

MINIMUM STANDARDS  
FOR  
CHILD-PLACING AGENCIES



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TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES  
LICENSING DIVISION



**MINIMUM STANDARDS FOR CHILD-PLACING AGENCIES**

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# INTRODUCTION

## Minimum Standards

These minimum standards are developed by the Texas Department of Family and Protective Services (DFPS) with the assistance of child-care operations, parents, lawyers, doctors, and other experts in a variety of fields. The child-care licensing law sets guidelines for what must be included in the standards and requires that minimum standards be reviewed and commented on by the State Advisory Committee on Child-Care Facilities. The licensing law requires that proposed standards be distributed to child-care operations for a 60-day review and comment period before adopting the proposed standards as rules. The Administrative Procedure and Texas Register Act requires that proposed standards be published for public comment before they are adopted as rules. The department considers recommendations from interested persons or groups in formulating the final draft, which is filed as rules with the Secretary of State. Standards are a product of contributions from many people and groups and thus reflect what the citizens of Texas consider reasonable and minimum.

## Maintaining Compliance

It is essential that operation employees and caregivers recognize four critical aspects of Licensing's efforts to protect the children in care and to help operation employees and caregivers comply with the law, rules, and standards. The four aspects are:

- Inspection
- Technical assistance
- Investigations
- Caregiver's rights and entitlements

## The Inspection

Various aspects of regulated operations are evaluated for compliance with the minimum standards, rules, and law during regular inspections. The emphasis on these inspections is to prevent risk to children in care. All operations are designated a monitoring plan based on their compliance history:

### Plan 1

Inspections are made every three to five months. Plan 1 is used for operations that are too new to have established a compliance record, have made inadequate attempts to correct deficiencies, or have repeated deficiencies that do not place children at immediate risk.

*(continued)*

**Plan 2**

Inspections are made every six to nine months. Plan 2 is used for operations that have a few deficiencies that do not place children at immediate risk and deficiencies are corrected on time.

**Plan 3**

Inspections are made every 10 to 12 months. Plan 3 is used for operations that consistently comply with the minimum standards or whose deficiencies are few and are promptly corrected.

**Deficiency**

A deficiency is any failure to comply with a standard, rule, law, specific term of the permit or condition of evaluation, probation, or suspension. During any inspection, if licensing staff find that the operation does not meet minimum standards, rule, or law, the areas of deficiency are discussed with appropriate operation employees and caregivers. Technical assistance and consultation on the problem areas are provided. Operation employees and caregivers are given the opportunity to discuss disagreements and concerns with licensing staff. If the concerns are not resolved, the operation may request an administrative review.

**Technical Assistance**

Licensing staff are available to offer consultation to potential applicants, applicants, and permit holders regarding how to comply with minimum standards, rules, and laws. Licensing staff often provide technical assistance during inspections and investigations. However, technical assistance can be requested at any time.

A new feature of the minimum standards is the provision of “Helpful Information” and “Best Practice Suggestions” following certain standards. This information is not a necessary component of meeting standards, but rather it is provided to help you meet the standards in a way best suited for your operation.

**Investigations**

When a report to Licensing alleges abuse or neglect, standards deficiency, or a violation of law or rule, licensing staff must investigate the report, notify the operation of the investigation, and provide a written report to the operation of the investigation results within prescribed time frames.

*(continued)*

## **Your Rights and Entitlements**

### **Waivers and Variances**

If an operation is unable to comply with a standard for economic reasons, or wishes to meet the intent of a standard in a way that is different from what the standard specifies, a waiver or variance of the standard may be requested. The request is made in writing to the operation's assigned Licensing Representative.

### **Administrative Review**

If an operation disagrees with a Licensing decision or action, the operation may request an administrative review. The operation is given an opportunity to show compliance with applicable law, rule, minimum standards, license restrictions and/or license conditions.

### **Appeals**

An operation may request an appeal hearing on a Licensing decision to deny an application or revoke or suspend a permit or a condition placed on the permit after initial issuance.

Appeal hearings are conducted by the State Office of Administrative Hearings (SOAH).

## **For Further Information**

It is important that operation employees and caregivers clearly understand the purpose of minimum standards and the reasons for Licensing's inspections. Do not hesitate to ask questions of licensing staff that will help you understand any aspect of Licensing. You may obtain information about licensing standards or procedures by calling your local Licensing office or by visiting the DFPS web site at [www.dfps.state.tx.us](http://www.dfps.state.tx.us).



# CHILD-PLACING AGENCIES

*Chapter 749, Title 40, Social Services & Assistance, Part 19, Dept. of Family and Protective Services*

## **Subchapter A, Purpose and Scope**

### **§749.1. What is the purpose of this chapter?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

The purpose of this chapter is to set forth the rules that apply to child-placing agencies.

### **§749.3. Who is responsible for complying with the rules of this chapter?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

The permit holder must ensure compliance with all rules of this chapter at all times, with the exception of those rules identified for specific types of services that your agency does not offer. For example, if we grant you a permit to offer adoption services only, you do not have to comply with rules that apply to foster care services; however, you must comply with all other rules of this chapter.



## Subchapter B, Definitions and Services

### Division 1, Definitions

#### §749.41. What do certain pronouns mean in this chapter?

*DFPS Rules, 40 TAC, effective January 1, 2007*

The following words have the following meanings in this chapter:

- (1) I, my, you, and your – An applicant or permit holder, unless otherwise stated.
- (2) We, us, our, and Licensing – The Licensing Division of the Department of Family and Protective Services (DFPS).

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

*DFPS Rules, 40 TAC, effective June 1, 2008*

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:
  - (A) Southern Association of Colleges and Schools, Commission on Colleges;
  - (B) Middle States Association of Colleges and Schools, Commission on Higher Education;
  - (C) New England Association of Schools and Colleges, Commission on Institutions of Higher Education;
  - (D) North Central Association of Colleges and Schools, The Higher Learning Commission;
  - (E) Northwest Commission on Colleges and Universities;
  - (F) Western Association of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities; or
  - (G) Western Association of Schools and Colleges, Accrediting Commission for Community and Junior 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.

*(continued)*

- (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) Adult – A person 18 years old or older.
- (6) Caregiver – A caregiver:
  - (A) Is a person counted in the child/caregiver ratio, 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. For example, a child-placement staff that takes a child on an appointment or doctor’s visit is considered a caregiver.
  - (B) Does not include babysitters or respite child-care providers who are not:
    - (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.
- (7) Certified fire inspector – Person certified by the Texas Commission on Fire Protection to conduct fire inspections.
- (8) Child/caregiver ratio – The maximum number of children for whom one caregiver can be responsible.
- (9) Child in care – A child or a young adult 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, he is considered a child in care.
- (10) 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.
- (11) 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.
- (12) Days – Calendar days, unless otherwise stated.

*(continued)*



- (13) 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.
- (14) Department – The Department of Family and Protective Services (DFPS).
- (15) 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.
- (16) Disinfecting solution – A disinfecting solution may be:
  - (A) A self-made solution, prepared as follows:
    - (i) One tablespoon of regular strength liquid household chlorine 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 chlorine 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 meets the Environmental Protection Agency’s (EPA’s) standards for “hospital grade” germicides (solutions that kill germs) that you must use according to label directions.
- (17) Emergency Behavior Intervention – Interventions used in an emergency situation, including personal restraints, mechanical restraints, emergency medication, and seclusion.
- (18) 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.
- (19) 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).
- (20) Food service – The preparation or serving of meals or snacks.
- (21) 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.

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- (22) Foster group home – An operation 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.
- (23) Foster home – As referred to in this chapter means both types of homes, foster family homes and foster group homes.
- (24) Foster home screening – A written evaluation, prior to 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) Environment of the foster parent(s) and their family in relation to their ability to meet the child’s needs.
- (25) Foster parent – A person who provides foster care services in the foster home.
- (26) Full-time – At least 30 hours per week.
- (27) Garbage – Food or items that when deteriorating cause offensive odors and/or attract rodents, insects, and other pests.
- (28) Health-care professional – A licensed physician, licensed registered nurse with appropriate advanced practice authorization from the Texas Board of Nurse Examiners, a licensed vocational nurse (LVN), a licensed registered nurse (RN), or other licensed medical personnel providing health care to the child within the scope of his license. This does not include medical doctors or medical personnel not licensed to practice in the United States.
- (29) 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.
- (30) Immediate danger – 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, or the probability of bodily harm resulting from a child running away if under 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.
- (31) Infant – A child from birth through 17 months.
- (32) Livestock – An animal raised for human consumption or an equine animal.
- (33) Living quarters – A structure or part of a structure where a group of children reside, such as a building, house, cottage, or unit.

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- (34) Long-term placement – A placement intended to last for more than 90 days.
- (35) 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.
- (36) 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.
- (37) Non-mobile – A child that is not able to move from place to place, even with assistance.
- (38) 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.
- (39) Physical force – Pressure applied to a child's body that reduces or eliminates the child's ability to move freely.
- (40) Post-adoptive 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.
- (41) Post-placement 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.
- (42) 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.
- (43) PRN – A standard order or prescription that applies “pro re nata” or “as needed according to circumstances.”

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- (44) 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 State Board of Medical Examiners;
  - (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; and
  - (G) 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.
- (45) Re-evaluation – Includes an assessment of 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.
- (46) Regularly – On a recurring, scheduled basis.
- (47) Sanitize – 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 10 minutes. Rinsing with cool water only those items that a child is likely to place in his mouth; and
  - (D) Allowing the surface or article to air-dry.
- (48) School-age child – A child who is five years old or older and who will attend school in August or September of that year.
- (49) Seat belt – A lap belt and any shoulder strap included as original equipment on or added to a motor vehicle.
- (50) Service plan – A plan that identifies a child’s basic and specific needs and how those needs will be met.
- (51) State or local fire inspector – A fire official designated by the city, county, or state government.

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- (52) State or local sanitation official – A sanitation official designated by the city, county, or state government that is trained in sanitary science to perform duties relating to education and inspections in environmental sanitation.
- (53) Substantial bodily harm – Physical injury serious enough that a prudent person would conclude that the injury required professional medical attention. It 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.
- (54) Toddler – A child from 18 months through 35 months old.
- (55) 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.
- (56) 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.
- (57) Volunteer – A person who provides services:
  - (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.
- (58) Water activities – Activities related to the use of splashing pools, wading pools, swimming pools, or other bodies of water.
- (59) Young adult – An adult whose chronological age is between 18 and 22 years, who is currently in a residential child-care agency, and who continues to need child-care services.

## Division 2, Services

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

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 with:
  - (A) Emotional Disorders, such as mood disorders, psychotic disorders, or dissociative disorders, and who demonstrate three 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 suicide attempts;
    - (iv) Difficulties that present a significant risk of harm to self or others, including frequent or unpredictable physical aggression; or
    - (v) A primary diagnosis of substance abuse or dependency and severe impairment because of the substance abuse;
  - (B) Mental Retardation, who have an intellectual functioning of 70 or below and are characterized by prominent, significant 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) Pervasive Developmental Disorder, which is a category of disorders (e.g. Autistic Disorder or Rett’s Disorder) 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; and
    - (v) Multiple physical disabilities including sensory impairments; or

*(continued)*

- (D) Primary Medical Needs, who cannot live without mechanical supports or the services of others because of non-temporary, life-threatening conditions, including the:
  - (i) Inability to maintain an open airway without assistance. This does not include the use of inhalers for asthma;
  - (ii) Inability to be fed except through a feeding tube, gastric tube, or a parenteral route;
  - (iii) Use of sterile techniques or specialized procedures to promote healing, prevent infection, prevent cross-infection or contamination, or prevent tissue breakdown; or
  - (iv) Multiple physical disabilities including sensory impairments; and
- (3) Additional Programmatic Services, which include:
  - (A) Transitional Living Program – A residential services program designed to serve children 14 years old or older for whom the service or treatment goal is basic life skills development toward independent living. A transitional living program includes basic life skills training and the opportunity for children to practice those skills. A transitional living program is not an independent living program;
  - (B) Assessment Services Program – Services to provide an initial evaluation of the appropriate placement for a child to ensure that appropriate information is obtained in order to facilitate service planning; and
  - (C) Respite Child-Care Services – See §749.2621 of this title (relating to What are respite child-care services?).

### **§749.63. Can I provide each type of service that Licensing regulates?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

You may provide each type of service that we regulate under the following conditions:

- (1) On your permit, we list the type of service that you have been approved to provide; and
- (2) Your operational policies and procedures ensure:
  - (A) Children are admitted appropriately;
  - (B) The needs of all children in care are met;
  - (C) Children are appropriately supervised;
  - (D) Children are protected from one another, if appropriate; and
  - (E) You meet the applicable rules of this chapter.

**§749.65. What children are eligible to participate in a transitional living program?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) For a child to be eligible to participate in a transitional living program, the child must be 14 years old or older.
- (b) For a child to be eligible to receive the level of caregiver supervision described in §749.2597 of this title (relating to Where must the caregivers reside in order to supervise children who are in a transitional living program?), the child must be 16 years old or older.

**§749.67. What are the requirements for a transitional living program?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

A transitional living program must have a training program for children that demonstrates competency in the following areas:

- (1) Health, general safety, and fire safety practices;
- (2) Money management;
- (3) Transportation skills;
- (4) Accessing community and other resources; and
- (5) Child health and safety, child development, and parenting skills, if the child is a parent of a child living with him.

**§749.69. What is an “independent living program”?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

An “independent living program” is a program that provides case management services to a child who lives independently, without supervision and child/caregiver ratio, and the constant presence of an on-site caregiver.

**§749.71. May I have an independent living program?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

Your agency may not provide an independent living program for a child in care under 18 years old.



## Subchapter C, Organization and Administration

### Division 1, Permit Holder Responsibilities

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

Before you begin operating, you are responsible for:

- (1) Ensuring that your agency is legally established to operate within Texas and complying with all applicable statutes;
- (2) Establishing the governing body of the agency;
- (3) Having a governing body that is responsible for, and has authority over, the agency's policies and activities;
- (4) Having policies that clearly state the responsibilities of the governing body;
- (5) Developing operational policies and procedures that comply with or exceed the rules specified in this chapter, Chapter 42 of the Human Resources Code, Chapter 745 of this title (relating to Licensing), and other applicable laws;
- (6) Developing and providing us your plan for ensuring that:
  - (A) We are informed of any changes in:
    - (i) The location of all agency records, offices and agency homes;
    - (ii) Agency home verification; and
    - (iii) Your written professional staffing plan;
  - (B) Agency homes meet all applicable rules of this chapter prior to verification;
  - (C) Upon our request, you investigate reports of rules violations in a timely manner and submit reports of your agency's actions and findings to us for our review, follow-up, and closure;
  - (D) Your child placement management staff conduct or review and sign off on all investigations completed by your agency;
  - (E) Your child placement management staff submits an investigation report to your agency's Licensing representative within 30 days of the request from Licensing; and
  - (F) You evaluate the effectiveness of your system for meeting rules of this chapter and describe the process your agency will use to address problems that your evaluation system identifies.

**§749.103. What are my operational responsibilities as the permit holder?***DFPS Rules, 40 TAC, effective March 1, 2008*

When you begin operating, you must:

- (1) Designate a full-time child-placing agency administrator who meets minimum qualifications of §749.631 of this title (relating to What qualifications must a child-placing agency administrator meet?);
- (2) Operate according to the written policies and procedures adopted by the governing body;
- (3) Maintain current, accurate, and complete master records;
- (4) Ensure that all required documentation is true, current, accurate, and complete;
- (5) Allow us to inspect your child-placing agency during its hours of operation;
- (6) Allow us to inspect or monitor one of your foster homes at any time;
- (7) Conduct ongoing evaluations of verified foster homes, including documentation of unmet rules of this chapter and correction of all deficiencies;
- (8) Display your permit at your agency and a copy at any branch office;
- (9) Observe the conditions of your permit;
- (10) 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;
- (11) Maintain liability insurance as required by the Human Resources Code, §42.049;
- (12) Comply with Chapters 42 and 43 of the Human Resources Code and all other applicable laws and rules of the Texas Administrative Code;
- (13) Not act as an agent for unlicensed agencies, institutions, or individuals;
- (14) Prior to implementing any changes, inform us of any changes to the plan you developed under §749.101 of this title (relating to What are my responsibilities as the permit holder before I begin operating?);
- (15) Prepare the annual budget and control expenditures to ensure needs of the children are met;
- (16) Ensure that no member of the governing body, member of the executive committee, management staff, or employee is listed as a sustained controlling person; and
- (17) If your child-placing agency will be moving to another location, notify us in writing as soon as possible but at least 15 days prior to the move.

**Helpful Information .....**

Regarding subsection (16), see Chapter 745 of the Texas Administrative Code, Subchapter G, rules §745.901 to §745.909, for more information on controlling persons.

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

You must:

- (1) Develop a written organizational chart showing the administrative, professional, and staffing structures and lines of authority;
- (2) Develop written job descriptions, including minimum qualifications and job responsibilities for each position;
- (3) Develop written policies on the training requirements for employees and caregivers;
- (4) Ensure that personnel policies comply with personnel requirements outlined in Subchapter F of Chapter 745 of this title (relating to Background Checks);
- (5) Ensure your employees report serious incidents and suspected abuse, neglect, or exploitation as required by the Family Code, §261.401;
- (6) Ensure that all employees and consulting, contracting, and volunteer professionals who work with a child and others with access to information about a child are informed in writing of their responsibility to maintain child confidentiality; and
- (7) 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?).

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

Your conflict of interest policies must include a:

- (1) Code of conduct on the relationship between employees, contract service providers, children in placement, foster and adoptive parents, and children's families;
- (2) Statement that it is a conflict of interest for any of the following people or relatives of any of the following to be verified as a foster parent or approved as an adoptive parent of the agency: any current owner, member of the governing body, executive director, or any other employee or contract service provider of your agency; and
- (3) Code of conduct on the relationship between your agency's owners, members of the governing body, employees, and prospective and current foster and adoptive parents, including required parameters for entering into independent financial relationships or transactions.

## Division 2, Governing Body

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

The governing body is responsible for:

- (1) Ensuring the agency remains fiscally sound;
- (2) Overseeing and ensuring the management of the agency's services and programs in compliance with your policies;
- (3) Approving and having authority over the agency's operational policies and activities which must comply with rules of this chapter;
- (4) Complying with the law, including Chapters 42 and 43 of the Human Resources Code, the applicable rules of this chapter, and other applicable rules in the Texas Administrative Code;
- (5) Ensuring that persons employed by or working at the agency, any family members of the owner or governing body members, paid consultants, or others who benefit financially from the agency, such as subcontractors or vendors, do not comprise a majority of the voting members of the governing body:
  - (A) Agencies that are granted a permit by us before January 1, 2007, have two years to comply with this paragraph; and
  - (B) Agencies that are granted a permit by us after January 1, 2007, have two years from the date the agency is licensed by us to comply with this paragraph; and
- (6) Carrying out governing body responsibilities assigned in the agency's policies and procedures.

### §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?

*DFPS Rules, 40 TAC, effective January 1, 2007*

You must provide to us in writing any change in:

<b>Change:</b>	<b>Deadline for notifying us:</b>
(1) The legal structure of your agency	At least seven working days before making the change
(2) The composition of the governing body	Within 2 days of such a change
(3) The information about governing body officers, executive committee, or members, such as name or location changes	Within 15 days of learning about a change

## Division 3, General Fiscal Requirements

### §749.161. What are my general fiscal requirements?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You must establish and maintain your agency on a sound fiscal basis.
- (b) You must maintain complete financial records.
- (c) If you provide adoption services, you must have a fee policy that clearly describes what fees you charge and what services the fees cover. We must approve your fee policy.

### §749.163. What are my specific fiscal requirements?

*DFPS Rules, 40 TAC, effective January 1, 2007*

You must:

- (1) Submit documentation to us of a 12-month budget of income and expenses with the application for a new permit;
- (2) Submit documentation to us of reserve funds or available credit at least equal to operating costs for the first three months of operation with the application for a new permit;
- (3) Have predictable funds sufficient for the first year of operation;
- (4) Demonstrate at all times that you have or will have sufficient funds to provide appropriate services for all children in your care; and
- (5) Account for a child's money separately from the funds of your agency and the foster home. No child's personal earnings, allowances, or gifts may be used to pay for the child's room and board, unless such a 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.

### §749.165. How often must I have a professional audit?

*DFPS Rules, 40 TAC, effective January 1, 2007*

You must have a professional audit completed annually and make it available for our review.

## Division 4, Fiscal Requirements for Adoption Agencies

### §749.191. What type of financial report must I submit to Licensing if I provide adoption services?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You must submit an annual financial report to us on a form that we provide. The report must include:
  - (1) Information on adoption-related income from all sources, including the source of the income and the amount; and
  - (2) Adoption-related agency expenses, including the expense category and the category detail.
- (b) You must submit the financial report to us within 60 days of the end of your agency's fiscal year.

### §749.193. May I make payments for adoption referrals?

*DFPS Rules, 40 TAC, effective January 1, 2007*

No, you may not make any payments for adoption referrals.

### §749.195. What types of fees may I collect prior to the completion and approval of a home study?

*DFPS Rules, 40 TAC, effective January 1, 2007*

You may only accept reasonable application fees, home study fees, and fees for education and training of the prospective adoptive parents prior to the completion of the home study.

### §749.197. For adoption services, what fee policies must I have?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) For adoption services, you must have an adoption fee or adoption fee schedule that you apply to all clients. The policy must include the type of expenditures you will meet for birth parents and whether you will do so through an overall fee, pass-through expenses, or some combination. Policies on pass-through expenses must comply with all requirements listed in §749.273 of this title (relating to What must I do if I pass through expenses to adoptive families?).
- (b) If you charge additional fees, your policy must explain clearly what the fees cover.
- (c) You must have a clear policy on refunds.

**§749.199. Must I charge the same fees for all adoptions?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

No, you are not required to charge the same fees for all adoptions. The fee or fee schedule may take into consideration relevant factors such as adoptive placement of children considered to be hard to place. You may also have a sliding scale fee schedule. The parameters of any differential fee schedules must be specified and equally applied.

**Division 5, Financial Assistance to Birth Mothers****§749.231. What financial assistance may I provide for a birth mother?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You may provide financial assistance to a birth mother to meet her reasonable and necessary living expenses and legal costs.
- (b) Reasonable and necessary living expenses include:
  - (1) Housing expenses;
  - (2) Necessary utilities, such as electric, water, or telephone bills;
  - (3) Food for the birth mother and her minor children that are living with her;
  - (4) Travel expenses for transportation necessary to support the pregnancy, such as gasoline or bus fares to medical appointments or the grocery store;
  - (5) Medical costs; and
  - (6) Child-care or foster care while a birth mother is hospitalized or unable to care for her children.
- (c) Reasonable and necessary living expenses do not include:
  - (1) Any expenses met by a birth mother's existing resources;
  - (2) Any expenses supporting other family members, with the exception of the birth mother's minor children who are living with her;
  - (3) Any expenses for recreational and leisure activities; or
  - (4) The purchase of an automobile.

**§749.233. During what period of time may I provide financial assistance to a birth mother?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

Financial assistance may only be provided:

- (1) During the time of the pregnancy; and
- (2) After the pregnancy, during the time the birth mother requires inpatient or outpatient postpartum care.

**§749.235. How do I determine the birth mother's need for financial assistance?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You must review the birth mother's financial resources.
- (b) Your evaluation must include an evaluation of family support, medical insurance, and other resources available.
- (c) The evaluation must justify a payment you make for the birth mother's reasonable and necessary living expenses and legal costs related to the adoption and, if applicable, post partum care.
- (d) You must document the evaluation and provide a copy to the birth mother.

**§749.237. How do I document financial assistance that I provide for a birth mother?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You must document financial assistance that you provide for the birth mother through receipts.
- (b) A receipt must include the date, payee identification, purpose of payment, and documentation that the funds were expended for services rendered or goods provided for the birth mother.
- (c) You must organize and maintain this documentation in the individual record of the birth mother.

**§749.239. May I provide cash payments to birth mothers?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) For reasonable and necessary living expenses, you may provide cash payments to birth mothers to cover the cost of day-to-day routine purchases, such as food, household supplies, personal hygiene or grooming items, and gasoline or public transportation if your policies:
  - (1) State when and for what purpose you can make cash payments to a birth mother;
  - (2) Establish a maximum amount per category, per time period, based on the current rates in the community in which the care is provided; and
  - (3) Require you to obtain documentation from a birth mother acknowledging receipt of the payments.
- (b) Each cash disbursement may cover a period of up to one month.



**§749.241. If a birth mother decides not to relinquish a child for adoption, may I require her to repay my agency or the adoptive parent for expenses and services incurred?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) No, you may not require a birth mother to repay you for expenses and/or services incurred.
- (b) You must inform a birth mother of this policy in writing upon establishing any formal relationship between your agency and a birth mother and post it in the agency's offices in a place routinely visible to birth mothers. The written policy provided to the birth mother must be in a language spoken and read by the birth mother.

**§749.243. May I provide foster care services free of charge or at a reduced rate to a birth mother that needs time to make a decision about adoptive placement?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

Yes, as long as the foster care services provided free of charge or at a reduced rate are not contingent upon the relinquishment of the child for adoption, you may provide the foster care services.

**§749.245. If a birth mother's needs are met through existing resources, can I disrupt that arrangement?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) If a birth mother's needs are met through an existing resource, you must not, by action or advice, disrupt that unless your child placement management staff determines that it is in the best interest of the birth mother and her child that other arrangements be made based on documented proof that her current living situation impacts the basic health or safety of the birth parent or the child, including psychological or emotional abuse. For example, if family members are providing housing at no cost to a birth mother, your agency may not advise the birth mother to move to an apartment for which your agency would pay rent.
- (b) This rule applies to any kind of financial assistance.
- (c) You must document the impact and determination of best interest before any arrangements are made and/or expenses are paid.

## Division 6, Fiscal Accountability/Pass-Through Expenses

### §749.271. May I require adoptive families to reimburse me for expenses incurred by the birth mother?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You may pass through to the adoptive parents certain expenses that:
  - (1) You incur on behalf of the birth mother; or
  - (2) The birth mother incurs.
- (b) You cannot pass through expenses for medical or other services that were met through a birth mother's insurance company or some other source or that were provided free to the birth mother.

### §749.273. What must I do if I pass through expenses to adoptive families?

*DFPS Rules, 40 TAC, effective January 1, 2007*

You must meet the following requirements if you pass through the birth mother's expenses to adoptive families:

- (1) Your fee policy must include a complete description of the types of expenses that you may pass through to adoptive families.
- (2) The fee policy must comply with the financial assistance requirements in Division 5 of this subchapter (relating to Financial Assistance to Birth Mothers).
- (3) You must prepare an individual report for each case where you pass through expenses to the adoptive family. The report must be organized by expense category and include the date, amount, and a description of each expenditure. You must give the report to the adoptive family. The report must be available for our review.
- (4) If requested by an adoptive parent, you must provide an itemized list of how pass through money was expended and if there is a surplus.
- (5) With the exception of unforeseeable medical and legal expenses, you must provide to the adoptive family a written estimate of the pass-through expenses you anticipate will be associated with the adoption. You must provide this estimate before the adoptive family makes any financial commitment to the placement.
- (6) If you exceed the estimated expenses by more than 10%, you must obtain acknowledgement and agreement in writing from the adoptive parents that they will incur the additional expenses. If you cannot reach an agreement with the adoptive parents, you must incur the additional expenses.
- (7) If there is a surplus of pass through money, you must refund the surplus back to the adoptive parents.

*(continued)*

- (8) You must inform the adoptive family, in writing, that:
  - (A) A birth mother may choose not to relinquish a child for adoption; and
  - (B) You are prohibited from seeking repayment from that birth mother for expenses incurred in providing adoption services.

## Division 7, Branch Offices

### §749.301. What is a branch office?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) A branch office is anywhere the child placement staff and child master records or foster/adoptive home master records are located.
- (b) You may operate a branch office if you:
  - (1) Maintain compliance with the rules of this chapter; and
  - (2) Are in good standing with us.

### §749.303. What must I do before opening a branch office?

*DFPS Rules, 40 TAC, effective January 1, 2007*

At least 30 days prior to the opening of a branch office, you must provide us the following information with your request to amend your license:

- (1) The address, telephone numbers (if available), and office hours for the branch office;
- (2) The name, qualifications, and contact information of the administrative staff person who will be primarily responsible for the day-to-day operation of the branch office;
- (3) The name(s), qualifications, and contact information of the child placement management staff that will be responsible for child-placing activities of the branch office;
- (4) The name(s) and qualifications of other employees who will be involved in child-placing activities at the branch office; and
- (5) A written plan describing how child placement staff will supervise child-placement activities provided from the branch office. The plan must describe:
  - (A) Who will be responsible for the on-going supervision and support to the employees;
  - (B) How often there will be in-person contact and supervision of the employees;
  - (C) Who will be responsible for providing support in case of emergencies or placement crises; and
  - (D) How employees will be provided with reasonable access to their supervisor(s).

## Division 8, Policies and Procedures

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) The requirements for policies only apply to the agency's policies that are required or governed by this chapter.
- (b) The policies that we require must be written and they must indicate the approval of the governing body, date of approval, and effective date.
- (c) The policies must be clearly stated and comply with the rules of this chapter.
- (d) All employees and caregivers must be made aware of and follow your policies and procedures. A copy of your policies and procedures must be maintained at the agency and available for review by an employee or caregiver.
- (e) All policies must be available for review by our staff and your clients, upon request.
- (f) You must report any significant change to the policies to us at least seven days before implementing the change.
- (g) You must maintain copies of all current and previous policies for at least two years.

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) Your admission policies must:
  - (1) Have a program statement that describes the program's goals, the services provided, and the population of children served by the program;
  - (2) Describe the specific characteristics of children the program will serve, such as the age range, gender, and needs of children served; and
  - (3) Indicate whether you will admit children on an emergency basis.
- (b) If you provide treatment services, you must have admission policies describing the emotional disorders, mental retardation, pervasive developmental disorders, or primary medical needs that your program is designed to treat.

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

Your placement policy must describe 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 when it is necessary to separate siblings groups; 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.

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You must give copies of the following policies to the person legally authorized to place the child:
  - (1) Fee policies;
  - (2) Emergency behavior intervention policies;
  - (3) Discipline policies;
  - (4) Treatment services policies, if the child is receiving treatment; and
  - (5) Adoption policies, if applicable.
- (b) Upon request you must make available to the person legally authorized to place the child any other policies that are required by us.
- (c) The policies listed in subsection (a) of this section must also be made available to employees, contract staff, foster parents, and adoptive parents.

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

You must develop policies that describe:

- (1) Visitation rights between the child and family members and the child and friends;
- (2) The child's rights to correspond by mail with family members and friends, including any policies regarding mail restrictions and receipt of electronic mail;
- (3) The child's rights to correspond by telephone with family members and friends;
- (4) The child's rights to receive and give gifts to family, friends, staff or caregivers, or other children in care, including any restrictions on gifts;

*(continued)*

- (5) Personal possessions a child is or is not allowed to have;
- (6) Emergency behavior intervention techniques if the use of emergency behavior intervention is permitted in your agency. If its use is not permitted, you must have a policy disallowing its use;
- (7) Discipline policies including techniques and methods for ensuring the appropriateness of discipline techniques used with a child. These policies and procedures must:
  - (A) Guide employees and caregivers in methods used for discipline of a child in care;
  - (B) Include measures for positive responses to appropriate behavior;
  - (C) Make clear that discipline of any type is inappropriate and not permitted for infants; and
  - (D) Emphasize the importance of nurturing behavior, stimulation, and promptly meeting the child's needs;
- (8) Any religious program or activity that you offer, including whether children are required to participate in religious activities with caregivers or staff;
- (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;
- (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; and
- (18) If applicable, the policy required by §749.2961(a)(2) of this title (relating to Are weapons, firearms, explosive materials, and projectiles permitted in a foster home?).

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

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) How you will meet the following requirements:
  - (A) During admission, explain and document the following 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 authorize;
    - (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 on any emergency behavior intervention; and
    - (ix) The process for making comments on any 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

*(continued)*

- (B) At admission, requirements for obtaining each child's input on preferred de-escalation techniques that caregivers can use to assist the child in the de-escalation process, and revisiting this information with the child and caregivers during each post emergency behavior intervention discussion;
- (6) Requirement that caregivers must attempt less restrictive and less intrusive emergency behavior interventions as preventive measures and de-escalating interventions to avoid the need for 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, 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 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.



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

*DFPS Rules, 40 TAC, effective January 1, 2007*

You must develop policies that guide caregivers in methods used for discipline of children in foster care or adoptive placement prior to consummation, and include:

- (1) Measures for positive responses to appropriate behavior;
- (2) If you work with infants, a statement that discipline of any type is not appropriate or permitted for infants; and
- (3) The importance of nurturing behavior, stimulation, and promptly meeting the child's needs.

**Technical Assistance**

While discipline is broadly defined, it is still the intent of the rule to prohibit any formal or structured discipline of infants. Infants do not have the cognitive ability to understand verbal direction and modify their behavior accordingly. Nothing can substitute for adult supervision and interaction.

For example, if a 14-month-old is wandering toward the street, a caregiver can say "Stop! I need you need to stay close to me," but this cannot substitute for physically preventing the child from entering the street. The caregiver cannot expect the child to stop and cannot expect the infant to not repeat this behavior.

This does not mean that an infant should not experience natural consequences for their behavior, but rather that the caregiver should not expect any cognitive learning or behavior modification to result. For example, if a 15-month-old bites someone, the caregiver should separate the biting infant and show empathy for the biting victim, but you cannot expect any consequences that the infant experiences to effect future biting behavior.

While an infant should experience natural, non-punitive consequences (e.g. being moved away from a hot stove), any expectation that an infant learn and modify their behavior could lead to unrealistic expectations, decreased supervision necessary to prevent dangerous or unwanted behavior, and frustration on the part of the caregiver.

Please note that corporal punishment is prohibited for all children, regardless of age (see §749.1953). Please also note that, per §749.1957(12), children may not be confined to furniture or equipment (such as a high chair) as discipline.

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

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) Respective rights and responsibilities of the agency and foster parents;
- (4) Pre-service and annual training requirements for foster parents or agency home caregivers; and
- (5) Policies on how you will provide services if the home provides more than one type of care.

**§749.347. What policies must I develop on the rights and responsibilities of the agency, foster parents, and caregivers?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

You must develop a statement of the rights and responsibilities of the agency and foster parents that address the relationship between the agency and the foster parents and 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;
- (2) Training requirements for foster parents and caregivers, including:
  - (A) What part you will provide;
  - (B) What part the foster parents and caregivers 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) The channels through which you and the foster parents will communicate with each other;
- (4) The amount of reimbursement(s) you will provide the foster parents and when the foster parents will receive it;
- (5) The kind and amount of 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 kind and amount of support provided to all foster families and any services available to foster parents, including respite child-care, homemaker services, or counseling;
- (8) The kind and amount of information about a child (including previous placements) that you will give to foster parents when placing or considering placing the child;
- (9) The kind of information you expect the foster parents to report to you and within what time frames;
- (10) The foster parents' role in the services to children in care, including expectations for the foster parents' participation in service planning and implementation; and
- (11) The foster parents' right to appeal your actions and decisions that affect them and the procedures for making an appeal.

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

You must develop additional policies for foster parents that provide treatment services. These policies must include:

- (1) Ongoing assessments of the caregiver's abilities to meet the needs of the children in care;
- (2) Safeguards for protecting the children and caregivers;
- (3) Emergency back-up and support systems for the caregivers; and
- (4) A procedure for your review and approval of paragraphs (1)-(3) of this section.

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

If foster parents 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;
- (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.

**§749.353. What policies must I develop for babysitters and respite child-care providers in foster homes?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

You must develop policies for babysitters and respite child-care providers in foster homes that include:

- (1) Minimum age for care providers;
- (2) Minimum amount and type of prior child-care experience that a provider must have;
- (3) Amount and type of training a provider must have;
- (4) Reference and background information that foster parents must obtain before using the provider;
- (5) Amount of time a provider can care for children;
- (6) Number of children that a provider can care for;
- (7) 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;
- (8) Specific care instructions that the foster parents must share with a provider for children with treatment needs;
- (9) A method for contact between the foster parent and provider during the time of the provider's care;
- (10) Procedures for agency review and approval of arrangements; and
- (11) Requirements for documentation of arrangements, including agency child placement staff review and approval, in the foster home record.

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

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.

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

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) Plan for review of adoption service plans appropriate to the needs of children served in the adoption program;
- (5) How you will assist the adoptive homes on how to best preserve the cultural identity of the children in their care;
- (6) Fees charged to adoptive parents and reimbursements to birth mothers;
- (7) Services that will be offered to birth parents;
- (8) Degree to which birth parents may be involved in planning for and placing their child; and
- (9) Post adoption services that will be offered to adoptive parents, adopted children, and birth parents.

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

If you use volunteers, you must develop policies that:

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

## Division 9, Clients and Appeals

### §749.421. Who are my clients?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) Your child clients include children in:
  - (1) Foster care; and
  - (2) Pre-consummated adoptive placement.
- (b) Your adult clients include:
  - (1) Birth parent, managing conservator, or whoever has legal responsibility for the child that you are placing;
  - (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 services.
- (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?

*DFPS Rules, 40 TAC, effective January 1, 2007*

You must inform your adult clients:

- (1) That the rules of this chapter, the 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; and
- (3) Of procedures for making a complaint to us.

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (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 for making an appeal;
  - (3) Who will hear an appeal and make the decision;
  - (4) How the 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?

*DFPS Rules, 40 TAC, effective January 1, 2007*

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.

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (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:

<b>Serious Incident</b>	<b>(i) To Licensing? (ii) If so, when?</b>	<b>(i) To Parents? (ii) If so, when?</b>	<b>(i) To Law Enforcement? (ii) If so, when?</b>
(1) A child dies while in your care.	(A)(i) YES (A)(ii) Report as soon as possible, but no later than 24 hours after the incident or occurrence.	(B)(i) YES (B)(ii) Immediately.	(C)(i) YES (C)(ii) Immediately.
(2) A critical injury or illness that warrants treatment by a medical professional or hospitalization, including dislocated, fractured, or broken bones; concussions; lacerations requiring stitches; second and third degree burns; and damage to internal organs.	(A)(i) YES (A)(ii) Report as soon as possible, but no later than 24 hours after the incident or occurrence.	(B)(i) YES (B)(ii) Report as soon as possible, but no later than 24 hours after the incident or occurrence.	(C)(i) NO (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 (A)(ii) As soon as you become aware of it.	(B)(i) YES (B)(ii) As soon as you become aware of it.	(C)(i) NO (C)(ii) Not applicable.

*(continued)*

<b>Serious Incident</b>	<b>(i) To Licensing? (ii) If so, when?</b>	<b>(i) To Parents? (ii) If so, when?</b>	<b>(i) To Law Enforcement? (ii) If so, when?</b>
(4) Physical abuse committed by a child against another child. For the purpose of this subsection, physical abuse is: physical injury that results in substantial bodily harm and requiring emergency medical treatment, excluding any accident; or failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial bodily harm to the child.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after the occurrence or incident.	(B)(i) YES (B)(ii) As soon as possible, but no later than 24 hours after the occurrence or incident.	(C)(i) NO (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 sexual conduct harmful to a child.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after the occurrence or incident.	(B)(i) YES (B)(ii) As soon as possible, but no later than 24 hours after the occurrence or incident.	(C)(i) NO (C)(ii) Not applicable.
(6) A child is indicted, charged, or arrested for a crime.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after you become aware of it.	(B)(i) YES (B)(ii) As soon as you become aware of it.	(C)(i) NO (C)(ii) Not applicable.

(continued)

<b>Serious Incident</b>	<b>(i) To Licensing? (ii) If so, when?</b>	<b>(i) To Parents? (ii) If so, when?</b>	<b>(i) To Law Enforcement? (ii) If so, when?</b>
(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 (A)(ii) Within 2 hours of notifying law enforcement.	(B)(i) YES (B)(ii) Within 2 hours of notifying law enforcement.	(C)(i) YES (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 (A)(ii) Within 2 hours of notifying law enforcement, if the child is still missing.	(B)(i) YES (B)(ii) Within 2 hours of determining the child is not on the premises, if the child is still missing.	(C)(i) YES (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 person.	(A)(i) YES (A)(ii) No later than 24 hours from when the child's absence is discovered and the child is still missing.	(B)(i) YES (B)(ii) No later than 24 hours from when the child's absence is discovered and the child is still missing.	(C)(i) YES (C)(ii) No later than 24 hours from when the child's absence is discovered and the child is still missing.
(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 Chapter 97, Subchapter A, (relating to Control of Communicable Diseases).	(A)(i) YES, unless the information is confidential. (A)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.	(B)(i) YES, if their child has contracted the communicable disease or has been exposed to it. (B)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.	(C)(i) NO (C)(ii) Not applicable.
(11) A suicide attempt by a child.	(A)(i) YES (A)(ii) As soon as you become aware of the incident.	(B)(i) YES (B)(ii) As soon as you become aware of the incident.	(C)(i) NO (C)(ii) Not applicable.

- (b) 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. You do have to report the incident to law enforcement, as outlined in the chart above. You also have to report the incident to the parents, if the adult resident is not capable of making decisions about his own care.
- (c) You must report and document the following types of serious incidents involving your agency, one of your foster homes, an employee, contract staff, or a volunteer to the following entities within the specified time frame:

<b>Serious Incident</b>	<b>(i) To Licensing? (ii) If so, when?</b>	<b>(i) To Parents? (ii) If so, when?</b>
(1) Any incident that renders all or part of your operation unsafe or unsanitary for a child, such as a fire or a flood.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after the incident.	(B)(i) YES (B)(ii) As soon as possible, but no later than 24 hours after the incident.
(2) A disaster or emergency that requires your operation to close.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after the incident.	(B)(i) YES (B)(ii) As soon as possible, but no later than 24 hours after the incident.
(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).	(A)(i) YES, unless the information is confidential. (A)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.	(B)(i) YES, if their child has contracted the communicable disease or has been exposed to it. (B)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.
(4) An allegation that a person under the auspices of your operation who directly cares for or has access to a child in the operation has abused drugs within the past seven days.	(A)(i) YES (A)(ii) Within 24 hours after learning of the allegation.	(B)(i) NO (B)(ii) Not applicable.
(5) An investigation of abuse or neglect by an entity (other than Licensing) of an employee, professional level service provider, volunteer, or other adult at the operation.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after you become aware of the investigation.	(B)(i) NO (B)(ii) Not applicable.

*(continued)*

<b>Serious Incident</b>	<b>(i) To Licensing? (ii) If so, when?</b>	<b>(i) To Parents? (ii) If so, when?</b>
(6) An arrest, indictment, or a county or district attorney accepts an "Information" regarding an official complaint against an employee, professional level service provider, or volunteer alleging commission of any crime as provided in §745.651 of this title (relating to What types of criminal convictions may preclude a person from being present in an operation?).	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after you become aware of the situation.	(B)(i) NO (B)(ii) Not applicable.

**§749.505. What constitutes a suicide attempt by a child?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

A suicide attempt includes a child’s attempt to take his own life using means or methods for causing his death, including a means or method that the child believes is capable of causing his death.

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

You must report and document the following occurrences to the following entities within the specified time frame:

<b>Occurrences</b>	<b>(i) To Licensing? (ii) If so, when?</b>	<b>(i) To Parents? (ii) If so, when?</b>
(1) Medically pertinent incidents, such as seizures, that do not rise to the level of a serious incident.	(A)(i) NO (A)(ii) Not applicable; however, you must document the type of incident including the date, time, action taken, and child’s name.	(B)(i) YES (B)(ii) Within seven days.
(2) Adding a swimming pool or other permanent body of water to a foster home.	(A)(i) YES, in writing. (A)(ii) Within 15 days before construction begins.	(B)(i) NO (B)(ii) Not applicable.
(3) Changing your child-placing agency administrator.	(A)(i) YES, in writing. (A)(ii) Within seven days after the action is taken.	(B)(i) NO (B)(ii) Not applicable.

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) All serious incident reports must be made to the Child Abuse Hotline.
- (b) 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?)).

**§749.511. How must I document a serious incident?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

A serious incident must be documented in a written report that includes the following information:

- (1) The name of the foster home, physical address, and telephone number;
- (2) The time and date of the incident;
- (3) The name, age, gender, and date of admission of the child or children involved;
- (4) The names of all adults involved and their role in relation to the child(ren);
- (5) The names or other means of identifying witnesses to the incident, if any;
- (6) The nature of the incident;
- (7) The circumstances surrounding the incident;
- (8) Interventions made during and after the incident, such as medical interventions, contacts made, and other follow-up actions;
- (9) The treating licensed health-care professional's name, findings, and treatment, if any; and
- (10) The resolution of the incident.

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

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

Serious Incident	Documentation
(1) Child death, suicide attempt, or a critical injury 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 interventions implemented on the child within 48 hours prior to the serious incident.
(2) Any critical 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; (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 (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 abusive behavior among children 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 abusive behavior.

### §749.515. Where must I keep incident reports?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You must keep a copy of the incident report on file for two years.
- (b) You must permit Licensing to make a copy of incident reports, as requested.

## Division 2, Operation Records

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) If you keep electronic records, you must develop procedures that address what must be in the external paper file and what can be in the electronic file.
- (b) You must limit access to your electronic files to:
  - (1) Persons within your agency authorized to see specific information; and
  - (2) Others outside of your agency authorized by law to have access to specific information.
- (c) You must develop policies that address the following:
  - (1) Computer security systems, including confidentiality, passwords, and employee procedures to ensure security of the system;
  - (2) Requirements for routine back up of data; and
  - (3) Anti-virus protection systems.

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

You must have procedures for protecting electronic and paper records from destruction, loss, and unauthorized access.

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) All documentation must be in the record:
  - (1) No later than 30 days after the occurrence or event;
  - (2) Within 15 days from the end of the month for monthly summaries; or
  - (3) As otherwise specified in this chapter.
- (b) Copies of any records kept by the foster parents must be submitted to you each month. You must file these records in the child's record.



**§749.537. Must I make records available for Licensing to review?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You must make all active records available for our immediate review and reproduction.
- (b) You must make all archived records available for our review and reproduction within 48 hours.
- (c) We must have reasonable access to your storage and file areas in order to monitor your record keeping.

**Division 3, Personnel Records****§749.551. Where must I maintain personnel records?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You must maintain active personnel records at the agency.
- (b) You must maintain archived personnel records at the 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 a master list of active and archived personnel records and their location in the main office of the agency.

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

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

- (1) Documentation showing the date of employment;
- (2) Documentation showing how the person meets the minimum age and qualifications for the position;
- (3) A current job description;
- (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?);

*(continued)*

- (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 that he has read a copy of the:
  - (A) Operational policies; and
  - (B) Personnel policies;
- (8) A statement signed and dated by the employee indicating that he must immediately report any suspected incident of child abuse, neglect, or exploitation to the Child Abuse Hotline and the agency's administrator or administrator's designee;
- (9) Proof of request for background checks;
- (10) A copy of the valid driver's license for each person who transports a child;
- (11) A record of training and training hours;
- (12) Any documentation of the person's tenure with the agency; and
- (13) The date and reason for the person's separation from the agency, if applicable.

#### **§749.555. How long must I maintain personnel records?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You must maintain annual training records for current personnel for the last full training year and current training year.
- (b) With the exception of subsection (a) of this section, you must keep personnel records for a year after an employee's last day on the job, or until any investigation involving the employee is resolved, whichever is longer.

### **Division 4, Client Records**

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

You must maintain master records for all clients. The records must be individualized, current, and complete.

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You must maintain the active master case record for a child at the office where the child placement staff that is managing the child's placement is located.
- (b) You must maintain the active master record for a foster or adoptive home at the office where the child placement staff that is managing the home is located.
- (c) You must maintain a master list of active client records and their location in the main office of the agency.

**§749.575. What is an active record for a child?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

An active child record consists of the child's record for the most recent 12 months of service.

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

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;
- (2) Documentation of known allergies and chronic conditions on the exterior of the child's record or in another location where the information is clearly visible to persons with access to the record; and
- (3) The date of each data entry and the name of the person who makes the data entry.

**§749.579. How must I maintain an active child record?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

On an on-going basis, you must ensure that each child's record is:

- (1) Kept accurate and current;
- (2) Locked and kept in a safe location or locations; and
- (3) Kept confidential as required by law.

**§749.581. Where must I maintain archived client records?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You must maintain archived client records at the agency 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 and their location in the main office of the agency.

**§749.583. Who must consent to the release of a child's record?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

Unless you are releasing information to a parent, to us, or as required by law, you may not release any portion of a child's record to any agency, organization, or individual without the written consent of the person legally authorized to consent to the release.

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (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 complete child records for a child placed in foster care:
  - (1) For at least two years after the child is discharged; and
  - (2) Until the resolution of any investigation of a serious incident that occurred while the child was in care with your agency.
- (c) You must maintain records for 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 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.

**§749.587. How must I handle adoption records if I cease operating?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) If you cease operating, you must transfer adoption records to:
  - (1) The Department of State Health Services, Bureau of Vital Statistics; or
  - (2) Another licensed child-placing agency. If you transfer your records to another child-placing agency, you must inform the Bureau of Vital Statistics, in writing, of the closing and of the location of the adoption records. You must send a copy of the letter you send to the Bureau of Vital Statistics to the local Licensing office.
- (b) You must transfer the records within the time frame specified by the Bureau of Vital Statistics.

## Subchapter E, Agency Staff and Caregivers

### Division 1, General Requirements

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

Your written and implemented professional staffing plan must:

- (1) Demonstrate that the number, qualifications, and responsibilities of professional staff, 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;
- (2) Describe 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
- (3) Describe how staff or service providers support clients served through branch offices.

#### **§749.603. Does education received outside of the United States count toward educational qualifications?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

Yes, however you must provide supporting information indicating that the education is equivalent to the minimum educational qualifications for the position for which the person is applying. Documents written in a foreign language must be translated into English.

**§749.605. What minimum qualifications must all employees meet?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) An employee's behavior or health status must not present a danger to children in care.
- (b) Each employee who is regularly or frequently present while children are in care must:
  - (1) Meet the requirements in Subchapter F of Chapter 745 of this title (relating to Background Checks);
  - (2) Have a record of a tuberculosis screening, showing the employee is free of contagious TB as provided in §749.1417 of this title (relating to Who must have a tuberculosis (TB) examination?);
  - (3) Be physically, mentally, and emotionally capable of performing assigned tasks and must have the skills necessary to perform assigned tasks; and
  - (4) Complete a notarized *Licensing Affidavit for Applicants for Employment* form, as specified in Human Resources Code, §42.059.

**§749.607. What general responsibilities do all employees and caregivers have?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

Regardless of whether the employee is counted in the child/caregiver ratio, each employee must:

- (1) Demonstrate competency, prudent judgment, and self-control in the presence of children and when performing assigned responsibilities;
- (2) Report suspected abuse, neglect, and exploitation to the Child Abuse Hotline and to the designated administrator or supervisor; and
- (3) Know and comply with applicable rules of this chapter, Chapter 42 of the Human Resources Code, Chapter 745 of this title (relating to Licensing), and any other applicable laws.

**§749.609. What are the requirements for tuberculosis screening?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

Before having contact with children in care, all caregivers, employees, contract staff, volunteers, foster home household members, and employees in foster homes must be screened for tuberculosis as provided in §749.1417 of this title (relating to Who must have a tuberculosis (TB) examination?).

## Division 2, Child-Placing Agency Administrator

### §749.631. What qualifications must a child-placing agency administrator meet?

*DFPS Rules, 40 TAC, effective January 1, 2007*

A child-placing agency administrator must:

- (1) Meet the qualifications established by the agency's governing body;
- (2) Be a Licensed Child-Placing Agency Administrator according to Chapter 43 of the Human Resources Code and Subchapter N of Chapter 745 of this title (relating to Administrator's Licensing); and
- (3) Be a full-time employee of the agency.

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) Except as provided in subsection (b) of this section, 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 are manageable by one person, which is clarified in the written professional staffing plans; and
  - (3) The person also holds a valid Child-Care Administrator License, if applicable; and
  - (4) At least one child-placing agency is not managing more than 25 foster homes.
- (b) An agency that provides an assessment services program may designate their child-placing agency administrator or another employee as the person responsible for administering those services. The person designated must:
  - (1) Be a Licensed Child-Placing Agency Administrator;
  - (2) Have a master's degree in social work or a human services field from an accredited college or university and at least two years of supervised child-placing experience. The degree must include:
    - (A) A minimum of nine credit hours in graduate level courses that focus on family and individual function and interaction; and
    - (B) At least 350 hours of formal, supervised field placement or practicum with a social service or human services agency; or
  - (3) Have a master's degree in a human services field and at least three years of supervised child-placing experience.

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

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.
- (2) Be responsible for or assign responsibility for:
  - (A) Administering and managing the agency according to the 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.

**§749.637. Who must have overall administrative responsibility when the child-placing agency administrator is absent on a frequent and/or extended basis?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) The child-placing agency administrator must designate an employee to be responsible for the overall administration of the agency while the administrator is absent from the agency on a frequent and/or extended basis.
- (b) The designee must be a Licensed Child-Placing Agency Administrator as required in Chapter 43 of the Human Resources Code.

**Division 3, Child Placement Staff****§749.661. What employees must my agency have to perform child placement activities?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

Your agency must have the following employees identified:

- (1) Child placement staff; and
- (2) Child placement management staff.



**§749.663. What are the responsibilities of child placement staff?***DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) Child placement staff 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, adoptive home, or any other substitute living arrangement;
  - (3) Managing the case of a child in any substitute living arrangement, including:
    - (A) Developing and updating of service plans;
    - (B) Stewarding direct contact with the child and the adoptive parents, foster parents, or other caregivers; and
    - (C) Performing any additional case management activities;
  - (4) Case management and service delivery to birth parents;
  - (5) Orientation, assessment, and verification of foster parents;
  - (6) Orientation, assessment, and approval of adoptive parents; and
  - (7) Monitoring and providing support services to foster parents, including the initiation of development plans, corrective actions, or adverse actions.
- (b) Child placement management staff may directly perform any of these responsibilities.

**§749.665. What are the requirements for contact between child placement staff and children in care?***DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) 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. These contacts are to ensure the:
  - (1) Needs of a child are being met; and
  - (2) Placement continues to be appropriate.
- (b) 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.

*(continued)*

- (c) 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's placement, including verification that the placement is meeting the child's needs as specified in the service plan.
- (d) 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 (b) and (c) of this section.
- (e) Child placement management staff must review and approve documentation of contacts.

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

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) Investigation findings; and
  - (C) Corrective and adverse action plans involving foster families; and
- (2) Supervise less qualified or experienced employees, if any, including planning for the employee's professional development and taking any other appropriate action in regard to their child-placing decisions.

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

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;
- (4) Investigation reports;
- (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 imposed on the child for more than seven days that have not been approved by the treatment director or service planning team, and any monthly re-evaluations of a restriction that continues for more than 30 days;

*(continued)*

- (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 per §749.665 of this title (relating to What are the requirements for contact between child placement staff and children in care?).

**§749.671. What is a corrective or adverse action?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

A corrective or adverse action can be anything that places a restriction or condition on the foster homes verification, including the removal of the verification.

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

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

<b>Options for qualifications:</b>	<b>Educational qualifications:</b>	<b>Professional qualifications:</b>
Option 1	(1)(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.	One year of documented full-time work experience in a child-placing agency under the direct supervision of a person fully qualified to conduct child placement management activities. The experience may include a maximum of 350 hours of formal, supervised field placement or practicum in child-placing activities.
Option 2	(2) A master's degree from an accredited college or university.	Two years of documented full-time work experience in a child-placing agency under the direct supervision of a person fully qualified to conduct child placement management activities. The experience may include a maximum of 350 hours of formal, supervised field placement or practicum in child-placing activities.

*(continued)*

<b>Options for qualifications:</b>	<b>Educational qualifications:</b>	<b>Professional qualifications:</b>
Option 3	(3) A bachelor's degree from an accredited college or university in social work or other human services field.	Two years of documented full-time work experience in a child-placing agency under the direct supervision of a person fully qualified to conduct child placement management activities. The experience may include a maximum of 350 hours of formal, supervised field placement or practicum in child-placing activities.
Option 4	(4) A bachelor's degree from an accredited college or university.	(A) Three years of documented full-time work experience in a (A) Three years of documented full-time work experience in a child-placing agency under the direct supervision of a person fully qualified to conduct child placement management activities. The experience may include a maximum of 350 hours of formal, supervised field placement or practicum in child-placing activities; or  (B) Direct supervision from a person fully qualified to conduct child-placement management activities. The direct supervision with the child-placement 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 three years.

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

DFPS Rules, 40 TAC, effective January 1, 2007

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.	Two years of documented full-time child-placing experience under the direct supervision of a person fully qualified to conduct child placement management staff activities.
Option 2	No	(A) A master's degree from an accredited college or university; and  (B) Nine credit hours in graduate level courses that focus on family and individual function and interaction.	Three years of documented full-time child-placing experience under the direct supervision of a person fully qualified to conduct child placement management activities.
Option 3	Yes	(A) A bachelor's degree from an accredited college or university in social work or other human services field; and  (B) Nine credit hours in undergraduate level courses that focus on family and individual function and interaction.	Four years of documented full-time child-placing experience under the direct supervision of a person fully qualified to conduct child placement management activities.

(continued)

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 4	No	(A) A bachelor's degree from an accredited college or university; and  (B) Nine credit hours in undergraduate level courses that focus on family and individual function and interaction.	Five years of documented full-time child-placing experience under the direct supervision of a person fully qualified to conduct child placement management activities.

**§749.677. What are the requirements for child placement management staff at a branch office?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You must have a child placement management staff assigned for each branch office to perform the child-placement activities.
- (b) Your child placement management staff must have and document at least 10 monthly supervision conferences per year with a branch-office employee who performs child-placing activities.
- (c) Employees performing child-placing activities must have reasonable access to their supervisor(s).

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

There are no caseload requirements for child placement staff; however, you must ensure manageable caseloads that allow child placement staff to meet the needs of children in care and adequately support foster and adoptive homes.

**§745.4041 What ethical requirements must I follow when conducting a foster home screening, a pre-adoptive home screening, or a post-placement adoptive report?**

*DFPS Rules, 40 TAC, effective March 1, 2002*

- (a) You must not have a conflict of interest with any party in a disputed suit. You must not allow any previous knowledge of any party that was not exclusively obtained through a home screening or adoptive report to bias you. You must disqualify yourself if a conflict or bias exists. You must present any issues or concerns relating to such a conflict or bias to the court before you accept an appointment. However, unless the court finds you biased, you may conduct subsequent reports in a case you have previously screened.
- (b) You must report to us any foster or adoptive placement that appears to have been made by someone other than the child's parents or a child-placing agency.
- (c) If you have investigated only one side of a disputed case, you may state whether the party you investigated appears to be suitable for custody. You must refrain from making a custody recommendation, unless otherwise directed by the court.

**Division 4, Treatment Director****§749.721. Must I have a treatment director?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

You must have a treatment director if you provide treatment services to 30 or more children at any one time, or to more than 50% of the children in your care. Your treatment director must be a full-time employee of your agency.

**§749.723. What are the responsibilities of my treatment director?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) Your treatment director:
  - (1) Is responsible for your overall treatment program, including clinical responsibility for the management of your agency's therapeutic interventions; and
  - (2) Provides direction and overall management of your treatment program.
- (b) When assigning responsibilities to your treatment director, you must ensure that the treatment director can oversee the treatment of all children receiving treatment services.

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) A treatment director that provides or oversees treatment services for children with mental retardation or children with 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 or a pervasive developmental disorder.
- (b) A treatment director that provides or oversees treatment services for children with primary medical needs must be a physician or a licensed registered nurse.
- (c) A treatment director that provides or oversees treatment services for children with emotional disorders must:
  - (1) Be a psychiatrist or psychologist;
  - (2) Have a master's degree in a human services field from an accredited college or university and three years of experience providing treatment services for children with an emotional disorder, including one year in a residential setting; or
  - (3) Be a licensed master social worker, a licensed clinical social worker, a licensed professional counselor, or a licensed marriage and family therapist, and have three years of experience providing treatment services for children with an emotional disorder, including one year in a residential setting.

**§749.727. If I provide more than one type of treatment service, can I have one treatment director?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

Yes, you can have one treatment director if he meets the required qualifications for the most prevalent treatment services your agency offers.



## Division 5, Treatment Services Provided by Nursing Professionals

### **§749.741. What treatment services must a registered nurse provide if I support a child with primary medical needs?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) A registered nurse must be on staff or on contract, individually or through an agency, to respond to emergencies, questions, or other medical issues.
- (b) A registered nurse must:
  - (1) Perform a nursing assessment of the child to include documentation of the child's diagnosed medical needs and selection of placement;
  - (2) Lead the service planning process for the child's care including registered nurse delegation of tasks or exemption from RN delegation in compliance with 22 Texas Administrative Code, Chapters 224 and 225 of the Texas Board of Nurse Examiners rules;
  - (3) Review medical records, including compliance with written physician orders;
  - (4) Contact other professionals, as needed, for the child's care;
  - (5) Monitor the implementation of the child's service plan; and
  - (6) Document outcomes for interventions used in the child's care.

### **§749.743. In what circumstances may a physician or registered nurse (including an advanced practice registered nurse) delegate nursing tasks to unlicensed caregivers?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

The physician or registered nurse may delegate nursing tasks to unlicensed caregivers only if all delegation criteria are met for the task to be delegated, including, but not limited to:

- (1) Compliance with 22 Texas Administrative Code, Chapters 224 and 225 of the Texas Board of Nurse Examiners rules;
- (2) The nursing task is one that a reasonable and prudent physician or registered nurse would find is within the scope of sound nursing judgment to delegate;
- (3) The physician or registered nurse determines that the nursing task can be properly and safely performed by the unlicensed caregiver without jeopardizing the child's welfare;
- (4) The agency employing or contracting with the unlicensed caregivers develops and follows a protocol, with input from a physician or registered nurse, for the instruction and training of unlicensed caregivers performing nursing tasks. The protocol must address:

*(continued)*

- (A) An established mechanism for identifying those individuals to whom nursing tasks may be designated;
  - (B) The manner in which the instruction addresses the complexity of the delegated task;
  - (C) The manner in which the unlicensed caregivers demonstrate the competency of the delegated task; and
  - (D) The mechanism for re-evaluation of the competency;
- (5) The training protocol recognizes that the final decision as to what nursing tasks can be safely delegated in any specific situation is within the specific scope of the physician's or registered nurse's professional judgment; and
- (6) A physician or registered nurse instructs unlicensed caregivers in performing nursing tasks.

## **Division 6, Contract Staff and Volunteers**

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (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 must immediately report any suspected incident of abuse, neglect, or exploitation to the Child Abuse Hotline and the agency's administrator or administrator's designee.
- (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.

### **§749.763. Are there additional requirements for a volunteer or contractor that performs employee or caregiver functions?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) A volunteer or contractor that performs any employee or caregiver function must meet the same requirements as an employee or caregiver who performs that function.
- (b) You must maintain records documenting how these requirements are met.

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

If the volunteer is a 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.

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

No, a person that is not being compensated may not provide services to an operation, if that person is on probation or parole, or is referred for community services through the courts because of criminal activity, including as an alternative to incarceration. This prohibition applies even if the services do not involve contact with children in care.

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) When a family or organization takes a child who is in care for an overnight or weekend visit, this is not a volunteer activity.
- (b) In order for a family or organization to take a child out of care for more than 48 hours, you must get written approval from the parent.



## Subchapter F, Training and Professional Development

### Division 1, Definitions

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

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

- (1) CEU – Continuing education unit.
- (2) CPR – Cardiopulmonary resuscitation.
- (3) Hours – Clock hours.
- (4) Instructor led training – Training that is characterized by the communication and interaction that takes place between the student and the instructor and 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 questions, providing feedback on skills practice, providing guidance or information on additional resources, and proactively interacting with students. Examples of this type of training include classroom training, on-line distance learning, video-conferencing, or other group learning experiences.
- (5) Self instructional training – Training that is designed to be used by one individual working alone and at their own pace to complete lessons or modules. Examples of this type of training include computer based training, written materials, or video training.

### Division 2, Orientation

#### §749.831. What is the orientation requirement for caregivers and employees?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) Prior to beginning job duties or having contact with children in care, each caregiver or employee must have orientation that includes:
  - (1) An overview of the relevant and applicable rules of this chapter;
  - (2) Your philosophy, organizational structure, policies, and a description of the services and programs you offer; and
  - (3) The needs and characteristics of children that you serve.
- (b) You must document the completion of the orientation in the appropriate personnel record.

**§749.833. Must I provide orientation to a person who was previously a caregiver or an employee at my agency?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You do not have to provide orientation to a person who was a caregiver or employee at your agency during the past 12 months. However, before this person can be the only caregiver for a group of children, you must:
  - (1) Discuss with the employee any changes in your services or programs that have occurred since the previous employment; and
  - (2) Ensure the employee has received training during the past 12 months from your agency on preventing, identifying, treating, and reporting child abuse, neglect, and exploitation.
- (b) You must document this discussion and the previous training in the person's personnel record.

**Division 3, Pre-Service Experience and Training****§749.861. What are the pre-service experience requirements for caregivers?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

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

### §749.863. What are the pre-service hourly training requirements for caregivers and employees?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) Caregivers and certain employees must complete the following training hours before the noted timeframe:

<b>Who is required to receive the training?</b>	<b>What type of pre-service training?</b>	<b>How many hours of training are needed?</b>	<b>When must the training be completed?</b>
(1) All caregivers	General pre-service training	8 hours	Before the person can be the only caregiver responsible for a child in care
(2) Caregivers caring for children receiving only child care services, programmatic services, and or treatment services for primary medical needs	Pre-service training regarding emergency behavior intervention	8 hours	Before the person can be the only caregiver responsible for a child in care
(3) Caregivers caring for children receiving treatment services for emotional disorders, mental retardation, or pervasive developmental disorders	Pre-service training regarding emergency behavior intervention	16 hours, however, if your agency prohibits the use of emergency behavior intervention, then only 8 hours of training are needed	Before the person can be the only caregiver responsible for a child in care
(4) Child-placing agency administrators, treatment directors, child placement staff, child placement management staff, and full-time professional service providers	Pre-service training regarding emergency behavior intervention	8 hours	Before beginning job duties

- (b) You must document the completion of each training requirement in the appropriate personnel record.

**§749.865. Can time spent in orientation training count towards pre-service training?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

No, the orientation training must be separate from the pre-service hourly training requirement.

**§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?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) A caregiver is exempt from completing the eight hours of general pre-service training if he 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:
  - (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?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) A qualified instructor must deliver the pre-service training.
- (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.



## Division 4, General Pre-Service Training

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

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, strategies and techniques for monitoring and working with these children, and age-appropriate activities for the children;
- (2) The different roles of caregivers;
- (3) Measures to prevent, identify, treat, and report suspected occurrences of child abuse (including sexual abuse), neglect, and exploitation;
- (4) Procedures to follow in emergencies, such as weather related emergencies, volatile persons, and severe injury or illness of a child or adult; and
- (5) Preventing the spread of communicable diseases.

### **§749.883. Are there additional general pre-service training requirements for a caregiver who will care for children younger than two years old?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

Yes. You must ensure that each caregiver providing care for children younger than two years old receives training on:

- (1) Recognizing and preventing shaken baby syndrome;
- (2) Preventing sudden infant death syndrome; and
- (3) Understanding early childhood brain development.

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

Yes. You must ensure that each caregiver that administers psychotropic medication receives training on:

- (1) Identification of psychotropic medications;
- (2) Basic pharmacology (the actions and side effects of, and possible adverse reactions to, various psychotropic medications);
- (3) Techniques and methods of administering medications;
- (4) Who is legally authorized to provide consent for the psychotropic medication; and
- (5) Any related policies and procedures.

## 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?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

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) Developing and maintaining an environment that supports positive and constructive behaviors;
- (2) The causes of behaviors potentially harmful to children, including aspects of the environment;
- (3) Early signs of behaviors that may become dangerous to the child or others;
- (4) Strategies and techniques the child can use to avoid harmful behaviors;
- (5) Teaching children to use the strategies and techniques of your agency's de-escalation protocols to avoid harmful behavior, and supporting the children's efforts to progress into a state of self-control;
- (6) Less restrictive strategies caregivers can use to intervene in potentially harmful behaviors;
- (7) Less restrictive strategies caregivers can use to work with oppositional children; and
- (8) The risks associated with the use of prone or supine restraints, including positional, compression, or restraint asphyxia.

**§749.903. If I allow the use of emergency behavior intervention, what curriculum components must be included in the pre-service training regarding emergency behavior intervention?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) If you allow the use of emergency behavior intervention, at least 75% of the 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 components listed in §749.901 of this title (relating to 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?).
- (b) The training does not have to address the use of any type of emergency behavior intervention that your policies do not allow.
- (c) The other 25% of the pre-service training curriculum regarding emergency behavior intervention must include the following components:
  - (1) Different roles and responsibilities of caregivers qualified in emergency behavior intervention versus employees or volunteers who are not qualified in emergency behavior intervention;
  - (2) Escape and evasion techniques to prevent harm to the child and caregiver without requiring the use of an emergency behavior intervention;
  - (3) Safe implementation of the restraint techniques and procedures that are appropriate for the age and weight of children served and permitted by the rules in this chapter and your policies and procedures;
  - (4) The physiological impact of emergency behavior intervention;
  - (5) The psychological impact of emergency behavior intervention, such as flashbacks from prior abuse;
  - (6) How to adequately monitor the child during the administration of an emergency behavior intervention to prevent injury or death;
  - (7) Monitoring physical signs of distress and obtaining medical assistance;
  - (8) Health risks for children associated with the use of specific techniques and procedures;
  - (9) Drawings, photographs, or videos of each personal restraint permitted by your policy; and
  - (10) Strategies for re-integration of children into the environment after the use of emergency behavior intervention, including the debriefing of caregivers and the child.

## Division 6, Annual Training

### §749.931. What are the annual training requirements for caregivers and employees?

*DFPS Rules, 40 TAC, effective January 1, 2007*

Caregivers and employees must complete the following training hours:

Who is required to receive the annual training?	How many hours of annual training are needed?
(1) Caregivers caring for children receiving only child-care services, programmatic services, and/or treatment services for primary medical needs	<p>(A) For homes with two foster parents, the foster parents must receive a total of 20 hours of annual training, of which four hours must be on training specific to the emergency behavior interventions allowed by your agency.</p> <p>(B) For all other caregivers, each caregiver must receive 20 hours of annual training, of which four hours must be on training specific to the emergency behavior interventions allowed by your agency.</p>
(2) Caregivers caring for children receiving treatment services for emotional disorders, mental retardation, or pervasive developmental disorders	<p>(A) For homes with two foster parents, the foster parents must receive a total of 50 hours of annual training, of which eight hours for each foster parent must be on training specific to the emergency behavior interventions allowed by your agency. These 50 hours must be distributed appropriately, and each foster parent must receive some amount of training.</p> <p>(B) For homes with one foster parent, 30 hours, of which eight hours must be on training specific to the emergency behavior interventions allowed by your agency.</p> <p>(C) All other caregivers, 30 hours, of which eight hours must be on training specific to the emergency behavior interventions allowed by your agency.</p>
(3) Child placement staff with less than one year of child-placing experience	<p>(A) 30 hours for the initial year;</p> <p>(B) 20 hours after the initial year; and</p> <p>(C) There are no annual training requirements for emergency behavior interventions. However, if there is a substantial change in techniques, types of intervention, or agency policies regarding emergency behavior intervention, then the staff must be re-trained.</p>

*(continued)*

Who is required to receive the annual training?	How many hours of annual training are needed?
(4) Child placement staff with at least one year of child-placing experience	20 hours. There are no annual training requirements for emergency behavior interventions. However, if there is a substantial change in techniques, types of intervention, or agency policies regarding emergency behavior intervention, then the staff must be re-trained.
(5) Child placement management staff	20 hours. There are no annual training requirements for emergency behavior interventions. However, if there is a substantial change in techniques, types of intervention, or agency policies regarding emergency behavior intervention, then the staff must be re-trained.
(6) Child-placing agency administrators, executive directors, treatment directors, and full-time professional service providers who hold a relevant professional license	(A) 15 hours, however, annual training hours used to maintain a person's relevant professional license may be used to complete these hours. (B) There are no annual training requirements for emergency behavior interventions. However, if there is a substantial change in techniques, types of intervention, or agency policies regarding emergency behavior intervention, then the staff must be re-trained.
(7) Child-placing agency administrators, executive directors, treatment directors, and full-time professional service providers who do not hold a relevant professional license	20 hours. There are no annual training requirements for emergency behavior interventions. However, if there is a substantial change in techniques, types of intervention, or agency policies regarding emergency behavior intervention, then the staff must be re-trained.

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) Each person must complete the annual training:
  - (1) Within 12 months from the date of his employment; and
  - (2) During each subsequent 12-month period.
- (b) You have the option of prorating the person's annual training requirements from the date of employment 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.

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) If the training complies with the other rules in this division (relating to Annual Training), annual training may include hours or CEUs 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; or
  - (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) The hours attending college or a professional credentialing or registry program.
- (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 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 hours of pre-service training that the person earns in addition to the required pre-service hours. 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.

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- (c) For annual training hours, you may not count:
  - (1) Orientation training;
  - (2) 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 of the required annual training hours may come from self-instructional 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.

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

No. We do not approve or endorse training resources or trainers for training hours. You must, however, ensure the employees receive reliable training relevant to the population of children served, which includes:

- (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?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

The annual training instructors must meet the same requirements in §749.869 of this title (relating to What are the instructor requirements for providing pre-service training?).

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

Annual training must be in areas appropriate to the needs of children for whom the caregiver provides care, which include:

- (1) Developmental stages of children;
- (2) Constructive guidance and discipline of children;
- (3) Fostering children's self-esteem;
- (4) Positive interaction with children;
- (5) Strategies and techniques for working with the population of children served;
- (6) Supervision and safety practices in the care of children; and
- (7) Preventing the spread of communicable diseases.

#### **Best Practice Suggestion** .....

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;
- For a caregiver who provides care to children younger than two years old:
  - Recognizing and preventing shaken baby syndrome;
  - Preventing sudden infant death syndrome; and
  - Understanding early childhood brain development.
- 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 that administers psychotropic medication, what annual training is required?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

If you permit a caregiver to administer psychotropic medication, his annual training must meet the requirements in §749.885 of this title (relating to Are there additional general pre-service training requirements for a caregiver that administers psychotropic medication?).

**§749.947. What must annual training regarding emergency behavior intervention include?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) The annual training regarding emergency behavior intervention must reinforce basic principles covered in pre-service training, see §749.901 of this title (relating to 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?) and §749.903 of this title (relating to If I allow the use of emergency behavior intervention, what curriculum components must be included in the pre-service training regarding emergency behavior intervention?), and develop and refine the caregiver's skills.
- (b) You may determine the content of the training based on your evaluation of your emergency behavior intervention programs.
- (c) The training may repeat pre-service training components, including training in the proper use and implementation of emergency behavior intervention.

**§749.949. What documentation must I maintain for annual training?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You must keep documentation verifying completion of annual training in the appropriate personnel record. The documentation may be a certificate, letter, or a signed and dated statement of successful completion from the training source.
- (b) The documentation must include the following information:
  - (1) The participant's name;
  - (2) Date of the training;
  - (3) Title or subject of the training;
  - (4) The trainer's name and qualifications, or the source of the training for self-instructional training; and
  - (5) Length of the training in hours.

## Division 7, First-Aid and CPR Certification

### §749.981. What first-aid and cardiopulmonary resuscitation (CPR) certification must caregivers have?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) Before a caregiver can be the only caregiver responsible for a child in care, the caregiver must be certified in:
  - (1) First-aid, with rescue breathing and choking; and
  - (2) CPR for infants, children, and adults.
- (b) A caregiver who is a health professional can use documentation of the following in lieu of these certifications:
  - (1) The training to be a health professional includes the knowledge covered in first aid and/or CPR training; and
  - (2) The person's employment ensures that these skills are kept current.

### §749.983. When must a caregiver renew first-aid and CPR certification?

*DFPS Rules, 40 TAC, effective January 1, 2007*

Each caregiver must complete any new first-aid training or CPR training, as required to maintain a current certification.

### §749.985. Who can provide first-aid and CPR certification?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) The following may provide first-aid and CPR certification:
  - (1) The American Red Cross, American Heart Association, or a training program that has been approved by the local Emergency Medical Services Authority, or is offered through a local hospital; or
  - (2) A person with a current certification to provide the training.
- (b) A caregiver may not obtain first-aid or CPR certification through self-instructional training.

### §749.987. What must the first-aid and CPR training include?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) First-aid and CPR training and re-certification must consist of a curriculum that includes both written and hands-on skill-based instruction, practice (for CPR, the practice is through the use of a CPR mannequin), and testing.
- (b) CPR training and re-certification must include CPR for infants, children, and adults.

**§749.989. What documentation must I maintain for first-aid and CPR certification?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You must document the completion of each training requirement in the appropriate personnel records. The documentation may be a certificate, letter, or a statement of successful completion, that is signed and dated, from the training source. A photocopy of the original first-aid and/or CPR certificate or letter may be maintained in the personnel record, as long as the employee can provide an original document upon request by Licensing.
- (b) The documentation must include the following information:
  - (1) The participant's name;
  - (2) Date of the training;
  - (3) Title or subject of the training;
  - (4) The trainer's name and qualifications;
  - (5) The expiration date of the certification as determined by the organization providing the certification; and
  - (6) Length of the training in hours.



## Subchapter G, Children's Rights

### §749.1001. How must I protect the rights of children served by my child-placing agency?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You must protect the rights of children while they are in foster care or in adoptive placement prior to the consummation of the adoption.
- (b) You must ensure that a caregiver or an adoptive parent, prior to consummation of the adoption, does not restrict or deny a child's rights.
- (c) You are responsible for removing a child from a situation where abuse, neglect, or exploitation exists.

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) A child's rights are cumulative of any other rights granted by law or other Licensing rules.
- (b) You must adhere to the child's rights, including:
  - (1) The right to appropriate care and treatment in the least restrictive setting available that can meet the child's needs;
  - (2) The right to be free from discrimination on the basis of gender (if your agency accepts both genders), race, religion, national origin, or sexual orientation;
  - (3) The right to have his physical, emotional, developmental, educational, social and religious needs met;
  - (4) The right to be free of abuse, neglect, and exploitation as defined in Texas Family Code §261.401;
  - (5) The right to be free from any harsh, cruel, unusual, unnecessary, demeaning, or humiliating punishment, which includes:
    - (A) Shaking the child;
    - (B) Subjecting the child to corporal punishment;
    - (C) Threatening the child with corporal punishment;
    - (D) Any 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;
    - (E) Denying the child food, sleep, toileting facilities, mail, or family visits as punishment;

*(continued)*

- (F) Subjecting the child to remarks that belittle or ridicule the child or the child's family; and
- (G) Threatening the child with the loss of placement or shelter as punishment;
- (6) The right to discipline that is appropriate to the child's age and developmental level;
- (7) The right to have restrictions or disciplinary consequences explained to him when the measures are imposed;
- (8) The right to a humane environment, including any treatment environment, which provides reasonable protection from harm and appropriate privacy for personal needs;
- (9) The right to receive educational services appropriate to the child's age and developmental level;
- (10) The right to training in personal care, hygiene, and grooming;
- (11) The right to reasonable opportunities to participate in community functions, including recreational and social activities such as Little League teams, Girl Scouts and Boy Scouts, and extracurricular school activities outside of the agency to the extent that is appropriate for the child;
- (12) The right to have adequate personal clothing, which must be suitable to his age and size and comparable to the clothing of other children in the community;
- (13) The right to have personal possessions at his home and to acquire additional possessions within reasonable limits;
- (14) The right to be provided with adequate protective clothing against natural elements such as rain, snow, wind, cold, sun, and insects;
- (15) The right to maintain regular contact with his family unless the child's best interest, appropriate professionals, or court necessitates restrictions;
- (16) The rights to send and receive uncensored mail, to have telephone conversations, keep a personal journal and to have visitors, unless the child's best interest, appropriate professionals, or court order necessitates restrictions;
- (17) The right to hire independent mental health professionals, medical professionals, and attorneys at his own expense;
- (18) The right to be compensated 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 his room, or other chores, or work assigned as a disciplinary measure;

*(continued)*

- (19) The right to have personal earnings, allowances, possessions, and gifts as the child's personal property;
- (20) The right to be able to communicate in a language or any other means that is understandable to the child at admission or 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;
- (21) The right to confidential care and treatment;
- (22) The right to consent in writing before permitting any publicity or fund raising activity for the agency, including the use of his photograph;
- (23) The right not to be required to make public statements acknowledging his gratitude to the foster home or agency;
- (24) The right to be free of unnecessary or excessive medication;
- (25) The right to have a comprehensive service plan that addresses the child's needs, including transitional and discharge planning;
- (26) The right to participate in the development and review of his service plan within the limits of the child's comprehension and ability to manage the information;
- (27) The right to receive emotional, mental health, or chemical dependency treatment separately from adults (other than young adults) who are receiving services;
- (28) The right to receive appropriate treatment for physical problems that affect his treatment or safety;
- (29) The right to be free from pressure to get an abortion, relinquish her child for adoption, or to parent her child, if applicable; and
- (30) The right to report abuse, neglect, exploitation, or violation of personal rights without fear of punishment, interference, coercion, or retaliation.

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) Within seven days after you admit a child into your agency, you must review the child's rights with the child and a child's parent, unless the parent's consent is not required. You must also provide the child and a child's parent with a written copy of the child's rights.
- (b) Child rights must be written in:
  - (1) Simple, non-technical terms; and
  - (2) English, unless the person does not understand English. The child's rights must be written in the person's primary language, if possible.

*(continued)*

- (c) If the person you are informing has a visual or auditory impairment, you must explain the child's rights in a manner that is understandable to the person.
- (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. You must put the signed copy in the child's record.

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (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.
- (b) Foster parents and caregivers must, as applicable:
  - (1) Attend and participate in school staffings, conferences, and education planning meetings;
  - (2) Make reasonable efforts to allow the child to participate in extracurricular activities; and
  - (3) Make reasonable efforts to allow the child to participate in school extracurricular activities to the extent of his interests and abilities and in accordance with his service plan.

#### **§749.1009. What right does a child have regarding contact with a parent?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You must allow contact between a child and his parent whose parental rights have not been terminated according to:
  - (1) Your policies; and
  - (2) The provisions of a court order or any visitation agreement.
- (b) You must document in the child's record:
  - (1) Any plans for contact between the child and a parent; and
  - (2) Any decision to limit contact with a parent.
- (c) Before you can temporarily restrict ongoing contacts or communication between the child and a parent, your child placement management staff must:
  - (1) Explain the reasons for the restrictions to the child and the child's parent; and
  - (2) Document the reasons in the child's record.

*(continued)*



- (d) Restrictions imposed by you that continue more than 30 days must be re-evaluated monthly by your child placement management staff, who also must:
  - (1) Explain the reasons for the continued restrictions to the child and the child's parents; and
  - (2) Document the reasons in the child's record.
- (e) If you limit communications or visits with a parent for practical reasons, such as geographical distance or expense, you must discuss the limits with the child and the child's parents. You must document the limits in the child's record.

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) A child must have a reasonable opportunity for sibling visits and contacts in an effort to preserve sibling relationships.
- (b) You must address plans for sibling visits and contacts in the child's record.
- (c) When contact is restricted or not allowed, you must include justification 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) If barriers to visits exist, such as unavoidable geographic distance and expense issues, the agency must make provisions for sibling contact through letters, telephone calls, or some other means.

**§749.1013. What right to privacy does a child have with respect to his contact with others?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) Except as determined by child placement management staff or the child's parent, you may not:
  - (1) Open or read the child's incoming or outgoing mail, including electronic mail, unless necessary to assist the child with reading or writing; or
  - (2) Listen to or screen the child's telephone calls unless the child needs assistance with using the telephone.
- (b) You must document in the child's record:
  - (1) Any reason for restricting the child's mail or telephone calls; and
  - (2) A listing of the mail or telephone calls that you restrict.
- (c) You must inform the child and parent about restrictions that you place on the child.

*(continued)*

- (d) Restrictions that continue for more than 30 days must be re-evaluated monthly 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.

**§749.1015. Under what circumstances may I conduct a search for prohibited items or items that endanger a child's safety?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) A child's possessions must be free of unreasonable searches and unreasonable removal of personal items.
- (b) You may search a child, his possessions, or his room only when you have reasonable suspicion:
  - (1) Of the presence of a prohibited item or an item that endangers the child's safety;
  - (2) That the child made suicidal threats or threatened to hurt himself or others; or
  - (3) That the child or children was involved in theft.
- (c) Only a caregiver may conduct searches that involve the removal of clothing, other than outer clothing, such as coats, jackets, hats, gloves, shoes, or socks.
- (d) If a search of a child who is five years old or younger involves the removal of clothing (other than outer clothing), another adult must witness the search.
- (e) If a search of a child who is over the age of five involves the removal of clothing (other than outer clothing), an adult of the same gender must witness the search.
- (f) The caregiver must ensure that other children do not witness a search that involves the removal of clothing, other than outer clothing.

**§749.1017. May a caregiver conduct a body cavity search of a child in care?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

With the exception of a child's mouth, a caregiver may not conduct a body cavity search of a child in care.

**§749.1019. What must a caregiver document regarding a search?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

A caregiver must document the following in the child's record when conducting a search if it results in the removal of personal items or clothing worn by the child:

- (1) The date of the search;
- (2) The name of the child;
- (3) Reason for the search;
- (4) A description of what was searched;
- (5) The articles of clothing removed, if applicable;
- (6) The name of the person conducting the search;
- (7) The name of the witness, if applicable;
- (8) The results of the search; and
- (9) The resolution of the issue with the child or children involved.

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

You may not use any of the following techniques on a child:

- (1) Chemical restraints, mechanical restraints, and seclusion. For more information on emergency behavior intervention, see Subchapter L of this chapter (relating to Foster Care Services: Emergency Behavior Intervention);
- (2) Aversive conditioning, which includes, but is not limited to, any technique designed to or likely to cause a child physical pain, the application of startling stimuli, and the release of noxious stimuli or toxic sprays, mists, or substances in proximity to the child's face;
- (3) Pressure points;
- (4) Rebirthing therapy; and
- (5) Hug and/or holding therapy.



## Subchapter H, Foster Care Services: Admission and Placement

### Division 1, Admissions

#### §749.1101. What children may I admit?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You may only admit children who meet your admission policy guidelines and whose needs you can meet. If you adopt a change in your admission policies that requires a change in the conditions of your permit, you must request an amendment to your permit with us. You can only accept children:
  - (1) Whose age and gender are specified on your permit; and
  - (2) Needing the services that are specified on your permit.
- (b) Each placement must meet the child's physical, medical, recreational, educational, and emotional needs as identified in the child's admission assessment.

#### §749.1103. After a child in my care turns 18 years old, may the person remain in my care?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) A young adult may remain in your care up to the age of 22 years old in order to:
  - (1) Transition to independence, including attending college or vocational or technical training;
  - (2) Attend high school, a program leading to a high school diploma, or GED classes;
  - (3) Complete your program; or
  - (4) Stay with a minor sibling.
- (b) A young adult who turns 18 in your care may remain in your care indefinitely if the person:
  - (1) Continues to need the same level of care; and
  - (2) Is unlikely to physically and/or intellectually progress over time.

**§749.1105. May I admit a young adult into care?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

You may admit a young adult into your care:

- (1) From another residential child-care operation if the reason for admittance is consistent with a condition listed in §749.1103 of this title (relating to After a child in my care turns 18 years old, may the person remain in my care?); or
- (2) If the child is in the care of the Texas Department of Family and Protective Services.

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You must include the following in the child's record at the time of admission:
  - (1) The child's name, gender, race, religion, 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 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; and
  - (13) A copy of the placement agreement, 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?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

A placement agreement is your agreement with a child's parent 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.

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

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) Within seven days of admission, you must provide orientation to each newly admitted child who is not an infant or a toddler. You must gear orientation to the intellectual level of the child.
- (b) For a child functioning at a school age level, 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;
  - (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) Grievance procedures.
- (c) For a child functioning above toddler age and below school age, orientation must include as many of the items in subsection (b) of this section as possible.
- (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?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (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.
- (b) At admission, you must review and provide written 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;
    - (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 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.

**§749.1115. What information must I provide caregivers when I admit a child?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (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.



## Division 2, Admission Assessment

### §749.1131. When must I complete the admission assessment?

*DFPS Rules, 40 TAC, effective January 1, 2007*

You must complete a non-emergency admission assessment 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?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (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 psychological 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 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;

*(continued)*

- (14) The child's understanding of the placement;
  - (15) A determination of whether 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;
  - (14) A determination of whether 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 requirements when I admit a child for treatment services?

DFPS Rules, 40 TAC, effective January 1, 2007

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 pervasive development disorder	<p>(A) The admission assessment must include a written, dated, and signed psychiatric or psychological diagnostic assessment, including the child's diagnoses.</p> <p>(i) If the child is coming from another regulated placement, the evaluation must have been completed within 14 months of the date of admission.</p> <p>(ii) If the child is not coming from another regulated placement, the evaluation must have been completed within six months of the date of admission.</p> <p>(B) The admission assessment must include the reason(s) for choosing treatment services for the child.</p> <p>(C) 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 mental retardation	<p>(A) The admission assessment must include a psychological evaluation with a psychometric evaluation completed within 14 months of the date of admission.</p> <p>(i) A licensed psychologist who has experience with mental retardation or published scales must determine and document the child's level of adaptive functioning.</p> <p>(ii) Standardized tests must be used to determine the intellectual functioning of a child. The test results must be documented in the evaluation.</p> <p>(iii) The evaluation must indicate manifestations of mental retardation as defined in the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.</p> <p>(B) The admission assessment must include the reason(s) for choosing treatment services for the child.</p> <p>(C) The admission assessment must include consideration given to any history of inpatient or outpatient treatment.</p>

*(continued)*

<b>If:</b>	<b>Then:</b>
(3) You intend to provide treatment services for a child with primary medical needs	<p>(A) The admission assessment must have a licensed physician's signed, written orders as the basis for the child's admission. The physician's evaluation must confirm that the child can be cared for appropriately in a foster home setting and that the foster parents have been trained to meet the needs of the child and demonstrated competency.</p> <p>(B) The written orders 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>(C) The admission assessment must include the reason(s) for choosing treatment services for the child.</p> <p>(D) The admission assessment must include consideration given to any history of inpatient or outpatient treatment.</p>
(4) The child's behavior and/or history within the last two months indicates that the child is an immediate danger to himself or others	<p>(A) The admission assessment must include a written, dated, and signed psychiatric or psychological diagnostic assessment including:</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 himself 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>(B) If the child is:</p> <ul style="list-style-type: none"> <li>(i) Coming from another regulated placement, the evaluation must have been completed within 14 months of the date of admission.</li> <li>(ii) Not coming from another regulated placement, the evaluation must have been completed within six months of the date of admission.</li> </ul> <p>(C) You must then evaluate your ability to provide services and safeguards appropriate to the child's needs, including direct and continuous supervision, if needed.</p>

**§749.1137. What if I cannot obtain the required information for an admission assessment?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You must make reasonable efforts to obtain all required information.
- (b) If you and the child's parent determine that attempting to get information at the time of placement would not be in the child's best interests, you may postpone attempting to acquire the information.
- (c) In the child's admission assessment, you must document why a:
  - (1) Particular piece of information is unavailable; or
  - (2) Delay obtaining a piece of information is necessary, including efforts made to obtain the information.

**Division 3, Required Admission Information****§749.1151. What are the medical requirements when I admit a child into care?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You must ensure that the child has a medical examination by a health-care professional within 30 days after the date of admission, unless you have documentation that the child has had a medical examination within the past year.
- (b) If you admit a child with primary medical needs, you must provide the child with a medical examination by a health-care professional within seven days before or three days after admission.
- (c) If a child admitted shows symptoms of abuse or illness, a health-care professional must examine the child immediately.
- (d) The reports and findings of any medical examination must be signed and dated by the health-care professional who performed the examination and must be documented in the child's record.

**§749.1153. What are the dental requirements when I admit a child into care?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) If the child is younger than three years old and a 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.
- (c) The report and findings of the dental examination must be signed and dated by the dentist and must be documented in the child's record.

**§749.1155. What must I document when I re-admit a child for care?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

For re-admission, you must complete the admission documentation as if the child was never in your care; or for children that were discharged from your agency within the last 12 months, you may update the previous admission documentation.

**Division 4, Emergency Admission****§749.1181. For which of my programs may I accept emergency admissions?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

You may accept emergency admissions in all of your programs with the exception of a transitional living program.

**§749.1183. What constitutes an emergency admission to my child-placing agency?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

You may admit a child on an emergency basis if the child:

- (1) Is being removed from a situation involving alleged abuse or neglect;
- (2) Is an alleged perpetrator of abuse and cannot be served in the child's current placement due to his perpetrating behaviors;
- (3) Displays behavior that is an immediate danger to himself or to others and cannot function or be served in his current setting;
- (4) Is abandoned and after exercising reasonable efforts the child's identity cannot be immediately determined. The efforts made to obtain information on the child's identity must be documented in the child's record;
- (5) Is removed from his home or placement, and there is an immediate need to find a residence for the child;
- (6) Is released to your authorized child-placing agency by a law enforcement or juvenile probation officer; or
- (7) Is without adult care.

**§749.1185. May I take possession of a child from a law enforcement or juvenile probation officer?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

You may take possession of a child from a law enforcement or juvenile probation officer only if you meet the requirements of Division 7, Subchapter H of Chapter 745 of this title (relating to Taking Possession of a Child Through Law Enforcement or a Juvenile Probation Officer).

**§749.1187. For an emergency admission, when must I complete all of the requirements for an admission assessment?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) For an emergency admission, you must complete all of the requirements (see Division 1 of this subchapter (relating to Admissions)) 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, psychometric, or physician's evaluation that is required by §749.1135 of this title (relating to What are the additional admission requirements when I admit a child for treatment services?), and the evaluation indicates manifestations of the disorder requiring treatment services. All evaluations must be signed, dated, and documented in the child's record.

**§749.1189. At the time of an emergency admission, what information must I document in the child's record at admission?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

At the time of the emergency admission you must document in the child's record:

- (1) A brief description of the circumstances necessitating the emergency admission;
- (2) The date and time of admission;
- (3) Allergies, such as food, medication, sting, and skin allergies;
- (4) Chronic health conditions, such as asthma or diabetes;
- (5) Known contra-indications to the use of restraint; and
- (6) For the purpose of providing treatment services:
  - (A) A brief description of the child's history;
  - (B) The child's current behavior; and
- (C) Your evaluation of how the placement will meet the child's needs and best interests.

## Division 5, Foster Care Placement

### §749.1251. What are the requirements for pre-placement visits for a child?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) A child over six months of age must visit the foster home at least once before placement.
- (b) There must be a meaningful interval between the pre-placement visit and the placement. This interval must be at least sufficient to allow a child and foster parents to have privacy, an opportunity to discuss and consider placement, and to have their questions, opinions, and concerns addressed.
- (c) You must document pre-placement visits in the child's record.
- (d) Pre-placement visits are not required for emergency admissions.

### §749.1253. What must staff do to prepare a child for a placement?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) The child-placement staff must discuss with the child the circumstances that make the placement necessary, as appropriate to the child's age and ability to respond orally and behaviorally to such a discussion. The discussion must take place prior to or at the time of the placement of a child.
- (b) You must document into the child's record:
  - (1) That the discussion occurred; and
  - (2) The child's understanding of and response to the discussions and the placement.

### §749.1255. What information from an admission assessment must I share with the caregivers responsible for the child's care?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) In a non-emergency placement, you must share all information from the admission assessment with the foster parents or caregiver responsible for the child's care prior to placement.
- (b) In an emergency placement, you must share with the foster parents or caregiver responsible for the child's care:
  - (1) At the time of placement, all available information relating to the child's needs and your plans for care and management; and
  - (2) Within 10 days of completing the admission assessment, all information from the admission assessment.

*(continued)*



- (c) You must document the following in the child's record:
  - (1) The information you share with the caregiver;
  - (2) Any information you do not share and the reason why you did not share the information; and
  - (3) How the placement is capable of meeting the child's needs.

## Division 6, Subsequent Placement

### **§749.1281. What are the requirements when I move a child from one foster home to another?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) If the move is not an emergency, child placement management staff must:
  - (1) Review and approve the move before you move the child to the new placement;
  - (2) Document the review and approval in the child's record, including signature and date; and
  - (3) Comply with the pre-placement requirements in §749.1251 of this title (relating to What are the requirements for pre-placement visits for a child?).
- (b) If the move is an emergency, child placement management staff must:
  - (1) Give verbal approval before the move; and
  - (2) Document the verbal approval in the child's record within 10 days of the placement. Documentation must be signed and dated and include the date verbal approval was given and circumstances of the emergency placement.
- (c) For all moves, child-placing staff must prepare a child according to §749.1253 of this title (relating to What must staff do to prepare a child for a placement?).



## Subchapter I, Foster Care Services: Service Planning, Discharge

### Division 1, Service Plans

#### §749.1301. What are the requirements for a preliminary service plan?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You must complete a preliminary service plan that addresses the immediate needs of the child, such as 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.

**Best Practice Suggestion** .....

It is a good idea to include in service plans specific information about the situations that trigger significant emotional responses for the child (e.g., enclosed spaces, darkness, bedtime), successful intervention strategies to effectively de-escalate those responses, anger and anxiety management options to assist the child in calming, techniques for self-management, and specific goals that address the targeted behaviors that most often lead to emergency behavior interventions for the child.

**§749.1305. Who must be involved in developing the preliminary service plan?**

The child placement staff must develop, sign, and date the preliminary service plan.

**§749.1307. When must I complete an initial service plan?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

You must complete the initial service plan within 40 days after you admit the child.

**§749.1309. What must a child's initial service plan include?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You must base the child's initial service plan on the child's needs identified in the child's admission assessment. 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	<p>(A) The child's needs identified in the admission assessment, in addition to basic needs related to day-to-day care and development, including:</p> <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> <li>(iii) Intellectual functioning, including any testing and plans for recommended follow-up;</li> <li>(iv) Developmental functioning, including any developmental delays and plans to improve or remediate developmental functioning;</li> <li>(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;</li> <li>(vi) Plans for social, recreation, and leisure activities;</li> <li>(vii) Plans for integrating the child into the community and community activities, as appropriate;</li> <li>(viii) Therapeutic needs, including plans for psychological/psychiatric testing and follow-up treatment and use of psychotropic medications; and</li> <li>(ix) Cultural identity needs, including assisting children in connecting with their culture in the community;</li> </ul>

*(continued)*

Type of Service	Items that must be included:
(1) Child-care services (continued)	<p>(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;</p> <p>(C) Recent data from the current caregiver's evaluation of the child's behavior and level of functioning;</p> <p>(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:</p> <ul style="list-style-type: none"> <li>(i) Level of supervision required;</li> <li>(ii) Discipline techniques;</li> <li>(iii) Behavior intervention techniques;</li> <li>(iv) Plans for trips and visits away from the agency; and</li> <li>(v) 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 care, how to communicate with the child, and reward systems;</li> </ul> <p>(E) If the child is 13 years old or older, a plan for educating the child in the following areas:</p> <ul style="list-style-type: none"> <li>(i) Healthy interpersonal relationships;</li> <li>(ii) Healthy boundaries;</li> <li>(iii) Pro-social communication skills;</li> <li>(iv) Sexually transmitted diseases; and</li> <li>(v) Human reproduction;</li> </ul> <p>(F) For children 16 years old and older, preparation for independent living;</p> <p>(G) For children who exhibit high risk behaviors, such as self harm, sexual aggression, runaway, or substance abuse:</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>(H) Expected outcomes of placement for the child and estimated length of stay in care;</p> <p>(I) Plans for discharge;</p> <p>(J) The names and roles of persons who participated in the development of the child's service plan;</p> <p>(K) The date the service plan was developed and completed;</p> <p>(L) The effective date of the service plan; and</p> <p>(M) The signatures of the service planning team members that were involved in the development of the service plan.</p>

(continued)

Type of Service	Items that must be included:
(2) Treatment services	<p>For children receiving treatment services, the plan must address all of the child's waking hours and include:</p> <ul style="list-style-type: none"> <li>(A) The child-care services planning requirements noted above;</li> <li>(B) A description of the emotional, behavioral, and physical conditions that require treatment services;</li> <li>(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</li> <li>(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.</li> </ul>
(3) Treatment services for children with mental retardation	<ul style="list-style-type: none"> <li>(A) The child-care treatment services planning requirements noted above;</li> <li>(B) A minimum of one hour per day of visual, auditory and tactile stimulation to enhance the child's physical, neurological, and emotional development;</li> <li>(C) An educational or training plan encouraging normalization appropriate to the child's functioning; and</li> <li>(D) Career planning for older adolescents who are not receiving treatment services for severe or profound mental retardation.</li> </ul>
(4) Transitional living program	<ul style="list-style-type: none"> <li>(A) Child-care service planning requirements;</li> <li>(B) Plans for encouraging the child to participate in community life and to form interpersonal relationships/friendships outside the transitional living program, such as community team sports, Eagle Scouts, and employment after school;</li> <li>(C) Consumer education, such as meal planning, meal preparation, grocery shopping, public transportation, searching for an apartment, and obtaining utility services;</li> <li>(D) Career planning, including assisting the child in enrolling in an educational or vocational job training program;</li> <li>(E) Money management and assisting the child in establishing a personal bank account;</li> <li>(F) Assisting the child with how to access resources, such as medical and dental care, therapy, mental health care, an attorney, the police, and other emergency assistance;</li> <li>(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</li> <li>(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.</li> </ul>

**§749.1311. Who must be involved in developing an initial service plan?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) A service planning team must develop the service plan. The team must consist of:
  - (1) At least one of the child's current caregivers;
  - (2) At least one professional service provider who provides direct services to the child; and
  - (3) If you are providing treatment services to the child, at least two of the following professionals:
    - (A) A licensed professional counselor;
    - (B) A psychologist;
    - (C) A psychiatrist or physician;
    - (D) A licensed registered nurse;
    - (E) A licensed masters level social worker;
    - (F) A licensed or registered occupational therapist; or
    - (G) Any other person in a related discipline or profession that is licensed or regulated in accordance with state law.
- (b) The child, as appropriate, and the parents must be invited to the meeting to develop the service plan.

**§749.1313. When must I inform the child's parent(s) of an initial service plan meeting?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You must give the child's parent(s) at least two weeks advance notice of the review.
- (b) The child's record must include documentation of the notice and any responses from the parents.

**§749.1315. Must a professional service provider or a professional who must participate in a child's service plan be an employee of my agency?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

No. You may employ or contract with a professional service provider or any other professional who participates in a child's service plan.

**§749.1317. What roles do professional service providers have in service planning?***DFPS Rules, 40 TAC, effective January 1, 2007*

The roles of professional service providers in service planning include:

<b>Type of Treatment Service</b>	<b>The roles of professional level service providers in service planning include:</b>
(1) Emotional disorder and pervasive development disorder	(A) Reviewing the child's diagnoses; (B) Reviewing the identified needs and the plan for treatment based on the child's diagnoses; (C) Reviewing the techniques, strategies, and therapeutic interventions that are planned for the child to improve adaptive functioning; and (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) Mental retardation	(A) Assessing the child's educational needs and progress toward meeting those needs; (B) Ensuring coordination between educators, caregivers, operation employees, and other professionals involved in the child's treatment; and (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 medications prescribed for a child; (B) Recommending special equipment needed by a child; and (C) Reviewing special instructions and training to caregivers for the daily care of the child.



**§749.1319. What must I document regarding a professional service provider's participation in the development of an initial service plan?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You must document the professional service provider's:
  - (1) Name; and
  - (2) Date of participation.
- (b) The professional service provider must sign and date the document. If the provider disagrees with any portion of the plan, the provider must document the issue(s) of contention before signing it.

**§749.1321. With whom do I share the initial service plan?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You must give a copy or summary of the initial service plan to the:
  - (1) Child, when appropriate;
  - (2) Child's parents; and
  - (3) Child's caregivers.
- (b) If you do not share the service plan or summary with the child, you must document your justification for not sharing the plan in the child's record.
- (c) You must document in the child's record that you provided a copy or summary of the service plan to the child's parents.

**§749.1323. When must I implement a service plan?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

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 10 days after the date of the service-planning meeting.

## Division 2, Service Plan Review and Updates

### §749.1331. How often must I review and update a service plan?

*DFPS Rules, 40 TAC, effective January 1, 2007*

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, pervasive developmental disorder, or primary medical needs	At least 90 days from the date of the child's last service plan.
(3) Treatment services for mental retardation	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.

### §749.1333. How does a child's transfer affect the timing of the review of the child's service plan?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You must review a child's service plan whenever the child's placement changes because of a change in the child's needs.
- (b) If the child's placement changes for another reason:
  - (1) The child's service planning team must approve the decision not to review the plan; and
  - (2) You must document the decision not to review the plan.

### §749.1335. How do I review and update a service plan?

*DFPS Rules, 40 TAC, effective January 1, 2007*

To review and update a service plan, you must:

- (1) Evaluate the child's progress and the effectiveness of strategies and techniques used toward meeting identified needs, including educational progress reports and medical interventions;
- (2) Identify any new needs and strategies or techniques to meet these needs, including instructions to appropriate employees;
- (3) Document any achieved or changed objectives;

*(continued)*

- (4) If the review shows no progress towards meeting the identified needs of the child, document reasons for continued placement;
- (5) Evaluate the possible effectiveness and side effects in the use of psychotropic medications prescribed for the child, any change in psychotropic medications during the period since the last review, and the behaviors and reactions of the child observed by caregivers, professional service providers, and parents, if applicable;
- (6) Document 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;
- (7) Update the estimated length-of-stay and discharge plans, if changed;
- (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) The frequency, patterns, and effectiveness of types of emergency behavior interventions;
  - (B) Strategies to reduce the need for emergency behavior interventions overall; and
  - (C) Specific strategies to reduce the need for use of personal restraints or emergency medication, as applicable;
- (10) Document in the child's record the review and update of the plan; and
- (11) Document the names of the persons participating in the review and update.

**§749.1337. Are the notification, participation, implementation, and documentation requirements for a service plan review and update the same as for an initial service plan?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

Yes, the same requirements found in Division 1 of this subchapter (relating to Service Plans) apply to a service plan review and update.

**§749.1339. How often must I re-evaluate the intellectual functioning of a child receiving treatment services for mental retardation?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (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.

**Division 3, Discharge and Transfer Planning**

***Best Practice Suggestion* .....**

If you suspect the person picking up a child is under the influence of drugs or alcohol, you have the option of contacting local law enforcement to request their assistance.

You may not legally prevent the child from being picked up by a parent or person designated by the parent; however, you have the option of addressing this issue at admission by asking parents what they would like for you to do if you do not feel comfortable releasing the child to one of the parents or their designee and signing an agreement to this effect.

Law enforcement officers and DFPS Child Protective Services staff have the authority by law to remove a child without a parent's permission.

You may want to ask to see identification of persons you do not know.

**§749.1361. What does "the transfer of a child in care" mean?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

A transfer refers to a child in care who is moved from one of your programs or foster homes to another one of your programs or foster homes operated under the same permit or at the same location.

**§749.1363. Who must plan a child's non-emergency discharge or transfer?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You must involve at least the following persons in planning the child's non-emergency discharge or transfer:
  - (1) At least one of the child's current caregivers; and
  - (2) At least one professional service provider involved in the child's service planning.

*(continued)*

- (b) You must invite the following persons to participate in planning the child's non-emergency discharge or transfer, if appropriate:
  - (1) The child;
  - (2) The child's parent(s); and
  - (3) Any other person pertinent to the child's care.
- (c) If you are unable to plan the transfer or discharge with the persons required in subsections (a) and (b) of this section, you must document in the child's record the reason why.
- (d) If a child in your care is not receiving treatment services, you must inform him of his 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 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 of his 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 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.

**§749.1365. May a foster home release a child to any person without my consent?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

No, the foster home must not release a child to any person without your consent.

**§749.1367. To whom can I discharge a child in a non-emergency situation?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

You must discharge a child to the child's parent or to anyone with written authorization from the parent or a person authorized by the court or by law to assume custody of the child.

**§749.1369. How do I discharge or transfer a child who is an immediate danger to himself or others?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

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 regarding a planned discharge or transfer?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

Your documentation of a planned discharge or transfer is called a "discharge or transfer summary" and must include:

- (1) A discharge or transfer summary showing services provided to the child, accomplishments, assessment of remaining needs, and recommendations about the services to meet those needs;
- (2) The date and circumstances of the discharge or transfer;
- (3) Discharge or transfer medications and/or prescriptions for medications;
- (4) Support resources for the child, including telephone numbers and addresses;
- (5) Aftercare plans and recommendations, including medical, psychiatric, psychological, dental, educational, and social appointments;
- (6) Date and time the child was informed of his discharge or transfer; and
- (7) For discharges, 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.

**§749.1373. When I discharge a child to another agency or residential child care operation, what information must I provide them?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) On or before the child's discharge, you must attempt to obtain legal consent to release the discharge summary and the information in subsection (b) of this section. If consent is not obtained, your attempt to obtain consent must be documented in the child's record. If consent is obtained, the information must be provided to the receiving operation within 30 days of the date the child is discharged.

*(continued)*

- (b) Copies of the following information from the child's record must also be released with the discharge summary:
- (1) The child's background information, including progress notes for the past 60 days if applicable;
  - (2) Any unresolved incidents or investigations involving the child, if applicable;
  - (3) Assessments and/or evaluations that you have performed for the child, including the child's admission assessment, diagnostic assessment, educational assessment, neurological assessment, and psychiatric or psychological evaluation;
  - (4) The child's service plans while in your care for the past 12 months;
  - (5) A list of medications the child is taking, the dosage, frequency, and reason the medication was prescribed; and
  - (6) Any treatment for a physical condition that is in progress and requires continuing or follow-up medical care.

**§749.1375. To whom do I provide a copy of the discharge summary when I discharge a child to his home?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

You must send a copy of the discharge summary to the child's parent within 30 days after you discharge the child.

**§749.1377. What constitutes an emergency discharge or transfer?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

An emergency transfer or discharge occurs when:

- (1) The parent withdraws a child unexpectedly from care;
- (2) There is a medical emergency requiring inpatient care;
- (3) The child is absent from the home and cannot be located; or
- (4) There is an immediate danger to the child or others and you determine that you cannot serve the child.

**§749.1379. What must I document in the child's record at the time of an emergency discharge or transfer?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

At the time of an emergency discharge or transfer, you must document the following in the child's record:

- (1) The circumstances necessitating the emergency discharge or transfer;
- (2) The explanation given to the child regarding the reason for the discharge or transfer;
- (3) The child's reaction to the discharge or transfer;
- (4) The date of discharge or transfer; and
- (5) The name, address, and relationship of the person to whom you transfer or discharge the child, where applicable.



## Subchapter J, Foster Care Services: Medical and Dental

### Division 1, Medical and Dental Care

#### §749.1401. What general medical requirements must my agency meet?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (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 specifying:
  - (1) The date of the examination;
  - (2) The procedures completed;
  - (3) The follow-up treatment recommended and any appointments scheduled;
  - (4) The child's refusal to accept medical treatment, if applicable;
  - (5) The results of the medical examination that is signed and dated by the health-care professional who performed the examination; and
  - (6) If the medical examination is a result of an injury or medical incident, the documentation of the circumstances surrounding the incident, including the date and time of the incident.
- (c) You must obtain follow-up medical treatment as recommended by the health-care professional.

#### §749.1403. Who determines the need and frequency for ongoing maintenance of medical care and treatment for a child?

*DFPS Rules, 40 TAC, effective January 1, 2007*

A health-care professional determines the need and frequency for ongoing maintenance of medical care and treatment for a child.

#### §749.1405. Who must perform medical care examinations and provide medical treatment for a child?

*DFPS Rules, 40 TAC, effective January 1, 2007*

A health-care professional licensed in the United States to practice in an appropriate medical or health-care discipline must perform medical care examinations and provide medical treatment for a child.

**§749.1409. What general dental requirements must my agency meet?***DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) A children 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 specifying the:
- (1) Date of the examination;
  - (2) Procedures completed;
  - (3) Follow-up treatment recommended and any appointments scheduled;
  - (4) The child's refusal to accept dental treatment, if applicable; and
  - (5) The results of the dental examination that is signed and dated by the health-care professional who performed the examination.
- (c) 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.

**§749.1411. Who must determine the frequency and need for ongoing maintenance of dental health for a child?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

A licensed dentist must determine the frequency and need for ongoing maintenance of dental health for a child. You must comply with dentist recommendations for examinations and treatment for each child.

**§749.1413. Who must perform dental examinations and provide dental treatment?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

A health-care professional licensed in the United States to practice dentistry must provide dental care.

**§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?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (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 contacted a communicable disease that the law requires you to report to the DSHS as specified in 25 TAC 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 care with a communicable disease that may be spread through casual contact, a health-care professional must authorize the person's participation in routine activity 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.

*(continued)*

- (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 may be spread through casual contact, 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.

**§749.1417. Who must have a tuberculosis (TB) examination?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) All persons over the age of one year old who live, work, or volunteer at your agency or in one of your foster homes must be screened for tuberculosis as recommended by the Center for Disease Control (CDC). This includes contract service providers.
- (b) If a person over one year old has lived, worked, or volunteered at a regulated residential child-care operation within 12 months prior to living, working, or volunteering at your agency or foster home, a new baseline tuberculosis screening is not required. However, you must have documentation of the person's previous screening on file at your agency. For example, an employee beginning employment in a regulated residential child-care operation for the first time would need a baseline tuberculosis screening. Employment in a different residential child-care operation would not require a new screening as long as a copy of the screening documentation went with the employee to each new place of employment. If the employee left employment in regulated residential child-care for more than 12 months and then returned, a new screening would be required.

*(continued)*

- (c) A copy of medical documentation of results of TB screening, chest radiograph, and/or treatment (if treatment is required) must be maintained in the person's file at the agency.

**Helpful Information** .....

Current CDC recommendations are as follows:

- Conduct a baseline tuberculosis screening. This screening includes a two-step tuberculosis skin test or a single blood assay for mycobacterium tuberculosis to test for infection with mycobacterium tuberculosis.
- After the initial baseline screening is conducted and shows negative for tuberculosis, no other testing is required as long as the person continues to live, work, or volunteer in a regulated residential child-care operation.
- In any of the following circumstances, use a chest radiograph to exclude TB disease:
  - The person's baseline screening shows positive,
  - The result shows a mycobacterium tuberculosis infection, or
  - There is documentation of treatment for latent tuberculosis infection or tuberculosis disease.

Obtain the chest radiograph within a six-month period from the initial baseline screening. Repeat radiographs are not needed unless symptoms or signs of TB disease develop, unless recommended by a physician, or unless the person ceases to live, work, or volunteer in a regulated residential child-care operation for more than 12 months.

**§749.1421. What immunizations must a child in my care have?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) Each child that you admit must meet and continue to meet applicable immunization requirements 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.
- (c) Unless exempt, 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.

**§749.1423. What are the exemptions from immunization requirements?***DFPS Rules, 40 TAC, effective January 1, 2007*

Exemptions for immunization requirements must meet criteria specified by:

- (1) §42.043 of the Human Resources Code; or
- (2) The Department of State Health Services rules in 25 TAC §97.62 (relating to Exclusions from Compliance).

**Helpful Information .....**

You can find more information in the Department of State Health Services' 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.

**§749.1425. What documentation is acceptable for an immunization record?***DFPS Rules, 40 TAC, effective January 1, 2007*

- (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; or
  - (4) A record received from school officials, including a record from another state.

**§749.1427. Must children in my care have a vision and hearing screening?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You must ensure that each child you admit is screened for possible vision and hearing problems that meet the requirements of the Special Senses and Communication Disorders Act, Health and Safety Code, Chapter 36. If problems are detected, the child must have a professional vision and hearing examination.
- (b) For each child required to be screened, you must keep one of the following in each child's record:
  - (1) The individual vision and hearing screening results;
  - (2) A signed statement from the child's parent that the child's screening records are current and on file at the program or school the child attends away from the agency. The statement must be dated and include the name, address, and telephone number of the program or school; or
  - (3) An affidavit from the child's parent stating that the vision or hearing screening and/or examination conflicts with the tenets or practices of a church or religious denomination of the parents.

**Helpful Information** .....

You can refer to the Health and Safety Code, §36.011, for specific information on vision and hearing screening. This information may be accessed on the Department of State Health Services' website at: [www.dshs.state.tx.us/vhs/](http://www.dshs.state.tx.us/vhs/).

**§749.1429. What must I do if a child in my care is identified as needing a diagnostic vision or hearing examination?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

You must:

- (1) Schedule the child for professional examination and needed health services;
- (2) Ensure the professional and medical recommendations are carried out; and
- (3) Convey the information concerning the child's visual and/or hearing difficulty to the educational and agency caregivers, so the recommended adjustments can be made in programs.

**§749.1431. What special equipment must I provide for a child with a physical disability?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

When recommended by a physician or other health-care professional, you must ensure that a child with a physical disability has any special equipment recommended that can be reasonably obtained.

**§749.1433. How often must the physician review a child's primary medical needs?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) A licensed physician must review a child's primary medical needs:
  - (1) At least every 90 days or on a schedule recommended by the child's physician; and
  - (2) Whenever a medical or related problem occurs.
- (b) The review must address:
  - (1) Whether the child can continue to be cared for appropriately in the foster home; and
  - (2) Any new or changed orders regarding the items outlined in §749.1135 of this title (relating to What are the additional requirements when I admit a child for treatment services?).
- (c) Documentation of each physician review must be filed in the child's record.

**§749.1435. What are the requirements for using a nasogastric tube?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) Only the following may insert a nasogastric tube:
  - (1) A physician;
  - (2) A licensed nurse according to a physician's written orders; or
  - (3) A caregiver instructed by a licensed nurse according to a physician's written orders.
- (b) The caregiver must document each insertion in the child's record. The documentation for each insertion must include the:
  - (1) Signature of the nurse or caregiver who inserted the tube; and
  - (2) Date of the insertion.
- (c) The caregiver must follow the physician's written orders concerning the tube.



## Division 2, Administration of Medication

### §749.1461. What consent must I obtain to administer medications?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You must obtain a general written consent to administer routine, preventive, and emergency medications.
- (b) You must obtain a written, signed, and dated consent, specific to the psychotropic medication to be administered, from the person legally authorized to give medical consent before administering a new psychotropic medication to a child, per §749.1603 of this title (relating to If my agency employs or contracts with a health-care professional who prescribes psychotropic medications to a child in care, what information must I provide the person legally authorized to give consent before requesting his consent for the child to be placed on psychotropic medication?) or §749.1605 of this title (relating to If my agency does not employ or contract with the health-care professional who prescribes psychotropic medications to a child in care, what information must I provide the person legally authorized to give medical consent prior to the health-care professional prescribing psychotropic medications to a child in care?).

### §749.1463. What medication requirements must caregivers meet?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (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 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 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 immediately after preparation;
  - (5) Ensure the child has taken the medication as prescribed;

*(continued)*

- (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 your employees do not provide any prescription medication or treatment to a child 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?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You must follow the label and ensure the nonprescription medication is not contraindicated with any other medication prescribed to the child or the child's medical conditions.
- (b) You may give nonprescription medication or vitamins to more than one child from one container.

### **Division 3, Self-Administration of Medication**

**§749.1501. What are the requirements for a self-medication program?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

For a child to be on a self-medication program:

- (1) The child's health-care professional must give written authorization for the child to be on the program;
- (2) The child's service plan must include the self-medication program and any requirements for caregiver supervision; and
- (3) You must notify the parent and the person legally authorized to give medical consent that the child is on the program.

**§749.1503. Who must record a medication dosage if the child is on a self-medication program?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

When a child who is on a self-medication program takes a dosage of the medication, the child may:

- (1) Record the dosage if you have a system for reviewing the child's medication each day; or
- (2) Report the medication to a caregiver, who must then do the actual recording.

**Division 4, Medication Storage and Destruction****§749.1521. What medication storage requirements must a foster home meet?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

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 Section 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;
- (5) Make provisions for securely storing medication that requires refrigeration;
- (6) Keep medication storage area(s) clean and orderly;
- (7) Remove discontinued medication immediately and destroy it in a way that ensures that children do not have access to it;
- (8) Remove medication on or before the expiration date and destroy it in a way that ensures that children do not have access to it;
- (9) Remove medication of a discharged or deceased child immediately and destroy it in a way that ensures that children do not have access to it; and
- (10) Provide prescription medication to the person to whom a child is discharged or transferred if the child is taking the medication at that time.

**§749.1523. What are the requirements for discontinued or expired medication?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

Foster parents must properly destroy medication in accordance with state and federal law and in a way that ensures children do not have access to it, within 30 days after:

- (1) It has been discontinued for a child;
- (2) The expiration date has passed; or
- (3) The child has left care without the medication.

**Division 5, Medication Records****§749.1541. What records must caregivers maintain for each child receiving medication?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) Caregivers must maintain a cumulative record of all prescription medication dispensed to a child and all nonprescription medication, excluding vitamins, dispensed to a child under five years old. Caregivers must maintain the medication record during the time that they provide services to the child. This record must include the:
  - (1) Child's full name;
  - (2) Prescribing health-care professional's name, if applicable;
  - (3) Medication name, strength, and dosage;
  - (4) Date (day, month, and year) and the time the medication was administered;
  - (5) Name and signature of the person who administered the medication;
  - (6) Child's refusal to accept medication, if applicable; and
  - (7) Reasons for administering the medication, including the specific symptoms, condition, and/or injuries of the child that the caregiver is treating, for PRN prescriptions and nonprescription medications (excluding vitamins) for children under five years old.
- (b) Identification of any prohibited prescription medication, nonprescription medication, and vitamins for each child must be maintained in the medication record, which must be incorporated into the child's record.
- (c) The medication records of prescription and nonprescription medication dispensed to the child must be incorporated into the child's record.

**§749.1543. Where must a child's medication records be maintained?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) The foster parents must maintain at the foster home the child's medication records for 30 days.
- (b) Foster parents must submit copies of the child's medication records to you each month. You must file these medication records in the child's record.
- (c) You must maintain copies of all the child's medication records for the length of time that you provide services to the child.

**§749.1545. What other requirements must I meet regarding medication records?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

You must make suitable forms available to caregivers for maintaining adequate records of all medications administered to a child.

**Division 6, Medication and Label Errors****§749.1561. What is a medication error?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

A medication error includes, but is not limited to, the following:

- (1) A child receives the wrong medication;
- (2) A child receives medication prescribed to someone else;
- (3) A child receives the wrong dosage of medication;
- (4) A child receives medication at the wrong time;
- (5) A medication dose is skipped or missed;
- (6) A child receives expired medication;
- (7) Not following the medication administration instructions, such as giving a child medication on an empty stomach when the medication should be given with food; and
- (8) A child receives medication that was not stored as required to maintain the effectiveness of the medication, such as refrigerating or not refrigerating the medication or exposing the medication to heat or sunlight.

**§749.1563. What must a caregiver do if the caregiver finds a medication error?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) If a caregiver finds a medication error regarding a prescribed medication, the caregiver must contact a health-care professional immediately, unless the error is the type described in paragraph (4) or (5) of §749.1561 of this title (relating to What is a medication error?), and follow the health-care professional's recommendations.
- (b) If a caregiver finds a medication error regarding a nonprescription medication, the caregiver must take the appropriate and necessary actions as required by the circumstances.
- (c) For all medication errors, a caregiver must document the following within 24 hours:
  - (1) The time and date of the error;
  - (2) The medication error;
  - (3) The time and date of the call(s) to the licensed health-care professional, if applicable;
  - (4) The name and title of the health-care professional contacted, if applicable; and
  - (5) The health-care professional's medical recommendations for ensuring the child's safety, if applicable.

**§749.1565. What must a caregiver do if the caregiver finds a medication label error?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

If a caregiver finds a medication label error, the caregiver must:

- (1) Report the error to the pharmacist; and
- (2) Have the label on the medication container corrected as soon as possible but no later than the next business day.

**Division 7, Side Effects and Adverse Reactions to Medication****§749.1581. What must caregivers do if a child has an adverse reaction to a medication?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

If a child has an adverse reaction to a medication, the caregiver must:

- (1) Immediately report the reaction to a health-care professional;
- (2) Follow the health-care professional's recommendations;

*(continued)*

- (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?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

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 physician; and
- (3) Report any other side effect to the prescribing physician within 72 hours.

## **Division 8, Use of Psychotropic Medication**

**§749.1603. If my agency employs or contracts with a health-care professional who prescribes psychotropic medications to a child in care, what information must I provide the person legally authorized to give consent before requesting his consent for the child to be placed on psychotropic medication?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) Before requesting the person's written consent to give the child psychotropic medication, the prescribing health-care professional must give the following in writing or document a discussion with the person or a combination of both:
  - (1) The child's diagnosis;
  - (2) The nature of the child's mental illness or condition;
  - (3) An explanation of the purpose of the medication;
  - (4) A description of the benefits expected;
  - (5) A description of any accompanying discomforts and risks, including those which could result from long-term use of the medication, and possible side effects, including side effects that are known to frequently occur in persons, side effects to which the child may be predisposed, and the nature and possible occurrence of irreversible symptoms;

*(continued)*

- (6) A statement of whether the medication is habituating in nature;
  - (7) Alternative interventions to the use of psychotropic medication that have been attempted and that have been unsuccessful;
  - (8) Other alternative treatments or procedures to the use of the psychotropic medication;
  - (9) Risks and benefits of the alternative treatments or procedures;
  - (10) Risks and benefits of not receiving or undergoing a treatment or procedure;
  - (11) An explanation that the person legally authorized to give medical consent may ask questions about the child's response to the medication, and may review your daily records on request; and
  - (12) An explanation that the person legally authorized to give medical consent may withdraw consent and request the medication be discontinued at any time.
- (b) The health-care professional must offer to answer any questions the person legally authorized to give consent has about the medication.
- (c) The person must sign a consent form that acknowledges that you have provided all of the information set forth in subsection (a) of this section. A copy of this signed consent form must be filed in the child's record.

**§749.1605. If my agency does not employ or contract with the health-care professional who prescribes psychotropic medications to a child in care, what information must I provide the person legally authorized to give medical consent prior to the health-care professional prescribing psychotropic medications to a child in care?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

If you are requesting consent and the person legally authorized to give consent is not privy to this information, you must:

- (1) Before requesting the person's written consent to give the child psychotropic medication, provide information in writing or document a discussion with the person regarding:
  - (A) The nature of the child's mental illness or condition;
  - (B) A general explanation of the purpose of the medication;
  - (C) A general description of the benefits expected;
  - (D) An explanation that the person may ask questions about the child's response to the medication; and
  - (E) An explanation that the person may withdraw medical consent and request the medication be discontinued at any time.

*(continued)*



- (2) Offer to answer any questions the person legally authorized to give medical consent has about the medication and/or provide the name and telephone number of the prescribing health-care professional for further information.
- (3) Obtain a signed consent form from the person legally authorized to give medical consent that acknowledges that you have provided all of the information set forth in paragraph (1) of this section. A copy of this signed consent form must be filed in the child's record.

**§749.1607. What are the requirements if a physician orders administration of a psychotropic medication to a child in an emergency?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) If a physician has made a determination that there is an emergency according to §266.009 of the Family Code and the emergency requires the administration of a psychotropic medication, then you must follow the physician's orders and do not have to obtain consent prior to the administration of the medication.
- (b) Within 72 hours after you have administered the medication, you must notify the parent and the person legally authorized to give medical consent.
- (c) The physician's statement regarding the emergency and the prescription must be documented in the child's record.

**§749.1609. What information must be documented about a child's use of psychotropic medication?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You must ensure that caregivers maintain a daily record of the child's use of such medication according to the requirements in §749.1541 of this title (relating to What records must caregivers maintain for each child receiving medication?).
- (b) Caregivers must document in the child's record a description of any noticeable change in the child's behavior in response to the medication.
- (c) You must provide the information in subsection (b) of this section to the prescribing health-care professional or the child's current health-care professional to use in evaluating the appropriateness of continuing the medication. You must document the health-care professional's evaluation and review in the child's record.

**§749.1611. If my agency employs or contracts with a health-care professional who prescribes psychotropic medications to a child in care, what are the requirements for evaluating whether a child should continue taking a psychotropic medication?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) If a child takes psychotropic medications, the prescribing health-care professional must evaluate and document in the child's medication record a description of the child's response to the medication and an assessment of its effectiveness and the appropriateness of continuing the medication on at least a quarterly basis. The written evaluation must include any reasons for discontinuing the medication.
- (b) If the health-care professional decides that he can evaluate the appropriateness of continuing the medication without seeing the child, you do not have to schedule an appointment for the evaluation.
- (c) The health-care professional must consider the target symptoms and treatment goals in evaluating the child's use of psychotropic medications.
- (d) The health-care professional must document whether the child needs to continue taking the medication. You must document the health-care professional's decision in the child's record.
- (e) If the health-care professional does not substantiate the effectiveness of a specific psychotropic medication within 90 days, the health-care professional must provide a written rationale for continuing the medication for an additional period. The continuation of the medication may not exceed an additional 90 days (for a total of 180 days) if the health-care professional does not substantiate effectiveness. A copy of the written rationale must be documented in the child's record.

## **Division 9, Protective Devices**

**§749.1641. What is a protective device?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) A protective device:
  - (1) Protects a person from involuntary self-injurious behavior or permits wounds to heal; and
  - (2) Does not prohibit a person's mobility.
- (b) Examples of a protective device are helmets, elbow guards, mittens, bedrails, and wheelchair seat belts.
- (c) If used appropriately, devices intended to encourage mobility or minimally restrain a young child for safety purposes, such as wheelchairs, car seats, high chairs, strollers, bed rails, and child leashes manufactured and sold specifically to harness a young child for safety purposes, are not protective devices.

**§749.1643. What does “involuntary self-injurious behavior” mean when used in this division?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

Involuntary self-injurious behavior means a person’s physical movements that are automatic and not subject to control of the person’s will that may inflict injury to the person.

**§749.1645. May I use protective devices?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You may use protective devices if a licensed physician orders their use for a specific child. The orders must indicate the circumstances under which the protective device is permitted.
- (b) You may not use protective devices as:
  - (1) Punishment;
  - (2) Retribution or retaliation;
  - (3) A means to get a child to comply;
  - (4) A convenience for caregivers or other persons; or
  - (5) A substitute for effective treatment or habilitation.
- (c) You must document the use of protective devices in the child's record, service plan, and service plan reviews. The service planning team must discuss and document in the child’s service plan reviews:
  - (1) Clinical justification for continued use of protective devices; and
  - (2) Ways to reduce the need for protective devices.

**§749.1647. Who may use PRN orders with respect to protective devices?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

A licensed physician ordering protective devices may use PRN orders. The physician must review PRN orders for protective devices at least every 90 days.

## Division 10, Supportive Devices

### §749.1671. What is a supportive device?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) A supportive device used:
  - (1) To support a person's posture;
  - (2) To assist a person who cannot obtain and/or maintain normal physical functioning to improve his mobility and independent functioning; or
  - (3) As an adjunct to proper care and treatment, for example physical therapy.
- (b) The purpose of a supportive device is not to restrict movement.

### §749.1673. May I use supportive devices?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You may use supportive devices if a licensed physician orders their use for a specific child. The orders must indicate the circumstances under which the supportive device is permitted.
- (b) You may not use a supportive device as a substitute for appropriate nursing care.
- (c) You may not use supportive devices that include tying or depriving or limiting the use of a child's hands or feet.
- (d) You may not use supportive devices as:
  - (1) Punishment;
  - (2) Retribution or retaliation;
  - (3) Means to get a child to comply;
  - (4) A convenience for caregivers or other persons; or
  - (5) A substitute for effective treatment or habilitation.
- (e) If a device is not specifically for assisting with sleep or safety during sleep, you must remove the device during rest periods.
- (f) You must document the use of supportive devices in the child's record, service plan, and service plan reviews. The service planning team must discuss and document in the child's service plan reviews:
  - (1) Clinical justification for continued use of supportive devices; and
  - (2) Ways to reduce the need for supportive devices.

### §749.1675. Who may use PRN orders with respect to supportive devices?

*DFPS Rules, 40 TAC, effective January 1, 2007*

A licensed physician ordering supportive devices may use PRN orders. The physician must review PRN orders for supportive devices at least every 90 days.

## Subchapter K, Foster Care Services: Daily Care, Problem Management

### Division 1, Additional Requirements for Infant Care

#### §749.1801. What do certain words mean in this division?

*DFPS Rules, 40 TAC, effective January 1, 2007*

These words have the following meanings in this division:

- (1) Baby bungee jumper - A bucket seat that is suspended from a doorway by an elastic bungee cord that allows an infant to bounce while sitting in the seat.
- (2) Baby walker - A baby walker allows an infant to sit inside the walker equipped with rollers or wheels and move across the floor.
- (3) Bouncer seat - A stationary seat designed to provide gentle rocking or bouncing motion by an infant's movement or by battery-operated movement. This type of equipment is designed for an infant's use from birth until the child can sit up unassisted.

#### §749.1803. What are the basic care requirements for an infant?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (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) An infant's caregiver must never leave the infant unsupervised. A sleeping infant is considered supervised if the caregiver is within eyesight or hearing range of the child and can intervene as needed, or if the caregiver uses a video camera or audio monitoring device to monitor the child and is close enough to the child to intervene 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.

*(continued)*

**Best Practice Suggestion continued.....**

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 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.

**§749.1805. What furnishings and equipment must I have in an infant care area?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

An infant care area must at a minimum include the following furnishings and equipment:

- (1) An individual crib for each infant; and
- (2) A sufficient number of toys to keep each child engaged in activities.

**§749.1807. What specific safety requirements must my cribs meet?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) All cribs must have:
  - (1) A firm, flat mattress that snugly fits the sides of the crib. The mattress must not be supplemented with additional foam material or pads;
  - (2) Sheets that fit snugly and do not present an entanglement hazard;
  - (3) A mattress that is waterproof or washable;
  - (4) Secure mattress support hangers, and no loose hardware or improperly installed or damaged parts;
  - (5) A maximum of 2 3/8 inches between crib slats or poles;
  - (6) No corner posts over 1/16 inch above the end panels;
  - (7) No cutout areas in the headboard or footboard that would entrap a child's head or body; and
  - (8) Drop rails, if present, which fasten securely and cannot be opened by a child.

*(continued)*

- (b) Caregivers must sanitize each crib when soiled and before reassigning the crib to a different child.
- (c) Caregivers must never leave children in the crib with the side down.
- (d) The foster home must not have stackable cribs.

**§749.1809. Are mesh cribs or port-a-cribs allowed?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

A foster home may use a full-size, portable, or mesh-side crib if:

- (1) Caregivers follow the manufacturer's instructions;
- (2) The crib has:
  - (A) Mesh that is securely attached to the top rail, side rail, and floor plate; and
  - (B) Folded sides that securely latch in place when raised;
- (3) Caregivers never leave a child in a mesh-sided crib with a side folded down; and
- (4) If you become aware of a recall for the port-a-crib used, you must discontinue its use.

**Best Practice Suggestion** .....

It is a good idea for the crib to have:

- A minimum height of 22 inches from the top of the railing to the mattress support at its lowest level; and
- Mesh openings that are 1/4 inch or less.

**§749.1811. What equipment must have safety straps before I can use it with an infant?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) A high chair, swing, stroller, infant carrier, rocker, bouncer seat, or a similar type of equipment that a foster home uses for an infant must be equipped with safety straps; and
- (b) The safety straps must be fastened whenever the infant is using the equipment.

**§749.1813. What types of equipment may a foster home not use with infants?***DFPS Rules, 40 TAC, effective January 1, 2007*

- (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 enough to swallow or choke a child.
- (b) Children may not sleep on bean bags, waterbeds, or foam pads.
- (c) A foster home may not use soft bedding, such as stuffed toys, quilts, pillows, bumper pads, and comforters in a crib for an infant six months old or younger.

**Helpful Information .....**

- Baby walkers present a hazard due to risk of falls down stairs, 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.
- 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.
- 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<sup>®</sup> 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.

**§749.1815. Are infants required to sleep on their backs?***DFPS Rules, 40 TAC, effective January 1, 2007*

Yes. 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.

**§749.1817. If an infant has difficulty falling asleep, may the infant's head or crib be covered?***DFPS Rules, 40 TAC, effective January 1, 2007*

No. An Infant must not have his head, face, or crib covered at any time by an item such as a blanket, linen, or clothing.



**§749.1819. What are the specific requirements for feeding an infant?***DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) Caregivers must feed an infant based on the recommendations of the infant's licensed physician.
- (b) Unless recommendations from the service team are contrary, caregivers must hold the infant while feeding him if the infant 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 child or adult's hand.
- (d) A caregiver who cares for more than one infant must:
  - (1) Not permit the infant to share bottles or training cups; 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 children no longer being held for feeding are fed in a safe manner.

**Division 2, Additional Requirements for Toddler Care****§749.1841. What are the basic care requirements for a toddler?***DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) Each toddler must receive individual attention, including playing, talking, and cuddling.
- (b) A toddler's caregiver must ensure that the environment is safe. For example, free the area of objects that may choke or harm the toddler, 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.
- (c) A toddler's caregiver must never leave the toddler unsupervised. A sleeping toddler is considered supervised if the caregiver is within eyesight or hearing range of the child and can intervene as needed, or if the caregiver uses a video camera or an audio monitoring device to monitor the child and is close enough to the child to intervene as needed.

*(continued)*

**Best Practice Suggestion .....**

Best practice for toddler care suggests:

- Care given by the same caregiver on a regular basis, when possible;
- Individual attention given to each child including playing, talking, and cuddling; and
- Holding and comforting a child who is upset.

Best practice suggests that furnishings and equipment for toddlers include the following:

- Age-appropriate seating, tables, and nap or sleep equipment;
- Enough popular items available so that toddlers are not forced to compete for them; and
- Containers or low shelving so items that children can safely use without direct supervision are accessible to the children.

Best practices for nap or rest time include the following:

- Schedule a supervised sleep or rest period after the noon meal for children 12 months of age or older or according to the child's individual physical needs;
- Lighting should allow for visual supervision of the children;
- Limit the sleep or rest period to no more than three hours;
- Do not force children to sleep and do not put anything in or on a child's head or body to force the child to rest or sleep;
- Allow each child who is awake after resting or sleeping for one hour to participate in an alternative, quiet activity until the nap/rest time is over for other children who may be resting; and
- Take a toddler who sleeps or rests in a crib out of the crib for other activities when the child awakens.

### Division 3, Additional Requirements for Pregnant Children

#### §749.1861. What information must I provide a pregnant child regarding her pregnancy?

*DFPS Rules, 40 TAC, effective January 1, 2007*

You must:

- (1) Ensure information, training, and counseling is available regarding health aspects of pregnancy, preparation for child birth, and recovery from child birth;
- (2) Ensure the pregnant child receives nutritional counseling and guidance that meets generally accepted standards, including nutrition during pregnancy, lactation, and foods to avoid; and
- (3) Inform the child of her right to be free from pressure to get an abortion, relinquish her child for adoption, or to parent her child.

**§749.1863. Is the use of emergency behavior intervention of a pregnant child permitted in a foster home?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

If your policies allow for the use of personal restraints on a pregnant child:

- (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.

**§749.1865. If my policies permit the admission of adolescent parents with their child(ren), who is responsible for the care of an adolescent's child?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

If your policies permit the admission of adolescent parents with their child(ren):

- (1) An adolescent parent must provide most of the care for her child;
- (2) Caregivers must be available to the adolescent parent as a resource and support; and
- (3) When you care for an adolescent's child in the adolescent parent's absence, you are responsible for that child as if the child is in your care.

**Division 4, Educational Services****§749.1891. What responsibilities do I have for the education of a child in care?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (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, the Texas Private School Accreditation Commission unless approved by the child's service planning team with documented justification;
  - (2) Ensuring a school-age child has the training and education 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 that implements a special education student's individual education plan (IEP); and

*(continued)*

- (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?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

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 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, IEP, and ITP meetings if concerned with the child's educational program or if the child does not appear to be making progress; and
- (7) 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 a pervasive development disorder?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

You must ensure that the educational program for a child with a pervasive development disorder:

- (1) Encourages normalization through appropriate stimulation and by encouraging self-help skills; and
- (2) Is appropriate to his intellectual and social functioning.

## Division 5, Recreational Services

### §749.1921. What responsibilities do foster parents have for providing a child with opportunities for recreational activities?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) Caregivers must provide daily indoor and outdoor recreational and other activities appropriate to the needs, interests, and abilities of the children so every child may participate.
- (b) Except for written medical orders to the contrary, your programs for non-ambulatory children must include:
  - (1) Physical fitness development that prescribes a variety of body positions; and
  - (2) Changes in environment.
- (c) Each child must have individual free time as appropriate to the child's age and abilities.
- (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 (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; (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 (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, pervasive developmental disorder, or mental retardation.

**§749.1923. What physical fitness activities must caregivers provide for a child receiving treatment services for primary medical needs or mental retardation?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) A child receiving treatment services for primary medical needs or mental retardation 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?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

A child receiving treatment services for primary medical needs or mental retardation 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.

**§749.1927. To what extent must a child receiving treatment services for primary medical needs or mental retardation have community living experiences?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

The child's surroundings and experiences must reflect normal patterns of community living as closely as possible and as appropriate for the child's special needs.

**Division 6, Discipline and Punishment****§749.1951. What are the requirements for disciplinary measures?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) Only a caregiver known to and knowledgeable of a child may discipline the child.
- (b) Each disciplinary measure must:
  - (1) Be consistent with your policies and procedures;
  - (2) Not be physically or emotionally damaging to the child;
  - (3) Be individualized to meet each child's needs;
  - (4) Be appropriate to the child's level of understanding, age, and developmental level; and
  - (5) Be appropriate to the incident and severity of the behavior demonstrated.

*(continued)*

- (c) The goal of each disciplinary measure must be to teach the child acceptable behavior and self-control. The caregiver must explain the reason for the disciplinary measure when the caregiver imposes the measure.

**Best Practice Suggestion** .....

It is a good idea for disciplinary measures to be consistent among caregivers. Using positive methods of discipline and guidance encourage self-esteem, self-control, and self-direction. Positive methods of discipline include the following:

- Using praise, positive reinforcement, and encouragement of good behavior instead of focusing only on unacceptable behavior;
- Reminding a child of behavior expectations daily by using clear, positive statements;
- Talking with the child about the situation;
- Focusing on the rule to learn and the reason for the rule;
- Focusing on solutions that are respectful, reasonable, and related to the problem behavior, rather than blaming or focusing on consequences;
- Redirecting the child's attention or behavior using positive statements;
- Providing prior notice of possible consequences for inappropriate behaviors;
- Giving the child acceptable choices or alternatives;
- Using brief supervised separation or time away from the group or situation, when appropriate for the child's understanding, age, and development. Best practice suggests that quiet time or time out from the group be limited to no more than one minute per year of the child's chronological or developmental age. However, this time frame may need to be adjusted for some children, such as a child who has attention-deficit disorder. Time out is not appropriate for infants and is not recommended for toddlers, since they are too young to understand this intervention;
- Arranging the environment to allow safe testing of limits;
- Using kind but firm action;
- Giving logical consequences that are appropriate to the situation and severity of the behavior; and
- Withholding privileges.

**§749.1953. May I use corporal punishment for children in care?***DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You may not use or threaten to use corporal punishment with any child in care.
- (b) Corporal punishment is the infliction of physical pain on any part of a child's body as means of controlling or managing the child's behavior. It includes:
  - (1) Hitting or spanking a child with a hand or instrument; or
  - (2) Forcing or requiring the child to do any of the following as a method of managing or controlling behavior:
    - (A) Perform any form of physical exercise, such as running laps or doing sit ups or push ups;
    - (B) Hold a physical position, such as kneeling or squatting; or
    - (C) Do any form of "unproductive work."

**§749.1955. What is "unproductive work"?***DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) "Unproductive work" is work that serves no purpose except to demean the child. Examples include moving rocks or logs from one pile to another or digging a hole and then filling it in. Unproductive work is never an appropriate behavior management tool.
- (b) "Unproductive work" does not include work that corrects damage that the child's behavior caused. For example, you may require a child who defaces a fence or wall to repaint it. This example includes a logical consequence and an acceptable behavior management tool.

**§749.1957. What other methods of punishment are prohibited?***DFPS Rules, 40 TAC, effective January 1, 2007*

In addition to corporal punishment, prohibited discipline techniques include, but are not limited to:

- (1) Any harsh, cruel, unusual, unnecessary, demeaning, or humiliating discipline or punishment;
- (2) Denial of mail or visits with their families as discipline or punishment;
- (3) Threatening with the loss of placement as discipline or punishment;
- (4) Using sarcastic or cruel humor and verbal abuse;
- (5) Maintaining an uncomfortable physical position, such as kneeling, or holding his arms out;
- (6) Pinching, pulling hair, biting, or shaking a child;
- (7) Putting anything in or on a child's mouth, such as soap or tape;
- (8) Humiliating, shaming, ridiculing, rejecting, or yelling at a child;

*(continued)*



- (9) Subjecting a child to abusive or profane language;
- (10) Placing a child in a dark room, bathroom, or closet;
- (11) Requiring a child to remain silent or inactive for inappropriately long periods of time for the child's age;
- (12) Confining a child to a highchair, box, or other similar furniture or equipment as discipline or punishment;
- (13) Denying basic child rights as a form of discipline or punishment;
- (14) Withholding food that meets the child's nutritional requirements; and
- (15) Using or threatening to use emergency behavior intervention as discipline or punishment.

**§749.1959. To what extent may a caregiver restrict a child's activities as a behavior management tool?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (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 will be imposed on a child for more than 30 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?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

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?).



## Subchapter L, Foster Care Services: Emergency Behavior Intervention

### Division 1, Definitions

#### §749.2001. What do certain words mean in this subchapter?

*DFPS Rules, 40 TAC, effective June 1, 2008*

These words 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(13) of this title (relating to What do certain words and terms mean in this chapter?).
- (3) Emergency behavior intervention – See §749.43(17) 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.

*(continued)*

- (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(43) of this title (relating to What do certain words and terms mean in this chapter?).
- (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) 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.

## **Division 2, Types of Emergency Behavior Intervention That May Be Administered**

### **§749.2051. What types of emergency behavior intervention may I administer?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) If permitted in your policies and you meet the requirements of this subchapter, a caregiver may administer the following types of emergency behavior intervention to a child in your care:
  - (1) Short personal restraint;
  - (2) Personal restraint; and
  - (3) Emergency medication.

*(continued)*

- (b) You may never administer chemical restraints, mechanical restraints, or seclusion.
- (c) Protective and supportive devices, used appropriately, are not considered emergency behavior interventions. For information on protective and supportive devices, see Divisions 9 and 10 of Subchapter J of this chapter (relating to Foster Care Services: Medical and Dental).

**§749.2053. Who may administer emergency behavior intervention?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

Only a caregiver qualified in emergency behavior intervention may administer any form of emergency behavior intervention, except for the short personal restraint of a child.

**§749.2055. What actions must a caregiver take before using a permitted type of emergency behavior intervention?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

Before using a permitted type of emergency behavior intervention, the caregiver must:

- (1) Attempt less restrictive behavior interventions that prove to be ineffective at defusing the situation; and
- (2) Determine that the basis for the emergency behavior intervention is:
  - (A) An emergency situation;
  - (B) A need for a personal restraint to administer intra-muscular medication or other medical treatments prescribed by a licensed physician, such as administering insulin to a child with diabetes; or
  - (C) A need for a personal restraint in a foster home where a child is significantly damaging property, such as breaking car windows or putting holes into walls. If this is the basis of the personal restraint, only a short personal restraint may be used and only to prevent the damage.

**§749.2059. What is the appropriate use for a short personal restraint?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

Generally, a short personal restraint is used in urgent situations, such as:

- (1) To protect the child from external danger that causes imminent significant risk to the child, such as preventing the child from running into the street or coming into contact with a hot stove. The restraint must end immediately after the danger is averted.
- (2) To intervene when a child under the age of five (chronological or developmental age) demonstrates disruptive behavior, if other efforts to de-escalate the child's behavior have failed; or
- (3) When a child over five years old demonstrates behavior disruptive to the environment or milieu, such as disrobing in public, provoking others that creates a safety risk, or to intervene to prevent a child from physically fighting.

**§749.2061. What precautions must a caregiver take when implementing a short personal restraint?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) When a caregiver implements a short personal restraint, the caregiver must:
  - (1) Minimize the risk of physical discomfort, harm, or pain to the child; and
  - (2) Use the minimal amount of reasonable and necessary physical force.
- (b) A caregiver may not use any of the following techniques as a short personal restraint:
  - (1) A prone or supine restraint;
  - (2) Restraints that impair the child's breathing by putting pressure on the child's torso, including leaning a child forward during a seated restraint;
  - (3) Restraints that obstruct the airways of the child or impair the breathing of the child, including procedures that place anything in, on, or over the child's mouth, nose, or neck, or impede the child's lungs from expanding;
  - (4) Restraints that obstruct the caregiver's view of the child's face;
  - (5) Restraints that interfere with the child's ability to communicate or vocalize distress; or
  - (6) Restraints that twist or place the child's limb(s) behind the child's back.

**§749.2063. Are there any purposes for which emergency behavior intervention cannot be used?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

Emergency behavior intervention may never be used as:

- (1) Punishment;
- (2) Retribution or retaliation;
- (3) A means to get a child to comply;
- (4) A convenience for caregivers or other persons; or
- (5) A substitute for effective treatment or habilitation.

### Division 3, Orders

**§749.2101. Are written orders required to administer emergency behavior intervention, and if so, who can write them?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

According to the following chart, written orders by certain professionals are required to administer certain emergency behavior intervention:

Type of Emergency Behavior Intervention	(A) Are written orders required to administer the intervention for a specific child?	(B) Who can write orders for the use of the intervention for a specific child?
(1) Short personal restraint	(A) NO.	(B) Not applicable.
(2) Personal restraint	(A) NO. However, successive restraints, a restraint simultaneous with emergency medication, and/or a restraint that exceeds the maximum time limit all require orders as specified in this subchapter. PRN orders are also permitted under §749.2107 of this title (relating to Under what conditions are PRN orders permitted for a specific child?).	(B) Not Applicable.
(3) Emergency medication	(A) YES.	(B) A licensed physician.

**§749.2103. Must the written order be in a child's record before a caregiver can use an emergency behavior intervention on a child?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

Yes, any type of written order that is required must be in the child's record before a caregiver can use emergency behavior intervention on that child.

**§749.2105. What information must a written order include?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) All written orders must include the following:
- (1) A statement that the particular type of emergency behavior intervention may only be used in an emergency situation;
  - (2) Designation of the specific intervention and procedure or technique that is authorized;
  - (3) Any specific measures for ensuring the child's health, safety, and well being, and the privacy of the setting that safeguards the child's personal dignity;
  - (4) A complete description of the behaviors and circumstances under which the intervention may be used;
  - (5) Instructions for observation or heightened observation of the child during the intervention;
  - (6) The behaviors that indicate the child is ready to be released from the intervention;
  - (7) The maximum length of time the child may be restrained regardless of behaviors exhibited;
  - (8) The prescribing professional's consideration of any potential medical and/or psychiatric contraindications for the specific child, such as a history of physical or sexual abuse or victimization involving the type of intervention; and
  - (9) Clinical justification for the intervention.
- (b) For emergency medication, the written order must also include instructions on how to administer the medication.



**§749.2107. Under what conditions are PRN orders permitted for a specific child?***DFPS Rules, 40 TAC, effective January 1, 2007*

PRN orders for certain emergency behavior interventions are permitted under the following conditions:

<b>Type of Emergency Behavior Intervention</b>	<b>Conditions:</b>
(1) Short personal restraint	Not applicable, because short personal restraints do not require orders.
(2) Personal restraint	<p>(A) Orders must include the number of times a child may be restrained in a seven-day period.</p> <p>(B) If the orders allow more than three restraints within a seven-day period, the order must include a plan for reducing the need for emergency behavior intervention.</p> <p>(C) The licensed psychiatrist or psychologist must review PRN orders for personal restraint at least every 30 days. The review must include written clinical justification for the continuation of PRN orders and be documented in the child's record.</p> <p>(D) PRN orders may not be used to restrain a child beyond the maximum length of time for personal restraint. See §749.2281 of this title (relating to What is the maximum length of time that an emergency behavior intervention can be administered to a child?).</p>
(3) Emergency medication	The licensed physician must review PRN orders for emergency medication at least every 30 days. The review must include written clinical justification for the continuation of PRN orders and be documented in the child's record.

## 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?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) The use of emergency behavior intervention must be an appropriate response to the behavior demonstrated, and de-escalation must have failed.
- (b) The caregiver must act to protect the child's safety and consider the:
  - (1) Characteristics of the immediate physical environment;
  - (2) Permitted types of emergency behavior intervention; and
  - (3) Potential risk of harm in using emergency behavior intervention versus the risk of not using emergency behavior intervention.
- (c) The caregiver must:
  - (1) Initiate an emergency behavior intervention in a way that minimizes the risk of physical discomfort, harm, or pain to the child; and
  - (2) Use the minimal amount of reasonable and necessary physical force to implement the intervention.
- (d) The caregiver must make every effort to protect the child's:
  - (1) Privacy, including shielding the child from onlookers; and
  - (2) Personal dignity and well-being, including ensuring that the child's body is appropriately covered.
- (e) As soon as possible after starting any type of emergency behavior intervention, the caregiver must:
  - (1) Explain to the child the behaviors the child must exhibit to be released or have the intervention reduced, if applicable; and
  - (2) Permit the child to suggest actions the caregivers can take to help the child de-escalate.
- (f) If the child does not appear to understand what he 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.

### §749.2153. When must a caregiver release a child from an emergency behavior intervention?

*DFPS Rules, 40 TAC, effective January 1, 2007*

A child must be released as follows:

Type of Emergency Behavior Intervention	The caregiver must release the child:
(1) Short personal restraint	(A) Immediately when an emergency health situation occurs during the restraint. The caregiver must obtain treatment immediately; or (B) Within one minute, or sooner if the danger is over or the disruptive behavior is de-escalated.
(2) Personal restraint	(A) Immediately when an emergency health situation occurs during the restraint. The caregiver must obtain treatment immediately; (B) Within one minute of the implementation of a prone or supine hold; (C) As soon as the child's behavior is no longer a danger to himself or others, the medication was administered, or the child is no longer damaging property; or (D) When the maximum time allowed for personal restraint is reached.
(3) Emergency medication	Not applicable.

## Division 5, Additional Responsibilities During Administration of a Personal Restraint

### §749.2201. Who must monitor a personal restraint?

*DFPS Rules, 40 TAC, effective January 1, 2007*

During any personal restraint, a caregiver qualified in emergency behavior intervention must monitor the child's breathing and other signs of physical distress and 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?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

Appropriate action includes responding prudently to a potentially life-threatening situation, for example, releasing a child when a child is unresponsive or indicates he 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 struggles to breathe.

**Helpful Information .....**

Signs of distress:

- Circulation – Are the child's extremities cold to the touch? Are the child's extremities turning blue or is the child turning blue around the mouth?
- Respiration – Is the child's breathing rapid and shallow? Is there an absence of breathing? Is the child saying he or she cannot breathe?
- Neurological – Is the child disoriented? Is he or she having a seizure?
- Gastrointestinal – Is the child vomiting or losing control of his or her bowels?
- Muscular-Skeletal – Is there apparent bruising, swelling, and/or complaints of pain?

**§749.2205. What personal restraint techniques are prohibited?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) The following personal restraint techniques are prohibited:
- (1) Restraints that impair the child's breathing by putting pressure on the child's torso, including restraints that obstruct the child's lungs from expanding such as leaning a child forward during a seated restraint;
  - (2) Restraints that obstruct the child's airway, including procedures that place anything in, on, or over the child's mouth, nose, or neck;
  - (3) Restraints that obstruct a caregiver's ability to view the child's face;
  - (4) Restraints that interfere with the child's ability to communicate or vocalize distress; or
  - (5) Restraints that twist or place the child's limb(s) behind the child's back.
- (b) Prone and supine restraints are also prohibited as a short personal restraint.

*(continued)*

- (c) Prone and supine restraints are also prohibited as a personal restraint except:
  - (1) As a transitional hold that lasts no longer than one minute;
  - (2) As a last resort when other less restrictive interventions have proven to be ineffective; and
  - (3) When an observer meeting the following qualifications ensures the child's breathing is not impaired:
    - (A) Trained to identify risks associated with positional, compression, or restraint asphyxia; and
    - (B) Trained to identify risks associated with prone and supine holds.

## Division 6, Combinations of Emergency Behavior Intervention

### **§749.2231. May a caregiver successively use emergency behavior interventions on a child?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) A caregiver may successively use emergency behavior interventions on a child only if:
  - (1) Allowed by your policies;
  - (2) Permitted by rules of this subchapter for both types of emergency behavior intervention; and
  - (3) Written orders specifically allow the combination.
- (b) The written orders must include clinical justification for the successive use of emergency behavior interventions that goes beyond the justification for the use of a single intervention. The licensed physician ordering the emergency medication must provide clinical justification for the combination of emergency medication and personal restraint.
- (c) A caregiver must allow the child:
  - (1) Bathroom privileges 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.

**§749.2233. May a caregiver simultaneously use emergency medication in combination with personal restraint?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) A caregiver may simultaneously use emergency medication in combination with personal restraint only if:
  - (1) Allowed by your policies;
  - (2) Permitted by the rules of this subchapter for both types of emergency behavior intervention; and
  - (3) Written orders specifically allow the combination.
- (b) The written orders must include clinical justification for the combination of emergency medication with personal restraint that goes beyond the justification for the use of a single emergency behavior intervention. If they are different people, both the licensed physician ordering the emergency medication and the professional ordering the personal restraint must provide the clinical justification for the combination.

**Division 7, Time Restrictions for Emergency Behavior Intervention**

**§749.2281. What is the maximum length of time that an emergency behavior intervention can be administered to a child?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

The maximum length of time that certain emergency behavior interventions can be administered to a child is as follows:

<b>Types of Emergency Behavior Intervention</b>	<b>The maximum length of time is:</b>
(1) Short personal restraint	One minute.
(2) Personal restraint	(A) For a child under nine years old, 30 minutes. (B) For a child nine years old or older, one hour. (C) A prone or supine personal restraint hold may not exceed one minute.
(3) Emergency medication	Not applicable.

**§749.2283. Can a caregiver exceed the maximum length of time that an emergency behavior intervention can be administered to a child?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

A caregiver may exceed the maximum length of time for certain emergency behavior interventions as follows:

<b>Types of Emergency Behavior Intervention</b>	<b>The maximum length of time is:</b>
(1) Short personal restraint	May not be exceeded.
(2) Personal restraint	May be exceeded if the caregiver obtains a written continuation order before the end of the time period from a licensed psychiatrist with written clinical justification: (A) Indicating that the emergency situation continues to exist; and (B) For the length of time he permits the child to be restrained.
(3) Emergency medication	Not applicable.

**Division 8, General Caregiver Responsibilities, Including Documentation, After the Administration of Emergency Behavior Intervention**

**§749.2301. What follow-up actions must caregivers take after the child's behavior no longer constitutes an emergency situation?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) The caregivers must take appropriate actions to help the child return to routine activities. The follow-up actions of the caregivers must include:
- (1) Providing the child with an appropriate transition and offering the child an opportunity to return to regular activities;
  - (2) Observing the child for at least 15 minutes; and
  - (3) Providing the child with an opportunity to discuss the situation that led to the need for emergency behavior intervention and the caregiver's reaction to that situation. The discussion must be held in private as soon as possible and no later than 48 hours after the child's use of an emergency medication or release from any emergency behavior intervention.

*(continued)*

- (b) Caregivers involved in the emergency behavior intervention must conduct a post-emergency behavior intervention discussion. The goal of the discussion is to allow the child and caregiver to discuss:
  - (1) The child's behavior and the circumstances that constituted the need for an emergency behavior intervention;
  - (2) The strategies attempted before the use of the emergency behavior intervention and the child's reaction to those strategies;
  - (3) The emergency behavior intervention itself and the child's reaction to the emergency behavior intervention;
  - (4) How caregivers can assist the child in regaining self-control in the future to avoid the administration of an emergency behavior intervention; and
  - (5) What the child can do to regain self-control in the future to avoid the administration of an emergency behavior intervention.
- (c) Caregivers involved in the emergency behavior intervention must:
  - (1) Debrief with child placing staff concerning the incident as soon as possible after the situation has stabilized; and
  - (2) Make reasonable efforts to debrief with children in care who witness the incident.
- (d) The child placing staff must review the use of the emergency behavior intervention within 72 hours of the intervention.
- (e) The caregivers do not have to return the child to previous activities or place the child in current activities that the group is participating in if the caregivers deem the child's participation is not in the best interests of the child or the other children in the group. However, caregivers must engage the child in an alternative routine activity.
- (f) This rule does not apply to short personal restraint.

**§749.2303. What must the caregiver document after discussing with the child the use of the emergency behavior intervention?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) The date and time the caregiver offered the discussion;
- (b) The child's reaction to the opportunity for discussion;
- (c) The date and time the discussion took place, if applicable; and
- (d) The content of the discussion, if applicable.



**§749.2305. When must a caregiver document the use of an emergency behavior intervention, and what must the documentation include?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (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) The basis for the emergency behavior intervention;
  - (3) A description and assessment of the circumstances and specific behaviors that caused the basis for the emergency behavior intervention;
  - (4) The de-escalation attempted before and during the use of the emergency behavior intervention and the child's reaction to those strategies;
  - (5) The specific emergency behavior intervention administered;
  - (6) The date and time the intervention was administered;
  - (7) The length of time the child was restrained;
  - (8) The name of the caregiver(s) that participated in the incident that led to the intervention, and who administered the intervention;
  - (9) The name of the person(s) who observed the child;
  - (10) The duration of the emergency behavior intervention;
  - (11) All attempts to explain to the child what behaviors were necessary for release from the intervention;
  - (12) 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; and
  - (13) The actions the caregiver(s) took to facilitate the child's return to normal activities following the end of the intervention.
- (b) The child-placing staff must document their review of the use of the emergency behavior intervention within 72 hours of the incident.
- (c) If personal restraint is used, documentation must also include the specific restraint techniques used, including a prone or supine restraint used as a transitional hold.
- (d) If emergency medication is used, documentation must also include the specific medication used and the dosage administered to the child.
- (e) This rule does not apply to short personal restraints.

## Division 9, Triggered Reviews

### §749.2331. What circumstances trigger a review of the use of emergency behavior intervention for a specific child?

*DFPS Rules, 40 TAC, effective January 1, 2007*

The following circumstances trigger a review for certain emergency behavior interventions:

<b>Types of Emergency Behavior Intervention</b>	<b>Circumstances that trigger a review:</b>
(1) Short personal restraint	Not applicable, because short personal restraints are not monitored.
(2) Personal restraint	(A) The same child is personally restrained four times within a seven-day period, unless there is a written order by a licensed psychiatrist or psychologist or service planning team recommendation that allows the use of four or more restraints on that child within the seven-day time period. A service planning team recommendation must include the same written information as an order. See §749.2105 of this title (relating to What information must a written order include?).  (B) The same child is personally restrained more often than the written order or service planning team recommendation allows.
(3) Emergency medication	Emergency medication is used on the same child three times in a 30-day period.

### §749.2333. When must a triggered review occur?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) A triggered review must occur as soon as possible, but no later than 30 days after the review is triggered.
- (b) The regularly scheduled review of the child's service plan can serve as the triggered review if it meets the requirements in §749.2337 of this title (relating to What must the triggered review include and what must be documented in the child's record?) and takes place no later than 30 days after the review is triggered.

**§749.2335. Who must participate in the triggered review?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

The service planning team must participate in the triggered review.

**§749.2337. What must the triggered review include and what must be documented in the child's record?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

The following must be included in a triggered review and documented in the child's record:

- (1) The same items that must be included and documented in an initial service plan, (see §749.1309 of this title (relating to What must a child's initial service plan include?));
- (2) A review of the records and orders of the emergency behavior interventions;
- (3) A review and documentation of any potential medical or psychiatric reason for not using emergency behavior interventions on the child, including the prescribing professional's consideration of any potential medical and/or psychiatric contraindications for the specific child, such as a history of physical or sexual abuse or victimization involving the type of intervention;
- (4) An examination of alternatives to manage the child's behavior and to assist the child in managing his own behavior; and
- (5) A written plan for reducing the need for emergency behavior intervention.

**§749.2339. What if there are four triggered reviews within a 90-day period?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

If there are four triggered reviews within a 90-day period:

- (1) A licensed psychiatrist, psychologist, clinical social worker, professional counselor, or marriage and family therapist must examine the child; and
- (2) The licensed professional must make service plan recommendations regarding the use of emergency behavior interventions. You must document these recommendations in the child's record.

## Division 10, Overall Agency Evaluation

### §749.2381. What is an overall agency evaluation?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) The overall agency evaluation is an annual review regarding:
  - (1) The use and effectiveness of emergency behavior interventions at your agency; and
  - (2) Your emergency behavior intervention policies and procedures, including the training policy and curriculum.
- (b) The objectives of the evaluation are to:
  - (1) Develop and maintain an environment that supports positive and constructive behaviors of children in care;
  - (2) Use any type of emergency behavior intervention safely, appropriately, and effectively; and
  - (3) Eliminate or reduce physical injuries and any other negative side effects on the child's behavior or emotional development resulting from the emergency behavior interventions.
- (c) One focus of the evaluation must be on:
  - (1) The frequency, patterns, and effectiveness of the types of emergency behavior intervention techniques that are used for all children in your foster homes;
  - (2) Strategies to reduce the need for emergency behavior interventions for all children in your foster homes; and
  - (3) Specific strategies to reduce the need for use of specific types of emergency behavior intervention techniques for all children in your foster homes.
- (d) The results of each overall agency evaluation must be made available to us for review.

### §749.2383. What data must be collected?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) Quarterly, you must collect, document, and review aggregate numbers of emergency behavior interventions by type of intervention with the exception of short personal restraints.
- (b) This information must be reported to us quarterly.
- (c) You must maintain the data for five years.

## **Subchapter M, Foster Homes: Screenings and Verifications**

### **Division 1, General Requirements**

**§749.2401. If one spouse will not be involved in the care of foster children, may I verify the spouse who will provide care individually as a foster parent?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

No. In order for one spouse to be a foster parent, you must verify both of them to provide foster care.

**§749.2403. What minimum age requirement must foster parents and caregivers meet?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

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.

**§749.2405. Will my home have to be re-verified if I am a single foster parent and I get married after my home is verified?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

Yes, you will have to re-verify that home in both spouse's names.

## Division 2, Foster Home Screenings

### §749.2441. Can I verify foster homes anywhere in the state?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) Each permit is limited to one DFPS region. We must approve an additional permit for each additional region.
- (b) If you were licensed before January 1, 2007, you have five years from January 1, 2007, to comply with this requirement.

### §749.2443. Do the requirements described in §749.2441 of this title (relating to Can I verify foster homes anywhere in the state?) apply to the counties in which I place children for adoption?

*DFPS Rules, 40 TAC, effective January 1, 2007*

No, you can place children for adoption anywhere in Texas.

### §749.2445. What is a foster home screening?

*DFPS Rules, 40 TAC, effective March 1, 2008*

- (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) You must report to Licensing all information obtained under §749.2447(7) of this title regarding 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?***DFPS Rules, 40 TAC, effective March 1, 2008*

You must obtain, document, and assess the following information about a prospective foster home:

<b>Required Information</b>	<b>Description of Discussion, Assessment and Documentation Requirements</b>
(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.
(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. TEA or other 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>

*(continued)*

Required Information	Description of Discussion, Assessment and Documentation Requirements
(4) History of marital relationships including any previous marriages.	You must document information about any previous marriages, divorces, or deaths of former spouses. Foster parents and caregivers must demonstrate the ability to form and sustain adult relationships.
(5) A history of the prospective foster parents' residence and their citizenship status.	You must document the: (A) Length of time spent at each residence for the past 10 years (street address, city, state); and (B) Citizenship of the prospective foster parents.
(6) The financial status of the prospective foster family.	Information on the family's income must be verified and documented.
(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.	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 results of those checks must be documented in the foster home record and the home study.  You must ask the prospective foster parents for information pertaining to each domestic violence call any law enforcement agency responded to at their residence during the previous 12 months. You must request background information from each local law enforcement agency that responded to a call disclosed by the prospective foster parents.
(8) The prospective foster parents' motivation to provide foster care.	Assess and document the prospective foster parents' motivation to provide foster care.
(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 observe these persons for any indication of problems and follow up, where indicated, with a professional evaluation. Document the information obtained through your observations.

(continued)



Required Information	Description of Discussion, Assessment and Documentation Requirements
(10) The quality of marital and family relationships.	Describe, address, and document the quality of marital 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 relationship, the strengths and problems of the relationship, and how those issues will relate to foster children placed in the home. You must discuss and assess the quality of the relationships between prospective foster parents and their biological 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: (A) Their willingness to respect and encourage a child's religious affiliation, if any; (B) Their willingness to provide a child opportunity for religious and spiritual development, if desired; and (C) The health protection they plan to give a child if the foster parents religious beliefs prohibit certain medical treatment.
(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. If their 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.

(continued)

Required Information	Description of Discussion, Assessment and Documentation Requirements
(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 the 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.
(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 those parents who abused or neglected the child. Discuss and assess their sensitivity and reactions to the biological parents. Discuss and assess their sensitivity to and acceptance of a child's feelings about his parents and assess their ability to help the child deal with those feelings. Discuss and assess the potential foster parents' sensitivity to and acceptance of the child's relationships with his 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 his 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 children, their attitudes toward foster children, and their acceptance of the verification as a foster family.

(continued)

Required Information	Description of Discussion, Assessment and Documentation Requirements
(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.
(19) Support systems available to prospective foster parents.	Discuss, assess, and document the support systems available to the foster family and the support they may receive from these resources.
(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.
(22) Prospective foster parent's ability to work with specific kinds of behaviors and backgrounds.	Discuss, assess, and document the prospective foster family's ability to work with specific behaviors, backgrounds, special needs and/or disabilities, and other characteristics of foster children.
(23) Background information from other child-placing agencies.	Request and assess the following background information (if provided) from any child-placing agency that previously conducted a foster screening, pre-adoptive home screening, post placement adoptive report, or home study: (A) The screening, report, home study, and related documentation; (B) Documentation of supervisory visits and evaluations; (C) Any record of deficiencies and their resolutions; and (D) The most current fire and health inspections.

**§749.2449. Whom must I interview when conducting a foster home screening?***DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) Interviews for a foster home screening must include at least:
- (1) One individual interview with each prospective foster parent;
  - (2) One individual interview with each child three years old or older living in the home either full or part time;
  - (3) One individual interview with each other person living full or part time with the family;
  - (4) One joint interview with the prospective foster parents;
  - (5) One family group interview with all family members living in the home; and
  - (6) One interview, by telephone, in person, or by letter, with any minor child 12 years old or older or adult child of the prospective foster parents not living in the home. If you cannot reach an adult child to interview, you must document your reasonable efforts to reach the child.
- (b) You must visit the home at least once when all members of the household are present.

**Helpful Information .....**

Individuals who may visit in the adoptive home, such as relatives who spend vacations or holidays, are not considered to be living in the home part time.

Examples of persons living in the home part time include:

- Children of prospective adoptive parent(s), including children attending college but who are in the home for weekends, holidays, and/or vacations or children who live in other living arrangements (with custodial parents, in boarding schools, etc.) but who are present in the home on weekends, vacations, holidays.
- Parents of the adoptive parents who may live in the home for a number of weeks or months each year.
- Friends who live with the family while unemployed.

**§749.2451. What are the requirements for documenting the interviews I conduct for a foster home screening?***DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You must document all interviews and attempts to interview persons you are required to interview for a foster home screening.
- (b) The documentation must include the dates and methods used to contact the required persons, the dates of the interviews, who was present at the interviews, their relationship to the prospective foster parents, and a summary of the interviews.
- (c) This documentation must be a part of the foster home record.

## Division 3, Verification of Foster Homes

### §749.2471. What must I do to verify a foster home?

*DFPS Rules, 40 TAC, effective January 1, 2007*

Verifying a foster home includes the following steps:

- (1) Completing and documenting the requirements for §749.2447 of this title (relating to What information must I obtain for the foster home screening?);
- (2) Completing and documenting the required interviews as specified in §749.2449 of this title (relating to Whom must I interview when conducting a foster home screening?);
- (3) Obtaining the following:
  - (A) A floor plan of the home showing dimensions and purposes of all rooms in the home and identifying indoor areas for children's use;
  - (B) A sketch or photo of the outside areas showing buildings, driveways, fences, storage areas, gardens, recreation areas, pools, ponds, or other bodies of water;
  - (C) An approved fire inspection; and
  - (D) An approved health inspection.
- (4) Inspecting the home to ensure and document that the home meets appropriate rules of this chapter, including:
  - (A) Tuberculosis screening, see §749.1417 of this title (relating to Who must have a tuberculosis (TB) examination?);
  - (B) Subchapter K of this chapter (relating to Foster Care Services: Daily Care and Problem Management; and
  - (C) Subchapter O of this title (relating to Foster Homes: Health and Safety Requirements, Environment, Space and Equipment);
- (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 homes that provide treatment services?);
- (6) If the home will provide a transitional living program, ensuring the home complies with the policies developed according to §749.351 of this title (relating to What policies must I develop for foster parents who offer a transitional living program?);
- (7) Evaluating all areas required for the foster home screening and verification, and make recommendations regarding the home's ability to work with children with respect to their age, gender, number of children, and services to be provided;

*(continued)*

- (8) Obtaining from the child placement management staff review and approval of the screenings, home study, and the recommended verification of the home; and
- (9) Issuing a verification certificate that specifies the:
  - (A) Name of the foster home;
  - (B) Foster home address and/or location;
  - (C) The foster home's capacity, which includes the biological and adopted children of the caregivers who live in the foster home, any children receiving foster or respite child-care, and children for whom the family provides day care.
  - (D) The ages and gender(s) of children for which the home is verified; and
  - (E) The types of services the foster home will provide.

**§749.2473. What must I do to verify a foster home that another child-placing agency has previously verified?**

*DFPS Rules, 40 TAC, effective March 1, 2008*

- (a) When a home has previously been verified by another agency, you may:
  - (1) Complete an entirely new screening and home study to comply with the requirements in §749.2471 of this title (relating to What must I do to verify a foster home?); or
  - (2) You may use the foster home screening and home study the previous child-placing agency conducted as a basis for meeting the requirement. You must update the information for every required section. You must describe any changes from the previous information. This verification will require you to:
    - (A) Conduct new interviews as specified in §749.2449 of this title (relating to Whom must I interview when conducting a foster home screening?);
    - (B) Conduct new criminal history and central registry background checks for foster home members, with results documented in the foster home record. Homes transferring from one agency to another, with children in care, may be verified by the receiving agency prior to completion of background checks;
    - (C) Document current fire and health inspections;
    - (D) Ensure that all appropriate household members have had a tuberculosis screening as required in §749.1417 of this title (relating to Who must have a tuberculosis (TB) examination?);
    - (E) Ensure that any unresolved deficiencies have been addressed;

*(continued)*

- (F) Conduct a new evaluation of all areas required for the foster home screening and verification, and make recommendations regarding the home's ability to work with children with respect to their age, gender, number of children, and services to be provided; and
  - (G) Obtain review and approval of the screening, home study, and the recommended verification of the home by child placement management staff.
- (b) If the foster home is transferring from another child-placing agency, you must submit a written request to the agency that the foster home is transferring from requesting the background information required in §749.2447(23) of this title (relating to What information must I obtain for the foster home screening?).

**§749.2475. To whom must I release information regarding a family on which I previously conducted a foster home screening, pre-adoptive home screening, post placement adoptive report, or home study?**

*DFPS Rules, 40 TAC, effective March 1, 2008*

- (a) If background information is requested by a child-placing agency conducting a foster home screening, pre-adoptive home screening, post placement adoptive report, or home study, then you must release any background information you have acquired through a previous foster home screening, pre-adoptive home screening, post placement adoptive report, or home study.
- (b) Background information must also be released to independent contractors who are hired or required by the court to conduct a social study under §107 of the Texas Family Code.
- (c) You must release the background information to the requesting agency within 10 days after receiving the written request, including generally informing the requesting agency of any unresolved investigations and/or deficiencies. After the resolution of the investigations and/or deficiencies, you must release the remaining background information to the requesting agency within 10 days after the resolution of the investigations and/or deficiencies.

*(continued)*

- (d) Background information is any information that must be obtained by §749.2447(23) of this title (relating to What information must I obtain for the foster home screening?). In addition to the items noted in §749.2447(23), the background information for a transferring foster home must also include, if applicable:
- (1) An annual development plan;
  - (2) Any corrective action plan(s); and
  - (3) A description of any imposed or potential service limitation.

**Helpful Information** .....

Chapter 42 of the Human Resources Code, § 42.0535, specifies immunity from civil and criminal liability when releasing background information on a foster home in compliance with law and rule:

- (a) A child-placing agency that seeks to verify an agency home or an agency group home shall request background information about the agency home or group home from a child-placing agency that has previously verified that agency home or agency group home.
- (b) Notwithstanding Section 261.201, Family Code, a child-placing agency that has verified an agency home or an agency group home is required to release to another child-placing agency background information requested under Subsection (a).
- (c) A child-placing agency that releases background information under this section is immune from civil and criminal liability for the release of the information.

**§749.2477. May I verify a foster home prior to approval by child placement management staff?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

No. Before you can verify a foster home, child placement management staff must:

- (1) Review and approve the verification, including the documented foster home screening, home study, and other requirements; and
- (2) Sign and date the document.

**§749.2479. May I place children in a foster home before verifying the home?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

No, you cannot place children in a foster home before completing the foster home screening and verification.



**§749.2481. What type of certificate must a foster home have in order to prove verification?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You must give the home a verification certificate after:
  - (1) Verifying the home; and
  - (2) Making any change that affects the verification certificate.
- (b) The home must post the current verification certificate or have it immediately available upon request.

**§749.2483. Do foster parent applicants have to own the home they live in for it to be their primary residence?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

No, they do not have to own or rent the home they live in for it to be considered their primary residence.

**§749.2485. What are the requirements for verifying a foster home at a residence that I own?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You must verify the home in the name of one foster family for whom the home is the primary residence. You may only verify the home in the name of one foster family.
- (b) A home is considered a primary residence if the person lives there on a routine basis and:
  - (1) It is the place of residence on their most recent tax return; or
  - (2) It is the address listed on their motor vehicle registration, driver's license, voter's registration, or other document filed with a public agency.
- (c) Foster group homes verified before January 1, 2007, are exempt from the requirements in this rule.

**§749.2487. What are the requirements for an agreement that I have with a foster home that I verify?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (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 in the agency home record.
- (b) The agreement must specify the following:
  - (1) The foster parents' responsibility for complying with rules of this chapter;
  - (2) The financial agreement between you and the foster home;
  - (3) The foster home agrees not to admit a non-relative child for 24-hour care from any source other than you;
  - (4) You have the right to remove the child from the home at your discretion;
  - (5) You must consent to any discharge of a child from the home;
  - (6) Visits by the child's parents or relatives must be arranged through you;
  - (7) You are responsible for regular supervision of the foster home;
  - (8) The foster parents' commitment to comply with your policies regarding child care, discipline, supervision of children, and children's visits or trips away from the foster home; and
  - (9) The foster parents' commitment to comply with your policies about foster parents' reports to you regarding foster children and events or occurrences impacting the provision of foster care.

**§749.2489. What information must I submit to Licensing about a foster home's verification status?**

*DFPS Rules, 40 TAC, effective March 1, 2008*

You must submit information to us within two working days of:

- (1) Verifying a new foster home;
- (2) Temporary verification of a foster home and when the verification is not longer temporary;
- (3) Putting a foster home on inactive status or taking a foster home off of inactive status;
- (4) Changing conditions of the verification for an existing home; or
- (5) Closing a foster home, including:
  - (A) The reason the foster home closed; and
  - (B) The name and contact information of a person at your agency who may be contacted by another child-placing agency to obtain records relating to the closed foster home.

**§749.2491. May I verify a foster home to provide different services?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You may verify a foster home to provide different services as long as a child placement staff completes an assessment of the home that includes a review of the following:
  - (1) The number, ages, and needs of children to be placed in the home;
  - (2) The foster home's capacity to provide each different service and supervise all children appropriately;
  - (3) The needs of any children currently in the home; and
  - (4) The foster parents' experience and ability to provide service.
- (b) The child placement staff must sign, date, and document this assessment in the foster home record. The different services permitted must be listed on the verification certificate.
- (c) Child placement management staff must review and approve the documentation prior to the placement of a child. You must document the review and approval in the record.
- (d) For each placement of a child into a home verified to provide multiple types of services, a child placement staff must ensure there will be no conflict of care. Examples of conflicts in care are placements that:
  - (1) Place one child at serious risk for harm by another child;
  - (2) Significantly compromise the care and supervision of any child in care;
  - (3) Require a level of expertise by the foster parents and/or caregivers that they do not possess; or
  - (4) Create an environment that is appropriately restrictive for one child but inappropriate for another.
- (e) A child needing treatment services may only be placed in a foster home that is verified to provide the treatment services needed by that child. If the treatment service needs of any of the children in a foster home changes and the home is not verified to provide that particular treatment service, the foster parent must notify the child placement staff and a new assessment of the home must be completed, signed, and dated by the child placement management staff. If the foster home is not approved to provide the services after the assessment, then the child must be moved to a placement that can provide the needed services.

**§749.2493. May a foster family provide day care in addition to foster care?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

A foster home may provide day care in addition to foster care under the following conditions:

- (1) The number and ages of children in both types of care must meet all relevant laws, including those listed in §745.375 of this title (relating to May I offer child day care at my agency foster home or independent foster home?);
- (2) The caregivers can supervise all children appropriately, can meet all children's needs, and can protect all children in both foster and day care;
- (3) There is adequate space and there are adequate staff or caregivers to meet all applicable rules;
- (4) The child-placing agency completes a written assessment, signed by child placement management staff, of the:
  - (A) Needs of the children in foster care and how the needs of the children in day care may impact the foster children; and
  - (B) Basis for determining no conflict of care exists in providing the two types of care; and
- (5) Both the Residential Child-Care and Child Day-Care Divisions of Licensing approve.

**Division 4, Temporary Verification****§749.2521. What must I do prior to issuing a temporary verification?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) The purpose of a temporary verification is to permit continued care of foster children in a foster home when a foster family moves from one residence to another and there is a short-term delay in verification, for example, fire and health inspections cannot be obtained prior to the move.
- (b) You may only issue a temporary verification after you:
  - (1) Inspect the new location;
  - (2) Determine that the home meets the minimum standards;
  - (3) Document that all health and safety, environment, and space and equipment standards are met; and
  - (4) The child placement management staff review and approve the temporary verification by signing and dating it.

*(continued)*

- (c) You may not use a temporary verification to change the verification conditions (number of children, age, gender, or services provided) of an agency home other than residence address.
- (d) You may not issue a temporary verification if no children are in placement in the foster home.

**§749.2523. For what length of time can I issue a temporary verification?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You may issue a temporary verification for up to six months.
- (b) A temporary verification is valid for no longer than six months from the date the verification is issued. You may not renew the temporary verification.

**§749.2525. Can foster children remain in the foster home while a temporary verification is in effect?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

Yes, children who were in the care of the foster family at the time of the move may continue to live in the foster home while the temporary verification is in effect. However, you may not make new placements of children into a home that is temporarily verified.

## **Division 5, Capacity and Child/Caregiver Ratio**

**§749.2551. What is the maximum number of children a foster family home may care for?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) A foster family home may care for up to six children, including any biological and adopted children of the caregivers who live in the foster home and any children receiving foster or respite child-care, and children for whom the family provides day care.
- (b) All adults in care must also be counted in the capacity of the home per §749.2651 of this title (relating to May a foster home accept adults into the home for care?).

**§749.2553. What is the maximum number of children that a foster group home may care for?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) A foster group home may care for up to 12 children, including any biological and adopted children of the caregivers who live in the foster home and any children receiving foster or respite child-care.
- (b) All adults in care must also be counted in the capacity of the home as specified in §749.2651 of this title (relating to May a foster home accept adults into the home for care?).

**§749.2555. How do I determine capacity?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

Capacity of the home is based on the:

- (1) Number of caregivers, and the age of the children in the home and in placement;
- (2) Services being provided and the needs of the children in care;
- (3) Amount of space available for children; and
- (4) Bathroom accommodations in the home.

**§749.2557. May a foster home exceed its verified capacity?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

No. The maximum number of children in a foster home, including the biological and adopted children of the caregivers who live in the foster home, any children receiving foster or respite child-care, and children for whom the family provides day care, must not exceed the capacity stated on the home's verification.

**§749.2559. How do I determine the child/caregiver ratio for a foster family home?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

The number of children one caregiver may supervise in a foster family home is six, unless the home meets one of the criteria in the chart below:

<b>If the home cares for:</b>	<b>Then the number of children one caregiver may care for is:</b>
One child under age 5	One caregiver to five children
More than two children receiving treatment services (for children with primary medical needs, see below)	One caregiver to four children
One child with primary medical needs	One caregiver to four children

**§749.2561. How many infants may a foster family home care for?***DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) A foster family home may only care for two infants at the same time unless you place more than two infants in a home in order to keep a single sibling group together.
- (b) If the home cares for two infants or more according to subsection (a) of this section, it can only care for two additional children under six years of age.
- (c) These restrictions include the biological and adopted children of the foster family, children in foster or respite child-care, and children for whom the family provides day care.

**§749.2563. How do I determine child/caregiver ratio for a foster group home?***DFPS Rules, 40 TAC, effective January 1, 2007*

The number of children one caregiver may supervise in a foster group home is eight, unless the home meets one of the criteria in the chart below:

<b>If the home cares for:</b>	<b>Then the number of children one caregiver may care for is:</b>
One child under age 5	One caregiver to five children
More than two children receiving treatment services (for children with primary medical needs, see below)	One caregiver to four children
One child with primary medical needs	One caregiver to four children

**§749.2565. Are there restrictions on placing a child younger than five years old in a foster group home?***DFPS Rules, 40 TAC, effective January 1, 2007*

Yes, you:

- (1) May only place a child who is younger than five years old in a foster group home if you determine that:
  - (A) The placement is necessary to maintain a sibling group; and
  - (B) A less restrictive setting cannot meet the needs of the sibling group.
- (2) You must document your decision in the child's record.



**§749.2567. Must a home maintain the child/caregiver ratio at all times?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

No. However, even during a time that all children in care are away from the home, at least one caregiver must be available by phone to:

- (1) Respond to emergencies, changes in schedules, or unplanned events; and
- (2) Provide care and supervision whenever a child needs the attention of a caregiver, including when the child returns to the home.

**Division 6, Supervision****§749.2591. How am I responsible for ensuring adequate supervision of children in care?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) Your child placement management staff must ensure that supervision of children in care adequately accounts for the following:
  - (1) Specific needs of the children in care in each home;
  - (2) Non-routine events taking place in the lives of individual children, the foster parents, or the group of children in care; and
  - (3) The children's history, including background of abuse or neglect by caretakers, sexual or physical abuse against others, fire-setting, maiming or killing animals, suicide attempts, and run-away behaviors.
- (b) Your child placement management staff must also approve a written plan for the increased supervision of a child who presents an immediate harm to himself or others.

**§749.2593. What responsibilities does a caregiver have when supervising a child?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) The caregiver is responsible for:
  - (1) Knowing which children they are responsible for;
  - (2) Being aware of and accountable for each child's on-going activity;
  - (3) Providing the level of supervision necessary to ensure each child's safety and well being, including auditory and/or visual awareness of each child's on-going activity as appropriate;
  - (4) Being able to intervene when necessary to ensure each child's safety; and
  - (5) Not performing tasks that clearly impede the caregiver's ability to supervise and interact with the children while being responsible for the supervision of the children and meet any service-planning requirement regarding supervision of any child.

*(continued)*

- (b) In deciding how closely to supervise a child, the caregiver must take into account:
  - (1) The child's age;
  - (2) The child's individual differences and abilities;
  - (3) The indoor and outdoor layout of the home;
  - (4) Surrounding circumstances, hazards, and risks; and
  - (5) The child's needs, including the physical, mental, emotional, and social.
- (c) Caregivers counted in the child/caregiver ratio must:
  - (1) Be aware of the children's habits, interests, and any special needs;
  - (2) Provide a safe environment;
  - (3) Cultivate developmentally appropriate independence in children through planned but flexible program activities;
  - (4) Positively reinforce children's efforts and accomplishments;
  - (5) Ensure continuity of care for children by sharing with incoming caregivers information about each child's activities during the previous shift and any verbal or written information or instructions given by the parent or other professionals; and
  - (6) Implement and follow the children's service plans.
- (d) Caregivers that supervise a child receiving treatment services must maintain progress notes for the child, at a frequency determined by the service planning team. Caregivers must sign and date each progress note at the time the progress note is completed. Progress notes must be available for Licensing staff to review.

**§749.2595. May I use a video camera to supervise a child in the child's bedroom?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) Video cameras may be used to supervise infants and toddlers.
- (b) Video cameras may not be used to supervise children, other than infants and toddlers, unless the:
  - (1) Parent, or other person legally authorized to consent, consents to the use of the video camera; and
  - (2) Child:
    - (A) Is younger than five years old;
    - (B) Has primary medical needs; or

*(continued)*

- (C) Has a service plan that permits the use for purposes of reducing risks of sexually offensive behavior, physical aggression, or other behaviors identified as requiring heightened supervision, such as night terrors, sleepwalks, or resides in a bedroom with such a child. You must document the justification for the video camera in the child's service plan, and the child must have other accessible and reasonable locations where he may change his clothing in private.
- (c) Video cameras may not be used to tape the child, and images may not be accessible except to the foster home's caregivers.

**§749.2597. Where must the caregivers reside in order to supervise children who are in a transitional living program?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

Caregivers counted in the child/caregiver ratio and responsible for supervising children in a transitional living program must:

- (1) Reside within close physical proximity of the child's living quarters;
- (2) Be physically available to the children at all times;
- (3) Be capable of responding quickly in an emergency; and
- (4) Be capable of monitoring the comings and goings of the children in the program.

**§749.2599. Can a child serve as a caregiver?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

A child who is over the age of 16 may serve as a caregiver for foster care children under the age of 13 as long as:

- (1) The child placement management staff approves the child to be a caregiver, establishing limits with duration and frequency;
- (2) The child acts as a caregiver for no more than eight hours and never over night;
- (3) The child is certified in first aid and CPR; and
- (4) Neither the child nor any of the foster children is supervising or receiving treatment services.

## Division 7, Respite Child-Care Services

### §749.2621. What are respite child-care services?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) Respite child-care services are a planned alternative 24-hour care that has the purpose of providing relief to the child's primary caregiver.
- (b) For the purposes of this chapter, respite child-care placement is a placement that lasts more than 72 hours. The placement of a child in a home for less than 72 hours is not respite child-care.

### §749.2623. What must occur before I place a child for respite child-care services?

*DFPS Rules, 40 TAC, effective January 1, 2007*

You must notify the child's parent before placing the child in respite child-care services.

### §749.2625. What information regarding the child must I share with the respite child-care services provider?

*DFPS Rules, 40 TAC, effective January 1, 2007*

To ensure continuity of care, you must share the following information with the respite child-care services provider before placing the child in the home:

- (1) Specific needs of a child, including:
  - (A) All psychiatric or medical treatment currently being provided;
  - (B) Medication regimen and medication instructions;
  - (C) Authorization for medical treatment; and
  - (D) Any other needs of a child that should be addressed by the respite child-care services provider;
- (2) Non-routine events taking place in the life of the child;
- (3) Emergency contact information, including the:
  - (A) Child's physician(s);
  - (B) Child's parent; and
  - (C) Agency's telephone number; and

*(continued)*

- (4) The child's history that may affect the provider's ability to provide care for the child, including:
  - (A) Background of abuse and/or neglect;
  - (B) Physical aggression or sexual behavior problems;
  - (C) Fire setting;
  - (D) Maiming or killing animals;
  - (E) Suicidal ideations and attempts; and
  - (F) Run-away behaviors.

**§749.2627. What must occur before one of my foster homes accepts a child for respite child-care service?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You must approve each occurrence of respite child-care services in your homes. Respite child-care services must not be provided if it could be detrimental to the child.
- (b) Your child placement management staff must determine that the respite placement will not cause a conflict in care for any child that you have already placed in the foster home. The record of the foster home providing respite child-care services must include documentation of this determination.

**§749.2629. In addition to the requirements of this division, what requirements of this chapter apply to respite child-care services that a foster home provides?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

You and the foster home providing respite child-care must meet all requirements of the applicable rules of this chapter for all children in care, including children admitted for respite child-care services. This includes compliance with capacity and child/caregiver ratios and supervision rules.

**§749.2631. How long may a child be in respite child-care services?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) With the exception of subsection (b) of this section, a child may be in respite child-care services for 14 consecutive days or 40 days each year.
- (b) A respite child-care placement that is made because a child's foster home is under investigation for abuse or neglect does not count toward nor is it limited by the time frames noted in subsection (a) of this section. However, these placements are limited to a maximum of 60 days.
- (c) If a child needs respite child-care services for more than 14 consecutive days or more than 60 days for an abuse or neglect investigation, this is considered a new placement and will not be respite child-care.
- (d) When a child finishes a respite child-care placement, he may not return to respite child-care services for at least 10 days.
- (e) Respite child-care must not be used if it could be detrimental to the child.

**§749.2633. How frequently may a foster home provide respite child-care services?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) The home may not provide respite child-care services for more than:
  - (1) 14 consecutive days; or
  - (2) 60 days annually.
- (b) A respite child-care placement that is made because a child's foster home is under investigation for abuse or neglect does not count toward nor is it limited by the time frames noted in subsection (a) of this section. However, these placements are limited to a maximum of 60 days.
- (c) This rule does not apply to foster homes that exclusively provide respite child-care services.

**§749.2635. May I place a child for respite child-care services in a home that Licensing does not regulate?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

You may place a child for respite child-care services in a home that meets the requirements of the exemption set forth in §745.117(6) of this title (relating to Which programs of limited duration are exempt from Licensing regulation?).

## Division 8, Agency - Foster Family Relationships

### §749.2651. May a foster home accept adults into the home for care?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) Foster homes may accept adults into the home for care if the adult:
  - (1) Is related to the foster family;
  - (2) Is a client in the Department of Aging and Disability Services, Community Based Services Program; or
  - (3) Meets one of the requirements of §749.1105 of this title (relating to May I admit a young adult into your care?).
- (b) Adults in care must be counted in the capacity of the home.

### §749.2653. What are the requirements for an unrelated adult to reside in a foster home?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) Before a foster home may add a new member to the household:
  - (1) The home must notify you of the potential new member of the household;
  - (2) The home must comply with requirements specified in Subchapter F of Chapter 745 of this title (relating to Background Checks) and §749.1417 of this title (relating to Who must have a tuberculosis (TB) examination?); and
  - (3) You must evaluate the effect that the adult will have on the foster children in the home. Your evaluation must include the following considerations:
    - (A) The needs of the foster children in care;
    - (B) The impact the adult will have in the foster family and for the foster children; and
    - (C) Whether the change in household will conflict with the children's best interest.
- (b) You must document the following in the foster home record:
  - (1) The results of the background check and the tuberculosis screening;
  - (2) Your evaluation; and
  - (3) The approval of the child placement management staff.

**§749.2655. When must a foster home notify you of changes that affect the foster home?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

A foster home must notify you of any of the following changes as follows:

<b>Change:</b>	<b>Time for notification:</b>
(1) In the location of the foster home.	Before moving.
(2) Major life changes in household composition: (A) Marriage, divorce, separation, death, birth, or any other change in household composition; (B) A serious health problem that affects the ability of the foster parent to care for children; or (C) Extended absences by one parent, such as military services or job assignments.	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

### §749.2801. When must I evaluate a foster home for compliance with Licensing rules?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You must evaluate a foster home for compliance with the relevant Licensing rules affecting the need for the evaluation, whenever:
  - (1) You receive an allegation of deficiency;
  - (2) There is a major life change in the foster family; or
  - (3) A change occurs that affects the conditions of the verification.
- (b) Every two years you must evaluate a foster home for compliance with all rules that apply to that home.

### §749.2803. What changes affect the conditions of a foster home's verification?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) Changes that affect the conditions of a foster home's verification include a change in the:
  - (1) Name of the foster home;
  - (2) Foster home's address and/or location;
  - (3) 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 and gender(s) of children for which the home is verified;
  - (5) 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 for the address and/or location indicated on the verification certificate. A new or temporary verification must be issued prior to a foster home's change in address or location.

### §749.2805. What is a "major life change in the foster family"?

*DFPS Rules, 40 TAC, effective January 1, 2007*

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 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.

**§749.2807. How do I evaluate a foster home's compliance with the relevant Licensing rules affecting the need for the evaluation?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

You are responsible for the home's ongoing compliance with our rules. You must evaluate the home as follows:

- (1) When there is an allegation of a deficiency, you must evaluate the rule and any rules related to the deficiency;
- (2) When a change in the conditions of the verification or a major life change occurs, you must evaluate the rules related to the conditions or change;
- (3) You must document the rules that were evaluated and the determination of the evaluation;
- (4) During any contact with the foster family, including routine supervisory contacts and investigations, you must cite and address any deficiencies noted;
- (5) Your documentation of deficiencies must include plans for achieving compliance; and
- (6) You must also document a plan for follow-up to ensure compliance was achieved.

**§749.2809. What must a plan for achieving compliance include?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

The plan for achieving compliance must include:

- (1) Specific actions or changes needed for the foster home to achieve compliance;
- (2) Time frames for corrections and consequences for failure to achieve compliance;
- (3) A determination of whether children can remain in the foster home before the home achieves compliance; and
- (4) A determination whether you will make new placements in the home before the home achieves compliance.

**§749.2811. How do I follow-up to ensure compliance?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

You must:

- (1) Re-inspect the foster home or receive documentation from the home showing that all deficiencies have been corrected; and
- (2) Document that the foster home has corrected all deficiencies in the foster home's record.

**§749.2813. How do I evaluate Licensing rules for each home every two years?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

You may either:

- (1) Perform a rule-by-rule evaluation of the home once every two years; or
- (2) Evaluate different parts of the rules at different times during the two-year period.

**§749.2815. How often must I have supervisory visits with the foster home?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You must have 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 one supervisory visit per year must be unannounced.
- (c) You must document each visit in the home's record. The documentation must include specific rules evaluated, results of the evaluation, deficiencies found, plans for achieving compliance, and plans for follow-up to ensure compliance was achieved.

**§749.2817. Must I monitor and have supervisory visits with a foster home where no children are placed?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You must maintain all monitoring and supervisory requirements if the home is available for placements.
- (b) If you place the home on inactive status, you do not have to monitor the home or have supervisory visits.

**§749.2819. When may I place a foster home on inactive status?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You may place a foster home on inactive status if:
  - (1) There are no foster children in the home;
  - (2) You and the foster parents agree that the home will be on inactive status; and
  - (3) You document in the home's record that the home is on inactive status and will not accept a child for placement.

*(continued)*

- (b) You may not place a home that you should close on inactive status. A home that you should close includes a home:
  - (1) Whose repeated noncompliance with rules endangers the health or safety of children;
  - (2) That repeatedly fails to comply with agency policies or corrective action plans;
  - (3) That refuses to comply with the rules of this chapter or agency policies; or
  - (4) That refuses to allow you or our staff to inspect the home.
- (c) When you place a home on inactive status or remove a home from inactive status, you must inform us by submitting an agency home report form.

**§749.2821. How do the foster parents meet their training requirements while their home is on inactive status?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) Foster parents may prorate their annual training requirement for the period of time that the home was on inactive status.
- (b) If the home remains on inactive status for more than a year, the foster parents must complete at least eight hours of pre-service retraining before you may place children in the home.

**§749.2823. Are background checks required on homes that are on inactive status?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

Background checks are not required for homes that are on inactive status. If the home is taken off of inactive status and it has been more than two years since the last background check for any person(s) at the home for whom a check is required, the background check(s) must be requested before a child or children can be placed in the home.

**§749.2825. How do I take a foster home off inactive status?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

When the home is ready to become active and accept children, you must:

- (1) Make a supervisory contact in the home prior to placing a child in the home;
- (2) Document that the home is complying with all applicable rules of this chapter; and
- (3) Ensure that the home is in compliance with all background check requirements.

## Subchapter O, Foster Homes: Health and Safety Requirements, Environment, Space and Equipment

### Division 1, Health and Safety

#### §749.2901. What health and safety regulations must each foster home meet in addition to Licensing rules?

*DFPS Rules, 40 TAC, effective January 1, 2007*

All agency homes must comply with all applicable fire, health, and safety laws, ordinances, and regulations.

#### §749.2903. Who must conduct fire and health inspections at a foster home?

*DFPS Rules, 40 TAC, effective June 1, 2008*

- (a) All foster homes are required to obtain fire and health inspections.
- (b) The requirements related to fire and health inspections for foster family homes are as follows:
  - (1) You must determine whether there is any local authority or certified fire inspector to conduct health and fire inspections. You must document all contacts with the date, name of person contacted, and the person's response to the request to complete an inspection. A certified fire inspector who is not a state or local fire inspector must conduct the inspection in accordance with the Texas State Fire Marshal's adopted standard, NFPA Life Safety Code 101 appearing in 28 TAC §34.303.
  - (2) If no local authority or certified fire inspector exists to complete a fire inspection for the home, you must request that the state Fire Marshal's Office do the inspection.
  - (3) If no local authority exists to complete a health inspection for the home, you must request a health inspection from the Department of State Health Services.
  - (4) If, after exploring and documenting all efforts to obtain a fire inspection for a home, you cannot obtain a fire inspection, you may use our Fire Prevention Checklist form.
  - (5) If, after exploring and documenting all efforts to obtain a health inspection for a home, you cannot obtain a health inspection, you may use our Environmental Health Checklist form.

*(continued)*

- (c) The requirements related to fire and health inspections for foster group homes are as follows:
  - (1) You must determine whether there is any local authority to conduct health and fire inspections. You must document all contacts with the date, name of person contacted, and the person's response to the request to complete an inspection.
  - (2) If no local authority exists to complete a fire inspection for the home, you must request that the state Fire Marshal's Office do the inspection.
  - (3) If no local authority exists to complete a health inspection for the home, you must request a health inspection from the Department of State Health Services.
  - (4) If, after exploring and documenting all efforts to obtain a fire inspection for a home, you cannot obtain a fire inspection, you may use our Fire Prevention Checklist form.
  - (5) If, after exploring and documenting all efforts to obtain a health inspection for a home, you cannot obtain a health inspection, you may use our Environmental Health Checklist form.
- (d) Once you document that a health and/or 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 health and/or 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?**

*DFPS Rules, 40 TAC, effective June 1, 2008*

- (a) Unless otherwise stated in the report, a fire or health inspection report obtained from a fire or health 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) If you use a DFPS checklist for a foster home's fire or health inspection, the checklist is current for one year.

**§749.2907. What disaster and emergency plans must each foster home have?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) Each foster home must have written plans and procedures for handling potential disasters and emergencies, such as fire, severe weather emergencies, and transportation emergencies.
- (b) Foster parents and caregivers must know the procedures for meeting disasters and emergencies, including evacuation procedures, supervision of the children, and contacting emergency help.

**§749.2909. How many smoke detectors must a foster home have?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (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 manufacturer's or fire inspector's instructions.

**§749.2911. How must smoke detectors be installed and maintained at a foster home?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

Smoke detectors must be installed and maintained according to the manufacturer's instructions, or in compliance with the state or local fire inspector's instructions.



**§749.2913. How many fire extinguishers must a foster home have?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (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 after each use; and
  - (2) 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 has different mounting instructions, follow those instructions.

**§749.2915. Where must a foster home store dangerous tools and equipment?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

A foster home must store dangerous tools and equipment, such as hatchets, saws, and axes, so they are inaccessible to children. Children may use these tools and equipment with caregiver supervision, as appropriate based on the child's age, maturity, and treatment issues.

**§749.2917. What are the requirements for animals that are present at a foster home?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) Caregivers must keep the home and premises free of stray animals.
- (b) The foster home must not allow children to play with stray animals or other animals that could be dangerous.
- (c) Any animals on the premises of a home must be kept free of disease. Animals must be vaccinated and treated as recommended by a licensed veterinarian. The caregivers must have documentation at the home showing that dogs, cats, and ferrets have been vaccinated 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.

## Division 2, Tobacco Use

### §749.2931. What policies must I enforce regarding tobacco products?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) A child may not use or possess tobacco products.
- (b) Caregivers and other adults may only smoke tobacco products outside.
- (c) No one may smoke tobacco products in a motor vehicle while transporting children in care.

## Division 3, Weapons, Firearms, Explosive Materials, and Projectiles

### §749.2961. Are weapons, firearms, explosive materials, and projectiles permitted in a foster home?

*DFPS Rules, 40 TAC, effective March 1, 2008*

- (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 a policy identifying specific precautions to ensure children do not have unsupervised access to them, including locked storage and separate locked storage for the weapons and ammunition;
  - (2) Locked storage must be made of strong, unbreakable material;
  - (3) If the locked storage has a glass or another breakable front or enclosure, the guns must be secured with a locked cable or chain placed through the trigger guards;
  - (4) 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
  - (5) 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 adult.
- (b) Your policies must require foster parents 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 which are inoperable and solely ornamental are exempt from the storage requirements in this rule.

**§749.2963. What factors must I consider when determining whether weapons, firearms, explosive materials, or projectiles are stored adequately?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

When determining if these items are stored adequately, you must consider the age, history, emotional maturity, and background of the children in the home.

**§749.2965. How must I determine whether weapons, firearms, explosive materials, or projectiles are present in a foster home?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) When you complete a foster home screening, you must ask whether weapons, firearms, explosive materials, or projectiles are present in the home. If these items are present, you must review your policies and requirements with the prospective foster parents.
- (b) The foster home record must include documentation on the:
  - (1) Items present in the home; and
  - (2) Specific precautions the caregivers must take to ensure that children do not have unsupervised access.
- (c) The two-year evaluation of compliance with rules of this chapter must include a discussion of whether the home has weapons, firearms, explosive materials, or projectiles, and if so, how these items are stored.

**§749.2967. May a caregiver transport a child in a vehicle where firearms, other weapons, explosive materials, or projectiles are present?**

*DFPS Rules, 40 TAC, effective March 1, 2008*

A caregiver may transport a child in a vehicle where firearms (not handguns), other weapons, explosive materials, or projectiles are present if:

- (1) All firearms are not loaded;
- (2) The firearms, other weapons, explosive materials, or projectiles are inaccessible to the child; and
- (3) Possession of the firearm is legal.

## Division 4, Space and Equipment

### §749.3021. How much space must bedrooms used by foster children have?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) A bedroom must have at least 40 square feet of space for each occupant and no more than four occupants per bedroom are permitted, even if the square footage of the room would accommodate more than four occupants. The four occupants restriction does not apply to children receiving treatment services for primary medical needs.
- (b) Single occupant bedrooms must have at least 80 square feet of floor space.
- (c) The floor space requirement must not include closets or other alcoves.
- (d) Floor space must be space that children can use for daily activities.
- (e) If a foster home was verified before January 1, 2007, then a foster home is exempt from the maximum bedroom occupancy requirement until:
  - (1) The foster family moves to a new home;
  - (2) The foster home is structurally altered by adding a new room; or
  - (3) The foster home's verification is no longer valid.

### §749.3023. Which rooms in the home may not be used as bedrooms?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) Only rooms that provide adequate opportunities for rest and privacy may be used as a bedroom.
- (b) Foster children or any other household members may not use any of the following as a bedroom:
  - (1) A room commonly used for other purposes, including dining rooms, living rooms, hallways, or porches;
  - (2) A passageway to other rooms;
  - (3) A room that does not have doors for privacy; or
  - (4) A detached structure.
- (c) A foster child may use a basement as a bedroom if there is:
  - (1) A second fire escape route from the basement; and
  - (2) Natural lighting.
- (d) A foster child may not use a basement as a bedroom if there is no natural lighting:
  - (1) Unless you verified the home prior to January 1, 2007; and
  - (2) Until the verification is no longer valid, or the home is structurally altered through the addition of a new room.

**§749.3025. May a resident in care who turns 18 years old share a bedroom with a minor?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) Before an adult resident who has turned 18 years old while placed in his current foster home can share a bedroom with a minor resident, you must assess the behaviors, maturity level, and relationships of each resident to determine whether there are risks to either the minor or adult in care.
- (b) You must document your assessment in each resident's record.

**§749.3027. May a child in care share a bedroom with an adult caregiver?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) A child may share a bedroom with an adult caregiver if:
  - (1) 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) 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 or others. However, the caregiver must provide comfortable sleeping arrangements for the child.

**§749.3029. Can children of opposite sex share a bedroom?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

Children six years old or older must not share a bedroom with a person of the opposite sex.

**§749.3031. What are the requirements for beds and bedding?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) Each child shall have his own bed and mattress.
- (b) Beds must be clean and comfortable.
- (c) Mattresses must have covers or protectors.
- (d) Linens must be changed when soiled, and not less often than once a week.

**§749.3033. What type of personal storage space must a foster child have?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

Each child must have accessible storage space for his clothing and personal possessions.

**§749.3035. What bathroom accommodations must a home have?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) A foster home must have one lavatory, one tub or shower, and one toilet for every eight household members. A foster home verified before January 1, 2007, is exempt from this requirement until it is no longer verified by the agency under which it is currently verified, or it makes structural changes to the home by adding additional bathrooms.
- (b) All lavatories, tubs, and showers must have hot and cold running water.
- (c) For foster homes that care for primary medical needs children, the child's bedroom and the child's bathroom must be located on the same floor. A foster home verified before January 1, 2007, is exempt from this requirement until it is no longer verified by the agency.
- (d) Bathrooms must allow for privacy.

**§749.3037. What are the requirements for indoor space that children can use?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) Children must have indoor areas for their use. There must be at least 40 square feet for each child. This does not include bedrooms, kitchens, bathrooms, utility rooms, unfinished attics, or hallways.
- (b) A foster home must identify indoor areas that children can use.
- (c) You must approve the indoor space that a home designates for the children's use.

**§749.3039. What are the requirements for outdoor recreation space and equipment?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (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 not be used as play or recreational equipment.

**§749.3041. What are the requirements for a foster home's physical environment?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

The foster home must ensure that:

- (1) Outdoor areas are well drained;
- (2) Windows and doors used for ventilation are screened;
- (3) Equipment and furniture are safe for children, kept clean, and in good repair;
- (4) Flammable or poisonous substances are stored out of the reach of children;
- (5) House and grounds are free of rodents, insects, and stray animals; and
- (6) Exits in living areas are not blocked by furniture.

**Division 5, Nutrition and Food Preparation****§749.3061. What are the requirements for feeding children in care?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (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.

**Best Practice Suggestion .....**

Best practice suggests that toddlers and pre-school children should not go more than three hours without a meal or snack being offered, unless the child is sleeping or unless otherwise justified in writing by the child's health-care professional. Likewise, school-age children should not go more than six hours without a meal or snack being offered, unless the child is sleeping or unless otherwise justified in writing by the child's health-care professional.

**§749.3063. What types of food and water must caregivers provide children?***DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) Caregivers must provide a child with food that is:
- (1) Of adequate variety, quality, and in sufficient quantity to supply the nutrients needed for proper growth and development according to the United States Department of Agriculture guidelines; and
  - (2) Appropriate for the child's age and activity level.
- (b) Caregivers must not serve a child nutrient concentrates and supplements, such as protein powders, liquid protein, vitamins, minerals, and other nonfood substances in lieu of food to meet the child's daily nutritional need, except with written instructions from a licensed health-care professional.
- (c) Caregivers must ensure drinking water is always available to each child and is served in a safe and sanitary manner. Children must be well hydrated and must be encouraged to drink water during physical activity and in warm weather.

**Best Practice Suggestion .....****Children's Nutrition**

Research suggests the following:

- Milk and milk products served to children 12 months old or older should be Grade A pasteurized or from sources approved by the Department of State Health Services.

The following milks do not contain the right amounts of all the nutrients infants need and can harm an infant's health. Iron-fortified infant formula is the best substitute for breast milk. Infants should not be given the following unless recommended by the infant's health-care professional:

- Cow's milk;
- Evaporated cow's milk or home-prepared evaporated cow's milk formula;
- Sweetened condensed milk;
- Goat's milk;
- Soy milk; or
- Imitation milks, including those made from rice or nuts (such as almonds) or nondairy creamer.

[http://www.fns.usda.gov/tn/Resources/feeding\\_infants.html](http://www.fns.usda.gov/tn/Resources/feeding_infants.html)

*Feeding Infants: A Guide for Use in the Child Nutrition Programs p.24)*

- Milk should be fluid milk.
- Breads and grains should be made from whole-grain or enriched meal or flour.
- Cereal should be whole grain or enriched or fortified.
- Vegetable or fruit juices should be 100% vegetable or fruit juice when used to meet a serving from the vegetable or fruit group.
- Children under one year old should not be offered unpasteurized or raw honey because it may contain spores that pose a health risk.

*(continued)*



**Best Practice Suggestion continued.....****Food Allergies**

A food allergy is caused by the body's immune system reacting inappropriately to a food or food additive. Symptoms may include wheezing, difficulty breathing, diarrhea, rashes, itching, hives, and headaches. Food allergies are most common in infants, due to their immature digestive systems. Food allergies are *usually* outgrown during the preschool years. Although any food may cause an allergic reaction, six foods are responsible for most of these reactions in children. These foods are:

- Peanuts;
- Eggs;
- Milk;
- Tree nuts;
- Soy; and
- Wheat.

A child who is pregnant or breastfeeding should avoid consuming peanuts and peanut products due to its association with the development of peanut allergies in infants. It is best not to offer children under two to three years old peanuts or peanut products, such as peanut butter and foods containing or cooked in peanut oil, because of the potential of developing this life-threatening and often life-long allergy. Foods that cause allergic reactions should be eliminated from the diet. However, it is important that the diet still contain a variety of foods for healthy growth and development. A child should receive a medical evaluation if food allergies are suspected. If the child's licensed physician determines that the child has a food allergy, a determination should be made of whether the child's allergic condition meets USDA's definition of disability.

**Food Intolerance**

A food intolerance is an adverse food-induced reaction that does not involve the body's immune system. Lactose intolerance is one example of food intolerance. A person with lactose intolerance lacks an enzyme needed to digest milk sugar. When that person eats milk products, gas, bloating, and abdominal pain may occur. It is best to provide food substitutions for children with food intolerances who cannot consume the regular meal.

<http://www.fns.usda.gov/tn/Resources/blocks1.pdf> - pg. 18)

**Choking**

Research has shown that 90% of fatal choking occurs in children younger than four years old. Examples of foods that present a risk of choking include hot dogs sliced into rounds, whole grapes, hard candy, nuts, seeds, raw peas, dried fruit, pretzels, chips, peanuts, popcorn, marshmallows, spoonfuls of peanut butter, and chunks of meat larger than can be swallowed whole.

**§749.3065. What must the caregiver do if a child refuses to or cannot eat a meal or snack that is offered?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) The caregiver must offer a child a meal or snack according to this division, but the caregiver may not force the child to eat. The caregiver does not have to offer other food to a child who:
  - (1) Refuses a meal or snack; or
  - (2) Chooses not to be present when a meal or snack is scheduled.
- (b) The caregiver must discuss recurring eating problems with child placement staff and the child's parent.
- (c) If a meal or snack is not appropriate to meet a child's individual needs, for example food allergies or religious reasons, then you must offer the child an appropriate nutritional substitute.

**§749.3067. May a caregiver use food as a reward or punishment or as part of any behavior management program?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

A caregiver may not use food that meets a child's nutritional requirements as a reward or punishment or as part of a behavior management program. Food cannot be withheld.

**§749.3069. May caregivers offer a child in care different food choices than what the family is eating?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) A caregiver must offer a child in care the same food choices that other children in the home are offered, unless medically contraindicated for the child.
- (b) A caregiver must offer a child in care food choices that are at least comparable to what the adults in the home are eating, unless medically contraindicated for the child.

**§749.3071. What must I do if a child requires a therapeutic or special diet?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) For a caregiver to serve a therapeutic or special diet to a child, you must have written approval in the child's record from a licensed physician or a registered or licensed dietician. This approval must be in the child's record.
- (b) If a child requires a therapeutic or special diet, you must give information regarding the diet to the child's caregivers.
- (c) Caregivers must make dietary alternatives available to a child who has special health needs as instructed by a licensed health-care professional.

**§749.3073. What are the nutrition requirements for a child with primary medical needs?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) Caregivers must feed a child with primary medical needs according to his medical and developmental needs.
- (b) A licensed physician must prescribe tube feeding. A dietician or physician must plan the diet that the physician prescribes.
- (c) Children must eat in an upright position unless the service planning team's recommendations are to the contrary.

**§749.3075. What food service practices must caregivers use for children receiving treatment services for primary medical needs or mental retardation?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) Food service practices for children receiving treatment services for primary medical needs or mental retardation, including non-mobile children, must encourage self-help and development.
- (b) A toddler or older child must eat or be fed in the dining area, unless the service planning team's recommendations are to the contrary.
- (c) Infants must be held during feedings, unless the service planning team's recommendations are to the contrary.

**§749.3077. What are the requirements for tube-feeding formula?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) A registered or licensed dietician, physician, or a registered nurse must ensure and document that the caregiver that prepares formula is adequately trained and has demonstrated competency in preparing the formula.
- (b) Tube-feeding formulas must supply the recommended dietary allowance for each child.
- (c) Caregivers must prepare and store the formula:
  - (1) According to directions; or
  - (2) As prescribed by a health-care professional.

**§749.3079. What are the requirements for storing food?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

All food items must be:

- (1) Covered and stored off the floor;
- (2) Stored on clean surfaces;
- (3) Be protected from contamination;
- (4) Stored in a container that is protected from insects and rodents;
- (5) Refrigerated immediately after use and after meals, if the food requires refrigeration; and
- (6) Covered when stored in the refrigerator.

**§749.3081. How must kitchen, dining areas, supplies, and equipment be maintained?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) Caregivers must keep furniture, equipment, food contact surfaces, and other areas where food is prepared, eaten, or stored clean and well repaired.
- (b) Utensils and containers intended for one-time use, such as paper and plastic dishes, must not be used more than once.

## Division 6, Transportation

### §749.3101. What are the requirements for the vehicles used to transport foster children?

*DFPS Rules, 40 TAC, effective January 1, 2007*

Vehicles used to transport foster children must be:

- (1) Maintained in safe operating conditions at all times; and
- (2) Inspected and registered according to federal, state, and local laws.

### §749.3103. What are the requirements for transporting foster children?

*DFPS Rules, 40 TAC, effective January 1, 2007*

The driver and all passengers must follow all federal, state, and local laws when driving, including laws on the use of child passenger safety systems, seat belts, and liability insurance.

### §749.3105. May children transport other foster children?

*DFPS Rules, 40 TAC, effective January 1, 2007*

Other children in the foster home may transport a foster child if the:

- (1) Child driving has a valid drivers license; and
- (2) Service planning teams for the foster children being transported and the foster child transporting, if applicable, approve of the transportation arrangements.

### §749.3107. May caregivers teach or supervise foster children in learning to drive?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) With your approval, caregivers may teach or supervise foster children in learning to drive. You must document your approval in the child's record.
- (b) Only the caregiver responsible for instruction and the child learning to drive may be present in the vehicle.

**Best Practice Suggestion** .....

It is recommended that any plan to teach a child to drive include the use of the Texas Department of Public Safety Parent Taught Driver Education Program or a TEA approved driving training school.

**§749.3109. What are the special requirements for transporting a child who requires increased supervision or is non-ambulatory or non-mobile?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) A sufficient number of caregivers to meet the child's needs must accompany the child.
- (b) Special provision(s) must be made for transporting non-ambulatory and non-mobile children. When necessary, this must include locks for wheelchairs and hydraulic lifts.

**§749.3111. Do the seat belt requirements prohibit transporting children in the bed of a pick-up truck or other parts of the vehicle on the foster parents' property or public roads?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

Yes. Children must be inside the vehicle when transported. The back of a pick-up truck is not considered inside the vehicle. Children must never be transported in the bed of a pick-up truck, while standing on runners, or while on the hood or trunk of any vehicle.

## **Division 7, Swimming Pools, Bodies of Water, Safety**

**§749.3131. Who is responsible for complying with the requirements in this subchapter?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

These requirements only apply to homes that are providing foster care services. This includes foster homes also approved as adoptive homes, but does not include adoptive homes only approved for adoption.

**§749.3133. What are the requirements for a pool at a foster home?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (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 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.

*(continued)*

- (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 or 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) Have a barrier that prevents a child's access to the pool;
  - (2) Be inaccessible to children when it is not in use; and
  - (3) Meet all other pool safety requirements specified in this subchapter.

**§749.3135. What general requirements must caregivers meet for children regarding a body of water?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) Caregivers must use prudent judgment and ensure children in your care 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 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?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (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:

<b>If the age of the youngest child is...</b>	<b>Then you must have one adult to supervise every (number) child/ren in the group</b>	<b>Swimming Child/Adult Ratio</b>
0 to 23 months old	1	1:1
2 years old	2	2:1
3 years old	3	3:1
4 years old	4	4:1
5 years old or older	8	8:1

- (b) 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 to supervise the children.
- (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.

*(continued)*



- (e) The ratios in subsection (a) of this section do not include children over the age of 12 years old who are proficient swimmers, however you must still comply with the child/caregiver ratios required in §749.2559 of this title (relating to How do I determine the child/caregiver ratio for a foster family home?) or §749.2563 of this title (relating to How do I determine child/caregiver ratio for a foster group home?).

**§749.3139. May I include volunteers or relatives who do not meet minimum qualifications for caregivers in the swimming child/adult ratio?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

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) Children in your care do not supervise water activities; and
- (3) You ensure compliance with all other rules of this chapter, including, but not limited to, rules relating to supervision and discipline.

**§749.3141. When must a child wear a life jacket?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

A child must wear a life jacket when:

- (1) Participating in boating activities;
- (2) The child is in more than two feet of water and does not know how to swim; or
- (3) Ordered by a physician for a child with a medical problem or disability.

**§749.3143. Must persons who are counted in the swimming child/adult ratio know how to swim and carry out a water rescue?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

At all times during a swimming activity, at least one adult counted in the swimming child/adult ratio must be able to swim, carry out a water rescue, and be prepared to do so in an emergency.

**§749.3145. What are the safety requirements for wading pools?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

Wading/splashing pools (less than two feet of water) must be:

- (1) Stored out of children's reach, when not in use;
- (2) Drained at least daily; and
- (3) Stored, so it does not hold water.

**§749.3147. What are the requirements for a hot tub?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

A hot tub must be covered with a locking cover when not in use.

**§749.3149. What must I document regarding a body of water that is on or adjacent and accessible to the premises of a foster home?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

You must document the following regarding a body of water that is on or adjacent and accessible to the premises of a foster home:

- (1) Type, location, and size of the body of water; and
- (2) Barriers between the foster home and the body of water.

## Subchapter P, Foster-Adoptive Homes and Legal Risk Placements

### Division 1, Verification of Foster-Adoptive Homes

#### §749.3201. May I verify the same applicant as a foster family home and an adoptive placement at the same time?

*DFPS Rules, 40 TAC, effective January 1, 2007*

Yes. You may approve applicants as a foster-adoptive home.

#### §749.3203. What rules must I follow to verify a foster-adoptive home?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You must follow all rules for verifying a foster family home and for approving an adoptive home.
- (b) You may combine the foster home screening and pre-adoptive home screening into one screening report as long as requirements for each screening are covered.

### Division 2, Legal Risk Placements

#### §749.3221. What is a “legal risk placement”?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) A “legal risk placement” exists when you:
  - (1) Have a child that is not available for adoption because his parent(s)’ rights have not been terminated;
  - (2) Have placed a child into a home that has been jointly verified as a foster home and approved as an adoptive home; and
  - (3) Intend for the placement to change from foster care to adoption once the child is eligible for adoption.
- (b) A “legal risk placement” does not exist when you merely place a child with foster parents who want to adopt the child but have not been approved as an adoptive home.



## Subchapter Q, Adoption Services: Children

### Division 1, Consent

#### §749.3301. What legal authority must I have to place a child in adoptive care?

*DFPS Rules, 40 TAC, effective January 1, 2007*

To place a child in adoptive care, you must have an agreement signed by the person legally authorized to consent to the child's placement.

### Division 2, Adoption Service Plan

#### §749.3321. When must I initiate and complete the adoption service plan?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You must initiate the plan when you accept a child or enter into a written agreement with the birth parent for adoption placement services.
- (b) You must complete the service plan within 40 days of initiation.

#### §749.3323. What must an adoption service plan include?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) The service plan must address:
  - (1) The needs of the birth parents (unless parental rights have been relinquished or involuntarily terminated), the fetus or child, and the adoptive family; and
  - (2) Any other issue that impacts the adoption.
- (b) The adoptive family becomes part of the service plan when matched with a child, or with a birth parent and fetus. You do not have to develop separate service plans for adoptive families that do not have a completed home study.
- (c) The plan must include specific strategies to meet the needs and issues identified, and an estimate of the time required to consummate the adoption. You must inform the birth parents (unless parental rights have been relinquished or involuntarily terminated) and adoptive parents of the services you provide.

#### §749.3325. When placing a sibling group, must I develop a plan for each child?

*DFPS Rules, 40 TAC, effective January 1, 2007*

If you place siblings in the same adoptive home, you do not have to develop a plan for each child. If you place siblings in separate adoptive homes, you have to develop separate plans for each home.

**§749.3327. If a child had a foster care service plan prior to preparation for adoption, must I complete a new adoption service plan?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

No. The adoption service plan may be a continuation of the foster care service plan.

### **Division 3, Preparation for Adoption**

**§749.3341. How often must I have contact with a child being considered for adoptive placement?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You must have contact at least quarterly with the child being considered for adoption. The contact must be meaningful and must include:
  - (1) Continued preparation for adoption; and
  - (2) Updated information concerning the adoption.
- (b) You must make a minimum of three face-to-face contacts with a child who is 18 months old or older to prepare the child for adoption.
- (c) You must make a minimum of one face-to-face contact with an infant who is age zero to 18 months old.
- (d) You must document each contact in the child's record.

**§749.3343. What does preparing a child for adoption include?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You must base your preparation on the child's needs and level of understanding.
- (b) Preparation must include helping the child to:
  - (1) Know and understand his history;
  - (2) Understand the difference between biological, foster, and adoptive parents;
  - (3) Express hopes and fears about adoption, including fears of disruption;
  - (4) Separate from people he is close to, and grieve their loss;
  - (5) Form new attachments; and
  - (6) As appropriate, make a plan for contact with siblings, other family members, and/or other significant persons.
- (c) You must document preparation activities in the child's record.

**§749.3345. Who must prepare a child for adoption?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) A person meeting the qualifications of child placement staff or child placement management staff must prepare a child for adoption.
- (b) Before you can place the child in the adoptive home, child placement management staff must review and approve the preparation and related documentation.

**§749.3347. What assessment information must I obtain on a child being placed for adoption?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You must obtain professional assessments of the child's physical, mental, and emotional status and the child's developmental level.
- (b) These assessments must be current within:
  - (1) 30 days of placement if the child is age zero to 18 months;
  - (2) Three months of placement if the child is age 18 months to five years; and
  - (3) Six months of placement if the child is age five years old or older.
- (c) You must provide any testing that an assessment recommends for the child.
- (d) You must document the assessments and results in the adoption record.

**§749.3349. What must the professional assessment of a child include?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) The extent of the professional assessment required depends on the age, history, and special needs of the child being considered.
- (b) The professional assessment must always include a medical examination by a licensed physician.
- (c) If the child's age is zero to 18 months old, the professional assessment must also include an evaluation by a professional credentialed in the area appropriate to the child's needs if:
  - (1) There is history of abuse, neglect, or failure to thrive; or
  - (2) The child is physically or mentally disabled or developmentally delayed.
- (d) If the child's age is over 18 months old, the assessment must include an evaluation by a licensed psychiatrist, psychologist, or other appropriately licensed or credentialed professional.
- (e) If professional assessments have been completed since the child was placed in the home, you are not required to repeat them.

**§749.3351. What information from the professional assessments must I share with the adoptive family?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

You must share the following with the adoptive family:

- (1) All information from the licensed physician and from the licensed psychiatrist, psychologist, or other licensed or credentialed professional about the potential impact on the child of existing conditions; and
- (2) All information about any further testing or assessments that these professionals recommend. Any such tests must be scheduled by the date of placement.

**§749.3353. What other referrals must I make regarding a child who has or may have a disability?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

You must make a referral to the Social Security Administration to determine the child's eligibility for Social Security Income (SSI).

**Division 4, Placement Requirements****§749.3371. What are the requirements for a child to visit the adoptive family prior to placement?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) Except in the case of children one month old and younger, a child must have at least one pre-placement visit with the adoptive family prior to placement. You must base the length, location, and number of visits on the age, development, and needs of the child.
- (b) You must schedule these visits over a period of time that ensures that both the child and the adoptive family have adequate time to prepare for the placement. The period of time should be based on the age and developmental needs of the child.
- (c) The planning for the pre-placement visits must include the child, if applicable, the foster parents, and the adoptive parents.
- (d) You must document the plan for pre-placement visits. Your child placement management staff must approve the plan before visits are initiated.



**§749.3373. What must my agreement with the adoptive parents include?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) Before placing the child into the home, you must have a written agreement with the adoptive parents.
- (b) You must give a signed copy of this agreement to the adoptive parents and place a copy in the case record.
- (c) The agreement must specify the following:
  - (1) The parties’ agreement to complete the adoption at a specified time;
  - (2) The adoptive parents agreement for you to supervise them prior to the completion of the adoption;
  - (3) That the adoptive parents must notify you before moving their residence prior to the completion of the adoption;
  - (4) That you and the adoptive parents each have the discretion to end the placement prior to the adoption; and
  - (5) The fee and schedule of payment.

**Division 5, Required Information**

**§749.3391. What information must I compile for a child I am considering for adoptive placement?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) As part of the Health, Social, Educational, and Genetic History report, you must compile the following information for a child you are considering for adoption placement:

<b>Type of Information:</b>	<b>Including:</b>
(1) Abuse or neglect:	Physical, sexual, or emotional abuse.
(2) Health history:	(A) Current health status; (B) Birth history; (C) Neonatal history; (D) Other medical, psychological, or psychiatric history, including any medication history; (E) Dental history; (F) Immunization record; and (G) Available results of any medical, psychological, psychiatric, and dental examinations.

*(continued)*

<b>Type of Information:</b>	<b>Including:</b>
(3) Social history:	Information about past and existing relations among the child and the child's siblings, birth parents, extended family members, and other persons who have had physical possession of or legal access to the child.
(4) Educational history:	(A) Enrollment and performance in educational institutions; (B) Results of educational testing and standardized tests; and (C) Special educational needs, if any.
(5) Family history:	Information about the child's birth parents, maternal and paternal grandparents, other children born to either of the child's birth parents, and extended family members: (A) Health and medical history, including any information obtained in the medical history report and information regarding genetic diseases or disorders; (B) Current health status; (C) If deceased, cause of and age of death; (D) Height, weight, eye, and hair color; (E) Nationality and ethnic backgrounds; (F) General levels of educational and professional achievements; (G) Religious backgrounds; (H) Results of any psychological, psychiatric, or social evaluations, including the date of any such evaluation, any diagnosis, and a summary of any findings; (I) Any criminal conviction record relating to the following: (i) A misdemeanor or felony classified as an offense against the person or family; (ii) A misdemeanor or felony classified as public indecency; or (iii) A felony violation of a statute intended to control the possession or distribution of a substance included in the Texas Controlled Substances Act; and (J) Any information necessary to determine whether the child is entitled to, or otherwise eligible for, state or federal financial, medical, or other assistance.

(continued)

- (b) In addition, you must document the following in the child's record:

Type of Information:	Including:
(1) History of previous placements:	Information about the child's previous placements, including the date(s) and reason(s) for placement.
(2) Child's legal status:	Information regarding the child's legal status.
(3) Child's understanding of adoptive placement:	Information regarding the child's understanding of adoptive placement.

**§749.3393. What written authorization must I give adoptive parents at the time of placement?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You must provide:
- (1) Written authorization to care for the child;
  - (2) Written information about the legal status, including if the parental rights to the child have not been terminated; and
  - (3) Written consent for the medical care of the child at the time of the child's placement in the home, if available.
- (b) You must file a copy of the signed authorizations and consent forms in the child's record and in the adoptive home record.

**§749.3395. What information must I provide the adoptive parents prior to or at the time of adoptive placement?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) The agency must discuss information about the child and his birth parents with the prospective adoptive parents.
- (b) According to the Texas Family Code §162.006, you must inform the prospective adoptive parents of their right to examine the records and other information relating to the history of the child.
- (c) The written information provided to the prospective adoptive parents must be edited to protect any confidential information.
- (d) You must provide the prospective adoptive parents information about the DFPS adoption assistance programs if the family may be eligible for such assistance.

## Division 6, Post-Placement Supervision

### §749.3421. What are my responsibilities for the child during the post-placement period?

*DFPS Rules, 40 TAC, effective January 1, 2007*

During the post-placement period, you must:

- (1) Ensure the adoptive placement continues to meet the child's needs;
- (2) Maintain responsibility for the child until the court signs the adoption decree; and
- (3) Make every effort to see that the adoption is consummated as stipulated within the written agreement, or renegotiate another time frame for when the adoption will be consummated.

### §749.3423. What responsibility do I have to offer counseling services to the adoptive family?

*DFPS Rules, 40 TAC, effective January 1, 2007*

To reduce the risk of adoptive placement breakdown, you must offer counseling services to the adoptive family. You must ensure that the adoptive family is aware that counseling is available. Counseling services may be provided by your agency or by an outside counseling resource.

### §749.3425. What are the requirements for post-placement contacts with the adoptive family and child?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You must have face-to-face contacts with the child and adoptive parents, as follows:

If the child:	Then you must have:
(1) Is under the age of two years old and does not need treatment services:	A minimum of five contacts with the child and the adoptive parents within the first six months of placement: (A) Two of the contacts must be face-to-face with the entire prospective adoptive family; and (B) At least one of the two contacts noted above must be in the adoptive home.
(2) Needs treatment services or is two years old or older:	Monthly contacts with the adoptive family during the first six months, two of these contacts must be in the adoptive home with all members of the adoptive family.

*(continued)*

- (b) Contacts not in the home may be in your office or another location that allows you enough privacy to counsel with the adoptive family and evaluate the placement.
- (c) After the first six months of placement, you must have at least quarterly face-to-face contacts in the adoptive home with the entire adoptive family until the adoption decree is entered.
- (d) Contacts must be documented and reviewed by child placement management staff.

**§749.3427. What must I do if the adoption is not completed within the time frame stipulated in the written agreement?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) The following individuals must assess why the adoption was not completed within the time frame stipulated in the written agreement:
  - (1) Staff who supervise the adoption placement;
  - (2) Any other professional staff involved with the family; and
  - (3) The adoptive family.
- (b) You must establish a plan for finalizing the adoption and for supervising the placement. The plan must be based upon the assessment. The plan for supervising the placement must require at least quarterly face-to-face contacts in the adoptive home with both parents present.
- (c) You must document the assessment and the plan.
- (d) Child placement management staff must:
  - (1) Review the documentation and plan; and
  - (2) Determine whether the assessment and plan will meet the needs of the child for safety, care, and permanency.
- (e) The adoptive placement must be re-evaluated if consummation of the adoption has not been completed within one year.

**§749.3429. What must I do if there are changes in the adoptive family during the post-placement period?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

You must document any changes in the adoptive family that may affect the child. This includes changes in health, financial condition, or family or household composition.

**§749.3431. What must I do if I determine that the placement cannot be completed and/or is not in the best interest of the child and/or the adoptive family?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You must remove the child from the adoptive family if the placement and adoption is not in the best interest of the child and/or the adoptive family.
- (b) The decision to remove the child must be reviewed and approved by child placement management staff prior to the removal.
- (c) If the child comes back into your care, you must document the following in the child's record:
  - (1) The circumstances necessitating the removal from the adoptive family; and
  - (2) An update of the child's service plan.

**Division 7, Post-Adoption Services****§749.3461. Must I offer counseling services after the adoption is consummated?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You must offer counseling services to the adoptive child and adoptive parents after the adoption is consummated.
- (b) You may offer these services through your agency or an outside counseling resource.

**§749.3463. If supplemental information concerning birth parents subsequently comes to my attention, what are my responsibilities?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You must make reasonable efforts to inform the adoptive parents and/or an adult adoptee, in writing, about supplemental medical, psychological, or psychiatric information, including developing genetic conditions, terminal illnesses, or death of a birth parent, that subsequently comes to your attention. You must document the information provided, the date and method of providing the information, and the names of the persons receiving the information.
- (b) When an adoptive placement is made, you must tell older adopted children and adoptive parents that you will communicate the information in subsection (a) of this section to them provided that they keep you informed of their whereabouts. You must document when you gave this information to the child and to adoptive parents.

*(continued)*

- (c) When you receive information on the identified topic, you must, at a minimum:
- (1) Write the adoptive parents and/or adult adoptee at the last known address;
  - (2) If the letter is returned to you as undeliverable, check the telephone directory or Internet search for the city where the adoptive parents and/or adult adoptee were last known to be living;
  - (3) If this action does not locate the adoptive parents and/or adult adoptee, check the record for contact information on family members or others who may have knowledge of the adoptive parents and/or adult adoptee's whereabouts and attempt to contact these persons and obtain forwarding information; and
  - (4) Document your attempts to locate the adoptive parents and/or adult adoptee.

**§749.3465. What must I do when an adoptee requests his adoption record?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) According to Texas Family Code §162.006, you must provide to the adult adoptee a copy of the adoption report that has been edited to protect any confidential information.
- (b) If the adoptee is younger than 18 years of age, the request for the information must come from or must include the written consent of the adoptee's adoptive parents or managing conservator.





## Subchapter R, Adoption Services: Birth Parents

### Division 1, Birth Parent Preparation

#### §749.3501. What information must I provide to birth parents who contact me for services?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) Upon establishing a formal relationship with birth parents, you must provide the following information to them in writing:
  - (1) Alternatives and options to adoption that your policies do not oppose;
  - (2) The services you provide, including counseling and post-adoption services;
  - (3) Adoption registries;
  - (4) Legal rights and responsibilities of both birth parents in regard to:
    - (A) Relinquishment of parental rights;
    - (B) Waivers of Interest;
    - (C) Affidavit of status;
    - (D) Termination of parental rights;
    - (E) Designating the father of a child as “unknown” based on legal requirements; and
    - (F) Paternity registry requirements; and
  - (5) Any assistance available through the agency to meet housing, medical, and prenatal care and other needs;
- (b) You must provide and discuss this information to birth parents in a language that they understand; and
- (c) You must document the:
  - (1) Date the information was shared; and
  - (2) Agency staff that shared the information.

**§749.3503. What are the requirements for contacting birth parents that become my clients?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) Child placement staff must have at least:
  - (1) Two face-to-face contacts with birth parents prior to the relinquishment of parental rights over a period of two or more days. At least one interview must be held after the birth of the child. If face-to-face contact with the birth father is not feasible, you must document justification for contacts that are not face-to-face; and
  - (2) Except in cases of relinquishment or involuntary termination of parental rights, quarterly contact with birth parents prior to placement of the child.
- (b) If the contacts required in subsection (a) of this section cannot be made, you must document that you have exercised reasonable efforts to locate the absent parent, and you must document why the contacts could not be made.
- (c) Contacts must assist birth parents to:
  - (1) Understand their feelings regarding relinquishing the child for adoption;
  - (2) Understand the long range implications of relinquishing the child for adoption;
  - (3) Freely make a choice regarding relinquishing the child to the agency for adoption;
  - (4) Insure that birth parents are not pressured to make a decision to place their child for adoption;
  - (5) Obtain information from birth parents about their expectations for adoptive placement, if placement is chosen, and the degree and type of involvement, if any, they desire with adoptive family; and
  - (6) Obtain the required Health, Social, Educational, and Genetic History Report (HSEGH).
- (d) The following topics must be discussed with the birth parents:
  - (1) Preparation for childbirth, when applicable;
  - (2) Relinquishment or waiver of parental rights;
  - (3) Termination of parental rights; and
  - (4) Counseling in regard to separation, loss, and grief issues.
- (e) Staff providing the service must document all contacts with birth parents.

## Division 2, Termination of Parental Rights

### **§749.3521. What requirements must I follow regarding termination of parental rights?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

You must comply with all state and federal laws regarding termination of parental rights, including Chapter 161 of the Texas Family Code (relating to Termination of the Parent-child Relationship).

### **§749.3523. What specific information must I obtain from birth parents that voluntarily relinquish their parental rights?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

A parent who signs an affidavit of voluntary relinquishment of parental rights regarding a biological child must also prepare a medical history report form that we issue as required by §161.1031 of the Texas Family Code. If the child is:

- (1) In the managing conservatorship of Child Protective Services, DFPS must maintain the form and make it available to persons with whom the child is placed; and
- (2) Placed for private adoption through a licensed child-placing agency, that agency must maintain the form.

## Division 3, Post Adoption Services

### **§749.3571. Must I offer counseling services to birth parents after the adoption of their child is consummated?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) Yes. You must offer counseling services to birth parents after the consummation of the adoption.
- (b) You must ensure that birth parents are notified in writing that counseling services are available through the agency on an ongoing basis.
- (c) You may provide counseling services directly or through referrals to counseling resources outside your agency.

**§749.3573. What are the requirements to provide information about the child to birth parents after the adoption is consummated?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You must make reasonable efforts to inform birth parents, in writing, about developing genetic conditions, terminal illness, or death of the biological child that comes to your attention.
- (b) At the time the adoption placement is made, you must tell birth parents that you will communicate the information in subsection (a) of this section to them provided that they keep you informed of their whereabouts.
- (c) When you receive information on the identified topics, you must document your attempts to locate the birth parents, the information provided, the date and method of providing the information, and the names of the persons receiving the information.

## Subchapter S, Adoption Services: Adoptive Parents

### Division 1, Adoptive Applicant Preparation

#### §749.3601. What information must I provide to persons inquiring about agency adoption services?

*DFPS Rules, 40 TAC, effective January 1, 2007*

Prior to establishing any formal relationship with prospective adoptive applicants, you must provide written information regarding:

- (1) The services you provide, including counseling and post-adoptive services;
- (2) Fee policies and payment procedures;
- (3) Agency requirements and procedures;
- (4) Legal requirements for adoption, including their right to have independent legal counsel for legal consummation. You may require that the legal counsel selected by the applicants be experienced in adoptions. If the attorney selected by the applicants is not experienced in adoptions, you may require the adoptive applicants to have an additional, experienced attorney handle the adoption requirements while allowing oversight by the applicants' choice of attorney; and
- (5) Adoption registries.

### Division 2, Pre-Adoptive Home Screening

#### **Best Practice Suggestion** .....

Best practices for adoptive home screening interviews:

- Space interviews so that members of the prospective adoptive family are able to process and provide information that contributes to the assessment of the family.
- If the home is not providing foster care to the child prior to the consummation of the adoption, conduct the individual interviews with either prospective adoptive parent and the joint interview with both parents on the same day.
- Avoid conducting the individual interviews with children and other family members living in the home and the joint interview with all family members on the same day.

**§749.3621. What is a pre-adoptive home screening?***DFPS Rules, 40 TAC, effective January 1, 2007*

A pre-adoptive home screening contains documentation of the following:

- (1) Interviews with adoption applicants, their families, and collateral contacts as necessary;
- (2) Information obtained through review of documents, reports, and inspections;
- (3) Assessment of the information obtained to determine whether applicants meet the requirements for approval as adoptive families;
- (4) Evaluation of the information obtained in order to make recommendations about the family's capacity for adoption, including the age, number, sex, and special needs of the children the family has the capacity to parent;
- (5) Assessment of basic care and safety issues, including safety of the environment of the adoptive home; and
- (6) Review and approval by child placement management staff, including the ages and gender(s) of the children for whom the home is approved, the special needs of the children for whom the home is approved, and the approved capacity of the home.

**§749.3623. What information must I obtain for the adoptive home screening?***DFPS Rules, 40 TAC, effective January 1, 2007*

You must obtain, document, and assess the following information about a prospective adoptive home:

<b>Required Information</b>	<b>Description of Discussion, Assessment, and Documentation Requirements</b>
(1) The age of the adoptive applicants.	All adoptive applicants must be at least 21 years or older. You must include documentation verifying their age.
(2) The marital status of the adoptive applicants including any previous marriages.	If the adoptive applicants are married, you must review and document the marriage license or declaration of marriage record. You must document information about any previous marriages, divorces, or deaths of former spouses.
(3) A history of the adoptive applicants' residence and their citizenship status.	You must document the: <ol style="list-style-type: none"> <li>(A) Length of time spent at each residence for the past 10 years (street address, city, state); and</li> <li>(B) Citizenship of the adoptive applicants.</li> </ol>

*(continued)*

Required Information	Description of Discussion, Assessment, and Documentation Requirements
(4) The financial status of the adoptive applicants.	Adoptive applicants must be able to meet the child's basic material needs. You must include the family's ability to support a child, employment history, income, expenses, and ability to manage money. You must verify income and insurance coverage.
(5) The results of the criminal history and central registry background checks conducted on the adoptive applicants and any non-client person 14 years of age or older who regularly or frequently stays or works in the home.	Persons applying to adopt children through a child-placing agency, and any non-client person 14 years of age or older who will regularly or frequently be staying or be present at the home while children are being provided care, must obtain a criminal history and central registry background check (See Chapter 745, Subchapter F, of this title (relating to Background Checks)). The results of those checks must be documented in the adoptive home record and the home study.
(6) Health status of the adoptive applicants.	Document information about the physical, mental, and emotional status (including substance abuse history) of all persons living in the home in relation to the family's ability to adopt a child and to assume parenting responsibilities. You must observe these persons for any indication of problems and follow up, where indicated, with a professional evaluation. Document the information obtained through your observations or through a physician's statement. Consideration must be given to the health and age of the adoptive applicants. There must be a plan in place to ensure the child will be raised in a stable and consistent environment to adulthood.
(7) Any disabilities of the adoptive applicants.	A person must not be prohibited from adopting a child solely based on a disability. You must evaluate individuals who are disabled in relation to their adjustment to the disability and any limits the disability imposes on the adoptive applicants' ability to care for a child. This evaluation must be documented in the home study.
(8) The adoptive applicants' motivation for adoption.	Discuss and assess the adoptive applicants' motivation for adoption. You must assess the applicants' motivation and its effect on their ability to accept and parent an adopted child.

(continued)

Required Information	Description of Discussion, Assessment, and Documentation Requirements
(9) The fertility of the adoptive applicants.	Discuss and assess information about the couple's fertility. The applicants' fertility is important only in relation to unresolved feelings about their infertility and their ability to accept and parent a child not born to them.
(10) The quality of the adoptive applicants' marital and family relationships.	Describe the quality of marital and family relationships in relation to the family's ability to adopt and parent a child. You must assess the stability of a couple's relationship, the strengths and problems of the relationship, and how those issues will relate to an adopted child. You must assess the quality of the relationships between the prospective adoptive parents and their biological children, living in or out of the home, strengths and problems of those relationships, and how those issues will relate to an adopted child.
(11) The adoptive applicants' feelings about their childhood and parents.	Discuss and assess adoptive applicants' feelings about their childhoods and parents, including any history of abuse or neglect and their resolution of the experiences.
(12) The adoptive applicants' attitude about an adopted child's religion.	Evaluate adoptive applicants on: (A) Their willingness to respect and encourage a child's religious affiliation, if any; (B) Their willingness to provide a child opportunity for religious and spiritual development, if desired; and (C) The health protection they plan to give a child if their religious beliefs prohibit certain medical treatment.
(13) The adoptive applicants' values, feelings, and practices in regard to child care and discipline.	Discuss and assess 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 adoptive parents' discipline styles, techniques, and their ability to recognize and respect differences in children and use discipline methods that suit the individual child. If their current discipline methods are different than those that you approve, discuss and assess how they would change their child care practices to conform with your approved methods.

(continued)



Required Information	Description of Discussion, Assessment, and Documentation Requirements
(14) The adoptive applicants' sensitivity to and feelings about children who may have been subjected to abuse and neglect if the agency may place such children with the adoptive parents.	Discuss and assess the adoptive applicants' understanding of the dynamics of child abuse and neglect. Discuss and assess their understanding of how these issues and experiences affect them, their families, and the children they may adopt. Assess the adoptive family applicants' ability to help children who have been abused or neglected. If the adoptive applicants experienced abuse or neglect as a child, assess the handling of those experiences and assess the impact of those experiences on the applicant's ability to help children deal with their own experiences. Evaluate the availability of family and community resources to meet the needs of the children adopted by the family.
(15) The adoptive applicants' sensitivity to, and feelings for children's experiences of separation from, and the loss of, their biological families.	Discuss and assess the adoptive applicants' 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 applicants' acceptance of the process of grief and loss for children and assess their ability to help children through the grieving process.
(16) The adoptive applicants' sensitivity to, and feelings about, a child's biological family.	Discuss the adoptive applicants' feelings about the child's parents, including those parents who abused or neglected the child. Assess their sensitivity and reactions to the birth parents. Discuss and assess their sensitivity to and acceptance of a child's feelings about his parents and assess their ability to help the child deal with those feelings. Discuss and assess the applicants' sensitivity to and acceptance of the child's relationships with his siblings. Discuss and assess their reactions to the possibility of contacts between the child and his biological family in the future.
(17) The attitude of other family and household members regarding adoption.	Discuss and assess the attitudes of other family and household members toward the plan of adoption. Discuss and assess their involvement in the care of children, their attitudes toward the children, and their acceptance of the adoption plan.

*(continued)*

Required Information	Description of Discussion, Assessment, and Documentation Requirements
(18) The attitude of the adoptive applicants' extended family regarding adoption.	Discuss the extended family's attitude toward adoption and the involvement the family will have with the adopted children. Discuss and assess their involvement in the care of the children, their attitudes toward adoption, and adopted children.
(19) Support systems available to adoptive applicants and adopted children.	Discuss and assess the support systems available to the adoptive family and the support they may receive from these resources.
(20) The language(s) spoken by the adoptive applicants.	Document the language(s) spoken by each adoptive applicant.
(21) The adoptive applicants' expectations of and plans for adoptive children.	Discuss and assess the prospective adoptive parent's expectations of the child and the flexibility of their expectations in relation to the child's actual needs and abilities. 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.
(22) Adoptive applicants' ability to work with specific kinds of behaviors and backgrounds.	Discuss and assess the adoptive applicants' ability to work with and/or willingness to accept specific behaviors, backgrounds, special needs and/or disabilities and other characteristics of children.
(23) Background information from other child-placing agencies.	Request and assess the following background information (if provided) from any child-placing agency that previously conducted a foster screening, pre-adoptive home screening, post placement adoptive report, or home study: (A) The screening, report, home study, and related documentation; (B) Documentation of supervisory visits and evaluations; (C) Any record of deficiencies and their resolutions; and (D) The most current fire and health inspections.

**§749.3624. May I consider a prospective adoptive parent's membership in a military organization as a factor in approving an adoptive home screening?**

*DFPS Rules, 40 TAC, effective March 1, 2008*

Section 162.0025 of the Texas Family Code prohibits any person conducting an adoptive home study from considering membership in the armed forces of the United States, Texas National Guard, National Guard in another state, or in a reserve component of the armed forces of the United States as a negative factor in determining whether the adoptive parent would be a suitable parent or whether an adoption is in the best interests of the child.

**§749.3625. Whom must I interview when conducting an adoptive home screening?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

Interviews for an adoptive home screening must include:

- (1) At least one individual interview with each prospective adoptive parent;
- (2) At least one individual interview with each child three years or older living in the home either full or part time;
- (3) At least one individual interview with any other person living full or part time with the family;
- (4) At least one joint interview with the adoptive applicants;
- (5) At least one family group interview with family members living in the home; and
- (6) At least one interview, by telephone, in person or by letter, with any minor child 12 years old or older or adult child of the adoptive applicants not living in the home. If you cannot reach an adult child to interview, you must document your reasonable efforts to locate the child.

**Helpful Information .....**

Individuals who may visit in the adoptive home, such as relatives who spend vacations or holidays, are not considered to be living in the home part time.

Examples of persons living in the home part time include:

- Children of prospective adoptive parent(s), including children attending college but who are in the home for weekends, holidays, and/or vacations or children who live in other living arrangements (with custodial parents, in boarding schools, etc.) but who are present in the home on weekends, vacations, holidays.
- Parents of the adoptive parents who may live in the home for a number of weeks or months each year.
- Friends who live with the family while unemployed.

**§749.3627. What must I document regarding interviews that I conduct for an adoptive home screening?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

You must document all interviews and attempts to complete interviews. The documentation must be a part of the adoptive home record and include:

- (1) The dates and methods used to contact the required persons;
- (2) The dates of the interviews;
- (3) Who was present at the interviews and their relationship to the adoptive applicants; and
- (4) A summary of the interviews.

**§749.3629. What are the requirements for visiting the home during an adoptive home screening?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) Unless the child is already placed in the home for foster care, you must visit the home when all members of the household are present.
- (b) You must document in the record the date, persons present, their relationship to the prospective adoptive family, and observations made during the visit.

**§749.3631. What are the requirements if adoptive applicants previously adopted a child from another child-placing agency or were previously foster parents for another agency?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You must request information related to the parents' experience and performance as foster and/or adoptive parents from the previous agency and any background information regarding the foster home as described in §749.2447(22) of this title (relating to What information must I obtain for the foster home screening?).
- (b) If provided, you must evaluate the information as part of your screening and placement decisions regarding the home. You must use the information to evaluate the family's ability to work with specific kinds of behaviors and backgrounds.

**§749.3633. What must I do if I do not place a child with the adoptive applicants within six months after I complete the pre-adoptive home screening?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) If you do not place a child with the adoptive applicants within six months after you complete the adoptive screening, you must update the screening within the 30-day period before a child is placed in the home.
- (b) For adoptive homes that are not providing foster care, the written update must include:
  - (1) A review and any required updating of each category of information required for an adoptive home screening; and
  - (2) Documentation of at least one visit to the adoptive home when all household members are present within the 30-day period before a child is placed in the home.

**§745.4067 May I place a child in a home of a prospective adoptive parent before I complete the pre-adoptive home screening?**

*DFPS Rules, 40 TAC, effective March 1, 2002*

This may be done in two situations. If the prospective adoptive parent is a:

- (1) Member of the child's family related by the second degree of consanguinity or affinity; or
- (2) Foster family with whom the child has been living immediately prior to the request for a pre-adoptive home screening.

**§745.4073 Must I complete a pre-adoptive home screening update if the prospective adoptive parents plan to adopt another child?**

*DFPS Rules, 40 TAC, effective March 1, 2002*

Yes. If prospective adoptive parents plan to adopt another child, either in addition to or instead of the child for whom the screening was done, you must complete a written pre-adoptive home screening update.

**Division 3, Basic Care and Safety Requirements****§749.3661. What information must adoptive applicants submit on their home and grounds as a part of their application?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) Adoptive applicants must submit a sketch of the floor plan of the home showing dimensions and purposes of all rooms in the home.
- (b) Adoptive applicants must submit a sketch or photo of the outside areas showing areas of the grounds to be used by the child.
- (c) If the home is providing foster care, you may use the foster care screening information.
- (d) You must review the sketches and/or photos to determine:
  - (1) Whether there is sufficient space to accommodate the members of the household and the adoptive child(ren); and
  - (2) Any potential safety or health issues.

**§749.3663. What are the basic safety requirements for the home and grounds?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) The home must be clean, safe, and free of obvious fire and other hazards. The home must be equipped with smoke detectors.
- (b) Pets must be vaccinated and treated as recommended by a licensed veterinarian.
- (c) If the adoptive home has a swimming pool, wading pool, hot tub, or other bodies of water on the premises, you must discuss safety issues and plans to ensure the safety of the child with the adoptive applicants.
- (d) You must discuss and assess basic care and safety issues depending on the age and specific needs of the child or children being considered for placement in the home. When you select a child for placement in the home, you must discuss issues specific to the child including supervision, special health or behavior risks, and general child care needs according to the experience and training needs of the adoptive parents.

**Best Practice Suggestion .....**

When you complete an adoption screening, it is a good idea to ask whether there are firearms, explosive materials or projectiles present in the home. If these items are present, review your agency's policies and requirements for storage with the adoptive applicants. Your agency may wish to consider the age, history, emotional maturity, and background of the child placed in the adoptive home in determining the adequacy of the storage of these items.

Some precautions your agency may consider include:

- Requiring trigger locks or making items inoperable;
- Requiring locked storage;
- Requiring separate locked storage for weapon and for ammunition; or
- Requiring that items stored in display cabinets be made inoperable, stored separately from ammunition, and that cabinets be locked.

It is a good idea not to transport children in vehicles with accessible firearms, explosive materials, or projectiles.



## Division 4, Pre-Placement Requirements

### §749.3691. What contacts must I maintain with adoptive applicants prior to the placement of a child?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) After you accept a family as a potential adoptive placement, you must maintain at least quarterly contact with them.
- (b) You must discuss any changes in the information that you obtain during the adoption screening.
- (c) In addition to the quarterly contacts, you must provide education and training in regard to the following as deemed appropriate by the child placing staff:
  - (1) Bonding with adoptive children;
  - (2) Parenting issues and concerns; and
  - (3) Children with special needs, if appropriate.
- (d) You must document each contact and training that was provided in the family's record, indicating the date, type of contact, and content.

### §749.3693. May I contract with another agency for the quarterly contacts?

*DFPS Rules, 40 TAC, effective January 1, 2007*

You may contract with another agency for the quarterly contacts as long as:

- (1) The agency reports the required information to you; and
- (2) You maintain the report in the adoptive applicants' record.

## Division 5, Pre-Adoption Consummation Activities

### §749.3721. What are my agency's responsibilities during the pre-adoption supervisory period?

*DFPS Rules, 40 TAC, effective January 1, 2007*

Your agency must:

- (1) Ensure the child's needs are met in the adoptive placement;
- (2) Maintain responsibility for the child until the court has entered the adoption decree; and
- (3) Offer counseling services to the adoptive family. These services may be provided through referrals outside the agency.

**§749.3725. If the adoption has not been completed within the stipulated time frame in the written agreement, what actions must my agency take?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

Your agency must make every effort to see that the adoption is consummated as stipulated within the written agreement.

- (1) You must make an assessment of why the adoption will not be completed at the end of a six-month supervisory period. The assessment must include:
  - (A) Input from staff who have supervised the adoption placement, professionals who have provided counseling for the family, any other professional staff involved with the family, and the adoptive family; and
  - (B) A plan for finalization of the adoption and for supervision of the placement that is based upon the assessment.
- (2) The assessment and plan must be documented. Child placement management staff must review the documentation and plan and must determine whether the assessment and plan will meet the needs of the child for safety, care, and permanency.
- (3) The adoptive placement must be re-evaluated if it has not been completed within one year.

**§749.3727. What actions must my agency take if there are changes to the adoptive family during the post-placement period?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

Your agency must document any changes in the adoptive family that may affect the child and assess the effect of the changes on the child. This includes changes in health, financial condition, or family or household composition.

**§749.3729. What must my agency do if the placement cannot be completed and/or is not in the best interests of the child and/or the adoptive family?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

Your agency must remove the child from the adoptive family if the placement and adoption is not in the best interests of the child and/or the adoptive family. The decision to remove the child must be reviewed and approved by child placement management staff prior to the removal. You must document the circumstances necessitating the removal and the child's needs in the child's record.

**§745.4025 What is a post-placement adoptive report?**

*DFPS Rules, 40 TAC, effective March 1, 2002*

A post-placement adoptive report is a written evaluation of the assessments and interviews, after the placement of the child, regarding the:

- (1) Child;
- (2) Prospective adoptive parent(s);
- (3) Family of the prospective adoptive parent(s);
- (4) Environment of the prospective adoptive parent(s) and their family; and
- (5) Adjustment of all individuals to the placement.

**§745.4033 Whom must I interview when conducting a foster home screening, a pre-adoptive home screening, or a post-placement adoptive report?**

*DFPS Rules, 40 TAC, effective March 1, 2002*

- (a) Interviews for a foster home screening, a pre-adoptive home screening, or post-placement adoptive report for family applicants may be conducted in one visit and must include:
  - (1) Individual interviews with each prospective foster or adoptive parent;
  - (2) Individual interviews with each child three years or older living in the home and any other person living full time with the family;
  - (3) A joint interview with the prospective foster or adoptive parents; and
  - (4) A family group interview with family members living in the home.
- (b) Interviews for a foster home screening and a pre-adoptive home screening for family applicants must also include any minor child 12 years old or older or adult child of the prospective foster or adoptive parents not living in the home. These interviews may be conducted by telephone, in person, or by letter.

**§745.4035 Must I document the interviews for a foster home screening, a pre-adoptive home screening, and a post-placement adoptive report?**

*DFPS Rules, 40 TAC, effective March 1, 2002*

Yes. You must document in the record all interviews and attempts to interview persons listed in §745.4033 of this title (relating to Whom must I interview when conducting a foster home screening, a pre-adoptive home screening, or a post-placement adoptive report?). The documentation must include the dates and methods taken to contact the required persons, the date of the interviews, who was present at the interviews, their relationship to the prospective foster or adoptive parents, and a summary of the interviews.

**§745.4037 Is a visit to the home required when conducting a foster home screening, a pre-adoptive home screening, or a post-placement adoptive report?**

*DFPS Rules, 40 TAC, effective March 1, 2002*

Yes. You must visit the home when all members of the household are present. You must document in the record the date, persons present, their relationship to the prospective foster or adoptive parents, and observations made during the visit.

**§745.4121 Are there requirements in addition to meeting the qualifications listed in §745.4027 of this title (relating to What qualifications must I meet to review and approve a foster home screening, a pre-adoptive home screening, or a post-placement adoptive report)?**

*DFPS Rules, 40 TAC, effective March 1, 2002*

Unless PRS is a party to the case, you must complete and notarize a PRS Post-Placement Adoptive Report Registration form, and file this form with the appropriate court(s).

**§745.4123 When must I conduct a post-placement adoptive report?**

*DFPS Rules, 40 TAC, effective March 1, 2002*

You must conduct the interviews for a post-placement adoptive report after the child has resided with the prospective adoptive parent or conservator for at least five months, unless otherwise directed by the court. However, you may start the post-placement adoptive report (e.g. the gathering of written information) after the placement of the child.

**§745.4125 What issues should an interview for a post-placement adoptive report address?**

*DFPS Rules, 40 TAC, effective March 1, 2002*

Each interview should focus on the adjustment of the family and the child following the placement of the child. You must also address any items required by §745.4061 of this title (relating to What information must the pre-adoptive home screening include?) that have not been adequately addressed.

**§745.4127 What information must the post-placement adoptive report include?**

*DFPS Rules, 40 TAC, effective March 1, 2002*

- (a) It must include the following documented information:
- (1) A summary of all assessments and available information about the child who is the subject of a petition for adoption, including:
    - (A) Health history, social history, educational history, genetic and family history, and other information required by the Texas Family Code, §162.005 and §162.007;
    - (B) History of physical, sexual, or emotional abuse experienced by the child;
- (continued)*

- (C) History of any previous placements, including the date and reasons for placement;
  - (D) The child's understanding of adoptive placement or conservatorship; and
  - (E) The child's legal status.
- (2) A summary of all assessments, interviews, and available information about the prospective adoptive parents including:
- (A) The pre-adoptive home screening (See §745.4061 of this title (relating to What information must the pre-adoptive home screening include?)), including the results of the criminal history and central registry background checks;
  - (B) The birth parents' expectations for adoptive placement and further involvement (See §745.4063 of this title (relating to Must the pre-adoptive home screening include information about the birth parents?));
  - (C) Individual strengths and weaknesses of the adoptive parents;
  - (D) Observations made relative to the family's interactions with each other;
  - (E) Additional interviews of persons specified in §745.4033 of this title (relating to Whom must I interview when conducting a foster home screening, a pre-adoptive home screening, or a post-placement adoptive report?); and
  - (F) A visit to the home (See §745.4037 of this title (relating to Is a visit to the home required when conducting a foster home screening, a pre-adoptive home screening, or a post-placement adoptive report?)).
- (3) An evaluation of the child's present or prospective physical, intellectual, social, and psychological functioning and needs, and whether the environment will meet those needs.
- (4) A summary of the adjustment of the family and child in the home during the six-month placement period, if appropriate.
- (5) Sources of information and verification, to the extent possible, of all statements of fact pertinent to the report.
- (6) The basis for your conclusions or recommendations.
- (7) The names and the qualifications of all persons involved in the preparation and evaluation of the report.
- (8) Telephone numbers for entities where it is appropriate for the subject of the report to file complaints about how the post-adoptive placement report was conducted (See §745.4043 of this title (relating to Whom must I contact with a complaint about how a pre-adoptive home screening or post-placement adoptive report was conducted?)).
- (b) All persons involved in the preparation and evaluation of the study must sign the report.

## Division 6, Counseling Services

### **§749.3741. Is my agency required to offer counseling services to the adoptive family?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

Yes, you must offer counseling services post-placement and post-adoption. The services may be provided directly or through referrals outside of your agency.

## Division 7, Subsequent Adoptions

### **§749.3761. What are the requirements if adoptive parents apply to adopt another child?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) Before you may place another child into the home, you must update the pre-adoptive screening.
- (b) The update must include at least one:
  - (1) Individual interview with each applicant;
  - (2) Individual interview with each child three years or older living in the home either full or part time;
  - (3) Individual interview with any other person living full or part time with the family; and
  - (4) Visit to the home while all family members are present.
- (c) You must complete all other requirements for an adoptive placement.
- (d) If a subsequent adoption occurs within one year from a previous adoption, in which all of the required home visits and interviews were conducted, an individual interview with both adoptive parents and a home visit with all family members present will meet the interviewing and home visit requirements.

## Subchapter T, Additional Requirements for Child-Placing Agencies That Provide an Assessment Services Program

### Division 1, Regulation

#### §749.3801. Does Licensing regulate all assessment services?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) No. This subchapter only regulates child-placing agencies that also provide an assessment services program.
- (b) Services provided by other individuals, agencies, and organizations are not subject to regulation under this subchapter.

### Division 2, Admission

#### §749.3831. What are the requirements for approving a child's admission into my assessment services program?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) The person responsible for the assessment services program must review and approve in writing the determination that your program will be able to provide or obtain all assessment services the child appears to need at intake.
- (b) The review, determination, and approval must be:
  - (1) In writing, signed, and dated from the person responsible for the assessment services program; and
  - (2) Completed prior to the admission of the child into your assessment services program.
- (c) The determination on the appropriateness of the program to meet the child's assessment needs must be filed in the child's record if the child is admitted into your assessment services program.
- (d) You must document in the child's record whether you are:
  - (1) Only providing assessment services to the child; or
  - (2) Also providing other services, such as transitional living services.
- (e) You must document in the child's record the date of the child's admission into your assessment services program.

## Division 3, Plan for the Assessment

### §749.3861. When must I complete the child's individual plan for the assessment?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) You must complete the child's individual plan for the assessment within 10 days from the date of the child's admission into the program.
- (b) You must document the plan in the child's record.

### §749.3863. When does admission into the assessment services program begin?

*DFPS Rules, 40 TAC, effective January 1, 2007*

Admission into the assessment services program begins when:

- (1) The parent makes the decision to place the child into the assessment services program; and
- (2) You decide to accept the child for these services.

### §749.3865. What must an individual plan for the assessment include?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) An individual plan for the assessment must include:
  - (1) Time frames for providing all assessment services;
  - (2) Recommendations for the child's care during the assessment process;
  - (3) Any treatment to be provided during the assessment period; and
  - (4) Current data from the caregiver's evaluation of the child's behavior and level of functioning.
- (b) The common application is not and must not serve as the individual plan for the assessment.

### §749.3869. How must my assessment services program collect information from a child's caregivers?

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) Your assessment services program must systematically collect information from caregivers throughout the child's participation in the assessment services program. This information includes the caregivers' observations and opinions of the child.
- (b) You must document this information in the child's record. Your documentation must include your consideration of the caregivers' observations and opinions.



**§749.3871. When is the plan for the assessment complete?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) The plan for the assessment is complete when it contains the necessary information and the signed approval of the person responsible for the assessment services program or a designated employee who meets the qualifications of a person responsible for the assessment program.
- (b) The parent must review and be provided a copy of the plan for the assessment.

**Division 4, Assessment Report****§749.3891. What is an assessment report?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) The assessment report that is the result of the assessment services is a narrative report that pulls together data from:
  - (1) Professional evaluation reports on the child; and
  - (2) The program's assessment on how the child is managing in the program.
- (b) The report includes:
  - (1) Recommendations made in other professional evaluations; and
  - (2) Recommendations based on the program's experiences with and assessment of the child.
- (c) The common application is not and must not serve as the assessment report.

**§749.3893. When must I complete the assessment report?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) The admission assessment must be conducted rapidly, consistent with good practice, in order to allow for a permanent placement as soon as possible.
- (b) You must complete the assessment report:
  - (1) Within 30 days after you admit the child, if the child is younger than five years old; or
  - (2) Within 45 days after you admit the child, if the child is five years old or older.
- (c) With the approval of the child's parent, you may extend the time frame for completing the report for an additional 15 days. You must document the need for the extension of time in the child's record.

*(continued)*

- (d) You must complete the assessment report before a planned discharge of the child from the assessment services program. However, additional assessment services may be conducted subsequent to placement if a quick placement is in the best interest of the child.
- (e) You must provide a copy of the assessment report to the child's parent as soon as the report is complete.

**§749.3895. What must be included in the written assessment report?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

In addition to the requirements set forth in §749.1133 of this title (relating to What information must an admission assessment include?), a written assessment report must include:

- (1) Copies and results of the determination of the child's basic health and social and developmental assessment, including:
  - (A) The child's basic health status, as determined under the supervision of a licensed physician;
  - (B) The child's basic social and developmental needs, as determined under the supervision of the person responsible for the assessment services program or a designated employee who meets the qualifications for a person responsible for the assessment program;
  - (C) Recommendations for any further assessment services and testing; and
  - (D) An assessment of the child's immediate and extended family in terms of an ongoing relationship with the child;
- (2) Copies and results of all evaluations and testing;
- (3) A summary of the primary caregivers' evaluations of the child's behavior and level of functioning;
- (4) An assessment of the results and summary in terms of appropriate short- and long-term planning for the child;
- (5) Recommendations for placement; and
- (6) A recommended behavior management plan based on the assessment results and the primary caregivers' evaluations of the child's behavior and level of functioning.

**§749.3897. Who must review and approve an assessment report?**

*DFPS Rules, 40 TAC, effective January 1, 2007*

- (a) The following people must review the assessment report:
  - (1) The person responsible for the assessment program or a designated employee who meets the qualifications of a person responsible for the assessment program;
  - (2) The child's primary caregiver; and
  - (3) The child's parent.
- (b) The person responsible for the assessment program, or the designated qualified employee, must approve and sign the report.
- (c) You must file the original, approved and signed assessment report, including any addendums to the report, in the child's record.



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[http://www.dfps.state.tx.us/Child\\_Care/Child\\_Care\\_Standards\\_and\\_Regulations/rules.asp](http://www.dfps.state.tx.us/Child_Care/Child_Care_Standards_and_Regulations/rules.asp)  
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and go to Subchapter A, Division 3, 745.21 to find the definition for this word.)
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[http://www.dfps.state.tx.us/Child\\_Care/Child\\_Care\\_Standards\\_and\\_Regulations/rules.asp](http://www.dfps.state.tx.us/Child_Care/Child_Care_Standards_and_Regulations/rules.asp)  
and go to Subchapter A, Division 3, 745.21 to find the definition for this word.)
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[http://www.dfps.state.tx.us/Child\\_Care/Child\\_Care\\_Standards\\_and\\_Regulations/rules.asp](http://www.dfps.state.tx.us/Child_Care/Child_Care_Standards_and_Regulations/rules.asp) and go to Subchapter A, Division 3, 745.21 to find the definition for this word.)

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[http://www.dfps.state.tx.us/Child\\_Care/Child\\_Care\\_Standards\\_and\\_Regulations/rules.asp](http://www.dfps.state.tx.us/Child_Care/Child_Care_Standards_and_Regulations/rules.asp) and go to Subchapter A, Division 3, 745.21 to find the definition for this word.)

permit holder: definition – 745.21 (visit

[http://www.dfps.state.tx.us/Child\\_Care/Child\\_Care\\_Standards\\_and\\_Regulations/rules.asp](http://www.dfps.state.tx.us/Child_Care/Child_Care_Standards_and_Regulations/rules.asp) and go to Subchapter A, Division 3, 745.21 to find the definition for this word.)

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