TO: HHS Executive Council
DATE: September 23, 2016
FROM: Hank L. Whitman, DFPS Commissioner

AGENDA ITEM: 3.h

SUBJECT: DFPS Minimum Standards Related to Emergency Behavior Intervention

BACKGROUND: ☑ Federal Requirement ☐ Legislative Requirement ☑ Other: HHS Initiative

In late 2015, DFPS began development of rules related to Child Protective Services and the provision of notice of significant events to key parties involved in the life of a child in care. See 41 Tex. Reg. 1372 and 41 Tex. Reg. 3754. In the course of discussions related to what constitutes a significant event, several stakeholders voiced concern regarding when or whether those parties would learn about the use of Emergency Behavior Intervention (EBI) on a child in care. In particular, there was general consensus that while CPS as the parent would not receive notice of each use of EBI, if the use of EBI reached the threshold at which an operation was required to hold a triggered review of EBI, CPS should be notified. However, this notification requirement was not clear in rule, nor were all in agreement that the threshold for a review to be triggered was set appropriately.

Given the critical nature of the issues, DFPS undertook an immediate review of the related Minimum Standards. See 41 Tex. Reg. 3754. As a part of this review, the agency convened a temporary workgroup of affected providers, advocates, and agency staff in accordance with Texas Human Resources Code § 42.042(i). The workgroup reached consensus regarding the need to clarify notification requirements related to triggered reviews, to add specificity regarding the purpose and scope of a triggered review, and putting into place additional parameters if the operation is authorized to utilize personal restraints in excess of the limit ordinarily in place for the operation. DFPS also received information from individual workgroup members regarding other state and national practices and standards around EBI, which it reviewed in order to make additional recommendations to the Executive Commissioner and Executive Council. DFPS also included in the proposal changes that relate to EBI but were identified as part of the separate comprehensive review of Chapter 748. Those changes are primarily related to updating and clarifying existing language, and DFPS determined it would be of maximum clarity to the public to bundle the proposed changes together rather than propose two separate packets that affect Minimum Standards related to EBI.

Finally, in order to make its rules consistent as appropriate, DFPS is proposing corresponding amendments to those identified for Chapter 748, related to General Residential Operations in Chapter 749, related to Child-Placing Agencies.

ISSUES AND ALTERNATIVES:

As may be expected, there is a general sense in the advocacy community that the use of EBI should be subject to additional restrictions and a general sense in the residential provider community that additional restrictions could make treatment of foster children more difficult and
costly. Staff feel that they have struck the appropriate balance and reached a workable compromise between the various competing interests without fiscal implications, but there is certainly a chance that one group or another will encourage the agency to impose or limit the restrictions proposed herein.

STAKEHOLDER INVOLVEMENT:

The temporary workgroup convened to consider the issues underlying this rule proposal included:

DFPS will transmit the rule proposal to stakeholders at the same time the rule is transmitted to Executive Council members, to give those who have historically been involved in the issues advance opportunity to review.

FISCAL IMPACT:

☒ None

SERVICES IMPACT STATEMENT:

The public benefit anticipated is that requirements regarding the use of EBI will be clarified and, as appropriate, limited to further improve the safety and well-being of children in the care of a regulated operation.

RULE DEVELOPMENT SCHEDULE:

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>August 11, 2016</td>
<td>Present to the Medical Care Advisory Committee</td>
</tr>
<tr>
<td>September 23, 2016</td>
<td>Present to the HHSC Executive Council</td>
</tr>
<tr>
<td>November 2016</td>
<td>Publish proposed rules in <em>Texas Register</em></td>
</tr>
<tr>
<td>January 2017</td>
<td>Publish adopted rules in <em>Texas Register</em></td>
</tr>
<tr>
<td>January 2017</td>
<td>Effective date</td>
</tr>
</tbody>
</table>

REQUESTED ACTION:

☒ The Council recommends to the Executive Commissioner that the proposed rule(s) be published in the *Texas Register* and later adopted should there be no substantive comment.

☐ Information Only
The Texas Health and Human Services Commission, on behalf of the Department of Family and Protective Services (DFPS), proposes amendments to §§748.901, 748.2451, 748.2551, 748.2601, 748.2603, 748.2701, 748.2751, 748.2801, 748.2805, 748.2807, 748.2855, 748.2901, 748.2905, and 748.2907 in Chapter 748, concerning Minimum Standards for General Residential Operations. The purpose of the amendments are to clarify the purpose, scope and notification requirements related to the use of Emergency Behavior Intervention (EBI) on a child in care.

BACKGROUND AND JUSTIFICATION

In late 2015, DFPS began development of rules related to Child Protective Services (CPS) and the provision of notice of significant events to key parties involved in the life of a child in care. See the February 12, 2016, issue of the Texas Register (41 Tex. Reg. 1372) and the May 20, 2016, issue of the Texas Register (41 Tex. Reg. 3754). In the course of discussions related to what constitutes a significant event, several stakeholders voiced concern regarding when or whether those parties would learn about the use of Emergency Behavior Intervention (EBI) on a child in care. In particular, there was general consensus that while CPS as the parent would not receive notice of each use of EBI, if the use of EBI reached the threshold at which an operation...
was required to hold a triggered review of EBI, CPS should be notified. However, this notification requirement was not clear in the relevant Minimum Standards, nor were all in agreement that the threshold for a review to be triggered was set appropriately.

Given the critical nature of the issues, DFPS undertook an immediate review of the related Minimum Standards. See the May 20, 2016, issue of the Texas Register (41 Tex. Reg. 3754). As a part of this review, the agency convened a temporary workgroup of affected providers, advocates, and agency staff in accordance with Texas Human Resources Code §42.042(i). The workgroup reached consensus regarding the need to clarify notification requirements related to triggered reviews, to add specificity regarding the purpose and scope of a triggered review, and to putting into place additional parameters if the operation is authorized to utilize personal restraints in excess of the limit ordinarily in place for the operation. DFPS also received information from individual workgroup members regarding other state and national practices and standards around EBI, which it reviewed in order to make additional recommendations to the Executive Commissioner and Executive Council. DFPS also included in the proposal changes that relate to EBI but were identified as part of the separate comprehensive review of Chapter 748. Those changes are primarily related to updating and clarifying existing language, and DFPS determined it would be of maximum clarity to the public to bundle the proposed changes together rather than propose two separate packets that affect Minimum Standards related to EBI.

Finally, in order to make its rules consistent as appropriate, DFPS is proposing corresponding amendments to those identified for Chapter 748, related to General Residential Operations in Chapter 749, related to Child-Placing Agencies.

SECTION-BY-SECTION SUMMARY

The amendment to §748.901 adds a component to the pre-service training regarding emergency behavior intervention, which will require addressing the circumstances when all de-escalation strategies fail.

The amendment to §748.2451 updates the treatment services terminology.

The amendment to §748.2551 deletes a masculine pronoun.

The amendment to §748.2601 clarifies that a personal restraint must be monitored to make sure the restraint is being performed appropriately.

The amendment to §748.2603 deletes a masculine pronoun.

The amendment to §748.2701 requires an operation to provide notification to the parent within 72 hours of any utilization of a mechanical restraint on the child.

The amendment to §748.2751 clarifies that in an emergency behavior intervention (EBI), a child must have bathroom privileges "as needed".
The amendment to §748.2801 limits the maximum length of time a personal restraint, other than a prone or supine restraint, may be utilized on a child of any age to 30 minutes.

The amendment to §748.2805 places limitations on exceeding the maximum length of time for EBI as follows: (1) eliminates possibility of an extension past the maximum length of time for a personal restraint; and (2) specifies that a seclusion or mechanical restraint may never exceed four hours.

The amendment to §748.2807 reiterates limit on exceeding time limits in seclusions and mechanical restraints.

The amendment to §748.2855: (1) clarifies that a caregiver "involved with the intervention" must document in the child's record the intervention; and (2) adds to the documentation requirements for an EBI to include: (a) the names of any witnesses to the EBI, including child witnesses in the home; and (b) the name of the person providing medical treatment or assistance to the child.

The amendment to §748.2901: (1) modifies threshold for triggered review of personal restraints to require a review if the same child is restrained either four times in a seven-day period or more than 12 times in a single 30-day period; and (2) retains existing authority for qualified individuals to authorize personal restraints in excess of the threshold above; adds requirement that in any 30-day period during which such excess restraints are authorized, the operation must conduct at least one triggered review in accordance with the subchapter.

The amendment to §748.2905: (1) specifies that parents and child, as applicable, must be invited to a triggered review so that they are given notice and an opportunity to participate; and (2) clarifies that if parent or child is invited but cannot participate, the operation is not required to delay the review so that the parent or child can participate.

The amendment to §748.2907 clarifies content and focus of a triggered review meeting.

FISCAL NOTE

Lisa Subia, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

There will be no effect on small or micro-businesses because the proposed changes do not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

PUBLIC BENEFIT AND COST

Ms. Subia also has determined that for each year of the first five years the amendments are in effect the public benefit anticipated is that requirements regarding the use of EBI will be clarified.
and, as appropriate, limited to further improve the safety and well-being of children in the care of a regulated operation.

The rule changes do impose some additional limitation on the use of EBI. However, they are not anticipated to have any direct fiscal implications. Requiring notification of a triggered review to the parent and child, as applicable, was arguably implied in prior standards and presents an insubstantial outlay of time and effort. Additional limitations related to mechanical restraints are unlikely to have any implications. Agency data reflect that there have been only 3 instances of mechanical restraints being utilized on children in care in the preceding 3 years. Decreasing the time limit for personal restraints and disallowing extension orders should have minimal impact in that lengthy personal restraints are not known to be common, and if the emergency continues, the operation may initiate a new restraint. The same is true for seclusion. Requiring a triggered review in any 30-day period in which personal restraints are authorized in excess of the general limitation should also have minimal impact, if any. Providers who participated in the temporary workgroup reported that such authorization is extremely rare, and only one provider could recall an instance of it occurring over the preceding decade. Clarifying the scope of a triggered review is a simplification for providers, and will permit them to focus on the issues related to EBI rather than being required to undergo a full service plan update. Finally, many of the rules relate primarily to updating and clarifying terminology and are similarly not expected to have any fiscal consequences.

TAKINGS IMPACT ASSESSMENT

Ms. Subia has determined that the proposed amendments do 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, do not constitute a taking under §2007.043, Government Code.

PUBLIC COMMENT

Questions about the content of the proposal may be directed to Audrey Carmical at (512) 438-3854 in DFPS's Legal Division. Electronic comments may be submitted to audrey.carmical@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-559, 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 is 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; 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 amendment implements HRC §42.042.
This agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.
§748.901. If I do not allow the use of emergency behavior intervention, what curriculum components must be included in the pre-service training regarding emergency behavior intervention?

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

1. - 6. (No change.)

7. Less restrictive strategies caregivers can use to work with oppositional children; and

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

9. The risks associated with the use of prone or supine restraints, including positional, compression, or restraint asphyxia.
§748.2451. What types of emergency behavior intervention may I administer?

(a) If permitted in your policies and you meet the requirements of this subchapter, you may administer the following types of emergency behavior intervention to a child in your care:

(1) - (3) (No change.)

(4) Seclusion:

(A) Only for a child [children] with an emotional disorder or an Autism Spectrum Disorder [disorders or pervasive developmental disorders]; and only if you provide treatment services to 25 or more children with emotional disorders or Autism Spectrum Disorder [pervasive developmental disorders], or if more than 30% of the children in your care receive treatment services for emotional disorders or Autism Spectrum Disorder [pervasive developmental disorders]. Seclusion is not permitted for children receiving therapeutic camp services; or

(5) Mechanical restraint, only if you are [have] a Residential Treatment Center [permit].

(B) (No change.)

(b) - (c) (No change.)
§748.2551. What responsibilities does a caregiver have when implementing a type of emergency behavior intervention?
   (a) - (e) (No change.)
   (f) If the child does not appear to understand what the child [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.
§748.2601. Who must monitor a personal restraint?
(a) During any personal restraint, a caregiver qualified in emergency behavior intervention must:

(1) Monitor the:
   (A) Personal restraint to make sure it is being performed appropriately; and
   (B) Child's breathing and other signs of physical distress;

(2) Take appropriate action to ensure adequate respiration, circulation, and overall well-being.

(b) If available, a caregiver who is not restraining the child should monitor the child. However, general residential operations with a capacity of more than 16 children must monitor prone and supine restraints as required in §748.2605(b) of this title (relating to What personal restraint techniques are prohibited?).

§748.2603. What is the appropriate action for a caregiver to take to ensure the child’s adequate respiration, circulation, and overall well-being?
Appropriate action includes responding prudently to a potentially life-threatening situation, for example, releasing a child when a child is unresponsive or indicates he cannot breathe and immediately seeking medical assistance from a health-care professional.
§748.2701. What are the additional responsibilities for implementing a mechanical restraint?
   (a) - (d) (No change.)
   (e) You must notify a child's parent that mechanical restraint was used on the child within 72 hours after the restraint is concluded.
§748.2751. May a caregiver successively use emergency behavior interventions on a child?
   (a) - (b) (No change.)
   (c) A caregiver must allow the child:
       (1) Bathroom privileges as needed and at least once every two hours;
       (2) - (5) (No change.)
§748.2801. What is the maximum length of time that an emergency behavior intervention can be administered to a child?
The maximum length of time that certain emergency behavior interventions can be administered to a child is as follows:

<table>
<thead>
<tr>
<th>Types of Emergency Behavior Intervention</th>
<th>The maximum length of time is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Short personal restraint</td>
<td>One minute.</td>
</tr>
<tr>
<td>(2) Personal restraint</td>
<td>(A) For a child of any age [under nine years old], 30 minutes. [B] For a child nine years old or older, one hour.</td>
</tr>
<tr>
<td></td>
<td>(B) [(C)] A prone or supine personal restraint hold may not exceed one minute.</td>
</tr>
<tr>
<td>(3) Emergency medication</td>
<td>Not applicable.</td>
</tr>
<tr>
<td>(4) Seclusion</td>
<td>(A) For a child under nine years old, one hour. (B) For a child nine years old or older, two hours.</td>
</tr>
<tr>
<td>(5) Mechanical restraint</td>
<td>(A) For a child under nine years old, 30 minutes. (B) For a child nine years old or older, one hour.</td>
</tr>
</tbody>
</table>

§748.2805. Can a caregiver exceed the maximum length of time that an emergency behavior intervention can be administered to a child?
A caregiver may exceed the maximum length of time for certain emergency behavior interventions as follows:

<table>
<thead>
<tr>
<th>Type of Emergency Behavior Intervention</th>
<th>The maximum length of time:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Short personal restraint</td>
<td>May not be exceeded.</td>
</tr>
<tr>
<td>(2) Personal restraint</td>
<td>May not be exceeded. [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.</td>
</tr>
<tr>
<td>(3) Emergency medication</td>
<td>Not applicable.</td>
</tr>
</tbody>
</table>
| (4) Seclusion | May be exceeded if the caregiver obtains a written continuation order before the end of the time period from the licensed psychiatrist, psychologist, or physician with written clinical justification:
(A) Indicating that the emergency situation continues to exist; and
(B) For the length of time the psychiatrist, psychologist, or physician permits the child to be secluded, which must not exceed four hours. |
|----------------|----------------------------------------------------------------------------------|
| (5) Mechanical restraint | May be exceeded if the caregiver obtains a written continuation order before the end of the time period from the licensed psychiatrist with written clinical justification:
(A) Indicating that the emergency situation continues to exist; and
(B) For the length of time the psychiatrist permits the child to be restrained, which must not exceed four hours. |

§748.2807. May continuation orders be obtained verbally to exceed the maximum length of time that seclusion or mechanical restraint can be administered to a child?
(a) (No change.)
(b) If the seclusion and mechanical restraint continues beyond the maximum length of time, then the caregiver must allow the child:
(1) Bathroom privileges as needed and at least once every two hours;
(2) - (5) (No change.)
(c) (No change.)
(d) In no event may the order permit the seclusion or mechanical restraint to exceed four hours.
§748.2855. When must a caregiver document the use of an emergency behavior intervention, and what must the documentation include?
   (a) As soon as possible, but no later than 24 hours after the initiation of the emergency behavior intervention, the caregiver involved in the intervention must document in the child's record the following information:
       (1) - (8) (No change.)
       (9) The names of any witnesses to the emergency behavior intervention, including any child in care who witnessed the intervention;
           (10) All attempts to explain to the child what behaviors were necessary for release from the intervention;
           (11) The child's condition following the use of the medication or release from the intervention, including any injury the child sustained as a result of the intervention or any adverse effects caused by the use of the intervention. If the child received medical assistance or treatment, the caregiver must document the name of the person(s) who provided medical assistance or treatment; and
           (12) The actions the caregiver(s) took to facilitate the child's return to normal activities following the end of the intervention.
   (b) - (f) (No change.)
§748.2901. What circumstances trigger a review of the use of emergency behavior intervention for a specific child?

(a) The following circumstances trigger a review for certain emergency behavior interventions:

<table>
<thead>
<tr>
<th>Types of Emergency Behavior Intervention</th>
<th>Circumstances that trigger a review:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Short personal restraint</td>
<td>Not applicable, because short personal restraints are not monitored.</td>
</tr>
<tr>
<td>(2) Personal restraint</td>
<td>Except as provided by subsection (b) of this section:</td>
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<tr>
<td></td>
<td>(A) The same child is personally restrained</td>
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<tr>
<td></td>
<td>(i) four times within a seven-day period; or</td>
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<td></td>
<td>(ii) more than 12 times in a single 30-day period; or</td>
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<td></td>
<td>[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 §748.2505 of this title (relating to What information must a written order include?).]</td>
</tr>
<tr>
<td></td>
<td>(B) The same child is personally restrained more often than the written order or service planning team recommendation allows.</td>
</tr>
<tr>
<td>(3) Emergency medication</td>
<td>Emergency medication is used on the same child three times in a 30-day period.</td>
</tr>
<tr>
<td>(4) Seclusion</td>
<td>(A) The seclusion of the same child continues for more than 12 hours; or</td>
</tr>
<tr>
<td></td>
<td>(B) The same child is secluded three times in a seven-day period.</td>
</tr>
<tr>
<td>(5) Mechanical restraint</td>
<td>(A) The mechanical restraint of the same child continues for more than three hours; or</td>
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<tr>
<td></td>
<td>(B) The same child is mechanically restrained three times in a seven-day period.</td>
</tr>
</tbody>
</table>

(b) You may exceed the number of restraints otherwise allowed in subdivision (a)(2) of this section for a child if a licensed psychiatrist or psychologist issues a written order or if a service planning team makes a recommendation allowing you to do so and you ensure the following:

(1) If applicable, the recommendation from the service planning team includes the same
written information as an order, as specified in §748.2505 of this title (relating to What information must a written order include?); and

(2) At least one triggered review is conducted in accordance with §748.2907 of this title (relating to What must the triggered review include and what must be documented in the child’s record?) every 30 days that personal restraints in excess of the threshold are authorized.

§748.2905. Who must participate in the triggered review?

(a) A full service planning team must participate in the triggered review. You must invite the child, as appropriate, and the parents to the review, so they may have the opportunity to participate and provide input into the content of the review. However, you are not required to delay a review because a parent or child is unable to participate in the review at its scheduled time.

(b) Even if the child is not receiving treatment services, the two additional professions required in §748.1339(b) of this title (relating to Who must be involved in developing an initial service plan?) must be involved in the triggered review.

§748.2907. What must the triggered review include and what must be documented in the child’s record?

(a) Except in cases in which the regularly scheduled review of the child's service plan also addresses the requirements of a triggered review in accordance with §748.2903(b) of this title (relating to When must a triggered review occur?), a triggered review is not a full review of the child's service plan and is focused on the requirements identified in subsection (c) of this section.

(b) Other than the requirements in this section and in §748.2905 of this title (relating to Who must participate in the triggered review?), the notification, participation, implementation, and documentation requirements in Division 4 of Subchapter I (relating to Admission, Service Planning, And Discharge) do not otherwise apply to a triggered review.

(c) 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 §748.1337 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 identified behaviors and patterns, any significant events leading up to the use of emergency behavior intervention, and all attempted de-escalation methods, whether successful or unsuccessful; [alternatives to manage the child's behavior and to assist the child in managing his own behavior; and]
5. Identification of alternatives to manage the child's behavior and more effectively prevent the use of emergency behavior intervention in the future; and
6. A written plan for reducing the need for emergency behavior intervention.
The Texas Health and Human Services Commission, on behalf of the Department of Family and Protective Services (DFPS), proposes amendments to §§749.2281, 749.2283, 749.2331, 749.2335, and 749.2337, in Chapter 749, concerning Minimum Standards for Child-Placing Agencies (CPAs). The purpose of the amendments are to clarify the purpose, scope and notification requirements related to the use of Emergency Behavior Intervention (EBI) on a child in care.

BACKGROUND AND JUSTIFICATION

In late 2015, DFPS began development of rules related to Child Protective Services and the provision of notice of significant events to key parties involved in the life of a child in care. See the February 12, 2016, issue of the Texas Register (41 Tex. Reg. 1372) and the May 20, 2016, issue of the Texas Register (41 Tex. Reg. 3754). In the course of discussions related to what constitutes a significant event, several stakeholders voiced concern regarding when or whether those parties would learn about the use of Emergency Behavior Intervention (EBI) on a child in care. In particular, there was general consensus that while CPS as the parent would not receive notice of each use of EBI, if the use of EBI reached the threshold at which an operation was required to hold a triggered review of EBI, CPS should be notified. However, this notification requirement was not clear in the relevant Minimum Standards, nor were all in agreement that the threshold for a review to be triggered was set appropriately.

Given the critical nature of the issues, DFPS undertook an immediate review of the related Minimum Standards. See the May 20, 2016, issue of the Texas Register (41 Tex. Reg. 3754). As a part of this review, the agency convened a temporary workgroup of affected providers, advocates, and agency staff in accordance with Texas Human Resources Code § 42.042(i). The workgroup reached consensus regarding the need to clarify notification requirements related to triggered reviews, to add specificity regarding the purpose and scope of a triggered review, and to putting into place additional parameters if the operation is authorized to utilize personal restraints in excess of the limit ordinarily in place for the operation. DFPS also received information from individual workgroup members regarding other state and national practices and standards around EBI, which it reviewed in order to make additional recommendations to the Executive Commissioner and Executive Council. DFPS also included in the proposal changes that relate to EBI but were identified as part of the separate comprehensive review of Chapter 748. Those changes are primarily related to updating and clarifying existing language, and DFPS
determined it would be of maximum clarity to the public to bundle the proposed changes together rather than propose two separate packets that affect Minimum Standards related to EBI.

Finally, in order to make its rules consistent as appropriate, DFPS is proposing corresponding amendments to those identified for Chapter 748, related to General Residential Operations in Chapter 749, related to Child-Placing Agencies.

SECTION-BY-SECTION SUMMARY

The amendment to §749.2281 limits the maximum length of time a personal restraint, other than a prone or supine restraint, may be utilized on a child of any age to 30 minutes.

The amendment to §749.2283: eliminates the possibility of an extension past the maximum length of time for a personal restraint.

The amendment to §749.2331: (1) modifies threshold for triggered review of personal restraints to require a review if the same child is restrained either four times in a seven-day period or more than 12 times in a single 30-day period; and (2) retains existing authority for qualified individuals to authorize personal restraints in excess of the threshold above; adds requirement that in any 30-day period during which such excess restraints are authorized, the operation must conduct at least one triggered review in accordance with the subchapter.

The amendment to §749.2335: (1) specifies that parents and child, as applicable, must be invited to a triggered review so that they are given notice and an opportunity to participate; and (2) clarifies that if parent or child is invited but cannot participate, the operation is not required to delay the review so that the parent or child can participate.

The amendment to §749.2337 clarifies content and focus of a triggered review meeting.

FISCAL NOTE

Lisa Subia, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the new sections.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

There will be no effect on small or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

PUBLIC BENEFIT AND COST

Ms. Subia also has determined that for each year of the first five years the amendments are in effect the public benefit anticipated is that requirements regarding the use of EBI will be clarified
and, as appropriate, limited to further improve the safety and well-being of children in the care of a regulated operation.

The rule changes do impose some additional limitation on the use of EBI. However, they are not anticipated to have any direct fiscal implications. Requiring notification of a triggered review to the parent and child, as applicable, was arguably implied in prior standards and presents an insubstantial outlay of time and effort. Additional limitations related to mechanical restraints are unlikely to have any implications. Agency data reflect that there have been only 3 instances of mechanical restraints being utilized on children in care in the preceding 3 years. Decreasing the time limit for personal restraints and disallowing extension orders should have minimal impact in that lengthy personal restraints are not known to be common, and if the emergency continues, the operation may initiate a new restraint. The same is true for seclusion. Requiring a triggered review in any 30-day period in which personal restraints are authorized in excess of the general limitation should also have minimal impact, if any. Providers who participated in the temporary workgroup reported that such authorization is extremely rare, and only one provider could recall an instance of it occurring over the preceding decade. Clarifying the scope of a triggered review is a simplification for providers, and will permit them to focus on the issues related to EBI rather than being required to undergo a full service plan update. Finally, many of the rules relate primarily to updating and clarifying terminology and are similarly not expected to have any fiscal consequences.

TAKINGS IMPACT ASSESSMENT

Ms. Subia has determined that the proposed amendments do 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, do not constitute a taking under §2007.043, Government Code.

PUBLIC COMMENT

Questions about the content of the proposal may be directed to Audrey Carmical at (512) 438-3854 in DFPS's Legal Services Division. Electronic comments may be submitted to Audrey.Carmical@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-559, 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 amendments 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; 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 §42.042.

This agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.
§749.2281. What is the maximum length of time that an emergency behavior intervention can be administered to a child?
The maximum length of time that certain emergency behavior interventions can be administered to a child is as follows:

<table>
<thead>
<tr>
<th>Types of Emergency Behavior Intervention</th>
<th>The maximum length of time is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Short personal restraint</td>
<td>One minute.</td>
</tr>
<tr>
<td>(2) Personal restraint</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(A) For a child of any age [under nine years old], 30 minutes.</td>
</tr>
<tr>
<td></td>
<td>(B) [For a child nine years old or older, one hour.]</td>
</tr>
<tr>
<td></td>
<td>(C) A prone or supine personal restraint hold may not exceed one minute.</td>
</tr>
<tr>
<td>(3) Emergency medication</td>
<td>Not applicable.</td>
</tr>
</tbody>
</table>

§749.2283. Can a caregiver exceed the maximum length of time that an emergency behavior intervention can be administered to a child?
A caregiver may exceed the maximum length of time for certain emergency behavior interventions as follows:

<table>
<thead>
<tr>
<th>Type of Emergency Behavior Intervention</th>
<th>The maximum length of time:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Short personal restraint</td>
<td>May not be exceeded.</td>
</tr>
<tr>
<td>(2) Personal restraint</td>
<td>Maybe not exceeded. [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:]</td>
</tr>
<tr>
<td></td>
<td>(A) Indicating that the emergency situation continues to exist; and</td>
</tr>
<tr>
<td></td>
<td>(B) For the length of time he permits the child to be restrained.</td>
</tr>
<tr>
<td>(3) Emergency medication</td>
<td>Not applicable.</td>
</tr>
</tbody>
</table>
§749.2331. What circumstances trigger a review of the use of emergency behavior intervention for a specific child?

(a) The following circumstances trigger a review for certain emergency behavior interventions:

<table>
<thead>
<tr>
<th>Types of Emergency Behavior Intervention</th>
<th>Circumstances that trigger a review:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Short personal restraint</td>
<td>Not applicable, because short personal restraints are not monitored.</td>
</tr>
<tr>
<td>(2) Personal restraint</td>
<td>Except as provided by subsection (b) of this section:</td>
</tr>
<tr>
<td></td>
<td>(A) The same child is personally restrained;</td>
</tr>
<tr>
<td></td>
<td>(i) four times within a seven-day period; or [ ]</td>
</tr>
<tr>
<td></td>
<td>(ii) more than 12 times in a single 30-day period; or</td>
</tr>
<tr>
<td></td>
<td>[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?).]</td>
</tr>
<tr>
<td></td>
<td>(B) The same child is personally restrained more often than the written order or service planning team recommendation allows.</td>
</tr>
<tr>
<td>(3) Emergency medication</td>
<td>Emergency medication is used on the same child three times in a 30-day period.</td>
</tr>
</tbody>
</table>

(b) You may exceed the number of restraints otherwise allowed in subdivision (a)(2) of this section for a child if a licensed psychiatrist or psychologist issues a written order or if a service planning team makes a recommendation allowing you to do so and you ensure the following:

(1) If applicable, the recommendation from the service planning team includes the same written information as an order, as specified in §749.2105 of this title (relating to What information must a written order include?); and

(2) At least one triggered review is conducted in accordance with §749.2337 of this title (relating to What must the triggered review include and what must be documented in the child’s record?) every 30 days that personal restraints in excess of the threshold are authorized.
§749.2335. Who must participate in the triggered review?
   (a) The service planning team must participate in the triggered review.
   (b) You must invite the child, as appropriate, and the parents to the review, so they may have
   the opportunity to participate and provide input into the content of the review. However, you are
   not required to delay a review because a parent or child is unable to participate in the review at
   its scheduled time.

§749.2337. What must the triggered review include and what must be documented in the child’s
record?
   (a) Except in cases in which the regularly scheduled review of the child's service plan also
   addresses the requirements of a triggered review in accordance with §749.2333(b) of this title
   (relating to When must a triggered review occur?), a triggered review is not a full review of the
   child's service plan and is focused on the requirements identified in subsection (c).
   (b) Other than the requirements in this section and in §749.2335 of this title (relating to Who
   must participate in the triggered review?), the notification, participation, implementation, and
   documentation requirements in Division 4 of Subchapter I (relating to Admission, Service
   Planning, And Discharge) do not apply to a triggered review.
   (c) 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?));]
      (1) [(2)] A review of the records and orders of the emergency behavior interventions;
      (2) [(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;
      (3) [(4)] An examination of identified behaviors and patterns, any significant events leading
      up to the use of emergency behavior intervention, and all attempted de-escalation methods,
      whether successful or unsuccessful; [alternatives to manage the child's behavior and to assist the
      child in managing his own behavior; and]
      (4) Identification of alternatives to manage the child's behavior and more effectively prevent
      the use of emergency behavior intervention in the future; and
      (5) A written plan for reducing the need for emergency behavior intervention.