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**EMERGENCY RULE WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS REGISTER. THIS DOCUMENT WILL NOT HAVE ANY SUBSTANTIVE CHANGES BUT IS SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE TEXAS REGISTER.**

40 TAC Chapter 811. Choices Rules and Section 809.102 Choices Child Care.

The Texas Workforce Commission (Commission) *adopts the emergency* repeal of and new rules for Chapter 811 Choices services *and the emergency* repeal of and new §809.102 relating to Choices Child Care. These rules are adopted concurrent with the proposal of rules for public comment and appear in this issue of the *Texas Register*.

Purpose. The purpose of these rules is to implement House Bill 2292 enacted by the 78<sup>th</sup> Legislature, Regular Session, 2003, (HB 2292), which amends, in pertinent parts, Chapter 31, Texas Human Resources Code to incorporate the pay for performance model relating to Temporary Assistance for Needy Families (TANF) cash assistance and Medicaid assistance for the adult(s).

Background: Consistent with federal statutory authority, Chapter 31, Human Resources Code requires that individuals must engage in work activities in order to receive TANF cash assistance and Medicaid assistance for the adult(s) unless exempt from the work activities. The Commission is responsible for the employment and training requirements contained in Chapter 31 through the local workforce development boards (Boards) under Section 302.021(a)(5), Labor Code.

Testimony and legislative debate on HB 2292 centered in part on reinforcing the personal responsibility requirements relating to TANF cash assistance and Medicaid assistance for the adult(s) and to ensure that no state or federal funds are used to pay for assistance to individuals that fail to cooperate. This ensures that families are cooperating in order to receive their cash assistance and supports the principle that the state should not support families who consistently refuse to cooperate.

HB 2292 also strengthened the linkages among the human services agencies by consolidating the twelve existing agencies within five agencies. The Health and Human Services Commission (HHSC), one of the five agencies, will oversee the operations of the remaining four agencies as well as the development of policies and rules. An oversight role of HHSC is to ensure that human services agencies are linking with the Commission to ensure that work opportunities for individuals are maximized and to ensure that individuals are cooperating with their mandatory work requirements. Such linkage ensures that opportunities are maximized to assist recipients obtaining and retaining employment through engaging in work activities where applicable.

The Commission has determined, consistent with the authority granted to states under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), that the definition of work activities includes cooperation with the Responsibility Agreement and the family employment plan. The specific statutory authority rests in 45 USCA Section 607 and is further clarified in the federal regulations interpreting those requirements, which state in part the

following: 45 CFR Sections 261.10, relating to what work requirements must an individual meet, 64 Fed. Reg. 17767, (April 12, 1999) states that "the State defines the work activities that meet the [work] requirement." Likewise, the preamble at the same page also states that "[as] stated above, it is the State's prerogative and responsibility to define the activities it considers to meet these requirements...." Specifically, 45 CFR Section 261.12 (b) states that the individual responsibility plan "...should describe the obligations of the individual. These could include going to school, maintaining certain grades, keeping school-aged children in school, immunizing children, going to classes, or doing other things that will help the individual become or remain employed in the private sector." Based on this language and the principle of personal responsibility, the Commission has added a definition of "work activity" to clearly communicate the inclusion of the requirements specified in the Responsibility Agreement.

The current Responsibility Agreement used by the State of Texas requires the following:

- \*Participation in mandatory work activities;
- \*Cooperation with child support enforcement efforts to establish paternity and obtain child support;
- \*Remaining employed and not quitting a job without good cause;
- \*Maintenance of children's health and dental checkups;
- \*Maintenance of children's immunizations;
- \*School attendance, as required;
- \*Attendance at parenting skills training, when required;
- \*Abstention from using, possessing, or selling controlled substances;
- \*Abstention from alcohol abuse; and,
- \*Truthful representation of the recipient's situation.

Under the pay for performance model, the Legislature requires that a TANF family that does not cooperate with their required work activities will be sanctioned, resulting in the termination of the total amount of TANF cash assistance provided to the family. In addition, the Medicaid assistance for the adult(s) will be denied, unless the adult is under 19 years of age or pregnant.

The sanction period will last a minimum of one month, or until cooperation is demonstrated. If the sanction results from noncooperation with Choices, one month of demonstrated cooperation is required to reinstate receipt of the family's TANF cash assistance.

The Texas Department of Human Services (TDHS) will not reinstate the family's TANF cash assistance until the Texas Workforce Center sends a notification to the local TDHS office indicating that the Choices service requirements are met. Furthermore, if a TANF recipient fails to cooperate for two consecutive months, the family's TANF case will be closed, and the family will be required to reapply for TANF cash assistance. Before certification, the conditional applicant will be required to attend a Workforce Orientation for Applicants (WOA) and to demonstrate one month of cooperation with Choices service requirements. TDHS will not process the family's TANF application until the Texas Workforce Center sends a notification to the local TDHS office indicating that the Choices service requirements were met.

The Commission's intent is to ensure that failure to cooperate is not a result of circumstances that would have prevented Choices participation. Therefore, the Commission will continue to stress the importance of contacting individuals to determine whether a good cause reason for nonparticipation exists.

During the one-month period of demonstrated cooperation, support services will be available as needed. For that reason and consistent with new §31.0032, Human Resources Code as amended by HB 2292, §809.102 relating to Choices Child Care is changed to include that children of sanctioned families and conditional applicants that must demonstrate cooperation prior to the reinstatement of their TANF cash assistance are eligible to receive Choices Child Care.

These changes further align the receipt of cash assistance with employment, similar to the world of work, because employers pay their employees only after working for a specific period of time.

*Timely Implementation. First, HB 2292 requires that the TDHS immediately apply a sanction terminating TANF cash assistance to or for a person or the person's family if TDHS or the Title IV-D agency determines that a person is not cooperating with the requirements of the Responsibility Agreement. Likewise, the law provides that the HHSC or any health and human services agency may deny Medicaid assistance effective September 1, 2003 for a person who is eligible for financial assistance, but fails to cooperate with the Responsibility Agreement unless specifically exempted. To effectuate the new law, the Commission's rule changes are required to be in place September 1, 2003.*

*Effective September 1, 2003, the Boards must notify TDHS of the demonstrated cooperation with Choices services requirements by sanctioned recipients and conditional applicants. Currently, as of July 2003, over 26,000 sanctioned families may be impacted as of September 1, 2003 if they fail to perform. The Boards are also required to develop policies and procedures to ensure that each Texas Workforce Center is prepared to respond to the sanctioned families' and conditional applicants' critical need to demonstrate cooperation with Choices services requirements. The Boards are required to ensure that the Texas Workforce Centers timely notify TDHS of the demonstrated cooperation to ensure that TANF cash assistance and the Medicaid assistance for the adult(s) are issued. If Boards fail to implement such policies, those families cooperating would be in danger of losing TANF cash assistance and the adults' Medicaid assistance. If Boards do not ensure that Texas Workforce Centers have processes in place that allow TANF families to demonstrate cooperation, the continued loss of eligibility for the family's TANF cash assistance and the adults' Medicaid assistance will create an imminent peril to the public health and welfare of the family. The lack of timely policies will impact the families' receipt of cash and medical assistance, which are designed to meet the families' basic needs and health care needs of the adults in the families. Consequently, an emergency rule is necessary to implement the law by the September 1, 2003 effective date.*

*Second, the law requires that full family sanctions begin on September 1, 2003. The Commission's rule development was dependent upon coordination with the TDHS regarding implementation of the requirements of the new law by September 1, 2003. Due to the required coordination with the TDHS, the Commission's earliest opportunity to take timely action to approve the proposal of rules is August 5, 2003. Due to the posting schedule of the Texas Register, the proposal would be published on August 22, 2003. Accounting for the required thirty-day posting period, the earliest effective date would be September 22, 2003. Because the law requires that sanctions be immediately applied beginning September 1, 2003, an emergency rulemaking is necessary to meet that statutory deadline.*

*The importance of implementing the bill is expressly intended by the Legislature, effective September 1, 2003, and is paramount to ensuring the effective use of resources for families willing to cooperate with TANF work requirements.*

*For those reasons, the Commission finds that under Government Code §2001.034, these emergency rules must be adopted on fewer than thirty days of notice. The emergency rules become effective September 1, 2003. Concurrent with the adoption of the emergency rules, the Commission is publishing the proposal of the permanent changes to the rules to provide the public with a thirty-day opportunity to comment and will adopt those rules after considering public comment as soon as feasible following the comment period. The permanent rules will replace the emergency rules.*

Although the rules are repealed in full and adopted as new, many of the provisions of the current rules are retained. For a copy of a comparison document of the existing rules with the emergency rules, please see the Commission web page at <http://www.twc.state.tx.us/twcinfo/rules/prorules.html>. To provide clarity to the rules, throughout the rules, technical modifications are made to update references to “recipients.” This is done in conjunction with changes to the Choices definitions to clarify that sanctioned families and conditional applicants are considered mandatory individuals. Following is a more detailed explanation of the rule changes.

Section 811.2 sets forth the definitions relating to Choices services. The following terms are added: “conditional applicant,” “mandatory individual,” “mandatory recipient,” and “sanctioned family.” The terms individual, applicant, recipient, and former recipient were reviewed for appropriateness and, if necessary, modified to describe the applicable populations.

The Commission clarifies that a sanctioned family who must demonstrate one month of cooperation in the program month following the family's initial Choices noncooperation may or may not be receiving TANF cash assistance. Due to the TDHS automation schedule, penalties that are received after the TDHS "cut-off" date will not be effective in the following month. For example, in September, the TDHS cut-off date is September 17. If a recipient noncooperates in September and Workforce Center staff submit a penalty request on September 17, the effective date of the full-family sanction will be in November. However, the recipient must demonstrate cooperation throughout the month of October, which is the first program month after the month of noncooperation. During the month of October, the sanctioned family will still be receiving TANF cash assistance, and is considered mandatory; therefore, the sanctioned family will be in the Board's denominator for this month.

The term "work activity" is also added. Because of the fundamental barriers addressed in the Responsibility Agreement, the Commission has determined that inherent to the definition of work are the concepts included in the Responsibility Agreement which support a recipient's continued job readiness. Without cooperation with the Responsibility Agreement, the individual would be hindered in his or her ability to work or retain employment.

Section 811.3 sets forth Choices Service Strategies. The terms applicant, recipient, and former recipient were reviewed for appropriateness and, if necessary, modified to describe the applicable populations.

Section 811.11 sets forth Board Responsibilities. The terms applicant and recipient were reviewed for appropriateness and, if necessary, modified to describe the applicable populations. The rules also require conditional applicants, who must demonstrate one month of cooperation with Choices and attend a WOA, to be enrolled immediately in Choices services.

Section 811.12 sets forth Applicant Responsibilities. The term applicant was reviewed for appropriateness and modified, if necessary, to describe the applicable populations. The rule clarifies that conditional applicants must attend a WOA.

Section 811.13 sets forth Responsibilities of Mandatory Individuals. The terms individual and recipient were reviewed for appropriateness and, if necessary, modified to describe the applicable populations.

Section 811.14 sets forth issues regarding Noncooperation. The provisions contain the same language set forth in §811.11, with the following changes. Timely and reasonable attempts must be made to contact recipients, sanctioned families, and conditional applicants to determine their reasons for noncooperation. If good cause is not determined, these individuals must be notified of their right to appeal. Additionally, recipients who were not in sanction status must be notified of the required procedures to demonstrate one month of cooperation prior to the reinstatement of their family's TANF cash assistance.

Section 811.15 sets forth issues regarding Demonstrated Cooperation. This section sets forth the requirements for sanctioned families and conditional applicants to demonstrate one month of cooperation prior to reinstating their family's TANF cash assistance.

Section 811.16 sets forth Good Cause for Mandatory Individuals. The term recipient was reviewed for appropriateness and, if necessary, modified to describe the applicable populations. Families who must demonstrate one month of cooperation may receive good cause. If good cause is granted, TDHS shall be notified that the family demonstrated cooperation, and the family's TANF cash assistance may be reinstated.

Section 811.21 sets forth General Provisions for Choices services. This section adds language to address the impact of the Fair Labor Standards Act on sanctioned families and conditional applicants who are not receiving TANF cash assistance, and who may be participating in an unpaid work activity. The allowable number of hours in such activities will be based on the household's food stamp allotment divided by the minimum wage.

Section 811.22 sets forth Assessment provisions. The term recipient was reviewed for appropriateness and, if necessary, modified to describe the applicable populations.

Section 811.23 sets forth provisions regarding the Family Employment Plan. The term recipient was reviewed for appropriateness and, if necessary, modified to describe the applicable populations. In addition, new language is added to incorporate the requirements of the Responsibility Agreement in the Family Employment Plan. Adults in TANF families have the responsibility to ensure the health and welfare of their children. This has a direct impact on their ability to obtain and retain employment.

In sections 811.24-811.30 the term recipient was reviewed for appropriateness and, if necessary, modified to describe the applicable populations. Sanctioned families are not subject to the

four/six week job search limitation during the month in which they are not receiving TANF cash assistance. The four/six week limitation is only applicable to families who are receiving a TANF cash assistance.

Sections 811.31 and 811.32 set forth Special Provisions regarding Conditional Applicants and Sanctioned Families to require that any job search activities be staff assisted.

Section 811.41 regarding Job Search and Job Readiness Assistance includes a new description of staff-assisted services.

In §§811.45-811.50 the term recipient was reviewed for appropriateness and, if necessary, modified to describe the applicable populations.

Section 811.51 regarding Post-Employment Services was reviewed. The terms recipient and former recipient were modified, if necessary, to describe the applicable populations.

Section 811.61 sets forth Support Services issues. The new language clarifies that any support service classified as cash assistance may only be provided for four months or less to an unemployed individual who is not already receiving cash assistance. This section also contains language to clarify that conditional applicants and sanctioned families may receive necessary support services in order to demonstrate one month of cooperation.

Section 811.63(b) was removed because it applies to all support services, which is now located under §811.63.

Under federal regulations, support services designed to meet a basic need, such as transportation, are classified as cash assistance when provided to an unemployed TANF recipient. The federal regulations do provide for an exception if such services are designed to be short term. Therefore, the rules clarify that these support services are classified as a short-term nonrecurrent benefit—that is, they are designed to last for less than four months and, therefore, are exempt from the federal definition of cash assistance.

The emergency repeal is adopted under Texas Labor Code, §301.061 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission programs. *The repeal is also adopted under Texas Government Code §2001.006, which provides authority for the Commission to adopt rules or take other administrative action that the agency determines is necessary and appropriate in preparation for the implementation of HB 2292 and rules relating to HB 2292 contained in 40 TAC Chapter 3. As set forth regarding the emergency rules, the Commission finds that adoption of the emergency rules is necessary and appropriate for implementation of HB 2292. Further, if HB 2292 were currently in effect, adoption of the rules would have been explicitly authorized by the law.*

The emergency rules affect Human Resources Code Title 2, particularly Chapters 31, 34 and 44, Human Resources Code.

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The rules affect Human Resources Code Title 2, particularly Chapters 31, 34, and 44, Human Resources Code.

## **SUBCHAPTER A. GENERAL PROVISIONS**

### **§811.1. Purpose and Goal.**

- (a) The purposes of Temporary Assistance for Needy Families (TANF), as set forth ~~outlined~~ in Title IV, Social Security Act, §401 (42 U.S.C.A. §601) are:
  - (1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
  - (2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;
  - (3) prevent and reduce the incidence of out-of-wedlock pregnancies; and
  - (4) encourage the formation and maintenance of two-parent families.
- (b) The goal of Choices services is to end the dependence of needy parents on public assistance by promoting job preparation, work, and marriage. A Board may exercise flexibility in providing services to Choices individuals to meet this Choices goal. A Board is also provided the flexibility and may engage in strategies that promote the prevention and reduction of out-of-wedlock pregnancies and encourage the formation and maintenance of two-parent families if those strategies support the primary goal of Choices services, which is employment and job retention.
- (c) The goal of the Commission is to ensure delivery of the employment and training activities as described in the TANF State Plan.
- (d) Boards shall identify the workforce needs of local employers and design Choices services to ensure that local employer needs are met and that the services are consistent with the goals and purposes of Choices services as referenced in this section, and as authorized by PRWORA, the applicable federal regulations at 45 C.F.R. Part 260 - 265, the TANF State



Plan, this chapter, and consistent with a Board's approved integrated workforce training and services plan as referenced in §801.17 of this title.

(e) The effective date of the rules in this Chapter 811 relating to Choices services shall be September 1, 2003; however, until September 1, 2003, the rules in effect on July 1, 2003 shall apply to Choices services.

## **§811.2. Definitions.**

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

- (1) Applicant -- An adult, or teen head of household, in a family person who applies for temporary cash assistance, who previously did not leave TANF in a sanctioned status.
- (2) TDHS -- The Texas Department of Human Services.
- (3) ~~Exempt Recipient~~ — ~~A recipient who is not required as defined by TDHS Rules, 40 TAC, 3.1101, to participate in Choices services.~~
- (43) Earned Income Deduction (EID) -- A standard work-related and income deduction, available through the TDHS for four months, as defined in TDHS Rules, 40 TAC, §3.1003 to recipients who are employed at least 30 hours a week and earn at least \$700 a month.
- (5) ~~Extended TANF Recipient~~ — ~~A person who receives TANF cash assistance past the date of the individual's 60-month limit due to a hardship exemption as defined in TDHS Rules, 40 TAC, §3.6001.~~
- (6) ~~Former recipient~~ — ~~A person who is an adult or teen head of household who no longer receives temporary cash assistance.~~
- (74) Choices Individual -- An adult, or teen head of household, in a family A person who is an applicant, conditional applicant, recipient, or former recipient, or sanctioned family as defined in this chapter-section.
- (5) Conditional Applicant -- An adult, or teen head of household, in a family who left TANF in a sanctioned status, but who is reapplying for temporary cash assistance.
- (6) Mandatory Individual -- An adult, or teen head of household, in a family who is a conditional applicant, mandatory recipient, or sanctioned family as defined in this chapter.
- (8) ~~Mandatory Recipient~~ — ~~A recipient, including Extended TANF recipients who are required as defined by TDHS Rules, 40 TAC, §3.1101, and §3.6001 to participate in Choices services.~~

- (97) PRWORA -- The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105, as amended.
- (108) Recipient -- ~~A person who is a~~An adult, or teen head of household, in a family who receives temporary cash assistance, and includes:
- (A) Exempt Recipient -- A recipient who is not required to participate in Choices services, as defined by TDHS Rules, 40 TAC, §3.1101;
- (B) Extended TANF Recipient -- A recipient who receives TANF cash assistance past the 60-month time limit because of a hardship exemption as defined in TDHS Rules, 40 TAC, §3.6001;
- (C) Former Recipient -- an adult, or teen head of household, in a family who no longer receives temporary cash assistance because of employment; or
- (D) Mandatory Recipient -- An adult, or teen head of household, in a family, including extended TANF recipients who are required as defined by TDHS Rules, 40 TAC, §3.1101, and §3.6001, to participate in Choices services.
- (9) Sanctioned Family -- An adult, or teen head of household, in a family who must demonstrate cooperation for one month in order to reinstate TANF benefits.
- (10) Temporary cash assistance -- The cash grant provided through TDHS to individuals who meet certain residency, income, and resource criteria as provided under federal and state statutes and regulations, including the PRWORA, the TANF block grant statutes, the TANF State Plan, temporary cash assistance provided under Texas Human Resources Code Chapters 31 or 34, and other related regulations. This term is also referred to as "TANF cash assistance."
- (11) Work Activity -- For the purposes of 45 USCA §607 and 45 CFR § 261.10, work activities are defined as:
- (A) all activities detailed in the Responsibility Agreement, as set forth in this chapter; and
- (B) all TANF Core and Non-Core activities, as set forth in this chapter.
- (12) Work-Based Services -- Includes those services defined in Human Resources Code §31.0126.
- (13) Work Ready -- A Choices individual is considered work ready if he or she has the skills that are required by employers in the workforce area. A Board must ensure immediate access to the labor market to determine whether the Choices individual has those necessary skills to obtain employment.

### **§811.3. Choices Service Strategy.**

- (a) A Board shall ensure that its strategic planning process includes an analysis of the local labor market to:
  - (1) determine employers' needs;
  - (2) determine emerging and demand occupations; and
  - (3) identify employment opportunities, which includes those with a potential for career advancement.
  
- (b) A Board shall set local policies for a Choices service strategy that coordinates various service delivery approaches to:
  - (1) assist applicants and conditional applicants in gaining employment as an alternative to public assistance;
  - (2) utilize a work first design as referenced in paragraph (2) of subsection (c) of this section to provide recipients-mandatory individuals, and exempt recipients who voluntarily participate in Choices services,~~participating in Choices~~ access to the labor market; and
  - (3) assist former recipients in job retention and career advancement to remain independent of temporary cash assistance.
  
- (c) The Choices service strategy shall include:
  - (1) Workforce Orientation for Applicants (WOA). As a condition of eligibility, applicants and conditional applicants are required to attend a workforce orientation that includes information on options available to allow them to enter the Texas workforce.
  - (2) Work First Design.
    - (A) The work first design:
      - (i) allows individuals to take immediate advantage of the labor market and secure employment, which is critical due to individual time-limited benefits; and
      - (ii) meets the needs of employers by linking individuals with skills that match those job requirements identified by the employer.
    - (B) Boards shall provide individuals access to other services and activities available through the One-Stop Service Delivery Network, which includes the WOA, to assist with employment in the labor market before certification for temporary cash assistance.

- (C) Post-employment services shall be provided in order to assist an individual's progress towards self-sufficiency as described in paragraph (3) of subsection (c) of this section and §811.51 of this chapter.
  - (D) In order to assist an individual's progress toward self-sufficiency:
    - (i) Boards shall provide ~~recipients~~ Choices individuals who are employed, including those receiving the EID, with information on available post-employment services; or
    - (ii) Boards may provide Choices individuals ~~former recipients~~ with post-employment services as determined by Board policy. The length of time these services may be provided is subject to §811.51~~(e)~~ of this chapter.
  - (E) In order to assist employers, Boards shall coordinate with local employers to address needs related to:
    - (i) employee post-employment education or training;
    - (ii) employee child care, transportation or other support services available to obtain and retain employment; and
    - (iii) employer tax credits.
  - (F) A Board shall ensure that a family employment plan is based on employer needs, individual skills and abilities, and individual time limits for temporary cash assistance.
- (3) **Post-Employment Services.** A Board shall ensure that post-employment services are designed to assist individuals with job retention, career advancement and reemployment, as defined in §811.51 of this chapter. Post-employment services are a continuum in the Choices service strategy to support an individual's progression to self-sufficiency.
- (4) **Adult Services.** A Board shall ensure that services for adults shall include activities individually designed to lead to employment and self-sufficiency as quickly as possible.
- (5) **Teen Services.** A Board shall ensure that services for teen heads of household shall include assistance with completion of secondary school or a certificate of general equivalence and making the transition from school to employment, as described in §811.27 and §811.50 of this chapter.
- (6) **Individuals with Disabilities.** A Board shall ensure that services for individuals with disabilities include reasonable accommodations to allow the individuals to access and participate in services, where applicable by law. A Board shall ensure that Memoranda of Understanding (MOU) are established with the appropriate agencies to serve individuals with disabilities.

- (7) Target Populations. A Board shall ensure that services are concentrated, as further defined in §811.11 (d) and (e) of this chapter, on the needs of the following:
  - (A) recipients who have 6 months or less remaining of their state TANF time limit, irrespective of any extension of time due to a hardship exemption;
  - (B) recipients who have twelve months or less remaining of their 60-month TANF time limit, irrespective of any extension of time due to a hardship exemption; and
  - (C) recipients who are Extended TANF Recipients.
- (8) Local Flexibility. A Board may develop additional service strategies that are consistent with the goal and purpose of this chapter and the One-Stop Service Delivery Network.
- (9) Local-Level MOU. A Board shall ensure the development of a local-level MOU in cooperation with TDHS for coordinated case management that is consistent with the MOU between TDHS and the Commission.

## **SUBCHAPTER B. CHOICES SERVICES RESPONSIBILITIES**

### **§811.11. Board Responsibilities.**

- (a) A Board shall ensure that:
  - (1) procedures are developed, in conjunction with TDHS, to notify applicants and conditional applicants on the availability of regularly scheduled Workforce Orientations for Applicants (WOA) and alternative WOAs;
  - (2) the WOA is offered frequently enough to allow applicants and conditional applicants to comply with the TDHS requirement that gives applicants ten (10) calendar days to attend a WOA;
  - (3) during a regularly scheduled WOA or alternative WOA, applicants and conditional applicants are informed of:
    - (A) employment services available through the One-Stop Service Delivery Network to assist applicants in achieving self-sufficiency without the need for temporary cash assistance;
    - (B) benefits of becoming employed;
    - (C) impact of time-limited benefits;
    - (D) individual and parental responsibilities; and
    - (E) other services and activities, including education and training, available through the One-Stop Service Delivery Network;

- (4) alternative WOAs are developed that allow applicants and conditional applicants with extraordinary circumstances to receive the information listed in §811.11(a)(3) of this subsection;
  - (5) procedures are developed to notify TDHS of applicants and conditional applicants ~~who that~~ contacted the Board's workforce centers to request alternative WOAs;
  - (6) verification that ~~an~~ applicants and conditional applicants attends a scheduled or alternative WOA is completed and TDHS is notified in accordance with TDHS rule, 40 T.A.C. §3.7301; and
  - (7) applicants and conditional applicants are provided with an appointment to develop a family employment plan.
- (b) A Board shall ensure that:
- (1) Choices services are offered to applicants who attend a WOA.
  - (2) Conditional applicants who attend a WOA are immediately scheduled to begin Choices services.
- (c) A Board shall ensure that recipient status is verified monthly, ~~and recipients either:~~
- (1) ~~comply with Choices services requirements as outlined in the family employment plan unless the recipient is exempted by TDHS; or~~
  - (2) ~~have good cause as described in §811.14 of this subchapter (relating to Good Cause for Recipients).~~
- (d) A Board shall develop policies and procedures to ensure that services are concentrated on individuals approaching their state or federal time limit, as identified in §811.3(c)(7)(~~A~~) and (~~B~~) of this chapter. Concentrated services may include targeted outreach, enhanced analysis of circumstances that may limit a recipient's ability to participate, and targeted job development.
- (e) A Board shall ensure that all Extended TANF Recipients are outreached and offered the opportunity to participate in Choices activities.
- (f) A Board shall ensure that post-employment services, including job retention and career advancement services, are available to recipients, Choices individuals including those receiving EID.
- (g) A Board shall ensure that the monitoring of Choices requirements and activities is ongoing and frequent, as determined by a Board, and consists of the following:
- (1) ensuring receipt of support services
  - (2) tracking and reporting of support services;

- (3) tracking and reporting actual hours of participation, at least monthly;
  - (4) determining and arranging for any intervention needed to assist the individual in complying with Choices service requirements;
  - (5) ensuring that the individual is progressing toward achieving the goals and objectives in the family employment plan; and
  - (6) monitoring all other participation requirements.
- (h) A Board shall ensure that:
- (1) no less than four hours of training regarding family violence is provided to staff who:
    - (A) provide information to ~~an applicant or recipient of temporary cash assistance~~ Choices individuals;
    - (B) recommend penalties or grant good cause; or
    - (C) provide employment planning or employment retention services; ~~and~~
  - (2) Choices individuals ~~recipients~~ who are identified as being victims of family violence are referred to an individual or an agency that specializes in issues involving family violence.
- (i) ~~A Board shall ensure that:~~
- (1) ~~reasonable attempts, as defined by the Board, are made to contact a recipient prior to initiating a penalty to determine the reason for non-compliance;~~
  - (2) ~~the attempts to contact a recipient are documented; and~~
  - (3) ~~notification is made to TDHS if a recipient fails to comply with Choices services requirements.~~
- (i)(j) A Board shall ensure that documentation is obtained and maintained regarding all contact with Choices individuals and data entered into TWIST.

### **§811.12. Applicant Responsibilities.**

Applicants and conditional applicants are required to attend a scheduled or an alternative WOA, in accordance with TDHS rule 40 T.A.C. §§3.7301-3.7302.

### **§811.13. Recipient Responsibilities of Mandatory Individuals.**

- (a) A Board shall ensure that mandatory individuals~~recipients~~, and exempt recipients who voluntarily participate in Choices services, comply with the provisions contained in this section.
- (b) Mandatory individuals~~recipients~~, and exempt recipients who voluntarily participate in Choices services, shall:
  - (1) accept a job offer at the earliest possible opportunity;
  - (2) participate in or receive ancillary services necessary to enable ~~the mandatory~~ individuals~~recipient~~ to work or participate in employment-related activities, including counseling, treatment, vocational or physical rehabilitation, and medical or health services;
  - (3) report hours of participation in component activities, including hours of employment; and
  - (4) attend scheduled appointments.
- (c) Within two-parent families, mandatory individuals~~mandatory recipients~~, and exempt recipients who voluntarily participate in Choices services, shall participate in assessment and family employment planning appointments and assigned employment and training activities as follows:
  - (1) participate in Choices employment and training as specified in §811.25(c)-(d) of this chapter;
  - (2) comply with requirements regarding core and non-core activities, as specified in §§811.25-811.~~3028~~ of this chapter; and
  - (3) sign a form that contains all the information identified in the Commission's Family Work Requirement form, as described in §811.24 of this chapter.
- (d) Within single-parent families, mandatory individuals~~mandatory recipients~~, and exempt recipients who voluntarily participate in Choices services, shall participate in assessment and employment planning appointments and assigned employment and training activities as follows:
  - (1) participate in Choices employment and training activities as specified in §811.25(b) of this chapter; and
  - (2) comply with requirements regarding core and non-core activities, as specified in §§811.25-811.~~3028~~ of this chapter.
- (e) A Board shall ensure that recipients who elect to receive the EID through TDHS:
  - (1) report actual hours of work to a Board; and
  - (2) are provided with information on available post-employment services.



**§811.14. Noncooperation.**

- (a) A Board shall ensure that cooperation by mandatory individuals with Choices requirements is verified each month to ensure that the individuals:
  - (1) comply with Choices services requirements as set forth in the family employment plan, unless the recipient is exempted by TDHS;
  - (2) have good cause as described in this chapter; or
  - (3) have not cooperated with Choices requirements and a penalty is requested.
  
- (b) A Board shall ensure that timely and reasonable attempts, as defined by the Board, are made to contact a recipient prior to initiating a penalty to:
  - (1) determine the reason for noncooperation;
  - (2) inform the recipient of:
    - (A) the violation, if good cause has not been determined;
    - (B) the right to appeal; and
    - (C) the necessary procedures to demonstrate cooperation.
  
- (c) A Board shall ensure that timely and reasonable attempts, as defined by the Board, are made to contact a sanctioned family and conditional applicants upon discovery of noncooperation to determine if good cause exists.
  
- (d) A Board shall ensure that the reasonable attempts to contact a mandatory individual are documented.
  
- (e) A Board shall ensure that TDHS is notified of:
  - (1) a recipient's failure to comply with Choices services requirements; and
  - (2) that the noncooperation is submitted as early as possible in the same month in which the noncooperation occurs.

**§811.15. Demonstrated Cooperation.**

- (a) Conditional applicants are required to demonstrate one month of cooperation to become eligible for reinstatement of TANF benefits.
  
- (b) Sanctioned families are required to demonstrate one month of cooperation as a condition of eligibility for TANF benefits.

(c) A Board shall ensure that TDHS is immediately notified if:

- (1) a sanctioned family denied TANF benefits because of one month of noncooperation has demonstrated full cooperation with Choices requirements for the program month immediately following the program month in which the family noncooperated;
- (2) a conditional applicant whose TANF case is closed because of two or more months of noncooperation has demonstrated full cooperation with Choices requirements for four consecutive weeks; or
- (3) a sanctioned family or conditional applicant has been granted good cause during the demonstrated cooperation period.

**§811.1416. Good Cause for Mandatory IndividualsRecipients.**

- (a) Good cause applies only to mandatory individuals, and exempt recipients who voluntarily participate in Choices services~~recipients~~. A Board shall ensure that whether the recipient has good cause is determined as provided in this chapter.
- (b) A Board shall ensure that a good cause determination:
  - (1) is based on ~~the individual~~ and family ~~circumstances of the recipient;~~
  - (2) is based on face-to-face or telephone contact ~~with the recipient;~~
  - (3) covers a temporary period when ~~a mandatory individuals, or exempt recipients who voluntarily participate in Choices services,~~recipient may be unable to attend scheduled appointments or participate in ongoing work activities;
  - (4) is made at the time the change in ~~the recipient's~~ circumstances is made known to the Board's service provider; and
  - (5) is conditional upon efforts to ~~enable the recipient to~~ address circumstances that limit the ability to participate in Choices services as required in the ~~Personal~~ Responsibility Agreement.
- (c) The following reasons may constitute good cause for purposes of this chapter ~~if the mandatory recipient is unable to meet the participation requirements due to:~~
  - (1) temporary illness or incapacitation;
  - (2) court appearance;
  - (3) caring for a physically or mentally disabled household member who requires the recipient's presence in the home;
  - (4) a demonstration that there is:

- (A) no available transportation and the distance prohibits walking; or
  - (B) no available job within reasonable commuting distance, as defined by the Board;
- (5) an inability to obtain needed child care, as defined by the Board and based on the following reasons:
- (A) informal child care by a relative or under other arrangements is unavailable or unsuitable, and based on, where applicable, Board policy regarding child care as specified in §811.47 of this chapter. Informal child care may also be determined unsuitable by the parent;
  - (B) eligible formal child care providers are unavailable, as defined in Chapter 809 of this title;
  - (C) affordable formal child care arrangements within maximum rates established by the Board are unavailable; and
  - (D) formal or informal child care within a reasonable distance from home or the work site is unavailable;
- (6) is without other support services necessary for participation;
- (7) receives a job referral that results in an offer below the federal minimum wage, except when a lower wage is permissible under federal minimum wage law;
- (8) is in a family crisis or a family circumstance that may preclude participation, including substance abuse, and mental health, provided the ~~recipient~~ mandatory individual, or exempt recipient who voluntarily participates in Choices services, engages in problem resolution through appropriate referrals for counseling and support services; or
- (9) is a victim of family violence.
- (d) A Board shall promulgate policies and procedures for determining a family's inability to obtain child care and shall ensure that mandatory individuals~~recipients~~ in single-parent families caring for children under age six are informed of:
- (1) the penalty exception to the family work requirement, including the criteria and applicable definitions for determining whether a mandatory individual~~recipient~~ has demonstrated an inability to obtain needed child care, as defined in §811.16~~4~~(c)(5)(A)-(D) of this section.
  - (2) a Board's policy and procedures for determining a family's inability to obtain needed child care, and any other requirements or procedures, such as fair hearings, associated with this provision, as required by 45 CFR §261.56.

- (e) A Board shall ensure that good cause:
  - (1) is reevaluated at least on a monthly basis;
  - (2) is extended if the circumstances giving rise to the good cause exception are not resolved after available resources to remedy the situation have been considered; and
  - (3) that is based on the existence of family violence does not exceed a total of twelve consecutive months per occurrence .

## **SUBCHAPTER C. CHOICES SERVICES**

### **§811.21. General Provisions.**

- (a) A Board shall ensure that services are available to assist Choices individuals with obtaining employment as quickly as possible and, if employed, with retaining employment. These services may include:
  - (1) job readiness and job search-related services;
  - (2) work-based services;
  - (3) post-employment services;
  - (4) education and training services as described in this chapter; and
  - (5) support services.
- (b) A Board shall ensure that employment and training activities are conducted in compliance with the Fair Labor Standards Act (FLSA) as follows:
  - (1) the amount of time per week that a recipient may be required to participate in activities that are not exempt from minimum wage and overtime under the FLSA shall be determined by the temporary cash assistance and food stamp benefits amount being divided by the minimum wage so that the amount paid to the recipient would be equal to or more than the amount required for payment of wages, including minimum wage and overtime; or
  - (2) the amount of time per week that a sanctioned family or conditional applicant may be required to participate in activities that are not exempt from minimum wage and overtime under the FLSA shall be determined by the food stamp benefits amount being divided by the minimum wage so that the amount paid to the sanctioned individual would be equal to or more than the amount required for payment of wages, including minimum wage and overtime; and
  - ~~(2)~~ if a Board provides activities that meet all of the following categories set forth in this paragraph, the activity is considered "training" under the FLSA and minimum wage and overtime is not required:

- (A) the training is similar to that given in a vocational school;
  - (B) the training is for the benefit of the trainees;
  - (C) trainees do not displace regular employees;
  - (D) employers derive no immediate advantage from trainees' activities;
  - (E) trainees are not entitled to a job after training is completed; and
  - (F) employers and trainees understand that trainee is not paid.
- (c) A Board shall ensure that placement in work-based services does not result in the displacement of currently employed workers or impair existing contracts for services or collective bargaining agreements.
- (d) A Board may, through local policies and procedures, require the use of the Eligible Training Provider Certification System (ETPS) and Individual Training Account (ITA) systems as described in 40 T.A.C. Chapter 841 to provide for Choices services for individuals participating in Choices services and paid for with TANF funds.
- (e) A Board shall, through local policies and procedures, make available job development services, which include:
- (1) contacting local employers or industry associations to request that job openings be listed with Texas Workforce Centers, and other entities in the One-Stop Service Delivery Network selected by the Board;
  - (2) identifying the hiring needs of employers;
  - (3) assisting the employer in creating new positions for job seekers based on the job developer's and employer's analysis of the employer's business needs; or
  - (4) finding opportunities with an employer for a specific job seeker or a group of job seekers.
- (f) A Board shall ensure that job development services identify, at a minimum, job openings for current mandatory individuals~~mandatory recipients~~.
- (g) A Board shall, through local policies and procedures, make available job placement services. Job placement services shall include:
- (1) identifying employers' workforce needs;
  - (2) identifying job seekers who have sufficient skills and abilities to be successfully linked with employment; and
  - (3) matching the skills of the job seeker pool to the hiring needs of local employers.

**§811.22. Assessment.**

- (a) A Board shall ensure that initial and ongoing assessments are performed to determine the employability and retention needs of Choices individuals as follows:
  - (1) An assessment is required for ~~mandatory individuals~~~~mandatory recipients~~, and for exempt recipients who voluntarily participate in Choices services, and who are:
    - (A) at least age 18; or
    - (B) heads of household, as determined by TDHS, who are not yet age 18, have not completed secondary school or received a certificate of general equivalence, and are not attending secondary school.
  - (2) An assessment shall be provided to applicants who choose to participate in Choices services.
  - (3) Ongoing assessments shall be provided to former recipients who choose to participate in Choices services.
- (b) Assessments shall include evaluations of strengths and potential barriers to obtaining and retaining employment, such as:
  - (1) skills and abilities, employment, and educational history in relation to employers' workforce needs in the local labor market;
  - (2) support services needs; and
  - (3) family circumstances that may affect participation, including the existence of family violence, substance abuse, and mental health, or the need for parenting skills training, as one of the factors considered in evaluating employability.
- (c) For ~~mandatory individuals~~~~recipients~~ who are at least age 18, or who are heads of household but are not yet age 18 and have not completed secondary school or received a certificate of general equivalence and are not attending secondary school:
  - (1) The assessments shall also include evaluations of the mandatory individual's~~recipient's~~:
    - (A) vocational and educational skills, experience, and needs; and
    - (B) literacy level by using a statewide standard literacy assessment instrument with the following exception: recipients receiving the EID are excluded from the literacy assessment. A Board shall ensure that the grade-level results or other literacy information is provided to TDHS for use in determining the appropriateness of the initial state time-limit designation for temporary cash assistance as described in the Texas Human Resources Code §31.0065, relating to state time-limited benefits.

- (2) The grade-level results or other literacy information are provided to TDHS for use in determining the appropriateness of the initial state time-limit designation for temporary cash assistance as described in the Texas Human Resources Code §31.0065, relating to state time-limited benefits.
- (d) Assessment Outcome. Assessments shall result in the development of a family employment plan, as described in §811.23 of this subchapter.

**§811.23. Family Employment Plan.**

- (a) Boards must ensure that prior to the development of a family employment plan, mandatory individuals~~recipients~~ receive general information about services provided through the One-Stop Service Delivery Network that will assist them in obtaining employment, if the recipient did not receive this information during the WOA.
- (b) Family employment plans are required for mandatory individuals~~mandatory recipients~~, and ~~for~~ exempt recipients who voluntarily participate in Choices services.
- (c) Family employment plans shall be developed with applicants and former recipients who choose to participate in Choices services.
- (d) A Board shall ensure that a family employment plan is developed during the assessment and:
  - (1) is based on assessments, as described in §811.22 of this subchapter;
  - (2) contains the goal of self-sufficiency through employment to meet the needs of the local labor market;
  - (3) contains the steps and services to achieve the goal, including:
    - (A) connecting the job seeker immediately to the local labor market;
    - (B) addressing potential barriers that limit the job seeker's ability to work or participate in activities;
    - (C) arranging support services for the job seeker or the family to address circumstances that limit the individual's ability to work or participate, including services for family violence;
    - (D) providing post-employment skill enhancement and career advancement; and
    - (E) requiring mandatory individuals ~~recipients~~ to notify the Board's service provider of changes in family circumstances that may preclude participation in Choices services.

- (4) is signed by the Choices individual, unless the Choices individual is a recipient receiving the EID, and a Board's service provider; and
  - (5) assigns required hours and sets forth ~~outlines~~ the participation agreement for compliance with Choices services requirements. Family employment plans for two-parent families must include a description of how the required hours of participation will be distributed between one or both adults in the two-parent household.
- (e) A Board shall ensure that the family employment plan contains the responsibilities listed in the Responsibility Agreement, which state that:
- (1) each adult member of the household receiving cash assistance must participate as required in Choices;
  - (2) each family must cooperate with child support requirements to establish paternity and help obtain child support for children on their case;
  - (3) each adult or teen parent must not voluntarily quit a job without good cause;
  - (4) each child in the family must get a medical checkup as scheduled through the Texas Health Steps program;
  - (5) each child must be current with the required immunizations;
  - (6) each child receiving TANF who is younger than 18, or a teen parent younger than 19, must attend school regularly unless the child has a high school diploma or a GED;
  - (7) each TANF recipient must attend parenting skills classes, if requested to do so;
  - (8) each parent or relative of a child receiving assistance must not use, sell, or possess controlled substances or abuse alcohol after signing a Responsibility Agreement; and
  - (9) each family must truthfully represent their situation in completing the application, the interview, providing proof of its circumstance, reporting changes in address, income, assets, and family size, and by keeping or rescheduling all appointments.
- (f) A Board shall ensure that the responsibilities in §811.23(e)(1) and (3) of this section are monitored for compliance.
- (eg) A Board shall ensure that progress towards meeting the goals of the family employment plan is evaluated and the family employment plan is modified as appropriate to meet employer needs in the local labor market.

**§811.24. Family Work Requirement Form for Two-Parent Families.**



A Board shall ensure that a Family Work Requirement form is developed for all two-parent families that:

- (1) contains an agreement by both adults in the family to comply with the family work requirements through distribution of required hours of participation between one or both adults in the two-parent family; and
- (2) is signed by the adults in the household that are required to participate in Choices services, except for the following:
  - (A) mandatory individuals~~recipients~~ who are temporarily unable to sign the form, such as a recipient who is temporarily unavailable; or
  - (B) recipients receiving the EID whose only participation requirement is to report their hours of employment.

**§811.25. TANF Core and TANF Non-Core Activities.**

- (a) Participation hours are subject to the restrictions regarding TANF core and TANF non-core activities as set forth~~outlined~~ in 45 C.F.R. §261.31, §261.32 and §261.33, and as set forth~~outlined~~ in this section and §811.26 of this subchapter.
  - (1) TANF core activities are:
    - (A) job search and job readiness assistance, as described in §811.41 of this chapter;
    - (B) unsubsidized employment, as described in §811.42 of this chapter;
    - (C) subsidized employment, as described in §811.43 of this chapter;
    - (D) on-the-job training, as described in §811.44 of this chapter;
    - (E) work experience, as described in §811.45 of this chapter;
    - (F) community service, as described in §811.46 of this chapter;
    - (G) vocational educational training, as described in §811.48 of this chapter; or
    - (H) child care services to a mandatory recipient, or exempt recipient who voluntarily participates in Choices services, who is participating in community service, as described in §811.47 of this chapter.
  - (2) TANF non-core activities are:
    - (A) job skills training, as described in §811.49 of this chapter;
    - (B) educational services for mandatory individuals, and exempt recipients who voluntarily participate in Choices services,~~recipients~~ who have not

completed secondary school or received a certificate of general equivalence, as described in §811.50 of this chapter.

- (b) A mandatory individual, and exempt recipient who voluntarily participate in Choices services, recipient in a single-parent family is deemed to be engaged in work during the month if he or she participates for at least a minimum weekly average of thirty hours. An average of twenty hours per week must be derived from participation in core activities. Up to an average of ten hours per week may be derived from participation in non-core activities.
- (c) Mandatory individuals, and exempt recipients who voluntarily participate in Choices services, in Twotwo-parent families who are not receiving Commission-funded child care are deemed to be engaged in work during the month if one or both adults in the family participate for at least a minimum weekly average of thirty-five hours. An average of thirty hours per week must be derived from participation in core activities. Up to an average of five hours per week may be derived from participation in non-core activities.
- (d) Mandatory individuals, and exempt recipients who voluntarily participate in Choices services, in Twotwo-parent families who are receiving Commission-funded child care are deemed to be engaged in work during the month if one or both adults in the family participate for at least a minimum weekly average of fifty-five hours. An average of fifty hours per week must be derived from participation in core activities. Up to an average of five hours per week may be derived from participation in non-core activities. The following work participation exceptions apply to two-parent families who are receiving Commission-funded child care:
  - (1) two-parent families with one adult in good cause status are deemed to be engaged in work during the month if the adult who is not in good cause status participates for at least a minimum weekly average of thirty-five hours. An average of thirty hours per week must be derived from participation in core activities. Up to an average of five hours per week may be derived from participation in non-core activities; or
  - (2) two-parent families with both adults in good cause status for whom no penalty will be requested for failure to meet the minimum weekly average hours based on the good cause determination.

#### **§811.26. Special Provisions Regarding Core and Non-Core Activities.**

- (a) Mandatory recipients, with the exception of those described in §811.27 and §811.30 of this subchapter, who are not in an employment activity after four weeks of participation in Choices services, must be placed into community service. Mandatory recipients who are not in an employment activity after reaching their six-week limit per federal fiscal year in job search and job readiness activities must be placed into community service. Mandatory recipients required to participate in a community service activity must be scheduled to participate no less than the minimum weekly average hours calculated as specified in §811.21 (b) of this subchapter.

- (1) An employment activity is defined as:
  - (A) unsubsidized employment, as described in §811.42 of this chapter;
  - (B) subsidized employment, as described in §811.43 of this chapter;
  - (C) on-the-job training, as described in §811.44 of this chapter; or
  - (D) work experience, as described in §811.45 of this chapter.
- (2) The number of hours that a recipient is required to participate in community service or another unpaid work activity, must be determined in compliance with the FSLA as described in §811.21(b) of this subchapter. If a recipient's hours of community service or other unpaid work activity are not sufficient to meet the core work activities requirement as set forth ~~outlined~~ in §811.25 (b)-(d) of this ~~sub~~subchapter, the recipient must be enrolled in additional core activities.
- (b) Exempt recipients who voluntarily participate in Choices services are not subject to the requirements set forth ~~outlined~~ in §811.26(a) of this section.
- (c) Recipients participating in unsubsidized employment in §811.26(a)(1)(A) of this section who lose that employment may participate in job search and job readiness activities unless they have reached the six-week limit per federal fiscal year.
- (d) Job search and job readiness activities, as defined in §811.41 of this chapter, are limited as follows:
  - (1) mandatory recipients, and exempt recipients who voluntarily participate in Choices services, may not be enrolled for more than 4 weeks of consecutive activity;
  - (2) mandatory recipients, and exempt recipients who voluntarily participate in Choices services, may not be enrolled for more than 6 weeks of total activity in a federal fiscal year;
  - (3) in order for a mandatory recipient to qualify for their remaining 2 weeks of job search and job readiness, they must first comply with §811.26(a) of this section, which requires that the mandatory recipient be engaged in an employment activity or in community service; and
  - (4) only once per federal fiscal year, may a partial week count as a full week of participation, per recipient.
- (e) Mandatory individuals, and exempt recipients who voluntarily participate in Choices services, ~~Recipients~~ may not be enrolled in vocational education training, as defined in §811.48 of this chapter, for more than a cumulative total of 12 months.

- (f) No more than thirty percent of mandatory individuals, and exempt recipients who voluntarily participate in Choices services, recipients engaged in work activities in a month may be included in the Board's numerator because they are:
  - (1) participating in vocational educational training; and
  - (2) teen heads of household participating in educational activities as described in §811.27 of this subchapter.
- (g) Mandatory individuals, and exempt recipients who voluntarily participate in Choices services, Recipients shall only be enrolled in core and non-core activities.

**§811.27. Special Provisions for Teen Heads of Household.**

- (a) A Board must ensure that teen heads of household who have not completed secondary school or received a certificate of general equivalence are enrolled in educational activities as defined in §811.50 of this chapter.
- (b) Teen heads of household who have not completed secondary school or received a certificate of general equivalence will count as engaged in work if they:
  - (1) maintain satisfactory attendance at a secondary school or the equivalent during the month as follows;
    - (A) during months in which school is in session, maintains satisfactory attendance;
    - (B) in months in which school is not in session, participates in allowable activities as described in §811.25 of this subchapter; or
  - (2) participate in education directly related to employment for an average of at least 20 hours per week during the month; or
  - (3) participate in Choices employment and training activities as specified in §811.25 of this subchapter.

**§811.28. Special Provisions for Mandatory Individuals, and Exempt Recipients Who Voluntarily Participate in Choices Services, Recipients in Single-Parent Families with Children Under Age Six.**

- (a) A Board shall ensure that mandatory individuals, and exempt recipients who voluntarily participate in Choices services, recipients in single-parent families with children under age six are notified of the penalty exception to Choices participation as described in §811.164(d) of this chapter.
- (b) A mandatory individual, and exempt recipient who voluntarily participates in Choices services, recipient in a single-parent family will count as engaged in work if he or she participates for at least an average of twenty hours per week in core activities.

### **§811.29. Special Provisions Regarding Exempt Recipients Who Voluntarily Participate.**

Boards are not required to provide Choices services as ~~set forth outlined~~ in §§811.25-811.30~~28~~ of this subchapter to exempt recipients who fail to meet work requirements.

### **§811.30. Special Provisions Regarding Persons with Disabilities.**

- (a) Mandatory individuals~~Disabled recipients~~ who are disabled shall count as engaged in work to the extent that the individuals:
  - (1) participate in Choices employment and training activities for the time period and to the extent determined able as specified by a physician; or
  - (2) participate in activities as directed by the Texas Rehabilitation Commission or similar organization.
- (b) Mandatory individuals~~Recipients~~ needed at home to care for a disabled adult in the household shall count as engaged in work if the recipient participates in Choices services for a time period and to the extent determined able as specified by a physician.
- (c) Mandatory individuals~~Recipients~~, who are needed at home to care for an ill or disabled child in the household shall count as engaged in work if the recipient participates in Choices services for a time period and to the extent determined able as specified by a physician.

### **§811.31. Special Provisions Regarding Conditional Applicants.**

A Board shall ensure that conditional applicants enrolled in job search activities, as described in this chapter, receive staff-assisted services.

### **§811.32. Special Provisions Regarding Sanctioned Families.**

A Board shall ensure that sanctioned families enrolled in job search activities, as described in this chapter, receive staff-assisted services.

## **SUBCHAPTER D. CHOICES WORK ACTIVITIES**

### **§811.41. Job Search and Job Readiness Assistance.**

- (a) Job search and job readiness are core activities as defined in §811.25(a)(1) of this chapter.
- (b) A Board shall ensure that job search and job readiness services:
  - (1) incorporate the following:

- (A) individual and group activities; ~~and~~
  - (B) staff-assisted services in which workforce center staff provide direction and guidance to job seekers, including appropriate referrals based on their skills and abilities and pre-scheduled job interviews; and ~~and client-directed activities.~~
  - (C) client-directed activities.
- (2) are limited to activities necessary for Choices individuals to secure immediate employment.
  - (3) provide individual assistance or coordinated, planned, and supervised activities that prepare Choices individuals for seeking employment, and including but are not limited to, the following:
    - (A) job skills assessment;
    - (B) job placement;
    - (C) counseling;
    - (D) information on available jobs;
    - (E) occupational exploration, including information on local emerging and demand occupations;
    - (F) interviewing skills and practice interviews;
    - (G) assistance with applications and resumes;
    - (H) job fairs;
    - (I) life skills; or
    - (J) guidance and motivation for development of positive work behaviors necessary for the labor market.
  - (4) are time-limited as defined in this subchapter.

**§811.42. Unsubsidized Employment.**

- (a) Unsubsidized employment is a core activity as defined in §811.25(a)(1) of this chapter.
- (b) Unsubsidized employment includes the following:
  - (1) full or part-time employment, in which wages are paid in full by the employer;
  - (2) unsubsidized internship with wages paid by the internship employer; and

- (3) self-employment.

#### **§811.43. Subsidized Employment.**

- (a) Subsidized employment is a core activity as defined in §811.25(a)(1) of this chapter.
- (b) Subsidized employment is full or part-time employment that is subsidized in full or in part and complies with this section. Subsidized employment may occur in either the private sector or public sector. A Board shall not be the employer of record for Choices individuals enrolled in a subsidized employment activity. Subsidized employment includes but is not limited to the following:
  - (1) subsidized internship with a portion of the Choices individual's wages subsidized;
  - (2) subsidized employment with a staffing agency acting as the employer of record; and
  - (3) subsidized employment with the actual employer acting as the employer of record.
- (c) Wages.
  - (1) Wages shall be at least federal or State minimum wage, whichever is higher. Boards must set a policy to establish the amount of the wage that is subsidized.
  - (2) Employers must provide the same wages and benefits to subsidized employees as for unsubsidized employees with similar skills, experience, and position.

#### **§811.44. On-the-Job Training.**

- (a) On-the-job training is a core activity as defined in §811.25(a)(1) of this chapter.
- (b) A Board shall ensure that a determination is made on a case-by-case basis whether to authorize, arrange, or refer a Choices individual for subsidized, time-limited training activities, to assist the Choices individual with obtaining knowledge and skills that are essential to the workplace while in a job setting. On-the-job training is training by an employer that is provided to a Choices individual while engaged in productive work in a job that:
  - (1) provides knowledge or skills essential to the full and adequate performance of the job;
  - (2) provides reimbursement to the employer of a percent of the wage rate of the Choices individual for the extraordinary costs of providing the training and additional supervision related to the training;
  - (3) is limited in duration as appropriate to the occupation for which the Choices individual is being trained, taking into account the content of the training, the

prior work experience of the Choices individual, and the service strategy of the Choices individual, as appropriate; and

- (4) includes training specified by the employer.
- (c) Unsubsidized employment after satisfactory completion of the training is expected. A Board shall not contract with employers who have previously exhibited a pattern of failing to provide Choices individuals in on-the-job training with continued long-term employment, which provides wages, benefits, and working conditions that are equal to those that are provided to regular employees who have worked a similar length of time and are doing a similar type of work.

#### **§811.45. Work Experience.**

- (a) Work experience is a core activity as defined in §811.25(a)(1) of this chapter.
- (b) A Board shall ensure that a determination is made on a case-by-case basis whether to authorize, arrange, or refer mandatory individuals, and exempt recipients who voluntarily participate in Choices services, ~~recipients~~ for unsalaried, work-based training positions in the private for-profit sector to improve the employability of a mandatory individual ~~recipient~~ who has been unable to find employment.
- (c) A Board shall ensure that all mandatory individuals, and exempt recipients who voluntarily participate in Choices services, ~~recipients~~ who are unemployed after completing job search services are evaluated on an individual basis to determine if enrollment in work experience shall be required, based on available resources and the local labor market.
- (d) \_\_\_ A Board shall ensure that each work experience placement:
  - (1) is time-limited;
  - (2) is designed to move the mandatory individuals, and exempt recipients who voluntarily participate in Choices services, ~~recipient~~ quickly into regular employment; and
  - (3) has designated hours, tasks, skills attainment objectives, and staff supervision.
- (e) A Board shall ensure that entities that enter into non-financial agreements with a Board, identify work experience positions and provide job training and work experience within their organization. These positions shall enable mandatory individuals, and exempt recipients who voluntarily participate in Choices services, ~~recipients~~ to gain the skills necessary to compete for positions within the entity as well as positions in the labor market.

#### **§811.46. Community Service.**

- (a) Community service is a core activity as defined in §811.25(a)(1) of this chapter.



- (b) A Board shall ensure that all recipients subject to §811.26(a) of this chapter are referred to a community service program that provides employment or training activities to recipients through unsalaried, work-based positions in the public or private nonprofit sectors to improve the employability of recipients who have been unable to find employment.

**§811.47. Child Care Services to a Mandatory Recipient, or Exempt Recipient Who Voluntarily Participates in Choices Services, ~~Recipient-Participating in Community Service~~.**

- (a) Child care services to a mandatory recipient, or exempt recipient who voluntarily participates in Choices services, participating in community service is a core activity as defined in §811.25(a)(1) of this chapter.
- (b) A mandatory recipient, or exempt recipient who voluntarily participates in Choices services, may provide child care services for another recipient who is engaged in a community service activity, as described in §811.46 of this subchapter. The hours spent by the recipient providing child care are considered a core activity. Boards that elect to allow this activity must set local policies which include:
  - (1) ensuring the health, safety and well-being of the children in care;
  - (2) limits on the maximum number of children that may be cared for; and
  - (3) the methodology and mechanism for reporting hours of participation by recipients.

**§811.48. Vocational Educational Training.**

- (a) Vocational educational training is a core activity as defined in §811.25(a)(1) of this chapter.
- (b) A Board shall ensure that a determination is made, on a case-by-case basis, whether to authorize, arrange, or refer Choices individuals for vocational educational training. Services provided by the Texas Rehabilitation Commission may be counted as vocational education training if the service provided to the Choices individual leads to employment.
- (c) The vocational educational training shall:
  - (1) relate to the types of jobs available in the labor market;
  - (2) be consistent with employment goals identified in the family employment plan, when possible;
  - (3) be provided only if there is an expectation that employment will be secured upon completion of the training; and

- (4) be subject to the time limitations as detailed in this subchapter.
- (d) Boards may count up to 5 hours per week of study or homework time toward a mandatory individual recipient's, and exempt recipient who voluntarily participates in Choices services, family participation requirement if:
  - (1) study or homework time is directly correlated to the demands of the course work for out-of-class preparation as described by the educational institution;
  - (2) the educational institution's policy requires a certain number of out-of-class preparation hours for the class;
  - (3) study or homework time has been directly verified from the educational institution; and
  - (4) the mandatory individual recipient or exempt recipient who voluntarily participates in Choices services, is making progress as determined by the educational institution.

**§811.49. Job Skills Training.**

- (a) Job skills training is a non-core activity as defined in §811.25(a)(2) of this chapter.
- (b) Job skills training services are designed to increase a Choices individual's employability. Job skills training may also include activities ensuring that Choices individuals become familiar with workplace expectations and exhibit work behavior and attitudes necessary to compete successfully in the labor market. Various types of activities, which are directly related to employment, may qualify, such as personal development and preemployment classes.
- (c) A Board shall ensure that a determination is made on a case-by-case basis whether to authorize, arrange, or refer Choices individuals for job skills training as set forth outlined in the family employment plan.
- (d) Job skills training shall be:
  - (1) directly related to employment; and
  - (2) consistent with employment goals identified in the family employment plan, when possible.
- (e) Job skills training includes:
  - (1) Adult Basic Education (ABE), English-as-a-Second-Language (ESL), or Workforce Adult Literacy services;
  - (2) entrepreneurial training provided prior to business start up; and
  - (3) self-employment assistance:

- (A) to Choices individuals currently engaged in operating a small business;
  - (B) to Choices individuals based upon an objective assessment process that identifies individuals who are likely to succeed; and
  - (C) which may include microenterprise services such as:
    - (i) business counseling;
    - (ii) financial assistance; and
    - (iii) technical assistance.
- (f) Boards may count up to 5 hours per week of study or homework time toward a mandatory individual recipient's, and exempt recipient who voluntarily participates in Choices services, family participation requirement if:
- (1) study or homework time is directly correlated to the demands of the course work for out-of-class preparation as described by the educational institution;
  - (2) the educational institution's policy requires a certain number of out-of-class preparation hours for the class;
  - (3) study or homework time has been directly verified from the educational institution; and
  - (4) the mandatory individual, or exempt recipient who voluntarily participates in Choices services, recipient is making progress as determined by the educational institution.

**§811.50. Educational Services for Mandatory Individuals, and Exempt Recipients who Voluntarily Participate in Choices Services, Recipients wWho hHave nNot Completed Secondary School or Received a Certificate of General Equivalence.**

- (a) Educational services are only available for mandatory individuals and exempt recipients who voluntarily participate in Choices services, recipients who have not completed secondary school or who have not received a certificate of general equivalence as follows.
  - (1) Educational services for mandatory individuals, and exempt recipients who voluntarily participate in Choices services, recipients age 20 or older are non-core activities as defined in §811.25(a)(2) of this chapter.
  - (2) Educational services for mandatory individuals, and exempt recipients who voluntarily participate in Choices services, recipients who are teen heads of household recipients age 19 and younger are core activities as defined in §811.27 of this chapter.

- (b) A Board shall ensure that a determination is made, on a case-by-case basis, whether to authorize, arrange, or refer mandatory individuals, and exempt recipients who voluntarily participate in Choices services,~~recipients~~ who are age 20 and older for the following educational or other training services:
- (1) secondary school leading to a high school diploma or a certificate of general equivalence;
  - (2) Workforce Adult Literacy; or
  - (3) other educational activities which are directly related to employment.
- (c) Boards may count up to 5 hours per week of study or homework time toward a mandatory individual~~recipient's~~, and exempt recipient who voluntarily participates in Choices services, family participation requirement if:
- (1) study or homework time is directly correlated to the demands of the course work for out-of-class preparation as described by the educational institution;
  - (2) the educational institution's policy requires a certain number of out-of-class preparation hours for the class;
  - (3) study or homework time has been directly verified from the educational institution; and
  - (4) the mandatory individual, or exempt recipient who voluntarily participates in Choices services,~~recipient~~ is making progress as determined by the educational institution.

#### **§811.51. Post-Employment Services.**

- (a) A Board shall ensure that post-employment services, which include job retention, career advancement, and reemployment services, are offered to mandatory individuals, and exempt recipients who voluntarily participate in Choices services,~~recipients~~ who are employed, and to applicants and former recipients who have obtained employment but require additional assistance in retaining employment and achieving self-sufficiency.
- (b) A Board shall ensure that post-employment services are monitored, and ensure that hours of employment are required and reported by mandatory recipients, and exempt recipients who voluntarily participate in Choices services, for at least the length of time the mandatory recipients, and exempt recipients who voluntarily participate in Choices services, receives temporary cash assistance.
- (c) A Board shall ensure that ongoing contact is established with Choices individuals receiving post-employment services at least monthly.
- (d) A Board may, through local policies and procedures, make ~~available~~ post-employment services available to:

(1) former recipients who are denied temporary cash assistance because of due to earnings—; and

(2) sanctioned families and conditional applicants who obtain employment during the one month of demonstrated cooperation.

(e) The post-employment services for former recipients may include the following:

- (1) assistance and support for the transition into employment through direct services or referrals to resources available in the workforce area;
- (2) child care, if needed, as specified in rules at 40 T.A.C. Chapter 809;
- (3) work-related expenses, including those identified in §811.64 of this chapter;
- (4) transportation, if needed;
- (5) job search, job placement, and job development services to help a former recipient who loses a job to obtain employment; or
- (6) referrals to available education or training resources to increase an employed individual's skills or to help the individual qualify for advancement and long-term employment goals.

(ef) The maximum length of time a former recipient, conditional applicant, and sanctioned family may receive services under this section is dependent upon:

- (1) ~~the former recipient's~~ family circumstances;
- (2) ~~whether the former recipient is at~~ the risk of returning to public assistance. A person is considered at risk of returning to temporary cash assistance if he or she is a food stamp recipient, or receives Commission-funded child care;
- (3) ~~the former recipient's~~ ongoing need for these services; and
- (4) the availability of funds for these services.

(fg) Post-employment service providers may include employers, community colleges, technical colleges, proprietary schools, faith-based and community-based organizations.

### **§811.52. Parenting Skills Training.**

A Board shall ensure that a determination is made, on a case-by-case basis and as determined during the assessments described in §811.22 of this chapter, whether to authorize, arrange, or refer Choices individuals for parenting skills training including one or more of the following: nutrition education, budgeting and life skills, and instruction on the necessity of physical and emotional safety for children.

## **SUBCHAPTER E. SUPPORT SERVICES AND OTHER INITIATIVES**

### **§811.61. Support Services.**

- (a) A Board shall ensure that support services as specified in this subchapter are provided, if needed, to Choices individuals to address barriers to employment or participation in Choices services, subject to availability of resources and funding. A Board shall ensure that support services provided to Choices individuals are coordinated with the employer, when appropriate.
- (b) A Board shall ensure that support services, including Commission-funded child care, are provided only to mandatory individuals, and exempt recipients who voluntarily participate in Choices services, recipients who are meeting requirements set forth outlined in §811.14811.16, §811.23, §§811.25-811.30 28, and §811.30 of this chapter, and as set forth outlined in §809.102 of this title. In applying this provision, a Board shall ensure support services are provided to a mandatory individual, and an exempt recipient who voluntarily participates in Choices services, recipient if it is determined ~~that the recipient needs the~~ support services are needed to comply with requirements set forth outlined in §811.14811.16, §811.23, and §§811.25-811.3028, and §811.30 of this chapter, and as set forth outlined in §809.102 of this title.
- (c) A Board shall ensure that:
- (1) support services are terminated immediately upon a determination of a mandatory individual recipient's, or exempt recipient who voluntarily participates in Choices services, failure to meet Choices requirements, unless otherwise determined by the Board's service provider as referenced in subsection (b) of this section;
  - (2) the Board's child care service provider is notified immediately of the ~~recipient's~~ failure to meet Choices requirements; and
  - (3) upon notification, the Board's child care service provider immediately notifies the child care provider that services are terminating due to failure to meet Choices requirements.
- (d) A Board shall ensure that support services, classified as cash assistance, for:
- (1) applicants and former recipients do not extend beyond four months for those who are unemployed and not receiving temporary cash assistance; and
  - (2) unemployed conditional applicants and sanctioned families do not extend beyond the one month of demonstrated cooperation.

### **§811.62. Child Care for Choices Individuals.**

- (a) A Board shall ensure that child care is provided if needed, as specified in Chapter 809 of this title.
- (b) Transitional child care is provided as needed, as specified in §809.101 of this title.

- (c) Choices child care is provided as needed, as specified in §809.102 of this title.
- (d) Applicant child care is provided as needed, as specified in §809.103 of this title.

**§811.63. Transportation.**

A Board shall ensure that transportation assistance shall:

- (1) be provided if needed to enable a Choices individual to work, attend, and participate in required Choices services, or access necessary support services if alternative transportation resources are not available; and
- ~~(2) not extend beyond four months for applicants or former recipients who are unemployed and not receiving temporary cash assistance; and~~
- (2) use the most economical means of transportation that meets the Choices individual's needs.

**§811.64. Work-Related Expenses.**

- (a) If other resources are not available, work-related expenses necessary for Choices individuals to accept or retain specific and verified job offers that pay at least the federal minimum wage may be provided or reimbursed.
- (b) A Board shall ensure that written policies are developed related to the methods and limitations for provision of work-related expenses.
- (c) Work-related expenses may include: tools, uniforms, equipment, transportation, car repairs, housing or moving expenses, and the cost of vocationally required examinations or certificates.

**§811.65. Wheels to Work.**

- (a) The Commission may develop a Wheels to Work initiative in which local nonprofit organizations provide automobiles for Choices individuals who have obtained employment but are unable to accept or retain the employment solely because of a lack of transportation.
- (b) A Board may, through local policies and procedures, establish services to assist Choices individuals who verify the need for an automobile to accept or retain employment by referring them to available providers.
- (c) Persons or organizations donating automobiles under a Wheels to Work initiative shall receive a charitable donation receipt for federal income tax purposes.

**§811.66. Certificate of General Equivalence (GED) Testing Payments.**

A Board shall ensure that the cost of certificate of GED testing and issuance of the certificate is paid through direct payments to the GED test centers and the Texas Education Agency for

Choices individuals referred for testing by a Board's provider of Choices services.

**§811.67. Individual Development Accounts (IDAs).**

- (a) A Board may set local policy and procedures to provide for implementation and oversight of IDAs under this section using TANF funds in accordance with 45 C.F.R. §§263.20-263.23. An IDA means an account established by, or for, an eligible individual to allow the individual to accumulate funds for specific purposes.
- (b) A Board shall ensure that any IDAs created and matched with TANF funds are established and administered through a contract with a private nonprofit entity or through a state or local government entity acting in cooperation with a private nonprofit entity. The private nonprofit entity, or cooperating state or local entity, must coordinate with a financial institution in administering the accounts.
- (c) Choices individuals may be eligible for IDAs if all of the requirements of this section are met.
- (d) IDAs may be established for an eligible individual, and may be contributed to with the individual's earned income and up to fifty percent of the individual's federal Earned Income Tax Credit refund. Federal Earned Income Tax Credit refunds shall not be matched with TANF funds.
- (e) Federal TANF funds, as well as public or private funds, may be used to provide matching funds for qualified expenses and to administer IDAs, and shall be expended in a manner consistent with applicable federal and state statutes and regulations, with the exception of federal Earned Income Tax Credit refunds.
- (f) Use of funds in an individual's IDA, shall be in accordance with the Social Security Act §404(h) (42 U.S.C.A. §604(h)) and 45 C.F.R. §§263.20-263.23 and limited to expenses related to:
  - (1) postsecondary educational expenses;
  - (2) first home purchase; or
  - (3) business capitalization.
- (g) A Board shall ensure that only qualified withdrawals are made by eligible individuals, and must develop policies and procedures to address unauthorized withdrawals, to include notification:
  - (1) to the individual that unauthorized withdrawals may impact the individual's eligibility for public assistance programs;
  - (2) to the individual of forfeiture of the entitlement to the matching funds for an unauthorized withdrawal; and
  - (3) to TDHS within seven working days of the unauthorized withdrawal.



## **SUBCHAPTER F. APPEALS**

### **§811.71. Board Review.**

- (a) The following may request a review by the respective Board:
  - (1) a Choices individual against whom an adverse action is taken by a Texas Workforce Center Partner; or
  - (2) a person who believes that a Choices individual has displaced the person from employment.
- (b) A request for review shall be submitted in writing and delivered to a Board within 15 calendar days of the date of the adverse action. The request shall also contain:
  - (1) a concise statement of the disputed adverse action;
  - (2) a recommended resolution; and
  - (3) any supporting documentation the Choices individual deems relevant to the dispute.
- (c) On receipt of a request for review, a Board shall coordinate a review by appropriate Board staff.
- (d) The parties to the request for review are the aggrieved person, applicant, or individual and the Texas Workforce Center Partner.
- (e) Additional information may be requested from the parties. Such information shall be provided within 15 calendar days of the request.
- (f) Within 30 calendar days of the date the request for review is received or of the date that additional requested information is received by the reviewing Board staff member, a Board shall send the parties written notification of the results of the review.

### **§811.72. Appeals to the Agency.**

- (a) After results of a review have been issued, the party that disagrees with the outcome of the review may request an Agency hearing to appeal the results of the review.
- (b) The request for appeal to the Agency from a Board's review shall be filed in writing with the Appeals Department, Texas Workforce Commission, 101 East 15<sup>th</sup> Street, Room 410, Austin, Texas 78778-0001, within 15 calendar days after receiving written notification of the results of the review.
- (c) The appeal to the Agency shall include a hearing, which is limited to the issues and the information considered in a Board review.

- (d) The Agency hearing shall be held in accordance with the procedures applicable to an appeal as contained in Chapter 823 of this title (relating to General Hearings).

**§811.73. Appeals to the Texas Department of Human Services (TDHS).**

A recipient who expresses dissatisfaction with a decision regarding the termination or reduction of his or her cash assistance benefits may appeal the decision to TDHS. If the termination or reduction of temporary cash assistance is based upon noncompliance with Choices requirements, a Board shall prepare and provide necessary information to TDHS.

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**§809.102. Choices Child Care.**

- (a) Children eligible to receive Choices child care include;
- (1) children of TANF recipients participating in the Choices program as stipulated in ~~40 TAC~~ Chapter 811 of this title; and
  - (2) children of sanctioned families and conditional applicants, as defined in Chapter 811 of this title, who must demonstrate cooperation prior to the resumption of TANF cash assistance as stipulated in Chapter 811 of this title.
- (b) Child care shall be provided to children of parents participating in the Choices program as stipulated in ~~40 TAC~~ Chapter 811 of this title, who need child care to accept employment and remain employed.
- (c) Persons approved for Choices but waiting to enter an approved initial component of the program may receive up to two weeks of child care:
- (1) when child care will prevent loss of the Choices placement, and
  - (2) if child care is available to meet the needs of the child and parent.