

January 5, 2015

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§745.8481, 745.8487, 745.8491, 745.8493, and 745.8495, without changes to the proposed text published in the November 14, 2014, issue of the *Texas Register* (39 TexReg 8948). The justification for the amendments is to clarify the current rules regarding confidentiality. Senate Bill (SB) 1648, 83rd Regular Session, added Human Resources Code §42.004, which makes photographs (including audio or video recordings, depictions or documentations) of a child by Child Care Licensing (CCL) in the course of an inspection or investigation confidential, and allows CCL to release these items only as specified in rule or other state or federal law. These rules were effective March 1, 2014. CCL is now adopting rules to clarify the limited circumstances in which an alleged perpetrator or an operation cited for a deficiency may view but not get a copy of a child's photograph. CCL is also clarifying in two other rules that photographs of children will not be released to the general public.

Attorney General (AG) Opinion OR 2013-20006 stated that DFPS had no rules that made home screenings confidential. Because of the private nature of a home screening and in response to the AG Opinion, CCL is clarifying that foster home screenings, adoptive home screenings, and post-placement adoptive reports are generally confidential and not releasable. However, a screening or report may be released to the person being evaluated (for example, the prospective foster parent or adoptive parent), or if the DFPS Commissioner approves the release of the screening or report based on a determination that, in the Commissioner's discretion, the release advances the goals of child protection.

Finally, CCL is clarifying that child welfare agencies from other states may obtain a CCL abuse or neglect investigation file to assist in their own child abuse and neglect investigations.

A summary of the changes follows:

The amendment to §745.8481(b) clarifies that any photographs of children in a monitoring file will not be released to the public by adding a reference to §745.8495 of this title (relating to Who can review or have a copy of a photograph or an audio or visual recording, depiction, or documentation of a child that is in Licensing records?).

The amendment to §745.8487(b)(6) clarifies that any photographs of children in an abuse or neglect investigation will not be released to the public by adding a reference to §745.8495 of this title.

The amendment to §745.8491(a)(11) clarifies that child welfare agencies from other states may obtain copies of a Licensing abuse or neglect investigation file to assist in their own child abuse or neglect investigations.

The amendment to §745.8493(a)(8) clarifies that foster home screenings, adoptive home screenings, and post-placement reports may not be released to anyone, unless the requester is the person being evaluated, or the DFPS Commissioner approves the release of the screening or report based on a determination that, in the Commissioner's discretion, the release advances the goals of child protection.

The amendment to §745.8495(b) clarifies that the following are entitled to review a child's photograph: (1) an operation only if the operation was cited for a deficiency as a

result of the inspection or investigation during which the photograph was taken; and (2) an alleged perpetrator of an abuse or neglect investigation during which the photograph was taken to support or verify the abuse or neglect finding.

No comments were received regarding adoption of the amendments

Title 40, Social Services & Assistance, Part 19, Dept. of Family and Protective Services
Chapter 745, Licensing
Subchapter K, Inspections and Investigations
Division 3, Confidentiality
TAC Section Number(s) §§745.8481, 745.8487, 745.8491, 745.8493, 745.8495

Final Action

201405015 TRD Docket Number
For Proposed Action

11/14/14 Proposed Action
Publication Date

X Amendment

X Adopted Without Changes

Effective Date:

X Other (Specify)
March 1, 2015

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.004 and §42.042.

§745.8481. Is information in my operation's monitoring file confidential?

(a) (No change.)

(b) We will not release some information in your operation's monitoring file because of other state and federal laws that make the information confidential, as provided in §745.8493 of this title (relating to Are there any portions of Licensing records that Licensing may not release to anyone?) and §745.8495 of this title (relating to Who can review or have a copy of a photograph or an audio or visual recording, depiction, or

documentation of a child that is in Licensing records?).

§745.8487. What information can Licensing release to the public after the completion of the abuse or neglect investigation?

(a) (No change.)

(b) Before releasing portions of the abuse or neglect investigation that are in the operation's monitoring file, we must remove:

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

(6) Any other information that may not be released under §745.8493 of this title (relating to Are there any portions of Licensing records that Licensing may not release to anyone?) and §745.8495 of this title (relating to Who can review or have a copy of a photograph or an audio or visual recording, depiction, or documentation of a child that is in Licensing records?).

§745.8491. Who can obtain information from the confidential portions of an abuse or neglect investigation file?

(a) The following may obtain information from the confidential portions of an abuse or neglect investigation file, subject to the limitations described in §745.8493 of this title (relating to Are there any portions of Licensing records that Licensing may not release to anyone?) and §745.8495 of this title (relating to Who can review or have a copy of a photograph or an audio or visual recording, depiction, or documentation of a child that is in Licensing records?):

(1) - (8) (No change.)

(9) An administrative law judge, or a judge of a court of competent jurisdiction in a criminal or civil case arising out of an investigation of child abuse or neglect, if he:

(A) - (B) (No change.)

(C) Includes in his disclosure order any safeguards that the court finds appropriate to protect the interest of the child involved in the investigation;

(10) According to the Texas Family Code §162.006, a prospective adoptive parent of the child who is the subject of the investigation or who is the alleged perpetrator in the investigation; and

(11) A child welfare agency from another state that is requesting the information to assist in its own child abuse or neglect investigation.

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

§745.8493. Are there any portions of Licensing records that Licensing may not release to anyone?

(a) We may not release the following portions of Licensing records to anyone:

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

(7) The identity of any child or information identifying the child in an abuse or neglect investigation, unless the requestor is:

(A) - (B) (No change.)

(C) The single-source continuum contractor (SSCC) for foster care redesign when:

(i) - (ii) (No change.)

(iii) The operation was cited for a deficiency as a result of the

investigation;

(8) Foster home screenings, adoptive home screenings, and post-placement adoptive reports, unless:

(A) The requester is the person being evaluated; or

(B) The DFPS Commissioner approves the release of a screening or report based on a determination that, in the Commissioner's discretion, the release advances the goals of child protection; and

(9) Any other information confidential under state or federal law.

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

§745.8495. Who can review or have a copy of a photograph or an audio or visual recording, depiction, or documentation of a child that is in Licensing records?

(a) (No change.)

(b) The following persons may review a photograph or an audio or visual recording, depiction, or documentation of a child in Licensing records, but may not have a copy:

(1) (No change.)

(2) The operation cited for a deficiency as a result of the inspection or investigation during which the photograph was taken or the audio or visual recording, depiction, or documentation was made;

(3) The alleged perpetrator of an abuse or neglect investigation during which the photograph was taken or the audio or visual recording, depiction, or documentation was made to support or verify the abuse or neglect finding;

(4) With a signed release from the operation, a single-source continuum contractor (SSCC) for foster-care redesign that subcontracts with the operation; and

(5) A prospective adoptive parent of the child, as provided in Texas Family Code §162.006.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on _____.