimbursed to keep the bed open in order to provide continued care and coordinated transition back from the hospital.

Response: DFPS adopts this rule without changes to this paragraph. It is the agency's intent that the bed would generally remain open as long as it is in the child's best interest to return to the placement in order to facilitate the continued care and coordinated transition as suggested by the commenters.

Comments concerning §700.2365(4) relating to the service level and the requirement that providers offer step down care, which includes long-term discharge and aftercare planning: The commenters request clarification regarding what will be required in the way of "after care services."

Response: DFPS adopts this rule without changes to this paragraph. The requirements around discharge and aftercare planning will be further developed and outlined in the residential contract.

SUBCHAPTER A. ADMINISTRATION

40 TAC §700.108, §700.110

STATUTORY AUTHORITY

The amendment and new section 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 amendment and new section implement the 2018-19 General Appropriations Act (Article II, Department of Family and Protective Services, Senate Bill 1, 85th Legislature, Regular Session, 2017) and Senate Bill 11, 85th Legislature, Regular Session.

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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SUBCHAPTER M. SUBSTITUTE-CARE SERVICES

DIVISION 1. GENERAL

40 TAC §700.1335, §700.1337

The new sections 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 new sections implement the 2018-19 General Appropriations Act (Article II, Department of Family and Protective Services, Senate Bill 1, 85th Legislature, Regular Session, 2017) and Senate Bill 11, 85th Legislature, Regular Session.

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SUBCHAPTER W. SERVICE LEVEL SYSTEM

DIVISION 5. INTENSE PLUS SERVICE LEVEL

40 TAC §700.2365, §700.2367

The new sections 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 new sections implement the 2018-19 General Appropriations Act (Article II, Department of Family and Protective Services, Senate Bill 1, 85th Legislature, Regular Session, 2017) and Senate Bill 11, 85th Legislature, Regular Session.

§700.2365. What is the description of the Intense Plus Service Level?

The Intense Plus Service Level consists of the highest degree of structure, and meets all of the requirements in §700.2361 of this title (relating to What is the description of the Intense Service Level?), in addition to the requirements of this section. Services and treatment at the Intense Plus Level must be provided in a therapeutic residential setting by caregivers with specialized training as further outlined in contract for the provision of services to a child at the Intense Plus Service Level. In addition to any such contractual requirements, a provider serving a child at the Intense Plus Service Level must:

- (1) offer single child and sibling group placement;
- (2) deliver an appropriate number of medical and therapeutic services that are research-supported, reimbursable by Medicaid or other funding sources, and readily available in the community, including but not limited to daily therapy sessions, individual and group therapy, and specialized therapies such as Eye Movement Desensitization and Reprocessing Therapy, Applied Behavior Analysis (certified); and Treatment for Anorexia/Bulimia/Eating Disorders, and others as appropriate;
- (3) provide continued care for a child following psychiatric or medical hospitalization; and
- (4) offer "step down" from the Intense Plus Service Level, which includes long-term discharge and aftercare planning.

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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