TO: Health and Human Services Commission  
Executive Council  

DATE: June 22, 2017  

FROM: Kristene Blackstone, Child Protective Services  

AGENDA ITEM: 2.a  

SUBJECT: Service Level System-Intense Plus, Treatment Foster Family Care and Child Protective Services Pilot Programs  

BACKGROUND: □ Federal  ☑ Legislative  □ Other: Program Initiative  

The Department of Family and Protective Services (DFPS) proposes new sections and an amendment to §§700.108, 700.110, 700.1335, 700.1337, 700.2365, and 700.2367 in Chapter 700, concerning Child Protective Services (CPS).  

The 2018-19 General Appropriations Act appropriated general revenue for general payment rate increases for the 24-Hour Residential Child Care (24 RCC) program as described in DFPS Rider 44. In addition, the Appropriations Act appropriated general revenue for a new Intense Plus Service Level for General Residential Operations / Residential Treatment Centers (GRO / RTCs) and for the new services Treatment Foster Family Care, and CPS Pilot Programs (Integrated Care Coordination and Family-Based Supportive Services). Finally, Senate Bill 11, 85th Legislature, Regular Session, 2017, and related appropriations require DFPS to contract for the provision of case management by a single source continuum contractor providing community based care, and an associated rate was required for case management.  

The Health and Human Services Commission (HHSC) is contemporaneously proposing amendments to §355.7103 and §355.7109 of Title 1, Part 15, to add the new rates for the 24 RCC program and add a reimbursement methodology for the new services. In order for HHSC to set rates for these programs, DFPS-CPS must implement rules that define and govern such programs.  

ISSUES AND ALTERNATIVES:  

None. The proposed revision is legislatively mandated.
STAKEHOLDER INVOLVEMENT:

The proposed rules will be presented to the HHSC Executive Council on June 22, 2017, and is anticipated to be published for public comment in the Texas Register on June 23, 2017.

FISCAL IMPACT:

☒ None

SERVICES IMPACT STATEMENT:

DFPS anticipates a positive effect on services. The pilot programs will permit the development of programs to better meet the needs of children served by DFPS. Community Based Care will enable local communities to respond to the needs of foster children in their area, to maximize efficiency, and to keep foster children in their home communities as much as possible. Treatment Foster Family Care, Integrated Care Coordination and the Intense Plus Service Level and corresponding rates will provide additional placement and service options for children with high needs. The Family Based Safety Services Pilot will allow the agency to provide innovative in-home services.

RULE DEVELOPMENT SCHEDULE:

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 2017</td>
<td>Publish proposed rules in Texas Register</td>
</tr>
<tr>
<td>June 2017</td>
<td>Present to HHSC Executive Council</td>
</tr>
<tr>
<td>August 2017</td>
<td>Publish adopted rules in Texas Register</td>
</tr>
<tr>
<td>September 2017</td>
<td>Effective date</td>
</tr>
</tbody>
</table>
PROPOSED PREAMBLE

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of Family and Protective Services (DFPS), proposes amendment §700.108 and new §§700.110, 700.1335, 700.1337, 700.2365, and 700.2367, in Title 40, Texas Administrative Code (TAC), Chapter 700, relating to Child Protective Services, in Subchapters A relating to Administration, M relating to Substitute Care Services, and W, relating to Service Level System.

BACKGROUND AND PURPOSE

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

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

SECTION-BY-SECTION SUMMARY

Proposed amendment §700.108 updates terminology for the initiative formerly referred to as “Foster Care Redesign”, which is now “Community-Based Care” as updated and expanded pursuant to Senate Bill 11 in the 85th Regular Session of the Texas Legislature.

Proposed new section §700.110 creates a general rule defining and governing DFPS Pilot Programs. This rule also gives the Commissioner of DFPS the ability to waive rule requirements of Chapter 700 as necessary to implement the pilots.

Proposed new section §700.1335 creates a rule defining and governing the DFPS Treatment Foster Family Care program and its associated requirements.

Proposed new section §700.1337 defines the Temporary Emergency Placement program, which allows for a highly structured, temporary placement for children with high needs.

Proposed new sections §§700.2401 and 700.2403 creates rules defining and governing the DFPS Intense Plus Service Level and its associated requirements.
FISCAL NOTE

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

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

Lisa Subia, Chief Financial Officer, has also determined that there will be no adverse impact on small businesses or micro-businesses required to comply with the sections as proposed.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

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

PUBLIC BENEFIT

Kristene Blackstone, Associate Commissioner for Child Protective Services, has determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections will be that the pilot programs will permit the development of programs to better meet the needs of children served by the agency; Community-Based Care will enable local communities to respond to the needs of foster children in their area, to maximize efficiency, and to keep foster children in their home communities as much as possible; Temporary Emergency Placement Program will create a highly-structured temporary placement for high-needs children; and that the Treatment Foster Family Care program; and the Intense Plus Service Level and corresponding rate will provide additional placement options for children with high needs.

TAKINGS IMPACT ASSESSMENT

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

Questions about the content of the proposal may be directed to Kaysie Taccetta at, (512) 438-5112 in DFPS's Child Protective Services. Electronic comments may be submitted to kaysie.taccetta@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-40R029, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the Texas Register.

STATUTORY AUTHORITY

The amendment and new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

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

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency’s legal authority to adopt.
§700.108. Waiver Provision for Implementation of Community-Based Care [Foster Care Redesign].

(a) As used in this section, the term "Community-Based Care [Foster Care Redesign]" has the meaning [means the initiative for the redesign of the foster care system to meet the goals] set forth in §264.152, Texas Family Code, and related law in Subchapter B-1 of Chapter 264, Texas Family Code [the January 2011 report titled "Improving Child and Youth Placement Outcomes: A System Redesign," which the Department of Family and Protective Services (DFPS) was directed to implement by the 82nd Texas Legislature, pursuant to Senate Bill 218 (Acts 2011, 82nd R.S., ch. 598, §11, eff. Sept. 1, 2011)]. The term may include the provision of placement and supportive services, as well as direct case management performed by the Single Source Continuum Contractor performing services in a catchment area.

(b) Notwithstanding any other provision in this chapter, to the extent necessary for the implementation of Community-Based Care [Foster Care Redesign], Department of Family and Protective Services (DFPS) [DFPS] may waive a provision in any section in this chapter as provided under subsection (c) of this section.

(c) The waiver of any rule provision contained in this chapter must be approved by the Commissioner of the Department of Family and Protective Services, or that person’s designee, after consultation with agency legal counsel to ensure that the waiver does not conflict with other state or federal law.

(d) Nothing in this section shall be construed to authorize DFPS to waive a provision of any section in this chapter if such waiver violates other state or federal law.

§700.110. Waiver Provision for DFPS Pilot Programs.

(a) As used in this section, the term "DFPS Pilot Program" means a small-scale, time-limited, trial program that DFPS will use to help determine the feasibility of implementing a project on a large scale. The term may include:
(1) a pilot program to implement integrated care coordination for certain high-needs children in the conservatorship of the Department of Family and Protective Services (DFPS). Integrated Care Coordination (ICC) means the coordination of the activities of all entities and individuals responsible for an individual's medical, social and behavioral health case management, ensuring all components of medical, social and behavioral health case management are utilized effectively, without duplication, to achieve quality outcomes for the child. Integrated Care Coordination services are designed for the specific purpose of maintaining the child or youth in, or transitioning the child or youth to, a family-based or community-based setting and include placement responsibility under a no eject, no reject contract. Integrated Care Coordination services include responsibility for all child welfare related tasks and activities under federal and state law;

(2) a pilot program to contract for the case management of family-based safety services in one or more administrative regions of the state; and

(3) any other pilot program determined to be appropriate or feasible by the Commissioner of DFPS.

(b) Notwithstanding any other provision in this chapter, to the extent necessary for the implementation of a DFPS Pilot Program, DFPS may waive a provision in any section in this chapter as provided under subsection (c) of this section.

(c) The waiver of any rule provision contained in this chapter must be approved by the Commissioner of DFPS, or that person's designee, after consultation with agency legal counsel to ensure that the waiver does not conflict with other state or federal law.

(d) Nothing in this section shall be construed to authorize DFPS to waive a provision of any section in this chapter if such waiver violates other state or federal law.
§700.1335. What is the Treatment Foster Family Care Program?

(a) Treatment Foster Family Care is a program designed to provide innovative, multi-disciplinary treatment services to a child or youth in a highly-structured family home environment.

(b) Caregivers who participate in the Treatment Foster Family Care Program have specialized training in providing services to children with mental health and/or socio-behavioral needs that cannot be met in traditional foster care settings, including:

(1) 24-hour supervision to ensure the child's safety and sense of security, which includes frequent one-to-one monitoring with the ability to provide immediate on site response;

(2) individualized, strengths-based therapeutic services and case management;

(3) time-limited services which include wrap-around services designed to transition children to a permanent and stable placement; and

(4) other training specified in the contract.

(c) A Treatment Foster Family Care home includes:

(1) at least one foster parent who does not work outside of the home and is highly-trained to meet the specific needs of this child population;

(2) a limitation of no more than two foster children at one time; and

(3) other characteristics and limitations specified in the contract.

(d) Child placing agencies providing Treatment Foster Family Care Services must:
(1) have a 24 hour on-call crisis person available to provide in-home crisis intervention and placement stabilization services, available to the child and family;

(2) a formal respite system, both routine and available upon request, when determined appropriate;

(3) a standardized case load to support this population of children; and

(4) other requirements specified in the contract.

§700.1337. What is the Temporary Emergency Placement (TEP) Program?

(a) The Temporary Emergency Placement Program is designed to provide highly-structured quality residential care and services when DFPS encounters high needs children for whom the Department is working to identify a safe and suitable longer-term placement to meet their unique needs.

(b) Caregivers who participate in the Temporary Emergency Treatment Program have specialized training in providing services to children with mental health, socio-behavioral needs and medical needs, including 24-hour supervision to ensure the child's safety and sense of security, which includes frequent one-to-one monitoring with the ability to provide immediate on site response and any other training requirement specified in contract.

(c) Contractors providing services through the Temporary Emergency Placement Program must:

(1) have experience providing residential-child care services to high needs children;

(2) reserve placement slots for the exclusive use of properly referred children determined eligible for the TEP program by DFPS;

(3) be prepared to admit children who might require TEP services at any time, 24 hours a day, 365 days a year;

(4) accept all properly referred children up to a predetermined number of placements as outlined in the contract with DFPS; and

(5) comply with all required terms and conditions set forth in the contract with DFPS.
**Current Division 5 Intensive Psychiatric Transition Program becomes new Division 6 and current sections §§700.2381, 700.2383, 700.2385 move into Division 6.**

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

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

(1) offer single child and sibling group placement;

(2) deliver an appropriate number of daily therapy sessions, individual and group therapy, and specialized therapies], including but not limited to:

   (A) Eye Movement Desensitization and Reprocessing Therapy;

   (B) Applied Behavior Analysis (certified); and

   (C) Treatment for Anorexia/Bulimia/Eating Disorders.

(3) provide continued care for a child following psychiatric or medical hospitalization; and

(4) offer “step down” from the Intense Plus Service Level, which includes long-term discharge and aftercare planning.
§700.2367. What are the characteristics of a child that needs the Intense Plus Service Level?

(a) The Intense Plus Service Level is designed to address chronically serious to severe emotional and/or behavioral management problems that interfere with the child’s ability to function in a family, school, or community setting outside of a therapeutic environment. Children at the Intense Plus Service Level do not generally function socially in an appropriate manner, and the child’s emotional functioning is largely incongruent with chronological age. At this level, children frequently have serious to severe outbursts that make it difficult for them to participate in routines or accept responsibility for behavior.

(b) Children at the Intense Plus Service Level display:

(1) all of the characteristics of the Intense Service Level as described in §700.2363 of this title (relating to What are the characteristics of a child that needs the Intense Service Level?); and

(A) a history of poor or inconsistent response to treatment as well as attempted multiple, unsuccessful interventions that have resulted in no remission of symptoms; or

(B) characteristics and history that make successful treatment at a lower service level unsuccessful, such as:

(i) extreme and recurring episodes of physical aggression that causes harm;

(ii) extreme and recurring episodes of sexually aggressive behavior;

(iii) chronic runaway behaviors, including any exposure to or risk of human trafficking;

(iv) certain medical conditions such as diabetes requiring injections or dialysis; and

(v) other characteristics specified by the contract.