

## TEXAS WORKFORCE COMMISSION LETTER

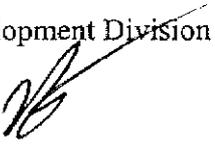
**ID/No:** WD 05-04, Change 1

**Date:** May 26, 2004

**Key Word:** Child Care / Fiscal –  
Administration

**To:** Local Workforce Development Board Executive Directors  
Commission Executive Staff  
Integrated Service Area Managers  
Commission Local Offices

**Through:** Luis M. Macias, Director, Workforce Development Division

**From:** Randy Townsend, Chief Financial Officer 

**Subject:** Change and Clarification on Overpayment Recovery of Child Care Related Funds

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### **PURPOSE:**

To provide Local Workforce Development Boards (Boards) with procedures for paying and recovering parents' share of cost and other child care funds.

### **REFERENCE:**

United States Department of Health and Human Services, Child Care and Development Fund, 45 CFR §§98.42 and 98.50–98.55  
Texas Workforce Commission Child Care and Development Rules: 40 TAC §§809.46, 809.271, 809.251, and 809.287  
WD Letter 18-00, issued February 25, 2000, and entitled "Assessing Parent Fees for Child Care"

### **FLEXIBILITY RATINGS:**

**No Local Flexibility (NLF):** This rating indicates that Boards must comply with the federal and state laws, rules, policies, and required procedures set forth in this WD Letter and have no local flexibility in determining whether and/or how to comply. Federal and state laws, rules, policies, and required procedures with a "No Local Flexibility" rating are indicated by the acronym, **NLF**, in the margin to the right of the applicable paragraph. Additionally, all information with a "No Local Flexibility" rating is indicated by "must" or "shall."

Failure to comply with the federal and state laws, rules, policies, and required procedures with a "No Local Flexibility" rating may result in corrective action, up to and including sanction and penalty.

**Local Flexibility (LF):** This rating indicates that Boards have local flexibility in determining whether and/or how to implement guidance or recommended practices set forth in this WD Letter. All guidance or recommended practices with a “Local Flexibility” rating are indicated by the acronym, **LF**, located in the margin to the right of the applicable paragraph. Additionally, guidance or recommended practices with a “Local Flexibility” rating are indicated by “may” or “recommend.”

Boards are not subject to corrective action for failure to comply with guidance or recommended practices with a “Local Flexibility” rating.

**BACKGROUND:**

Texas Workforce Commission rules §§809.46, 809.271, 809.251, and 809.287 provide Boards with policies and procedures for collecting parents’ share of cost, ensuring continuation of child care services during certain situations, and detecting fraud. WD Letter 18-00, issued February 25, 2000, and entitled “Assessing Parent Fees for Child Care” provides Boards with additional information on the rules for assessing parent fees for child care.

On April 14, 2004, WD Letter 05-04, entitled “Overpayment Recovery of Child Care Related Funds,” was issued. The intent of WD Letter 05-04 was to provide Boards with guidance regarding the accounting of parent fees, and recoupment of those fees and child care funds when fraud occurs or when an appeal decision is rendered against the parent. The Texas Workforce Commission (Commission) did not intend to change program policy or hinder performance measures. In response to those concerns, the Commission is rescinding WD Letter 05-04 and issuing WD Letter 05-04, Change 1.

**PROCEDURES:**

**Parent’s Share of Cost**

**Effective immediately,** Boards must use **operational funds (non-direct child care funds)** **NLF** to reimburse child care providers if it is the Board’s policy to pay a parent’s share of cost to a child care provider when the parent fails to pay.

Using operational funds for this purpose will allow Boards to collect and keep the recovered funds while ensuring data integrity within the Budget and Payment Application for the unit cost of child care services. Therefore, the amount paid to the child care provider shall not be altered in the Child Care Service Delivery application to include the parent’s share of cost. **NLF**

Boards must keep any child care funds that are recovered as a result of repayment of a parent’s share of cost. Boards must establish accounts receivables for those amounts due. When Boards collect the funds, such funds should offset the receivable. Funds collected must be used for allowable child care activities as specified in Commission rule, Chapter 809 and 45 CFR §§98.50–98.55. **NLF**

**Child Care During an Appeal**

Boards may keep any recovered child care funds paid during an appeals process as described **LF** in Commission rules §§809.271–809.273 if the appeal decision is rendered against the

parent. Funds collected should be accounted for as program income and be used for allowable child care activities.

**Fraudulent Violations or Ineligibility**

**NLF**

Boards must exercise due diligence in attempting to collect funds due to fraud or ineligibility in accordance with 45 CFR §98.60(i). If the fraud or ineligibility was in violation of a federal rule or regulation, Boards must submit such overpayments to the Commission. If the fraud or ineligibility was in violation of a state or local rule or regulation, such overpayments will remain with the Board. As noted above, an accounts receivable for such amounts must be established, so that the collected funds will offset the receivable. Recovered funds that remain with the Board must be used for allowable child care activities.

For instance, Boards may establish income eligibility limits for child care services in their respective local workforce development areas (workforce areas) that are lower than the federal income eligibility limit. If this is done, and if it is determined that a client committed fraud based on a particular workforce area's income eligibility requirement, the recovered funds must remain with the Board and be used for allowable child care activities. If, however, it is determined that a client committed fraud based on the federal income eligibility limit (85 percent of the state median income [SMI]), the Board must remit the recovered funds to the Commission. For example, if the Board's income eligibility limit is set below 85 percent of SMI, then the funds remain with the Board. If child care services were provided to a family with an income higher than 85 percent of SMI, the Board shall return the funds to the Commission.

**Disallowed Costs**

**NLF**

All disallowed costs identified through audit resolution or a state single audit must be remitted to the Commission. Costs that are disallowed by a Board, but not the Commission, must remain with the Board and be used for allowable child care activities.

**ACTIONS REQUIRED:**

Boards must ensure that appropriate staff is apprised of and complies with the requirements in this WD Letter.

**INQUIRIES:**

Direct inquiries to Kimberly R. Emmerich, Director of Financial Operations, at (512) 936-3054 or at [Fiscal.TA@twc.state.tx.us](mailto:Fiscal.TA@twc.state.tx.us).

Rescissions: WD Letter 05-04	Expiration: Continuing
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