

**RULE REVIEW CHAPTER 749**  
**Minimum Standards for Child-Placing Agencies**  
**FINAL DRAFT, December 14, 2016**

*Subchapter B, Definitions and Services*  
*Division 1, Definitions*

**§749.43. What do certain words and terms mean in this chapter?**

The words and terms used in this chapter have the meanings assigned to them under §745.21 of this title (relating to What do the following words and terms mean when used in this chapter?), unless another meaning is assigned in this section or unless the context clearly indicates otherwise. The following words and terms have the following meanings unless the context clearly indicates otherwise:

(1) Accredited college or university--An institution of higher education accredited by one of the following regional accrediting entities:

(A) ~~The Southern Association of Colleges and Schools, Commission on Colleges,~~ a subdivision of the Southern Association of Colleges and Schools;

(B) ~~The Middle States Association of Colleges and Schools, Commission on Higher Education,~~ a component of the Middle States Association of Colleges and Schools;

(C) ~~New England Association of Schools and Colleges, The Commission on Institutions of Higher Education,~~ a subdivision of the New England Association of Schools and Colleges;

(D) ~~North Central Association of Colleges and Schools, The Higher Learning Commission~~ (formerly part of the North Central Association of Colleges and Schools);

(E) The Northwest Commission on Colleges and Universities;

(F) ~~Western Association of Schools and Colleges, The Accrediting Commission for Senior Colleges and Universities,~~ a subdivision of the Western Association of Schools and Colleges; or

(G) ~~Western Association of Schools and Colleges, The Accrediting Commission for Community and Junior Colleges,~~ a subdivision of the Western Association of Schools and Colleges.

(2) ~~Activity space--An area or room used for child activities.~~

(3) ~~Adaptive functioning--Refers to how effectively a person copes with common life demands and how well the person meets standards of personal independence expected of someone in his particular age group, socio-cultural background, and community setting.~~

(4) ~~Adoption record--All information received by the child-placing agency that bears the child's name or pertains to the child, including any information about the birth parents and adoptive parents, is considered to be part of the adoption record.~~

(5) ~~Adoptive home screening--Also known as a pre-adoptive home screening. A written evaluation, prior to the placement of a child in an adoptive home, of the:~~

(A) Prospective adoptive parent(s);

(B) Family of the prospective adoptive parents; and

(C) Environment of the adoptive parents and their family in relation to their ability to meet the needs of a child, and if a child has been identified for adoption, the needs of that particular child.

(65) Adult--A person 18 years old or older.

(76) Adverse action--See corrective or adverse action.

(7) Babysitting--Temporarily caring for a child in foster care for no more than 12 consecutive hours.

(8) Caregiver--A caregiver:

(A) Is a person counted in the child/caregiver ratio for foster care services, including employees, foster parents, contract service providers, and volunteers, whose duties include direct care, supervision, guidance, and protection of a child in care. This includes any person that is solely responsible for a child in foster care. For example, a child-placement staff that takes a foster child on an appointment or doctor's visit is considered a caregiver;

(B) Does not include babysitters, overnight care providers, or respite child-care providers unless they are:

- (i) Verified foster parents;
- (ii) Licensed foster parents; or
- (iii) Agency employees;

(C) Does not include a contract service provider who:

(i) Provides a specific type of service to your agency for a limited number of hours per week or month; or

(ii) Works with one particular child; or

(iii) Is a nurse being reimbursed by Medicaid; and

(D) Does not include a person left alone momentarily with a child in care while the caregiver leaves the room.

(9) Certified fire inspector--Person certified by the Texas Commission on Fire Protection to conduct fire inspections.

(10) Child/caregiver ratio--The maximum number of children for whom one caregiver can be responsible.

(11) Chemical restraint--A type of emergency behavior intervention that uses chemicals or pharmaceuticals through topical application, oral administration, injection, or other means to immobilize or sedate a child as a mechanism of control. The use of a medication is not a chemical restraint under this chapter if the medication:

(A) Is prescribed by a treating health-care professional;

(B) Is administered solely for medical or dental reasons; and

(C) Has a secondary effect of immobilizing or sedating a child.

(12) Childhood activities--Activities that are generally accepted as suitable for children of the same chronological age, level of maturity, and developmental level as determined by a reasonable and prudent parent standard as specified in §749.2605 of this title (relating to What is the "reasonable and prudent parent standard"?). Examples of childhood activities include extracurricular activities, in-school and out-of-school activities, enrichment activities, cultural activities, and employment opportunities. Childhood activities include unsupervised childhood activities.

(13) Child in care--A child who has been placed by a child-placing agency in a foster or adoptive home, regardless of whether the child is temporarily away from the home;

~~as in the case of a child at school or at work or receiving respite child-care services.~~  
Unless a child has been discharged from the child-placing agency, the child is considered a child in care.

(1214) Corporation or other type of business entity-- May include an association, corporation, nonprofit association, nonprofit corporation, nonprofit association with religious affiliation, nonprofit corporation with religious affiliation, limited liability company, political subdivision, or state agency. For purposes of this chapter, this definition does not include any type of "partnership", which is defined separately.

~~Child-passenger safety seat system--An infant or child passenger restraint system that meets the federal standards for crash-tested restraint systems as set by the National Highway Traffic Safety Administration.~~

(1315) Corrective or adverse action--Is any action by you that places a restriction or condition on a foster home's verification, including the revocation of the verification. Note: For information regarding a corrective or adverse action which Licensing is taking against you, see Subchapter L of Chapter 745 (relating to Enforcement Actions).

(16) Counseling--A procedure used by professionals from various disciplines in guiding individuals, families, groups, and communities by such activities as delineating alternatives, helping to articulate goals, processing feelings and options, and providing needed information. This definition does not include career counseling.

(1417) Days--Calendar days, unless otherwise stated.

(1518) De-escalation--Strategies used to defuse a volatile situation, to assist a child to regain behavioral control, and to avoid a physical restraint or other behavioral intervention.

(1619) Department--The Department of Family and Protective Services (DFPS).

(1720) Discipline--A form of guidance that is constructive or educational in nature and appropriate to the child's age, development, situation, and severity of the behavior.

~~(18) Disinfecting solution--A disinfecting solution may be:~~

~~(A) A self-made solution, prepared as follows:~~

~~(i) One tablespoon of regular strength liquid household bleach to each gallon of water used for disinfecting such items as toys, eating utensils, and nonporous surfaces (such as tile, metal, and hard plastics); or~~

~~(ii) One-fourth cup of regular strength liquid household bleach to each gallon of water used for disinfecting surfaces such as bathrooms, crib rails, diaper-changing tables, and porous surfaces, such as wood, rubber or soft plastics; or~~

~~(B) A commercial product that is registered with the Environmental Protection Agency (EPA) as an antimicrobial product and includes directions for use in a hospital as a disinfectant. You must use the product according to label directions. Commercial products must not be toxic on surfaces likely to be mouthed by children, like crib rails and toys.~~

(1921) Emergency Behavior Intervention (EBI)--Interventions used in an emergency situation, including personal restraints, mechanical restraints, emergency medication, and seclusion.

~~(20) Family applicants--All residents, part- or full-time, of a household that are being considered for verification as an agency foster home or approved as an adoptive home.~~

(22) Emergency medication--A type of emergency behavior intervention that uses chemicals or pharmaceuticals through topical application, oral administration, injection,

or other means to modify a child's behavior. The use of a medication is an emergency medication under this chapter if the medication:

(A) Is prescribed by a treating health-care professional;

(B) Is administered solely for a medical or dental reason (e.g. benadryl for an allergic reaction or medication to control seizures); and

(C) Has a secondary effect of modifying a child's behavior.

**Helpful Information**

The distinguishing variable between a PRN (as needed) psychotropic medication and an emergency medication is the circumstances under which the medication is given. A medication given to help a child manage his/her behavior or to de-escalate a child who is having trouble managing his/her behavior is regulated only as a PRN psychotropic medication. However, if the medication is given in response to an emergency situation, it is an emergency medication.

For example, a child becomes increasingly agitated after a family visit, to the point of screaming and becoming verbally abusive to caregivers and other children. The child is not able to use self-calming techniques. If the child is offered a PRN psychotropic medication under these circumstances, it is not regulated as emergency medication, because there is no emergency situation. The medication serves to help the child manage the behavior before it escalates into an emergency.

However, if the child had escalated to the point of physically assaulting someone and requiring physical restraint, then a medication offered during the restraint to help the child calm would be regulated as an emergency medication.

(23) Emergency situation--A situation in which attempted preventative de-escalatory or redirection techniques have not effectively reduced the potential for injury, so that intervention is immediately necessary to prevent:

(A) Imminent probable death or substantial physical injury to the child because the child attempts or continually threatens to commit suicide or substantial physical injury; or

(B) Imminent physical harm to another because of the child's overt acts, including attempting to harm others. These situations may include aggressive acts by the child, including serious incidents of shoving or grabbing others over their objections. These situations do not include verbal threats or verbal attacks.

~~(24)~~ (24) Family members--An individual related to another individual within the third degree of consanguinity or affinity. For the definitions of consanguinity and affinity, see Chapter 745 of this title (relating to Licensing). The degree of the relationship is computed as described in Government Code, §573.023 (relating to Computation of Degree of Consanguinity) and §573.025 (relating to Computation of Degree of Affinity).

**Helpful Information**

Regarding the definition for (24) Family Member:

Relationship of Consanguinity AND Affinity

Person Related within

Person Related within

Person Related within

| <u>1<sup>st</sup> Degree</u>   | <u>2<sup>nd</sup> Degree</u>   | <u>3<sup>rd</sup> Degree</u>   |
|--|--|--|
| <ul style="list-style-type: none"> <li>• <u>Parent;</u></li> <li>• <u>Child;</u></li> <li>• <u>Spouse;</u></li> <li>• <u>Mother-In-Law and Father-In-Law; and</u></li> <li>• <u>Daughter-In-Law and Son-In-Law.</u></li> </ul> <p><u>*Step and half relationships (step-brother, step-father, half-sister, etc.) are considered to be the same as blood relationships.</u></p> | <ul style="list-style-type: none"> <li>• <u>Grandparent;</u></li> <li>• <u>Grandparent-In-Law;</u></li> <li>• <u>Grandchild;</u></li> <li>• <u>Grandchild-In-Law;</u></li> <li>• <u>Sister or Brother; and</u></li> <li>• <u>Sister/Brother-In-Law.</u></li> </ul> | <ul style="list-style-type: none"> <li>• <u>Great-Grandparent;</u></li> <li>• <u>Great-Grandparent-In-Law;</u></li> <li>• <u>Grandchild;</u></li> <li>• <u>Grandchild-In-Law;</u></li> <li>• <u>Niece/Nephew;</u></li> <li>• <u>Niece/Nephew-In-Law;</u></li> <li>• <u>Aunt/Uncle; and</u></li> <li>• <u>Aunt/Uncle-In-Law.</u></li> </ul> |

~~(22) Food service--The preparation or serving of meals or snacks.~~

~~(2325)~~ Foster family home--A home that is the primary residence of the foster parent(s) and provides care for six or fewer children or young adults, under the regulation of a child-placing agency.

~~(2426)~~ Foster group home--~~An operation~~ A home verified:

(A) After January 1, 2007, that is the primary residence of the foster parent(s) and provides care for seven to 12 children or young adults, under the regulation of a child-placing agency; or

(B) Prior to January 1, 2007, that provides care for seven to 12 children or young adults, under the regulation of a child-placing agency.

~~(2527)~~ Foster home--As referred to in this chapter means both types of homes, foster family homes and foster group homes.

~~(2628)~~ Foster home screening--A written evaluation, prior to the verification of the placement of a child in a foster home, of the:

(A) Prospective foster parent(s);

(B) Family of the prospective foster parent(s); ~~and~~

(C) All other part- or full-time household members; and

(D) Environment of the foster parent(s) and their family in relation to their ability to meet the child's needs.

~~(2729)~~ Foster parent--A person ~~who provides foster~~ verified to provide child-care services in the foster home.

~~(2830)~~ Full-time--At least 30 hours per week.

~~(2931)~~ Governing body--A group of persons or officers of the corporation or other type of business entity having ultimate authority and responsibility for the child-placing agency.

~~Garbage--Food or items that when deteriorating cause offensive odors and/or attract rodents, insects, and other pests.~~

~~(3032)~~ Health-care professional--A licensed physician, licensed advanced practice registered nurse, physician's assistant, licensed vocational nurse (LVN), licensed registered nurse (RN), or other licensed medical personnel providing health care to the child within the scope of the person's license. This does not include medical doctors or medical personnel not licensed to practice in the United States.

(~~31~~33) High-risk behavior--Behavior of a child that creates an immediate safety risk to the child or others. Examples of high-risk behavior include suicide attempt, self-abuse, physical aggression causing bodily injury, chronic running away, ~~drug~~ addiction substance abuse, fire setting, and sexual aggression or perpetration.

(~~32~~34) Human services field--A field of study that contains coursework in the social sciences of psychology and social work including some counseling classes focusing on normal and abnormal human development and interpersonal relationship skills from an accredited college or university. Coursework in guidance counseling does not apply.

(~~33~~35) Immediate danger to self or others--A situation where a prudent person would conclude that bodily harm would occur if there were no immediate interventions. Immediate danger includes a serious risk of suicide, serious physical injury to self or others, or the probability of bodily harm resulting from a child running away ~~if less than 10 years old chronologically or developmentally~~. Immediate danger does not include:

(A) Harm that might occur over time or at a later time; or

(B) Verbal threats or verbal attacks.

(~~34~~36) Infant--A child from birth through 17 months.

~~(35) Livestock--An animal raised for human consumption or an equine animal.~~

~~(36) Living quarters--A structure or part of a structure where a group of children reside, such as a building, house, cottage, or unit.~~

~~(37) Long-term placement--A placement intended to last for more than 90 days.~~

(~~38~~37) Master record--The compilation of all required records for a specific person or home, such as a master personnel record, master case record for a child, or a master case record for a foster or adoptive home.

(38) Mechanical restraint--A type of emergency behavior intervention that uses the application of a device to restrict the free movement of all or part of a child's body in order to control physical activity.

(39) Mental health professional--Refers to:

(A) A psychiatrist licensed by the Texas Medical Board;

(B) A psychologist licensed by the Texas State Board of Examiners of Psychologists;

(C) A master's level social worker or higher licensed by the Texas State Board of Social Work Examiners;

(D) A professional counselor licensed by the Texas State Board of Examiners of Professional Counselors;

(E) A marriage and family therapist licensed by the Texas State Board of Examiners of Marriage and Family Therapists; and

(F) A master's level or higher nurse licensed as an Advanced Practice Registered Nurse by the Texas Board of Nursing and board certified in Psychiatric/Mental Health.

(40) Non-ambulatory--A child that is only able to move from place to place with assistance, such as a walker, crutches, a wheelchair, or prosthetic leg.

(41) Non-mobile--A child that is not able to move from place to place, even with assistance.

~~(42) Normalcy--The ability of a child in care to live as normal a life as possible, including:~~

~~(A) Having normal interaction and experiences within a foster family and participating in foster family activities; and~~

~~(B) Engaging in age and developmentally appropriate childhood activities, such as extracurricular activities, social activities in and out of school, and employment opportunities.~~

(4342) Overnight care--Temporary care provided for a child in foster care by someone other than the foster parents with whom the child is placed for more than 12 consecutive hours, but no more than 72 consecutive hours.

(4443) Owner--The sole proprietor, partnership, or corporation or other type of business entity who owns a child-placing agency.

(44) Parent--A person who has legal responsibility for or legal custody of a child, including the managing conservator or legal guardian.

(45) Partnership--A partnership may be a general partnership, (general) limited liability partnership, limited partnership, or limited partnership as limited liability partnership.

(46) Permit holder--The owner of the child-placing agency that is granted the permit.

(47) Person legally authorized to give consent--The person legally authorized to give consent by the Texas Family Code or a person authorized by the court.

(48) Personal restraint--A type of emergency behavior intervention that uses the application of physical force without the use of any device to restrict the free movement of all or part of a child's body in order to control physical activity. Personal restraint includes escorting, which is when a caregiver uses physical force to move or direct a child who physically resists moving with the caregiver to another location.

(4649) Physical force--Pressure applied to a child's body that reduces or eliminates the child's ability to move freely.

(4750) Post-~~adoptive~~adoption services--Services available through the child-placing agency (direct or on referral) to birth and adoptive parents and the adoptive child after the adoption is consummated. Examples include counseling, maintaining a registry if a central registry is not used, providing pertinent, new medical information to birth or adoptive parents, or providing the adult adoptee a copy of his record upon request.

(4851) Post-placement adoptive report--A written evaluation of the assessments and interviews, after the adoptive placement of the child, regarding the:

- (A) Child;
- (B) Prospective adoptive parent(s);
- (C) Family of the prospective adoptive parent(s);
- (D) Environment of the prospective adoptive parent(s) and their family; and
- (E) Adjustment of all individuals to the placement.

(4952) Pre-adoptive home screening--See adoptive home screening.

(5053) PRN--A standing order or prescription that applies "pro re nata" or "as needed according to circumstances."

(5154) Professional service provider--Refers to:

(A) A child placement management staff or person qualified to assist in child placing activity;

(B) A psychiatrist licensed by the Texas Medical Board;

(C) A psychologist licensed by the Texas State Board of Examiners of Psychologists;

(D) A master's level social worker or higher licensed by the Texas State Board of Social Work Examiners;

(E) A professional counselor licensed by the Texas State Board of Examiners of Professional Counselors;

(F) A marriage and family therapist licensed by the Texas State Board of Examiners of Marriage and Family Therapists;

(G) A master's level or higher nurse licensed as an Advanced Practice Registered Nurse by the Texas Board of Nursing and board certified in Psychiatric/Mental Health; and

(H) Other professional employees in fields such as drug counseling, nursing, special education, vocational counseling, pastoral counseling, and education who may be included in the professional staffing plan for your agency that provides treatment services if the professional's responsibilities are appropriate to the scope of the agency's program description. These professionals must have the minimum qualifications generally recognized in the professional's area of specialization.

(55) Prone restraint--A restraint in which the child is placed in a chest-down hold.

~~(5256)~~ Psychosocial assessment--An evaluation by a mental health professional of a child's mental health that includes a:

(A) Clinical interview of the child;

(B) Diagnosis from the Diagnostic and Statistical Manual of Mental Disorders 5 (DSM-5), or statement that rules out a DSM-5 diagnosis;

(C) Treatment plan for the child, including whether further evaluation of the child is needed (for example: is a psychiatric evaluation needed to determine if the child would benefit from psychotropic medication or hospitalization; or is a psychological evaluation with psychometric testing needed to determine if the child has a learning disability~~disabilities~~ or an intellectual disability~~disabilities~~); and

(D) Written summary of the assessment.

~~(5357) Re-evaluation~~evaluate--~~Includes an assessment of~~Re-assessing all factors required for the initial evaluation ~~only~~ for the purpose of determining if any substantive changes have occurred. If substantive changes have occurred, these areas must be fully evaluated.

~~(5458) Regularly~~--On a recurring, scheduled basis. Note: For the definition for "regularly or frequently present at an operation" as it applies to background checks, see §745.601 of this title (relating to What words must I know to understand this subchapter?).

~~(5559) Sanitize~~--The use of a product (usually a disinfecting solution) registered by the Environmental Protection Agency (EPA) that substantially reduces germs on inanimate objects to levels considered safe by public health requirements. Many bleach and hydrogen peroxide products are EPA-registered. You must follow the product's labelling instructions for sanitizing (paying particular attention to any instructions regarding contact time and toxicity on surfaces likely to be mouthed by children, such as toys and crib rails). For an EPA-registered sanitizing product or disinfecting solution that does not include labelling instructions for sanitizing (a bleach product, for example), you must conduct these steps in the following order: A four-step process that must be followed in the subsequent order:

(A) Washing with water and soap;

(B) Rinsing with clear water;

(C) Soaking in or spraying on a disinfecting solution for at least two minutes.  
Rinsing with cool water only those items that a child is likely to place in his mouth; and

(D) Allowing the surface or ~~item~~ ~~article~~ to air-dry.

(5660) School-age child--A child who is five years old or older and who will attend school in August or September of that year.

(5761) Seat belt--A lap belt and any shoulder strap included as original equipment on or added to a motor vehicle.

(62) Seclusion--A type of emergency behavior intervention that involves the involuntary separation of a child from other residents and the placement of the child alone in an area from which the resident is prevented from leaving by a physical barrier, force, or threat of force.

(5863) Service plan--A plan that identifies a child's basic and specific needs and how those needs will be met.

(64) Short personal restraint--A personal restraint that does not last longer than one minute before the child is released.

(5965) State or local fire ~~inspector~~ authority--A fire official who is authorized to conduct fire safety inspections on behalf of the city, county, or state government, including certified fire inspectors.

~~(60) State or local sanitation official--A sanitation official who is authorized to conduct environmental sanitation inspections on behalf of the city, county, or state government.~~

(6466) Substantial physical injury ~~bodily harm~~--Physical injury serious enough that a reasonable prudent person would conclude that the injury needs treatment by a medical professional, including dislocated, fractured, or broken bones; concussions; lacerations requiring stitches; second and third degree burns; and damages to internal organs. ~~required professional medical attention.~~ Evidence that physical injury is serious includes the location and/or severity of the bodily harm and/or the age of the child. #Substantial physical injury does not include minor bruising, the risk of minor bruising, or similar forms of minor bodily harm that will resolve healthily without professional medical attention.

(67) Supine restraint--Placing a child in a chest up restraint hold.

(6268) Supplements-- Includes vitamins, herbs, and any supplement labeled dietary supplement.

(69) Swimming activities--Activities related to the use of splashing pools, wading pools, swimming pools, or other bodies of water.

(70) Toddler--A child from 18 months through 35 months old.

(6371) Trafficking victim--A child who has been recruited, harbored, transported, provided or obtained for the purpose of forced labor or commercial sexual activity, including any child subjected to an act or practice as specified in Penal Code §20A.02 or §20A.03.

(6472) Trauma informed care (TIC)--Care for children that is child-centered and considers the unique culture, experiences, and beliefs of the child. TIC takes into consideration:

(A) The impact that traumatic experiences have on the lives of children;

(B) The symptoms of childhood trauma;

(C) An understanding of a child's personal trauma history;

(D) The recognition of a child's trauma triggers; and  
(E) Methods of responding that improve a child's ability to trust, to feel safe, and to adapt to changes in the child's environment.

(6573) Treatment director--The person responsible for the overall treatment program providing treatment services. A treatment director may have other responsibilities and may designate treatment director responsibilities to other qualified persons.

~~(66) Universal precautions--An approach to infection control where all human blood and certain human body fluids are treated as if known to be infectious for HIV, HBV, and other blood-borne pathogens.~~

(6774) Unsupervised ~~activity~~childhood activities--~~When a~~Childhood activities that a child in care participates in ~~an activity~~ away from the foster home and ~~caregiver~~the foster parents. Childhood activities that the foster parents conduct or supervise or the child-placing agency sponsors are not unsupervised childhood activities. Unsupervised childhood activities may include playing sports, going on field trips, spending the night with a friend, going to the mall, or dating. Unsupervised childhood activities may last one or more days.

(6875) Volunteer--A person who provides:

(A) Child-care services, treatment services, or programmatic services under the auspices of the agency without monetary compensation, including a "sponsoring family;" or

(B) Any type of services under the auspices of the agency without monetary compensation when the person has unsupervised access to a child in care.

~~(69) Water activities--Activities related to the use of splashing pools, wading pools, swimming pools, or other bodies of water.~~

(7076) Young adult--An adult whose chronological age is between 18 and 22 years, who is currently in a residential child-care operation, and who continues to need child-care services.

## *Subchapter B, Definitions and Services*

### *Division 2, Services*

#### **749.61. What types of services does Licensing regulate?**

We regulate the following types of services:

(1) Child-Care Services--Services that meet a child's basic need for shelter, nutrition, clothing, nurture, socialization and interpersonal skills, care for personal health and hygiene, supervision, education, and service planning;

(2) Treatment Services--In addition to child-care services, a specialized type of child-care services designed to treat and/or support children:

(A) With Emotional Disorders; who have a current DSM-5 diagnosis, such as mood disorders, psychotic disorders, or dissociative disorders, and ~~who~~ demonstrate ~~three~~two or more of the following:

~~(i) A Global Assessment Functioning of 50 or below;~~

~~(ii) A current DSM diagnosis;~~

~~(iii) Major self-injurious actions, including recent a suicide attempts~~attempt within the last 12 months;

(ivii) Difficulties that present a significant risk of harm to others, including frequent or unpredictable physical aggression; or

(viii) An additional primary DSM-5 diagnosis of substance-related and/or addictive disorder ~~abuse or dependency and with~~ severe impairment ~~because of the substance abuse~~;

(B) With a DSM-5 diagnosis of Intellectual Disability ~~Disabilities, who have an intellectual functioning of 70 or below and are~~ that is characterized by prominent, significant severe deficits and pervasive impairment in one or more of the following areas:

(i) Conceptual, social, and practical adaptive skills to include daily living and self-care;

(ii) Communication, cognition, or expressions of affect;

(iii) Self-care activities or participation in social activities;

(iv) Responding appropriately to an emergency; or

(v) Multiple physical disabilities, including sensory impairments;

(C) With a DSM-5 diagnosis of Autism Spectrum Disorder ~~Pervasive Developmental Disorder, which is a category of disorders (e.g. Autistic Disorder or Rett's Disorder)~~ that is characterized by prominent, severe deficits and pervasive impairment in one or more of the following areas of development:

(i) Conceptual, social, and practical adaptive skills to include daily living and self-care;

(ii) Communication, cognition, or expressions of affect;

(iii) Self-care activities or participation in social activities;

(iv) Responding appropriately to an emergency; or

(v) Multiple physical disabilities including sensory impairments;

(D) - (E) (No change.)

(3) (No Change.)

### **Helpful Information**

*Regarding subsection (2)(A), neither attending ~~therapy~~counseling nor taking a psychotropic medication factors into a child being eligible for treatment services for an emotional disorder. Only the indicators noted above are considered when determining eligibility for treatment services. However, you may offer treatment services to a child you assess as needing those services, regardless of the indicators above.*

*Regarding subsection (2)(B), a DSM-5 diagnoses of Intellectual Disability also requires a severity level (mild, moderate, severe, or profound). If a severity level is provided, the severity information may be helpful in determining whether the child is characterized by prominent, severe deficits and pervasive impairment.*

*Regarding subsection (2)(C), the Autism Spectrum Disorder includes previous DSM-IV diagnoses of autistic disorder, Asperger's disorder, pervasive development disorder-not otherwise specified, and similar disorders associated with a known medical or genetic disorder (e.g. Rett's Disorder). This newly titled disorder is a single continuum of mild to severe (Levels 1 - 3) impairments in the two domains of social communication and*

restrictive repetitive behaviors/interests. A DSM-5 diagnosis does not mandate a severity level; however, if a severity level is provided, then the severity information may be helpful in determining whether the child is characterized by prominent, severe deficits and pervasive impairment.

### *Subchapter C, Organization and Administration*

#### **DELETE Division 1, Permit Holder Responsibilities**

**DELETE §749.101. What are my responsibilities as the permit holder before I begin operating?**

**DELETE §749.103. What are my operational responsibilities as the permit holder?**

**DELETE §749.105. What responsibilities do I have for personnel policies and procedures?**

**DELETE §749.107. What must my conflict of interest policies include?**

#### **NEW Division 1, Plans and Policies Required During the Application Process**

#### **NEW §749.101. What plans must I submit for Licensing's approval as part of the application process?**

As part of the application process, you must submit the following plans to us for approval:

(1) An operation plan that must include:

(A) The location and telephone numbers of all of your offices, including branch offices;

(B) Your hours of operation at your main office and any branch offices; and

(C) A list of persons or officers and their titles who comprise the governing body, if applicable;

(2) A fiscal plan that includes:

(A) A detailed estimate of the operating costs of the agency for the first three months;

(B) Documentation of reserve funds or available credit at least equal to operating costs for the first three months;

(C) An estimated 12-month budget of income and expenses; and

(D) Predictable funds sufficient for the first year of operation;

(3) A plan to evaluate the effectiveness of your system for meeting the rules of this chapter, including evaluating the accuracy of foster home screenings and the comprehensiveness of the supervisory visits. This plan must describe how your evaluation process will:

(A) Identify problems, including deficiencies;

(B) Correct the problems identified; and

(C) Document the problems identified and when and how the problems were corrected; and

(4) A plan to ensure that you will:

(A) Investigate reports of minimum standards violations, upon our request; and

(B) Submit reports of your agency's investigative actions and findings to us within 30 days for our review, follow-up, and closure.

**NEW §749.103. What policies and procedures must I submit for Licensing's approval as part of the application process?**

(a) You must develop the policies and procedures identified in subsection (b) of this section. Your policies and procedures must comply with or exceed the minimum standards specified in this chapter, Chapter 42 of the Human Resources Code, Chapter 745 of this title (relating to Licensing), and any other other applicable law.

(b) As part of the application process, you must submit the following policies and procedures to us for our approval:

(1) Policies and procedures related to record keeping, including where the records will be located. The policies must be consistent with Subchapter D of this chapter (relating to Reports and Records Keeping);

(2) Personnel policies and procedures consistent with §749.105 of this title (relating to What are the requirements for my personnel policies and procedures?);

(3) Conflict of interest policies consistent with §749.107 of this title (relating to What must my conflict of interest policies include?);

(4) Admission policies consistent with §749.109 of this title (relating to What must my admission policies include?);

(5) Placement policies consistent with §749.111 of this title (relating to What must my placement policies include?);

(6) Child-care policies consistent with §749.113 of this title (relating to What child-care policies must I develop?);

(7) Emergency behavior intervention policies consistent with §749.115 of this title (relating to What emergency behavior intervention policies must I develop if my foster homes are permitted to use emergency behavior intervention?);

(8) Discipline policies consistent with §749.117 of this title (relating to What are the requirements for my discipline policies for children in care?);

(9) Foster care policies consistent with §749.119 of this title (relating to What foster care policies must I develop?);

(10) Rights and responsibilities of the child-placing agency and the foster parents consistent with §749.121 of this title (relating to What policies must I develop concerning the rights and responsibilities of the child-placing agency and foster parents?);

(11) Additional policies for foster parents that provide treatment services consistent with §749.123 of this title (relating to What policies must I develop regarding foster parents who provide treatment services to a child with primary medical needs?);

(12) Additional policies for foster parents who offer a transitional living program consistent with §749.125 of this title (relating to What policies must I develop for foster parents who offer a transitional living program?);

(13) Policies for babysitters, overnight care providers, and respite care providers consistent with §749.127 of this title (relating to What policies must I develop for babysitters, overnight care providers, and respite care providers?);

(14) Policies for a legal risk placement program consistent with §749.129 of this title (relating to What policies must I develop for a legal risk placement program for foster-adoptive families?);

(15) Adoption policies, if applicable, consistent with §749.131 of this title (relating to What policies must I develop if I offer adoption services?);

(16) Volunteer policies consistent with §749.133 of this title (relating to What policies must I develop if I use volunteers?);

(17) Abuse and neglect policies consistent with §749.135 of this title (relating to What abuse and neglect policies must I develop?);

(18) An appeal process for adult clients consistent with Division 8 of Subchapter C (relating to Clients and Appeals);

(19) A weapons, firearms, explosive materials, and projectiles policy, for foster care services, consistent with Division 3 of Subchapter O (relating to Weapons, Firearms, Explosive Materials, and Projectiles); and

(20) A tobacco and e-cigarette policy consistent with §749.2931 of this title (relating to What policies must I enforce regarding tobacco products and e-cigarettes?).

### **NEW §749.105. What are the requirements for my personnel policies and procedures?**

Your personnel policies and procedure must:

(1) Include an organizational chart showing the administrative, professional, and staffing structures and lines of authority;

(2) Include written job descriptions, including minimum qualifications and job responsibilities for each position;

(3) Include a written professional staffing plan that:

(A) Demonstrates that the number, qualifications, and responsibilities of professional positions, including the child-placing agency administrator, are appropriate for the size and scope of your services and that workloads are reasonable enough to meet the needs of the children in care;

(B) Describes in detail the qualifications, duties, responsibilities, and authority of professional positions. For each position, the plan must show whether employment is on a full-time, part-time, or continuing consultative basis. For part-time and consulting positions, the plan must specify the number of hours and/or frequency of services; and

(C) Describes how staff or service providers support clients served through branch offices;

(4) Include written training requirements for employees and caregivers;

(5) Comply with background check requirements outlined in Subchapter F of Chapter 745 of this title (relating to Background Checks);

(6) Require your employees to report serious incidents and suspected abuse, neglect, or exploitation. An employee who suspects abuse, neglect, or exploitation must report their suspicion directly to us and may not delegate this responsibility, as directed by Texas Family Code §261.101(b);

(7) Require that all employees and consulting, contracting, and volunteer professionals who work with a child and others with access to information about a child be informed in writing of their responsibility to maintain child confidentiality; and

(8) Either adopt the model drug testing policy or have a written drug testing policy that meets or exceeds the criteria in the model policy provided in §745.4151 of this title (relating to What drug testing policy must my residential child-care operation have?).

### **NEW §749.107. What must my conflict of interest policies include?**

Your conflict of interest policies must include:

(1) A statement that child placement staff and child placement management staff will not conduct, review, or approve foster home screenings, adoptive home screenings, or post-placement adoptive reports if there is a conflict of interest or bias with the family or the child. For example, there would be a conflict of interest if the staff is related to or has a personal relationship with the family or the child;

(2) A statement that it is a conflict of interest for your agency to verify as a foster parent or approve as an adoptive parent any of the following persons or relatives of any of the following persons: any current owner, member of the governing body, executive director, or any other employee or contract service provider of your agency;

(3) A code of conduct on the relationship between your agency's owners (including members of the governing body, if applicable), employees, contract service providers, children in placement, children's families, and prospective and current foster and adoptive parents, including required parameters for entering into independent financial relationships or transactions;

(4) For corporations or other types of business entities, a statement that the majority of the voting members of the governing body must consist of persons who do not have a conflict of interest that would potentially interfere with objective decision making.

Persons who have such a conflict of interest include the following:

(A) Family members of:

(i) An officer of the governing body;

(ii) The administrator or executive director of the child-placing agency; or

(iii) Any person with a controlling interest in the entity's stock; or

(B) If the governing body is a non-profit entity, persons who benefit financially from the agency, including but not limited to persons employed by or working at the agency, paid consultants, subcontractors, or vendors; and

(5) For adoptions, you may state whether the person whom you evaluated appears to be suitable for adoption, even if there are other individuals requesting adoption. If you have not evaluated parties of a disputed case, you must refrain from making an adoption or custody recommendation, unless otherwise directed by the court.

### **NEW §749.109. What must my admission policies include?**

Your admission policies must include a description of each program you offer, including:

(1) The program's goals and services provided, including whether the program accepts emergency admissions; and

(2) The characteristics of the population the program serves, such as gender, age range, behaviors, and diagnoses. If the program includes treatment services, your policy must describe the type of treatment services the program is designed to treat, including emotional disorders, intellectual disability, autism spectrum disorder, primary medical needs, or trafficking victim services.

### **NEW §749.111. What must my placement policies include?**

Your placement policy must include a description of how you will:

(1) Ensure that your agency will not place a child before determining that foster care and/or adoption is appropriate for the child;

(2) Match a child with a foster and/or adoptive home to ensure that the child's needs are met;

(3) Make every effort to place siblings together and document in each child's record when it is necessary to separate siblings; and

(4) Ensure contact between siblings is maintained when siblings are not placed together or document why contact is not appropriate for one or more of the siblings.

### **NEW §749.113. What child-care policies must I develop?**

You must develop policies that describe:

(1) Visitation rights between the child and family members and the child and friends;

(2) The child's right to correspond by mail with family members and friends, including any policies regarding mail restrictions and receipt of electronic messages and mail;

(3) The child's right to correspond by telephone with family members and friends;

(4) The child's right to receive and give gifts to family, friends, staff or caregivers, or other children in care, including any restrictions on gifts;

(5) How a child obtains clothing;

(6) Personal possessions a child is or is not allowed to have, where the possessions may be stored, and search policies;

(7) Emergency behavior intervention techniques if the use of emergency behavior intervention is permitted in your agency. The policy must be consistent with §749.115(5) of this title (relating to What emergency behavior intervention policies must I develop if my foster homes are permitted to use emergency behavior intervention?);

(8) Any religious program or activity that you offer, including whether children must participate in the program or activity, and if so, with or without caregivers;

(9) The plans for meeting the educational needs of each child;

(10) When trips with caregivers away from the home are allowed and what protocols will be used;

(11) Program expectations and rules that apply to all children, including an overview of your discipline policy;

(12) Child grievance procedures;

(13) The types and frequency of reports to parents;

(14) Procedures for routine and emergency diagnosis and treatment of medical and dental problems;

(15) Routine health care relating to pregnancy and childbirth, if you admit and/or care for a pregnant child;

(16) Your plan for providing health-care services to a child with primary medical needs;

(17) Transitional living policies, if applicable;

(18) How you will determine whether it is appropriate for a child to use weapons, firearms, explosive materials, and projectiles, if applicable. This information must be consistent with §749.103(b)(19) of this title (relating to What policies and procedures must I submit for Licensing's approval as part of the application process?).

### **NEW §749.115. What emergency behavior intervention policies must I develop if my foster homes are permitted to use emergency behavior intervention?**

At a minimum, you must develop emergency behavior intervention policies to implement the requirements in Subchapter L of this chapter (relating to Foster Care Services: Emergency Behavior Intervention). The policies must include the following:

(1) A complete description of emergency behavior interventions that you permit caregivers to use;

(2) The specific techniques that caregivers can use;

(3) The qualifications for caregivers who assume the responsibility for emergency behavior intervention implementation, including required experience and training, and an evaluation component for determining when a specific caregiver meets the requirements of a caregiver qualified in emergency behavior intervention. You must have an on-going program to evaluate caregivers qualified in emergency behavior intervention and the use of emergency behavior interventions;

(4) Your requirements for and restrictions on the use of permitted emergency behavior interventions;

(5) For the orientation required in §749.1111(b)(6) of this title (relating to What orientation must I provide a child?), how you will:

(A) Explain and document to a child in a manner that the child can understand:

(i) Who can use an emergency behavior intervention;

(ii) The actions a caregiver must first attempt to defuse the situation and avoid the use of emergency behavior intervention;

(iii) The situations in which emergency behavior intervention may be used;

(iv) The types of emergency behavior intervention you permit;

(v) When the use of an emergency behavior intervention must cease;

(vi) What action the child must exhibit to be released from the emergency behavior intervention;

(vii) The way to report an inappropriate emergency behavior intervention;

(viii) The way to provide voluntary comments during or after an emergency behavior intervention; and

(ix) The process for making written comments after an emergency behavior intervention, such as comments regarding the incident that led to the emergency behavior intervention, the manner in which a caregiver intervened, and the manner in which the child was the subject or to which they were a witness. You may create a standardized form that is easily accessible or give children the permission to submit comments on regular paper; and

(B) Obtain each child's input on preferred de-escalation techniques that caregivers can use to assist the child in the de-escalation process;

(6) Requirements that caregivers must attempt less restrictive and less intrusive emergency behavior interventions as preventive measures and de-escalating interventions to avoid the use of emergency behavior intervention;

(7) Training for emergency behavior intervention. The policy must include a description of the emergency behavior intervention training curriculum that meets the requirements in the rules of this chapter, the amount and type of training required for different levels of caregivers (if applicable), training content, and how the training will be delivered; and

(8) Prohibitions for discharging or otherwise retaliating against:

(A) An employee, child in care, foster parent or other adult client, resident, or other person for filing a complaint, presenting a grievance, or otherwise providing in good faith information relating to the misuse of emergency behavior intervention at the agency or foster home; or

(B) A child in care, foster parent or other adult client, or resident because someone on behalf of the client or resident files a complaint, presents a grievance, or otherwise provides in good faith information relating to the misuse of emergency behavior intervention at the agency or foster home.

### **NEW §749.117. What are the requirements for my discipline policies for children in care?**

(a) You must develop discipline policies for children in foster care or in an adoptive placement prior to consummation that must:

(1) Guide caregivers and employees in the methods used for the discipline of children;

(2) Integrate trauma informed care into the care, treatment, and management of each child;

(3) Include measures for positive responses to appropriate behavior;

(4) Include the importance of nurturing behavior, stimulation, and promptly meeting the child's needs; and

(5) Include a statement that discipline of any type is not allowable for infants.

(b) For children in foster care, the discipline policies you develop must also be consistent with Subchapter K, Division 6 of this title (relating to Discipline and Punishment).

### **NEW §749.119. What foster care policies must I develop?**

You must develop foster care policies that include the following:

(1) Criteria and procedures for screening and accepting foster parent applicants or agency home caregivers who can meet the needs of the children your agency serves;

(2) Criteria for making decisions about the number, ages, gender, and needs of children who may be placed in a foster home;

(3) Pre-service and annual training requirements for foster parents or agency home caregivers that at a minimum meet the requirements of Subchapter F of the Chapter (relating to Training and Professional Development); and

(4) Policies on how you will provide services if the home provides more than one type of care.

### **NEW §749.121. What policies must I develop concerning the rights and responsibilities of the child-placing agency and foster parents?**

You must develop policies clearly stating the rights and responsibilities of the child-placing agency and foster parents. The policies must specify:

(1) What decisions you will make, what decisions the foster parents will make, and which ones you and the foster parents must agree upon. This policy must support normalcy consistent with Subchapter M, Division 7 of this chapter (relating to Normalcy);

(2) For training requirements for foster parents:

(A) What part you will provide;

(B) What part the foster parents must acquire on their own; and

(C) A statement about who will be responsible for training fees, travel expenses, and associated child-care costs;

(3) How you and the foster parents will communicate with each other;

(4) The amount of reimbursement you will provide the foster parents and when the foster parents will receive it;

(5) The type of relevant information and pre-placement contact you will provide, so the foster parents can make an informed decision about a placement;

(6) How much discretion the foster parents have in accepting or declining specific placements;

(7) The type and amount of support and services that are available to foster parents, including what support and services you will provide for babysitting, overnight care, and respite child-care services;

(8) The type of information that the foster parents must report to you and within what time frames;

(9) The foster parents' role in the services to children in care, including expectations for the foster parents' participation in service planning and implementation of the service plan;

(10) The foster parents' right to appeal your actions and decisions that affect them and the procedures for making an appeal;

(11) The responsibilities of the child-placing agency and the foster parents for complying with the rules of this chapter; and

(12) How foster parents may review their child-placing agency home record.

### **NEW §749.123. What policies must I develop regarding foster parents who provide treatment services to a child with primary medical needs?**

Your support and services policies for foster parents that are required in §749.121(a)(7) of this title (relating to What policies must I develop concerning the rights and responsibilities of the child-placing agency and foster parents?) must include the provision of overnight care and respite care for foster parents who provide treatment services to a child with primary medical needs. The policies must include:

(1) Making arrangements to provide at least 72 hours of overnight care to the foster parents each year; and

(2) Providing respite child care services as necessary.

### **NEW §749.125. What policies must I develop for foster parents who offer a transitional living program?**

For foster parents who offer a transitional living program, you must develop policies that address the following:

(1) Criteria used to select participants for the program;

(2) Supervision of participants consistent with §749.2597 of this title (relating to Where must the caregivers reside in order to supervise children who are in a transitional living program?);

(3) Expected behaviors of participants and consequences for failure to comply;

(4) Training, education, and experiences to be achieved in the program; and

(5) Roles of participants, agency employees, contract staff, and caregivers.

### **NEW §749.127. What policies must I develop for babysitters, overnight care providers, and respite care providers?**

For both in-home and out-of-home care, you must develop policies specifically for babysitters, overnight care providers, and respite care providers that include:

(1) Minimum age for each type of provider;

(2) Minimum amount and type of prior child-care experience that each type of provider must have;

(3) Amount and type of training each type of provider must have;

(4) Reference and background information that foster parents or you must obtain before using each type of provider;

(5) Number of children that each type of provider can care for;

(6) Information that the foster parents must share with a provider, including information about the children in care and emergency contact information for the foster parent and the agency;

(7) Specific care instructions that the foster parents must share with a provider for children with treatment needs;

(8) A method for contact between the foster parent (and/or the child-placing agency) and provider during the time of the provider's care;

(9) Procedures for agency review and approval of arrangements; and

(10) Requirements for documentation of arrangements, including agency child placement staff review and approval, in the foster home record.

### **NEW §749.129. What policies must I develop for a legal risk placement program for foster-adoptive families?**

If you operate a legal risk placement program, you must develop policies that specify:  
(1) The requirements for foster-adoptive families to participate in this program; and  
(2) Criteria used in selecting children for appropriate legal-risk placements.

**NEW §749.131. What policies must I develop if I offer adoption services?**

You must develop policies for adoption services that include:

- (1) Procedures and criteria for qualifying, screening, and selecting adoptive parents, including the:
  - (A) Criteria you will use to evaluate potential adoptive parents;
  - (B) Criteria you will use to make decisions about placing specific children with an adoptive family; and
  - (C) Procedures you will use to implement the selection criteria;
- (2) Training and programs for the adoptive parents;
- (3) Statement of the rights and responsibilities of the agency and adoptive parents prior to the consummation of the adoption;
- (4) How you will assist the adoptive homes on how to best preserve the cultural identity of the children in their care;
- (5) Fees charged to adoptive parents and reimbursements to birth mothers consistent with Division 5 of this subchapter (relating to Financial Assistance to Birth Mothers):
  - (6) Services that will be offered to birth parents;
  - (7) Degree to which birth parents may be involved in planning for and placing their child; and
  - (8) Post adoption services that will be offered to adoptive parents, adopted children, and birth parents.

**NEW §749.133. What policies must I develop if I use volunteers?**

If you use volunteers, you must develop policies that:

- (1) Include job descriptions and/or responsibilities for the volunteers;
- (2) Address qualifications, screening, and selection procedures for the volunteers;
- (3) Address orientation and training programs for the volunteers;
- (4) Address supervision of volunteers; and
- (5) Address volunteer contact with children in care.

**NEW §749.135. What abuse and neglect policies must I develop?**

You must develop policies on preventing, recognizing, and responding to abuse and neglect of children, including:

- (1) Required annual training for employees;
- (2) Methods for increasing employee awareness of issues regarding child abuse and neglect, including warning signs that a child may be a victim of abuse or neglect;
- (3) Methods for increasing employee awareness of prevention techniques for child abuse and neglect;
- (4) Strategies for coordination between the agency and appropriate community organizations; and

(5) Actions that the parent of a child who is a victim of abuse or neglect should take to obtain assistance and intervention.

**NEW §749.137. What are the general requirements for my agency's policies and procedures?**

(a) The requirements for policies only apply to the agency's policies that are required or governed by this chapter.

(b) All employees and caregivers must be aware of and follow your policies and procedures.

**NEW §749.139. What requirements must I follow when adopting my child-placing agency's plans, policies, and procedures?**

(a) Your agency's plans, policies, and procedures must indicate the date on which you adopted them and their effective date.

(b) You must formalize the adoption of your agency's plans, policies, and procedures as appropriate for your type of ownership:

(1) If you are a sole proprietor, you must sign them;

(2) If you are a partnership, each partner must sign them; or

(3) If you are a corporation or other type of business entity, the governing body must take a written action to adopt (sometimes this may be an order or the adoption may be included in the minutes of the governing body).

**NEW §749.141. Can Licensing cite my agency for a deficiency if I fail to operate according to my approved plans, policies, and procedures?**

Yes, if you violate plans, policies, or procedures, then we may cite the relevant standard in Division 1 of this Subchapter (relating to Plans and Policies Required During the Application Process) as a deficiency;

**Helpful Information**

- *Licensing only enforces plans, policies, and procedures required by the minimum standards. For example, Licensing does not enforce your policies on purchase approvals. In addition, Licensing will not cite this standard if you meet a specific minimum standard but do not meet your policy that requires more than the minimum standard. For example, if your policy requires caregivers to complete 12 hours of general pre-service training and inspection results indicate an employee only completed ten hours of training, we will not cite you for failing to meet your policy.*
- *If this chapter contains another relevant minimum standard, then that standard would be cited for failure to comply with a policy. For example and using the same example as above, if an employee only completed six hours of general pre-service training, we will cite §749.863(a)(1) because the minimum standards require eight hours of general pre-service training. However, if there isn't another relevant minimum standard, then we would cite the relevant standard in Division 1. For example, if your professional staffing plan became outdated, then we would cite §749.105(3).*

Subchapter C, Organization and Administration

**DELETE** Division 2, Governing Body

**DELETE** §749.131. What are the specific responsibilities of the governing body?

**DELETE** §749.133. After a permit has been issued, what subsequent information regarding my governing body must I provide to Licensing, and when must I provide it?

**NEW** Division 2, Operational Responsibilities and Notifications

**NEW §749.151. What are my operational responsibilities?**

While you are operating, you must:

(1) Have a designated full-time child-placing agency administrator who meets the minimum qualifications of §749.631 of this title (relating to What qualifications must a child-placing agency administrator meet?);

(2) Operate according to your approved plans, policies, and procedures;

(3) Maintain current, true, accurate, and complete records;

(4) Allow us to inspect your child-placing agency during its hours of operation;

(5) Allow us to inspect or monitor any of your foster homes at any time;

(6) Not offer unrelated types of services that conflict or interfere with the best interests of a child in care, a caregiver's responsibilities, or space in the homes. If you offer more than one type of service, you must determine and document that no conflict exists;

(7) Maintain liability insurance as required by the Human Resources Code, §42.049; and

(8) Prepare the annual budget and control expenditures and ensure compliance with Division 3 of this Subchapter (relating to General Fiscal Requirements).

**Helpful Information**

*Regarding subsection (2), Licensing only enforces this requirement for plans, policies, and procedures required by the minimum standards. For example, Licensing does not enforce your policies on purchase approvals. In addition, Licensing will not cite this standard if you meet a specific minimum standard but do not meet your policy that requires more than the minimum standard. For example, if your policy requires caregivers to complete 12 hours of general pre-service training and inspection results indicate an employee only completed ten hours of training, we will not cite you for failing to meet your policy. But if an employee only completed six hours of training, we will cite you for a deficiency because the minimum standards require eight hours of general pre-service training.*

**NEW §749.153. What changes must I notify Licensing about regarding my child-placing agency?**

(a) You must provide written notification to your Licensing Representative:

(1) As soon as possible, but at least 30 days before you:

(A) Change the legal structure of your agency or your governing body, if applicable;

(B) Move your agency to another location;

- (C) Open a branch office; or
- (D) Change your agency's or a branch office's hours of operation;
- (2) As soon as possible, but at least 15 days before you:
  - (A) Make changes to the plans required in §749.101(3) and (4) of this title (relating to What plans must I submit for Licensing's approval as part of the application process?); or
  - (B) Make changes to the policies and procedures required in 749.103(b) of this title (relating to What policies and procedures must I submit for Licensing's approval as part of the application process?);
- (3) As soon as possible, but no later than two days after:
  - (A) You change your child-placing agency administrator.
  - (B) A new individual becomes a controlling person at your child-placing agency;
  - (C) An individual ceases to be a controlling person at your child-placing agency;
- or
- (D) There is a significant change in the information we maintain about a controlling person, such as a name change or mailing address change; and
- (4) About a foster home's verification status as described in §749.2489 of this title (relating to (What information must I submit to Licensing about a foster home's verification status?)).
- (b) You must report to the Texas Abuse and Neglect Hotline as soon as you become aware of any foster or adoptive placements that appear to have been made by someone other than the child's parents or a child-placing agency.

### **Helpful Information**

Licensing does not automatically approve an action when you provide the required notice to your Licensing Representative. Additional action may need to be taken by you or Licensing. For example, changing the legal structure of your agency may require a new license; and opening a new branch office requires your to also comply with §749.303 of this title (relating to What must I do before opening a branch office).

*Subchapter C, Organization and Administration*  
*Division 3, General Fiscal Requirements*

**DELETE §749.161. What are my general fiscal requirements?**

**DELETE §749.163. What are my specific fiscal requirements?**

### **NEW §749.161. What are my fiscal requirements?**

- (a) You must establish and maintain your agency on a sound fiscal basis, including
  - (1) Paying your employees timely;
  - (2) Paying foster parents per your agreement with them; and
  - (3) Making sure the needs of children in care are being met.
- (b) You must maintain complete financial records that comply with Generally Accepted Accounting Principles, including:

(1) Accounting for a child's money separately from the funds of your agency and the foster home. You may not use a child's personal earnings, allowances, or gifts to pay for the child's room and board, unless such use is a part of the child's service plan and the child's parent approves it in writing. You must give or send the child's money to the child, parent, or next placement within 30 days of the child's discharge; and

(2) Making one of the following available for our review:

(A) An annual review of your financial records conducted by an independent Certified Public Accountant in accordance with the Generally Accepted Accounting Principles; or

(B) Proof of reserve funds equal to at least three months of operating expenses for your agency.

*Subchapter C, Organization and Administration  
Division 7, Branch Offices*

### **NEW §749.304. Where must I have a main or branch office?**

You must have either a main or branch office:

(1) In each region of the department where you verify homes; or

(2) Within 150 miles of each verified foster home.

### **§749.305. ~~When are additional staff or offices required for foster care services~~What are the requirements for administrators and treatment directors for a main office and branch offices?**

~~(a) In each DFPS region where you verify foster homes or within 150 miles of each verified foster home, you must comply with one the following:~~You must comply with one of the following:

~~(1) Maintain a~~The main office ~~or~~and each branch office, ~~with:~~must have a separate:

~~(A) An administrator~~Administrator who meets §749.631 of this title (relating to What qualifications must a child-placing agency administrator meet?); and

~~(B) A treatment~~Treatment director, if applicable, per §749.721 of this title (relating to Must I have a treatment director?); or

~~(2) Offices that operate based on the following caseload limits for child placement staff may share the same administrator and treatment director.~~Maintain a main office or branch office that operates based on the following caseload limits:

~~(A) A caseload of foster children only~~cannot~~that does not~~ exceed:

~~(i) 35 for children receiving child-care services;~~

~~(ii) 25 for children receiving treatment services; and~~

~~(iii) 30 for a combination of children receiving child-care services and children receiving treatment services;~~

~~(B) A caseload of foster homes only~~cannot~~that does not~~ exceed 15 homes; and

~~(C) A combination caseload of both children and homes~~cannot~~that does not~~ exceed 30 cases. Calculate the maximum of 30 cases by counting:

~~(i) Each child as one case;~~

~~(ii) Each foster family home as one case; and~~

~~(iii) Each foster group home as two cases.~~

~~(b) If you choose to comply with subsection (a) of this section using the caseload limits in subsection (a)(2) of this section, you are only required to have one administrator and one treatment director (if applicable) for each license.~~

~~(c) If you were licensed before January 1, 2007, you have until January 1, 2012, to comply with this requirement.~~

~~(d)~~ This rule does not apply to a child-placing agency that provides only adoption services, including foster homes verified by a private adoption agency solely for the care of infants awaiting placement in an adoptive home pending the resolution of the child's eligibility for adoption and/or the readiness of an appropriate adoptive home. This exception does not ~~include~~apply to a foster home that is also the intended adoptive home.

### **§749.307. What happens to the foster homes supervised by a branch office when the branch office closes?**

(a) If the branch office closure is related to a corrective or adverse action which Licensing is taking or has taken against your agency, you must:

(1) Close a foster home under that branch office; or

(2) Transfer a foster home under that branch office to your main or another branch office, including:

(A) Updating the foster home study per §749.2473 of this title (relating to What must I do to verify a foster home that another child-placing agency has previously verified?), with the exception of new criminal history and central registry background checks;

(B) Ensuring that all required criminal history and central registry background checks for the foster home have been conducted within the last 24 months; and

(C) ~~Issuing a new~~Amending the verification certificate.

(b) If the branch office closure is not related to a corrective or adverse action which Licensing is taking or has taken against your agency, you may transfer the foster homes to the main office or another branch office without updating the foster ~~homes'~~home ~~studies~~screening.

### *Subchapter C, Organization and Administration*

#### DELETE Division 8, Policies and Procedures

DELETE §749.331. What are the general requirements for my agency's policies?

DELETE §749.333. What are the requirements for my admission policies?

DELETE §749.335. What information must my placement policy contain?

DELETE §749.337. What policies must I provide to the person placing the child?

DELETE §749.339. What child-care policies must I develop?

DELETE §749.341. What emergency behavior intervention policies must I develop if the use of emergency behavior intervention is permitted in my foster homes?

DELETE §749.343. What policies must I develop on the discipline of children in foster care and pre-adoptive care?

DELETE §749.345. What foster care policies must I develop?

DELETE §749.347. What policies must I develop on the rights and responsibilities of

the child-placing agency, foster parents, and caregivers?

DELETE §749.349. What additional policies must I develop for foster parents that provide treatment services?

DELETE §749.351. What policies must I develop for fosters parents who offer a transitional living program?

DELETE §749.353. What policies must I develop for babysitters, overnight care providers, and respite care providers?

DELETE §749.355. What policies must I develop for a legal risk placement program for foster-adoptive families?

DELETE §749.357. What policies must I develop if I offer adoption services?

DELETE §749.359. What policies must I develop if I use volunteers?

### *Subchapter C, Organization and Administration*

#### *Division 9, Clients and Appeals*

[Need to renumber Division 9 and make it Division 8. We need to tell Rules ahead of time that this needs to be done. They can call the *Texas Register* ahead of time and get them to make this change prior to publication of the adopted rules.]

#### **§749.421. Who are my clients?**

(a) Anyone can request information from you or attend a meeting open to all interested persons. A person becomes your client when you establish a relationship beyond that available to someone who is merely an interested person.

(b) Your child clients include children in:

- (1) Foster care; and
- (2) Pre-consummated adoptive placement.

~~(b)~~(c) Your adult clients include:

- (1) Birth ~~parent~~parents, managing ~~conservator~~conservators, or whoever has legal responsibility for ~~the child that you~~children they are placing in your care;
- (2) Foster parent applicants;
- (3) Foster parents;
- (4) Adoptive applicants;
- (5) Adoptive parents prior to consummation of the adoption; ~~and~~
- (6) Adoptive parents and birth parents seeking post ~~adoptive~~adoption services; and
- (7) Young adults in your care.

~~(c) Anyone can call you for information or attend a meeting open to all interested persons, but a person becomes your client when you establish a relationship beyond that available to someone who is merely an interested person.~~

#### **§749.423. What rights do my adult clients have?**

When a person becomes your adult client, you must inform the person in writing:

- (1) That the rules of this chapter, ~~the any~~ compliance ~~status~~-reports, and your policies are available for review upon their request;
- (2) Of their right to appeal agency actions and decisions that affect them, and the procedures for making an appeal;

(3) Of procedures for making a complaint to us regarding a violation of minimum standards; and

(4) Of other entities and their phone numbers and addresses where it is appropriate to file complaints, such as the board or state agency that professionally licenses individuals whom you employ or contract with, and the procedures for making complaints to those entities.

#### **§749.425. What must my appeal process include?**

(a) You must have a written appeal process for your adult clients in regard to your actions and decisions that affect those clients.

(b) The process must describe:

(1) How you will inform clients of their right to appeal;

(2) The procedures and time frames for ~~making clients to make~~ an appeal;

(3) The criteria or basis that will be used to make the decision;

~~(4)~~ Who will hear an appeal and make the decision;

~~(5)~~ Time frames for making a decision and communicating the decision to the client; and

~~(6)~~ How the client will be informed of ~~person who requests an appeal will find out about~~ the decision;

~~(5)~~ Time frames for making a decision and communicating the decision to the complainant; and

~~(6)~~ The basis for an appeal decision.

(c) You must provide this information to each birth parent, foster parent applicant, or adoptive applicant before you make that person your client.

(d) Your appeal process does not have to involve anyone from outside your agency. An internal review procedure is sufficient.

#### *Subchapter D, Reports and Record Keeping*

#### *Division 1, Reporting Serious Incidents and Other Occurrences*

#### **§749.501. What is a serious incident?**

A serious incident is a non-routine occurrence that has or may have dangerous or significant consequences on the care, supervision, and/or treatment of a child. The different types of serious incidents are noted in §749.503 of this title (relating to When must I report and document a serious incident?).

#### **§749.503. When must I report and document a serious incident?**

(a) You must report and document the following types of serious incidents involving a child in your care. The reports must be made to the following entities, and the reporting and documenting must be within the specified time frames:

| Serious Incident  | (i) To Licensing?<br><br>(ii) If so, when?   | (i) To Parents?<br><br>(ii) If so, when?   | (i) To Law enforcement?<br><br>(ii) If so, when?  |
|---|--|--|---|
| (1) A child dies while in your care.  | (A)(i) YES<br><br>(A)(ii) <del>Report as soon as possible, but no later than 24 hours after the incident or occurrence.</del> <u>Within 2 hours after the child's death</u>                                  | (B)(i) YES<br><br>(B)(ii) <del>Immediately</del> <u>Within 2 hours after the child's death</u>   | (C)(i) YES<br><br>(C)(ii) <del>Immediately,</del> <u>but no later than 1 hour after the child's death</u> |
| (2) A <del>critical</del> <u>substantial physical</u> injury or <u>critical illness</u> that <u>a reasonable person would conclude needs warrants</u> treatment by a medical professional or hospitalization, <del>including dislocated, fractured, or broken bones; concussions; lacerations requiring stitches; second and third degree burns; and damage to internal organs.</del> | (A)(i) YES<br><br>(A)(ii) Report as soon as possible, but no later than 24 hours after the incident or occurrence. <u>Note: For further clarification see "Helpful Information" at the end of this rule.</u> | (B)(i) YES<br><br>(B)(ii) Report as soon as possible, but no later than 24 hours after the incident or occurrence. <u>Note: For further clarification see "Helpful Information" at the end of this rule.</u> | (C)(i) NO<br><br>(C)(ii) Not Applicable   |
| (3) Allegations of abuse, neglect, or exploitation of a child; or any incident where there are indications that a child in care may have been abused, neglected, or exploited.  | (A)(i) YES, including whether you plan to move the child until the investigation is complete.<br><br>(A)(ii) As soon as you become   | (B)(i) YES, including whether you plan to move the child until the investigation is complete.<br><br>(B)(ii) As soon as you become   | (C)(i) NO<br><br>(C)(ii) Not  |

| Serious Incident  | (i) To Licensing?<br><br>(ii) If so, when?   | (i) To Parents?<br><br>(ii) If so, when?   | (i) To Law enforcement?<br><br>(ii) If so, when? |
|---|--|--|--|
|   | aware of it.   | aware of it.   | applicable                                       |
| (4) Physical abuse committed by a child against another child. For the purpose of this subsection, physical abuse <u>occurs when there is substantial:</u> physical injury <del>that results in substantial bodily harm and requiring emergency medical treatment</del> , excluding any accident; or failure to make a reasonable effort to prevent an action by another person that results in <u>substantial</u> physical injury <del>that results in substantial bodily harm</del> to the child. | (A)(i) YES<br><br>(A)(ii) As soon as <u>you become aware of</u> <del>it possible, but no later than 24 hours after the occurrence of incident.</del> | (B)(i) YES<br><br>(B)(ii) As soon as <u>you become aware of</u> <del>it possible, but no later than 24 hours after the occurrence of incident.</del> | (C)(i) NO<br><br>(C)(ii) Not applicable          |
| (5) Sexual abuse committed by a child against another child. For the purpose of this subsection, sexual abuse is: conduct harmful to a child's mental, emotional or physical welfare, including nonconsensual sexual activity between children of any age, and consensual sexual activity between children with more than 24 months difference in age or when there is a significant difference in the developmental level of the children; or failure to make a reasonable effort to prevent       | (A)(i) YES<br><br>(A)(ii) As soon as <u>you become aware of</u> <del>it possible, but no later than 24 hours after the occurrence of incident.</del> | (B)(i) YES<br><br>(B)(ii) As soon as <u>you become aware of</u> <del>it possible, but no later than 24 hours after the occurrence of incident.</del> | (C)(i) NO<br><br>(C)(ii) Not applicable          |

| Serious Incident   | (i) To Licensing?<br><br>(ii) If so, when?  | (i) To Parents?<br><br>(ii) If so, when?   | (i) To Law enforcement?<br><br>(ii) If so, when?   |
|--|---|--|--|
| sexual conduct harmful to a child.   |   |  |  |
| (6) A child is indicted, charged, or arrested for a crime, not including being issued a ticket at school by law enforcement or any other citation that does not result in the child being detained; <u>or when law enforcement responds to an alleged incident at the foster home.</u> | (A)(i) YES<br><br>(A)(ii) As soon as possible, but no later than 24 hours after you become aware of it. | (B)(i) YES<br><br>(B)(ii) As soon as you become aware of it.   | (C)(i) NO<br><br>(C)(ii) Not applicable  |
| (7) A child developmentally or chronologically under 6 years old is absent from a foster home and cannot be located, including the removal of a child by an unauthorized person.   | (A)(i) YES<br><br>(A)(ii) Within 2 hours of notifying law enforcement.                                  | (B)(i) YES<br><br>(B)(ii) Within 2 hours of notifying law enforcement.   | (C)(i) YES<br><br>(C)(ii) Immediately upon determining the child is not on the premises and the child is still missing.  |
| (8) A child developmentally or chronologically 6 to 12 years old is absent from a foster home and cannot be located, including the removal of a child by an unauthorized person.   | (A)(i) YES<br><br>(A)(ii) Within 2 hours of notifying law enforcement, if the child is still missing.   | (B)(i) YES<br><br>(B)(ii) Within 2 hours of determining the child is not on the premises, if the child is still missing. | (C)(i) YES<br><br>(C)(ii) Within 2 hours of determining the child is not on the premises, if the child is still missing. |
| (9) A child 13 years old or older is absent from a foster home and cannot be located, including the removal of a child by an unauthorized  | (A)(i) YES<br><br>(A)(ii) No later than <u>6</u> <del>24</del> hours from when the                      | (B)(i) YES<br><br>(B)(ii) No later than <u>6</u> <del>24</del> hours from when the                                       | (C)(i) YES<br><br>(C)(ii) No later than <u>6</u> <del>24</del> hours from when the                                       |

| Serious Incident  | (i) To Licensing?<br><br>(ii) If so, when?   | (i) To Parents?<br><br>(ii) If so, when?   | (i) To Law enforcement?<br><br>(ii) If so, when?   |
|---|--|--|--|
| person.   | child's absence is discovered and the child is still missing. <u>However, you must report the child's absence immediately if the child has previously been alleged or determined to be a trafficking victim, or you believe the child has been abducted or has no intention of returning to the foster home.</u> | child's absence is discovered and the child is still missing. <u>However, you must report the child's absence immediately if the child has previously been alleged or determined to be a trafficking victim, or you believe the child has been abducted or has no intention of returning to the foster home.</u> | child's absence is discovered and the child is still missing. <u>However, you must report the child's absence immediately if the child has previously been alleged or determined to be a trafficking victim, or you believe the child has been abducted or has no intention of returning to the foster home.</u> |
| (10) A child in your care contracts a communicable disease that the law requires you to report to the Department of State Health Services (DSHS) as specified in 25 TAC 97, Subchapter A, (relating to Control of Communicable Diseases). | (A)(i) YES, unless the information is confidential.<br><br>(A)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable  | (B)(i) YES, if their child has contracted the communicable disease or has been exposed to it.<br><br>(B)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable  | (C)(i) NO<br><br>(C)(ii) Not applicable  |

| Serious Incident                   | (i) To Licensing?<br><br>(ii) If so, when?                             | (i) To Parents?<br><br>(ii) If so, when?                               | (i) To Law enforcement?<br><br>(ii) If so, when? |
|------------------------------------|--|--|--|
|                                    | disease.   | disease.   |  |
| (11) A suicide attempt by a child. | (A)(i) YES<br><br>(A)(ii) As soon as you become aware of the incident. | (B)(i) YES<br><br>(B)(ii) As soon as you become aware of the incident. | C)(i) NO<br><br>(C)(ii) Not applicable           |

(b) ~~Foster parents must report any serious incident directly to the Child Abuse Hotline if the incident involves a child under the care of the foster parent.~~ If there is a medically pertinent incident, such as a seizure, that does not rise to the level of a serious incident, you do not have to report the incident but you must document the incident in the same manner as a serious incident.

(c) If there is a serious incident involving an adult resident, you do not have to report the incident to Licensing, but you must document the incident in the same manner as a serious incident. You do have to report the incident to:

(1) lawLaw enforcement, as outlined in the chart above;

~~(2) You also have to report the incident to the~~The parents, if the adult resident is not capable of making decisions about ~~his~~the resident's own care; and

(3) Adult Protective Services through the Texas Abuse and Neglect Hotline if there is reason to believe the adult resident has been abused, neglected or exploited.

(d) You must report and document the following types of serious incidents involving your agency, one of your foster homes, an employee, professional level service provider, contract staff, or a volunteer to the following entities within the specified time frame:

| Serious Incident   | (i) To Licensing?<br><br>(ii) If so, when?  | (i) To Parents?<br><br>(ii) If so, when?  |
|--|---|---|
| (1) Any incident that renders all or part of your agency or a foster home unsafe or unsanitary for a child, such as a fire or a flood. | (A)(i) YES<br><br>(A)(ii) As soon as possible, but no later than 24 hours after the incident. | (B)(i) YES<br><br>(B)(ii) As soon as possible, but no later than 24 hours after the incident. |
| (2) A disaster or emergency that requires a foster home to close.  | (A)(i) YES<br><br>(A)(ii) As soon as possible, but no later than 24 hours after the incident. | (B)(i) YES<br><br>(B)(ii) As soon as possible, but no later than 24 hours after the incident. |

|   |   |   |
|---|---|---|
| <p>(3) An adult who has contact with a child in care contracts a communicable disease noted in 25 TAC 97, Subchapter A (relating to Control of Communicable Diseases).</p>  | <p>(A)(i) YES, unless the information is confidential.</p> <p>(A)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.</p> | <p>(B)(i) YES, if their child has contracted the communicable disease or has been exposed to it.</p> <p>(B)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.</p> |
| <p>(4) An allegation that a person under the auspices of your <del>child-placing</del> agency who directly cares for or has access to a child in the setting has abused drugs within the past seven days.</p>   | <p>(A)(i) YES</p> <p>(A)(ii) Within 24 hours after learning of the allegation.</p>  | <p>(B)(i) NO</p> <p>(B)(ii) Not applicable.</p>   |
| <p>(5) An investigation of abuse or neglect by any other entity (other than Licensing) of an employee, <u>professional level service provider, foster parent,</u> contract staff, volunteer, or other adult at the agency.</p>  | <p>(A)(i) YES</p> <p>(A)(ii) As soon as possible, but no later than 24 hours after you become aware of the investigation.</p>   | <p>(B)(i) NO</p> <p>(B)(ii) Not applicable.</p>   |
| <p>(6) An arrest, <del>or</del> indictment, or a county or district attorney accepts an "Information" regarding an official complaint against an employee, <u>professional level service provider, foster parent, a</u> contract staff, <del>or volunteer</del> <u>volunteer, or other adult at the agency</u> alleging commission of any crime as provided in §745.651 of this title (relating to What types of criminal convictions may affect a person's ability to be present at an operation?); <u>or when law enforcement responds to an alleged incident at the foster home.</u></p> | <p>(A)(i) YES</p> <p>(A)(ii) As soon as possible, but no later than 24 hours after you become aware of the situation.</p>   | <p>(B)(i) NO</p> <p>(B)(ii) Not applicable.</p>   |

**Helpful Information**

Regarding subsection (a)(2), not every trip to a hospital or emergency clinic must be

reported as a serious incident. Only those incidents involving a “critical substantial physical injury or critical illness” must be reported and documented as a serious incident. The ~~rule~~ definition of "substantial physical injury" contains some examples of reportable serious incidents. Visits to the emergency room or emergency clinic (that did not result in hospitalization) for a common illness such as the flu, for a chronic illness such as an asthma attack, or for a routine medical exam would not warrant reporting as a serious incident.

Also, it is the nature of the injury or illness that determines whether it is reportable as a serious incident, not the venue in which it is treated. Taking a child to the emergency clinic or doctor's office for stitches is still reportable as a serious incident, even though the treatment did not occur at an emergency room or hospital.

Regarding children receiving treatment services for primary medical needs, planned admissions to the hospital are not reportable as serious incidents. If the child sustains a critical substantial physical injury or contracts a critical illness, a serious incident report is required. However, ongoing treatment for the child's chronic illnesses or conditions is not reportable as a serious incident.

In addition, admission to a psychiatric hospital only warrants a serious incident report if the admission is precipitated by a reportable incident, such as a suicide attempt. The admission itself is not reportable as a serious incident.

**DELETE §749.507. When must I report other occurrences?**

**§749.509. How do I make a report of a serious incident or occurrence to Licensing?**

- (a) All serious incident reports must be made directly to the ~~Child~~Texas Abuse and Neglect Hotline.
  - (b) Foster parents must report any serious incidents directly to the Texas Abuse and Neglect Hotline if the incident involves a child under the care of the foster parent.
- ~~Occurrences that are required to be reported to Licensing in writing must be forwarded to your Licensing representative (See §749.507(2) and (3) of this title (relating to When must I report other occurrences?)).~~

**§749.513. What additional documentation must I include with a written serious incident report?**

You must include the following additional documentation with a written serious incident report, as applicable:

| Serious incident  | Documentation   |
|---|---|
| (1) Child death, <del>suicide attempt, or a</del> <u>critical substantial physical injury, or a suicide attempt</u> reportable under §749.503(a)(1), (2), and (11) of this title (relating to When must I report and document a serious incident?). | Any emergency behavior intervention implemented on the child within 48 hours prior to the serious incident. |

|   |  |
|---|--|
| (2) Any <del>critical</del> <u>substantial physical</u> injury reportable under §749.503(a)(2) of this title that resulted from a short personal restraint.                         | Documentation of the short personal restraint, including the precipitating circumstances and specific behaviors that led to the emergency behavior intervention.   |
| (3) Child absent without permission.  | (A) Any efforts made to locate the child;<br>(B) The date and time you notified the parent(s) and the appropriate law enforcement agency and the names of the persons with whom you spoke regarding the child's absence and subsequent location or return to the foster home; and<br>(C) If the parent cannot be located, dates and times of all efforts made to notify the parent regarding the child's absence and subsequent location or return to the foster home. |
| (4) Any <del>abusive behavior among children</del> <u>physical or sexual abuse committed by a child against another child</u> reportable under §749.503(a)(4) or (5) of this title. | The difference in size, age, and developmental level of the children involved in the <del>abusive behavior</del> <u>physical or sexual abuse</u> .   |

**§749.515. ~~Where~~How long must I keep my incident reports?**

~~(a)~~ You must keep a copy of the incident ~~report~~reports on file for two years. The reports must be easily accessible to Licensing upon request.

~~(b) You must permit Licensing to make a copy of incident reports, as requested.~~

*Subchapter D, Reports and Record Keeping*

*Division 2, ~~Operation~~Agency Records*

**NEW §749.529. What are the retention requirements for my agency's policies?**

(a) You must maintain a copy of your policies and procedures at the agency. They must be available for review by employees, contract staff, caregivers, Licensing, or your clients, upon request.

(b) You must maintain copies of all current and previous policies for at least two years.

**DELETE §749.531. If I keep electronic records, what procedures must I have for those records?**

**DELETE §749.533. What procedures must I have for protecting records?**

**NEW §749.531. What policies and procedures must I have for protecting records?**

You must have policies and procedures for:

(1) Protecting paper and electronic records from destruction and loss; and

(2) Clarifying the persons:

(A) Within your agency who are authorized to access records; and

(B) Outside of your agency who are authorized by law to have access to records.

**NEW §749.533. What additional policies and procedures must I have for electronic records?**

If you keep electronic records, you must develop policies and procedures in addition to the requirements in §749.531 of this title (relating to What policies and procedures must I have for protecting records?). These policies and procedures must address:

(1) What records must be in the external paper file and what records can be stored in the electronic file;

(2) Computer security systems, including confidentiality, passwords, and employee procedures to ensure the security of the system;

(3) Requirements for routine back-up of data;

(4) Anti-virus protection systems; and

(5) Limit access to your electronic files to persons within your agency authorized to see specific information in an electronic file.

**NEW 749.534. Are electronic signatures allowed?**

Yes, you may use electronic and digital signatures, including approvals by e-mail and electronic approvals.

**§749.535. How current must a record be?**

(a) All documentation must be in the record:

(1) No later than 30 days after the occurrence or event; or

(2) ~~Within 15 days from the end of the month for monthly summaries; or~~

~~(3) As otherwise specified in this chapter.~~

(b) Foster parents must submit copies ~~Copies~~ of any records ~~kept by the foster parents must be submitted~~ they keep to you each month. They must submit them within 15 days from the end of the month. You must file these records in the child's record.

**§749.539. Where must I maintain foster home disaster and emergency plans?**

You must maintain a copy of each current foster home disaster and emergency plan at the agency main office, the relevant branch office, or in a central administratively designated location.

*Subchapter D, Reports and Record Keeping  
Division 3, Personnel Records*

**§749.551. Where must I maintain personnel records?**

(a) You must maintain all active personnel records at the agency main office or keep individual personnel records at the office where each person is working. ~~This may include electronic records in §749.531 of this title (relating to If I keep electronic records, what procedures must I have for those records?).~~

(b) You must maintain archived personnel records at the main office, the relevant branch office, ~~agency~~ and/or in a central administratively designated location.

- (c) You may archive entire closed personnel records electronically.
- (d) Your system for maintaining all personnel records must be uniform throughout the agency.
- (e) You must maintain in the main office of the agency a master list of active and archived personnel records ~~and their~~ with a notation of the location of those records ~~in the main office of the agency.~~

**Helpful Information**

~~Regarding subsection (d), most child-placing agencies either keep all personnel records at the main office or keep each personnel record at the location in which the person is working. Any system is acceptable as long as it is consistently implemented throughout the child-placing agency. You are not required to keep duplicate records at a branch office if you choose to maintain all personnel records at your main office.~~

**§749.553. What information must the personnel record of an employee include?**

For each employee, excluding foster parents, the personnel record must include:

- (1) - (3) (No change.)
- (4) Evidence of any valid professional licensures, certifications, or registrations the person must have to meet qualifications for the job-position, such as a current renewal card or a letter from the credentialing entity verifying that the person has met the required renewal criteria;
- (5) A copy of the record of tuberculosis screening conducted prior to the person having contact with children in care showing that the employee is free of contagious tuberculosis as provided in §749.1417 of this title (relating to Who must have a tuberculosis (TB) examination?);
- (6) A notarized Licensing *Affidavit for Applicants for Employment* form as specified in Human Resources Code, §42.059;
- (7) A statement signed and dated by the employee documenting that ~~he~~ the employe has read a copy of the operational policies required by §749.103 of this title (relating to What policies and procedures must I submit for Licensing's approval as part of the application process?); ~~;~~
  - ~~(A) Operational policies; and~~
  - ~~(B) Personnel policies;~~
- (8) A statement signed and dated by the employee indicating ~~that~~:
  - ~~(A) The~~ the employee must immediately report any suspected incident of child abuse, neglect, or exploitation to the ChildTexas Abuse and Neglect Hotline and the agency's administrator or administrator's designee; ~~and~~
  - ~~(B) The date the employee attended pre-service training in measures to prevent, identify, treat, and report suspected occurrences of child abuse (including sexual abuse), neglect, and exploitation, as required by §749.881(3) of this title (relating to What curriculum components must be included in the general pre-service training?)~~;
- (9) Proof of request for background checks required by Chapter 745, Subchapter F of this title (relating to Background Checks);
- (10) For each person who transports a child, a copy of:
  - (A) The person's valid driver's license; or
  - (B) A driver's license check conducted through the Texas Department of Public Safety within the last 12 months;

- (11) A record of training, including the date of the training, and the number of training hours, and the curriculum covered;
- (12) Any documentation of the person's ~~tenure~~performance with the agency; and
- (13) The date and reason for the person's separation ~~from the agency~~, if applicable.

*Subchapter D, Reports and Record Keeping  
Division 4, Client Records*

**§749.571. What client records must I maintain?**

You must maintain master records for all clients. The records must be individualized, current, and complete. The master record may include electronic records ~~in §749.531 of this title (relating to If I keep electronic records, what procedures must I have for those records?)~~.

**§749.573. Where must I maintain active master records for clients?**

- (a) - (b) (No change.)
- (c) You must maintain a master list of active client records ~~and their~~ with a notation of the location of those records in the main office of the agency.

**§749.577. What information must an active child record include?**

For each child, the active record must include:

- (1) The child's full name and another method of identifying the child, such as a client number; and
- (2) Documentation of known allergies and chronic conditions on the exterior of the child's record or in another ~~location~~place where the information is clearly visible to persons with access to the record, including a notation of "no known allergies" when applicable; ~~and~~
- ~~(3) The date of each data entry and the name of the person who makes the data entry.~~

**§749.581. Where must I maintain archived ~~master client~~ records for clients?**

- (a) You must maintain archived client records at the ~~agency~~main office, the branch office that served the client, and/or in a central administratively designated location.
- (b) You may archive entire closed client records electronically.
- (c) Your system for maintaining all client records must be uniform throughout the agency.
- (d) You must maintain a master list of archived client records with a notation of the ~~and their~~ location of those records in the main office of the agency.

**§749.585. How long must I maintain client records?**

- (a) For children placed in adoption, you must maintain complete child, birth parent, and adoptive family records permanently or transfer them, as appropriate, to the Bureau of Vital Statistics.
- (b) You must maintain a foster child's complete record from admittance to discharge for two years from the date of discharge, or until the resolution of any investigation involving the child, whichever is longer.

- (c) You must maintain records for verified foster homes for at least five years after the foster home is closed. This includes foster homes that did not receive placements.
- (d) You must maintain records for approved adoptive applicants with whom you did not place a child for at least five years after the family withdraws or you close consideration of the family for a placement.
- (e) You must maintain records for applicants for foster or adoptive homes whom you did not verify or approve for at least one year after denial of the application.
- (f) You do not have to maintain records of foster or adoptive home applicants who drop out before the completion of a home study screening.

*Subchapter E, Agency Staff and Caregivers  
Division 1, General Requirements*

**DELETE §749.601. What must my written professional staffing plan include?**

*Subchapter E, Agency Staff and Caregivers  
Division 2, Child-Placing Agency Administrator*

**§749.633. Can a child-placing agency administrator be an administrator for two residential child-care operations?**

A child-placing agency administrator can be an administrator for two residential child-care operations, including a general residential operation or residential treatment center, if:

- (1) Both operations are in good standing with Licensing;
  - (2) The size and scope of the operation operations are manageable by one person, which is clarified in the written professional staffing plans;
  - (3) The person also holds a valid Child-Care Administrator License, if applicable;
- and
- (4) At least one child-placing agency is managing 25 or fewer foster homes, ~~if acting as the administrator for two child-placing agencies.~~

**§749.635. What responsibilities must the child-placing agency administrator ~~designated to be responsible for the administration of the agency~~ have?**

The child-placing agency administrator must:

- (1) Have daily supervision and overall administrative responsibility for all of your offices, including your main office and any branch offices; and
- (2) Be responsible for or assign responsibility for:
  - (A) Administering and managing the agency according to ~~the~~your policies ~~adopted by the governing body;~~
  - (B) Ensuring that the agency complies with applicable rules of this chapter, Chapter 42 of the Human Resources Code, Chapter 745 of this title (relating to Licensing), and other applicable laws;
  - (C) Personnel matters, including hiring, assigning duties, training, supervision, evaluation of employees, and terminations; ~~and~~
  - (D) Ensuring persons whose behavior or health status presents a danger to children are not allowed at the agency or foster homes; and

(E) Administering and managing your approved agency plans as stated in §749.101(3) and (4) of this title (relating to What plans must I submit for Licensing's approval as part of the application process?). These plans:

(i) Evaluate the effectiveness of your system for meeting the rules of this chapter; and

(ii) Ensure the investigation of reports of minimum standards violations, upon our request.

*Subchapter E, Agency Staff and Caregivers*

*Division 3, Child Placement Staff and Child Placement Management Staff*

**§749.663. What are the responsibilities of child placement staff?**

(a) Child placement staff providing foster care services are responsible for:

(1) Deciding whether to admit a child for placement, including completion of an admission assessment and any other evaluation of a child for placement;

(2) Placing a child into a foster home or other substitute living arrangement;

(3) Managing the case of a child, including:

(A) Developing and updating of service plans;

(B) ~~Stewarding~~ Maintaining direct contact with the child and the foster parents or other caregivers; and

(C) Performing any additional case management activities, including conducting and documenting supervisory visits for compliance with §749.2815 of this title (relating to How often must I have supervisory visits with the foster home and what must be evaluated during a supervisory visit?);

(4) Orientation, assessment, and verification of foster parents; and

(5) Monitoring and providing support services to foster parents, including the initiation of development plans, corrective actions, or adverse actions.

(b) Child placement staff providing adoption services are responsible for:

(1) Deciding whether to admit a child for placement;

(2) Placing a child into a foster home, adoptive home, or other substitute living arrangement;

(3) Managing the case of a child, including:

(A) Developing and updating of service plans;

(B) ~~Stewarding~~ Maintaining direct contact with the child and the foster parents, adoptive parents, or other caregivers; and

(C) Performing any additional case management activities;

(4) Case management and service delivery to birth parents; and

(5) Orientation, assessment, and approval of adoptive parents.

~~(c) Child placement management staff may directly perform any of these responsibilities.~~

**§749.667. What are the responsibilities of child placement management staff?**

Child placement management staff must:

(1) Review and approve:

(A) All child placement activities, as outlined in §749.663 of this title (relating to What are the responsibilities of child placement staff?);

(B) Documentation of supervisory visits for compliance with §749.2815 of this title (relating to How often must I have supervisory visits with the foster home and what must be evaluated during a supervisory visit?);

(C) Investigation findings of minimum standards deficiencies that Licensing requested you conduct; and

(D) Corrective and adverse action plans involving foster families; and

(2) Supervise ~~less qualified or experienced employees~~ child placement staff, if any, including planning for the ~~employee's~~ staff's professional development and taking any other appropriate action in regard to their child-placing decisions.

(3) Directly perform the responsibilities of the child placement staff, as appropriate (e.g. the child placement staff is absent or unavailable).

### **§749.669. How do child placement management staff document approval?**

Child placement management staff must review and approve by signing and dating the following documents:

(1) Assessment/admission forms;

(2) Initial and subsequent placement documents;

(3) Foster and adoptive home ~~studies~~ screenings;

(4) Investigation reports of minimum standards deficiencies that Licensing requested you conduct;

(5) Foster home development and/or corrective action plans;

(6) Initial and updated service plans;

(7) Discharge or transfer plans and summaries;

(8) Any restrictions you impose on the child;

(A) imposed on the child for For more than 30 days that ~~have not been approved by~~ the treatment director or service planning team has not approved; and

(B) any monthly re-evaluations of a restriction that That continues for more than 30 days and must be re-evaluated by the child placement management staff;

(9) Any restrictions to communication and visitation with family imposed on a child;

(10) Any restrictions to a particular room or building for more than 24 hours imposed on a child; and

(11) Child placement staff contacts with children in §749.1291 of this title (relating to What are the requirements for contact between child placement staff and children in foster care?).

### **DELETE 749.671. What is a corrective or adverse action?**

### **§749.673. What are the qualifications that an employee must have to perform child placement activities?**

In addition to the requirements that all employees must meet, employees who perform child placement activities must meet the following qualifications:

| Options for qualifications: | Educational qualifications:                  | Professional qualifications:   |
|-----------------------------|--|--|
| Option 1                    | (1) <del>(A) A master's degree from an</del> | <u>(A)</u> One year of documented full-time work experience in a <del>child-placing agency</del> |

|                              |  |   |
|------------------------------|--|---|
|                              | <p><del>accredited college or university in social work or other human services field; and</del> (B) <del>Nine credit hours in graduate level courses that focus on family and individual function and interaction.</del> <u>A master's degree from an accredited college or university; or</u></p> <p>(2) <u>A bachelor's degree from an accredited college or university in social work or other human services field.</u></p> | <p><del>conducting child-placing activities</del> <u>residential child-care operation, or as a conservatorship caseworker or foster adoptive home development worker for the department. The experience must be in conducting assessments, service planning, or case management duties.</u> The experience may include a maximum of 350 hours of formal, supervised field placement or practicum in child-placing activities; <u>or</u></p> <p>(B) <u>One year working under the direct supervision of child placement management staff. The direct supervision with the child placement management staff must consist of 10 documented, monthly, face-to-face, individual, case-related conferences over the year. The direct supervision must continue until the employee's previous experience and directly supervised experience totals one year.</u></p> |
| Option 2                     | <p><del>(2) A master's degree from an accredited college or university.</del></p>  | <p><del>Two years of documented full-time work experience in a child-placing agency conducting child-placing activities. The experience may include a maximum of 350 hours of formal, supervised field placement or practicum in child-placing activities.</del></p>  |
| Option 3                     | <p><del>(3) A bachelor's degree from an accredited college or university in social work or other human services field.</del></p>   | <p><del>Two years of documented full-time work experience in a child-placing agency conducting child-placing activities. The experience may include a maximum of 350 hours of formal, supervised field placement or practicum in child-placing activities.</del></p>  |
| Option <u>4</u> <del>2</del> | <p><del>(4) A bachelor's degree from an accredited college or university.</del></p>  | <p>(A) <del>Three</del><u>Two</u> years of documented full-time work experience in a <del>child-placing agency conducting child-placing activities</del> <u>residential child-care operation, or as a conservatorship caseworker or foster adoptive home development worker for the department. The experience must be in conducting assessments, service planning, or case management duties.</u> The experience may include a maximum of 350 hours of formal, supervised field placement or practicum in child-placing activities; <u>or</u></p> <p>(B) <u>Two years of working under the</u></p>   |

|  |  |   |
|--|--|---|
|  |  | <p><del>Direct</del><u>direct</u> supervision <del>from a of</del> child placement management staff. The direct supervision with the child placement management staff must consist of 10 documented, monthly, face-to-face, individual, case-related conferences over each annual period. The direct supervision must continue until the employee's previous experience and directly supervised experience totals <del>three</del><u>two</u> years.</p> |
|--|--|---|

**§749.675. What are the qualifications an employee must have to perform child placement management activities?**

In addition to the requirements that all employees must meet, employees who perform child placement management activities must meet the following qualifications:

| Options for qualifications: | A license in social work or another human services field: | Educational qualifications:  | Professional qualifications. Any field placement or practicum experience may not be counted:   |
|-----------------------------|---|--|--|
| Option 1                    | Yes   | (A) A master's degree from an accredited college or university in social work or other human services field; and (B) Nine credit hours in graduate level courses that focus on family and individual function and interaction. | <del>Two years</del> <u>One year</u> of documented full-time experience in a <del>child-placing agency conducting child-placing activities</del> <u>residential child-care operation, or as a conservatorship caseworker or foster adoptive home development worker for the department. The experience must be in conducting assessments, service planning, or case management duties.</u> |
| Option 2                    | No  | <u>(1)</u> (A) A master's degree from an accredited college or university; and (B) Nine credit hours in <u>undergraduate or</u>  | <del>Three</del> <u>Two</u> years of documented full-time experience in a <del>child-placing agency conducting child-placing activities</del> <u>residential</u>   |

|                               |     |  |  |
|-------------------------------|-----|--|--|
|                               |     | graduate level courses that focus on family and individual function and interaction.; or<br>(2) (A) A bachelor's degree from an accredited college or university in social work or other human services field; and<br>(B) Nine credit hours in undergraduate or graduate level courses that focus on family and individual function and interaction. | <u>child-care operation, or as a conservatorship caseworker or foster adoptive home development worker for the department. The experience must be in conducting assessments, service planning, or case management duties.</u>  |
| Option 3                      | Yes | <del>(A) A bachelor's degree from an accredited college or university in social work or other human services field; and<br/>(B) Nine credit hours in undergraduate level courses that focus on family and individual function and interaction.</del>   | <del>Four years of documented full-time experience in a child-placing agency conducting child-placing activities.</del>  |
| Option <del>3</del> <u>43</u> | No  | (A) A bachelor's degree from an accredited college or university; and<br>(B) Nine credit hours in undergraduate <u>or graduate</u> level courses that focus on family and individual function and interaction.   | <del>Five</del> <u>Three</u> years of documented full-time experience in a <del>child-placing agency conducting child-placing activities</del> <u>residential child-care operation, or as a conservatorship caseworker or foster adoptive home development worker for the department. The experience must be in conducting assessments, service planning, or case management duties.</u> |

**§749.679. What are the requirements for the caseloads of my child placement staff?**

There are no caseload requirements for child placement staff; however, you must:

(1) Maintain compliance with 749.305(a)(2) of this title (relating to What are the requirements for administrators and treatment directors for a main office and branch offices?), if applicable; and

~~(2) ensure manageable caseloads that~~ Ensure that all caseloads allow child placement staff to meet the needs of children in care and adequately support foster and adoptive homes.

**DELETE §749.681. What ethical requirements must I follow when conducting a foster home screening, an adoptive home screening, or a post-placement adoptive report?**

*Subchapter E, Agency Staff and Caregivers  
Division 4, Treatment Director*

**§749.725. What qualifications must a treatment director have?**

(a) A treatment director that provides or oversees treatment services for children with ~~mental retardation~~ intellectual disabilities or children with autism spectrum disorder ~~pervasive developmental disorders~~ must be:

(1) Licensed as a psychiatrist, psychologist, professional counselor, clinical social worker, marriage and family therapist, or registered nurse; or

(2) Certified by the Texas Education Agency as an education diagnostician, have a master's degree in special education or a human services field, and have three years of experience working with children with ~~mental retardation~~ intellectual disabilities or autism spectrum ~~a pervasive developmental~~ disorder.

(b) - (c) (No change.)

*Subchapter E, Agency Staff and Caregivers  
Division 6, Contract Staff and Volunteers*

**§749.761. What are the requirements for a volunteer?**

(a) You must maintain a personnel record for each volunteer.

(b) The personnel record must include a statement signed and dated by the volunteer indicating ~~he~~ the volunteer must immediately report any suspected incident of abuse, neglect, or exploitation to the ~~Child~~ Texas Abuse and Neglect Hotline and the agency's administrator or administrator's designee. An internal reporting policy may not require or allow a person to delegate ~~the delegation of~~ the person's responsibility to report suspected abuse, neglect, or exploitation.

~~(c) If the volunteer provides short-term services through an agency or an organization, you must be aware of and approve the organization or agency's policies on volunteer short-term services before the volunteer can have contact with children.~~

**§749.767. When is ~~is~~ a volunteer or contractor who is part of another ~~agency or organization~~ subject to my policies and procedures?**

(a) A volunteer or contractor who is part of another organization is subject to your policies and procedures unless that organization provides screening, training, and

supervision to the volunteer/contractor that are adequate to protect the health and safety of children. Before the volunteer/contractor can have contact with children:

(1) The volunteer/contractor must meet the relevant requirements of your policies and procedures; or

(2) You must confirm that the organization provides adequate screening, training, and supervision.

(b) An organization may be another licensed operation.

~~If the volunteer is part of an organization, including another agency, that provides screening, training, and supervision, you do not have to duplicate these services. However, you must determine that the volunteer program's policies and procedures meet the intent of these rules, before the volunteer can have contact with children.~~

**DELETE §749.769. Can I use a volunteer that is on probation, parole, or referred for community service through the courts?**

**NEW §749.769. May a person perform community service hours at my agency?**

A person may not perform community service at your agency. For the purpose of this rule, community service includes service a person must perform because the person is on probation, parole, or otherwise required to perform the service through the courts because of criminal activity.

**DELETE §749.771. Is a family or organization that invites a child in care for an overnight or weekend a "volunteer"?**

*Subchapter F, Training and Professional Development  
Division 1, Definitions*

**§749.801. What do certain words and terms mean in this subchapter?**

The words and terms used in this subchapter have the following meanings:

~~(1) CEU--Continuing education unit.~~

~~(2) CPR--Cardiopulmonary resuscitation.~~

~~(3)~~(2) Hours--Clock hours.

~~(4)~~(3) Instructor-~~led~~ training--Training that is characterized by the communication and interaction that takes place between the student and the instructor ~~and~~. It must include an opportunity for the student to ~~timely~~ interact with the instructor to obtain clarifications and information beyond the scope of the training materials, ~~including answering~~. For such an opportunity to exist, the instructor must be able to answer questions, providing provide feedback on skills practice, providing provide guidance or information on additional resources, and proactively interacting interact with students. Examples of this type of training include classroom training, on-line distance learning, video-conferencing, or other group learning experiences.

~~(4)~~(5) Self-~~instructional~~ training--Training ~~that is~~ designed to be used by one individual working alone and at ~~their~~the individual's own pace to complete lessons or modules. An example ~~Examples~~ of this type of training is ~~include~~ computer based

training, ~~written materials, or video training~~. Self-study training is also a type of self-instructional training.

(5) Self-study training--Non-standardized training where an individual reads written materials, watches a training video, or listens to a recording to obtain certain knowledge that is required for annual training. Self-study training is limited to three hours, see 749.935(d) of this title (relating to What types of hours or instruction can be used to complete the annual training requirements?).

*Subchapter F, Training and Professional Development  
Division 3, Pre-Service Experience and Training*

**§749.861. What are the pre-service experience requirements for caregivers?**

(a) For caregivers providing care to children only receiving child-care services and/or programmatic services, there are no pre-service experience requirements.

(b) Before a caregiver can provide care to a child receiving treatment services, you must ensure that the caregiver has the experience to care for the child's treatment need. If a caregiver does not have the necessary experience, your child-placement management staff must prescribe a regimen of specific child-care experience that the caregiver must complete before you place a child with treatment needs in the caregiver's home, including a minimum of eight hours of observations of interactions with children receiving similar treatment services as the prospective caregiver would be providing.

(c) You must document the caregiver's experience and/or prescribed regimen in the home's record.

**§749.867. Must I provide pre-service training to a caregiver or employee who was previously a caregiver or employee for a ~~child-placing agency~~ residential child-care operation?**

(a) A caregiver is exempt from completing the eight hours of general pre-service training if ~~he~~ the caregiver has been a caregiver for a residential child-care operation during the past 12 months.

(b) A caregiver or employee is exempt from completing the pre-service training regarding emergency behavior intervention if ~~he~~ the caregiver or employee:

(1) Has been a caregiver for or employed by a residential child-care operation during the past 12 months;

(2) Has received training during the past 12 months in the types of emergency behavior intervention used at your agency; and

(3) Can demonstrate knowledge and competency of the training material, both in writing and in physical techniques.

(c) You must document the exemption factors in the appropriate personnel record.

**§749.869. What are the instructor requirements for providing pre-service training?**

(a) The training must be instructor-led.

(b) A qualified instructor must deliver the pre-service training. A qualified instructor must hold a generally recognized credential or possess documented knowledge and/or experience relevant to the training the instructor will provide.

~~(b) The training must be instructor led.~~

(c) A health-care professional or a pharmacist must provide training in administering psychotropic medication. The trainer must assess each participant after the training to ensure that the participant has learned the course content.

(d) To provide training in emergency behavior intervention the:

(1) Instructor must be certified in a recognized method of emergency behavior intervention, or be able to document knowledge of:

(A) The emergency behavior intervention;

(B) The course material;

(C) Training delivery methods and techniques; and

(D) Training evaluation or assessment methods and techniques;

(2) Training must be competency-based and require participants to demonstrate skill and competency at the end of the training.

*Subchapter F, Training and Professional Development*

*Division 4, General Pre-Service Training*

#### **§749.881. What curriculum components must be included in the general pre-service training?**

The general pre-service training curriculum must include the following components:

(1) Topics appropriate to the needs of children for whom the caregiver will be providing care, such as developmental stages of children, fostering children's self-esteem, constructive guidance and discipline of children, water safety, and strategies and techniques for monitoring and working with these children, ~~and normalcy~~;

(2) Trauma informed care;

(3) The different roles of caregivers;

(4) Measures to prevent, identify, treat, and report suspected occurrences of child abuse (including sexual abuse), neglect, and exploitation;

(5) Procedures to follow in emergencies, such as weather related emergencies, volatile persons, and severe injury or illness of a child or adult; and

(6) Preventing the spread of communicable diseases.

#### **§749.885. Are there additional general pre-service training requirements for a caregiver that administers psychotropic medication?**

#### **Helpful Information**

- The online psychotropic medication training of the Child Protective Services Division of DFPS satisfies this general pre-service training requirement as long as caregivers also get instructor-led training that covers:
  - Policies and procedures on administering medication; and
  - Who may consent to using psychotropic medications for children who are not in the conservatorship of DFPS.

*Subchapter F, Training and Professional Development*  
*Division 5, Pre-Service Training Regarding Emergency Behavior Intervention*

**§749.901. If I do not allow the use of emergency behavior intervention, what curriculum components must be included in the pre-service training regarding emergency behavior intervention?**

If you do not allow the use of emergency behavior intervention, your pre-service training curriculum regarding emergency behavior intervention must focus on early identification of potential problem behaviors and strategies and techniques of less restrictive interventions, including the following components:

(1) - (6) (No change.)

(7) Less restrictive strategies caregivers can use to work with oppositional children;

and

(8) Addressing circumstances when all de-escalation strategies fail; and

(9) The risks associated with the use of prone or supine restraints, including positional, compression, or restraint asphyxia.

*Subchapter F, Training and Professional Development*  
*Division 6, Annual Training*

**§749.933. When must an employee or caregiver complete the annual training?**

(a) Each person must complete the annual training:

(1) Within 12 months from when you hire the person as an employee or caregiver or verify the person as a foster parent, whichever is applicable~~the date of his employment;~~ and

(2) During each subsequent 12-month period after the anniversary date of hire or verification.

(b) Alternatively, you have the option of prorating the person's annual training requirements from the date of ~~employment~~hire or verification to the end of the calendar year or the end of the agency's fiscal year and then beginning a new 12-month period that coincides with the calendar or fiscal year.

(c) The method for completing annual training requirements must be consistent throughout your agency.

**§749.935. What types of hours or instruction can be used to complete the annual training requirements?**

(a) If the training complies with the other rules in this division (relating to Annual Training), annual training may include hours or ~~GEUs~~Continuing Education Units earned through:

(1) Workshops or courses offered by local school districts, colleges or universities, or Licensing;

(2) Conferences or seminars;

(3) Self-instructional training, excluding training on emergency behavior intervention, first-aid, and CPR;

(4) Planned learning opportunities provided by child-care associations or Licensing;

(5) Planned learning opportunities provided by a child-placing agency administrator, professional contract service provider, professional service provider, treatment director, child placement management staff, child placement staff, contractor, or caregiver who meets minimum qualifications in the rules of this chapter; or

(6) Completed college courses for which a passing grade is earned, with three college credit hours being equivalent to 50 clock hours of required training. College courses do not substitute for required CPR or first-aid certification or required annual training on emergency behavior intervention or psychotropic medication.

(b) For annual training hours, you may count:

(1) The hours of annual training that a person received at another ~~child-placing agency, general residential~~ child-care operation, or residential treatment center, if the person:

(A) Received the training within the time period you are using to calculate the person's annual training; and

(B) Provides documentation of the training;

(2) Annual emergency behavior intervention training;

(3) First-aid and CPR training;

(4) ~~The~~ Any hours of pre-service training that the person ~~earn~~ earned in addition to the required pre-service hours, although you may not carry over more than 10 hours of a person's pre-service training hours for use as annual training hours during the upcoming year. ~~For example, if a person completes 24 hours of pre-service emergency behavior intervention training, and is required to obtain 16 hours, that person may count eight of the hours toward annual training requirements;~~

(5) Half of the hours spent developing initial training curriculum that is relevant to the population of children served. No additional credit hours for training curriculum development are permitted for repeated training sessions; and

(6) One-fourth of the hours spent updating and making revisions to training curriculum that is relevant to the population of children served.

(c) For annual training hours, you may not count:

(1) Orientation training;

(2) ~~Required Pre-service~~ pre-service training;

(3) The hours involved in case staffings and conferences with the supervisor; or

(4) The hours presenting training to others.

(d) No more than ~~one-third~~ one-half of the required annual training hours may come from self-instructional training. No more than three of those self-instructional hours may come from self-study training.

(e) If a person earns more than the minimum number of training hours required during a particular year, the person can carry over to the next year a maximum of 10 training hours.

### Helpful Information

Regarding paragraph (b)(4), here are two examples to clarify (b)(4): (1) if a person

completes a total of 35 hours of pre-service training and is required to complete a total of 18 hours of pre-service training, then that person may only carry over a maximum of 10 of the hours toward annual training requirements even though the person completed 17 extra hours of non-required, pre-service training; and (2) if a person completes a total of 35 hours of pre-service training and is required to complete a total of 26 hours of pre-service training, then that person may only carry over 9 hours toward the annual training requirements because the person completed 9 extra hours of non-required, pre-service training.

**§749.937. Does Licensing approve training resources or trainers for annual training hours?**

(a) No. We do not approve or endorse training resources or trainers for training hours.

(b) ~~However, you~~ ~~You~~ must, ~~however,~~ ensure the employees and caregivers receive reliable training relevant to the population of children served.

(c) Instructor-led, which includes training and self-instructional training, excluding self-study training, must include:

- (1) Specifically stated learning objectives;
- (2) A curriculum, which includes experiential or applied activities;
- (3) An evaluation/assessment tool to determine whether the person has obtained the information necessary to meet the stated objectives; and
- (4) A certificate, letter, or a signed and dated statement of successful completion from the training source.

**§749.939. What are the instructor requirements for providing annual training?**

(a) Except for transportation safety training, the annual training instructors must meet the same requirements in §749.869(a), (c) and (d) of this title (relating to What are the instructor requirements for providing pre-service training?).

(b) Transportation safety training must be instructor-led and provided by:

- (1) - (6) (No change.)

**§749.941. What areas or topics are appropriate for annual training?**

Other than the mandated Annual training topics, annual training must be in areas appropriate to the needs of children for whom the caregiver provides care, which may include:

- (1) ~~Trauma-informed care;~~
- (~~2~~) Developmental stages of children;
- (~~3~~) Constructive guidance and discipline of children;
- (~~4~~) Fostering children's self-esteem;
- (~~5~~) Positive interaction with children;
- (~~6~~) Strategies and techniques for working with the population of children served;
- (~~7~~) ~~Normalcy;~~
- (~~8~~) Supervision and safety practices in the care of children, including making reasonable and prudent parenting decisions regarding a foster child's participation in childhood activities; ~~or~~
- (~~9~~) Preventing the spread of communicable diseases;

- (8) Water safety; or
- (9) Administration of medication.

### **Best Practice Suggestion**

- A person should attempt to attend trainings in new topic areas every year or attend topics where the person believes there is a need for improvement or need for additional knowledge. A person should avoid attending the same training every year, unless there is a specific need for information regarding that topic.
- Here are some examples of annual training topics:
  - Helping children cope with separation, such as from parents, family, and placement;
  - Helping or preparing children for re-integration into a family, community, or subsequent placement;
  - Stages of child development, including normal behavioral reactions to stress at the various ages of children served by the agency;
  - Healthy personal boundaries and professional relationship boundaries;
  - Protecting self and others from false allegations;
  - Training to perform special tasks such as the care of gastric tubes or lifeguard certification training, if applicable;
  - For a caregiver who provides care to children receiving treatment services for emotional disorders, training on cognitive distortions and how they apply to the children; or
  - Special needs of children in care, which may include areas such as sexualized behavior, trauma, medical needs, and/or developmental disorders.

### **§749.945. For a caregiver who ~~that~~ administers psychotropic medication, what annual training is required?**

If you permit a caregiver to administer psychotropic medication:

- (1) ~~His~~The caregiver's annual training must meet the psychotropic medication training requirements in §749.885 of this title (relating to Are there additional general pre-service training requirements for a caregiver that administers psychotropic medication?); and
- (2) ~~He~~The caregiver must obtain annual psychotropic medication training no later than 12 months after ~~his~~the caregiver's last psychotropic medication training.

### **Helpful Information**

- The online psychotropic medication training for the Child Protective Services Division of DFPS satisfies this annual training requirement as long as caregivers also get instructor-led training that covers:
  - Policies and procedures on administering medication; and
  - Who may consent to using psychotropic medications for children who are not in the conservatorship of DFPS.

### **§749.947. What annual training is required regarding emergency behavior intervention?**

(No Changes.)

## **Best Practice Suggestion**

*Annual emergency behavior intervention training is not intended to be an exact replica of pre-service emergency behavior intervention training. While some review of previous content may be needed to ensure that caregivers retain necessary skills, you are expected and encouraged to use your emergency behavior intervention data to craft annual training that can most effectively improve the use of de-escalation techniques and emergency behavior interventions in your foster homes. This may include techniques caregivers can use to proactively avoid crisis situations and any necessary actions once all de-escalation attempts have failed.*

### **Subchapter G, Children's Rights**

#### **DELETE §749.1003. What rights does a child in care have?**

##### **§749.1003. What rights does a child in care have?**

(a) A child's rights are cumulative of any other rights granted by law or other Licensing rules.

(b) The following categories include the child's rights that you must adhere to:

(1) Safety and care, including:

(A) The right to good care and treatment that meets the child's needs in the most family-like setting possible;

(B) The right to be free from abuse, neglect, and exploitation; and

(C) The right to fair treatment;

(2) Family contacts, including the right to maintain regular contact with the child's parents and siblings, unless restrictions are necessary because of the child's best interest, the decision of an appropriate professional, or a court order;

(3) Living a normal life, including:

(A) The right to speak and be spoken to in the child's own language, including Braille if the child is blind or sign language if the child is deaf. This should also occur within a reasonable time after an emergency admission of a child, if applicable. You must make every effort to place a child with foster parent(s) who can communicate with the child. If these efforts are not successful, you must document in the preliminary service plan your plan to meet the communication needs of the child;

(B) The right to receive educational services appropriate to the child's age and developmental level;

(C) The right to have the child's religious needs met;

(D) The right to participate in childhood activities, including foster family activities and activities away from the foster home and the foster parents, that are appropriate for the child's age, maturity, and developmental level;

(E) The right to privacy, including sending and receiving unopened mail, making and receiving phone calls, keeping a personal journal, and having visitors, unless the child's best interest, appropriate professionals, or court order necessitates restrictions;

(F) The right to personal care, hygiene, and grooming equipment and supplies and training in how to use them;

(G) The right to have comfortable clothing, which is suitable to the child's age and size and similar to the clothing of other children in the community. Teenagers should have reasonable opportunities to select the clothing;

(H) The right to clothing that protects the child against the weather;

(I) The right to have personal items at the child's home and to get additional things within reasonable limits;

(J) The right to personal space in the child's bedroom to store clothes and belongings;

(K) The right to be informed of search policies and be free of unreasonable searches and unreasonable removal of personal items

(L) Depending on the child's age and maturity, the right to seek employment, keep the child's own money, have a bank account in the child's name, and get paid for any work done for the agency or home as part of the child's service plan or vocational training, with the exception of assigned routine duties that relate to the child's living environment, such as cleaning the child's room, or other chores, or work assigned as a disciplinary measure;

(M) The right to consent in writing before taking part in any publicity or fund raising activity for the foster home or agency, including the use of the child's photograph;

(N) The right to refuse to make public statements showing gratitude to the foster home or agency; and

(O) The right to not be pressured to get an abortion, give up her child for adoption, or parent her child, if applicable;

(4) Discipline, including:

(A) The right to be free from any harsh, cruel, unusual, unnecessary, demeaning, or humiliating treatment or punishment. This means the child must not be:

(i) Shaken;

(ii) Subjected to or threatened with corporal punishment, including spanking or hitting the child;

(iii) Forced to do unproductive work that serves no purpose except to demean the child, such as moving rocks from one pile to another or digging a hole and then filling it in;

(iv) Denied food, sleep, a bathroom, mail, or family visits as punishment;

(v) Subjected to remarks that belittle or ridicule the child or the child's family;

(vi) Threatened with the loss of placement or shelter as punishment; and

(vii) Subjected to demeaning behavior to embarrass, control, harm, intimidate, or isolate the child. "Demeaning behavior" may include using physical force, rumors, threats, or inappropriate comments;

(B) The right to discipline that is appropriate to the child's age, maturity, and developmental level; and

(C) The right to have restrictions or disciplinary policies explained to the child at admittance and when the measures are imposed;

(5) Plans for the child while in care, including:

(A) The right to have a comprehensive service plan that addresses the child's needs, including transitional and discharge planning; and

(B) The right to actively participate in the development of the child's service plan within the limits of the child's comprehension and ability to manage the information. The child has the right to a copy or summary of the plan. A child 14 years of age or older has the right to review and sign the service plan;

(6) Medical care and records, including:

(A) The right to medical, dental, vision, and mental health care and developmental services that adequately meet the child's needs. The right to request that the care or services be separate from adults (other than young adults) who are receiving services;

(B) The right to be free of unnecessary or excessive medication; and

(C) The right to confidential care and treatment, including keeping medical records and agency records private and only discussing them when it is about the child's care; and

(7) Complaints, including the right to make calls, reports, or complaints without interference, coercion, punishment, retaliation, or threats of punishment or retaliation. The child may make these calls, reports, or complaints anonymously. Depending upon the nature of the complaint, the child has the right to call, report, or complain to:

(A) The DFPS Texas Abuse/Neglect Hotline at 1-800-252-5400;

(B) The HHSC Ombusman for Children and Youth Currently in Foster Care at 1-844-286-0769;

(C) The DFPS Office of Consumer Affairs at 1-800-720-7777; or

(D) Disability Rights of Texas at 1-800-252-9108.

#### **§749.1005. How must I inform a child and the child's parents of their rights?**

(a) - (c) (No change.)

(d) The person you are informing of the child's rights must sign a statement indicating that the person has read and understands these rights. A copy of a timely signed "CPS Rights of Children and Youth in Foster Care" will meet this standard. You must put the signed copy in the child's record.

#### **§749.1007. What are a child's rights regarding education?**

(a) A child must have an appropriate education through participation in an educational/vocational program in the most appropriate and least restrictive educational settings, for example: attending regular classes conducted in an accredited elementary, middle, or secondary school within the community, or home schooling.

(b) (No change.)

#### **§749.1011. What right does a child have regarding contact with siblings?**

(a) - (b) (No change.)

(c) When you restrict sibling contact, you must include justification in the child's record. Restrictions imposed by you that continue for more than 60 days must be re-evaluated every 60 days by your child placement management staff, who also must:

(1) Explain the reasons for the continued restrictions to the child; and

(2) Document the reasons in the child's record.

~~If the restriction lasts more than 90 days, you must document the justification for continuing the restriction in the child's record at least every 90 days.~~

(d) (No change.)

**§749.1021. What techniques am I prohibited from using on a child?**

~~You may not use any of the following~~ Certain techniques must not be used on a child, including:

(1) - (5) (No change.)

*Subchapter H, Foster Care Services: Admission and Placement  
Division 1, Admissions*

**§749.1107. What information must I document in the child's record at the time of admission?**

(a) You must include the following in the child's record at the time of admission:

(1) The child's name, gender, race, religion, and date of birth, ~~and birthplace~~;

(2) ~~Court orders establishing who is the managing conservator for the child, if applicable~~;

~~(3)~~ The name, address, and telephone number of the managing conservator(s), the primary caregivers for the child, any person with whom the child is allowed to leave the foster home, and any other individual who has the legal authority to consent to the child's medical care;

~~(4)~~ The names, addresses, and telephone numbers of biological or adoptive parents, unless parental rights have been terminated;

~~(5)~~ The names, addresses, and telephone numbers of siblings;

~~(6)~~ The date of admission;

~~(7)~~ Medication the child is taking;

~~(8)~~ The child's immunization record;

~~(9)~~ Allergies, such as food, medication, sting, and skin allergies;

~~(10)~~ Chronic health conditions, such as asthma or diabetes;

~~(11)~~ Known ~~contra-indications~~ contraindications of the use of restraint;

~~(12)~~ Identification of the child's treatment needs, if applicable, and any additional treatment services or programmatic services the child is receiving;

~~(13)~~ Identification of the child's high-risk behavior(s), if applicable, and the safety plan staff and caregivers will implement related to the behavior(s);

~~(14)~~ A copy of the placement agreement, if applicable; and

~~(15)~~ Documentation of the attempt to notify the parent of the child's location as required by §749.1113(c) (3) of this title (relating to What information must I share with the parent at the time of placement?), if applicable.

(b) For emergency admissions, you must meet the requirements in Division 4 of this subchapter (relating to Emergency Admission).

**§749.1109. What is a placement agreement?**

(a) A placement agreement is your agreement with a child's parent or the child that defines your roles and responsibilities and authorizes you to obtain or provide services for the child. The placement agreement must include:

(1) Authorization permitting you to care for the child;

(2) A medical consent form signed by a person authorized by the Texas Family Code to provide consent; and

(3) The reason for placement and anticipated length of time in care.

(b) A placement agreement must be signed by the child's parent, except as provided in subsection (c).

(c) For a transitional living program, a child 16 years old or older may sign the placement agreement on the child's own behalf, as provided in the Texas Family Code §32.203, without the consent of the child's parent if the child:

(1) Resides separate and apart from the child's parent and manages the child's own financial affairs;

(2) Is unmarried and pregnant; or

(3) Is unmarried and a parent.

### **§749.1111. What orientation must I provide a child?**

(a) Within seven days of admission, you must provide orientation to each newly admitted child who is five years old or older. You must gear orientation to the intellectual level of the child.

(b) Orientation must include information about your policies on the following:

(1) Visitation, including family visitation and overnight visitation;

(2) Mail;

(3) Telephone calls;

(4) Gifts;

(5) Personal possessions, including any limits placed on the possessions the child may or may not have;

(6) Emergency behavior intervention, including your agency's policies and practices on the use of personal restraint and the child's input on preferred de-escalation techniques that caregivers can use to assist the child in the de-escalation process;

(7) Discipline;

(8) The religious program and practices;

(9) The educational program;

(10) Trips away from the home;

(11) Program expectations and rules; and

(12) Internal Grievance grievance procedures.

(c) Orientation must include information on how to:

(1) Make complaints to outside agencies; and

(2) Contact parties to a child's case (i.e. caseworker, attorney ad litem, guardian ad litem, CASA worker, etc.).

(d) You must document in the child's record when the orientation occurred, any item that the orientation did not include, and the reason that the orientation did not include that item.

### **§749.1113. What information must I share with the parent at the time of placement?**

~~(a) The parent must be able to determine whether your program and/or practices are appropriate for the child and can meet the child's needs.~~

(a) At admission, you must provide the following policies to the parent placing the child:

- (1) Fee policies;
- (2) Emergency behavior intervention policies;
- (3) Discipline policies;
- (4) Adoption policies, if applicable; and
- (5) Any other policies required by us, upon request of the parent.

(b) At admission, you must ~~review and~~ provide and explain the following written information and policies materials to the parent placing the child ~~that explain~~:

- (1) Information about the policies that you would present a child during orientation;
- (2) Your policies regarding the:
  - (A) Use of volunteers or sponsoring families, if applicable;
  - (B) Type and frequency of notifications made to parents; and
  - (C) Involvement of the child in any publicity and/or fund raising activity for the

agency; and

(3) ~~The~~ Information about the parent's right to refuse to or withdraw consent for a child to participate in:

- (A) Research programs; and/or
- (B) Publicity and/or fund raising activities for the agency.

(c) If you sign a placement agreement for a transitional living program with a child as specified in §749.1109(c) of this title (relating to What is a placement agreement?), then you:

(1) Must share the policies noted in subsection (a) with the child, instead of the parent;

(2) Do not have to comply with subsection (b), but you must provide and explain to the child your policies regarding the:

- (A) Use of volunteers or sponsoring families, if applicable;
- (B) Involvement of the child in any publicity and/or fund raising activity for the agency; and
- (C) Child's right to refuse to or withdraw consent to participate in:

(i) Research programs; and/or

(ii) Publicity and/or fund raising activities for the agency; and

(3) You must ~~Must~~ attempt to notify the child's parent ~~of a child that you admit to a transitional living program~~ of the child's location, if the child was admitted without the consent of the parent, ~~as provided in Texas Family Code §32.203.~~

#### **§749.1115. What information must I provide caregivers when I admit a child?**

(a) By the day you admit the child for care, you must provide the caregivers responsible for the child's care with information about the child's immediate needs, such as enrolling the child in school or obtaining needed medical care or clothing.

(b) You must inform appropriate caregivers of any special needs, such as medical or dietary needs or conditions or supervision needs, and document that you shared the information with the caregiver.

*Subchapter H, Foster Care Services: Admission and Placement  
Division 2, Admission Assessment*

#### **§749.1131. When must I complete the admission assessment?**

You must complete a non-emergency admission assessment prior to admission. ~~according to the time frames required in §749.1133 of this title (relating to What information must an admission assessment include?). For an emergency admission assessment, see §749.1187 of this title (relating to For an emergency admission, when must I complete all of the requirements for an admission assessment?).~~

### **§749.1133. What information must an admission assessment include?**

(a) An admission assessment must provide an initial evaluation of the appropriate placement for a child, and ensure that you obtain the information necessary for you to facilitate service planning.

(b) Prior to a child's non-emergency admission, an admission assessment must be completed which includes:

(1) The child's legal status;

(2) A description of the circumstances that led to the child's referral for substitute care;

(3) A description of the child's behavior, including appropriate and maladaptive behavior, and any high-risk behavior ~~posing a risk to self or others~~;

(4) Any history of physical, sexual, or emotional abuse or neglect;

(5) Current medical and dental status, including the available results of any medical and dental examinations;

(6) Current mental health and substance abuse status, including available results of any psychiatric evaluation, psychological evaluation, or psychosocial assessment ~~or psychiatric examination~~;

(7) The child's current developmental level of functioning;

(8) The child's current educational level, and any school problems;

(9) Any applicable requirements of §749.1135 of this title (relating to What are the additional admission assessment requirements when I admit a child for treatment services?);

(10) Documentation indicating efforts made to obtain any of the information in paragraphs (1)-(9) of this subsection, if any information is not obtainable;

(11) The services you plan to provide to the child;

(12) Immediate goals of placement;

(13) The parent's expectations for placement, duration of the placement, and family involvement;

(14) The child's understanding of the placement; and

(15) A determination of whether and how you can meet the ~~immediate~~ needs of the child; ~~and~~

~~(16) A rationale for the appropriateness of the admission.~~

(c) Prior to completing a child's initial service plan, the following information must be added to the admission assessment:

(1) The child's social history. The history must include information about past and existing relationships with the child's birth parents, siblings, extended family members, and other significant adults and children, and the quality of those relationships with the child;

(2) A description of the child's home environment and family functioning;

(3) The child's birth and neonatal history;

- (4) The child's developmental history;
  - (5) The child's mental health and substance abuse history;
  - (6) The child's school history, including the names of previous schools attended and the dates the schools were attended, grades earned, and special achievements;
  - (7) The child's history of any other placements outside the child's home, including the admission and discharge dates and reasons for placement;
  - (8) The child's criminal history, if applicable;
  - (9) The child's skills and special interests;
  - (10) Documentation indicating efforts made to obtain any of the information in paragraphs (1)-(9) of this subsection, if any information is not obtainable;
  - (11) The services you plan to provide to the child, including long-range goals of placement;
  - (12) Recommendations for any further assessments and testing;
  - (13) A recommended behavior management plan; and
  - (14) A determination of whether and how you can meet the needs of the child, based on an evaluation of the child's special strengths and needs; ~~and~~
  - ~~(15) A rationale for the appropriateness of the admission.~~
- (d) You must attempt to obtain a signed authorization, so you can subsequently request in writing materials from the child's current or most recent placement, such as the admission assessment, professional assessments, and the discharge summary. You must consider information from these materials when you complete your admission assessment if they are made available to you.

**§749.1135. What are the additional admission assessment requirements when I admit a child for treatment services?**

When you admit a child for treatment services, you must do the following as applicable:

| If:   | Then:   |
|---|---|
| (1) You intend to provide treatment services for a child with an emotional disorder or <u>autism spectrum</u> <del>pervasive development</del> disorder | (A) The admission assessment must include a written, dated, and signed: <ul style="list-style-type: none"> <li>(i) Psychiatric evaluation or psychological evaluation, including the child's diagnosis; or</li> <li>(ii) Psychosocial assessment as defined in §749.43<del>(52)</del> of this title (relating to What do certain words and terms mean in this chapter?).</li> </ul> (B) A psychiatric evaluation, psychological evaluation, or psychosocial assessment must have been completed within: <ul style="list-style-type: none"> <li>(i) 14 months of the date of admission, if the child is coming from another regulated placement; or</li> <li>(ii) Six months of the date of admission, if the child is not coming from another regulated placement.</li> </ul> (C) The admission assessment must include the reason(s) for choosing treatment services for the child.           (D) The admission assessment must include consideration given to any history of inpatient or outpatient treatment. |

|   |   |
|---|---|
| <p>(2) You intend to provide treatment services for a child with <u>an</u> intellectual <del>disability</del> <del>disabilities</del></p> | <p>(A) The admission assessment must include a written, dated, and signed:</p> <ul style="list-style-type: none"> <li>(i) Psychological evaluation with psychometric testing, <u>including the child's diagnosis</u>; or</li> <li>(ii) Psychosocial assessment as defined in §749.43<del>(52)</del> of this title.</li> </ul> <p>(B) A psychological evaluation or psychosocial assessment must be completed within 14 months of the date of admission.</p> <p>(C) A psychological evaluation must:</p> <ul style="list-style-type: none"> <li>(i) Be performed by a licensed psychologist who has experience with intellectual disabilities or published scales;</li> <li>(ii) Include the use of standardized tests to determine the intellectual functioning of a child. The test results must be documented in the evaluation;</li> <li>(iii) Determine and document the child's level of adaptive functioning; and</li> <li>(iv) Indicate manifestations of <u>an</u> intellectual <del>disability</del> <del>disabilities</del> as defined in the Diagnostic and Statistical Manual of Mental Disorders 5 (DSM-5).</li> </ul> <p>(D) The admission assessment must include the reason(s) for choosing treatment services for the child.</p> <p>(E) The admission assessment must include consideration given to any history of inpatient or outpatient treatment.</p> |
| <p>(3) You intend to provide treatment services for a child with primary medical needs</p>  | <p>(A) The admission assessment must have a licensed physician's signed, written orders as the basis for the child's admission. There must also be an evaluation from the physician, a nurse practitioner, or a physician's assistant that confirms that the child can be cared for appropriately in a foster home setting.</p> <p><del>(B)</del> <u>There must be a documented evaluation from a health care professional</u> that the foster parents have been trained to meet the needs of the child and demonstrated competency.</p> <p><del>(B)</del> <del>(C)</del> <u>The written orders <u>and/or hospital discharge</u></u> must include orders for:</p> <ul style="list-style-type: none"> <li>(i) Medications;</li> <li>(ii) Treatments;</li> <li>(iii) Diet;</li> <li>(iv) Range-of-motion program at stated intervals;</li> <li>(v) Habilitation, as appropriate; and</li> <li>(vi) Any special medical or developmental procedures.</li> </ul> <p><del>(C)</del> <u>(D)</u> The admission assessment must include the reason(s) for choosing treatment services for the child.</p> <p><del>(D)</del> <u>(E)</u> The admission assessment must include consideration given to any history of inpatient or outpatient treatment.</p>  |
| <p>(4) The child's</p>  | <p>(A) The admission assessment must include a written, dated,</p>  |

|  |  |
|--|--|
| <p>behavior and/or history within the last two months indicates that the child is an immediate danger to <del>himself</del><u>self</u> or others</p> | <p>and signed:</p> <ul style="list-style-type: none"> <li>(i) Psychiatric evaluation or psychological evaluation, <u>including the child's diagnosis</u>; or</li> <li>(ii) Psychosocial assessment as defined in §749.43<del>(52)</del> of this title.</li> </ul> <p>(B) A psychiatric evaluation or psychological evaluation must include:</p> <ul style="list-style-type: none"> <li>(i) The child's diagnosis, if applicable;</li> <li>(ii) An assessment of the child's needs and potential danger to <del>himself</del> or others; and</li> <li>(iii) Recommendations for care, treatment, and further evaluation. If the child is admitted, the recommendations must become part of the child's service plan and must be implemented.</li> </ul> <p>(C) A psychiatric evaluation, psychological evaluation, or psychosocial assessment must have been completed within:</p> <ul style="list-style-type: none"> <li>(i) 14 months of the date of admission, if the child is coming from another regulated placement; or</li> <li>(ii) Six months of the date of admission, if the child is not coming from another regulated placement.</li> </ul> <p><del>(D) You must then evaluate your ability to provide services and safeguards appropriate to the child's needs, including direct and continuous supervision, if needed.</del></p> |
|--|--|

*Subchapter H, Foster Care Services: Admission and Placement  
Division 3, Required Admission Information*

**§749.1151. What are the medical requirements when I admit a child into care?**

- (a) You must ensure that the child has a medical examination by a health-care professional within 30 days after the date of admission. This exam is not required if you have documentation that the child has had a medical examination within the past year, including documentation in the child's health passport if ~~he~~the child is in ~~DFPS~~the department's conservatorship.
- (b) - (d) (No change.)

**§749.1153. What are the dental requirements when I admit a child into care?**

- (a) If the child is younger than three years old and a health-care professional ~~physician~~ recommends a dental examination, then you must ensure that a dentist examines the child.
- (b) A child three years old or older must have a dental appointment scheduled with a dentist within 30 days after the date of admission, and the examination must occur within 90 days after the date of admission. A dental examination is not required if you have documentation that the child has had a dental examination within the past year, including documentation in the child's health passport if ~~he~~the child is in ~~DFPS~~department's conservatorship.
- (c) (No change.)

*Subchapter H, Foster Care Services: Admission and Placement*  
*Division 4, Emergency Admission*

**§749.1183. What constitutes an emergency admission to my child-placing agency?**

It is an emergency admission if:

(1) You must place the child within 72 hours~~You may admit a child on an emergency basis if the child:~~

~~(2) Is being~~The child was removed from a situation involving alleged abuse or neglect;

~~(3) Is~~is the child is an alleged perpetrator of abuse and cannot be served in the child's current placement due to ~~his~~the child's perpetrating behaviors;

~~(4) Displays~~The child displays behavior that is an immediate danger to ~~himself~~self or to others and cannot function or be served in his current setting;

~~(5) Is~~The child was abandoned and, after exercising reasonable efforts, the child's identity cannot be immediately determined. ~~The~~You must document the efforts made to obtain information on the child's identity ~~must be documented~~ in the child's record;

~~(6) Is~~The child was removed from ~~his~~the child's home or placement, and there is an immediate need to find a residence for the child;

~~(7) Is released~~A law enforcement or juvenile probation officer released the child to your authorized child-placing agency ~~by a law enforcement or juvenile probation officer;~~  
or

~~(8) Is~~The child is otherwise without adult care.

**§749.1187. For an emergency admission, when must I complete all of the requirements for an admission assessment?**

(a) For an emergency admission, you must complete all of the requirements (see Division 2 of this subchapter (relating to Admission Assessment)) for an admission assessment within 40 days from the date of the child's admission.

(b) In an emergency admission of a child receiving treatment services, the child must not continue in care for more than 30 days after the date of admission unless the child has received the ~~required psychological,~~ psychiatric evaluation, psychological evaluation, psychosocial assessment, ~~psychometric,~~ or medical evaluation that is required by §749.1135 of this title (relating to What are the additional admission assessment requirements when I admit a child for treatment services?), and the evaluation or assessment indicates manifestations of the disorder requiring treatment services. All evaluations and assessments must be signed, dated, and documented in the child's record.

*Subchapter H, Foster Care Services: Admission and Placement*  
*Division 7, Post-Placement Contact*

**§749.1291. What are the requirements for contact between child placement staff and children in foster care?**

(a) Except for children receiving treatment services for primary medical needs, child placement staff must have monthly face-to-face contact with a child in care. However, staff can miss two visits per year, provided a child does not go longer than 60 days without a visit.

(b) For children receiving treatment services for primary medical needs, child placement staff or a nurse ~~on-staff~~ must have face-to-face contact with a child in care **every 15 days twice every month with no more than 20 days between visits**. However, staff can miss two visits per year, provided a child does not go longer than 30 days without a visit.

(c) At least half of the contacts must occur in the foster home.

(d) These contacts are to ensure the:

- (1) Child is safe;
- (2) Needs of a child are being met; and
- (3) Placement continues to be appropriate.

(~~e~~) If the child is able to communicate in a meaningful way, the contact with the child must:

- (1) Be for a length of time sufficient to address the child's needs and determine the appropriateness of the placement;
- (2) Provide an opportunity to meet in private; and
- (3) Provide an opportunity for the child to express ~~his~~ feelings about how the placement is working out.

(~~f~~) If the child is non-verbal or pre-verbal, the contact with the child must be for a length of time sufficient for an appropriate observation of the child and the child's placement, including an assessment of any changes in behavior or developmental progress or delays as well as a verification that the placement is meeting the child's needs as specified in the service plan.

(~~g~~) The required contacts must be significant and must be documented in the child's record. The documentation in the child's record must be sufficient to address the requirements of subsections (d) and (e) of this section.

(~~g~~) Child placement management staff must review and approve documentation of contacts.

### Helpful Information

Quality visits should occur in an area free from distractions and where other household members may not overhear the conversation.

For non-verbal or pre-verbal children, an appropriate observation may include observing a diaper change or seeing how the child interacts with a caregiver.

*Subchapter I, Foster Care Services: Service Planning, Discharge  
Division 1, Service Plans*

### **§749.1301. What are the requirements for a preliminary service plan?**

(a) You must complete a preliminary service plan that addresses the immediate needs of the child within 72 hours, such as supervision requirements, enrolling the child in

school, or obtaining needed medical care or clothing, ~~within 72 hours of the child's admission.~~

(b) In addition, for a child receiving treatment services the preliminary service plan must include

- (1) A description of the child's immediate treatment and care needs;
- (2) A description of the child's immediate, educational, medical, and dental needs, including possible side effects of medications or treatment prescribed to the child;
- (3) A description of how you will meet the child's needs, including any necessary increased supervision or follow-up actions of possible side effects of medication or treatment provided to the child;
- (4) The identification of any issues or concerns the child may have that could escalate a child's behavior. Identification of a child's issues or concerns must serve to avoid the use of unnecessary emergency behavior interventions with the child. Child concerns may include issues with food, eye contact, physical touch, personal property, or certain topics; and
- (5) A designation of who will be responsible for meeting each of the child's needs.

(c) The plan must be compatible with the information included in the child's admission assessment.

(d) You must document the plan in the child's record.

(e) You must inform each professional service provider and caregiver working with a child about the child's preliminary service plan.

(f) You must implement and follow the preliminary service plan.

**§749.1307. When must I complete an initial service plan?**

You must complete the initial service plan within ~~40~~<sup>45</sup> days after you admit the child.

**§749.1309. What must a child's initial service plan include?**

(a) You must base the child's initial service plan on the child's needs identified in the child's admission assessment and integrate trauma informed care in the care, treatment, and management of each child. The service planning team may prioritize the child's service planning goals and objectives based on the child's admission assessment. However, any required service plan components not initially addressed must have a justification for the delay in addressing the needs.

(b) The child's initial service plan must be documented in the child's record and include those items that a preliminary plan must include (see §749.1301 of this title (relating to What are the requirements for a preliminary service plan?)), and the items noted below for each specific type of service that you provide the child:

| Type of Service         | Items that must be included:  |
|-------------------------|---|
| (1) Child-care services | (A) The child's needs identified in the admission assessment, in addition to basic needs related to day-to-day care and development, including: <ul style="list-style-type: none"> <li>(i) Medical needs, including scheduled medical exams and plans for recommended follow-up treatment;</li> <li>(ii) Dental needs, including scheduled dental exams and plans for recommended follow-up treatment;</li> </ul> |

(iii) Intellectual functioning, including any testing and plans for recommended follow-up;

(iv) Developmental functioning, including any developmental delays and plans to improve or remediate developmental functioning;

(v) Educational needs and how those needs will be met, including planning for high school completion and post-secondary education and training, if appropriate, and any school evaluations or recommendations;

(vi) Plans for normalcy, including:

(I) Social, extracurricular, recreation, and leisure activities; and

(II) Integrating the child into the community and community activities, as appropriate;

(vii) Therapeutic needs, including plans for ~~psychological~~/psychiatric evaluation, psychological evaluation, psychosocial assessment or testing and follow-up treatment, testing, and the use of psychotropic medications; and

(viii) Cultural identity needs, including assisting children in connecting with their culture in the community;

(B) Plans for maintaining and improving the child's relationship with family members, including recommendations for visitation and contacts between the child and the child's parents, the child and the child's siblings, and the child and the child's extended family;

(C) Recent ~~data~~information from the current caregiver's evaluation of the child's behavior and level of functioning;

(D) Specific goals and strategies to meet the child's needs, including instructions to caregivers responsible for the care of the child. Instructions must include specific information about:

(i) The child's personal trauma history;

(ii) Level of supervision required;

(iii) The child's trauma triggers;

(iv) Methods of responding that improve a child's ability to trust, to feel safe, and to adapt to changes in the child's environment;

(v) Discipline techniques;

(vi) Behavior intervention techniques;

(vii) Plans for trips and visits away from the foster home; and

(viii) Any actions the caregivers must take or conditions the caregivers must be aware of to meet the child's special needs, such as medications, medical care, dietary needs, ~~psychiatric~~therapeutic care, how to communicate with the child, and reward systems;

(E) If the child is 13 years old or older, a plan for educating the child in the following areas:

(i) Healthy interpersonal relationships;

(ii) Healthy boundaries;

(iii) Pro-social communication skills;

(iv) Sexually transmitted diseases; and

(v) Human reproduction;

|                                     |  |
|-------------------------------------|--|
|                                     | <p>(F) If the child is 14 years old or older, plans for the caregivers to assist the child in obtaining experiential life-skills training to improve <del>his</del><u>the child's</u> transition to independent living. Plans must:</p> <ul style="list-style-type: none"> <li>(i) Be tailored to the child's skills and abilities; and</li> <li>(ii) Include training in practical activities that include, but are not limited to, grocery shopping, meal preparation, cooking, using public transportation, performing basic household tasks, and <u>money management, including</u> balancing a checkbook;</li> </ul> <p>(G) For children 16 years old and older, preparation for independent living, including employment opportunities, if appropriate;</p> <p>(H) For children who exhibit high-risk behaviors, <del>such as self harm, sexual aggression, runaway, or substance abuse:</del></p> <ul style="list-style-type: none"> <li>(i) Plans to minimize the risk of harm to the child or others, such as special instructions for caregivers, sleeping arrangements, or bathroom arrangements; and</li> <li>(ii) A specific safety contract developed between the child and staff that addresses how the child's safety needs will be maintained;</li> </ul> <p>(I) Expected outcomes of placement for the child and estimated length of stay in care;</p> <p>(J) Plans for discharge;</p> <p>(K) The names and roles of persons who participated in the development of the child's service plan;</p> <p>(L) The date the service plan was developed and completed;</p> <p>(M) The effective date of the service plan; and</p> <p>(N) The signatures of the service planning team members that were involved in the development of the service plan.</p> |
| (2) Treatment services              | <p>For children receiving treatment services, the plan must address all of the child's waking hours and include:</p> <p>(A) The child-care services planning requirements noted <u>in paragraph (1) of this subsection</u><del>above</del>;</p> <p>(B) A description of the emotional, behavioral, and physical conditions that require treatment services;</p> <p>(C) A description of the emotional, behavioral, and physical conditions the child must achieve and maintain to function in a less restrictive setting, including any special treatment program and/or other services and activities that are planned to help the child achieve and to function in a less restrictive setting; and</p> <p>(D) A list of emotional, physical, and social needs that require specific professional expertise, and plans to obtain the appropriate professional consultation and treatment for those needs. Any specialized testing, recommendations, and/or treatment must be documented in the child's record.</p>  |
| (3) Treatment services for children | <p>(A) The child-care and treatment services planning requirements noted <u>in paragraphs (1) and (2) of this subsection</u><del>above</del>;</p> <p>(B) A minimum of one hour per day of visual, auditory and tactile</p>   |

|   |   |
|---|---|
| with <u>an</u> intellectual <u>disability</u> <del>disabilities</del> | stimulation to enhance the child's physical, neurological, and emotional development;<br>(C) An educational or training plan encouraging normalization appropriate to the child's functioning; and<br>(D) Career planning for older adolescents who are not receiving treatment services for <u>a</u> severe or profound intellectual <u>disability</u> <del>disabilities</del> .   |
| (4) Transitional living program                                       | (A) Child-care service planning requirements <u>noted in paragraph (1) of this subsection</u> ;<br>(B) Plans for encouraging the child to participate in community life and to form interpersonal relationships/friendships outside the transitional living program, such as <del>community team sports, Eagle Scouts, and employment after school</del> <u>extra-curricular recreational activities</u> ;<br>(C) <del>Consumer</del> <u>Plans for</u> education, <del>such as</del> <u>related to</u> meal planning, meal preparation, grocery shopping, public transportation, searching for an apartment, and obtaining utility services;<br>(D) Career planning, including assisting the child in enrolling in an educational or vocational job training program;<br>(E) Money management and assisting the child in establishing a personal bank account;<br>(F) Assisting the child with how to access resources, such as medical and dental care, <del>therapy</del> <u>counseling</u> , mental health care, an attorney, the police, and other emergency assistance;<br>(G) Assisting the child in obtaining the child's social security number, birth certificate, and a driver's license or a Department of Public Safety identification card, as needed; and<br>(H) Problem-solving, such as assessing personal strengths and needs, stress management, reviewing options, assessing consequences for actions taken and possible short-term and long-term results, and establishing goals and planning for the future. |

**NEW §749.1312. Can the service planning team discuss and develop a child's service plan in separate meetings?**

Yes, the service planning team may meet in one meeting, two or more meetings, or in separate meetings, provided that each service planning team member is informed of the discussions and comments regarding the child's service plan that were made in each meeting.

**§749.1313. When must I inform the child's parents and foster parents of an initial service plan meeting?**

- (a) ~~The You must give the~~ child's parents and foster parents must have at least two weeks advance notice of the initial service plan meeting~~review~~.
- (b) The child's record must include documentation of the notice and any responses from the parents and foster parents.

**§749.1317. What roles do professional service providers have in service planning?**

The roles of professional service providers in service planning include:

| Type of Treatment Service   | The roles of professional service providers in service planning include:   |
|---|--|
| (1) Emotional disorder and <u>autism spectrum</u> <del>pervasive development</del> disorder | (A) Reviewing the child's diagnoses;<br>(B) Reviewing the identified needs and the plan for treatment based on the child's diagnoses;<br>(C) Reviewing the techniques, strategies, and therapeutic interventions that are planned for the child to improve adaptive functioning; and<br>(D) Reviewing any medications prescribed for a child with special review of psychotropic medications; the presence or absence of medication side effects, including the effects of the medications on the child's behavior; laboratory findings; and any reason the child should not use a medication. |
| (2) <u>Intellectual disability</u> <del>Mental retardation</del>                            | (A) Assessing the child's educational needs and progress toward meeting those needs;<br>(B) Ensuring coordination between educators, caregivers, agency employees, and other professionals involved in the child's treatment; and<br>(C) Providing information to the education system on the strategies and techniques used with the child in the agency.   |
| (3) Primary medical needs   | (A) Reviewing any medications prescribed for a child;<br>(B) Recommending any special equipment needed by a child; and<br>(C) Reviewing special instructions and training to caregivers for the daily care of the child.   |

**§749.1321. To ~~With~~ whom do I provide a copy of the child's ~~share the~~ initial service plan?**

(a) You must give a copy or summary of the initial service plan to the:

(1) Child, when appropriate. At a minimum, you must give a copy or summary of the plan to a child 14 years of age or older, unless there is justification for not providing the plan;

(2) Child's parents; and

(3) Child's caregivers.

(b) If you provide a copy or summary of the initial service plan to a child:

(1) The child must review the plan;

(2) The child must sign the plan, or you must document the child's refusal to sign it; and

(3) You must document if the child disagrees with the plan.

(c) If you do not provide a copy or summary of ~~share~~ the initial service plan to a ~~or~~ ~~summary with the~~ child, you must document your justification for not sharing the plan in the child's record.

(d)(e) You must document in the child's record that you provided a copy or summary of the initial service plan to the child's parents.

**§749.1323. When must I implement a service plan?**

You must implement and follow an initial service plan as soon as all of the service planning team members have reviewed and signed the plan, but no later than ~~40~~15 days after the date of the scheduled service-planning meeting involving the parents, foster parents, and the child.

*Subchapter I, Foster Care Services: Service Planning, Discharge  
Division 2, Service Plan ~~Review~~Reviews and Updates*

**§749.1331. How often must I review and update a service plan?**

Except for when the child's placement within your agency changes because of a change in the child's needs, you must review and update the service plan as follows:

| Type of Service   | Review and Update   |
|---|---|
| (1) Child-care services   | At least 180 days from the date of the child's last service plan.   |
| (2) Treatment services for emotional disorder, <del>pervasive developmental</del> <u>autism spectrum</u> disorder, or primary medical needs | At least 90 days from the date of the child's last service plan.  |
| (3) Treatment services for <u>intellectual disabilities</u> <del>mental retardation</del>   | In the first year of care, the plan must be reviewed at least every 180 days from the date of the child's last service plan. Thereafter, the plan must be reviewed at least annually from the date of the child's last service plan review. |

**§749.1335. How do I review and update a service plan?**

To review and update a service plan, you must:

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

~~(8) Determine for children receiving treatment services for emotional disorders, pervasive developmental disorders, or primary medical needs whether to:~~

~~(A) Continue the placement;~~

~~(B) Continue the placement as child-care services;~~

~~(C) Transfer the child to a less restrictive setting; or~~

~~(D) Refer the child to an inpatient hospital;~~

(9) Evaluate the use and effectiveness of emergency behavior intervention techniques, if used, since the last service plan. If applicable, this evaluation must focus on:

(A) - (C) (No change.)

(409) Document in the child's record the review and update of the plan; and

(4110) Document the names of the persons participating in the review and update.

**NEW §749.1336. Can the child-placing agency continue to review and update a child's previous service plan without creating a new service plan?**

Yes, a single service plan that continues throughout the time a child is in residential child care is acceptable, as long as you:

(1) Complete a preliminary service plan as required by §749.1301 of this title (relating to What are the requirements for a preliminary service plan?) each time a child is admitted into your care; and

(2) Continue to comply with the service plan review and update requirements in this Division of this Subchapter (relating to Service Plan Reviews and Updates).

**§749.1339. How often must I re-evaluate the intellectual functioning of a child receiving treatment services for ~~mental retardation~~ intellectual disabilities?**

(a) Each child's intellectual functioning must be re-evaluated at least every three years by a psychologist qualified to provide psychological testing; or

(b) A psychologist must determine the need and frequency for a specific child's intellectual functioning to be re-evaluated, such as a young child who may require more frequent testing. This determination, including justification for the time frame, must be documented in the child's record annually by the service planning team.

*Subchapter I, Foster Care Services: Service Planning, Discharge  
Division 3, Discharge and Transfer Planning*

**§749.1363. Who must plan a child's non-emergency discharge or transfer?**

(a) - (c) (No change.)

(d) If a child in your care is not receiving treatment services, you must inform ~~him~~the child of ~~his~~the non-emergency discharge or transfer at least four days prior to the date of the discharge or transfer, unless your licensed child-placing agency administrator or child placement management staff has clear justification for not giving ~~him~~the child such notice. The licensed child-placing agency administrator or child placement management staff who determines the justification for the child not having the advance notice of the discharge or transfer, must put the justification in writing and sign and date it. The justification must be in the child's record.

(e) If a child in your care is receiving treatment services, you must inform ~~him~~the child of ~~his~~the non-emergency discharge or transfer at least four days prior to the date of the discharge or transfer, unless your treatment director, three members of the child's service planning team, or the child's psychiatrist or psychologist has a justification for not giving ~~him~~the child such notice. Whoever determines the justification for the child not having the advance notice of the discharge or transfer must put the justification in writing and sign and date it. The justification must be in the child's record.

**§749.1369. How do I discharge or transfer a child who is an immediate danger to ~~himself~~ self or others?**

The child's caregiver(s) or the child placement staff must accompany the child to the receiving operation, agency, or person unless the child's parent or law enforcement transports the child.

**§749.1371. What must I document in the child's record at the time of discharge or transfer?**

At the time of a discharge or transfer, you must document the following:

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

(3) For discharge, the name, address, telephone number and relationship of the person to whom you discharge the child, unless the child legally consents to ~~his~~ discharge. If the child legally consents to ~~his~~ discharge and does not want to involve the child's parent(s), you must document this in the child's record;

(4) - (7) (No change.)

*Subchapter J, Foster Care Services: Medical and Dental  
Division 1, Medical and Dental Care*

**§749.1401. What general medical requirements must my agency meet?**

(a) A child in your care must receive medical care:

(1) Initially, according to the requirements in §749.1151 of this title (relating to What are the medical requirements when I admit a child into care?);

(2) As needed for injury, illness, and pain; and

(3) As needed for ongoing maintenance of medical health.

(b) The child's record must include a written record of each medical examination that consists of specifying:

~~(1) The date of the examination;~~

~~(2) The procedures completed;~~

~~(3) A copy of the results of the medical examination;~~

(2) The follow-up treatment recommended and any appointments scheduled;

~~(4)~~ (3) A notation of the child's refusal to accept medical treatment, if applicable;

~~(5) A copy of the results of the medical examination;~~

~~(6)~~ (4) If the medical examination is a result of an injury or ~~medical incident~~ illness, the documentation of the date, time, and circumstances surrounding the ~~incident~~ injury or illness, ~~including the date and time of the incident~~; and

~~(7)~~ (5) Any other documentation provided by the health-care professional who performed the examination.

(c) For a child in ~~DFPS~~ the conservatorship of the department, you must supplement any information already documented in the child's health passport in order to comply with subsection (b) of this section. In your written record for the child, you are not required to repeat information that is already in the child's health passport.

(d) You must obtain follow-up medical treatment as recommended by the health-care professional.

**Best Practice**

If there is no date by which to obtain follow-up treatment, then if necessary the follow-up should be done as soon as practical and integrated into the next service plan review.

### **§749.1409. What general dental requirements must my agency meet?**

- (a) A child in your care must receive dental care:
- (1) Initially, according to the requirements in §749.1153 of this title (relating to What are the dental requirements when I admit a child into care?);
  - (2) At as early an age as necessary;
  - (3) As needed for relief of pain and infections; and
  - (4) As needed for ongoing maintenance of dental health.
- (b) The child's record must include a written record of each dental examination that consists of specifying the:
- ~~(1) Date of the examination;~~
  - ~~(2) Procedures completed;~~
  - ~~(3) A copy of the results of the dental examination;~~
  - (2) Follow-up treatment recommended and any appointments scheduled; and
  - ~~(4)~~ (3) A notation of the ~~The~~ child's refusal to accept dental treatment, if applicable; and.
  - ~~(5) A copy of the results of the dental examination.~~
- (c) For a child in ~~DFPS~~ the conservatorship of the department, you must supplement any information already documented in the child's health passport in order to comply with subsection (b) of this section. In your written record for the child, you are not required to repeat information that is already in the child's health passport.
- (d) You must obtain follow-up dental work indicated by the examination, such as treatment of cavities and cleaning.

### **Best Practice Suggestion**

~~Here are some best practices for use and storage of a child's toothbrush:~~

- ~~• Soft-bristle toothbrushes, provided for each child's individual use after meals and snack times, which are:~~
  - ~~• Age appropriate;~~
  - ~~• Labeled with the child's full name;~~
  - ~~• Stored in a manner that prevents the toothbrushes from touching each other and the bristles are not in contact with any surface during storage; and~~
  - ~~• Replaced immediately if the bristles become splayed.~~
  - ~~• For children under six years old, toothbrushes stored out of children's reach when not in use.~~
- ~~Here are some best practices for use of toothpaste:~~
- ~~• Provide fluoride toothpaste for children three years old or older, or for children who have learned how to spit out toothpaste when brushing.~~
  - ~~• Use only a pea-sized amount of toothpaste for children under six years old. Provide adult supervision in the use of toothpaste for children under six years old or children who have not learned how to spit out toothpaste when brushing. This helps to prevent swallowing the toothpaste and possible fluoride poisoning.~~

### **§749.1415. What health precautions must I take if a person in care, employee, caregiver, someone else in one of my foster homes, or someone else in my agency has a communicable disease?**

- (a) You must notify the Department of State Health Services (DSHS) after you become aware that a person in your care, an employee, a contract service provider, a caregiver, someone else in one of your foster homes, or a volunteer has contracted a communicable disease that the law requires you to report to the DSHS as specified in 25 TAC Chapter 97, Subchapter A (relating to Control of Communicable Diseases).
- (b) If a person in your care has symptoms of a communicable disease that is reportable to the DSHS, you must:
- (1) Consult a health-care professional about the person's treatment;
  - (2) Follow the treating physician's orders, which may include separating the person from others;
  - (3) Notify the person's parent, if applicable; and
  - (4) Sanitize all items used by the sick person before another person uses one of them.
- (c) If a health-care professional diagnoses a person in your care with a communicable disease that is reportable to ~~Department of State Health Services (DSHS)~~ DSHS, a health-care professional must authorize the person's participation in any routine ~~activity~~ activities at the foster home. The authorization must:
- (1) Be in the person's record;
  - (2) Include a written statement that the person will not pose a serious threat to the health of others; and
  - (3) Include any specific instructions and precautions to be taken for the protection of others, if necessary.
- (d) If an employee, a contract service provider, a caregiver, someone else in one of your foster homes, or a volunteer has a communicable disease that is reportable to DSHS, you must obtain written authorization from a health-care professional for the person to be present at the agency or foster home. The written authorization must include a statement that the person will not pose a serious threat to the health of others.
- (e) You must follow any written instructions and precautions specified by a health-care professional.

### **Helpful Information**

*Communicable diseases that exclude a child from routine activity are defined by the Department of State Health Services (DSHS) in 25 TAC §97.7 (relating to Diseases Requiring Exclusion from Child-Care Facilities and Schools). You can obtain this information from the Department of State Health Services ~~or Licensing staff~~.*

### **§749.1421. What immunizations must a child in my care have?**

- (a) Each child that you admit must meet and continue to meet applicable immunization requirements as specified by ~~§42.043 of the Human Resources Code and~~ the Department of State Health Services.
- (b) You must maintain current immunizations records for each child in your care, including any immunization exemptions or exceptions. ~~For a child in DFPS conservatorship, documentation in the child's health passport is sufficient.~~
- (c) Unless the child is exempt from immunization requirements, all immunizations required for the child's age must:
- (1) Be completed by the date of admission; or

(2) Begin within 30 days after admission.

**Helpful Information**

The current immunization requirements can be found at <http://www.immunizetexas.com> , and:

- For children 0 through 43 months click on "School Requirements", click on "Main Page", to the right of the page click on "Child-Care Facilities", and click on "2015-2016 Texas Minimum State Vaccine Requirements for Child-Care Facilities";
- For children 44 months through 18 years click on "School Requirements", click on "Main Page", to the right of the page click on "Schools", and click on "2015-2016 Texas Minimum State Vaccine Requirements for Students Grades K-12".

**§749.1423. What ~~are the~~ exemptions ~~from~~ or exceptions are there concerning immunization requirements?**

(a) ~~Exemptions for~~ A child may be exempt from immunization requirements for a medical reason or reason of conscience, including a religious belief. To claim an exemption, the person applying for the child's admission must meet criteria specified by:

- (1) §42.043(d) and (d-1) of the Human Resources Code; or
- (2) The Department of State Health Services ~~rule~~ **rules** in 25 TAC §97.62 (relating to Exclusions from Compliance).

(b) For some diseases, a child who previously had a disease and is accordingly naturally immune from it may qualify for an exception to the immunization requirements for the disease. To claim this exception, the person applying for the child's admission must meet the criteria specified by the Department of State Health Services rule in 25 TAC §97.65 (relating to Exceptions to Immunization Requirements).

**Helpful Information**

- You can find more information ~~in~~ **regarding** the Department of State Health Services' exemptions at <http://www.dshs.state.tx.us/immunize/default.shtm>, click on "School Requirements", click on "Main Page", and to the right of the page click on "Exclusions from Immunization Requirements". ~~rules at 25 TAC Chapter 97, Subchapter B (relating to Immunization Requirements in Texas Elementary and Secondary Schools and Institutions of Higher Education). You can access it on the Department of State Health Services Internet website at: [www.dshs.state.tx.us/immunize](http://www.dshs.state.tx.us/immunize), or you may obtain a copy from Licensing or your local or state health department.~~
- While exemptions that comply with HRC §42.043(d) and (d-1) may be used by the person applying for the child's admission into a CPA, these exemptions may not comply with the school exemption requirements.

**§749.1425. What documentation is acceptable for an immunization record?**

Acceptable documentation includes:

(1) An official immunization record generated from a state or local health authority, including a record from another state. Examples include a registry, a copy of the current immunization record that is on file at the pre-kindergarten program or school, or the health passport for a child in the conservatorship of DFPS, so long as the record includes:

- (A) The child's name and date of birth;
- (B) The type of vaccine and number of doses; and
- (C) The month, day, and year the child received each vaccination; or
- (2) An official immunization record or photocopy, such as from a doctor's office, that includes:
  - (A) The child's name and date of birth;
  - (B) The type of vaccine and number of doses;
  - (C) The month, day, and year the child received each vaccination;
  - (D) The signature (including a rubber stamp or electronic signature) of the health-care professional who administered the vaccine, or another health-care professional's documentation of the immunization as long as the name of the health-care professional that administered the vaccine is documented; and
  - (E) Clinic contact information, if the immunization record is generated from an electronic health record system.

~~(a) An original or facsimile of the immunization record must include:~~

- ~~(1) The child's name and birth date;~~
- ~~(2) The number of doses and vaccine type;~~
- ~~(3) The month, day, and year the child received each vaccination; and~~
- ~~(4) One of the following:~~
  - ~~(A) A signature or rubber stamp signature from the health-care professional who administered the vaccine; or~~
  - ~~(B) A registered nurse's documentation of the immunization that is provided by a health-care professional, as long as the health-care professional's name and qualifications are documented.~~

~~(b) Documentation of an immunization record on file at your agency may be:~~

- ~~(1) The original record;~~
- ~~(2) A photocopy;~~
- ~~(3) An official immunization record generated from a state or local health authority, such as a registry;~~
- ~~(4) A record received from school officials, including a record from another state; or~~
- ~~(5) The child's health passport, for a child in DFPS conservatorship.~~

**§749.1433. How often must the physician review a child's primary medical needs?**

- (a) (No change.)
- (b) The review must address:
  - (1) (No change.)
  - (2) Any new or changed orders regarding the items outlined in §749.1135 of this title (relating to What are the additional admission requirements when I admit a child for treatment services?).
- (c) (No change.)

*Subchapter J, Foster Care Services: Medical and Dental  
Division 2, Administration of Medication*

**§749.1463. What ~~medication requirements must caregivers meet~~ are the requirements for administering prescription medication?**

(a) To the best of their knowledge, caregivers must inform the person legally authorized to give medical consent of the benefits, risks, and side effects of all prescription medication and treatment procedures used and the medical consequences of refusing them, and/or provide the name and telephone number of the prescribing health-care professional for more information.

(b) ~~Caregivers~~ For prescription medications, caregivers must:

- (1) Be informed about possible side effects of medications administered to the child;
- (2) Store all medication in the original container unless ~~you have~~ the caregiver has an additional container with the same label and instructions;
- (3) Administer all medications according to the instructions on the label or according to a prescribing health-care professional's subsequent signed orders;
- (4) Administer each child's medication within one hour of preparation;
- (5) Ensure the child has taken the medication as prescribed;
- (6) Ensure a person trained in and authorized to administer ~~prescription~~-medication administers the medication to a child in care unless the child is on a self-medication program;
- (7) Maintain any documentation provided by the health-care professional on the administration of current ~~prescription~~-medication;
- (8) Not physically force a child to take ~~prescription~~-medication;
- (9) Ensure that a child is not given any ~~prescription~~-medication or treatment except on written orders of a health-care professional;
- (10) Not borrow or administer ~~prescription~~-medication to a child that is prescribed to another person; and
- (11) Not administer ~~prescription~~-medication to more than one child from the same container. Only the child for whom the ~~prescription~~-medication was prescribed may use the medication.

**§749.1469. What are the requirements for administering nonprescription medication and ~~vitamins~~ supplements?**

(a) For non-prescription medications and supplements, You you must:

- (1) ~~follow~~ Follow the label instructions for dosage;
- (2) Inform the child's prescribing health-care professional of the administration and dosage of any non-prescription medication or supplements and to ensure the nonprescription medication and/or supplements ~~is~~ are not contraindicated with any other medication prescribed to the child or the child's medical conditions.

(b) You may give nonprescription medication or ~~vitamins~~ supplements to more than one child from one container.

*Subchapter J, Foster Care Services: Medical and Dental  
Division 3, Self-Administration of Medication*

**§749.1503. Who must record ~~a~~ the medication dosage if the child is on a self-medication program?**

When a child who is on a self-medication program takes a dosage of the medication, the-you must ensure there is a system for reviewing the child's medication each day and that the child either may:

- (1) ~~Record~~Records the daily dosage ~~if you have a system for reviewing the child's medication each day;~~ or
- (2) ~~Report~~Reports the medication to a caregiver, who must then do the actual daily recording.

*Subchapter J, Foster Care Services: Medical and Dental  
Division 4, Medication Storage and Destruction*

**§749.1521. What medication storage and destruction requirements must a foster home meet?**

A foster home must:

- (1) Store medication in a locked container;
- (2) Keep medication inaccessible other than to caregivers responsible for stored medication;
- (3) ~~Ensure the medication storage area has a separate container where medications "for external use only" are stored separately from other medications;~~
- (4) Store medication covered by Schedule II of the Texas Controlled Substances Act under double lock in a separate container. For example, a double lock can include a lock on the cabinet or filing cabinet and the door to the closet where medications are stored;
- (54) Make provisions for storing medication that requires refrigeration;
- (65) Keep medication storage area(s) clean and orderly;
- (76) Remove discontinued medication immediately and store it in a separate locked area until it is destroyed within 30 days;
- (87) Remove medication on or before the expiration date and store it in a separate locked area until it is destroyed within 30 days;
- (98) Remove medication of a discharged or deceased child immediately and store it in a separate locked area until it is destroyed within 30 days; and
- (109) Provide prescription medication to the person to whom a child is discharged or transferred if the child is taking the medication at that time.

**DELETE §749.1523. What are the requirements for discontinued or expired medication?**

*Subchapter J, Foster Care Services: Medical and Dental  
Division 5, Medication Records*

**§749.1541. What records must caregivers maintain for each child receiving medication?**

- (a) Caregivers must maintain a cumulative medication record of all:
  - (1) Prescription medication dispensed to each child; and

(2) Nonprescription medications and supplements, ~~excluding vitamins, that are~~ dispensed to a child under five years old.

(b) The cumulative medication record must be updated within 24 hours of administering medication.

~~(c) Caregivers must maintain the medication record, during the time that they provide services to the child. This record~~ which must include ~~the~~:

- (1) Child's full name;
- (2) Prescribing health-care professional's name, if applicable;
- (3) Reason medication was prescribed, for prescription medication;
- (4) Medication name, strength, and dosage;
- (5) Date (day, month, and year) and the time the medication was administered;
- (6) Name and signature of the person who administered the medication;
- (7) Child's refusal to accept medication, if applicable; and
- (8) Reasons for administering the medication, including the specific symptoms, condition, and/or injuries of the child that the caregiver is treating, only for:

(A) PRN psychotropic medication; and

(B) Nonprescription medications and supplements ~~(excluding vitamins)~~ for children under five years old.

(d) Caregivers must document in the medication record each non-prescription medication or supplement that is given to the child and how often the child receives the medication or supplement.

~~(e) Caregivers must document~~ Identification of any prohibited prescription medications (for example, medication allergies or contraindications) or prohibited, nonprescription medications and supplements ~~medication, and vitamins for each child must be maintained~~ in the medication record, ~~which must be incorporated into the child's record.~~

~~(d) (f) The~~ You must incorporate the medication record ~~records of prescription and nonprescription medication dispensed to the child must be incorporated~~ into the child's record.

*Subchapter J, Foster Care Services: Medical and Dental  
Division 7, Side Effects and Adverse Reactions to Medication*

### **§749.1581. What must a caregiver do if a child has an adverse reaction to a medication?**

If a child has an adverse reaction (unexpected or dangerous reaction) to a medication, the caregiver must:

(1) Immediately report the reaction to a health-care professional and the child's parent;

(2) Follow the health-care professional's recommendations;

(3) Seek further medical care for the child if the child's condition appears to worsen; and

(4) Document in the child's medical record the:

(A) Adverse reactions that the child had to the medication;

(B) Time and date of call(s) to the health-care professional;

- (C) Name and title of the health-care professional contacted; and
- (D) Health-care professional's medical recommendations for ensuring the child's safety.

**§749.1583. What must a caregiver do if a child experiences side effects from any medications?**

- (a) A side effect from any medication is an effect of medication in addition to the medication's intended effect, often an undesirable effect.
- (b) If a child experiences side effects from any medication, the caregiver must:
  - (1) Document the observed and reported side effects;
  - (2) Immediately report any serious side effects to the child's prescribing health-care professional ~~physician~~ and the child's parent; and
  - (3) Report any other side effect to the prescribing health-care professional ~~physician~~ within 72 hours.

*Subchapter K, Foster Care Services: Daily Care, Problem Management  
Division 1, Additional Care for Infant Care*

**§749.1803. What are the basic care requirements for an infant?**

- (a) Each infant must receive individual attention, including playing, talking, cuddling, and holding.
- (b) A caregiver must provide prompt attention to an infant's physical needs, such as feeding and diapering.
- (c) An infant's caregiver must ensure that the environment is safe. For example, free the area of objects that may choke or harm the infant, take measures to prevent electric shock, free the area of furniture that is in disrepair or unstable, and allow no unsupervised access to water to prevent the risk of drowning.
- (d) Items necessary for diaper changing must be kept out of the reach of children, but do not need to be in locked storage.
- ~~(d)~~(e) An infant's caregiver must never leave the infant unsupervised:
  - (1) A sleeping infant is considered supervised if the caregiver is within eyesight or hearing range of the infant and can intervene as needed, or if the caregiver uses a video camera or audio monitoring device to monitor the infant and is close enough to the infant to intervene as needed; and
  - (2) An awake infant is considered supervised if the caregiver is within eyesight of the infant and is close enough to the infant to intervene as needed. For short periods of time in the course of routine household activities, the infant may be out of the caregiver's eyesight, as long as the:
    - (A) Infant is within hearing range;
    - (B) Infant's environment is free of any safety hazards; and
    - (C) Caregiver is able to intervene immediately, as needed.

***Best Practice Suggestion***

Best practice for infant care suggests:

- Care by the same caregiver on a regular basis, when possible;
- Holding and comforting a child who is upset; and
- Talking to children as they are fed, changed, and held, such as naming objects, singing, or saying rhymes.

When changing diapers, best practice suggests:

- Promptly change soiled or wet diapers or clothing;
- Thoroughly cleanse children with individual cloths or disposable towels. Discard disposable towels after use and launder any cloths before using them again;
- Ensure that the child is dry before placing a new diaper on the child. If the child must be dried, use a clean, individual cloth or disposable towel to dry the child. Launder the individual cloth before using it again or discard the disposable towel after its use;
- Keep all diaper-changing supplies, including ointments and wipes, out of children's reach;
- Wash the infant's hands or see that the child's hands are washed after each diaper change;
- Discard disposable gloves after each diaper change; and
- Cover containers used for soiled diapers or keep them in a sanitary manner, such as placing soiled diapers in individual sealed bags.

### §749.1813. What types of equipment may a foster home not use with infants?

(a) A foster home may not use any of the following types of equipment with infants:

- (1) Baby walkers;
- (2) Baby bungee jumpers;
- (3) Accordion safety gates; ~~and~~
- (4) Toys that are ~~small~~not large enough to prevent swallowing or choking~~swallow or~~

~~choke a child~~; or

~~(b)~~(5) Children may not sleep on bean Bean bags, waterbeds, ~~or~~and foam pads for use as sleeping equipment.

~~(b)(c)~~ Except for a tight fitting sheet and as provided in subsection (c), the crib must be bare for an infant younger than twelve months of age. Soft bedding, such as blankets, sleep positioning devices, stuffed toys, quilts, pillows, bumper pads, and comforters may not be used in a crib for an infant younger than 12 months of age.

(c) A crib mattress cover may also be used to protect against wetness, but the cover must:

(1) Be designed specifically for the size and type of crib and crib mattress that it is being used with;

(2) Be tight fitting and thin; and

(3) Not be designed to make the sleep surface softer.

(d) An infant receiving treatment services for primary medical needs may have special items that assist ~~him~~ with safe sleep at the written recommendation of a health-care professional. You must keep the recommendation in the child's record.

### Helpful Information

- The prohibited equipment is not safe or beneficial to an infant's development and is not recommended by either the American Academy of Pediatrics or the Consumer Product Safety Commission.

- Regarding paragraph (1), ~~B~~baby walkers present a hazard due to risk of ~~falls~~falling down stairs, ~~or steps~~, and tipping over thresholds or carpet edges. They provide infants accessibility to potentially hot surfaces, containers of hot liquids such as coffee, dangling appliance cords, poisonous plants or hazardous substances and buckets, toilets or other containers of water.
- Regarding paragraph (2), ~~B~~baby bungee jumpers present a hazard due to increased risk of injury to the child as a result of spinning, swinging, or bumping into walls while placed in the jumper.
- Regarding paragraph (3), ~~A~~accordion gates with large V-shaped openings along the top edge and diamond shaped openings between the slats present entrapment and entanglement hazards resulting in strangulation, choking or pinching to children who try to crawl through or over the gate.
- ~~Examples of items that present a choking hazard for infants and toddlers include coins, balloons, safety pins, marbles, Styrofoam © and similar products, and sponge, rubber or soft plastic toys.~~
- ~~Studies on SIDS support eliminating soft bedding materials and stuffed toys used for children under six months old.~~
- Regarding paragraph (6), studies on SIDS support eliminating soft bedding materials sleep positioning devices, and stuffed toys for infants under twelve months. Examples of items that can be used as alternatives to blankets and sheets are a one-piece footed sleeper, a body shirt or undershirt underneath a sleeper, sleep sack or wearable blanket that zips up the front and can be worn over a sleeper. Wearable blankets are sleeveless, so a baby can still move his arms around while the rest of his body stays covered.
- ~~The prohibited equipment is not safe or beneficial to an infant's development and is not recommended by either the American Academy of Pediatrics or the Consumer Product Safety Commission.~~

#### §749.1815. What are the specific sleeping requirements for infants?

- (a) Caregivers must place an infant not yet able to turn over on his own in a face-up sleeping position unless a health-care professional orders otherwise. You must keep any orders from a health-care professional in the child's record.
- (b) An infant's ~~infant must not have his~~ head, face, or crib must not be covered at any time by an item such as a blanket, linen, or clothing.
- (c) An infant may not sleep in a prone position with a sleeping adult at any time, including in the adult's bed, on a couch, etc.

#### §749.1819. What are the specific requirements for feeding an infant?

- (a) Caregivers must feed an infant based on the recommendations of the infant's health-care professional~~licensed physician~~.
- (b) Unless recommendations from the service team are contrary, caregivers must hold the infant while feeding an ~~him if the~~ infant that is:
- (1) Birth through six months old; or
  - (2) Unable to sit unassisted in a high chair or other seating equipment during feeding.

- (c) Caregivers must never prop a bottle by supporting it with anything other than the infant's ~~child~~ or adult's hand.
- (d) A caregiver who cares for more than one infant must:
- (1) Sterilize shared bottles or training cups between uses by different infants; and
  - (2) Clean high chair trays before each use.

### **Best Practice Suggestion**

*Best practice suggests:*

- Feeding infants while infants are awake;
- Providing regular snack and meal times for infants who eat table food; and
- Ensuring infants ~~children~~ no longer being held for feeding are fed in a safe manner.

*Subchapter K, Foster Care Services: Daily Care, Problem Management  
Division 3, Additional Requirements for Pregnant Children*

### **§749.1863. Is the use of emergency behavior intervention of a pregnant child permitted in a foster home?**

If your policies allow for the use of personal restraints and you have ~~on~~ a pregnant child in care:

- (1) The health-care professional attending to the child's pregnancy must document whether any type of emergency behavior intervention that your policies allow is inadvisable; and
- (2) You may not use any emergency behavior intervention that the child's health-care professional attending to her pregnancy finds inadvisable.

*Subchapter K, Foster Care Services: Daily Care, Problem Management  
Division 4, Educational Services*

### **§749.1891. What responsibilities do I have for the education of a child in care?**

- (a) You must arrange an appropriate education for each child, including:
- (1) Ensuring the child in care attends an educational facility or program that is approved or accredited by the Texas Education Agency, the Southern Association of Colleges and Schools, or the Texas Private School Accreditation Commission, unless approved by the child's service planning team approves the child attending another educational facility or program ~~with documented justification~~. You must keep documentation of the planning team's justification and approval in the child's record;
  - (2) Ensuring a school-age child ~~has the training and~~ receives education and training in the least restrictive setting necessary to meet the child's needs and abilities;
  - (3) For a child attending an accredited educational facility or program, ensuring the facility or program implements a special education student's individual education plan (IEP); and

(4) Advocating that a school-age child receives the educational and related services to which he is entitled under provisions of federal and state law and regulations.

(b) For children receiving treatment services you must designate a liaison between the agency and the child's school.

#### **§749.1893. What responsibilities do caregivers have for the educational needs of a child in their care?**

Caregivers must:

(1) Review report cards and other information received from teachers or school authorities with the child and provide necessary information to agency staff;

(2) Counsel and assist the child regarding adequate classroom performance;

(3) Permit, encourage, and make reasonable efforts to involve the child in extracurricular activities as determined by a reasonable and prudent parent standard and to the extent of the child's interests and abilities and in accordance with the child's service plan;

(4) Provide a quiet, well-lighted space for the child to study and allow regular times for homework and study;

(5) Know what emergency behavior interventions are permitted and being used with the child;

(6) Request ARD (admission, review, and dismissal), IEP (individual education plan), and ITP (individual transitional planning) meetings if concerned with the child's educational program or if the child does not appear to be making progress; ~~and~~

(7) Provide notice to the parent of the child of any scheduled ARD, IEP, or ITP meetings; and

(8) Attend ARD, IEP, ITP meetings, other school staffings, and conferences to represent the child's educational best interests, including the child being evaluated for and provided with services needed for the child to benefit from educational services, and positive behavior supports designed to decrease the need for negative disciplinary techniques or interventions.

#### **§749.1895. What are the specific requirements for the educational program of a child diagnosed with autism spectrum ~~a pervasive development~~ disorder?**

You must ensure that the educational program for a child with ~~a~~ an autism spectrum pervasive development disorder:

(1) Encourages normalization through appropriate stimulation and by encouraging self-help skills; and

(2) Is appropriate to ~~his~~ the child's intellectual and social functioning.

*Subchapter K, Foster Care Services: Daily Care, Problem Management  
Division 5, Recreational Services*

#### **§749.1921. What responsibilities do foster parents have for providing a child with opportunities for recreational activities?**

(a) - (c) (No change.)

(d) Caregivers must provide the following types of recreational activities based on each individual child's needs:

| Types of service        | The caregivers must:   |
|-------------------------|--|
| (1) Child-care services | (A) Ensure that opportunities to participate in community activities, such as school sports or other extracurricular school activities, religious activities, or local social events, are available to the child; and<br>(B) Organize family activities, religious activities, or local social events that are available to the child.   |
| (2) Treatment services  | (A) Meet the requirements in paragraph (1)(A) of this chart;<br>(B) Ensure that each child receiving treatment services has an individualized recreation plan designed by the service planning team or professionals who are qualified to address the child's individual needs, that the plan is implemented, and that the plan is revised by the service planning team or qualified professionals, as needed; and<br>(C) Ensure that medical and physical support are given if the recreational and leisure-time activities require it for a child who is receiving treatment services for primary medical needs, <u>autism spectrum pervasive developmental disorder</u> , or <u>intellectual disability</u> <del>mental retardation</del> . |

**§749.1923. What physical fitness activities must caregivers provide for a child receiving treatment services for primary medical needs or ~~mental retardation~~ intellectual disability?**

(a) A child receiving treatment services for primary medical needs or ~~mental retardation~~ intellectual disability must have a minimum of one hour of physical stimulation each day.

(b) Training programs for non-mobile children must include development of physical fitness. This must include a variety of body positions and changes in environment.

**§749.1925. What type of daily schedule must caregivers provide for a child receiving treatment services for primary medical needs or ~~mental retardation~~ intellectual disability?**

A child receiving treatment services for primary medical needs or ~~mental retardation~~ intellectual disability must have a schedule that is based on the normalization principle. In order to help the child obtain an existence as normal as possible, the daily schedule must:

- (1) Demonstrate an understanding of normal child development; and
- (2) Enhance the child's physical, emotional, and social development.

*Subchapter K, Foster Care Services: Daily Care, Problem Management*

*Division 6, Discipline and Punishment*

**§749.1959. To what extent may a caregiver restrict a child's activities as a behavior management tool?**

- (a) Within limits, a foster parent may restrict a child's activities as a behavior management tool.
- (b) Restrictions of activities, ~~other than school or chores, which~~ that will be imposed on a child for more than ~~30~~14 days, must be reviewed with and approved by the child placement management staff or treatment director prior to or within 24 hours of imposing the restriction.
- (c) Restrictions to a particular room or building that will be imposed on a child for more than 24 hours must have approval from the service planning team, a professional service provider, or treatment director prior to or within 24 hours of imposing the restriction.
- (d) You must inform the child and parent about any such restrictions you place on the child.
- (e) Documentation of all approvals, justification for the restriction, and informing the child and parents must be in the child's record.

**§749.1961. May a person in care discipline or punish another person in care?**

No. A person in care must not discipline or punish another person in care except when babysitting under §749.2599 of this title (relating to Can a child serve as a ~~caregiver~~babysitter?).

*Subchapter L, Foster Care Services: Emergency Behavior Intervention  
Division 1, Definitions*

**§749.2001. What do certain ~~words~~ terms mean in this subchapter?**

These ~~words~~ terms have the following meaning in this subchapter:

- (1) ~~Chemical restraint--A type of emergency behavior intervention that uses chemicals or pharmaceuticals through topical application, oral administration, injection, or other means to immobilize or sedate a child as a mechanism of control. The use of medications that have a secondary effect of immobilizing or sedating a child, but are prescribed by a treating health-care professional and administered solely for medical or dental reasons, is not chemical restraint and is not regulated as such under this chapter.~~
- (2) ~~De-escalation--See §749.43(15) of this title (relating to What do certain words and terms mean in this chapter?).~~
- (3) ~~Emergency behavior intervention--See §749.43(19) of this title.~~
- (4) ~~Emergency medication--A type of emergency behavior intervention that uses chemicals or pharmaceuticals through topical application, oral administration, injection, or other means to modify a child's behavior. The use of medications that have a secondary effect of modifying a child's behavior, but are prescribed by a treating health-care professional and administered solely for medical or dental reasons (e.g. benadryl~~

for an allergic reaction or medication to control seizures), is not emergency medication and is not regulated as such under this chapter.

~~(5) Emergency situation--A situation in which attempted preventative de-escalatory or redirection techniques have not effectively reduced the potential for injury and it is immediately necessary to intervene to prevent:~~

~~(A) Imminent probable death or substantial bodily harm to the child because the child attempts or continually threatens to commit suicide or substantial bodily harm; or~~

~~(B) Imminent physical harm to another because of the child's overt acts, including attempting to harm others. These situations may include aggressive acts by the child, including serious incidents of shoving or grabbing others over their objections. These situations do not include verbal threats or verbal attacks.~~

~~(6) Mechanical restraint--A type of emergency behavior intervention that uses the application of a device to restrict the free movement of all or part of a child's body in order to control physical activity.~~

~~(7) Personal restraint--A type of emergency behavior intervention that uses the application of physical force without the use of any device to restrict the free movement of all or part of a child's body in order to control physical activity. Personal restraint includes escorting, which is when a caregiver uses physical force to move or direct a child who physically resists moving with the caregiver to another location.~~

~~(8) PRN--See §749.43(49) of this title.~~

~~(9) Prone restraint--Placing a child in a chest down restraint hold.~~

~~(10) Seclusion--A type of emergency behavior intervention that involves the involuntary separation of a child from other residents and the placement of the child alone in an area from which the resident is prevented from leaving by a physical barrier, force, or threat of force.~~

~~(11) Short personal restraint--A personal restraint that does not last longer than one minute before the child is released.~~

~~(12) Supine restraint--Placing a child in a chest up restraint hold.~~

~~(13) Transitional hold--The use of a temporary restraint technique that lasts no longer than one minute as part of the continuation of a longer personal or mechanical restraint.~~

~~(14)~~ 2 Triggered review--A review of a specific child's placement, treatment plan, and orders or recommendations for intervention, because a certain number of interventions have been made within a specified period of time.

### **Helpful Information**

*The distinguishing variable between a PRN (as needed) psychotropic medication and an emergency medication is the circumstances under which the medication is given. A medication given to help a child manage his/her behavior or to de-escalate a child who is having trouble managing his/her behavior is regulated only as a PRN psychotropic medication. However, if the medication is given in response to an emergency situation, it is an emergency medication. For example, a child becomes increasingly agitated after a family visit, to the point of screaming and becoming verbally abusive to caregivers and other children. The child is not able to use self-calming techniques. If the child is offered a PRN psychotropic medication under these circumstances, it is not regulated as emergency medication, because there is no emergency situation. The medication serves to help the child manage the behavior before it escalates into*

~~an emergency.~~

~~However, if the child had escalated to the point of physically assaulting someone and requiring physical restraint, then a medication offered during the restraint to help the child calm would be regulated as an emergency medication.~~

*Subchapter L, Foster Care Services: Emergency Behavior Intervention*

*Division 4, Responsibilities During Administration of Any Type of Emergency Behavior Intervention*

**§749.2151. What responsibilities does a caregiver have when implementing a type of emergency behavior intervention?**

(a) - (e) (No change.)

(f) If the child does not appear to understand what ~~he~~the child must do to be released from the emergency behavior intervention, the caregiver must attempt to re-explain it every 15 minutes until the child understands or is released from the intervention.

*Subchapter L, Foster Care Services: Emergency Behavior Intervention*

*Division 5, Additional Responsibilities During Administration of a Personal Restraint*

**§749.2201. Who must monitor a personal restraint?**

During any personal restraint, a caregiver qualified in emergency behavior intervention must:

(1) ~~monitor~~Monitor the:

(A) Personal restraint to make sure it is being performed appropriately; and

(B) ~~child's~~Child's breathing and other signs of physical distress; and

(2) ~~take~~Take appropriate action to ensure adequate respiration, circulation, and overall well-being.

**§749.2203. What is the appropriate action for a caregiver to take to ensure the child's adequate respiration, circulation, and overall well-being?**

Appropriate action includes responding prudently to a potentially life-threatening situation, for example, releasing a child when a child is unresponsive or indicates ~~he~~the child cannot breathe and immediately seeking medical assistance from a health-care professional. The caregiver must take into account that a child may thrash about more violently as ~~he~~the child struggles to breathe.

*Subchapter L, Foster Care Services: Emergency Behavior Intervention*

*Division 6, Combinations of Emergency Behavior Intervention*

**§749.2231. May a caregiver successively use emergency behavior interventions on a child?**

(a) - (b) (No change.)

(c) A caregiver must allow the child:

- (1) Bathroom privileges as needed and at least once every two hours;
  - (2) An opportunity to drink water at least once every two hours;
  - (3) Regularly prescribed medications unless otherwise ordered by the licensed physician;
  - (4) Regularly scheduled meals and snacks served in a safe and appropriate manner;
- and
- (5) An environment that is adequately ventilated during warm weather, adequately heated during cold weather, appropriately lighted, and free of safety hazards.

*Subchapter L, Foster Care Services: Emergency Behavior Intervention  
Division 8, General Caregiver Responsibilities, Including Documentation, After the  
Administration of Emergency Behavior Intervention*

**§749.2305. When must a caregiver document the use of an emergency behavior intervention, and what must the documentation include?**

(a) As soon as possible, but no later than 24 hours after the initiation of the intervention, the caregiver must document in the child's record the following information:

- (1) The child's name;
- (2) A description and assessment of the circumstances and specific behaviors that caused the basis for the emergency behavior intervention;
- (3) The de-escalation attempted before and during the use of the emergency behavior intervention and the child's reaction to those strategies;
- (4) The specific emergency behavior intervention administered;
- (5) The date and time the intervention was administered;
- (6) The length of time the child was restrained;
- (7) The name of the caregiver(s) that participated in the incident that led to the intervention, and who administered the intervention;
- (8) The name of the person(s) who observed the child;
- (9) The names of any witnesses to the emergency behavior intervention, including child witnesses in the home;
- (10) All attempts to explain to the child what behaviors were necessary for release from the intervention;
- (~~11~~11) The child's condition following the use of the medication or release from the intervention, including any injury the child sustained as a result of the intervention or any adverse effects caused by the use of the intervention. If the child received medical assistance or treatment, the caregiver must document the name of the person(s) who provided medical assistance or treatment; and
- (~~12~~12) The actions the caregiver(s) took to facilitate the child's return to normal activities following the end of the intervention.

(b) - (e) (No change.)

*Subchapter L, Foster Care Services: Emergency Behavior Intervention*

Subchapter M, Foster Homes: Screenings and Verifications

Division 1, General Requirements

**§749.2403. What minimum age requirement must foster parents and caregivers meet?**

Each caregiver in a home that you verify ~~on or after January 1, 2007,~~ must be at least 21 years old. ~~Each caregiver in a home that you verified prior to that date must be at least 18 years old.~~

Subchapter M, Foster Homes: Screenings and Verifications

Division 2, Foster Home Screenings

**§749.2445. What is a foster home screening?**

- (a) You must complete a foster home screening prior to verifying the foster home.
- (b) Your child placement management staff must review and approve each foster home screening.
- (c) The foster home screening must document:
  - (1) Required information (see §749.2447 of this title (relating to What information must I obtain for the foster home screening?));
  - (2) An assessment of the information obtained to determine whether the applicant meets the requirements for verification; and
  - (3) An evaluation of the information obtained in order to make recommendations about the applicant's capacity to work with children, including but not limited to age, gender, special needs, and number of children.
- (d) Regarding §749.2447(7) of this title, You you must report to Licensing ~~all~~ only the information obtained ~~under §749.2447(7) of this title regarding~~ about the prospective foster family's domestic violence history, as applicable. You must report this information regardless of whether you verify the home.

**§749.2447. What information must I obtain for the foster home screening?**

You must obtain, document, and assess the following information about a prospective foster home:

| Required Information   | Description of Discussion, Assessment and Documentation Requirements  |
|--|---|
| (1) The age of the prospective foster parents. Ages of all other members of the household. | All prospective foster parents must be at least 21 years old. You must document the ages of all household members and include documentation verifying the ages of the foster parents. |

| Required Information   | Description of Discussion, Assessment and Documentation Requirements   |
|--|--|
| (2) The educational level of the prospective foster parents.   | <p>You must ensure and document that each foster parent is able to comprehend and benefit from training and provide appropriate care and supervision to meet the needs of children in care, in areas such as health, education, and discipline/behavior management, by doing either or both of the following:</p> <p>(A) Require that foster parents have a high school diploma or a G.E.D. high school equivalency. The Texas Education Agency (TEA) or another public education entity outside of Texas must recognize the high school program or high school equivalent program; or</p> <p>(B) Have a screening program that:</p> <ul style="list-style-type: none"> <li>(i) Ensures that each foster parent is able to be an appropriate role model for children in placement;</li> <li>(ii) Ensures that each foster parent is able to communicate with the child in the child's own language, or has other means to communicate with the child in the child's own language; and</li> <li>(iii) Addresses adequately basic competencies that would otherwise be met by a high school diploma or G.E.D. including basic reading, writing, and math.</li> </ul> |
| (3) Personal characteristics.  | <p>You must document information from foster parents that demonstrate:</p> <p>(A) Emotional stability, good character, good health, and adult responsibility; and</p> <p>(B) The ability to provide nurturing care, appropriate supervision, reasonable discipline, and a home-like atmosphere for children.</p>   |
| (4) History of current and previous interpersonal relationships, including marriages, common-law marriages, and other relationships between people who share or have shared a domestic life without being married. | <p>You must document information regarding the marital status of the foster parents, including the present marital status, as well as a history of previous marriages or significant interpersonal relationships. You must include a description of the marriage or relationship, including reasons why any previous marriages or significant interpersonal relationships were ended.</p>  |
| (5) A history of the prospective foster parents' residence and their citizenship status.   | <p>You must document the:</p> <p>(A) Length of time spent at each residence for the past 10 years (street address, city, state); and</p> <p>(B) Citizenship of the prospective foster parents.</p>   |

| Required Information  | Description of Discussion, Assessment and Documentation Requirements   |
|---|--|
| <p>(6) The financial status of the prospective foster family.</p> | <p>(A) You must discuss with the prospective foster parents the current reimbursement process, <u>if applicable</u>, and the foster parents' understanding of that process.</p> <p>(B) You must verify and document that the prospective foster parents have sufficient up-front income or other readily available assets to support their household and all children in care prior to receiving the foster care reimbursement for services provided. For each prospective foster parent you must obtain, document and assess the following:</p> <p style="padding-left: 40px;"><del>(A)</del>(i) Proof of income for the past 60 days or two complete calendar months. Disability, social security, and/or other sources of income such as family support, Supplemental Nutrition Assistance Program (SNAP) and Temporary Assistance for Needy Families (TANF) must be included, as applicable;</p> <p style="padding-left: 40px;"><del>(B)</del>(ii) A copy of two consecutive itemized bank statements and/or the previous year's tax return. The bank statements must be related to the previous two calendar months prior to the date of application. If a foster family does not have two consecutive itemized bank statements or a previous year's tax return, then you must copy and document the evidence used to verify the financial status of the prospective foster family, including documenting the information used to verify the itemized monthly household expenses; and</p> <p style="padding-left: 40px;"><del>(C)</del>(iii) A monthly household expense report itemizing the following expenses:</p> <ul style="list-style-type: none"> <li><del>(1)</del>(I) Mortgage/Rent;</li> <li><del>(2)</del>(II) Utilities;</li> <li><del>(3)</del>(III) Transportation;</li> <li><del>(4)</del>(IV) Food;</li> <li><del>(5)</del>(V) Medical;</li> <li><del>(6)</del>(VI) Clothing;</li> <li><del>(7)</del>(VII) Insurance;</li> <li><del>(8)</del>(VIII) Credit cards and loans;</li> <li><del>(9)</del>(IX) Legal (i.e. attorney fees, alimony and/or child support);</li> <li><del>(10)</del>(X) Pet; and</li> <li><del>(11)</del>(XI) Entertainment/miscellaneous.</li> </ul> |

| Required Information  | Description of Discussion, Assessment and Documentation Requirements   |
|---|--|
| <p>(7) The results of criminal history and central registry background checks conducted on the prospective foster parents and any non-client person 14 years of age or older who regularly or frequently stays or is present in the home.</p> | <p><u>(A)</u> Persons applying to foster children and any person, excluding clients, 14 years of age or older who will regularly or frequently be staying or present at the home, must obtain a criminal history and central registry background check. See Chapter 745, Subchapter F of this title (relating to Background Checks). The <u>specific</u> results of those checks must be documented <u>and assessed</u> in the foster home screening and the foster home record. <u>Any assessments of other parts of a home screening must include and assess relevant background check result information. For example, the paragraphs (3) and (6) regarding a foster family's personal characteristics and financial status should consider and assess a misdemeanor theft by check, even though this crime is not a bar to becoming a foster parent.</u></p> <p><u>(B)</u> With respect to law enforcement service call information, you must do the following:</p> <p><del>(A)</del><u>(i)</u> Obtain service call information from the appropriate law enforcement agency for <u>each of</u> the prospective foster parents' addresses <del>for</del><u>over</u> the past two years. Discuss with the prospective foster parents any service call information that you obtain from a law enforcement agency and the facts surrounding the incident.</p> <p><del>(B)</del><u>(ii)</u> Whether results were found or not, ask the prospective foster parents whether any law enforcement agency has responded to any of their residences in the past two years. If you obtain additional information from the prospective foster parents, request background information from each law enforcement agency that responded. Discuss the incident and any additional background information that you obtain with the prospective foster parents.</p> <p><del>(C)</del><u>(iii)</u> Assess and document information obtained from law enforcement and any discussion with the prospective foster parents in the foster home screening.</p> |
| <p>(8) The prospective foster parents' motivation to provide foster care.</p>   | <p>Assess and document the prospective foster parents' motivation and willingness to provide foster care.</p>  |

| Required Information   | Description of Discussion, Assessment and Documentation Requirements   |
|--|--|
| (9) Health status of all persons living in the home.   | Document information about the physical and mental health status (including substance abuse history) of all persons living in the home in relation to the family's ability to provide foster care. You must discuss whether any health-related issues noted may affect the prospective foster parent's ability to care for a child in care. You must also observe these persons for any indication of problems and follow up, where indicated, with a professional evaluation. Document the information obtained through your observations and, if applicable, professional evaluations.   |
| (10) The quality of the current interpersonal relationship, including marriage, common-law marriage, or a relationship between people who share a domestic life without being married, and family relationships. | Discuss, assess, and document the quality of the current and previous interpersonal and family relationships in relation to the family's ability to provide foster care. You must discuss and assess the stability of a couple's current and previous relationships, the strengths and problems of the relationship, and how those issues will affect the current environment and the prospective foster parents' ability to care for any foster children placed in the home. You must discuss and assess the quality of the relationships between prospective foster parents and their children, living in or out of the home, strengths and problems of those relationships, and how those issues will relate to foster children placed in the home. |
| (11) The prospective foster parents' feelings about their childhoods and parents.  | Discuss, assess, and document the prospective foster parents' feelings about their childhoods and parents, including any history of abuse or neglect and their resolution of those experiences.  |
| (12) The prospective foster parents' attitudes about a foster child's or his biological family's religion.   | Evaluate and document prospective foster parents on:<br><br>(A) Their willingness to respect and encourage a child's religious affiliation, if any;<br><br>(B) Their willingness to provide a child the opportunity for religious and spiritual development, if desired; and<br><br>(C) The health protection they plan to give a child if a foster parent's religious beliefs prohibit certain medical treatment.   |

| Required Information   | Description of Discussion, Assessment and Documentation Requirements  |
|--|---|
| (13) The prospective foster parents' values, feelings, and practices in regard to child care and discipline.   | Discuss, assess, and document the applicants' knowledge of child development and their child-care experience. Discuss and assess the ways the applicants were disciplined as children and their reactions to the discipline they received. Discuss and assess the prospective foster parents' discipline styles, techniques, and their ability to recognize and respect differences in children and use discipline methods that suit the individual child. Discuss your approved disciplinary methods, which must comply with Subchapter K, Division 6 of this chapter (relating to Discipline and Punishment). If the prospective foster parents' current discipline methods are different than those that you approve, discuss and assess how they would change their child-care practices to conform to your approved methods. |
| (14) The prospective foster parents' sensitivity to and feelings about children who may have been subjected to abuse or neglect.                       | Discuss, assess, and document the prospective foster parents' understanding of the dynamics of child abuse and neglect. Discuss and assess their understanding of how these issues and experiences will affect them, their families, and foster children in their care. Discuss and assess the prospective foster parent's ability to help children who have been abused or neglected. If a prospective foster parent experienced abuse or neglect as a child, assess his handling of those experiences and the impact of those experiences on the applicant's ability to help children deal with their own experiences. Assess the availability of family and community resources to meet the needs of the children in the family's care.  |
| (15) The prospective foster parents' sensitivity to and feelings about children's experiences of separation from or loss of their biological families. | Discuss, assess, and document the prospective foster parents' understanding of the dynamics of separation and loss and the effects of these experiences on children. Discuss and assess their personal experiences with separation and loss and their processing of those experiences. Assess the potential foster parents' acceptance of the process of grief and loss for children and assess their ability to help a child through the grieving process.   |

| Required Information  | Description of Discussion, Assessment and Documentation Requirements   |
|---|--|
| (16) The prospective foster parents' sensitivity to, and feelings about, a child's biological family.           | Discuss, assess, and document the prospective foster parents' feelings about the child's parents, including the issue of abuse or neglect of the child by the child's parents or other family members. Discuss and assess their sensitivity and reactions to the child's parents. Discuss and assess their sensitivity to and acceptance of a child's feelings about the child's parents and assess their ability to help the child deal with those feelings. Discuss and assess the prospective foster parents' sensitivity to and acceptance of the child's relationships with the child's siblings. Discuss and assess their willingness to support the child's relationships with parents, siblings, and extended family, including their support for contacts between the child and the child's family. |
| (17) The attitude of other household members about the prospective foster parents' plan to provide foster care. | Discuss, assess, and document the attitudes of other household members toward the plan to provide foster care. Discuss and assess their involvement in the care of foster children, their attitudes toward foster children, and their acceptance of the verification as a foster family.   |
| (18) The attitude of the prospective foster parents' extended family regarding foster care.                     | Discuss, assess, and document the extended family's attitude toward foster care and foster children and the involvement the extended family will have with foster children. Discuss and assess the impact the extended family's attitudes will have on the family's ability to provide foster care and whether the extended family will serve as a support system for the foster family and for foster children.   |

| Required Information  | Description of Discussion, Assessment and Documentation Requirements   |
|---|--|
| (19) Support systems available to prospective foster parents.                       | Discuss, assess, and document the support systems available to each foster parent and the support the family may receive from these resources. You must ask each prospective foster parent for information about any person who may provide support as a caregiver during an unexpected event or crisis situation, such as an illness or disability of a foster parent, loss of transportation, or the death of an immediate family member. Verify and document identifying information and availability of each person that will provide support as a caregiver. <u>Any of these persons will need a fingerprint-based criminal history check before acting as a caregiver. Unless the person will be a caregiver immediately after you verify the home, the background check on the person does not have to be completed before you verify the home.</u> |
| (20) The prospective foster parents' expectations of and plans for foster children. | Discuss, assess, and document the prospective foster parents' expectations of the child and the flexibility of their expectations in relation to the child's actual needs and abilities. Discuss and assess their capacities to recognize and emphasize the strengths and achievements of the child and their capacities to adjust their expectations according to the abilities of the child.   |
| (21) The language(s) spoken by the prospective foster parents.                      | Document the language(s) spoken by each prospective foster parent.   |

| Required Information  | Description of Discussion, Assessment and Documentation Requirements  |
|---|---|
| <p>(22) Prospective foster parent's ability to work with specific kinds of behaviors and backgrounds.</p> <p> </p> <p> </p> <p> </p> <p> </p> <p> </p> <p> </p> | <p><u>(A)</u> Discuss, assess, and document each prospective foster parent's willingness and ability to work with specific and challenging behaviors of foster children, including such things as backgrounds, special needs and/or disabilities.</p> <p><u>(B)</u> Discuss, assess, and document the prospective foster parents' understanding of the concepts of trauma informed care and how they would use those concepts in the care, treatment, and management of children placed in their home.</p> <p><u>(C)</u> Discuss, assess and document the prospective foster parents' willingness and ability to:</p> <ul style="list-style-type: none"> <li><del>(A)</del> <u>(i)</u> Care for and work with children of a specific gender;</li> <li><del>(B)</del> <u>(ii)</u> Care for and work with children of a specific age range;</li> <li><del>(C)</del> <u>(iii)</u> Care for a specific number of children, including whether or not the children are part of the same sibling group;</li> <li><del>(D)</del> <u>(iv)</u> Provide respite care services to any additional number of children of a specific gender, within a specific age range, and with special needs that the family will not be providing care for full time; and</li> <li><del>(E)</del> <u>(v)</u> Provide any additional services Licensing regulates according to §749.61 of this title (relating to What types of Services does Licensing regulate?).</li> </ul> |

| Required Information   | Description of Discussion, Assessment and Documentation Requirements   |
|--|--|
| (23) Background information from other child-placing agencies. | <p>(A) Request and assess the following background information (if provided) from any <u>and all</u> child-placing <del>agency</del> <u>agencies</u> that previously conducted a foster home screening, pre-adoptive home screening, or post placement adoptive report:</p> <ul style="list-style-type: none"> <li><del>(A)</del> (i) The screening, report, and related documentation;</li> <li><del>(B)</del> (ii) Documentation of supervisory visits and evaluations;</li> <li><del>(C)</del> (iii) Any record of deficiencies and their resolutions; and</li> <li><del>(D)</del> (iv) The most current fire and health inspections.</li> </ul> <p>(B) You must address the closure or any identified risk indicators, as applicable, with the prospective foster parents before approval and verification of the home if the background information indicates that:</p> <ul style="list-style-type: none"> <li><del>(A)</del> (i) The foster home was previously closed by a child-placing agency; or</li> <li><del>(B)</del> (ii) There was one or more potential risk indicators that the child placing agency did not adequately address with the foster parents.</li> </ul> |

**§749.2451. What must I document regarding interviews I conduct for a foster home screening?**

- (a) You must document all interviews ~~and attempts to interview~~ of persons you are required to interview for a foster home screening.
- (b) The documentation must include the date and method used to contact each required person, the date of each interview, who was present at each interview, their relationship to the prospective foster parents, and a summary of each interview.
- (c) This documentation must be a part of the foster home record.

**§749.2453. When must I update the foster home screening?**

- (a) You must update a foster home screening, as follows:
  - (1) Under the circumstances described in §749.307(a) of this title (relating to What happens to the foster homes supervised by a branch office when the branch office closes?); ~~and~~
  - (2) When there is a major life change in the foster family as described in §749.2805 of this title (relating to What is a "major life change in the foster family?"); and
  - (3) When there is a change that affects a foster home's verification as described in §749.2803 of this title (relating to What changes affect a foster home's verification?).
- (b) A foster home screening update may be made by using an addendum.

- (c) ~~A-CPA~~You must complete a foster home screening update that is needed under the circumstances described in §749.307(a) of this title before issuing a new verification certificate.
- (d) ~~A-CPA~~You must do the following when updating a foster home screening because of a major life change in the foster family:
  - (1) Assess the appropriateness of any current placement of children in the foster home, immediately upon notification; and
  - (2) Complete the update within 30 days of the notification of the major life change.

*Subchapter M, Foster Homes: Screenings and Verifications*  
*Division 3, Verification of Foster Homes*

**§749.2471. What must I do to verify a foster home?**

Verifying a foster home includes the following steps:

(1) - (4) (No change.)

~~(5) If the home will provide treatment services, ensuring that the home complies with the policies developed according to §749.349 of this title (relating to What additional policies must I develop for foster parents that provide treatment services?);~~

~~(6)~~ If the home will provide a transitional living program, ensuring the home complies with the policies developed according to ~~§749.354~~§749.125 of this title (relating to What policies must I develop for foster parents who offer a transitional living program?);

~~(6)~~(7) Evaluating all areas required in this subchapter, and making recommendations regarding the home's ability to care for and work with children with respect to a child's gender and age, the number of children, and the types of services to be provided;

~~(7)~~(8) If there are any indicators of potential risk to children based on the assessment and evaluation of an area required in this subchapter, documenting the indicators and how you addressed them with the prospective foster family prior to approval and verification of the home;

~~(8)~~(9) Obtaining from the child placement management staff review and approval of the home screening, and the recommended verification of the home; and

~~(9)~~(10) Issuing a verification certificate that specifies the:

(A) - (H) (No change.)

**§749.2475. To whom must I release information regarding a family on which I previously conducted a foster home screening, pre-adoptive home screening, or post placement adoptive report, ~~or home study~~?**

(a) - (b) (No change.)

(c) For the purposes of this section, background information includes:

(1) - (5) (No change.)

(6) Copies of any current or previous plan to achieve compliance or other type of annual-development ~~plans~~plan for the past two years, if applicable; and

(7) Copies of any current or previous correction action or adverse action plans for the past two years, if applicable.

(d) (No change.)

**§749.2487. What are the requirements for an agreement that I have with a foster home that I verify?**

(a) You must sign a written agreement with each agency foster home at the time that you verify the home. You and the foster home must each have copies of the signed agreement. You must file a copy of the signed agreement in the agency home record.

(b) (No change.)

**§749.2488. What statement must I provide to foster parents regarding foster parent and child-placing agency rights and responsibilities?**

(a) - (d) (No change.)

(e) At the time you verify the home, you must also provide foster parents with a written copy of your policies relating to §749.121 of this title (relating to What policies must I develop concerning the rights and responsibilities of the child-placing agency and the foster parents?).

**§749.2497. Are transfer/closing summaries required for foster homes?**

Yes, you must have either a transfer summary or closing summary for each foster home that transfers to another ~~CPA~~child-placing agency or closes.

(1) A transfer summary must be completed by the 10th day after you receive a written request to transfer.

(2) A closing summary must be completed by the 20th day after the foster home is closed.

(3) A transfer and closing summary must include:

(A) A copy of the verification certificate;

(B) The foster home addresses and/or location for the past two years;

(C) The length of time the foster parents have been fostering with the ~~CPA~~you;

(D) For the children that were in care for the last two years, the:

(i) Number of children fostered;

(ii) Type of treatment services provided to each child; and

(iii) Reason for each child's discharge from care;

(E) A description of any limitations on verification that were in place for the foster home in caring for and working with children (such as gender, age, number of children, treatment services, special needs, or type of abuse or neglect experienced by the child), regardless of whether the limitation was requested by the foster parent or imposed by ~~the CPA~~you;

(F) For a closing summary, the reason the foster home is closing, including whether you required the foster home to close;

(G) For a transfer summary, ~~whether there are~~ any pending investigations and/or unresolved deficiencies;

(H) For a closing summary, ~~whether there were~~ any unresolved deficiencies that had not been corrected and what those deficiencies were;

(I) ~~Whether there are any~~ Any indicators of risk to children at the time of transfer/closing and what those indicators are;

(J) ~~Whether there was an annual~~ Any plan to achieve compliance or other type of development plan that was in place within the previous 12 months at the time of the date of transfer/closing; and

(K) ~~Whether there was a~~ Any corrective action or adverse action plan that was in place at the time of transfer/closing; and

(L) A statement concerning whether you would recommend the foster home for verification in the future, including whether you would recommend any limitations or restrictions on the verification, and the basis of your recommendation or lack thereof.

*Subchapter M, Foster Homes: Screenings and Verifications  
Division 6, Supervision*

**§749.2599. Can a child serve as a ~~caregiver~~ babysitter?**

A child who is 16 years old or older, including a foster child, may serve as a babysitter for children under the age of 13 as long as:

- (1) The child placement management staff approves the child to babysit and establishes, ~~establishing~~ limits with duration and frequency;
- (2) The child acts as a babysitter for no more than eight hours and never over night;
- (3) The child is certified in first aid and cardiopulmonary resuscitation (CPR); and
- (4) Neither the child babysitting nor any of the foster children in the babysitter's care is receiving treatment services.

*Subchapter M, Foster Homes: Screenings and Verifications  
Division 7, Respite Child-Care Services*

**§749.2623. What must occur before I place a child for respite child-care services?**

Before placing the child in respite child-care services, you ~~You~~ must:

- (1) notify ~~Notify~~ the child's parent ~~before placing the child in respite child-care services; and~~
- (2) Inform the child of the plan for respite child-care services, including the intended time of stay.

**§749.2635. May I place a child for babysitting, overnight care, or respite care in a home that Licensing does not regulate?**

Yes, you may place a child in a home that Licensing does not regulate for babysitting, overnight care, or respite care, if the provider:

- (1) Is not subject to regulation by Licensing; and
- (2) Meets the policy requirements your agency developed according to ~~§749.353~~ §749.127 of this title (relating to What policies must I develop for babysitters, overnight care providers, and respite care providers?).

Subchapter M, Foster Homes: Screenings and Verifications  
 Division 8, Agency - Foster Family Relationships

**§749.2655. When must a foster home notify you of changes that affect the foster home?**

A foster home must notify you of any of the following changes as follows:

| Type of change | Change:   | Time for notification:  |
|----------------|---|---|
| (1)            | <del>In</del> A change in the location of the foster home.  | Before moving.  |
| (2)            | <del>Major</del> Any major life changes as defined at §749.2805 of this title (relating to <u>What is a "major life change in the foster family"?</u> ). <del>in household composition:</del><br><del>— (A) Marriage, divorce, separation, death, birth, or any other change in household composition;</del><br><del>— (B) A serious health problem that affects the ability of the foster parent to care for children; or</del><br><del>— (C) Extended absences by one parent, such as military services or job assignments.</del> | Before the change occurs, if possible; otherwise, immediately upon discovery. |
| (3)            | A change affecting a condition of the verification.   | Before the change occurs, if possible; otherwise, immediately upon discovery. |

Subchapter N, Foster Homes: Management and Evaluation

**§749.2803. What changes affect ~~the conditions of~~ a foster home's verification?**

(a) Changes that affect ~~the conditions of~~ a foster home's verification include a ~~change in the~~:

- (1) ~~Name of the foster home~~ Marriage, divorce, separation, death, birth, or any other change in household composition;
- (2) ~~Foster~~ Change in the foster home's address and/or location;
- (3) ~~Foster~~ Change in the foster home's capacity, as determined by the capacity requirements in §749.2557 of this title (relating to May a foster agency home exceed its verified capacity?);
- (4) Ages Changes in the ages and gender(s) of children for which the home is authorized to provide care; or
- (5) The Changes in the types of services the foster home will provide; ~~or~~
- (6) ~~The composition of the family or home.~~

(b) ~~A verification certificate is only valid until:~~

- (1) ~~The occurrence of any changes that affect the conditions of a foster home's verification, including the home's address and/or location; or~~
- (2) ~~The foster home's time-limited verification expires.~~

~~(e)~~ You must issue a new or temporary verification certificate to a foster home ~~prior~~ to:

- (1) ~~Changing any conditions of~~Change the home's verification, including the home's address or location;
- (2) ~~Extending~~Extend the expiration date of the home's time-limited verification; or
- (3) ~~Changing~~Change a foster home's verification from time-limited to non-expiring.

(c) A verification certificate becomes invalid at the point of:

- (1) The occurrence of any changes that affect a foster home's verification, including the home's address and/or location; or
- (2) The foster home's time-limited verification expires.

#### **§749.2805. What is a "major life change in the foster family"?**

A major life change in the foster family includes:

- (1) Marriage, divorce, separation, death, birth, or any other change in household composition;
- (2) A serious health problem or significant change in a work schedule that affects the ability of the foster parent to care for children; or
- (3) Extended absences by one parent, such as military service or out-of-town job assignments.

#### **§749.2815. How often must I have supervisory visits with the foster home and what must be evaluated during a supervisory visit?**

(a) ~~You~~Child placement staff must ~~have~~conduct supervisory visits:

- (1) In the foster home at least quarterly;
- (2) With both foster parents, if applicable, at least once every six months; and
- (3) With all household members at least once every year.

(b) At least two supervisory visits per year must be unannounced.

(c) At least once every quarter, your supervisory visit must evaluate and document the following:

(1) Any change to household members, frequent visitors, or persons who will provide support as a caregiver during an unexpected event or crisis situation;

(2) Any major life change in the foster family as described in §749.2805 of this title (relating to What is a "major life change in the foster family"?);

(3) Any change to the foster home disaster and emergency plans as described in §749.2907 of this title (relating to What disaster and emergency plans must each foster home have?); and

(4) Any challenging behaviors of the current children in the home, the level of stress the foster family is currently experiencing (including any significant change in finances), and any methods for responding to each child's challenging behavior and/or alleviating any significant stress the foster family is experiencing.

(d) You must document each visit in the home's record. The documentation must include the names of all household members present during the visit, specific issues identified and any rules evaluated, results of the evaluation, deficiencies found, plans for achieving compliance, plans for follow-up to ensure compliance was achieved, and any changes to the information in the foster home screening since the last supervisory visit, including the reasons for any change in the home's verification.

(e) For each supervisory visit, documentation of the visit must be signed by each foster parent present for the visit and the child-placement staff conducting the visit.

*Subchapter O, Foster Homes: Health and Safety Requirements, Environment, Space and Equipment*

*Division 1, Health and Safety*

**DELETE §749.2902. What health safety measures are required at a foster home?**

**NEW §749.2902. What health and safety measures are required at a foster home?**

(a) Foster homes must have either:

(1) A health inspection conducted from the local health authority; or

(2) A health and safety evaluation conducted by your child placement staff using our Environmental Health Checklist form for foster homes.

(b) You must document each health inspection or health and safety evaluation, including the name and telephone number of the person who conducted the inspection or evaluation.

(c) The foster home must correct any deficiencies documented during any inspection or evaluation and must comply with any conditions or restrictions specified by the inspector or evaluator.

**§749.2903. What fire safety measures are required at a foster family home not serving children receiving treatment services for primary medical needs?**

(a) Foster family homes not serving children receiving treatment services for primary medical needs must have either:

(1) A fire inspection conducted by a ~~certified fire inspector or a local or state~~ or local fire authority; or

(2) A fire safety evaluation conducted by your child placement staff using the State Fire Marshal's fire prevention checklist for foster homes.

(b) Each fire inspection or fire safety evaluation must be documented, including the name and telephone number of the person who conducted the inspection or evaluation.

(c) The foster home must correct and deficiencies ~~Deficiencies~~ documented during any inspection or evaluation and must be corrected, and the foster home must comply with any conditions or restrictions specified by the inspector or evaluator.

(d) If a foster family home changes verification to become either a foster family home serving children receiving treatment services for primary medical needs or a foster group home, then the foster home must meet the fire safety measures for §749.2904 of this title (relating to What fire safety measures are required at a foster family home serving children receiving treatment services for primary medical needs or a foster group home?) before changing the verification.

**§749.2904. What fire safety measures are required at a foster family home serving children receiving treatment services for primary medical needs or a foster group home?**

(a) Foster family homes serving children receiving treatment services for primary medical needs and foster group homes must have a fire inspection conducted by a

~~certified fire inspector or a local or~~ state or local fire authority. You must document efforts to obtain a fire inspection. If, after exploring and documenting efforts to obtain a fire inspection for a home, you cannot obtain a fire inspection, then a fire safety evaluation may be conducted by your child-placement staff using the State Fire Marshal's fire prevention checklist for foster homes. Documentation of efforts to obtain a fire inspection must include each date, the name of the person contacted, and the person's response to the request to complete an inspection.

(b) Each inspection or use of the State Fire Marshal's checklist must be documented, including the name and telephone number of the person who conducted the inspection or evaluation.

(c) Deficiencies documented during any inspection or use of the State Fire Marshal's checklist must be corrected, and the foster home must comply with any conditions or restrictions specified by the inspector or child-placement staff.

(d) Once you document that a fire inspection is not available in a particular area, you may use that documentation for any foster home verified by you in that area. A copy of the documentation must be on file in each foster home record to which the documentation applies.

(e) Documentation that a fire inspection is not available in a particular area is valid for one year.

#### **§749.2905. How often must fire and health inspections be conducted at a foster home?**

(a) Unless otherwise stated in the report, a fire or health inspection report obtained from a local health authority or state or local fire authority, ~~including a certified fire inspector,~~ is current for:

- (1) One year for a foster group home; and
- (2) Two years for a foster family home.

(b) A fire safety or health and safety evaluation by ~~If you use~~ of a checklist ~~for a foster home's fire or health inspection, the checklist~~ is current for one year.

#### **§749.2909. How many smoke detectors must a foster home have?**

(a) Each home must have a working smoke detector in the following areas:

- (1) In hallways or open areas outside sleeping rooms; and
- (2) On each level of a home with multiple levels.

(b) Depending on the size and layout of the home, additional smoke detectors may be required based on the manufacturer's or the state or local fire ~~inspector's~~ authority's instructions.

#### **§749.2911. How must smoke detectors be installed and maintained at a foster home?**

Smoke detectors must be installed and maintained according to the manufacturer's instructions, or in compliance with the state or local fire ~~inspector's~~ authority's instructions.

#### **§749.2913. How many fire extinguishers must a foster home have?**

(a) A foster home must have a fire extinguisher:

- (1) In each kitchen; and
- (2) On each level of the home.
- (b) The fire extinguisher(s) must ~~be~~:
  - (1) ~~Serviced~~Be serviced or replaced after each use; and
  - (2) Have a maintenance check once a year by a person qualified to inspect fire extinguishers~~Checked for proper weight at least once a year.~~

**Best Practice Suggestion**

*It is a good idea to mount fire extinguishers on the wall by a hanger or bracket, with the top of the extinguisher no higher than five feet above the floor and the bottom at least four inches above the floor or any other surface. If a state or local fire ~~inspector~~authority has different mounting instructions, follow those instructions.*

**§749.2917. What are the requirements for animals that are present at a foster home?**

- (a) Any animals on the premises of a home must be kept free of disease and must not create health problems or a health risk for children.
- (b) Animals must be vaccinated and treated as recommended by a licensed veterinarian.
- (c) The caregivers must have documentation at the home showing that dogs, and cats, ~~and ferrets~~ have been vaccinated for rabies as required by Texas Health and Safety Code, Chapter 826. ~~If the foster home chooses to have animals on the premises, it must ensure that the animals do not create health problems or a health risk for children.~~

*Subchapter O, Foster Homes: Health and Safety Requirements, Environment, Space and Equipment*

*Division 2, Tobacco and E-Cigarette Use*

**§749.2931. What policies must I enforce regarding tobacco products and e-cigarettes?**

- (a) A child may not use or possess tobacco products, e-cigarettes, or any type of vaporizers.
- (b) Caregivers and other adults may only smoke tobacco products, e-cigarettes, and vaporizers outside.
- (c) No one may smoke tobacco products, e-cigarettes, or vaporizers in a motor vehicle while transporting children in care.

*Subchapter O, Foster Homes: Health and Safety Requirements, Environment, Space and Equipment*

*Division 3, Weapons, Firearms, Explosive Materials, and Projectiles*

**§749.2961. Are weapons, firearms, explosive materials, and projectiles permitted in a foster home?**

(a) Generally, weapons, firearms, explosive materials, and projectiles (such as darts or arrows), are permitted, however, there are some specific restrictions:

(1) If you allow weapons, firearms, explosive materials, projectiles, or toys that explode or shoot, you must develop and enforce a policy identifying specific precautions to ensure children do not have unsupervised access to them, including:

(A) Locked storage for the weapons and the ammunition;

(B) Locked storage must be made of strong, unbreakable material;

(C) If the locked storage has a glass or another breakable front or enclosure, guns must be secured with a locked cable or chain placed through the trigger guards; and

(D) Separate locked storage for the weapons and the ammunition. Ammunition may be stored with weapons in the same location, such as a gun cabinet, provided that access to both ammunition and weapons cannot be obtained by using the same key and/or combination;

(2) You must determine that it is appropriate for a specific child to use the weapons, firearms, explosive materials, projectiles, or toys that explode or shoot; and

(3) No child may use a weapon, firearm, explosive material, projectile, or toy that explodes or shoots, unless the child is directly supervised by ~~a qualified~~ an adult knowledgeable about the use of the weapon, firearm, explosive material, projectile, or toy that explodes or shoots that is to be used by the child.

(b) Your policies must require foster parents/caregivers to notify you if there is a change in the type of or an addition to weapons, firearms, explosive materials, or projectiles that are on the property where the foster home is located.

(c) Firearms that are inoperable and solely ornamental are exempt from the storage requirements in this rule.

*Subchapter O, Foster Homes: Health and Safety Requirements, Environment, Space and Equipment*

*Division 4, Space and Equipment*

#### **§749.3027. May a child in care share a bedroom with an adult caregiver?**

(a) A child may share a bedroom with an adult caregiver if:

(1) ~~It is in~~ the best interest of the child;

(2) The child is under three years old and sleeps in the bedroom of the caregiver; and

(3) Approval is documented and dated in the child's service plan by the service planning team.

(b) An exception for a child to share a bedroom with an adult caregiver may be made during specific travel and camping situations if no other more reasonable provision is available to the child and other requirements are met.

(c) Children may not sleep in the same bed with an adult caregiver at any time.

(d) To facilitate continuous supervision of a child, the caregiver may move a child to a location where the caregiver can directly and continuously supervise a child until there is no longer an immediate danger to ~~himself~~ self or others. However, the caregiver must provide comfortable sleeping arrangements for the child.

**§749.3031. What are the requirements for beds and bedding?**

- (a) Each foster child shall have ~~his~~their own bed and mattress. This does not prevent a child receiving respite care or requiring closer supervision from sleeping on a couch, sleeping bag, etc. for fewer than seven days.
- (b) Beds must be clean and comfortable.
- (c) Mattresses must be off of the floor and have covers or protectors.
- (d) Linens must be changed when soiled, and not less often than once a week.

**§749.3039. What are the requirements for outdoor recreation ~~space and~~ equipment?**

- (a) Equipment must not have openings, angles, or protrusions that can entangle a child's clothing or entrap a child's body or body parts.
- (b) Equipment must be securely anchored according to manufacturer's specifications to prevent collapsing, tipping, sliding, moving, or overturning.
- (c) Climbing equipment, swings, and slides must not be installed over asphalt or concrete.
- (d) Equipment must be appropriate, cleaned, maintained, and repaired.
- (e) Trampolines may only be used at the foster home if:
  - (1) The number of children allowed on the trampoline at one time meets the manufacturer's instructions~~Only one child is on the trampoline at a time;~~
  - (2) ~~Somersaults are not allowed on the trampoline;~~
  - (3) Shock-absorbing pads cover the springs, hooks, and frame;
  - (4) ~~No ladder is used with the trampoline~~Ladders are removed from the trampoline when the trampoline is not in use; and
  - (5) A caregiver provides supervision as follows:
    - (A) For children under ~~15~~12 years old, the caregiver must be immediately present, watching the child(ren) at all times, enforcing safety rules and manufacturer's instructions, and able to respond in an emergency; and
    - (B) For children ~~15~~12 years old and older, the caregiver must be on the premises, visually check on the child(ren) at frequent intervals, and able to respond in an emergency.

*Subchapter O, Foster Homes: Health and Safety Requirements, Environment, Space and Equipment*

*Division 5, Nutrition and Food Preparation*

**§749.3061. What are the requirements for feeding children in care?**

- (a) ~~Caregivers must give children food of adequate quality and in sufficient quantity to supply the nutrients necessary for proper growth and development.~~
- (b) Caregivers must feed an infant whenever the infant is hungry.
- (c) Caregivers must provide a toddler or school age child with three meals and at least one snack a day.
- (d) No more than 14 hours may pass between the last meal or snack of the day and the availability of the first meal the following day.

**§749.3075. What ~~food service practices must caregivers use~~ are the feeding requirements for children receiving treatment services for primary medical needs or ~~mental retardation~~ intellectual disabilities?**

(a) ~~Food service practices for~~ Caregivers must encourage self-help and development when feeding children receiving treatment services for primary medical needs or ~~mental retardation~~ intellectual disabilities, including non-mobile children, ~~must encourage self-help and development.~~

(b) - (c) (No change.)

*Subchapter O, Foster Homes: Health and Safety Requirements, Environment, Space and Equipment*

*Division 6, Transportation*

**§749.3103. What are the requirements for transporting children?**

The driver and all passengers must follow all federal, state, and local laws when driving, including laws on the use of a child passenger safety ~~systems~~ seat system, seat belts, and liability insurance.

**Helpful Information**

*The Transportation Code prohibits a child under five years old to ride on a motorcycle, unless seated in a sidecar.*

*Below is a chart from the web site of the Texas Department of Public Safety regarding child ~~restraints~~ passenger safety seat system:*

**~~Texas Department of Public Safety Proper Child Restraint Recommendations~~**

~~(Note: Children 12 and under are safest when properly restrained in the rear seat. Keep children rear-facing as long as possible. Always refer to the child safety seat instructions and vehicle manufacturer's instructions for weight and height limits, proper use and installation.)~~

| <del>Conditions</del>     | <del>Infants 20 lbs and less</del>                             | <del>Infants</del>  | <del>Toddlers</del>   | <del>Other Children</del>                                  |
|---------------------------|--|---|---|--|
| <del>Weight and Age</del> | <del>Birth to at least 1 year old AND at least 20 pounds</del> | <del>Birth to at least 1 year old<br/>More than 20 pounds and less than 35 pounds</del> | <del>More than 1 year old, more than 20 pounds, up to approximately 40 pounds</del> | <del>More than 40 pounds, ages 4-8 unless 4'9" tall</del>  |
| <del>Type of Seat</del>   | <del>Infant only or rear-facing convertible</del>              | <del>Rear-facing convertible designed for heavier infants</del>                         | <del>Convertible or forward-facing seat with harness</del>                          | <del>Belt-positioning booster (high-back or no-back)</del> |

| <del>Conditions</del>                                      | <del>Infants</del>          | <del>Toddlers</del>       | <del>Other Children</del> |
|--|-----------------------------|---------------------------|---------------------------|
| <del>Belt-positioning booster (high-back or no-back)</del> | <del>Rear-facing only</del> | <del>Forward-facing</del> | <del>Forward-facing</del> |

**Forward-facing**

Harness straps are at, or below, shoulder level.

Harness straps should be at or above shoulder level-check manual.

Belt-positioning booster seats are used with lap/shoulder belt combination only.

**Remember**

Do not place infants in the front seat of vehicles with active air bags.

5-point harnesses provide the best protection

Make sure the lap belt portion fits low and tight to avoid abdominal injuries.

Child Passenger Recommendations

2013 Child Passenger Safety National Best Practice Recommendations

|                |                             |   |
|----------------|-----------------------------|---|
| <u>Phase 1</u> | <u>Rear-Facing Seats</u>    | <u>Infants: Birth – 35+ pounds, 2+ years old. Rear-facing infant or rear-facing convertible safety seat as long as possible, up to the rear-facing height or weight limit of the seat. Properly install according to instructions in owner's manual, rear-facing in the back seat.</u>  |
| <u>Phase 2</u> | <u>Forward-facing Seats</u> | <u>When children outgrow the rear-facing safety seat (2+ years), they should ride in a forward-facing safety seat as long as possible, up to the upper height or weight limit (40 – 80+ pounds) of the harnesses. Usually 4+ years old. Properly installed forward-facing in the back seat. <b>NEVER</b> turn forward-facing before child meets all: AGE/HEIGHT/WEIGHT requirements set by safety seat manufacturer for forward-facing.</u> |
| <u>Phase 3</u> | <u>Booster Seats</u>        | <u>After age 4 and 40+ pounds, children can ride in a booster seat with the adult lap and shoulder belt until the adult safety belt will fit them properly (usually when the child is 4'9" tall, 10 – 12 years old). <b>MUST</b> have a lap/shoulder belt to use a booster seat.</u>  |
| <u>Phase 4</u> | <u>Adult Safety Belt</u>    | <u>Once children outgrow their booster seat (usually at 4'9", 10 – 12 years) they can use the adult lap/shoulder safety belt if it fits them properly. Lap portion low over the hips/tops of thighs and shoulder belt crosses the center of the shoulder and center of the chest.</u>   |

Children are better protected the longer they can stay in each phase. Keep children in each seat up to the **maximum** age/weight/height limits before moving to the next phase. **ALL** children younger than age 13 years should ride properly restrained in the back seat.

*Subchapter O, Foster Homes: Health and Safety Requirements, Environment, Space and Equipment*

*Division 7, Swimming Pools, Bodies of Water, Safety*

**§749.3133. What are the requirements for a pool at a foster home?**

- (a) The caregivers must inform children about house rules for use of the pool and appropriate safety precautions. Adult supervision and monitoring of safety features must be adequate to protect children younger than 12 years of age and children of any age who are not competent swimmers from unsupervised access to the pool.
- (b) The swimming pool must be built and maintained according to the standards of the Department of State Health Services and any other applicable state or local regulations.
- (c) A fence or wall that is at least four feet high must enclose the pool area. The fence must be well constructed and be installed completely around the pool area. ~~A foster home that you verified before January 1, 2007, has one year from that date to comply with this requirement. Caregivers must continue to prevent children's unsupervised access to the pool.~~
- (d) Fence gates leading to the outdoor pool area must be self-closing and self-latching. Gates must be locked when the pool is not in use. Keys to open the gate must not be accessible to children under the age of 16 years old, children of any age who are not competent swimmers, or any children receiving treatment services.
- (e) Doors that lead from the home to the pool area must have a lock that only adults or children over 10 years old can reach. The lock must be completely out of the reach of children younger than 10 years old.
- (f) Furniture, equipment, or large materials must not be close enough to the pool area for a child to use them to scale the fence or release a lock.
- (g) At least two life-saving devices must be available, such as a reach pole, backboard, buoy, or a safety throw bag with a brightly colored buoyant rope or throw line. One additional life-saving device must be available for each 2,000 square feet of water surface, so a pool of 2,000 square feet would require three life saving devices.
- (h) Drain grates must be in place, in good repair, and capable of being removed only with tools.
- (i) Caregivers must be able to clearly see all parts of the swimming area when supervising activity in the area.
- (j) The bottom of the pool must be visible at all times.
- (k) Pool covers must be completely removed prior to pool use.
- (l) An adult must be present who is able to immediately turn off the pump and filtering system when any child is in the pool.
- (m) Pool chemicals and pumps must be inaccessible to all children.
- (n) Machinery rooms must be locked to keep children out.
- (o) An aboveground pool must:
  - (1) Be inaccessible to children under the age of 16 years old, children of any age who are not competent swimmers, or any children receiving treatment services when it is not in use; and
  - (2) Meet all other requirements in this rule except for subsections (c) - (e) of this section.
- (p) A pool cover does not substitute for any of the requirements in this rule.

**§749.3135. What general requirements must caregivers meet for children regarding a body of water?**

- (a) Caregivers must use prudent judgment and ensure children in your care who are younger than 12 years old, children of any age who are not competent swimmers, and children receiving treatment services are protected from unsupervised access to water such as a swimming pool, hot tub, fountain, pond, lake, creek, or other body of water.
- (b) If children are allowed to swim in a body of water such as a river, creek, pond, or lake, the supervising adult must clearly designate swimming areas.
- (c) Rules governing the activity and the dangers of the body of water must be explained to participants in a manner that is clearly understood prior to their participation.

**§749.3137. What are the child/adult ratios for swimming activities?**

(a) The maximum number of children one adult can supervise during swimming activities is based on the age of the youngest child in the group and is specified in the following chart:

| If the age of the youngest child is...  | <del>Then you must have one adult to supervise every (number) child/ren in the group</del>   | Swimming Child/Adult Ratio |
|---|--|----------------------------|
| <u>(1)</u> 0 to 23 months old   | <del>1</del>   | 1:1                        |
| <u>(2)</u> 2 years old  | <del>2</del>   | 2:1                        |
| <u>(3)</u> 3 years old  | <del>3</del>   | 3:1                        |
| <u>(4)</u> 4 years old  | <del>4</del>   | 4:1                        |
| <u>(5)</u> 5 years old or older in a foster family home or foster group home; and either:<br><u>(A) One child is receiving treatment services for primary medical needs; or</u><br><u>(B) Three or more children are receiving treatment services</u> |  | <u>4:1</u>                 |
| <u>(6)</u> 5 years old or older in a foster family home <u>or foster group home, no children are receiving treatment services for primary medical needs, and no more than two children are receiving treatment services</u>                           | <del>6</del>   | 6:1                        |
| <del>5 years old or older in a foster group home</del>  | <del>You must meet the applicable child/caregiver ratios as provided in §749.2563 of this title (relating to How do I determine child/caregiver ratio for a foster group home?).</del> | <del>varies</del>          |

(b) When all of the children in the group are at least four years of age or older, in ~~in~~ addition to meeting the required swimming child/adult ratio listed in subsection (a) of this section, ~~if four or more children are engaged in swimming activities, then there must be~~ at least two adults ~~must to~~ supervise four or more ~~the~~ children who are actually in the water.

(c) When a child who is non-ambulatory or who is subject to seizures is engaged in swimming activities, you must assign one adult to that one child. This adult must be in addition to any lifeguard on duty in the swimming area. You do not have to meet this requirement if a licensed physician writes orders in which the physician determines that the child:

(1) Is at low risk of seizures and that special precautions are not needed; or

(2) Only needs to wear an approved life jacket while swimming and additional special precautions are not needed.

(d) A lifeguard who is supervising the area where the children are swimming may be counted in the child/adult ratio; however, one caregiver must always be present and the lifeguard may not be the only person counted in the child/adult ratio.

(e) The ratios in subsection (a) of this section do not include children over the age of 12 years old who are ~~proficient~~ competent swimmers. However, you must still comply with the child/caregiver ratios required in §749.2563 of this title (relating to How do I determine child/caregiver ratio for a foster group home?), ~~including compliance with subsection (c) of this section if children are on an unsupervised swimming activity.~~

### Helpful Information

Regarding subsection (b), if a foster parent takes four 4-year olds swimming, subsection (a) only requires one person to supervise the four children. However, if all four 4-year olds are in the water at the same time, then subsection (b) requires there to be at least two adults to supervise the children.

### **§749.3139. May I include volunteers or relatives who do not meet minimum qualifications for caregivers in the swimming child/adult ratio?**

To meet the swimming child/adult ratio, you may include adult volunteers and adult relatives who do not meet the minimum qualifications for caregivers, providing:

(1) You maintain enough caregivers to meet the child/caregiver ratio required in Subchapter M, Division 5 of this chapter (relating to Capacity and Child/Caregiver Ratio);

(2) Persons in your care do not supervise ~~waters~~ swimming activities; and

(3) You ensure compliance with all other rules of this chapter, including, but not limited to, rules relating to supervision and discipline.

**NEW §749.3151. Can foster parents approve a child to participate in swimming activities as an unsupervised childhood activity without complying with the rules of this division?**

Yes, a foster parent using the "reasonable and prudent parent standard" as defined in §749.2605 of this title (relating to What is the "reasonable and prudent parent standard"?) may approve a child to participate in unsupervised childhood activities (activities away from the foster home and the foster parents) involving swimming that do not comply with the rules of this Division of this subchapter (relating to Swimming Pools, Bodies of Water, Safety). However, depending upon the background of the child (for example the child's age, level of maturity and responsibility, and proficiency in swimming), such an approval may or may not require limitations like other adult supervision or the need for a life jacket when boating.

*Subchapter V, Additional Requirements for Child-Placing Agencies That Provide Trafficking Victim Services  
Division 4, Training*

**§749.4153. Must I provide pre-service training to a caregiver or an employee who was previously a caregiver or employee for another operation?**

(a) A child-placing agency does not have to provide additional general pre-service training or pre-service training regarding emergency behavior intervention to any caregiver or employee who is exempt from this training by §749.867 of this title (relating to Must I provide pre-service training to a caregiver or employee who was previously a caregiver or employee for a ~~child-placing agency~~residential child-care operation?). In addition, a caregiver or employee (child-placing agency administrator, treatment director, child placement management staff, child placement staff, or full-time professional service provider) does not have to complete the five hours of pre-service training regarding complex trauma experienced by trafficking victims if the caregiver or employee:

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

(b) (No change.)