CHAPTER 809. CHILD CARE SERVICES

ADOPTED RULES WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS REGISTER. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE TEXAS REGISTER.

ON JANUARY 5, 2021, THE TEXAS WORKFORCE COMMISSION ADOPTED THE BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS REGISTER.

Estimated date of publication in the Texas Register: January 22, 2021

The rules will take effect: January 25, 2021

The Texas Workforce Commission (TWC) adopts amendments to the following sections of Chapter 809, relating to Child Care Services, without changes, as published in the October 23, 2020, issue of the Texas Register (45 TexReg 7551):

Subchapter A. General Provisions, §809.2
Subchapter B. General Management, §§809.12, 809.13, and 809.18
Subchapter E. Requirements to Provide Child Care, §809.91 and §809.93
Subchapter G. Texas Rising Star Program, §§809.130 - 809.134

TWC adopts amendments to the following sections of Chapter 809, relating to Child Care Services, with changes, as published in the October 23, 2020, issue of the Texas Register (45 TexReg 7551):

Subchapter B. General Management, §809.16 and §809.19

TWC adopts the following new sections to Chapter 809, relating to Child Care Services, without changes, as published in the October 23, 2020, issue of the Texas Register (45 TexReg 7551):

Subchapter B. General Management, §809.22
Subchapter E. Requirements to Provide Child Care, §809.96
Subchapter G. Texas Rising Star Program, §809.136

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the Chapter 809 rule changes is to implement a contracted slots option for child care services, clarify the allowable uses of Child Care Quality (CCQ) funds, update how the parent co-payment is determined, align the child transfer policy with industry practices, and implement changes to Texas Rising Star policy based on recommendations that arose from the Texas Rising Star four-year review.

House Bill 680
House Bill 680 (HB 680), 86th Texas Legislature, Regular Session (2019), amended the Texas Government Code and the Texas Labor Code regarding TWC's Child Care program. To fully implement HB 680 requirements, Chapter 809 requires amendments to clarify allowable uses of Local Workforce Development Boards' (Boards) CCQ funds to allow Boards to engage in child
care provider contract agreements for reserved slots, and to allow direct referrals for eligible children participating in recognized public/private partnerships.

Allowable Uses of Boards' Child Care Quality Funds
HB 680, Section 1 amends Texas Government Code, §2308.317, by adding a new subsection requiring each Board, to the extent practicable, to ensure that any professional development for child care providers, directors, and employees using the Board's allocated quality improvement funds:
--be used toward the requirements for a credential, certification, or degree program; and
--meet the Texas Rising Star program's professional development requirements.

Section 809.16, Quality Improvement Activities, outlines rules related to quality improvement activities that are allowable for Boards. Section 809.16 currently allows Boards to expend quality funds on any quality improvement activity described in 45 Code of Federal Regulations (CFR) Part 98. TWC adopts requiring Boards to align expenditures for child care professional development with applicable state statute and the activities described in the Child Care Development Fund (CCDF) State Plan.

Child Care Provider Contract Agreements
HB 680, Section 5 adds Texas Labor Code, §302.0461, Child Care Provider Contract Agreements, allowing Boards to contract with child care providers to provide subsidized child care. This is congruent with §658E(c)(2)(A) of the Child Care and Development Block Grant (CCDBG) Act of 2014, which authorizes states to offer financial assistance for child care services through grants and contracts. Specific guidance from the US Department of Health and Human Services' Office of Child Care confirms that:
"States can award grants and contracts to providers in order to provide financial incentives to offer care for special populations, require higher quality standards, and guarantee certain numbers of slots to be available for low-income children eligible for Child Care and Development Fund (CCDF) financial assistance. Grants and contracts can provide financial stability for child care providers by paying in regular installments, paying based on maintenance of enrollment, or paying prospectively rather than on a reimbursement basis."

HB 680 requires that any such contract includes the number of slots reserved by a provider for children who participate in the subsidized child care program.

To be eligible for a contract, HB 680 requires that a child care provider be a Texas Rising Star 3- or 4-star provider and meet one of the following priorities:
--Be located in an area:
   --where the number of children under age six with working parents is at least three times greater than the capacity of licensed child care providers in the area; or
   --determined by TWC to be underserved with respect to child care providers
--Have a partnership with local school districts to provide prekindergarten (pre-K)
--Have a partnership with Early Head Start (EHS) or Head Start (HS)

--Have an increased number of places reserved for infants and toddlers by high-quality child care providers

--Satisfy a priority identified in the Board's plan.

HB 680 also requires that Boards choosing to contract with providers submit a report to TWC no later than six months after entering into the contract, and every six months thereafter, determining the contract's effect on the following:

--Financial stability of providers participating in the contract
--Availability of high-quality child care options for participants in TWC's subsidy program
--Number of high-quality providers in any part of the local workforce development area (workforce area) with a high concentration of families with a need for child care
--Percentage of children participating in TWC's subsidized child care program at each Texas Rising Star provider in the Board's workforce area

In December 2019, TWC's Child Care & Early Learning Division assembled a workgroup consisting of TWC staff, Board staff, and Board child care services contractor staff to discuss implementation recommendations related to contracted slots. Recommendations from the contracted slots workgroup informed the revisions described.

Reserved Slots
Currently, §809.93(g) prohibits a Board or its child care contractor from paying providers for holding spaces (slots) open. However, if a Board chooses to contract with child care providers for a specific number of spaces, also known as a Contracted Slots model, the Board would continue payment for reserved slots during the transition time between one child leaving and another child being placed in the slot. TWC adopts allowing transition times to hold slots open for another child participating in the subsidy program and requiring the slots to be filled one month following the month of the vacancy. Adding new §809.96 to define the child care provider contract agreement rules and requirements will clarify the policy and require that Boards choosing to use contracted slots include the program in the Board plan.

Waiting Lists and Priorities
TWC prioritizes services for veterans and foster youth and former foster children in accordance with Texas Labor Code, §302.152 and Texas Family Code, §264.121(a)(3). When providing child care subsidies, Boards are required to prioritize these groups, subject to the availability of funds. Furthermore, §809.18 requires Boards to maintain waiting lists for families that are waiting for child care services. Because HB 680 authorizes Boards to contract with child care providers to reserve a set number of child care slots, the contracted slots workgroup has identified complications with continuing to use the current waiting list system for filling open slots for providers with contracts.

Currently, the Board's waiting list for the subsidy voucher system is for the entire workforce area. Families are contacted in order of priority to select any participating provider in the Board's workforce area. Section 809.43 details the priority groups as follows:
The first priority group is assured child care services and includes children of parents eligible for the following:

--Choices child care
--Temporary Assistance for Needy Families Applicant child care
--Supplemental Nutrition Assistance Program Employment and Training child care
--Transitional child care

The second priority group is served subject to the availability of funds and includes the following, in the order of priority:

1. Children requiring protective services child care
2. Children of a qualified veteran or qualified spouse
3. Children of a foster youth
4. Children experiencing homelessness
5. Children of parents on military deployment whose parents are unable to enroll in military-funded child care assistance programs
6. Children of teen parents
7. Children with disabilities

The third priority group includes any other priority adopted by the Board.

With a Contracted Slots model, the slots need to be filled quickly to avoid Boards paying for vacant reserved slots. TWC is considering allowing families to indicate ZIP code preferences for location of child care and prioritizing children with preferences matching ZIP codes with an available contracted slot.

**Eligible Geographic Locations**

One of the qualifying priorities identified in HB 680 to allow contracted slots is that the child care provider be located in an area of high need and low capacity, that is, an area:

--where the number of children under age six with working parents is at least three times greater than the capacity of licensed child care providers in the area; or
--that TWC has determined to be "underserved with respect to child care providers."

TWC is considering using data from the state demographer to analyze and publish annual information about geographic areas that meet the requirements described in HB 680 and requiring Boards to use this data to identify providers that are in areas of high need and low capacity.

**Direct Referrals from Public Prekindergarten and Head Start/Early Head Start Partnerships**

HB 680 explicitly authorizes contracts for Texas Rising Star providers engaged in partnerships with public pre-K or HS/EHS. Additionally, HB 3, 86th Texas Legislature, Regular Session (2019), supports expansion of pre-K partnerships.

Children served through these partnerships are dually enrolled in both early childhood programs. When a child is dually enrolled in child care services and either public pre-K or HS/EHS, part of
the cost to CCDF is offset. Through these partnerships, eligible children can receive the full-day, full-year care that working parents require at a lower cost to the Child Care Services program.

Eligible children served through these partnerships receive early care and education from multiple funding sources. However, each funding source prioritizes certain populations slightly differently (such as a low-income individual, a foster child or child of a foster youth, a veteran or active duty service member, a child with a disability, or a child experiencing homelessness).

These variations can lead to mismatches of when a child is able to access services despite being simultaneously eligible for both programs in a partnership. Operationally, not being able to combine funding for dually eligible children can impact the enrollment efficiency and financial stability of the partnership and limits TWC's ability to implement the contracted slots agreements provisions of HB 680 and to support the pre-K partnership provisions of HB 3.

Chapter 809 does not currently allow for a separate path for enrolling eligible children who are directly referred from a partnering program. Because of this structure, eligible children from partnering programs must be placed on a Board's waiting list despite the federal, state, and local policies that support partnerships and dual enrollment.

TWC adopts creating a separate path for enrollment to support more stable partnerships, maximize available funding to serve more children, and provide improved customer service to participating families.

With a separate enrollment path for partnership direct referrals, services for eligible children who are in TWC's second or third priority group, as defined in §809.43, Priority for Child Care Services, would still be served subject to the availability of funding. Additionally, if the number of referrals from a partnership exceeds the subsidized spots available at a single partnership site, §809.43 would be applied, and any children who did not receive subsidized care through the referring partnership would be placed on the Board's waiting list.

**Parent Share of Cost for Part-Time Referrals**

A technical change is needed related to how the parent co-payment is determined. Families participating in child care subsidies are responsible for a co-payment, known in Texas as the "parent share of cost," that covers a portion of their child's care and education. Boards assess the parent share of cost on a sliding-fee scale based on income, family size, and other appropriate factors to ensure that the cost is affordable and is not a barrier to families receiving services.

The CCDBG Act of 2014 led to significant changes in the administration of child care services in Texas. In September 2016, TWC adopted amendments to Chapter 809 to align with the new federal requirements and §809.19, Assessing the Parent Share of Cost, was affected. In compliance with federal requirements and guidance, TWC amended §809.19 to limit the basis of the sliding-fee scale to family size and income, including the number of children in care.

With this rule change, Boards were no longer able to offer "discounts" for part-time care, as doing so could have been perceived as using the cost of care or amount of subsidy payment to determine parent share of cost.
The CCDF State Plan template for Federal Fiscal Years 2019 - 2021 (released after the final federal rule) allows the number of hours the child is in care, in addition to the family's income and size, to be considered when determining parent share of cost.

TWC adopts rule changes authorizing Boards to assess the parent share of cost at the full-time rate and allow reductions for families with part-time referrals with the goal of reducing the financial burden on families that need part-time child care. If a child's referral changes from part-time to full-time care, the family will no longer qualify for the reduction and must revert to the original parent share of cost assessment amount.

Child Transfer Policies
The CCDBG Act includes provisions to ensure equal access to child care for families receiving subsidies, as compared to families that do not receive subsidies. To support equal access, the final federal rule, 45 CFR §98.45(3), requires states to ensure that payments for subsidized child care "reflect generally accepted payment practices of child care providers that serve children who do not receive CCDF subsidies." Additionally, 45 CFR §98.45(5) requires states to ensure that child care providers receive prompt notice of changes to a family's status, which may impact payment.

Providers commonly have policies for private-pay families that require families to give notice before withdrawing their child from the program. Typically, these policies range from two weeks to a full month. These waiting periods help providers to manage their enrollment efficiently and ensure that they have adequate time to fill empty spots.

Section 809.13(c)(10) requires Boards to establish a policy for transfer of a child from one provider to another. However, the rule does not require Boards to establish a waiting period for families that request to transfer a child.

TWC adopts requiring Boards to institute a waiting period as part of their transfer policy to support better alignment with CCDBG and greater stability for subsidy providers.

Texas Rising Star Four-Year Review Recommendations
Texas Government Code, §2308.3155(b)(2) requires TWC to adopt a timeline and a process for regularly reviewing and updating the Texas Rising Star quality standards. The statute also requires TWC's consideration of input from interested parties regarding the quality standards.

To meet this requirement, on February 23, 2016, TWC's three-member Commission (Commission) adopted §809.130(e)(1), which requires staff to facilitate a review of the Texas Rising Star guidelines every four years.

Beginning in May 2019, TWC convened a workgroup to review the Texas Rising Star guidelines and recommend revisions. The workgroup included early learning program directors from around the state, early childhood advocacy organization representatives, professional development providers, Board staff, and representatives from TWC, the Texas Education Agency, the Texas Health and Human Services Commission's (HHSC) Child Care Regulation
Division (formerly Child Care Licensing (CCL)), and the State Center for Early Childhood, Children's Learning Institute (CLI).

Over an eight-month period, the workgroup met regularly to review the Texas Rising Star guidelines in detail and to engage in a collaborative effort to improve guidelines' standards. On January 21, 2020, the Commission approved the publication of the workgroup's recommendations for public comment. During February 2020, TWC partnered with Boards to host seven public stakeholder meetings across the state. Throughout the review process, TWC also provided the public with a website to view materials related to the review and a dedicated email address to offer input.

The revisions in this adopted rulemaking consider the recommendations of the workgroup as well as stakeholder input received during public meetings or provided to TWC in writing.

**Workforce Registry**

The Texas Early Childhood Professional Development System (TECPDS) includes the Workforce Registry (WFR), a web-based system for early childhood professionals to track their experience, education, and training. The WFR offers benefits to programs and teachers by streamlining record-keeping of staff qualifications and professional development. The WFR:

-- reduces reliance on paper files and ensures reliable access to an employee's professional development records;
-- allows teachers to easily share their training records and to see a holistic view of their portfolio of training and education;
-- reduces administrative costs and simplifies processes for directors and owners;
-- facilitates validation of compliance with CCL standards and documentation of Texas Rising Star points; and
-- allows for more efficient and strategic professional development planning.

TWC adopts integrating the WFR into Texas Rising Star, requiring programs applying for certification to agree to participate in the WFR and encourage their staff to participate as well. For all programs, adopting and maintaining use of the WFR will be included in ongoing technical assistance and Continuous Quality Improvement Plans (CQIPs).

During public stakeholder meetings, many child care providers expressed concerns that the WFR could allow competitors to "steal" staff. TWC notes that the WFR does not have a searchable database of teachers or their qualifications. A teacher's record is only available to others when the teacher actively makes it available to a specified provider--typically the teacher's current employer. Additionally, based on comments received, TWC requested that the WFR be modified to no longer include job postings. This functionality is duplicative of the TWC-funded WorkInTexas.com online job-matching portal.

**Creating a Pre-Star Provider Designation**

TWC adopts a new Pre-Star provider definition in §809.2(18), and a requirement that all CCL-regulated subsidy providers be designated as Pre-Star in §809.91(a)(1). Pre-Star designations are outside of the statutorily defined Texas Rising Star quality-based rating system set forth in Texas Government Code, §2308.3155 and will not receive an enhanced reimbursement rate. Programs
wishing to enter the Texas Rising Star system and apply for star-level certification must first meet Pre-Star designation. Pre-Star designations are based upon a child care program's demonstration that they do not have significant licensing findings, as set forth in the Screening Criteria for Subsidized Child Care and defined in the CCDF State Plan.

TWC will:
-- outline implementation and rollout plans in more detail in the CCDF State Plan;
-- solicit additional input from stakeholders on Pre-Star implementation details during the development of the State Plan;
-- host stakeholder webinars during State Plan development; and
-- post the draft CCDF State Plan for formal public comment.

Continuous Quality Improvement Framework
Another recommendation from the Texas Rising Star four-year review was that TWC develop a framework for CQIPs and require certified programs to engage in a formal CQIP process.

Early childhood programs and their mentors use CQIPs to identify areas for program and staff improvement. The Texas Rising Star CQIP framework will provide targeted technical assistance and customized coaching to set specific improvement goals and monitor progress.

New Training and Certification Requirements for Texas Rising Star Staff
TWC currently defines requirements for educational background, work experience, and minimum annual training hours for Texas Rising Star mentors and assessors. However, there are no uniform training requirements for mentors or assessors to learn the standards, how to consistently measure them, or how to coach programs to improve.

The four-year review recommendations include new requirements for Texas Rising Star assessor and mentor training and certification to ensure valid and consistent star-level certifications across all Texas Rising Star programs and to improve mentoring and coaching to support the CQIP framework.

Based on these recommendations, TWC adopts that assessors be required to take the Texas Rising Star standards training and to obtain the Texas Rising Star Assessment Certification. Additionally, TWC adopts that assessors be required to pass quarterly reliability checks.

TWC also adopts more robust training requirements for mentors. Increasing the number of programs that attain and retain higher levels of quality will require strong mentoring support, and successful implementation of a CQIP framework will depend on skillful coaching from Texas Rising Star mentors. Specifically, TWC adopts requiring mentors to take the Texas Rising Star standards training and to participate in competency-based professional development designed to improve coaching practices.

Streamlining and Reweighting Categories of Texas Rising Star Measures
Section 809.130 defines the five categories of Texas Rising Star measures defined by previous Texas Rising Star guidelines development efforts. Texas Rising Star categories currently are: (1)
Director and Staff Qualifications and Training, (2) Caregiver-Child Interactions, (3) Curriculum, (4) Nutrition and Indoor and Outdoor Activities, and (5) Parent Involvement and Education.

Many of the current measures are repetitive across categories or not well-correlated to the category being measured. TWC adopts reorganizing measures under the following four categories: (1) Director and Staff Qualifications and Training, (2) Teacher-Child Interactions, (3) Program Administration, and (4) Indoor/Outdoor Environments.

TWC will change the Texas Rising Star guidelines to adjust the relative weight of each category in recognition of the categories that are most closely correlated with child outcomes. The workgroup specifically recognized the importance of teacher-child interactions in child development, also noting that the TWC-funded "Strengthening Texas Rising Star Implementation Study" established validity and reliability for measures within this category. The teacher-child interactions category will be assigned a weight of 40 percent, with the remaining three categories weighted at 20 percent each.

**Impact of Certain Deficiencies on Texas Rising Star Certification**

Section 809.132 defines the impact of certain child care licensing deficiencies on programs’ Texas Rising Star certification status. Certain deficiencies or accumulation of total deficiencies may result in a decrease in star level or loss of certification. Because enhanced reimbursement rates are tied to star-level certification, the result can be a significant reduction in reimbursements for affected programs.

Stakeholders, including early learning program directors, have observed that financial instability is a barrier to maintaining and increasing quality. The workgroup recommended providing Texas Rising Star programs that receive certain licensing deficiencies with an opportunity to remedy those deficiencies within a six-month probationary period. The workgroup also recommended increasing technical assistance for programs at risk of losing or dropping their Texas Rising Star certification level. Stakeholders that commented on the revisions strongly supported these recommendations.

A review of Texas Rising Star data from 2017 to 2019 showed that almost half of the 300 programs that lost a star level or dropped out of Texas Rising Star did so due to licensing deficiencies. Eighty percent of star-level drops were due to licensing deficiencies, and of those programs that lost their Texas Rising Star certification completely, 54 percent became disqualified for certification due to licensing deficiencies.

TWC adopts a revised structure for considering licensing deficiencies for both new Texas Rising Star applicants and existing certified programs. The revised structure will continue to provide a high level of accountability for the most critical licensing issues but will also provide opportunities for providers to correct issues that are less correlated with the quality of care children receive.

**Minimum Eligibility Requirements for Providers Serving CCDF Subsidized Children**

Under federal regulations 45 CFR §98.30(g) regarding Parental Choice, the Administration for Children and Families explicitly allows states to establish policies that requires subsidy providers
to meet higher standards of quality, as long as those requirements do not effectively limit parental choice. TWC adopts a new Pre-Star provider designation, indicating those child care programs that demonstrate that they do not have significant licensing findings. Pre-Star designations are outside of the statutorily defined Texas Rising Star quality-based rating system and will not receive an enhanced reimbursement rate. As previously described, programs that meet the criteria for Pre-Star, and would like to enter the Texas Rising Star quality rating improvement system, are eligible to apply for star-level certification.

The Pre-Star designation reviews a provider's licensing findings, as is currently done through the Texas Rising Star Screening Form that is included in the Texas Rising Star guidelines. The new Screening Criteria for Subsidized Child Care criteria have been adapted and included in a proposed amendment of the CCDF State Plan, which is available for public comment (see meeting materials for October 6, 2020, Commission Meeting). Additionally, based on feedback from the four-year review, the total number of licensing deficiencies allowed has increased from 10 to 15.

TWC will establish a five-year timeline for all subsidy providers to achieve at least a Pre-Star designation. TWC will develop a plan to roll out this requirement across the state and will codify the details of this plan in the CCDF State Plan. TWC's rollout plan will consider potential supply challenges, such as those in rural areas of the state which face a potential shortage of child care providers. Additionally, TWC will:

-- outline the Pre-Star implementation and rollout plans in more detail in the CCDF State Plan;
-- solicit additional input from stakeholders on Pre-Star implementation details during the development of the State Plan;
-- host stakeholder webinars during State Plan development; and
-- post the draft CCDF State Plan for formal public comment.

During regional stakeholder meetings, many commenters supported this strategy as an effort to ensure that public funds are being invested in child care programs that do not have significant issues with basic licensing requirements and to create a framework for placing these programs on a path to higher quality. At the same time, a few stakeholders also expressed concerns regarding the cost of administering a new Pre-Star designation. TWC notes that the Pre-Star designation may be determined through an automated process that reviews a program's licensing history, as published by Child Care Regulation, and automatically makes the determination of whether a provider may be designated as Pre-Star. Therefore, this adopted change does not require a significant investment of staff resources. Additionally, TWC is also considering the implementation of a continuous quality improvement framework to enhance mentoring and coaching; these resources would be available to Pre-Star programs that would like to enter the state's quality rating improvement system and apply for star-level certification.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS
(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS
TWC adopts the following amendments to Subchapter A:
§809.2. Definitions
Section 809.2 is amended to add a definition for "Pre-Star provider."

SUBCHAPTER B. GENERAL MANAGEMENT
TWC adopts the following amendments to Subchapter B:

§809.12. Board Plan for Child Care Services (Includes New Regulations)
Section 809.12 is amended to require Boards to include their strategies to use contracted slots agreements, if applicable, in their plans.

§809.13. Board Policies for Child Care Services (Includes New Regulations)
Section 809.13 is amended to require Boards to develop:
--a two-week waiting period policy for a child to transfer to a new provider;
--policies and procedures for contracted slots agreements, if applicable; and
--policies supporting direct referrals from recognized pre-K or HS/EHS partnerships.

§809.16. Quality Improvement Activities
Section 809.16 is amended to allow Boards to expend child care funds in accordance with quality improvement activity described in applicable state laws and the CCDF State Plan. The amendment to §809.16(a) is intended to note that Boards take into account all federal and state requirements regarding quality improvement activities. In addition, any quality improvement activities that are undertaken at the state or local level must be acknowledged in the state's CCDF State Plan.

§809.18. Maintenance of a Waiting List
Section 809.18 is amended to add an allowable exemption from the waiting list for children who are referred directly from a recognized pre-K or HS/EHS partnership to a child care provider to receive services in the contracted partnership program.

§809.19. Assessing the Parent Share of Cost
Section 809.19 is amended to allow Boards to implement a policy to reduce the parent share of cost amount assessed pursuant to §809.19(a)(1)(B) upon the child's referral for part-time care. In response to comment, §809.19(k)(2) is amended to clarify that parent share of cost reductions are for parents who qualify for the reduction based on the Board's policy.

§809.22. Direct Referrals to Recognized Partnerships (New Regulation)
New §809.22 adds a requirement for Boards to establish policies and procedures to enroll eligible children who are directly referred by recognized pre-K or HS/EHS partnerships and exempting these children from the waiting list.

SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE
TWC adopts the following amendments to Subchapter E:

§809.91. Minimum Requirements for Providers (Includes New Regulations)
Section 809.91(a)(1) is amended to reference new subsection (g), which requires that all CCL-regulated child care providers be designated as Pre-Star based upon meeting TWC’s Screening Criteria for Subsidized Child Care. The Screening Criteria for Subsidized Child Care is removed in §809.131(a) and (b) as a Texas Rising Star eligibility requirement.

Section 809.91 is also amended to add new subsection (h) to provide additional details regarding Pre-Star designations. The Screening Criteria for Subsidized Child Care will be defined in the CCDF State Plan, as will a statewide rollout plan. TWC will carefully consider how to implement the new requirement for all subsidy providers to be Pre-Star designated to ensure that parent choice is not impacted. TWC plans to roll out this requirement over a five-year period; this is intended to provide child care programs with ample time to ensure that they can attain Pre-Star designation. The new Screening Criteria for Subsidized Child Care criteria are included in a proposed amendment of the CCDF State Plan, which is available for public comment (see meeting materials for October 6, 2020 Commission meeting). TWC will:

--outline the Pre-Star implementation and rollout plans in more detail in the CCDF State Plan;
--solicit additional input from stakeholders on Pre-Star implementation details during the development of the State Plan;
--host stakeholder webinars during State Plan development; and
--post the draft CCDF State Plan for formal public comment.

§809.93. Provider Reimbursement
Section 809.93 is amended to add the option for Boards to pay child care providers for holding spaces open if they have a valid contracted slots agreement.

§809.96. Contracted Slots Agreements (New Regulation)
New §809.96 adds detailed requirements for Boards that use contracted slots agreements.

SUBCHAPTER G. TEXAS RISING STAR PROGRAM
TWC adopts the following amendments to Subchapter G:

§809.130. Short Title and Purpose
Section 809.130(d)(1) is amended to denote that Texas Rising Star measures align with the following four categories:
--Director and Staff Qualifications and Training
--Teacher-Child Interactions
--Program Administration
--Indoor/Outdoor Environments

§809.131. Eligibility for the Texas Rising Star Program (Includes New Regulations)
Section 809.131 is amended to remove §809.131(b), as all CCL-regulated subsidy providers will now be required to be designated as Pre-Star under §809.91(a)(1). Additionally, §809.131 is amended to require Texas Rising Star applicants to agree to participate in the WFR and to encourage staff to create accounts within the WFR.

§809.132. Impact of Certain Deficiencies on Texas Rising Star Certification (Includes New Regulations)
Section 809.132 is amended to add compliance requirements for current Texas Rising Star providers and amends the consequences of certain child care licensing deficiencies for certified Texas Rising Star programs and applicants.

§809.133. Application and Assessments for the Texas Rising Star Program (Includes New Regulations)
Section 809.133 is amended to require all programs to participate in the creation of an online-generated CQIP that focuses on growth and evolving adherence to higher-quality standards and to require Boards to ensure that CQIPs are implemented and supported as described in the Texas Rising Star guidelines.

§809.134. Minimum Qualifications for Texas Rising Star Staff (Includes New Regulations)
Section 809.134 is amended to require all Texas Rising Star staff to complete the Texas Rising Star standards training, require Texas Rising Star assessors to attain and maintain the Texas Rising Star Assessor Certification, and require Texas Rising Star mentors to pursue the coaching micro-credential through the attainment of competency badges over a time period defined by TWC.

Section 809.134 is also amended to move §809.134(d) and (e) to new §809.136.

§809.136. Roles and Responsibilities of Texas Rising Star Staff
New §809.136 defines the separate roles and responsibilities of Texas Rising Star assessors and mentors, including separation of roles; cross-functional collaboration and coordination; and mandated reporting requirements related to observed licensing violations.

New §809.136(4) and (5) clarify the separation of roles and professional development of Texas Rising Star staff.

PART III. PUBLIC COMMENTS
The public comment period ended on December 11, 2020. Comments were received from:

--A Habitat for Learning
--Alamo Workforce Development Board
--Children at Risk, on behalf of:
  --Austin/Travis County Success By 6 Coalition
  --Big Thought
  --Child Care Partners
  --Children at Risk
  --Creative Corners
  --Dallas College School of Education
  --Early Matters Dallas
  --Emergent ED. Child Care Consulting Inc.
  --Gingerbread Kids Academy
  --King Steps Academy
  --Loving Touch Child Care
  --Our Little Red Schoolhouse
SUBCHAPTER B. GENERAL MANAGEMENT

§809.13. Board Policies for Child Care Services

Comment: Three Boards supported the rule related to the two-week waiting period policy for a child to transfer to a new provider. One Board agreed that this practice aligns with child care industry practices. Another Board stated that it has implemented this procedure and received positive feedback.

Response: TWC appreciates the comments.

§809.16. Quality Improvement Activities

Comment: One Board opposed the language change in §809.16(a) and requested to continue to have the flexibility to offer the full range of quality improvement activities as was intended by federal regulation. This flexibility will allow the Board to offer a wider range of activities that more fully meets the unique needs of local providers in the area.

Response: The proposed language regarding the Board's expenditure of quality improvement funds was not intended to limit a Board's flexibility in determining how to design and deliver quality improvement activities. The amendment to §809.16(a) is intended to note that Boards are to take into account all federal and state requirements regarding quality improvement activities.

Under Texas Government Code, §2308.317(c), Boards shall use at least two percent of their allocation on quality improvement activities and directs Boards to give priority to quality child care initiatives that benefit child care providers that are working toward Texas Rising Star certification or are Texas Rising Star--certified providers working
toward higher certification levels. The statute further directs Boards, to the extent practicable, to ensure that professional development funds for child care providers, directors, and employees be used toward the requirement for a credential, certification, or degree program, and that the training meets the requirements of the Texas Rising Star program. In addition, any quality improvement activities that are undertaken at the state or local level must be acknowledged in the state's CCDF State Plan.

The language in §809.16(a) is changed to clarify this intent.

§809.18. Maintenance of a Waiting List

Comment: Two Boards supported the rule regarding direct referrals for children referred from a recognized Prekindergarten, Head Start, and Early Head Start partnership. One Board stated that this change will allow the Board to fill slots within the one-month timeframe for contracted slots.

Response: TWC appreciates the comments.

Comment: One Board stated that the Board was unsure if it will be able to consistently fill vacant slots within the one-month timeframe for other target populations due to their status on the waitlist.

Response: TWC acknowledges that contracted slots must be managed in concert with a Board's existing waiting list. Under current state statutes, Boards are required to prioritize specific populations, and TWC does not have the flexibility to allow an exception for contracted slots. Therefore, the current procedures for managing enrollments using the Board's waiting list remain applicable for contracted slot vacancies, with the noted exception for Prekindergarten and Head Start/Early Head Start.

No changes were made in response to this comment.

§809.19. Assessing the Parent Share of Cost

Comment: Two Boards supported the rule allowing flexibility related to parent share of cost discounts for part-time referrals. One Board stated that the discounts will make child care more affordable for low-income families and demonstrates flexibility and consideration for families with unique child care needs.

Response: TWC appreciates the comments.

Comment: One Board appreciated the flexibility to establish a policy to reduce the parent share of cost for children referred for part-time care. The Board requested clarification regarding when the parent share of cost would change if the parent is referred to full-time care, specifically if the change would be effective at the beginning of the first full month after the referral change or at the end of the 12-month eligibility period. The Board also requested clarification regarding whether the Board is now being
required to offer a reduction in parent share of cost for selecting a Texas Rising Star-
certified provider, as referenced in §809.19(k)(2).

Response: Section 809.19(k) allows a Board to establish a policy to reduce the parent
share of cost amount assessed on the child's referral for part-time care. The timing of the
parent share of cost amount change will be determined by the Board's policy. Boards may
consider a policy to implement a parent copay change effective at the beginning of the
first full month after the referral is effective.

If the Board establishes a policy described in §809.19(k), the policy must ensure that
parents who qualify for a reduction based on both part-time care and selecting a Texas
Rising Star provider receive the greater of the two discounts.

Section 809.19(k)(2) is modified to clarify that discounts are for parents who qualify for
the reduction based on the Board's policy.

§809.22. Direct Referrals to Recognized Partnerships

Comment: One Board supported the concept of making direct referrals from recognized
partnerships. However, the Board stated that more guidance is needed for successful
implementation.

Response: TWC appreciates the comment and will work with Boards to provide
guidance and technical assistance as needed.

No changes were made in response to this comment.

SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES

§809.43. Priority for Child Care Services

Comment: One individual requested that children of child care workers be included in
the first priority group of children in which are mandatory to be served.

Response: TWC appreciates the comment; however, this requested change is outside the
scope of the proposed rulemaking.

SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE

§809.91. Minimum Requirements for Providers

Comment: One Board agrees with the rule requiring all subsidy providers to deliver
quality care. However, the Board requested clarification on the following questions:

--Will Pre-Star program be required to move forward and apply for Texas Rising Star
certification?
--How will equal access be ensured, especially in rural areas with a limited number of child care programs and the likelihood that the limited number of programs in the area may not meet the Pre-Star level?

Response: Regarding the requirement to apply for Texas Rising Star certification, under Texas Government Code, §2308.3155, participation in the Texas Rising Star program is voluntary. Therefore, TWC does not have statutory authority to require subsidy providers to participate in Texas Rising Star.

Regarding equal access, TWC plans to have a five-year implementation period, with the details of this to be outlined in the CCDF State Plan. TWC understands that rural areas may face challenges with the available supply of child care, and want to ensure that is taking into consideration. TWC anticipates that in areas with limited supply, waivers of the Pre-Star requirement may be needed.

TWC will be collecting and analyzing data within the first year or two to better understand the impact of the Pre-Star designation requirement. TWC also wants to consider how providers with licensing deficiencies are afforded an opportunity to address those deficiencies while also considering providers that continue to have critical deficiencies cited by Child Care Regulation.

No changes were made in response to this comment.

Comment: Two Boards requested clarification as to the consequences for providers that meet Pre-Star provider designation initially but receive a licensing citation that would result in the provider no longer meeting the Pre-Star designation and potentially not eligible to provide subsidized child care services.

Response: TWC wants to carefully consider how negative licensing findings on Pre-Star providers should be considered. TWC wants to ensure it considers the consequences for providers that have quickly addressed and corrected issues, versus consequences for providers that do not, and those that have repeated and continual Pre-Star licensing deficiencies.

The rules implement this Pre-Star requirement and that the implementation be detailed in the CCDF State Plan. The CCDF State Plan is currently under development and is due to the Administration for Children and Families by June 30, 2021. TWC will engage with stakeholders in the CCDF State Plan Development, and the draft State Plan will be available for public comment.

No changes were made in response to these comments.

Comment: Several providers and advocacy groups expressed concerns that the Pre-Star requirement does not meet a goal of all subsidy providers participating in Texas Rising Star. Their goal is to ensure that child care providers that participate in the child care
subsidy program are able to offer high-quality services to families. To reach that goal, the
group supports an approach that requires all subsidy providers to participate in Texas
Rising Star, provides them with the necessary supports to improve and reach certification,
and phases in requirements to participate and to reach higher levels of quality.

Response: TWC appreciates the comment. However, TWC points out that under Texas
Government Code, §2308.3155, participation in the Texas Rising Star program is
voluntary. Therefore, TWC does not have statutory authority to require subsidy providers
to participate in Texas Rising Star.

No changes were made in response to these comments.

Comment: Several providers and advocacy groups expressed concerns regarding the
very long ramp-up period that does not set up providers for Texas Rising Star
participation. They advocate for a relatively short timeline for providers to participate in
Pre-Star and then a few years for providers to obtain a minimum certification level to
continue to participate in the state’s subsidy program. The current five-year
implementation proposal for Pre-Star is not consistent with that approach.

Response: It is TWC’s intent to have the majority, if not all, of subsidy providers
designated as Pre-Star prior to the five-year deadline. However, the timeline of five years
will allow TWC to ensure that equal and equitable access to child care is available across
the state, specifically in those areas with child care deserts. In addition, TWC wants to
ensure that it takes time to carefully consider how to structure consequences for providers
that receive licensing deficiencies denoted in Pre-Star. Following the adoption of the rule,
TWC will use a portion of this five-year period to work out the details regarding
consequences for providers that have quickly addressed and corrected issues, versus
consequences for providers that do not, and for those that have repeated and continued
Pre-Star licensing deficiencies. These details will be in the CCDF State Plan, which will
be available for public comment.

In addition, under Texas Government Code, §2308.3155, participation in Texas Rising
Star is voluntary; therefore, programs may choose to participate in certification at their
discretion.

No changes were made in response to these comments.

Comment: One Board supported the creation of a Pre-Star provider designation. The
Board encouraged TWC to consider offering incentives to Pre-Star providers to achieve
Texas Rising Star designation quickly, including offering a declining incentive to
encourage earlier adoption by providers.

Response: Boards may utilize CCDF Quality funds to incentivize programs to obtain
Texas Rising Star certification.

No changes were made in response to this comment.
Comment: One advocate organization supported the inclusion of a subsidy provider mandatory entry level. The organization is hopeful that, in the future, the Pre-Star designation will become an official part of the Texas Rising Star system and that providers will be mandated to move up through a single system.

The organization stated that Pre-Star providers should receive supports such as information and access to online resources that do not detract from resources available to Texas Rising Star providers. The organization expressed agreement with the decision not to provide enhanced reimbursement rates for Pre-Star programs. The organization also stated that Pre-Star providers should progress to higher levels of quality on a more aggressive timeline. Considering the minimal requirements of Pre-Star and even two-star Texas Rising Star levels, all providers should be mandated to enter into the Pre-Star or Texas Rising Star system within 18 months of the rule change. The organization also recommended that adequate supports should be provided once providers enter into the Texas Rising Star system, and that they should be required to continue to progress to higher levels in order to continue receiving subsidy funding.

Response: Boards will provide information about Texas Rising Star to all early learning programs designated as Pre-Star and the supports and resources that are available to them. Pre-Star designated programs that are working toward Texas Rising Star certification are provided a mentor. Boards may choose to allow Pre-Star designated programs that are not currently working toward Texas Rising Star certification to participate in local initiatives, receive other mentoring services, or participate in the continuous quality improvement process. Timelines for progressively higher-quality ratings are determined by the early learning program. In addition, under Texas Government Code, §2308.3155, participation in Texas Rising Star is voluntary; therefore, TWC cannot mandate entry into Texas Rising Star.

No changes were made in response to this comment.

§809.93. Provider Reimbursement

Comment: One individual requested that TWC's reimbursement model be more similar to how non-subsidized families pay for child care, primarily by paying providers prior to services being provided.

Response: TWC appreciates the comment; however, this requested change is outside the scope of the proposed rulemaking.

§809.96. Contracted Slots Agreements

Comment: One Board supports the rule; however, requested that the payments to providers with contracts be part of an automated system as making payments outside of the current automated system is not a sound accounting function and could cause disallowed costs.
Response: TWC appreciates the comment and will work with Boards choosing to have contracted slots agreements to provide assistance in developing payment methodologies that ensure sound accounting processes. At this time, TWC is unable to modify The Workforce Information System of Texas (TWIST) to process contracted slots payments. TWC is pursuing a potential replacement of the TWIST child care system, and will take this comment into consideration for future automation enhancements.

No changes were made in response to this comment.

Comment: One Board appreciated the flexibility to decide whether or not to enter into contracted slots agreements with providers. The Board also supported the plan to make these contracts available only to Texas Rising Star three and four-star providers. The Board stated that implementation would require extensive support from TWC in terms of availability of data in order to determine need as required in §809.96(e) and to adhere to the reporting requirements in §809.96(h).

Response: TWC appreciates the comment and will work with Boards choosing to have contracted slots agreements to provide implementation assistance.

No changes were made in response to this comment.

SUBCHAPTER G. TEXAS RISING STAR PROGRAM

Comment: One provider stated that the changes are good. However, the commenter requested that TWC allow time to implement the amended rules.

Response: TWC appreciates your comment and began providing information about these proposed changes in November via three webinars for existing Texas Rising Star providers and one webinar for all providers. These webinars are also posted on TWC's website. TWC encourages all providers to begin familiarizing themselves with this information. When the changes are final, TWC plans to provide additional time for child care programs to become familiar with the changes. Implementation is planned for April 1, 2021; however, all programs will not be required to immediately implement the changes. Texas Rising Star revisions will have a rolling implementation, in which the program will be assessed against the new requirements during its next visit.

No changes were made in response to this comment.

Comment: One organization appreciated TWC's commitment to institute a marketing plan to provide enhanced consumer education so that parents are better educated about the importance of quality and the meaning and value of each higher Texas Rising Star level. The organization hopes that the plan will include consistent messaging around choosing high-quality programs at each parent touch point--from Agency to Board to contractor, and that the messaging also promotes optimal child development through the use of developmental milestones.
Response: TWC appreciates the input and will take these comments into consideration as TWC finalizes this plan.

No changes were made in response to this comment.

Comment: One Board requested that the rules in Subchapter G be clarified to ensure that it is clear that the clause in §809.135, specifically, "The Texas Rising Star program is not subject to Chapter 823 of this title, the Integrated Complaints, Hearings, and Appeals rules," applies to the Texas Rising Star program as a whole and not just to the Texas Rising Star Process for Reconsideration.

Response: TWC appreciates the comment; however, this requested change is outside the scope of the proposed rulemaking.

§809.130. Short Title and Purpose

Comment: One Board and several commenters supported the reorganizing of Texas Rising Star measures and assigning more weight to the teacher-child interaction category in recognition of its correlation with child outcomes. The commenters support the streamlining of standards and reducing the standards from five to four categories. The commenters believe it will help avoid redundancy and eliminate duplication. Additionally, the commenters support the new reweighting of the categories, so they are most closely correlated with child outcomes, and believe that the heavy focus on teacher-child interactions is paramount to strong childhood outcomes.

Response: TWC appreciates the comment.

Comment: Several commenters requested additional clarification about how the changes in standards impact providers' current and future ratings.

Response: TWC has conducted an initial review of reweighting impacts noting that most impacts resulted in a higher overall star level being determined. However, with the additional revisions of specific measures, scoring methodology for teacher-child interactions, and new measures added, there may be impacts to some programs that TWC is unable to currently quantify. Mentoring, training modules, a director's toolkit of resources, use of the continuous quality improvement plan, and additional supports will be provided to programs to minimize any negative impacts.

No changes were made in response to these comments.

Comment: One advocacy group recommended coupling these requirements with additional resources to support providers in their efforts to improve interactions.
Response: Mentoring, training modules, a director’s toolkit of resources, use of the continuous quality improvement plan, and additional supports will be provided to programs.

No changes were made in response to this comment.

§809.131. Eligibility for the Texas Rising Star Program

Comment: Several commenters support requiring current Texas Rising Star programs and applicants to create staff accounts within the WFR. Because of the increased challenges of recruiting and retaining staff, one commenter applauded the recommendation that the WFR not include a searchable database of teachers or their qualifications nor job postings.

Response: TWC appreciates the comments.

Comment: Two Boards requested clarification on potential ramifications on programs that do not comply with the requirement to agree to participate in the WFR and to encourage staff to create accounts within the WFR.

Response: TWC will require that Texas Rising Star child care providers create a director account in the WFR. TWC recommends that Texas Rising Star providers encourage their staff members to create individual accounts within the WFR.

Texas Rising Star staff will work with each provider to set individual CQIP goals to increase staff participation in the WFR. Additionally, mentors can assist in identifying any barriers that may have prevented an individual from creating his or her account.

A director account will be required for each Texas Rising Star provider so that participating staff members may associate their WFR profiles with their employer. However, if an individual staff member declines to create a WFR account, the provider's Texas Rising Star certification will not be affected.

No changes were made in response to these comments.

Comment: One Board supported the purpose behind the TECPDS WFR. However, the Board expressed concerns regarding providers that may not wish to participate due to privacy concerns related to posting information on the systems.

Two providers expressed similar concerns. One provider stated that the idea of a web-based professional development tool that tracks training, education, and employment seems very convenient and easily accessible for staff, employers, and other interested parties such as Child Care Licensing and Child Care Services. However, the provider stated that the information, which is easily accessible to the previously mentioned, can also become accessible to hackers and others who have nefarious intentions.
Sharing information concerning training, employment, and other personal identifying
data is a matter of individual choice. Additionally, this is a right of privacy. By
mandating enrollment in the WFR in order to participate as a Texas Rising Star provider,
each individual's right to privacy is not being upheld.

The other provider stated that the provider can give copies of trainings to the local
assessor.

Response: TWC acknowledges commenters' concerns regarding the privacy of their
personal data in relation to the WFR. TWC shares these concerns and is committed to
ensuring privacy and security of personal data. The WFR registry does not include any
search function and access to individual data is controlled, monitored, and audited.

TWC's rule changes related to the WFR are intended to increase use of the WFR to
provide TWC and Boards with summative information to support data-driven decisions
on the investment of CCQ funds. Additionally, TWC uses the WFR's aggregate
workforce data to satisfy federal reporting requirements on the state's annual CCDF
Quality Progress Report, which asks for state-level information on the state of and
progress of the workforce. [https://twc.texas.gov/files/partners/child-care-quality-

Everyone who creates an account in the WFR owns their own data and decides who can
see their data. The database is not searchable by the public. Individuals have the option to
share their education, employment, and training information with the directors of centers
or facilities that also have accounts, such as the individual's employer. The individual
also has the ability to stop sharing his or her profile with a director.

As stated previously, TWC will require that Texas Rising Star child care providers create
a director account in the WFR. The provider may determine who fills the director role in
the WFR, and that individual may decide how much employment, education, and training
data to include in his or her professional profile.

TWC also recommends that Texas Rising Star providers encourage their staff members to
create individual accounts within the WFR. All information entered into the WFR is
stored securely and may only be viewed by approved TECPDS/WFR staff and your local
Board for the purposes of record validation and to assist assessors with scoring Texas
Rising Star staff training/qualifications measures. All of these users are subject to
contract provisions that limit their access to the data they need to do their jobs. For
example, a Texas Rising Star assessor will only view records for individuals who had
associated themselves with a provider with an agreement to provide subsidized child care
in the assessor's assigned Board area. TWC staff do not have access to individual WFR
records.

UTHealth, which houses the WFR, complies with the Family Educational Rights and
Privacy Act, which prohibits the release of most education records without an individual's
permission. Additionally, WFR data is governed by the University of Texas Health
Science Center's data security standards, which adhere to the National Institute of Standards and Technology (NIST) Cybersecurity regular security scanning for vulnerabilities and an annual NIST security audit.

No changes were made in response to these comments.

Comment: One provider stated that it should not be mandatory to participate in the TECPDS WFR if a center has its own Training Tracking System. The provider suggested instead, that if a center has an electronic program that tracks its staff training, it should not have to use the registry because that would create an increased workload for a duplicate job.

Response: The intent of participation within the WFR is multi-faceted, including the integration of automatic scoring for applicable Category 1 measures within the Texas Rising Star assessment tool.

TWC will explore opportunities to create interface capabilities between the WFR and providers' individual systems in order to reduce duplicate data entry.

No changes were made in response to this comment.

§809.132. Impact of Certain Deficiencies on Texas Rising Star Certification

Comment: Two Boards expressed concerns regarding certain aspects of the impact of licensing deficiencies. One Board expressed concerns that some deficiencies regarding the safety of children were not included. One Board is concerned that four probationary impacts during a three-year certification period decreases motivation to resolve issues when there is no financial impact to the program and would suggest reducing to three the number of probationary impacts during the three-year certification period.

Response: TWC recognizes that these standards contain elements that are supported by some, while others would prefer modifications. TWC has crafted these changes based on extensive discussions and input from the Texas Rising Star Workgroup. TWC will monitor the impact of these changes, including how many probationary periods providers are subject to, and determine if revisions are needed in the future.

No changes were made in response to these comments.

Comment: Several commenters supported a revised structure that continues to provide a high level of accountability for the most critical licensing issues, while also providing the opportunity for providers to correct issues without losing their star-level certification. Specifically, the group requested Texas Rising Star programs that receive licensing deficiencies have an opportunity to remedy those deficiencies within a six-month probationary period. Providers need increased technical assistance for programs at risk of losing or dropping their certification level.
Response: The revised screening form minimized the number of deficiencies that resulted in an immediate star-level drop and modified the impact for most to be placed on probation while receiving targeted assistance to address future compliance.

No changes were made in response to these comments.

Comment: One commenter appreciated the openness to consider COVID-19 in assessment and recommended that TWC provide adequate support and mentorship to better support providers.

The commenter also appreciated the recommendation to minimize deficiencies from ten to four that result in immediate star-level impact as well as the recommendation to institute probationary rather than star-level impacts in situations in which an employee is fired for inadequate care. The commenter further suggested that providers that have a proven record of exemplary star ratings be considered for a less stringent annual assessment. The commenter also stated that Texas Rising Star programs that receive licensing deficiencies that do not compromise child safety get an opportunity to remedy those deficiencies within a six-month probationary period.

Response: TWC appreciates the comments. Regarding adequate support and mentorship to support providers, TWC will provide coaching, credentialing, training modules, a mentor's toolkit of resources, and additional supports to mentors to assist in supporting programs during this time.

Regarding the impact of deficiencies on providers with a proven record of exemplary star rating being considered for less stringent annual assessment and providing opportunities to providers to remedy certain deficiencies within a certain period, TWC will make a future determination on modifications to annual assessments for providers that have a proven record of exemplary star rating.

No changes were made in response to these comments.

Comment: One Board supported the new approach on licensing deficiencies that allows providers to remedy deficiencies and maintain their star level or certification as this promotes financial stability. The Board asked if HHSC has evaluated inner-rater reliability to ensure consistency. Some providers have stated that some CCL representatives are more lenient on some standards.

Response: TWC appreciates your feedback. HHSC processes are not addressed in this rulemaking.

§809.133. Application and Assessments for the Texas Rising Star Program

Comment: One Board and several commenters support the development of a statewide Texas Rising Star Continuous Quality Improvement (CQI) framework. The Board expressed appreciation of the enhancement that will allow CLI Engage to automatically
generate CQI documents that will better define needed areas of improvement, while allowing Texas Rising Star mentor staff the flexibility to address staff-specific needs.

Several commenters stated that the Texas Rising Star CQI framework will provide targeted technical assistance and customized coaching to help providers work toward achieving higher levels of quality. The group requested additional details on how the CQI framework will be implemented, and whether there will be an opportunity to provide input on how the framework should look.

Response: TWC appreciates the support. A draft CQI document is available for review on the TWC Texas Rising Star 4-Year Review webpage.

No changes were made in response to these comments.

§809.134. Minimum Qualifications for Texas Rising Star Staff

Comment: One Board asked whether a staff member's education level and years of experience will be taken into consideration when determining who needs to attend the training or will automatically qualify staff for some credentialing badges. The Board stated the different levels of education and experience should also be weighed when determining staff training.

Response: All mentors and assessors must take the Texas Rising Star Assessment Training course, regardless of education and experience. All Texas Rising Star assessors will be required to pass the test and achieve a Texas Rising Star Assessment certification. This will ensure all staff are trained and assessors are certified on the Texas Rising Star certification program, thus ensuring reliable and valid assessment scoring.

No changes were made in response to this comment.

Comment: One Board asked what are TWC's expectations if a Texas Rising Star staff member at the contractor or Board level does not achieve certification as an assessor. Currently hired staff were not required to pass any type of certifications and imposing this requirement now may cause issues for employers.

Response: Statewide training for Texas Rising Star staff on the revisions will begin in January 2021, followed by a period for assessor staff to attain certification. Assessors are expected to pass all ten modules, and to attain their certification prior to the roll-out date for the new standards, which is scheduled for April 1, 2021. Assistance will be provided to assessor staff throughout the certification course to assist in increasing their knowledge, skills, and abilities so they can receive certification. This will include the availability of online training content, self-study online modules, small group-facilitated sessions. and peer learning communities. However, if the staff member still cannot become certified, employers should consider utilizing the staff member in a different role.

No changes were made in response to this comment.
**Comment:** Several commenters supported ensuring that all mentors and assessors complete the required certification as it will improve the reliability and ratings. The commenters requested that assessments be centralized under TWC to help ensure program reliability. The commenters encourage TWC to develop partnerships between TWC and Boards to strengthen the mentor and assessor collaboration and consistency.

**Response:** TWC appreciates the input. In order to centralize Texas Rising Star assessors, the Texas Government Code, §2308.3155, must be amended. TWC has included this in its legislative proposals to the 87th Texas Legislature.

No changes were made in response to these comments.

**Comment:** One Board requested that there should be training or certification requirements for Texas Rising Star program directors. Because directors are the leaders of their programs, to properly maintain Texas Rising Star standards, the Board believes that it is just as, if not more important, for them to be certified to lead a Texas Rising Star program.

**Response:** TWC appreciates the input. The current measure in the Texas Rising Star guidelines for director training is being removed and integrated into the continuous quality improvement plan, which is individualized to the director and program's specific needs and goals.

No changes were made in response to this comment.

**Comment:** One Board expressed concern that, by imposing certain education requirements, work experience, and annual training-hour requirements for Texas Rising Star mentor and assessor staff, TWC is subverting local control of Boards (as the employer of record) to hire staff they believe are qualified to meet the demands of these positions. The Board requested TWC to evaluate the existing and proposed criteria to ensure they are not in violation of Title VII, which prohibits employers from using neutral tests or selection procedures that have the effect of disproportionately excluding individuals based on race, color, religion, sex (including sexual orientation and gender identity), or national origin if the tests or selection procedures are not "job-related for the position in question and consistent with business necessity." To that end, the Board encouraged TWC to review the current composition of mentors and assessors to determine if, in fact, it has potentially eliminated from consideration individuals in a disparate manner.

**Response:** Title VII prohibits employers from using neutral tests or selection procedures that have the effect of disproportionately excluding individuals based on race, color, religion, sex, or national origin if the tests or selection procedures are not "job-related for the position in question and consistent with business necessity." The education and certification requirements for Texas Rising Star mentors and assessors are directly related to their job duties.
Regarding the new certification requirement for assessors, assistance will be provided to any assessor who is unable to pass a training module to help them achieve certification status. TWC's intent is to provide ample support and resources to Texas Rising Star staff who need additional assistance in mastering the competencies needed to serve as a Texas Rising Star assessor.

Mentors and assessors are responsible for making important determinations of a child care program's quality status, based on multiple measures and factors. Therefore, it is critical that the child care program has highly qualified staff, as their judgements impact a child care provider's Texas Rising Star certification. TWC also notes that other occupations have similar job-related education and certification requirements.

Boards may also wish to consider any opportunities they have to support their staff in the pursuit of their required education levels. Many employers, including TWC, offer education stipends/tuition assistance programs.

No changes were made in response to this comment.

PART IV. STATUTORY AUTHORITY

The rules are adopted under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules implement changes made to Texas Labor Code, Chapter 302 and Texas Government Code, Chapter 2308, in a manner that comports with the existing requirements of 45 CFR Part 98.
CHAPTER 809. CHILD CARE SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

§809.2. Definitions.

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

(1) Attending a job training or educational program--An individual is attending a job training or educational program if the individual:

(A) is considered by the program to be officially enrolled;

(B) meets all attendance requirements established by the program; and

(C) is making progress toward successful completion of the program as determined by the Board upon eligibility redetermination as described in §809.42(b) of this chapter.

(2) Child--An individual who meets the general eligibility requirements contained in this chapter for receiving child care services.

(3) Child care contractor--The entity or entities under contract with the Board to manage child care services. This includes contractors involved in determining eligibility for child care services, contractors involved in the billing and reimbursement process related to child care subsidies, as well as contractors involved in the funding of quality improvement activities as described in §809.16 of this chapter.

(4) Child Care Licensing (CCL)--Division responsible for protecting the health, safety, and well-being of children who attend or reside in regulated child care facilities and homes. Previously a division of the Texas Department of Family and Protective Services (DFPS), CCL is now part of the Texas Health and Human Services Commission (HHSC).

(5) Child care services--Child care subsidies and quality improvement activities funded by the Commission.

(6) Child care subsidies--Commission-funded child care reimbursements to an eligible child care provider for the direct care of an eligible child.

(7) Child experiencing homelessness--A child who is homeless, as defined in the McKinney-Vento Act (42 USC 11434(a)), Subtitle VII-B, §725.
(8) Child with disabilities--A child who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. Major life activities include, but are not limited to, caring for oneself; performing manual tasks; walking; hearing; seeing, speaking, or breathing; learning; and working.

(9) Educational program--A program that leads to:

(A) a high school diploma;

(B) a Certificate of High School Equivalency; or

(C) a postsecondary degree from an institution of higher education.

(10) Excessive unexplained absences--More than 40 unexplained absences within a 12-month eligibility period as described in §809.78(a)(3) of this chapter.

(11) Family--Two or more individuals related by blood, marriage, or decree of court, who are living in a single residence and are included in one or more of the following categories:

(A) Two individuals, married--including by common-law, and household dependents; or

(B) A parent and household dependents.

(12) Household dependent--An individual living in the household who is:

(A) an adult considered a dependent of the parent for income tax purposes;

(B) a child of a teen parent; or

(C) a child or other minor living in the household who is the responsibility of the parent.

(13) Improper payments--Any payment of Child Care Development Fund (CCDF) grant funds that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements governing the administration of CCDF grant funds and includes payments:

(A) to an ineligible recipient;

(B) for an ineligible service;

(C) for any duplicate payment; and
(D) for services not received.

(14) Job training program--A program that provides training or instruction leading to:

(A) basic literacy;
(B) English proficiency;
(C) an occupational or professional certification or license; or
(D) the acquisition of technical skills, knowledge, and abilities specific to an occupation.

(15) Listed family home--A family home, other than the eligible child's own residence, that is listed, but not licensed or registered with, CCL pursuant to Texas Human Resources Code, §42.052(c).

(16) Military deployment--The temporary duty assignment away from the permanent military installation or place of residence for reserve components of the single military parent or the dual military parents. This includes deployed parents in the regular military, military reserves, or National Guard.

(17) Parent--An individual who is responsible for the care and supervision of a child and is identified as the child's natural parent, adoptive parent, stepparent, legal guardian, or person standing in loco parentis (as determined in accordance with Commission policies and procedures). Unless otherwise indicated, the term applies to a single parent or both parents.

(18) Pre-Star provider--A designation for subsidy providers licensed or registered by CCL, based on meeting the Screening Criteria for Subsidized Child Care, which is further defined in the CCDF State Plan.

(19) Protective services--Services provided when:

(A) a child is at risk of abuse or neglect in the immediate or short-term future and the child's family cannot or will not protect the child without DFPS Child Protective Services (CPS) intervention;

(B) a child is in the managing conservatorship of DFPS and residing with a relative or a foster parent; or

(C) a child has been provided with protective services by DFPS within the prior six months and requires services to ensure the stability of the family.
(20) Provider--A provider is defined as:

(A) a regulated child care provider as defined in paragraph (21) of this section;

(B) a relative child care provider as defined in paragraph (22) of this section; or

(C) a listed family home as defined in paragraph (15) of this section, subject to the requirements in §809.91(b) of this chapter.

(21) Regulated child care provider--A provider caring for an eligible child in a location other than the eligible child's own residence that is:

(A) licensed by CCL;

(B) registered with CCL; or

(C) operated and monitored by the United States military services.

(22) Relative child care provider--An individual who is at least 18 years of age, and is, by marriage, blood relationship, or court decree, the child's:

(A) grandparent;

(B) great-grandparent;

(C) aunt;

(D) uncle; or

(E) sibling (if the sibling does not reside in the same household as the eligible child).

(23) Residing with--Unless otherwise stipulated in this chapter, a child is considered to be residing with the parent when the child is living with, and physically present with, the parent during the time period for which child care services are being requested or received.

(24) Teen parent--A teen parent (teen) is an individual 18 years of age or younger, or 19 years of age and attending high school or the equivalent, who has a child.

(26) Texas Rising Star provider--A provider certified as meeting the Texas Rising Star program standards. Texas Rising Star providers are certified as a:

(A) 2-Star Program Provider;
(B) 3-Star Program Provider; or
(C) 4-Star Program Provider.

(27) Working--Working is defined as:

(A) activities for which one receives monetary compensation such as a salary, wages, tips, and commissions; or
(B) participation in Choices or Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T) activities.

SUBCHAPTER B. GENERAL MANAGEMENT


(a) A Board shall, as part of its Texas Workforce Development Board Plan (Board plan), develop, amend, and modify the Board plan to incorporate and coordinate the design and management of the delivery of child care services with the delivery of other workforce employment, job training, and educational services identified in Texas Government Code, §2308.304, et seq., as well as other workforce training and services included in the One-Stop Service Delivery Network.

(b) The goal of the Board plan is to coordinate workforce training and services, to leverage private and public funds at the local level, and to fully integrate child care services for low-income families with the network of workforce training and services under the administration of the Boards.

(c) Boards shall design and manage the Board plan to maximize the delivery and availability of safe and stable child care services that assist families seeking to become independent from, or who are at risk of becoming dependent on, public assistance while parents are either working or attending a job training or an educational program.

(d) A Board shall include in the Board plan any strategies to use contracted slots agreements, as described in §809.96 of this chapter, including any local priorities and
how contracted slots agreements will help increase access to high-quality care for targeted communities and population.

§809.13. Board Policies for Child Care Services.

(a) A Board shall develop, adopt, and modify its policies for the design and management of the delivery of child care services in a public process in accordance with Chapter 802 of this title.

(b) A Board shall maintain written copies of the policies that are required by federal and state law, or as requested by the Commission, and make such policies available to the Commission and the public upon request.

(c) At a minimum, a Board shall develop policies related to:

(1) how the Board determines that the parent is making progress toward successful completion of a job training or educational program, as described in §809.2(1) of this chapter;

(2) maintenance of a waiting list, as described in §809.18(b) of this subchapter;

(3) assessment of a parent share of cost, as described in §809.19(a)(1) of this subchapter, including:

   (A) provisions for a parent's failure to pay the parent share of cost, including the reimbursement of providers, as a program violation that is subject to early termination of child care services within a 12-month eligibility period; and

   (B) criteria for determining the affordability of the parent share of cost, as described in §809.19(d) and (e) of this subchapter;

(4) maximum reimbursement rates, as provided in §809.20 of this subchapter, including policies related to reimbursement of providers that offer transportation;

(5) family income limits, as described in Subchapter C of this chapter (relating to Eligibility for Child Care Services);

(6) provision of child care services to a child with disabilities under the age of 19, as described in §809.41(a)(1)(B) of this chapter;

(7) minimum activity requirements for parents, as described in §809.48 and §809.50 of this chapter;
(8) time limits for the provision of child care while the parent is attending an educational program, as described in §809.41(b) of this chapter;

(9) Board priority groups, as described in §809.43(a) of this chapter;

(10) transfer of a child from one provider to another, as described in §809.71(3) of this chapter, including a waiting period of two weeks before the effective date of a transfer, except in cases in which the provider is subject to a CCL action, as described in §809.94 of this chapter, or on a case-by-case basis by the Board;

(11) providers charging the difference between their published rate and the Board's reimbursement rate as provided in §809.92(d) of this chapter;

(12) procedures for fraud fact-finding as provided in §809.111 of this chapter;

(13) policies and procedures to ensure that appropriate corrective actions are taken against a provider or parent for violations of the automated attendance requirements specified in §809.115(d) and (e) of this chapter;

(14) policies and procedures for contracted slots agreements as described in §809.96 of this chapter, if the Board opts to enter into such agreements; and

(15) supporting direct referrals from recognized pre-K or HS/EHS partnerships, as described in §809.22 of this subchapter.

§809.16. Quality Improvement Activities.

(a) Child care funds allocated by the Commission pursuant to its allocation rules (generally, Chapter 800, Subchapter B of this title (relating to Allocations), and specifically §800.58 of this title (relating to Child Care)), including local public transferred funds and local private donated funds, as provided in §809.17 of this subchapter, to the extent they are used for nondirect care quality improvement activities, may be expended in accordance with 45 CFR Part 98, §98.53, any applicable state laws, and the CCDF State Plan.

(b) Boards must ensure compliance with 45 CFR Part 98 regarding construction expenditures, as follows:

(1) State and local agencies and nonsectarian agencies or organizations.

(A) Funds shall not be expended for the purchase or improvement of land, or for the purchase, construction, or permanent improvement of any building or facility.
(B) Funds may be expended for minor remodeling, and for upgrading child care facilities to ensure that providers meet state and local child care standards, including applicable health and safety requirements.

(2) Sectarian agencies or organizations.

(A) The prohibitions in paragraph (1) of this subsection apply.

(B) Funds may be expended for minor remodeling only if necessary to bring the facility into compliance with the health and safety requirements established pursuant to 45 CFR Part 98.

(c) Expenditures certified by a public entity, as provided in §809.17(b)(3) of this subchapter, may include expenditures for any quality improvement activity described in 45 CFR Part 98.

§809.18. Maintenance of a Waiting List.

(a) A Board shall ensure that a list of parents waiting for child care services, because of the lack of funding or lack of providers, is maintained and available to the Commission upon request.

(b) A Board shall establish a policy for the maintenance of a waiting list that includes, at a minimum:

(1) the process for determining that the parent is potentially eligible for child care services before placing the parent on the waiting list; and

(2) the frequency in which the parent information is updated and maintained on the waiting list.

(c) A Board may exempt children from the waiting list who are directly referred from a recognized pre-K or HS/EHS partnership as described in §809.22 of this subchapter to a child care provider to receive services in the contracted partnership program, which is subject to the availability of funding and the availability of subsidized slots at the partnership site.


(a) For child care funds allocated by the Commission pursuant to its allocation rules (generally, Chapter 800, Subchapter B of this title (relating to Allocations), and specifically, §800.58 of this title (relating to Child Care)), including local public transferred funds and local private donated funds, as provided in §809.17 of this subchapter, the following shall apply.
A Board shall set a parent share of cost policy that assesses the parent share of cost in a manner that results in the parent share of cost:

(A) being assessed to all parents, except in instances when an exemption under paragraph (2) of this subsection applies;

(B) being an amount determined by a sliding fee scale based on the family's size and gross monthly income, including a possible reexamination of the sliding fee scale if there are frequent terminations for lack of payment pursuant to subsection (e) of this section, which also may consider the number of children in care;

(C) being an amount that is affordable and does not result in a barrier to families receiving assistance;

(D) being assessed only at the following times:

(i) initial eligibility determination;

(ii) 12-month eligibility redetermination;

(iii) upon the addition of a child in care;

(iv) upon a parent's report of a change in income, family size, or number of children in care that would result in a reduced parent share of cost assessment; and

(v) upon resumption of work, job training, or education activities following temporary changes described in §809.51(a)(2) of this chapter, and upon resumption of work, job training, or education activities during the three-month continuation of care period described in §809.51(c) of this chapter; and

(E) not increasing above the amount assessed at initial eligibility determination or at the 12-month eligibility redetermination based on the factor in subparagraph (B) of this paragraph, except upon the addition of a child in care as described in subparagraph (D)(iii) of this paragraph.

Parents who are one or more of the following are exempt from paying the parent share of cost:

(A) Parents who are participating in Choices or who are in Choices child care described in §809.45 of this chapter;

(B) Parents who are participating in SNAP E&T services or who are in SNAP E&T child care described in §809.47 of this chapter;
(C) Parents of a child receiving Child Care for Children Experiencing Homelessness as described in §809.52 of this chapter; or

(D) Parents who have children who are receiving protective services child care pursuant to §809.49 and §809.54(c) of this chapter, unless DFPS assesses the parent share of cost.

(3) Teen parents who are not covered under exemptions listed in paragraph (2) of this subsection shall be assessed a parent share of cost. The teen parent's share of cost is based solely on the teen parent's income and size of the teen's family as defined in §809.2 of this chapter.

(b) For child care services funded from sources other than those specified in subsection (a) of this section, a Board shall set a parent share of cost policy based on a sliding fee scale. The sliding fee scale may be the same as or different from the provisions contained in subsection (a) of this section.

(c) A Board shall establish a policy regarding reimbursement of providers when parents fail to pay the parent share of cost.

(d) A Board shall establish a policy regarding termination of child care services within a 12-month eligibility period when a parent fails to pay the parent share of cost. The Board's policy must include:

(1) a requirement to evaluate and document each family's financial situation for extenuating circumstances that may affect affordability of the assessed parent share of cost pursuant to paragraph (2) of this subsection, and a possible temporary reduction pursuant to subsection (g) of this section before the Board or its child care contractor may terminate care under this section;

(2) general criteria for determining affordability of a Board's parent share of cost, and a process to identify and assess the circumstances that may jeopardize a family's self-sufficiency under subsection (g) of this section;

(3) maintenance of a list of all terminations due to failure to pay the parent share of cost, including family size, income, family circumstances, and the reason for termination, for use when conducting evaluations of affordability, as required under paragraph (4) of this subsection; and

(4) the Board's definition of what constitutes frequent terminations and its process for assessing the general affordability of the Board's parent share of cost schedule, pursuant to subsection (e) of this section.
(e) A Board with frequent terminations of care for lack of payment of the parent share of
cost must reexamine its sliding fee scale and adjust it to ensure that fees are not a
barrier to assistance for families at certain income levels.

(f) A Board that does not have a policy to reimburse providers when parents fail to pay
the parent share of cost may establish a policy to require the parent to pay the
provider before the family can be redetermined eligible for future child care services.

(g) The Board or its child care contractor may review the assessed parent share of cost
for a possible temporary reduction if there are extenuating circumstances that
jeopardize a family's self-sufficiency. The Board or its child care contractor may
temporarily reduce the assessed parent share of cost if warranted by these
circumstances. Following the temporary reduction, the parent share of cost amount
immediately prior to the reduction shall be reinstated.

(h) If the parent is not covered by an exemption as specified in subsection (a)(2) of this
section, then the Board or its child care contractor shall not waive the assessed parent
share of cost under any circumstances.

(i) If the parent share of cost, based on family income and family size, is calculated to
be zero, then the Board or its child care contractor shall not charge the parent a
minimum share of cost amount.

(j) A Board may establish a policy to reduce the parent share of cost amount assessed
pursuant to subsection (a)(1)(B) of this section upon the parent's selection of a Texas
Rising Star--certified provider. Such Board policy shall ensure:

(1) that the parent continue to receive the reduction if:

(A) the Texas Rising Star provider loses Texas Rising Star certification; or

(B) the parent moves or changes employment within the workforce area and
no Texas Rising Star--certified providers are available to meet the needs
of the parent's changed circumstances; and

(2) that the parent no longer receives the reduction if the parent voluntarily
transfers the child from a Texas Rising Star--certified provider to a non-Texas
Rising Star--certified provider.

(k) A Board may establish a policy to reduce the parent share of cost amount assessed
pursuant to subsection (a)(1)(B) of this section upon the child's referral for part-time
care. Such Board policy shall ensure that:

(1) the parent no longer receives the reduction if the referral is changed to full-time
care; and
(2) a parent who qualifies for a reduction in parent share of cost for both selecting a Texas Rising Star--certified provider (as defined in subsection (j) of this section) and a child's part-time care referral will receive the greater of the two discounts.

§809.22. Direct Referrals to Recognized Partnerships.

(a) A recognized partnership is a partnership that:

(1) exists between a child care provider and one of the following:

   (A) a public school prekindergarten provider;
   (B) a local education agency; or
   (C) a Head Start/Early Head Start program; and

(2) requires both parties to have entered into an agreement, such as a memorandum of understanding, and serves some number of children under age six who are dually enrolled in both programs.

(b) A Board shall establish policies and procedures to enroll eligible children who are directly referred by a recognized partnership.

(c) A Board's policy shall exempt children directly referred from a recognized partnership from the Board's waiting list, subject to the availability of funding and the availability of subsidized slots at the partnership site.

SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE

§809.91. Minimum Requirements for Providers.

(a) A Board shall ensure that child care subsidies are paid only to:

(1) regulated child care providers as described in §809.2 of this chapter, subject to the requirements in subsection (g) of this section;
(2) relative child care providers, as described in §809.2 of this chapter, subject to the requirements in subsection (e) of this section; or
(3) at the Board's option, child care providers licensed in a neighboring state, subject to the following requirements:

   (A) Boards shall ensure that the Board's child care contractor reviews the licensing status of the out-of-state provider every month, at a minimum, to confirm the provider is meeting the minimum licensing standards of the state.
(B) Boards shall ensure that the out-of-state provider meets the requirements of the neighboring state to serve CCDF-subsidized children.

(C) The provider shall agree to comply with the requirements of this chapter and all Board policies and Board child care contractor procedures.

(b) A Board shall not prohibit a relative child care provider that is listed with CCL and meets the minimum requirements of this section from being an eligible relative child care provider.

(c) Except as provided by the criteria for Texas Rising Star Provider certification, a Board or the Board's child care contractor shall not place requirements on regulated providers that:

(1) exceed Pre-Star designation requirements or the state licensing requirements stipulated in Texas Human Resources Code, Chapter 42; or

(2) have the effect of monitoring the provider for compliance with state licensing requirements stipulated in Texas Human Resources Code, Chapter 42.

(d) When a Board or the Board's child care contractor, in the course of fulfilling its responsibilities, gains knowledge of any possible violation regarding regulatory standards, the Board or its child care contractor shall report the information to the appropriate regulatory agency.

(e) For relative child care providers to be eligible for reimbursement for Commission-funded child care services, the following applies:

(1) Relative child care providers shall list with CCL; however, pursuant to 45 CFR §98.41(e), relative child care providers listed with CCL shall be exempt from the health and safety requirements of 45 CFR §98.41(a).

(2) A Board shall allow relative child care providers to care for a child in the child's home (in-home child care) only for the following:

(A) A child with disabilities as defined in §809.2 of this chapter, and his or her siblings;

(B) A child under 18 months of age and his or her siblings;

(C) A child of a teen parent; and

(D) When the parent's work schedule requires evening, overnight, or weekend child care in which taking the child outside of the child's home would be disruptive to the child.
(3) A Board may allow relative in-home child care for circumstances in which the Board's child care contractor determines and documents that other child care provider arrangements are not available in the community.

(f) Boards shall ensure that subsidies are not paid for a child at the following child care providers:

(1) Except for foster parents authorized by DFPS pursuant to §809.49 of this chapter, licensed child care centers, including before- or after-school programs and school-age programs, in which the parent or his or her spouse, including the child's parent or stepparent, is the director or assistant director, or has an ownership interest; or

(2) Licensed, registered, or listed child care homes where the parent also works during the hours his or her child is in care.

(g) Regulated child care providers, except those operated and monitored by the US military, must meet Pre-Star provider designation unless exempted under requirements of subsection (h)(3) of this section.

(h) Pre-Star provider designations and exemptions are defined in the Commission-approved CCDF State Plan and include:

(1) minimum Pre-Star criteria required for each provider type;

(2) a progressive statewide roll out plan to require Pre-Star designation for receipt of subsidies; and

(3) limited provider exemption criteria to ensure parent choice is not negatively impacted by the Pre-Star requirements.

§809.93. Provider Reimbursement.

(a) A Board shall ensure that reimbursement for child care is paid only to the provider.

(b) A Board or its child care contractor shall reimburse a regulated provider based on a child's monthly enrollment authorization, excluding periods of suspension at the concurrence of the parent, as described in §809.51(d) of this chapter.

(c) A Board shall ensure that a relative child care provider is not reimbursed for days on which the child is absent.

(d) A relative child care provider shall not be reimbursed for more children than permitted by the CCL minimum regulatory standards for Registered Child Care
Homes. A Board may permit more children to be cared for by a relative child care provider on a case-by-case basis as determined by the Board.

(e) A Board shall not reimburse providers that are debarred from other state or federal programs unless and until the debarment is removed.

(f) Unless otherwise determined by the Board and approved by the Commission for automated reporting purposes, the monthly enrollment authorization described in subsection (b) of this section is based on the unit of service authorized, as follows:

(1) A full-day unit of service is 6 to 12 hours of care provided within a 24-hour period; and

(2) A part-day unit of service is fewer than 6 hours of care provided within a 24-hour period

(g) A Board or its child care contractor shall ensure that providers are not paid for holding spaces open without a valid contracted slots agreement, as described in §809.96 of this subchapter.

(h) A Board or the Board's child care contractor shall not pay providers:

(1) less, when a child enrolled full time occasionally attends for a part day; or

(2) more, when a child enrolled part time occasionally attends for a full day.

(i) The Board or its child care contractor shall not reimburse a provider retroactively for new Board maximum reimbursement rates or new provider published rates.

(j) A Board or its child care contractor shall ensure that the parent's travel time to and from the child care facility and the parent's work, school, or job training site is included in determining whether to authorize reimbursement for full-day or part-day care under subsection (f) of this section.

§809.96. Contracted Slots Agreements.

(a) In this section, the term "contracted slots agreement" is defined as a Board entering into a contract with a child care provider to reserve a specific number of places, or slots, for children participating in the child care subsidy program. This contract shall:

(1) define the number of slots to be reserved by age group (infant, toddler, preschool, or school-age); and

(2) meet the eligibility requirements as described in subsection (e) of this section.
(b) Boards may enter into a contracted slots agreement with providers that agree to provide subsidized child care services to eligible children residing in the Board's workforce area.

(c) A Board that enters into a contracted slots agreement shall include this strategy in the Board Plan, as described in §809.12 of this chapter.

(d) Each contract between a Board and a provider must identify the number of places (slots) to be reserved for children participating in the child care subsidy program.

(e) To be eligible for a contract, a child care provider must be a Texas Rising Star 3-star or 4-star provider and meet one of the following priorities:

(1) Be located:
   (A) where the number of children under age six with working parents is at least three times greater than the capacity of licensed child care providers in the area, based on data published annually by the Commission; or
   (B) in an underserved area that has been identified by a Board as having an inadequate supply of child care in accordance with the parameters described in the CCDF State Plan.

(2) Have a partnership with local school districts to provide pre-K services;

(3) Have a partnership with EHS or HS;

(4) Increase the number of places reserved for infants and toddlers by high-quality child care providers;

(5) Satisfy a priority identified in the Board's plan, as described in §809.12 of this chapter.

(f) A Board that enters into a contracted slots agreement may continue payment for reserved slots during times of transition between the time that one child leaves the program and another child is placed in the slot. The period of continued payment shall adhere to the Board's policy for contracted slots agreements, as described in §809.13(c)(14) of this chapter, and may not exceed one month following the month of the vacancy.

(g) Except for children directly referred from recognized partnerships, as described in §809.22 of this chapter, to fill open reserved slots, Boards shall contact families in order of the Board's waiting list:
(1) that requested care in the ZIP code where the provider with the open reserved slot is located; and

(2) whose child is in the age group for which a slot is available.

(h) In accordance with Commission guidelines, Boards that enter into contracted slots agreements shall submit a report to the Commission within six months of entering into a contract, determining the contract’s effect on the:

(1) financial stability of providers participating in the contract;

(2) availability of high-quality child care options available to participants in the Commission's subsidy program;

(3) number of high-quality providers in any part of the workforce area with a high concentration of families that need child care;

(4) percentage of children participating in the Commission's subsidized child care program at each Texas Rising Star provider in the workforce area; and

(5) additional information as requested by the Commission.

(i) A Board shall resubmit the report every six months from the due date of the Board's initial report to the Commission.

SUBCHAPTER G. TEXAS RISING STAR PROGRAM

§809.130. Short Title and Purpose.

(a) The rules contained in this subchapter may be cited as the Texas Rising Star Program rules.

(b) The purpose of the Texas Rising Star Program rules is to interpret and implement Texas Government Code, §2308.3155(b), which requires the Commission to establish rules to administer the Texas Rising Star program, including guidelines for rating a child care provider for Texas Rising Star certification.

(c) The Texas Rising Star Program rules identify the organizational structure and categories of, and the scoring factors that shall be included in, the Texas Rising Star guidelines.

(d) The Texas Rising Star guidelines for rating a child care provider shall:

(1) describe measures for the Texas Rising Star program that contain, at a minimum, measures for child care providers regarding:
(A) director and staff qualifications and training;
(B) teacher-child interactions;
(C) program administration; and
(D) indoor/outdoor environments;

(2) specify measures that:
(A) must be met in order for a provider to be certified at each star level; and
(B) are observed and have points awarded through on-site assessments; and

(3) specify the scoring methodology and scoring thresholds for each star level.

(e) The Texas Rising Star guidelines:

(1) shall be reviewed and updated by the Commission at a minimum of every four years in conjunction with the rule review of Chapter 809, conducted pursuant to Texas Government Code, §2001.039, and the Texas Rising Star guidelines review shall:
(A) consider input from stakeholders; and
(B) include at least one public hearing held prior to submitting the stakeholder input to the Commission;

(2) shall be adopted by the Commission subject to the requirements of the Texas Open Meetings Act; and

(3) may be reviewed and amended as determined necessary by the Commission in accordance with the requirements of the Texas Open Meetings Act.

§809.131. Eligibility for the Texas Rising Star Program.

A child care provider is eligible to apply for the Texas Rising Star program if the provider has a current agreement to serve Commission-subsidized children and:

(1) has a permanent (nonexpiring) license or registration from CCL;

(2) has at least 12 months of licensing history with CCL, and is not on:
(A) corrective action with a Board pursuant to Subchapter F of this chapter;
(B) a "Notice of Freeze" with the Commission pursuant to Texas Labor Code, Chapter 213 (Enforcement of the Texas Unemployment Compensation Act) or Chapter 61 (Payment of Wages); or

(C) corrective or adverse action with CCL; and

(3) meets the requirements to be designated as a Pre-Star provider as specified in §802.2(18) of this chapter.

(4) has director and teaching staff registered in the Texas Early Childhood Professional Development System Workforce Registry; or

(5) is regulated by and in good standing with the US Military.

§809.132. Impact of Certain Deficiencies on Texas Rising Star Certification.

(a) A Texas Rising Star provider shall lose Texas Rising Star certification if the provider:

(1) is placed on corrective action with a Board pursuant to Subchapter F of this chapter;

(2) is under a "Notice of Freeze" with the Commission pursuant to Chapter 213 of the Texas Labor Code (Enforcement of the Texas Unemployment Compensation Act) or Chapter 61 of the Texas Labor Code (Payment of Wages);

(3) is placed on corrective or adverse action by CCL;

(4) had 15 or more total high or medium-high weighted licensing deficiencies during the most recent 12-month licensing history;

(5) had more than four probationary impacts during its three-year certification period;

(6) had a consecutive third probationary impact; or

(7) is cited for specified CCL minimum standards regarding weapons and ammunition.

(b) Texas Rising Star providers with any of the specified "star level drop" licensing deficiencies listed in the Texas Rising Star guidelines during the most recent 12-month CCL licensing history shall be placed on a six-month Texas Rising Star program probationary period. Furthermore:
(1) reduction of one star level for each deficiency cited, so a 4-star certified provider is reduced to a 3-star provider, a 3-star provider is reduced to a 2-star provider; or

(2) a 2-star provider loses certification.

(c) Texas Rising Star providers with any of the specified "probationary" licensing deficiencies listed in the Texas Rising Star guidelines during the most recent 12-month CCL licensing history shall be placed on a six-month Texas Rising Star probationary period. Furthermore:

(1) Texas Rising Star providers on a six-month Texas Rising Star probationary period that are cited by CCL for any additional specified probationary deficiencies within the probationary period shall be placed on a second, consecutive probation and lose a star level, with a 2-star certified provider losing certification;

(2) if CCL does not cite any additional specified probationary deficiencies during the probationary period, the provider can be removed from probation status; and

(3) if any additional specified probationary deficiencies are cited by CCL during the second probationary period, the Texas Rising Star provider shall lose certification.

(d) Texas Rising Star providers with 10 to 14 total high or medium-high weighted licensing deficiencies during the most recent 12-month CCL licensing history shall be placed on a six-month Texas Rising Star program probationary period. Furthermore:

(1) Texas Rising Star providers on a six-month probationary period that are cited by CCL within the probationary period for any additional high or medium-high weighted deficiencies shall be placed on a second, consecutive probation and lose a star level, with a 2-star provider losing certification;

(2) if no additional high or medium-high weighted deficiencies are cited by CCL during the probationary period, the provider can be removed from probation status; and

(3) if any new high or medium-high weighted deficiencies—not to exceed 14 total deficiencies—are cited by CCL during the second six-month probationary period, a provider shall lose Texas Rising Star certification.

(e) Providers losing a star level due to licensing deficiencies shall be reinstated at the former star level if no citations described in subsections (b) - (d) of this section occur within the six-month reduction time frame.
(f) Providers losing Texas Rising Star certification shall be eligible to reapply for
certification after six months following the loss of the certification, as long as no
deficiencies described in subsections (b) - (d) of this section are cited during the
disqualification period.

§809.133. Application and Assessments for the Texas Rising Star Program.

(a) Texas Rising Star certification applicants must complete:

(1) an orientation on the Texas Rising Star guidelines, including an overview of
the:

(A) Texas Rising Star program application process;

(B) Texas Rising Star program measures; and

(C) Texas Rising Star program assessment process;

(2) the creation of a continuous quality improvement plan; and

(3) a Texas Rising Star program self-assessment tool.

(b) Boards shall ensure that:

(1) written acknowledgment of receipt of the application and self-assessment is
sent to the provider;

(2) within 20 days of receipt of the application, the provider is sent an estimated
time frame for scheduling the initial assessment;

(3) an assessment is conducted for any provider that meets the eligibility
requirements in §809.131 of this subchapter and requests to participate in the
Texas Rising Star program; and

(4) Texas Rising Star certification is granted for any provider that is assessed and
verified as meeting the Texas Rising Star provider certification criteria set
forth in the Texas Rising Star guidelines.

(c) Boards shall ensure that Texas Rising Star assessments are conducted as follows:

(1) On-site assessment of 100 percent of the provider classrooms at the initial
assessment for Texas Rising Star certification and at each scheduled
recertification; and

(2) Recertification of all certified Texas Rising Star providers every three years.
(d) Boards shall ensure that certified Texas Rising Star providers are monitored on an annual basis and the monitoring includes:

   (1) at least one unannounced on-site visit; and

   (2) a review of the provider's licensing compliance as described in §809.132 of this subchapter.

(e) Boards shall ensure compliance with the process and procedures in the Texas Rising Star guidelines for conducting assessments of nationally accredited child care facilities and child care facilities regulated by the US Military.

(f) Boards shall ensure compliance with the process and procedures in the Texas Rising Star guidelines for conducting assessments of certified Texas Rising Star providers that have a change of ownership, move, or expand locations.

(g) Boards shall ensure compliance with the process and procedures in the Texas Rising Star guidelines for implementing and supporting a continuous quality improvement framework.

§809.134. Minimum Qualifications for Texas Rising Star Staff.

(a) Boards shall ensure that Texas Rising Star staff meet the minimum requirements in subsections (b) - (g) of this section.

(b) Texas Rising Star staff shall meet the minimum education requirements as follows:

   (1) Bachelor's degree from an accredited four-year college or university in early childhood education, child development, special education, child psychology, educational psychology, elementary education, or family consumer science.

   (2) Bachelor's degree from an accredited four-year college or university with at least 18 credit hours in early childhood education, child development, special education, child psychology, educational psychology, elementary education, or family consumer science with at least 12 credit hours in child development.

   (3) Associate's degree in early childhood education, child development, special education, child psychology, educational psychology, elementary education, or family consumer science with two years of experience as a director in an early childhood program, with preference given to experience with a provider that is accredited or Texas Rising Star certified.

(c) The Commission may grant a waiver of no more than two years to obtain the minimum education requirements in subsection (b) of this section if a Board can
demonstrate that no applicants in its workforce area meet the minimum education requirements.

(d) Texas Rising Star staff shall meet the minimum work experience requirements of one year of full-time early childhood classroom experience in a child care, EHS, HS, or pre-K through third-grade school program.

(e) Texas Rising Star staff shall meet the background check requirement consistent with Chapter 745 of this title.

(f) Texas Rising Star staff shall demonstrate:

(1) knowledge of best practices in early childhood education; and

(2) understanding of early childhood evaluations, observations, and assessment tools for both teachers and children.

(g) Texas Rising Star staff shall meet the following training and certification criteria:

(1) All staff must complete the Texas Rising Star standards training, as described in the Texas Rising Star guidelines.

(2) All assessors must attain and maintain the Texas Rising Star Assessor Certification, as described in the Texas Rising Star guidelines.

(3) All mentors must attain mentor micro-credentialing, as described in the Texas Rising Star guidelines.

§809.136. Roles and Responsibilities of Texas Rising Star Staff.

Boards shall ensure that Texas Rising Star staff members comply with their assigned responsibilities, as applicable.

(1) A mentor is defined as a designated staff member who helps providers obtain, maintain, or achieve higher star levels of certification.

(2) An assessor is defined as a designated staff member who assesses and monitors providers that obtain, maintain, and achieve higher levels of quality.

(3) Dual-role staff is defined as designated staff members who assume the role of the assessor and mentor.

(4) If an individual performs the duties of both an assessor and a mentor, the individual providing Texas Rising Star mentoring services to a provider does not act as the assessor of that same provider when determining Texas Rising Star certification.
(5) Texas Rising Star staff members are required to complete annual professional development and continuing education consistent with the Texas Rising Star annual minimum training hours requirement for a Texas Rising Star–certified child care center director.

(6) Per the Texas Family Code, §261.101, Texas Rising Star staff members are mandated reporters when observing serious incidents as described in the Texas Rising Star guidelines.