

CHAPTER 809. CHILD CARE SERVICES

PROPOSED 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 MAY 31, 2016, THE TEXAS WORKFORCE COMMISSION PROPOSED THE BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated Publication Date of the Proposal in the *Texas Register*: **June 17, 2016**

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The Texas Workforce Commission (Commission) proposes amendments to the following sections of Chapter 809, relating to Child Care Services:

Subchapter A. General Provisions, §809.2

Subchapter B. General Management, §809.13, §§809.15 - 809.17, §809.19, and §809.20

Subchapter C. Eligibility for Child Care Services, §§809.41 - 809.51, §809.53, and §809.54

Subchapter D. Parent Rights and Responsibilities, §§809.71 - 809.75 and §809.78

Subchapter E. Requirements to Provide Child Care, §§809.91 - 809.93 and §809.95

Subchapter F. Fraud Fact-Finding and Improper Payments, §§809.111 - 809.113, §809.115, and §809.117

The Commission proposes adding the following section to Chapter 809, relating to Child Care Services:

Subchapter C. Eligibility for Child Care Services, §809.52

The Commission proposes the repeal of the following sections of Chapter 809, relating to Child Care Services:

Subchapter C. Eligibility for Child Care Services, §809.55

Subchapter D. Parent Rights and Responsibilities, §§809.76 - 809.77

Subchapter F. Fraud Fact-Finding and Improper Payments, §809.116

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

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PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 809 rule change is to make amendments to the Commission's Child Care Services rules to address changes resulting from the Child Care and Development Block Grant Act (CCDBG Act) of 2014. The proposed amendments to Chapter 809 also include, where appropriate, changes in rule language based on the Notification of Proposed Rulemaking (NPRM) issued December 24, 2015, by the U.S. Health and Human Services Administration for Children and Families.

The CCDBG Act authorizes the federal Child Care and Development Fund (CCDF), which is the primary federal funding source for providing child care subsidy assistance to low-income families and for improving the quality of care for all children. The Texas Workforce Commission (Agency) is the CCDF Lead Agency in Texas. The CCDF program is administered by the 28 Local Workforce Development Boards (Boards). Additionally, the Texas Department of Family and Protective Services (DFPS) is responsible for administering the health and safety requirements of the CCDF program.

On November 19, 2014, President Obama signed the CCDBG Act of 2014, reauthorizing the CCDBG Act for the first time since 1996. The new law makes significant changes to the CCDF program, designed to promote children's healthy development and safety, improve the quality of child care, and provide support for parents who are working or in training or education.

The primary purpose of the Commission's proposed amendments to Chapter 809 is to implement the following changes to the CCDF program resulting from the CCDBG Act of 2014:

Twelve-Month Eligibility Period

The CCDBG Act of 2014 added a 12-month eligibility and redetermination period requirement for children determined eligible for subsidized child care. This change to the CCDF program is designed to provide more stable assistance to families, protection for working families, and increased opportunities for children to remain in child care services.

CCDBG Act §658E(c)(2)(N)(i) and (ii) require states to demonstrate in the CCDF State Plan that after initial eligibility each child who receives assistance will be considered to meet all eligibility requirements for such assistance and will receive such assistance for not fewer than 12 months before the state or designated local entity redetermines the eligibility of the child, regardless of changes in income--as long as income does not exceed the federal threshold of 85 percent of the state median income (SMI)--or temporary changes in participation in work, training, or educational activities.

Therefore, a state shall not terminate assistance prior to the end of the 12-month period if the family experiences a temporary job loss or temporary change in participation in a training or educational activity.

Although the CCDBG Act requires a period of 12-month minimum eligibility and receipt of child care services prior to redetermination, §658E(c)(2)(N)(iii) allows states the option to terminate eligibility due to a permanent (nontemporary) change in work, training, or education. However, the CCDBG Act requires that prior to terminating a subsidy, the state must continue to provide child care assistance for a period of at least three months to allow parents to engage in job search, resume work, or attend an educational or training program as soon as possible.

Parent Share of Cost during the 12-Month Eligibility Period

To support continued care throughout the 12-month eligibility period, NPRM §98.21(a)(3):
--prohibits states from increasing the parent share of cost during the 12-month eligibility period, regardless of increases in the family income; and
--requires that states act upon information provided by the parent that would result in a reduction in the parent share of cost.

NPRM §98.21(b)(2) allows increases in the parent share of cost for instances in which the family has exceeded a state's initial eligibility income threshold, but still remains under the federal 85 percent of SMI.

Finally, NPRM §98.45(k)(2) requires that the parent share of cost be based on income and the size of the family and may be based on other factors as appropriate, but may not be based on the cost of care or amount of the subsidy payment.

Graduated Phaseout of Eligibility

CCDBG Act §658E(c)(2)(N)(iv) requires Lead Agencies to have a "Graduated Phaseout of Eligibility" that includes policies and procedures to continue child care assistance at the time of redetermination for children of parents who are working or attending a job training or educational program and whose income has risen above the Lead Agency's initial income eligibility threshold to qualify for assistance but remains at or below 85 percent of SMI.

Income Calculation to Consider Irregular Income Fluctuations

CCDBG Act §658E(c)(2)(N)(i)(II) requires that states take into consideration irregular fluctuations of earnings when calculating income for eligibility. NPRM §98.21(c) further clarifies this requirement by adding that the calculation of income policies ensures that temporary increases in income, "including temporary increases that result in monthly income exceeding 85 percent of SMI (calculated on a monthly basis), do not affect eligibility or family co-payments."

Priority and Eligibility for Children Experiencing Homelessness

CCDBG Act §650E(3)(B)(i) and NPRM §98.46(a)(3) and §98.51 require states to give priority for services to children experiencing homelessness. NPRM §98.2 defines a "child experiencing homelessness" as a child meeting the definition of homelessness under the McKinney-Vento Homelessness Act of 1987 (McKinney-Vento Act).

The NPRM preamble clarifies that Lead Agencies have flexibility in how they offer priority to these populations, including by prioritizing enrollment, waiving copayments, paying higher rates for access to higher-quality care, or using grants or contracts to reserve slots for priority populations.

Additionally, the CCDBG Act and the NPRM require that state procedures permit enrollment (after an initial eligibility determination) of children experiencing homelessness while required documentation is obtained.

Attendance and Provider Reimbursements

CCDBG Act §658E(c)(2)(S) and NPRM §98.45(m) require implementation of provider payment practices that:

- align with generally accepted payment practices for children who do not receive CCDF funds; and
- support the fixed costs of providing child care services by delinking provider payments from a child's occasional absences.

Consumer Education Information

CCDBG Act §658E(c)(2)(E) and NPRM §98.33 require that states collect and disseminate,

through a consumer-friendly and easily accessible website, consumer education information to parents of eligible children, the general public, and, where applicable, providers regarding:

- availability of the full diversity of child care services;
- quality of providers;
- state processes for licensing, conducting background checks, and monitoring child care providers;
- other programs for which families that receive child care services may be eligible;
- research and best practices concerning children's development; and
- state policies regarding social-emotional behavioral health of children.

Additionally, NPRM §98.33(d) requires that parent consumer education information also include:

- licensing compliance information for the provider selected by the parent;
- how to submit a complaint regarding a child care provider;
- how to contact community resources that assist parents in locating quality child care; and
- how CCDF subsidies are designed to promote equal access to the full range of child care providers.

CCDBG Act §658E(c)(2)(E) also requires that Lead Agencies provide eligible parents with information on existing resources and other services in the state that conduct developmental screening and provide referrals and services, when appropriate, for children eligible for subsidized child care, including:

- the Medicaid Early and Periodic Screening, Diagnosis, and Treatment program; and
- the Early Childhood Intervention (ECI) and Preschool Program for Children with Disabilities developmental screening services.

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

The Commission proposes the following amendments to Subchapter A:

§809.2. Definitions

Attending a Job Training or Educational Program

Consistent with CCDBG Act §658E(c)(2)(N)(i)-(ii), the definition of "attending a job training or educational program" is amended to clarify that the requirement in the definition that the individual be making progress toward successful completion of the program as determined by the Board, is only applied at the parent's 12-month redetermination.

Consistent with the CCDBG Act, care cannot be discontinued during the 12-month eligibility period for failure to make progress toward completion of an education or training program. However, the NPRM allows additional eligibility requirements at the 12-month redetermination period. Boards must ensure that the parent is making progress toward completion of the program, as determined by the Board, when redetermining eligibility for continued care, but are prohibited from making this a condition of eligibility at the parent's initial eligibility determination. When developing policies and procedures for determining if the parent is making progress toward completion of the program, the Commission cautions against relying solely on

the parent's grade point average (GPA), particularly one semester's GPA. If a Board uses the GPA, the Commission encourages Boards to establish a minimum threshold that would demonstrate if a parent has consistently failed to complete coursework during the eligibility period.

The requirement in the definition that the individual must be considered by the program to be officially enrolled in and meeting the attendance requirements of the program is retained without change because enrollment and attendance in the program should be maintained throughout the 12-month eligibility period. Discontinuing care due to a nontemporary cessation of attendance in a training or education activity during the 12-month eligibility period is addressed in §809.51(b).

As described in amended §809.73, parents are required to report items that impact a family's eligibility during the 12-month eligibility period. Boards may develop procedures for confirming continued enrollment and attendance during the 12-month eligibility period, including requesting that education institutions and training providers confirm enrollment at each semester and the resumption of training classes in order to determine that the parent has not had a nontemporary cessation of education or training activities.

The Commission notes that the requirements in §809.41 requiring Board policies for child care during education, including time limits or eligibility based on the type of education pursued by the parent, are not changed by these amendments.

A Child Experiencing Homelessness

Consistent with NPRM §98.2, §809.2 is amended to add the definition for a "child experiencing homelessness" as a child meeting the definition of homeless pursuant to the McKinney-Vento Act.

Child with Disabilities

The definition of a "child with disabilities" is amended to align with the definition under §504 of the Rehabilitation Act of 1973.

Improper Payments

The definition of "improper payments" is amended to align with the current definition of an improper payment in CCDF regulation §98.100(d). The amended §809.2(11) defines an improper payment as:

Any payment of 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:

- to an ineligible recipient;
- for an ineligible service;
- for any duplicate payment; and
- for services not received.

Regulated Child Care Provider

The definition of a "regulated child care provider" is amended to remove providers licensed by the Texas Department of State Health Services (DSHS) as a youth day camp as eligible providers

of subsidized child care services.

CCDBG Act §658H and NPRM §98.43 require that states have in effect "requirements, policies, and procedures to require and conduct criminal background checks for child care staff members of all licensed, regulated, or registered child care providers and all providers eligible to deliver services." These requirements include a Federal Bureau of Investigation (FBI) fingerprint check. Relative providers are exempt from this requirement, which must otherwise be implemented no later than September 30, 2017.

DSHS youth day camps are currently exempt from DFPS child care licensing and monitoring requirements. DSHS conducts background checks of staff in compliance with state law for youth camps, but unlike the CCDBG Act and the NPRM, state law does not require an FBI fingerprint criminal background check for youth day camp staff. Nonetheless, certain youth day camps may be eligible for DFPS to license as child care centers. Therefore, to allow sufficient time for day camps that serve subsidized children to choose to work with DFPS to become licensed, the Commission will not implement this provision until September 30, 2017.

Working

The definition of "working" is amended to remove job search activities from the definition. Child care during periods of cessation of work, job training, or education is addressed in §809.51.

SUBCHAPTER B. GENERAL MANAGEMENT

The Commission proposes the following amendments to Subchapter B:

§809.13. Board Policies for Child Care Services

Section 809.13 is amended to remove the requirement in subsection (c) for Boards to submit policy modifications, amendments, or new policies to the Commission within two weeks of adopting the policy. This section retains the requirement that Boards submit Board policies to the Commission upon request. The additional requirement to submit changes to policies within a specific time frame is redundant. The Commission makes this change to reduce administrative burden on both Board and Agency staff. Section §809.13 is amended to remove multiple Board policy requirements that no longer apply under the CCDBG Act.

Consistent with the CCDBG Act 12-month eligibility period requirement, §809.13 is amended to remove the requirement for Boards to have a policy on frequency of eligibility determinations, as the frequency is now established under federal law.

Section 809.13 is amended to remove the option for Boards to have a policy to include provider eligibility for nonrelative listed family homes. CCDBG Act §658E(c)(2)(K) requires annual unannounced inspections of all CCDF-subsidized providers for compliance with health, safety, and fire standards. Relative providers are exempt from this requirement. By state statute, listed family homes are not inspected by DFPS child care licensing (unless there is a report of abuse or neglect at the facility). Therefore, under the CCDBG Act, nonrelative listed family homes are not eligible to provide CCDF-subsidized services.

Section 809.13 is amended to remove the requirement that Boards establish policies for attendance standards in order to be consistent with CCDBG Act §658E(c)(2)(S), which requires

that provider reimbursement policies support the fixed costs of providing child care services by delinking provider payments from a child's occasional absences. Attendance standards are established in amended §809.78, and reimbursement policies based on enrollments are established in §809.93.

Section 809.13 is amended to remove the requirement that Boards have procedures for imposing sanctions when a parent fails to comply with the provisions of the parent responsibility agreement (PRA). As explained in the changes to Subchapter D, the PRA is no longer a requirement.

Section 809.13 is amended to remove the requirement that Boards have a policy regarding the mandatory waiting period for reapplying or being placed on the waiting list. As explained in the changes to Subchapter C, the mandatory waiting period is no longer required.

§809.15. Promoting Consumer Education

Section 809.15(b) is amended to clarify that consumer education information includes consumer education information provided on the Board's website.

Section 809.15(b)(4) is amended to remove the requirement that Boards include in consumer education information for parents a description of the school readiness certification system, as the program has been discontinued.

Information on Resources for Developmental Screening

CCDBG Act §658E(c)(2)(E)(ii) requires that states provide eligible parents with information on existing resources and other services in the state that conduct developmental screening and provide referrals to services, when appropriate, for children eligible for subsidized child care regarding:

- the Medicaid Early and Periodic Screening, Diagnosis, and Treatment program; and
- Early Childhood Intervention (ECI) and Preschool Program for Children with Disabilities developmental screening services.

Information on developmental screenings must also include a description of how a family or eligible child care provider can use available resources and services to obtain developmental screenings for children receiving assistance who may be at risk for cognitive or other developmental delays, which may include social, emotional, physical, or linguistic delays.

NPRM §98.33(c) clarifies that the developmental screening information should be made available to parents as part of the intake process and to providers through training and education.

Consistent with CCDBG Act §658E(c)(2)(E)(ii) and NPRM §98.33(c), §809.15(b) is amended to add the requirement, pursuant to CCDBG Act §658E(c)(2)(E)(ii), that Boards include:

--information on resources and services available in the local workforce development area for conducting developmental screenings and providing referrals to services when appropriate for children eligible for child care services, including the use of:

- the Early and Periodic Screening, Diagnosis, and Treatment program under 42 U.S.C. 1396 et seq.; and
- developmental screening services available under Part B and Part C of the Individuals with Disabilities Education Act (20 U.S.C. 1419, 1431 et seq.); and

--a link to the Agency's designated child care consumer education website.

The Commission clarifies that Boards are not required to make referrals or to ensure that developmental screenings are conducted. The only requirement is that Boards provide information to parents regarding available local resources and developmental screenings.

Additional information and guidance regarding the manner in which information on developmental screenings is made available will be provided by the Agency through updates to the Child Care Services Guide. Additionally, the Agency is working with statewide training partners regarding making training and education on developmental screenings available to providers.

The Commission also notes that this provision does not affect the rules, policies, and procedures currently in place regarding approval of the inclusion rate pursuant to §809.20(e).

Consumer Education

CCDBG Act §658E(c)(2)(E) and NPRM §98.33 require that states collect and disseminate consumer education information to parents of eligible children, the general public, and, where applicable, providers regarding:

- availability of the full diversity of child care services;
- quality of providers;
- state processes for licensing, conducting background checks, and monitoring child care providers;
- other programs for which families that receive child care services may be eligible;
- research and best practices concerning children's development; and
- state policies regarding social-emotional behavioral health of children.

Additional information and guidance regarding the manner in which consumer education information is made available will be provided by the Agency through updates to the Child Care Services Guide, including guidance on:

- providing licensing compliance information;
- making consumer education information available in printed form; and
- ensuring consumer education information is accessible to both individuals with disabilities and individuals with limited English proficiency.

Additionally, NPRM §98.33(d) requires that parent consumer education information also include:

- licensing compliance information of the provider selected by the parent;
- how to submit a complaint regarding a child care provider;
- how to contact community resources that assist parents in locating quality child care; and
- how CCDF subsidies are designed to promote equal access to the full range of child care providers.

All consumer education required by the final CCDF regulations is available on the Texas Child Care Solutions website at www.texaschildcaresolutions.org.

Section 809.15 is amended to require that Boards provide a link to the Commission's designated child care consumer education website as part of the consumer education information provided

to parents.

§809.16. Quality Improvement Activities

Section 809.16 is amended to remove outdated CCDF regulatory citations. The current CCDF regulations are being amended by the U.S. Department of Health and Human Services and the NPRM language has changed citations for quality improvement activities and the use of CCDF for construction. Further, the list of allowable quality activities in the CCDF regulations has been expanded to include quality activities listed in the CCDBG Act. Section 809.16 removes the specific citations list of quality activities, and replaces it with the general reference for CCDF in 45 C.F.R., Part 98.

§809.17. Leveraging Local Resources

Section 809.17 is amended with language moved, without changes, from Subchapter C §809.42(c) related to public entities certifying expenditures for direct child care, as the language is more relevant to the local match process described in §809.17 than to eligibility for child care services described in §809.42(c).

§809.19. Assessing the Parent Share of Cost

Parent Share of Cost Incentives to Consider Selection of a TRS-Certified Provider

NPRM §98.30(h) includes provisions designed to provide parents with incentives that encourage the selection of high-quality child care without violating parental choice provisions. The NPRM provides states with flexibility in determining what types of incentives to use to encourage parents to choose high-quality providers, including the option to lower the parent share of cost for parents who choose a high-quality provider.

Consistent with NPRM §98.30(h) and to encourage parents to select a TRS-certified provider as well as encourage greater provider participation in the TRS program, the Commission amends §809.19(a)(1) to allow Boards to consider the parent selection of a TRS-certified provider in the parent share of cost assessment.

Parent Share of Cost during the 12-Month Eligibility Period

To support continued care throughout the 12-month eligibility period, NPRM §98.21(a)(3):
--prohibits states from increasing the parent share of cost during the 12-month eligibility period, regardless of increases in the family income; and
--requires that states act upon information provided by the parent that would result in a reduction in the parent share of cost.

Consistent with the NPRM, §809.19(a) is amended to add the requirement that the parent share of cost is assessed only at the following times:

- Initial eligibility determination;
- 12-month eligibility redetermination;
- The addition of a child in care that would result in an additional amount of parent share of cost; and
- Parent's report of change in income, family size, or number of children in care that would result in a reduced parent share of cost assessment.

Basing the Parent Share of Cost on the Cost of Care or Subsidy Amount

NPRM §98.45(k)(2) requires that the parent share of cost be based on income and the size of the family and may be based on other factors as appropriate, but may not be based on the cost of care or amount of the subsidy payment.

Section 809.19 is amended to remove the provision that the assessed parent share of cost must not exceed the Board's maximum reimbursement rate or the provider's published rate, whichever is lower. This provision is contrary to the requirement in the NPRM that the assessed parent share of cost must not be based on the cost of care or the amount of the subsidy payment.

The parent share of cost must only be based on the following factors:

- the family's size and income, and
- may also consider the number of children in care and parent selection of a TRS-certified provider as described in §809.19(a)(1)(B).

The Commission retains the rule language in §809.19(d) that allows Boards to review the assessed parent share of cost for possible reduction if there are extenuating circumstances that jeopardize a family's self-sufficiency. However, this reduction shall not be based on the Board's maximum reimbursement rate or the provider's published rate.

The Commission notes that the current rules at §809.19(d) allow Boards to review the assessed parent share of cost for possible reductions if there are extenuating circumstances that jeopardize a family's self-sufficiency. Extenuating circumstances include unexpected temporary costs such as medical expenses and work-related expenses that are not reimbursed by the employer. The Commission is aware that some Boards may allow a limited number of these reductions during the eligibility period. Such policies are still allowed, but Boards must ensure that the parent share of cost is reduced any time the parent reports a change in income, family size, or number of children in care that would result in a reduced parent share of cost.

The Commission further notes that amended §809.73 requires that parents report such changes within 14 calendar days of the change. Changes in the parent share of cost should be made at the beginning of the month following the reported change. If the parent does not report the change within that time period, the Board is not required to make the change retroactive from the actual date of the reduction.

The Commission is also aware that some Boards reduce the parent share of cost for a limited period of time during the initial eligibility period in order to assist the parent, particularly newly employed parents, with the parent share of cost. This remains an allowable practice under §809.19(d) regarding a reduction of the assessed parent share of cost. After this initial reduction, the parent share of cost may be regularly assessed based on the family size and income and number of children in care, as required by §809.19(a)(1)(B).

Exemptions for Parents of Children Experiencing Homelessness

CCDBG Act §650E(3)(B)(i) and NPRM §98.46(a)(3) and §98.51 require that states give priority for services to children experiencing homelessness. The NPRM preamble clarifies that Lead Agencies have flexibility as to how they offer priority to these populations, including by prioritizing enrollment, waiving copayments, paying higher rates for access to higher-quality care, or using grants or contracts to reserve slots for priority populations.

Section 809.19(a)(2) is amended to require that parents of a child experiencing homelessness be exempt from the parent share of cost.

The Commission emphasizes that pursuant to §809.19(e), the Board or its child care contractor shall not waive the assessed parent share of cost unless the parent is covered by an exemption specified in §809.19(a)(2).

§809.20. Maximum Provider Reimbursement Rates

Section 809.20(b) is amended to remove the requirement that Boards establish enhanced reimbursement rates for preschool-age children at providers that obtain school readiness certification, as the school readiness certification system has been discontinued.

Section 809.20(c) is amended to remove the September 1, 2015, effective date for the TRS tiered reimbursement rates as these requirements are currently in effect.

Section 809.20(d) is amended to clarify in rule language the current requirement and practice that there must be a 2 percentage point difference between the TRS star levels.

SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES

The Commission proposes the following amendments to Subchapter C:

§809.41. A Child's General Eligibility for Child Care Services

CCDBG Act §658E(c)(2)(N)(i) requires that each child who receives CCDF assistance be considered to meet all eligibility requirements and receive assistance for not less than 12 months before eligibility redetermination. NPRM §98.20 clarifies that general eligibility requirements are applicable "at the time of eligibility determination or redetermination."

Consistent with CCDBG Act §658E(c)(2)(N)(i) and NPRM §98.20, §809.41 is amended to add language clarifying that a child's general eligibility requirements--i.e., child's age, citizenship status, and residency, and the family's income, work status, and attendance in a job training or educational activity--are applied at the time of eligibility determination or redetermination. Changes to the child's age or residency, the family's income, participation in work, job training, or education activities that occur during the 12-month eligibility period and affect the child's continued care and eligibility are covered in §809.42.

The CCDBG Act revised the definition of eligibility at §658P(4)(B) so that, in addition to being at or below 85 percent of SMI for a family of the same size, the "family assets do not exceed \$1,000,000 (as certified by a member of such family)." This requirement is included in NPRM §98.20(a)(2)(ii).

Section 809.41(a)(3)(A) is amended to include this requirement and clarify that a family member must certify that the family assets do not exceed the \$1,000,000 threshold. This certification will be based on the parent's self-attestation and will be included in the application for services. Boards are not required to verify this certification; however, if it is discovered that the family may exceed the \$1,000,000 asset threshold, the parent may be subject to fraud fact-finding procedures, as described in Subchapter F. Additional guidance will be provided in the Child Care Services Guide.

As mentioned previously, CCDBG Act §650E(3)(B)(i) and NPRM §98.46(a)(3) and §98.51 require states to give priority for services to children experiencing homelessness. The NPRM preamble clarifies that Lead Agencies have flexibility as to how they offer priority to these populations.

Consistent with this requirement, §809.41(a)(2)(A) is amended to include language that families meeting the definition of experiencing homelessness in §809.2 are considered as having income that does not exceed 85 percent of the state median income. Therefore, Boards are not required to conduct income eligibility determinations for families with a child experiencing homelessness.

Section 809.41 is amended to remove subsection (d) related to job search limitations. Continued child care for job search is described in §809.51.

CCDBG Act §658E(c)(2)(N)(iv) requires Lead Agencies to have a "Graduated Phaseout of Eligibility" that includes policies and procedures to continue child care assistance at the time of redetermination for children of parents who are working or attending a job training or educational program and whose income has risen above the Lead Agency's initial income eligibility threshold to qualify for assistance but remains at or below 85 percent of SMI.

NPRM §98.21(b) provides two options for states to use for the CCDBG Act's graduated phaseout requirement. The phaseout can be accomplished either by:

- establishing a second tier of eligibility at 85 percent of SMI if the parents, at the time of redetermination, are working or attending a job training or educational program, even if their income exceeds the initial income limit; or
- using the approach specified above, but only for a limited period of not less than an additional 12 months.

Section 809.41 is amended to add language requiring that Boards that establish initial family income eligibility at a level less than 85 percent of the SMI must ensure that the family remains income-eligible for care after passing the Board's initial income eligibility limit. As a result, for Boards with an initial eligibility limit lower than 85 percent of the SMI, the family's income eligibility for continued care will be 85 percent of the SMI at the following times:

- at the 12-month redetermination;
- once a parent resumes activities during the three-month period described in §809.51; and
- any time a parent reports a change in income that may exceed 85 percent of the SMI.

This language is consistent with NPRM §98.21(b)(1)(i), which provides the option to require that the family remain income-eligible for care after passing the initial income eligibility limit, including at the family's scheduled 12-month eligibility redetermination, as long as the family income does not exceed 85 percent of SMI.

In determining if the family exceeds 85 percent of the SMI, the Board will use income calculation methodology and guidance that take into consideration fluctuations of income pursuant to §809.44(a).

The Commission notes that Boards are not required to establish initial family income eligibility at a level less than 85 percent of the SMI. The graduated phaseout requirements only apply to

Boards that have established income eligibility thresholds pursuant to §809.41(a) that are less than 85 percent of the SMI.

§809.42. Eligibility Verification, Determination, and Redetermination

Section 809.42 is amended to include rule provisions related to eligibility verification, determination, and redetermination consistent with the CCDBG Act.

Section 809.42(a) is amended to emphasize that a Board shall ensure that all eligibility requirements for child care are verified prior to authorizing care. Due to the requirement in CCDBG Act §658E(c)(2)(N)(i) that each child who receives CCDF assistance will be considered to meet all eligibility requirements and will receive assistance for not less than 12 months before the eligibility is redetermined, it is critical that eligibility is properly and accurately verified prior to authorizing care.

Consistent with CCDBG Act §658E(c)(2)(N)(i) and NPRM §98.21, amended §809.42(b) requires that Boards ensure that eligibility for child care services shall be redetermined no sooner than 12 months following the initial determination or most recent redetermination.

§809.43. Priority for Child Care Services

Consistent with CCDBG Act §650E(3)(B)(i) and NPRM §§98.46(a)(3) and 98.51, which require states to give priority for services to children experiencing homelessness, the Commission amends §809.43 to add children experiencing homelessness as a second priority group served, subject to the availability of funds. This priority group will follow the three priority groups in state statute--children in protective services, children of a qualified veteran or spouse, and children of foster youth.

§809.44. Calculating Family Income

CCDBG Act §658E(c)(2)(N)(i)(II) and NPRM §98.21(c) require that states take into consideration irregular fluctuations of earnings when calculating income for eligibility. The NPRM further clarifies this requirement by adding that the calculation of income policies ensures that temporary increases in income, "including temporary increases that result in monthly income exceeding 85 percent of SMI (calculated on a monthly basis), do not affect eligibility or family co-payments."

Section 809.44(a) is amended to reflect these new requirements. The rule language requires that Boards ensure family income is calculated in accordance with Commission guidelines. Consistent with the CCDBG Act, rule language also requires that Commission guidelines: --take into account irregular fluctuations in earnings; and --ensure that temporary increases in income, including temporary increases that result in monthly income exceeding 85 percent SMI, do not affect eligibility or parent share of cost.

A standard and uniform methodology applied consistently across all 28 local workforce development areas (workforce areas) is important to ensure that the state is meeting the requirements of the CCDBG Act regarding fluctuations of income. This is also important, as child care is also required to continue if a parent moves to another workforce area.

The Commission will be developing guidelines based on the current methodology and income sources used by the Workforce Innovation and Opportunity Act of 2014 (WIOA) adult program.

WIOA annualizes family income using the most recent six months of income sources. By taking into consideration six months of income, this methodology meets the requirement to take into account irregular fluctuations in earnings and will ensure that temporary increases in monthly income do not affect eligibility or parent share of cost. Additionally, aligning the child care income calculation sources and methodology with sources and methodology used by WIOA will provide consistency among the Commission's two major programs in which income is calculated for eligibility purposes.

The guidelines will identify any differences between the two programs that are specific to the relevant program, while retaining the overall goal of aligning the income calculation methodology as closely as possible, given any federal guidance specific to the programs. The guidance will include, but not be limited to, the following:

- Income documentation requirements at initial eligibility that may differ from requirements at redetermination;
- Documentation requirements for gaps in income;
- Calculation of bonuses received during the 12-month eligibility period;
- The methodology and documentation used to determine family income for changes reported during the 12-month eligibility period; and
- The methodology and documentation used to determine family income for parents who resume work, training, or education during the three-month period of nontemporary cessation of activities.

Section 809.44(b) is amended to provide an updated itemized list of income sources that are specifically excluded from determining family income. This list includes income sources that are specifically excluded by various federal laws or regulations in determining eligibility for public assistance programs including CCDF, as well as income sources that are excluded by the WIOA adult program.

The specific exclusions are:

- Medicare, Medicaid, Supplemental Nutrition Assistance Program (SNAP) benefits, school meals, and housing assistance;
- Monthly monetary allowances provided to or for children of Vietnam veterans born with certain birth defects;
- Needs-based educational scholarships, grants, and loans, including financial assistance under Title IV of the Higher Education Act--Pell Grants, Federal Supplemental Educational Opportunity grants, Federal Work Study Program, PLUS, Stafford loans, and Perkins loans;
- Individual Development Account (IDA) withdrawals for the purchase of a home, medical expenses, or educational expenses;
- Onetime cash payments, including tax refunds, Earned Income Tax Credit (EITC) and Advanced EITC, onetime insurance payments, gifts, and lump sum inheritances;
- VISTA and AmeriCorps living allowances and stipends;
- Noncash or in-kind benefits such as employer-paid fringe benefits, food, or housing received in lieu of wages;
- Foster care payments and adoption assistance;
- Special military pay or allowances, including subsistence allowances, housing allowances, family separation allowances, or special allowances for duty subject to hostile fire or imminent danger;
- Income from a child in the household between 14 and 19 years of age who is attending school;

- Early withdrawals from qualified retirement accounts specified as hardship withdrawals as classified by the Internal Revenue Service (IRS);
- Unemployment compensation;
- Child support payments;
- Cash assistance payments, including Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), Refugee Cash Assistance, general assistance, emergency assistance, and general relief;
- Onetime income received in lieu of TANF cash assistance;
- Income earned by a veteran while on active military duty and certain other veterans' benefits, such as compensation for service-connected death, vocational rehabilitation, and education assistance;
- Regular payments from Social Security, such as Old-Age and Survivors Insurance Trust Fund;
- Lump sum payments received as assets in the sale of a house, in which the assets are to be reinvested in the purchases of a new home (consistent with IRS guidance);
- Payments received as the result of an automobile accident insurance settlement that are being applied to the repair or replacement of an automobile; and
- Any income sources specifically excluded by federal law or regulation.

The Commission understands that the new income calculation methodology and income exemptions may equate to lower parent share of cost assessments, thereby increasing the cost of care and reducing the number of children the Board may be able to serve. The Agency will continue to analyze Board costs, including parent share of cost, as part of the Agency's performance target methodology.

New §809.44(c) states that income that is not listed in §809.44(b) as excluded from income is included as income.

§809.45. Choices Child Care

Section 809.45(b) is amended to clarify that for a parent receiving Choices Child Care who ceases participation in the Choices program during the 12-month eligibility period, Boards must ensure that:

- child care continues for the three-month period pursuant to §809.51; and
- the provisions of §809.51 shall apply if the parent resumes participation in Choices or begins participation in work or attendance in a job training or education program during the three-month period.

§809.46. Temporary Assistance for Needy Families Applicant Child Care

Section 809.46 is amended to remove provisions that:

- duplicate the 12-month eligibility period specified in §809.42; or
- would end care prior to the end of the 12-month eligibility period.

§809.47. Supplemental Nutrition Assistance Program Employment and Training Child Care

Section 809.47 is amended to remove language stating that SNAP Employment and Training (SNAP E&T) care continues as long as the case remains open.

Section 809.47(b) is added to clarify that for a parent receiving SNAP E&T Child Care who ceases participation in the E&T program during the 12-month eligibility period, Boards must

ensure that:

- child care continues for the three-month period pursuant to §809.51; and
- the provisions of §809.51 shall apply if the parent resumes participation in the E&T program or begins participation in work or attendance in a job training or education program during the three-month period.

§809.48. Transitional Child Care

Section 809.48 is amended to remove provisions that would end care prior to the end of the 12-month eligibility period.

§809.49. Child Care for Children Receiving or Needing Protective Services

Section 809.49 is amended to clarify that child care discontinued by DFPS prior to the end of the 12-month eligibility period shall be subject to the Continuity of Care provisions in §809.54.

Section 809.49 is also amended to clarify that the requirements of §809.91(f)(1) do not apply to foster parents whose care is authorized by DFPS. The language clarifies that requests made by DFPS for specific eligible providers are enforced for children in protective services, including children of foster parents when the foster parent is the owner, director, assistant director, or other individual with an ownership interest in the provider.

A technical change to §809.49(a)(2) is made to clarify that DFPS may authorize care for a child under the age of 19.

§809.50. At-Risk Child Care

Section 809.50 is amended to clarify that eligibility requirements for At-Risk child care are applied at initial determination and at the 12-month eligibility redetermination, pursuant to §809.41 and §809.42.

§809.51. Child Care during Interruptions in Work, Education, or Job Training

Section 809.51 is amended to include CCDBG Act and NPRM requirements regarding the provision of child care during interruptions in work, education, or job training. The section contains the rules related to both temporary interruptions and permanent cessation of activities during the 12-month eligibility period.

Section 809.51(a) is amended to include the CCDBG Act requirement that if a child met all of the applicable eligibility requirements for any child care service in Subchapter C on the date of the most recent eligibility determination or redetermination, the child shall be considered to be eligible and will receive services during the 12-month eligibility period, regardless of any:

- change in family income, if that family income does not exceed 85 percent of SMI for a family of the same size; or
- temporary change in the ongoing status of the child's parent as working or attending a job training or education program.

Consistent with language in the NPRM, a temporary change shall include, at a minimum, any:

- time-limited absence from work for an employed parent for periods of family leave (including parental leave) or sick leave;
- interruption in work for a seasonal worker who is not working between regular industry work seasons;

- student holiday or break for a parent participating in training or education;
- reduction in work, training or education hours, as long as the parent is still working or attending a training, or education program;
- other cessation of work or attendance in a training or education program that does not exceed three months;
- change in age, including turning 13 years old during the eligibility period; and
- change in residency within the state.

Section 809.51(b) is amended to require that during the period of time between eligibility redeterminations, a Board shall discontinue child care services due to a parent's loss of work or cessation of attendance at a job training or educational program that does not constitute a temporary change in accordance with paragraph (b)(2) of this section. However, Boards must ensure that care continues at the same level for a period of not less than three months after such loss of work or cessation of attendance at a job training or educational program.

Section 809.42(c) is amended to state that if a parent resumes work or attendance at a job training or education program at any level and at any time during the three months, Boards shall ensure that:

- care will continue to the end of the 12-month eligibility period at the same or greater level, depending upon any increase in the activity hours of the parent; and
- the parent share of cost will not be increased during the remainder of the 12-month eligibility period, including for parents who are exempt from the parent share of cost pursuant to §809.19.

This is consistent with NPRM §98.21(a)(3), which prohibits states from increasing the parent share of cost during the 12-month eligibility period, regardless of increases in the family income.

The rule language also clarifies that the Board child care contractor shall verify only:

- that the family income does not exceed 85 percent SMI; and
- the resumption of work or attendance at a job training or education program.

School Holidays and Breaks

The Commission clarifies that student holidays such as spring break and breaks between semesters that are less than three months are considered temporary changes, and eligibility shall continue during those breaks. Breaks between semesters that last longer than three months are considered nontemporary, and care ends if the parent does not resume attendance at an education or job training program, or does not participate in work within three months of the end of the semester.

Reductions in Work, Training, or Education for Dual-Parent Families

The Commission clarifies that in a dual-parent family, if both parents have a nontemporary loss of job (or end of training/education activities), then the family would be subject to the three-month job search period prior to termination. However, if one parent experiences a nontemporary change, then this would be considered a reduction in the dual-parent 50-hour participation requirements. Under the CCDBG Act, a reduction in work is not considered a permanent loss of job and is not subject to discontinuation of the child's care. Care would continue through the 12-month period without requiring care to end if one parent does not resume activities within three months. The child is still residing with at least one parent who is working and is still eligible under the CCDBG Act.

Continued Care for Children over the Age of 13

The Commission notes that the DFPS Child Care Licensing allows children under the age of 14 (and under the age of 19 for children with disabilities) to receive care at a regulated facility. However, the Commission is aware that some child care facilities do not serve children over the age of 13. In such a case, the Board must ensure that eligibility continues at a different provider selected by the parent until the end of the child's eligibility period, unless the parent voluntarily withdraws from child care services.

Continued Care for Children and Families Relocating to Another Workforce Area

Under the CCDBG Act, a change in the child's residence is not grounds for ending care in the state, regardless of the enrollment status of the workforce area to which the parent moved. The Commission understands that a Board at full enrollment would be required to enroll and fund children even if the Board enrollment of new children is closed at the time. The movement of children both into and out of workforce areas is anticipated to be balanced throughout the year. However, the Agency will track this movement and the fiscal impact on Boards to determine if funding amounts should be adjusted accordingly.

Additional policies, procedures, and documenting requirements regarding continuation of care for children and families who relocate to another workforce area will be provided as updates to the Child Care Services Guide.

The Commission clarifies that the Board that determined eligibility at the beginning of the 12-month period is responsible for any subsequent finding of improper eligibility determinations. However, the Board in the workforce area in which the family relocates is responsible for verifying that the move did not result in a nontemporary loss of work, training, or education, and the family is not over 85 percent of the SMI.

The Commission clarifies that if the move to a different workforce area does not result in a change of provider (i.e., the child remains at the originating workforce area provider), then care would continue at that provider under the originating Board's agreement, rates, and funding through the remainder of the authorization for care and the end of the 12-month eligibility period. However, if the move to a different workforce area results in or is accompanied by a change in provider, then the receiving Board will establish and fund the authorization.

The Commission also clarifies that if a parent is participating in the three-month period of continued care and relocates to a different workforce area without resuming activities, then the parent would not receive a new three-month period, but is entitled to continue the three-month period that began in the previous workforce area.

Other Cessation of Work, Training, or Education Activities

The Commission recognizes that there are situations, such as parent incarcerations or other circumstances, that may not be clearly defined in the rules. The Commission will work with Boards to provide guidance on these situations. As a general rule, if the separation from activities is of a length that would allow the parent to continue participation within three months, then care would continue through the remainder of the 12-month eligibility period. If, however, the separation is expected to last over three months, then care would be discontinued three months after the cessation of work, training, or education.

Number of Three-Month Periods in a 12-Month Eligibility Period

The CCDBG Act requires that care continue for at least 12 months following the initial eligibility determination. Neither the CCDBG Act nor the NPRM allows states to put limits on the number of three-month periods of continued care that a parent may have during the 12-month eligibility period. Parents will be allowed a three-month period of continued care for each nontemporary cessation of activities within the 12-month eligibility period.

Parent Share of Cost during the Three-Month Period of Continued Care

As required in §809.19(a)(1)(c), the parent share of cost is reassessed if a parent reports a change in income that would result in a reduced parent share of cost. Accordingly, the parent share of cost should be reassessed during the three-month period due to the resulting reduction of family income. As mentioned in the discussion on calculating family income in §809.44, the Commission will provide guidance on the methodology used to calculate income during this period in order to take into consideration fluctuation in income. During this period, Boards may also reduce the parent share of cost based on the Board policies for reductions due to extenuating circumstances pursuant to §809.19(d).

Increases in the Level of Care following the Three-Month Period of Continued Care

Section 809.51(c) requires care to continue to the end of the 12-month eligibility period at the same or greater level, depending on any increase in the activity hours of the parent. The Commission expects that the parent should provide documentation to verify that such an increase is warranted.

Implementation of the 12-Month Eligibility Period

The Commission clarifies that eligibility determinations under the new rules will go into effect at the family's first scheduled redetermination (under the Board's previous determination period) following October 1, 2016.

§809.52. Child Care for Children Experiencing Homelessness

New §809.52 is added to include initial eligibility for children experiencing homelessness. CCDBG Act §658E(c)(3) requires that state procedures permit enrollment (after an initial eligibility determination) of children experiencing homelessness while required documentation is obtained.

Consistent with this requirement, §809.52(a) requires that for a child experiencing homelessness, a Board shall ensure that the child is initially enrolled for a period not to exceed three months.

Section 809.52(b)(1) states that if, during the three-month enrollment period, the parent of a child experiencing homelessness is unable to provide documentation verifying that the child meets the age and citizenship status requirements under §809.41(a)(1) - (2), then care shall be discontinued following the three-month enrollment period. Consistent with NPRM §98.51, payments of child care services for this three-month period are not considered improper payments.

Section 809.52(b)(2) states that if, during the three-month enrollment period, a parent provides documentation verifying eligibility under §809.41(a) (regarding the child's age and citizenship status, and the parent's participation in work, job training, or education activities) then care shall

continue through the end of the 12-month initial eligibility period (inclusive of the three-month initial enrollment period).

For parents of children experiencing homelessness, parent self-attestation of the eligibility requirements under §809.41(a)(1) - (2) will be allowed for the first three months for all eligibility requirements, as long as the family meets the definition of homelessness. This can be verified through another entity such as a school district or housing authority, or by the Board contractor.

The Agency will work with Boards to provide guidance on determining initial and continuing eligibility for homeless families.

The Commission clarifies that parents of children experiencing homelessness must have appeal rights pursuant to §809.74.

§809.53. Child Care for Children Served by Special Projects

Section 809.53 is amended to clarify that the provisions related to child care for children serviced by special projects are only for special projects funded through non-CCDF sources.

§809.54. Continuity of Care

Section 809.54 is amended to clarify that for enrolled children, including children whose eligibility for Transitional child care has expired, care continues through the end of the applicable eligibility periods described in §809.42.

Rule language also clarifies that enrolled children of military parents in military deployment remain eligible for continued care, including parents in military deployment at the end of the 12-month eligibility redetermination period.

Section 809.54 also removes the temporary placement of a child if space is available due to another child's absence due to custody arrangements, as temporary placements are contrary to the CCDBG Act's 12-month eligibility requirements.

§809.55. Mandatory Waiting Period for Reapplication

Section 809.55, regarding a mandatory waiting period for reapplication if care is terminated for certain reasons, is repealed because the listed termination reasons for ending care are no longer applicable.

SUBCHAPTER D. PARENT RIGHTS AND RESPONSIBILITIES

The Commission proposes the following amendments to Subchapter D:

§809.71. Parent Rights

Section 809.71 is amended to clarify that the 20-day eligibility notification following receipt of eligibility documentation from the parent is applicable for both the initial eligibility determinations and the 12-month eligibility redetermination.

Section 809.71(9) is amended to remove the exceptions to the 15-day notification of termination for instances in which care is to end immediately due to a parent no longer participating in Choices or SNAP E&T or due to a child being absent five consecutive days, as these are no longer eligible reasons to terminate care during the 12-month eligibility period.

Regarding the 15-day termination notice, the Commission clarifies that for parents with a nontemporary cessation of activities, at a minimum, notification must be provided at least 15 days prior to the end of the three-month period of continued care. However, Boards should also clearly notify or provide clear instructions to parents at the beginning of the three-month period that care will end if the parent does not resume participation at any level within three months.

Section 809.71 is amended to remove the 30-day notification due to terminations to make room for a priority group member, as this is no longer an eligible reason to terminate care during the 12-month period.

Section 809.71 is also amended to remove the requirement that parents be informed of the Board's attendance policies. Notification of the attendance standards are located in amended §809.78.

§809.72. Parent Eligibility Documentation Requirements

Section 809.72(a) is amended to clarify that child care cannot be determined or redetermined and care cannot be authorized until parents provide to the Board's child care contractor all the information necessary to determine eligibility.

Section 809.72(b) is amended to clarify that a parent's failure to submit documentation shall result in initial denial of child care service or the termination of services at the 12-month redetermination period.

As mentioned in §809.42(a), due to the requirement in CCDBG Act §658E(c)(2)(N)(i) that each child who receives CCDF-funded child care will be considered to meet all eligibility requirements and will receive assistance for not less than 12 months before the eligibility is redetermined, it is critical that all eligibility documentation submitted is properly and accurately verified prior to authorizing care. As described in §809.42(c), an exception to this requirement exists for a child experiencing homelessness.

§809.73. Parent Reporting Requirements

CCDBG Act §658E(c)(2)(N)(ii) and NPRM §98.21(e)(2) state that any requirement for parents to provide notification of changes in circumstances shall not constitute an undue burden on families. Any such requirements shall:

- limit notification requirements to changes that impact a family's eligibility (e.g., only if income exceeds 85 percent of SMI, or there is a nontemporary change in the status of the child's parent as working or attending a job training or educational program) or changes that impact the Lead Agency's ability to contact the family or pay providers;
- not require an office visit to fulfill notification requirements; and
- offer a range of notification options (e.g., phone, e-mail, online forms, extended submission hours) to accommodate the needs of working parents.

Further NPRM language states that Lead Agencies must allow families the option to voluntarily report changes on an ongoing basis:

- Lead Agencies are required to act on the information provided by the family if it would reduce the family's copayment or increase the family's subsidy.

--Lead Agencies are prohibited from acting on information that would reduce the family's subsidy unless the information provided indicates that the family's income exceeds 85 percent of SMI for a family of the same size, taking into account irregular income fluctuations, or, at the option of the Lead Agency, if the family has experienced a nontemporary change in work, training, or educational status.

Section 809.73 related to parent reporting requirements is amended consistent with this guidance.

Section 809.73(a) is amended to require Boards to ensure that during the 12-month eligibility period, parents are only required to report items that impact a family's eligibility or that enable the Board or Board contractor to contact the family or pay the provider.

This is further clarified in §809.73(b), which is amended to state that parents shall report to the child care contractor, within 14 days of the occurrence, the following:

- Changes in family income or family size that would cause the family to exceed 85 percent of SMI for a family of the same size;
- Changes in work or attendance at a job training or educational program not considered to be temporary changes, as described in §809.42; and
- Any change in family residence, primary phone number, or e-mail (if available).

The amendment extends the number of days to report from the current 10 calendar days to 15 calendar days. This will allow additional time for parents to report changes while also allowing sufficient time for Boards to make any requested changes in the parent share of cost or for other authorization changes to become effective, as well as sufficient time to adjust the parent's eligibility (if the reported change caused the family to exceed 85 percent SMI or constitutes a nontemporary change in activity status).

Because the CCDBG Act limits termination of eligibility for care to the parent's permanent cessation of work, training, or education activities, or the family exceeding 85 percent of SMI (taking into consideration fluctuations of income), §809.73 is also amended to remove the provision that care may be terminated and costs may be recovered due to a parent failure to report a change in §809.73(b). However, the provision that failure to report a change may result in fact-finding for suspected fraud as described in Subchapter F is retained.

Section 809.73 is also amended to require Boards to allow parents to report, and require the child care contractor to take appropriate action, regarding changes in:

- income and family size, which may result in a reduction in the parent share of cost pursuant to §809.19; and
- work, job training, or education program participation that may result in an increase in the level of child care services

The CCDBG Act requires that reporting requirements during the 12-month period do not constitute an undue burden on working parents, and the NPRM clarifies that the reporting requirements must only be on information that affects eligibility or the ability to contact the parent and pay the provider. Therefore, the Commission emphasizes that Boards must not require parents to report any changes during the 12-month period other than those specified in amended §809.73(a) - (b).

The Agency will work with Boards to provide technical assistance on establishing clear and family-friendly information for parents on when they are required to report income and family changes.

Additionally, the Agency will work with Boards to provide reports and tools, including tools associated with wage records and a child's attendance tracking, to assist Boards in identifying parents and families that:

- may have changes in income or family size that may have resulted in the family income exceeding 85 percent of the SMI; or
- may have experienced a nontemporary change in work, training, or education activities.

Implementation of the Reporting Requirements

The Commission clarifies that parents with children enrolled prior to the effective date of the rule amendments may be notified of the new parent reporting requirements at the parent's next scheduled redetermination. However, the standards for assessing any reported changes to the parent's eligibility as well as changes in the consequences for failure to report will be effective on the effective date of the amended rules. Therefore, the Board must ensure that if a parent fails to report a change that was required under the former rules, care shall not be terminated and recoupment is not required for this failure to report, subject to the requirements in Subchapter F regarding recoupments.

§809.74. Parent Appeal Rights

Section 809.74 is amended to clarify that parents may appeal the amount of any recoupment determined pursuant Subchapter F of this chapter.

§809.75. Child Care during Appeal

Section 809.75 is amended to remove the provisions for not continuing care during a parent appeal as the reasons for terminating care provided in this section no longer apply.

§809.76. Parent Responsibility Agreement

As stated previously, CCDBG Act §658E(c)(2)(N) states that each child who receives assistance will be considered to meet all eligibility requirements for such assistance and will receive such assistance for not less than 12 months before the state redetermines eligibility.

NPRM §98.20(b)(4) clarifies that the state may establish additional eligibility conditions, regarding the child's age, citizenship, residing in a family with an income that does not exceed 85 percent SMI, and residing with parents who are working or in job training or education, as long as the additional requirements do not impact eligibility other than at the time of eligibility determination or redetermination. Additionally, CCDBG Act §658E(c)(2)(N)(ii) and NPRM §98.21(d) require that Lead Agency eligibility redetermination requirements do not unduly disrupt parent work, training, or education activities.

The PRA in §809.76 requires that the parent shall:

--pursue child support by:

--cooperating with the Office of the Attorney General (OAG), if necessary, to establish paternity and to enforce child support on an ongoing basis by either:

--providing documentation that the parent has an open case with OAG and is cooperating with OAG; or

- opening a child support case with OAG and providing documentation that the parent is cooperating with OAG; or
- providing documentation that the parent has an arrangement with the absent parent for child support and is receiving child support on an ongoing basis;
- not use, sell, or possess marijuana or other controlled substances; and
- ensure that each family member younger than 18 years of age attend school regularly (unless exempt under state law).

Current §809.76(c) requires that the parent demonstrate compliance with these provisions within three months of initial eligibility. If the parent does not demonstrate compliance within three months, child care is required to end. Some Boards require parents to demonstrate compliance with the PRA at the time of initial eligibility.

Boards have reported that parents meet PRA requirements by opening an OAG case at initial determination, closing the case immediately following initial determination, and then reopening the case immediately prior to redetermination. This increases OAG's workload and requires Boards and Board contractors to track parent compliance with the PRA—without meeting the PRA's intent.

Therefore, §809.76 regarding the PRA is repealed, as the requirements of the provisions of the PRA:

- cannot be applied or enforced during the 12-month eligibility period;
- cause delays in determining eligibility; and
- cause errors in calculating income due to inconsistent receipt of child support.

§809.77. Exemptions from the Parent Responsibility Agreement

Section 809.77 related to exemptions from the PRA is repealed.

§809.78. Attendance Standards and Reporting Requirements

CCDBG Act §658E(c)(2)(S) and NPRM §98.45(m) require implementation of provider payment practices that:

- align with generally accepted payment practices for children who do not receive CCDF funds; and
- support the fixed costs of providing child care services by delinking provider payments from a child's occasional absences.

NPRM §98.45(m)(2) included four options that states may consider to meet the statutory requirement to support the fixed costs of providing child care by delinking payments from a child's occasional absence. The options include:

- paying providers based on a child's enrollment, rather than attendance;
- providing full payment to providers as long as a child attends for at least 85 percent of the authorized time;
- providing full payment to providers as long as a child is absent for five or fewer days in a four-week period; and
- requiring states that do not choose one of these three approaches to describe their approach in the State Plan, including how the approach is not weaker than one of the three listed above.

Currently, Chapter 809 requires Boards to establish a policy on attendance standards and procedures regarding reimbursement to providers for absence days. Chapter 809 requires Boards to terminate services if a child exceeds the Board-allowed number of paid absences during a year. If care is terminated due to excessive absences, then the parent must wait 30 days before reapplying for services.

Neither the CCDBG Act nor the NPRM grants states the authority to terminate care due to a child not meeting the state's attendance standards.

As described in §809.93, consistent with the requirements in the CCDBG Act and the NPRM, the Commission amends §809.93 to state that providers shall be reimbursed based on the child's enrollment, rather than daily attendance.

However, in order to ensure that authorizations for reimbursement based on enrollments do not result in underutilization of services, and to prevent the potential for waste, fraud, or abuse of public child care funds, the Commission establishes statewide attendance standards designed to encourage parents to fully use child care services.

Section 809.78(a)(1) is amended to require that parents shall be notified that the eligible child shall attend on a regular basis consistent with the child's authorization for enrollment. Failure to meet attendance standards may:

- result in suspension of care; and

- be grounds for determining that a change in the parent's participation in work, a job training, or an education program has occurred and care may be terminated pursuant to the requirements in §809.51(b).

Section 809.78(a)(2) establishes allowable attendance standards as fewer than:

- five consecutive absences during the month;

- ten total absences during the month; or

- forty-one absences in a 12-month period.

Section 809.78(a)(3) states that child care providers may end a child's enrollment with the provider if the child does not meet the provider's established attendance policy. As will be discussed in Subchapter E, regarding provider reimbursement based on enrollment, a child's eligibility cannot end based on the number of absences. However, parents must be notified that a provider is allowed to discontinue enrollment of the child at the provider facility if the child does not meet attendance standards established by the provider.

Section 809.78(a) is also amended to remove the provisions that child care services may be terminated for absences or misuse of attendance automation policies. However, the rules retain the provisions that parents be notified that misuse of the automated attendance procedures is grounds for a potential fraud determination.

The Commission acknowledges that the rule amendments related to enrollments and absences will require substantial modifications to existing Board policies and procedures as well as changes to the Agency's information and attendance automation systems. The Agency will work with Boards regarding these changes and to develop necessary reports to assist Boards, parents,

and providers in tracking attendance.

SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE

The Commission proposes the following amendments to Subchapter E:

§809.91. Minimum Requirements for Providers

CCDBG Act §658E(c)(2)(K) requires annual unannounced inspections of all CCDF providers for compliance with health, safety, and fire standards. Relative providers are exempt from this requirement. By state statute, listed family homes are not inspected by DFPS child care licensing (unless there is a report of abuse or neglect at the facility). Therefore, under the CCDBG Act, nonrelative listed family homes are not eligible to provide CCDF services. Therefore, §809.91(b) is amended to remove requirements for Boards choosing to allow nonrelative listed homes as eligible child care providers as these providers are no longer eligible to care for CCDF-subsidized children.

Section 809.91(f) is amended to clarify that foster parents who are also directors, assistant directors, or have an ownership in the child care center, may receive reimbursement if authorized by DFPS.

§809.92. Provider Responsibilities and Reporting Requirements

Section 809.92(b) is amended to remove the specific attendance reporting requirements for providers to:

- document and maintain a list of each child's attendance and submit the list upon request;
- inform the Board when an enrolled child is absent; and
- inform the Board that a child has not attended the first three days of scheduled care.

The implementation of the child care attendance automation system eliminates the need for providers to report this attendance to the Board. However, the Commission notes that removing the requirement from Chapter 809 that providers document and maintain a list of each child's attendance does not remove the DFPS child care licensing requirement for providers to maintain a daily sign-in sheet for all children enrolled at the facility.

§809.93. Provider Reimbursement

As explained in §809.78 regarding a child's attendance standards, CCDBG Act §658E(c)(2)(S) and NPRM §98.45(m) require implementation of provider payment practices that:

- align with generally accepted payment practices for children who do not receive CCDF funds; and
- support the fixed costs of providing child care services by delinking provider payments from a child's occasional absences.

NPRM §98.45(m)(2) included four options that states may consider to meet the statutory requirement to support the fixed costs of providing child care by delinking payments from a child's occasional absence. The options include:

- paying providers based on a child's enrollment, rather than attendance;
- providing full payment to providers as long as a child attends for at least 85 percent of the authorized time;
- providing full payment to providers as long as a child is absent for five or fewer days in a four-week period; and

--requiring states that do not choose one of these three approaches to describe their approach in the State Plan, including how the approach is not weaker than one of the three listed above.

Currently, Chapter 809 requires Boards to establish a policy on attendance standards and procedures regarding reimbursement to providers for absence days. Chapter 809 requires Boards to terminate services if a child exceeds the Board-allowed number of paid absences during a year. If care is terminated due to excessive absences, then the parent must wait 30 days before reapplying for services.

Neither the CCDBG Act nor the NPRM grants states the authority to terminate care due to a child not meeting the state's attendance standards.

To ensure statewide consistency for families and statewide compliance to the requirements in CCDBG Act §658E(c)(2)(S) and NPRM §98.45(m), §809.93 is amended to implement a statewide policy that reimburses regulated providers based on the child's enrollment, rather than daily attendance.

The rules retain the requirement that relative child care providers are not reimbursed for days on which the child is absent. The Commission retains this provision based on the contention that unregulated relative providers do not have the same fixed costs as regulated providers do in order to meet regulatory standards.

§809.94. Providers Placed on Corrective or Adverse Action by the Texas Department of Family and Protective Services

Section 809.94(c) is amended to remove language stating that a parent receiving notification of a provider's corrective action may choose to continue care with the provider if the parent signs the notification acknowledging that the parent is aware of the provider status. The effect of this language is to end the child's care unless the parent signs the notification and acknowledges that the parent chooses to continue care at the facility. Under the CCDBG Act, care cannot end during the 12-month period for a parent's failure to return the acknowledgement to continue care at the facility.

Therefore, §809.94(c) is amended to state that the parent may transfer the child to another provider without being subject to the Board's transfer policies if the parent requests the transfer within 14 business days of receiving the notification.

§809.95. Provider Automated Attendance Agreement

Section 809.95 is amended to clarify that provider misuse of attendance reporting and violation of the requirements in this section are grounds for fraud determination pursuant to Subchapter F of this chapter.

SUBCHAPTER F. FRAUD FACT-FINDING AND IMPROPER PAYMENTS

The Commission proposes the following amendments to Subchapter F:

§809.111. General Fraud Fact-Finding Procedures

Under *Program Integrity* on page 80488, the NPRM preamble provided the following clarification regarding the Administration for Children and Families' (ACF) intent regarding

fraud and recoupments:

ACF would like to clarify that there is no Federal requirement for Lead Agencies to recoup CCDF overpayments, except in instances of fraud. We also strongly discourage such policies as they may impose a financial burden on low-income families that is counter to CCDF's long-term goal of promoting family economic stability. The Act affirmatively states an eligible child "will be considered to meet all eligibility requirements" for a minimum of 12 months regardless of increases in income (as long as income remains at or below 85 percent of SMI) or temporary changes in parental employment or participation in education and training. Therefore, there are very limited circumstances in which a child would not be considered eligible after an initial eligibility determination.

When implementing their CCDF programs, Lead Agencies must balance ensuring compliance with eligibility requirements with other considerations, including administrative feasibility, program integrity, promoting continuity of care for children, and aligning child care with Head Start, Early Head Start, and other early childhood programs. These proposed changes are intended to remove any uncertainty regarding applicability of Federal eligibility requirements for CCDF and the threat of potential penalties or disallowances that otherwise may inhibit Lead Agencies ability to balance these priorities in a way that best meets the needs of children.

Existing regulations at §98.60 indicate that Lead Agencies shall recover child care payments that are the result of fraud from the responsible party. While ACF does not define the term fraud and leaves flexibility to Lead Agencies, fraud in this context typically involves knowing and willful misrepresentation of information to receive a benefit. We urge Lead Agencies to carefully consider what constitutes fraud, particularly in the case of individual families.

In accordance with this guidance, §809.111 is amended to provide a definition of fraud in relation to child care services. The amended rule states that a person commits fraud if, to obtain or increase a benefit or other payment, either for the person or another person, the person:

- makes a false statement or representation, knowing it to be false; or
- knowingly fails to disclose a material fact.

This definition is consistent with the definition of fraudulently obtaining benefits under Texas Labor Code §214.001.

§809.112. Suspected Fraud

Section 809.112 is amended to clarify specific parental actions that may be grounds for suspected fraud and cause the Board to conduct fact-finding or the Commission to initiate a fraud investigation. These actions include:

- not reporting or falsely reporting at initial eligibility or at eligibility redetermination:
 - household composition, or income sources or amounts that would have resulted in ineligibility or a higher parent share of cost; or
 - work, training, or education hours that would have resulted in ineligibility; or
- not reporting during the 12-month eligibility period:
 - changes in income or household composition that would cause the family income to

- exceed 85 percent SMI (taking into consideration fluctuations of income); or
- a permanent loss of job or cessation of training or education that exceeds 90 days; and
- improper or inaccurate reporting of attendance.

§809.113. Action to Prevent or Correct Suspected Fraud

Section 809.113 is amended to remove the provision that a child care contractor may take certain actions if a provider or parent has committed fraud. Although a Board's child care contractor is expected to take these actions, the language implied that the contractor determines which action to take without the involvement of the Board or the Commission.

Amended language in §809.113 clarifies that actions taken against a provider or parent shall be consistent with and pursuant to Commission policy.

Further, §809.113 is amended to include the following options:

- A provider may be prohibited from future eligibility to provide Commission-funded child care services; and
- A parent's eligibility may be terminated during the 12-month eligibility period if eligibility was determined using fraudulent information provided by the parent.

§809.115. Corrective Adverse Actions

Section 809.115 is amended to remove §809.115(b)(4) to remove termination of child care services as a possible corrective action for parents' noncompliance with this chapter.

§809.116. Recovery of Improper Payments

Section 809.116 is repealed and combined with §809.117.

§809.117. Recovery of Improper Payments to a Provider or Parent

Section 809.117 is amended to clarify the circumstances in which parents are required to repay improper payments. The language clarifies that a parent shall repay improper payments only in the following circumstances:

- Instances involving fraud;
- Instances in which the parent has received child care services awaiting an appeal and the determination is affirmed by the hearing officer; or
- Instances in which the parent fails to pay the parent share of cost and the Board's policy is to pay the provider for the parent's failure to pay the parent share of cost.

Section 809.117 is amended to prohibit a parent subject to the repayment provisions above from future child care eligibility until the repayment amount is recovered, provided that the prohibition does not result in a Choices or SNAP E&T participant becoming ineligible for child care.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of

enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to persons required to comply with the rules.

There is no anticipated adverse economic impact on small or microbusinesses as a result of enforcing or administering the rules.

While we are not concluding any net increase or decrease to the cost of the child care program administered by TWC and Boards as a result of these proposed rules, it is pertinent to take note that there will likely be an impact to the child care program, possibly to somewhat reduce child care operational and administrative costs, somewhat increase the cost of some individual units of child care, and possibly to increase waiting lists for subsidized child care. While these individual impacts cannot easily be quantified at this time, we note that they are necessary due to the enactment of federal statutory revisions and the impending effective date of federal regulations, and not created by these proposed rules.

Economic Impact Statement and Regulatory Flexibility Analysis

The Agency has determined that the proposed rules will not have an adverse economic impact on small businesses as these proposed rules place no requirements on small businesses, including child care providers.

Doyle Fuchs, Director of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Reagan Miller, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to ensure compliance with the CCDBG Act, and to provide efficient and effective subsidized child care services that promote both child development and parent workforce participation.

The Agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission sought the involvement of Texas' 28 Boards. Agency executive management discussed the policy concept with the Board executive directors during the March 29, 2016, Executive Director Council meeting and Agency staff presented the policy concept to Board staff during the March 29, 2016, workforce forum. During the rulemaking process, the Commission considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. Comments must be received or postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and Texas Human Resources Code §44.002, regarding Administrative Rules.

The proposed rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

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 ~~considered to be~~ 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).
- (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.
- (4) Child care services--Child care subsidies and quality improvement activities funded by the Commission.
- (5) Child care subsidies--Commission-funded child care reimbursements to an eligible child care provider for the direct care of an eligible child.
- (6) Child experiencing homelessness--A child who is homeless as defined in the McKinney-Vento Act (42 U.S.C. 11434(a)), Subtitle VII-B, §725.
- ~~(7)~~(6) 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. ~~is mentally or physically incapable of performing routine activities of daily living within the child's typical chronological range of development. A child is considered mentally or physically incapable of performing routine activities of daily living if the child requires assistance in performing tasks (major life activity) that are within the~~

~~typical chronological range of development,~~ Major life activities include, including but are not limited to, caring for oneself; performing manual tasks; walking; hearing; seeing, speaking, breathing; learning; and working.

~~(8)(7)~~ Educational program--A program that leads to:

- (A) a high school diploma;
- (B) a General Educational Development (GED) credential; or
- (C) a postsecondary degree from an institution of higher education.

~~(9)(8)~~ Family--The unit composed of a child eligible to receive child care services, the parents of that child, and household dependents.

~~(10)(9)~~ Household dependent--An individual living in the household who is one of the following:

- (A) An adult considered as 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.

~~(11)(10)~~ Improper payments--Any payment of 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.

~~Payments to a provider or Board's child care contractor for goods or services that are not in compliance with federal or state requirements or applicable contracts.~~

~~(12)(11)~~ 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.

(13)~~(12)~~ Listed family home--A family home, other than the eligible child's own residence, that is listed, but not licensed or registered with, the Texas Department of Family and Protective Services (DFPS) pursuant to Texas Human Resources Code §42.052(c).

(14)~~(13)~~ 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.

(15)~~(14)~~ 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.

(16)~~(15)~~ 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.

(17)~~(16)~~ Provider--A provider is defined as:

- (A) a regulated child care provider as defined in [§809.2\(18\)](#) ~~§809.2(17)~~;
- (B) a relative child care provider as defined in [§809.2\(19\)](#) ~~§809.2(18)~~;
or

(C) a listed family home as defined in [§809.2\(13\)](#)~~§809.2(12)~~, subject to the requirements in §809.91(b).

[\(18\)](#)~~(17)~~ 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 DFPS;

(B) registered with DFPS; [or](#)

~~(C) licensed by the Texas Department of State Health Services as a youth day camp; or~~

[\(C\)](#)~~(D)~~ operated and monitored by the United States military services.

[\(19\)](#)~~(18)~~ Relative child care provider--An individual who is at least 18 years of age, and is, by marriage, blood relationship, or court decree, one of the following:

(A) The child's grandparent;

(B) The child's great-grandparent;

(C) The child's aunt;

(D) The child's uncle; or

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

[\(20\)](#)~~(19)~~ 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.

[\(21\)](#)~~(20)~~ 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.

[\(22\)](#)~~(21)~~ Texas Rising Star program--A voluntary, quality-based rating system of child care providers participating in Commission-subsidized child care.

[\(23\)](#)~~(22)~~ Texas Rising Star Provider--A provider certified as meeting the TRS program standards. TRS providers are certified as one of the following:

(A) 2-Star Program Provider;

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

~~(24)~~(23) Working--Working is defined as:

(A) activities for which one receives monetary compensation such as a salary, wages, tips, and commissions; or

~~(B)—job search activities (subject to the requirements in §809.41(d)); or~~

(B)~~(C)~~ participation in Choices or Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T) activities.

SUBCHAPTER B. GENERAL MANAGEMENT

§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)—A Board shall also submit any modifications, amendments, or new policies to the Commission no later than two weeks after adoption of the policy by the Board.~~

(c)~~(d)~~ 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);
- (2) maintenance of a waiting list as described in §809.18(b);
- (3) assessment of a parent share of cost as described in §809.19, including the reimbursement of providers when a parent fails to pay the parent share of cost;
- (4) maximum reimbursement rates as provided in §809.20, 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 ~~up to~~under the age of 19 as described in §809.41(a)(1)(B);

- (7) minimum activity requirements for parents as described in §809.48 and §809.50;
- (8) time limits for the provision of child care while the parent is attending an educational program as described in §809.41(b);
- ~~(9) frequency of eligibility redetermination as described in §809.42(b)(2);~~
- (9)~~(10)~~ Board priority groups as described in §809.43(a);
- (10)~~(11)~~ transfer of a child from one provider to another as described in §809.71(3);
- ~~(12) provider eligibility for listed family homes as provided in §809.91(b), if the Board chooses to include listed family homes as eligible providers;~~
- ~~(13) attendance standards and procedures as provided in §809.92(b)(4), including provisions consistent with §809.54(f) (relating to Continuity of Care for custody and visitation arrangements);~~
- (11)~~(14)~~ providers charging the difference between their published rate and the Board's reimbursement rate as provided in §809.92(d);
- (12)~~(15)~~ procedures for fraud fact-finding as provided in §809.111;
- ~~(16) procedures for imposing sanctions when a parent fails to comply with the provisions of the parent responsibility agreement (PRA) as described in §809.76(e);~~
- ~~(17) mandatory waiting period for reapplying or being placed on the waiting list for child care services as described in §809.55; and~~
- (13)~~(18)~~ 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) - (e).

§809.15. Promoting Consumer Education.

- (a) A Board shall promote informed child care choices by providing consumer education information to:
 - (1) parents who are eligible for child care services;
 - (2) parents who are placed on a Board's waiting list;
 - (3) parents who are no longer eligible for child care services; and

- (4) applicants who are not eligible for child care services.
- (b) The consumer education information, [including consumer education information provided through a Board's website](#), shall contain, at a minimum:
- (1) information about the Texas Information and Referral Network/2-1-1 Texas (2-1-1 Texas) information and referral system;
 - (2) the website and telephone number of DFPS, so parents may obtain health and safety requirements including information on:
 - (A) the prevention and control of infectious diseases (including immunizations);
 - (B) building and physical premises safety;
 - (C) minimum health and safety training appropriate to the provider setting; and
 - (D) the regulatory compliance history of child care providers;
 - (3) a description of the full range of eligible child care providers set forth in §809.91; and
 - (4) a description of programs available in the workforce area relating to school readiness and quality rating systems, including:
 - (A) Texas Rising Star (TRS) Provider criteria, pursuant to Texas Government Code §2308.315; [and](#)
 - ~~(B) the school readiness certification system, pursuant to Texas Education Code §29.161; and~~
 - [\(B\)](#) integrated school readiness models, pursuant to Texas Education Code §29.160; ~~and~~
 - (5) a list of child care providers that meet quality indicators, pursuant to Texas Government Code §2308.3171; ~~;~~
 - [\(6\) information on existing resources and services available in the workforce area for conducting developmental screenings and providing referrals to services when appropriate for children eligible for child care services, including the use of:](#)
 - [\(A\) the Early and Periodic Screening, Diagnosis, and Treatment program under 42 U.S.C. 1396 et seq.; and](#)
 - [\(B\) developmental screening services available under Part B and Part C of](#)

[the Individuals with Disabilities Education Act \(20 U.S.C. 1419, 1431 et seq.\); and](#)

[\(7\) a link to the Agency's designated child care consumer education website.](#)

- (c) A Board shall cooperate with the Texas Health and Human Services Commission (HHSC) to provide 2-1-1 Texas with information, as determined by HHSC, for inclusion in the statewide information and referral network.

§809.16. Quality Improvement Activities.

- (a) Child care funds allocated by the Commission pursuant to its allocation rules (generally, Chapter 800, General Administration, Subchapter B, Allocation and Funding, and specifically §800.58, Child Care), including local public transferred funds and local private donated funds, as provided in §809.17, to the extent they are used for nondirect care quality improvement activities, may be expended on any quality improvement activity described in 45 CFR [Part 98 §98.51](#). ~~These activities may include, but are not limited to:~~

~~(1) activities designed to provide comprehensive consumer education to parents and the public;~~

~~(2) activities that increase parental choice; and~~

~~(3) activities designed to improve the quality and availability of child care.~~

- (b) Boards must ensure compliance with 45 CFR [Part 98 §98.54\(b\)](#) 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 §98.41](#).

- (c) Expenditures certified by a public entity, as provided in §809.17(b)(3), may include expenditures for any quality improvement activity described in 45 CFR [Part 98§98.51](#).

§809.17. Leveraging Local Resources.

(a) Leveraging Local Funds.

- (1) The Commission encourages Boards to secure local public and private funds for the purpose of matching federal funds in order to maximize resources for child care needs in the community.
- (2) A Board is encouraged to secure additional local funds in excess of the amount required to match federal funds allocated to the Board in order to maximize its potential to receive additional federal funds should they become available.
- (3) A Board's performance in securing and leveraging local funds for match may make the Board eligible for incentive awards.

(b) The Commission accepts the following as local match:

- (1) Funds from a private entity that:
 - (A) are donated without restrictions that require their use for:
 - (i) a specific individual, organization, facility, or institution; or
 - (ii) an activity not included in the CCDF State Plan or allowed under this chapter;
 - (B) do not revert back to the donor's facility or use;
 - (C) are not used to match other federal funds; and
 - (D) are certified by both the donor and the Commission as meeting the requirements of subparagraphs (A) - (C) of this paragraph.
- (2) Funds from a public entity that:
 - (A) are transferred without restrictions that would require their use for an activity not included in the CCDF State Plan or allowed under this chapter;
 - (B) are not used to match other federal funds; and
 - (C) are not federal funds, unless authorized by federal law to be used to match other federal funds.

- (3) Expenditures by a public entity certifying that the expenditures:
 - (A) are for an activity included in the CCDF State Plan or allowed under this chapter;
 - (B) are not used to match other federal funds; and
 - (C) are not federal funds, unless authorized by federal law to be used to match other federal funds.

(c) A Board shall ensure that a public entity certifying expenditures for direct child care as described in §809.17(b)(3), determines and verifies that the expenditures are for child care provided to an eligible child. At a minimum, the public entity shall verify that the child:

(1) is under 13 years of age, or at the option of the Board, is a child with disabilities under 19 years of age; and

(2) resides with:

(A) a family whose income does not exceed 85 percent of the state median income for a family of the same size; and

(B) a parent who requires child care in order to work or attend a job training or educational program.

~~(d)~~(e) A Board shall submit private donations, public transfers, and public certifications to the Commission for acceptance, with sufficient information to determine that the funds meet the requirements of subsection (b) of this section.

~~(e)~~(f) Completing Private Donations, Public Transfers, and Public Certifications.

- (1) A Board shall ensure that:
 - (A) private donations of cash and public transfers of funds are paid to the Commission; and
 - (B) public certifications are submitted to the Commission.
- (2) Private donations and public transfers are considered complete when the funds have been received by the Commission.
- (3) Public certifications are considered complete to the extent that a signed written instrument is delivered to the Commission that reflects that the public entity has expended a specific amount of funds on eligible activities described in subsection (b)(3) of this section.

~~(f)~~(e) A Board shall monitor the funds secured for match and the expenditure of any resulting funds to ensure that expenditures of federal matching funds available through the Commission do not exceed an amount that corresponds to the private donations, public transfers, and public certifications that are completed by the end of the program year.

§809.19. Assessing the Parent Share of Cost.

(a) For child care funds allocated by the Commission pursuant to its allocation rules (generally, Chapter 800, General Administration, Subchapter B, Allocation and Funding, and specifically, §800.58, Child Care), including local public transferred funds and local private donated funds, as provided in §809.17, the following shall apply.

(1) 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, and also may consider the:

(i) number of children in care; and

(ii) parent selection of a TRS-certified provider.

~~(C) not exceeding the Board's maximum reimbursement rate or the provider's published rate, whichever is lower.~~

(C) 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 that would result in an additional amount for the child; and

(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.

(2) 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;

(B) Parents who are participating in SNAP E&T services;

(C) Parents of a child experiencing homelessness as defined in §809.2; or

(D)~~(E)~~ Parents who have children who are receiving protective services child care pursuant to §809.49 and §809.54(c)(1), 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~~(8)~~.

(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) The Board or its child care contractor may review the assessed parent share of cost for possible reduction if there are extenuating circumstances that jeopardize a family's self-sufficiency. The Board or its child care contractor may reduce the assessed parent share of cost if warranted by these circumstances

(e) 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.

(f) 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.

§809.20. Maximum Provider Reimbursement Rates.

(a) Based on local factors, including a market rate survey provided by the Commission, a Board shall establish maximum reimbursement rates for child care subsidies to ensure that the rates provide equal access to child care in the local market and in a manner consistent with state and federal statutes and regulations governing child care. At a minimum, Boards shall establish reimbursement rates for full-day and part-day units of service, as described in §809.93(e), for the following:

(1) Provider types:

(A) Licensed child care centers, including before- or after-school

programs and school-age programs, as defined by DFPS;

- (B) Licensed child care homes as defined by DFPS;
- (C) Registered child care homes as defined by DFPS; and
- (D) Relative child care providers as defined in §809.2.

(2) Age groups in each provider type:

- (A) Infants age 0 to 17 months;
- (B) Toddlers age 18 to 35 months;
- (C) Preschool age children from 36 to 71 months; and
- (D) School age children 72 months and over.

(b) A Board shall establish enhanced reimbursement rates:

(1) for all age groups at TRS provider facilities;

~~(2) only for preschool age children at child care providers that obtain school readiness certification pursuant to Texas Education Code §29.161; and~~

~~(2)(3)~~ only for preschool-age children at child care providers that participate in integrated school readiness models pursuant to Texas Education Code §29.160.

(c) The minimum enhanced reimbursement rates established under subsection (b) of this section shall be greater than the maximum rate established for providers not meeting the requirements of subsection (b) of this section for the same category of care up to, but not to exceed, the provider's published rate. ~~Effective September 1, 2015, t~~The maximum rate must be at least:

(1) 5 percent greater for a:

- (A) 2-Star Program Provider; or
- (B) child care provider meeting the requirements of subsections ~~(b)(2) or (b)(3)~~ of this section;

(2) 7 percent greater for a 3-Star Program Provider; and

(3) 9 percent greater for a 4-Star Program Provider.

(d) Boards may establish a higher enhanced reimbursement rate than those specified in subsection (c) of this section for TRS providers, as long as there is a

minimum 2 percent~~age~~ point difference between each star level.

- (e) A Board or its child care contractor shall ensure that providers that are reimbursed for additional staff or equipment needed to assist in the care of a child with disabilities are paid a rate up to 190 percent of the provider's reimbursement rate for a child of that same age. The higher rate shall take into consideration the estimated cost of the additional staff or equipment needed by a child with disabilities. The Board shall ensure that a professional, who is familiar with assessing the needs of children with disabilities, certifies the need for the higher reimbursement rate described in this subsection.
- (f) The Board shall determine whether to reimburse providers that offer transportation as long as the combined total of the provider's published rate, plus the transportation rate, is subject to the maximum reimbursement rate established in subsection (a) of this section.

SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES

§809.41. A Child's General Eligibility for Child Care Services.

- (a) Except for a child receiving or needing protective services as described in §809.49, for a child to be eligible to receive child care services, at the time of eligibility determination or re-determination, a Board shall ensure that the child:
 - (1) meets one of the following age requirements:
 - (A) be under 13 years of age; or
 - (B) at the option of the Board, be a child with disabilities under 19 years of age;
 - (2) is a U.S. citizen or legal immigrant as determined under applicable federal laws, regulations, and guidelines; and
 - (3) resides with:
 - (A) a family within the Board's workforce area ~~whose~~:
 - (i) whose income does not exceed the income limit established by the Board, which income limit must not exceed 85% percent of the state median income (SMI) for a family of the same size; and
 - (ii) whose assets do not exceed \$1,000,000 as certified by a family member; or
 - (iii) that meets the definition of experiencing homelessness as defined in §809.2.
 - (B) parents who require child care in order to work or attend a job training or educational program; or

- (C) a person standing in loco parentis for the child while the child's parent is on military deployment and the deployed military parent's income does not exceed the limits set forth in subparagraph (A) of this paragraph.
- (b) Notwithstanding the requirements set forth in subsection (c) of this section, a Board shall establish policies, including time limits, for the provision of child care services while the parent is attending an educational program.
- (c) Time limits pursuant to subsection (b) of this section shall ensure the provision of child care services for four years, if the eligible child's parent is enrolled in an associate's degree program that will prepare the parent for a job in a high-growth, high-demand occupation as determined by the Board.

~~(d) Unless otherwise subject to job search limitations as stipulated in this title, the following shall apply:~~

~~(1) For child care funds allocated by the Commission pursuant to its allocation rules (generally, Chapter 800, General Administration, Subchapter B, Allocation and Funding, and specifically, §800.58 Child Care), an enrolled child may be eligible for child care services for four weeks within a federal fiscal year in order for the child's parent to search for work because of interruptions in the parent's employment.~~

~~(2) For child care services funded by the Commission from sources other than those specified in paragraph (1) of this subsection, child care services during job search activities are limited to four weeks within a federal fiscal year.~~

~~(d)~~(e) A Board may establish a policy to allow parents attending a program that leads to a postsecondary degree from an institution of higher education to be exempt from residing with the child as defined in §809.2.

(e) Boards that establish initial family income eligibility at a level less than 85 percent SMI must ensure that the family remains income-eligible for care after passing the Board's initial income eligibility limit.

§809.42. Eligibility Verification, Determination, and ~~Verification~~ Redetermination.

(a) A Board shall ensure that its child care contractor verifies all eligibility requirements for child care services prior to authorizing child care.

(b) A Board shall ensure that Eeligibility for child care services shall be redetermined: no sooner than 12 months following the initial determination or most recent re-
determination.

~~(1) any time there is a change in family income or other information that could affect eligibility to receive child care services; and~~

~~(2) on an established frequency at the Board's discretion.~~

~~(c) A Board shall ensure that a public entity certifying expenditures for direct child care as described in §809.17(b)(3) determines and verifies that the expenditures are for child care provided to an eligible child. At a minimum, the public entity shall verify that the child:~~

~~(1) is under 13 years of age, or at the option of the Board, is a child with disabilities under 19 years of age; and~~

~~(2) resides with:~~

~~(A) a family whose income does not exceed 85% of the state median income for a family of the same size; and~~

~~(B) a parent who requires child care in order to work or attend a job training or educational program.~~

§809.43. Priority for Child Care Services.

(a) A Board shall ensure that child care services are prioritized among the following three priority groups:

(1) The first priority group is assured child care services and includes children of parents eligible for the following:

(A) Choices child care as referenced in §809.45;

(B) Temporary Assistance for Needy Families (TANF) Applicant child care as referenced in §809.46;

(C) SNAP E&T child care as referenced in §809.47; and

(D) Transitional child care as referenced in §809.48.

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

(A) children who need to receive protective services child care as referenced in §809.49;

(B) children of a qualified veteran or qualified spouse as defined in §801.23 of this title;

(C) children of a foster youth as defined in §801.23 of this title;

(D) children experiencing homelessness as defined in §809.2 and described in §809.52;

~~(E)(D)~~ children of parents on military deployment as defined in §809.2 whose parents are unable to enroll in military-funded child care assistance programs;

~~(F)(E)~~ children of teen parents as defined in §809.2; and

~~(G)(F)~~ children with disabilities as defined in §809.2.

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

(b) A Board shall not establish a priority group under subsection (a)(3) of this section based on the parent's choice of an individual provider or provider type.

§809.44. Calculating Family Income.

(a) For the purposes of determining family income and assessing the parent share of cost, Boards shall ensure that family income is calculated in accordance with Commission guidelines that:

(1) take into account irregular fluctuations in earnings; and

(2) ensure that temporary increases in income, including temporary increases that result in monthly income exceeding 85 percent SMI do not affect eligibility or parent share of cost.

~~Unless otherwise required by federal or state law, the family income for purposes of determining eligibility and the parent share of cost means the monthly total of the following items for each member of the family (as defined in §809.2(8)):~~

~~(1) Total gross earnings. These earnings include wages, salaries, commissions, tips, piece-rate payments, and cash bonuses earned.~~

~~(2) Net income from self-employment. Net income includes gross receipts minus business-related expenses from a person's own business, professional enterprise, or partnership, which result in the person's net income. Net income also includes gross receipts minus operating expenses from the operation of a farm.~~

~~(3) Pensions, annuities, life insurance, and retirement income, and early withdrawals from a 401(k) plan not rolled over within 60 days of withdrawal. This includes Social Security pensions, veteran's pensions and survivor's benefits and any cash benefit paid to retirees or their survivors by a former employer, or by a union, either directly or through an insurance company. This also includes payments from annuities and life insurance.~~

~~(4) Taxable capital gains, dividends, and interest. These earnings include capital gains from the sale of property and earnings from dividends from stock~~

~~holdings, and interest on savings or bonds.~~

~~(5) Rental income. This includes net income from rental of a house, homestead, store, or other property, or rental income from boarders or lodgers.~~

~~(6) Public assistance payments. These payments include TANF as authorized under Chapters 31 or 34 of the Texas Human Resources Code, refugee assistance, Social Security Disability Insurance, Supplemental Security Income, and general assistance (such as cash payments from a county or city).~~

~~(7) Income from estate and trust funds. These payments include income from estates, trust funds, inheritances, or royalties.~~

~~(8) Unemployment compensation. This includes unemployment payments from governmental unemployment insurance agencies or private companies and strike benefits while a person is unemployed or on strike.~~

~~(9) Workers' compensation income, death benefit payments and other disability payments. These payments include compensation received periodically from private or public sources for on-the-job injuries.~~

~~(10) Spousal maintenance or alimony. This includes any payment made to a spouse or former spouse under a separation or divorce agreement.~~

~~(11) Child support. These payments include court-ordered child support, any maintenance or allowance used for current living costs provided by parents to a minor child who is a student, or any informal child support cash payments made by an absent parent for the maintenance of a minor.~~

~~(12) Court settlements or judgments. This includes awards for exemplary or punitive damages, noneconomic damages, and compensation for lost wages or profits, if the court settlement or judgment clearly allocates damages among these categories.~~

~~(13) Lottery payments of \$600 or greater.~~

(b) In accordance with Commission income calculation guidelines, Boards shall ensure that the following income sources are excluded from the family income: ~~Income to the family that is not included in subsection (a) of this section is excluded in determining the total family income. Specifically, family income does not include:~~

(1) Medicare, Medicaid, SNAP benefits, school meals, and housing assistance;

(2) Monthly monetary allowances provided to or for children of Vietnam veterans born with certain birth defects;

(3) Needs-based Educational scholarships, grants, and loans; including financial assistance under Title IV of the Higher Education Act--Pell Grants, Federal

Supplemental Educational Opportunity grants, Federal Work Study Program, PLUS, Stafford loans, and Perkins loans;

~~(4)~~ ~~Earned Income Tax Credit (EITC) and the Advanced EITC;~~

~~(4)~~~~(5)~~ Individual Development Account (IDA) withdrawals for the purchase of a home, medical expenses, or educational expenses;

~~(5)~~~~(6)~~ Onetime cash payments, including ~~T~~tax refunds,~~;-~~ Earned Income Tax Credit (EITC) and Advanced EITC, onetime insurance payments, gifts, and lump sum inheritances;

~~(6)~~~~(7)~~ VISTA and AmeriCorps living allowances and stipends;

~~(7)~~~~(8)~~ Noncash or in-kind benefits such as employer-paid fringe benefits, food, or housing received in lieu of wages;

~~(8)~~~~(9)~~ Foster care payments and adoption assistance;

~~(9)~~~~(10)~~ Special military pay or allowances, ~~which~~including subsistence allowances, housing allowances, family separation allowances, or special allowances for duty subject to hostile fire or imminent danger;

~~(10)~~~~(11)~~ Income from a child in the household between 14 and 19 years of age who is attending school;

~~(11)~~~~(12)~~ Early ~~401(k)~~-withdrawals from qualified retirement accounts specified as hardship withdrawals as classified by the Internal Revenue Service (IRS);

(12) Unemployment compensation;

(13) Child support payments;

(14) Cash assistance payments, including Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), Refugee Cash Assistance, general assistance, emergency assistance, and general relief;

(15) One-time income received in lieu of TANF cash assistance;

(16) Income earned by a veteran while on active military duty and certain other veterans' benefits, such as compensation for service-connected death, vocational rehabilitation, and education assistance;

(17) Regular payments from Social Security, such as Old-Age and Survivors Insurance Trust Fund;

(18) Lump sum payments received as assets in the sale of a house, in which the assets are to be reinvested in the purchases of a new home (consistent with IRS

guidance);

(19) Payments received as the result of an automobile accident insurance settlement that are being applied to the repair or replacement of an automobile; and

(20)(13) Any income sources specifically excluded by federal law or regulation.

(c) Income that is not listed in subsection (b) of this section as excluded from income is included as income.

§809.45. Choices Child Care.

(a) A parent is eligible for Choices child care if the parent is participating in the Choices program as stipulated in Chapter 811 of this title.

(b) For a parent receiving Choices Child Care who ceases participation in the Choices program during the 12-month eligibility period, Boards must ensure that:

(1) child care continues for the three-month period pursuant to §809.51; and

(2) the provisions of §809.51 shall apply if the parent resumes participation in Choices or begins participation in work or attendance in a job training or education program during the three-month period.

~~(b) A parent who has been approved for Choices, but is waiting to enter an approved initial component of the program, may be eligible for up to two weeks of child care services if:~~

~~(1) child care services will prevent loss of the Choices placement; and~~

~~(2) child care is available to meet the needs of the child and parent.~~

§809.46. Temporary Assistance for Needy Families Applicant Child Care.

(a) A parent is eligible for TANF Applicant child care if the parent:

(1) receives a referral from the Health and Human Services Commission (HHSC) to attend a Workforce Orientation for Applicants (WOA);

(2) locates employment or has increased earnings prior to TANF certification; and

(3) needs child care to accept or retain employment.

(b) To receive TANF Applicant child care, the parent shall be working and not have voluntarily terminated paid employment of at least 25 hours a week within 30 days prior to receiving the referral from HHSC to attend a WOA, unless the voluntary termination was for good cause connected with the parent's work.

- ~~(c) Subject to the continued employment of the parent, TANF Applicant child care shall be provided for up to 12 months or until the family reaches the Board's income limit for eligibility under any provision contained in §809.50, whichever occurs first.~~
- ~~(d) Parents who are employed fewer than 25 hours a week at the time they apply for temporary cash assistance are limited to 90 days of TANF Applicant child care. Applicant child care may be extended to a total of 12 months, inclusive of the 90 days, if before the end of the 90-day period, the applicant increases the hours of employment to a minimum of 25 hours a week.~~
- ~~(e) A parent whose time limit for TANF Applicant child care has expired may continue to be eligible for child care services provided the parent and child are otherwise eligible under any provision contained in §809.50.~~

§809.47. Supplemental Nutrition Assistance Program Employment and Training Child Care.

- (a) A parent is eligible to receive SNAP E&T child care services if the parent is participating in SNAP E&T services, in accordance with the provisions of 7 CFR Part 273, as long as the case remains open.
- (b) For a parent receiving SNAP E&T child care services who ceases participation in the E&T program during the 12-month eligibility period, Boards must ensure that:
 - (1) child care continues for the three-month period pursuant to §809.51; and
 - (2) the provisions of §809.51 shall apply if the parent resumes participation in the E&T program or begins participation in work or attendance in a job training or education program during the three-month period.

§809.48. Transitional Child Care.

- (a) A parent is eligible for Transitional child care services if the parent:
 - (1) has been denied TANF and was employed at the time of TANF denial; or
 - (2) has been denied TANF within 30 days because of expiration of TANF time limits; and
 - (3) requires child care to work or attend a job training or educational program for a combination of at least an average of 25 hours per week for a single-parent family or 50 hours per week for a two-parent family, or a higher number of hours per week as established by a Board.
- (b) Boards may establish an income eligibility limit for Transitional child care that is higher than the eligibility limit for At-Risk child care, pursuant to §809.50, provided

that the higher income limit does not exceed 85% ~~percent~~ of the state median income for a family of the same size.

(c) For former TANF recipients who are employed when TANF is denied, Transitional child care shall be available for:

- (1) a period of up to 12 months from the effective date of the TANF denial; or
- (2) a period of up to 18 months from the effective date of the TANF denial in the case of a former TANF recipient who was eligible for child caretaker exemptions pursuant to Texas Human Resources Code §31.012(c) and voluntarily participates in the Choices program.

~~(d) Former TANF recipients who are not employed when TANF expires, including recipients who are engaged in a Choices activity except as provided under subsection (e) of this section, shall receive up to four weeks of Transitional child care in order to allow these individuals to search for work as needed.~~

~~(e) Former TANF recipients who are not employed when TANF is denied, are engaged in a Choices activity, are meeting the requirements of Chapter 811 of this title, and are denied TANF because of receipt of child support shall be eligible to receive Transitional child care services until the date on which the individual completes the activity, as defined by the Board.~~

~~(d)(f)~~ A Board may allow a reduction to the requirement in subsection (a)(3) of this section if a parent's documented medical disability or need to care for a physically or mentally disabled family member prevents the parent from participating in work, education, or job training activities for the required hours per week.

~~(e)(g)~~ For purposes of meeting the education requirements stipulated in subsection (a)(3) of this section, the following shall apply:

- (1) each credit hour of postsecondary education counts as three hours of education activity per week; and
- (2) each credit hour of a condensed postsecondary education course counts as six education activity hours per week.

§809.49. Child Care for Children Receiving or Needing Protective Services.

(a) A Board shall ensure that determinations of eligibility for children needing protective services are performed by DFPS.

- (1) Child care will continue as long as authorized and funded by DFPS.
- (2) DFPS may authorize child care for a child under court supervision ~~up to~~ under the age of 19.

(3) Child care discontinued by DFPS prior to the end of the 12-month eligibility period shall be subject to the Continuity of Care provisions in §809.54.

- (b) A Board shall ensure that requests made by DFPS for specific eligible providers are enforced for children in protective services, including children of foster parents when the foster parent is the owner, director, assistant director or other individual with an ownership interest in the provider.

§809.50. At-Risk Child Care.

- (a) A parent is eligible for child care services under this section if at initial eligibility determination and at eligibility redetermination as described in §809.42:
- (1) the family income does not exceed the income limit established by the Board pursuant to §809.41(a)(2)(A); and
 - (2) child care is required for the parent to work or attend a job training or educational program for a combination of at least an average of 25 hours per week for a single-parent family or 50 hours per week for a two-parent family, or a higher number of hours per week as established by the Board.
- (b) A Board may allow a reduction to the work, education, or job training activity requirements in subsection (a)(2) of this section if a parent's documented medical disability or need to care for a physically or mentally disabled family member prevents the parent from participating in these activities for the required hours per week.
- (c) For purposes of meeting the education requirements stipulated in subsection (a)(2) of this section, the following shall apply:
- (1) each credit hour of postsecondary education counts as three hours of education activity per week;
 - (2) each credit hour of a condensed postsecondary education course counts as six education activity hours per week; and
 - (3) teen parents attending high school or the equivalent shall be considered as meeting the education requirements in subsection (a)(2) of this section.
- (d) When calculating income eligibility for a child with disabilities, a Board shall deduct the cost of the child's ongoing medical expenses from the family income.
- (e) Boards may establish a higher income eligibility limit for teen parents than the eligibility limit established pursuant to §809.41(a)(2)(A) provided that the higher income limit does not exceed ~~85%~~ percent of the state median income for a family of the same size.

- (f) A teen parent's family income is based solely on the teen parent's income and size of the teen's family as defined in §809.2(8).
- (g) Boards may establish a higher income eligibility limit for families with a child who is enrolled in Head Start, Early Head Start, or public pre-K provided that the higher income limit does not exceed ~~85%~~ percent of the state median income for a family of the same size.

§809.51. Child Care during ~~Temporary~~ Interruptions in Work, Education, or Job Training.

(a) Except for a child experiencing homelessness, as described in §809.52, if the child met all of the applicable eligibility requirements for child care services in this subchapter on the date of the most recent eligibility determination or redetermination, the child shall be considered to be eligible and will receive services during the 12-month eligibility period described in §809.42, regardless of any:

(1) change in family income, if that family income does not exceed 85 percent SMI for a family of the same size; or

(2) temporary change in the ongoing status of the child's parent as working or attending a job training or education program. A temporary change shall include, at a minimum, any:

(A) time-limited absence from work for an employed parent for periods of family leave (including parental leave) or sick leave;

(B) interruption in work for a seasonal worker who is not working between regular industry work seasons;

(C) student holiday or break for a parent participating in training or education;

(D) reduction in work, training, or education hours, as long as the parent is still working or attending a training or education program;

(E) other cessation of work or attendance in a training or education program that does not exceed three months;

(F) change in age, including turning 13 years old during the eligibility period; and

(G) change in residency within the state.

(b) During the period of time between eligibility redeterminations, a Board shall discontinue child care services due to a parent's loss of work or cessation of attendance at a job training or educational program that does not constitute a temporary change in accordance with paragraph (a)(2) of this section. However, Boards must ensure that care continues at the same level for a period of not less than

three months after such loss of work or cessation of attendance at a job training or educational program.

(c) If a parent resumes work or attendance at a job training or education program at any level and at any time during the period described in paragraph (b), then the Board shall ensure that:

(1) care will continue to the end of the 12-month eligibility period at the same or greater level, depending upon any increase in the activity hours of the parent;

(2) the parent share of cost will not be increased during the remainder of the 12-month eligibility period, including for parents who are exempt from the parent share of cost pursuant to §809.19; and

(3) the Board's child care contractor verifies only:

(A) that the family income does not exceed 85 percent of the SMI; and

(B) the resumption of work or attendance at a job training or education program.

~~(a) If a parent has a temporary cessation of work, education, or job training activities and is unable to meet the requirements described in §809.50(a)(2), child care may be suspended for no more than 90 calendar days from the documented effective date of the cessation of these activities.~~

~~(b) If a parent has a documented temporary medical incapacitation and is unable to meet the work, education, or job training requirements described in §809.50(a)(2), the following shall apply:~~

~~(1) Child care may be allowed to continue for no more than 60 calendar days from the documented effective date of the temporary medical incapacitation; and~~

~~(2) Child care may be suspended for no more than 30 calendar days after the end of the 60-day calendar period following the documented temporary medical incapacitation, as described in subsection (b)(1) of this section.~~

~~(c) Upon the parent's return to work, education, or job training activities, a Board is not required to resume child care at the same provider used prior to the documented temporary cessation of these activities or medical incapacitation.~~

~~(d) Prior to any suspension of child care as described in this section, a parent must provide:~~

~~(1) documentation from the employer or training provider stating that the parent will be returning to work or job training activities following the temporary cessation of these activities or medical incapacitation; or~~

- ~~(2) written notification to the child care contractor of the parent's intent to enroll in an educational institution following the temporary cessation of educational activities.~~

§809.52. Child Care for Children Experiencing Homelessness.

- (a) For a child experiencing homelessness, as defined in §809.2, a Board shall ensure that the child is initially enrolled for a period of three months.
- (b) If, during the three-month initial enrollment period, the parent of a child experiencing homelessness:
- (1) is unable to provide documentation verifying that the child is eligible under §809.41(a)(1)-(2) (regarding age and citizenship status), then care shall be discontinued following the three-month enrollment period; or
- (2) provides documentation verifying eligibility under §809.41(a), then care shall continue through the end of the 12-month initial eligibility period (inclusive of the three-month initial enrollment period).

§809.53. Child Care for Children Served by Special Projects.

- (a) Special projects developed in federal and state statutes or regulations and funded using non-CCDF sources may add groups of children eligible to receive child care.
- (b) The eligibility criteria as stated in the statutes, ~~or~~ regulations, or funding sources shall control for the special project, unless otherwise indicated by the Commission.
- (c) The time limit for receiving child care for children served by special projects may be:
- (1) specifically prescribed by federal or state statutes or regulations according to the particular project;
- (2) otherwise set by the Commission depending on the purpose and goals of the special project; and
- (3) limited to the availability of funds.

§809.54. Continuity of Care.

- (a) Enrolled children, including children whose eligibility for Transitional child care has

expired, shall receive child care through the end of the applicable eligibility periods described in §809.42~~as long as the family remains eligible for any available source of Commission funded child care except as otherwise provided under subsection (b) of this section.~~

- (b) Except as provided by §809.75(b) relating to child care during appeal, nothing in this chapter shall be interpreted in a manner as to result in a child being removed from care,~~except when removal from care is required for child care to be provided to a child of parents eligible for the first priority group as provided in §809.43.~~
- (c) In closed DFPS CPS cases (DFPS cases) where child care is no longer funded by DFPS, child care shall continue through the end of the applicable eligibility periods described in §809.42 using funds allocated to the Board by the Commission~~the following shall apply:~~
- ~~(1) Former DFPS Children Needing Protective Services Child Care. Regardless of whether the family meets the income eligibility requirements of the Board or is working or attending a job training or educational program, if DFPS determines on a case by case basis that the child continues to need protective services and child care is integral to that need, then the Board shall continue the child care by using other funds, including funds received through the Commission, for child care services for up to six months after DFPS case is closed.~~
- ~~(2) Former DFPS Children Not Needing Protective Services Child Care. If the family meets the income eligibility requirements of the Board and if DFPS does not state on a case by case basis that the child continues to need protective services or child care is not integral to that need, then the Board may provide care subject to the availability of funds. To receive care under this paragraph, the parents must be working or attending a job training or an educational program.~~
- (d) A Board shall ensure that no enrolled children of military parents in military deployment have a disruption of child care services or eligibility ~~because of the~~during military deployment, including parents in military deployment at the end of the 12-month eligibility redetermination period.
- (e) A Board shall ensure that a child who is required by a court-ordered custody or visitation arrangement to leave a provider's care is permitted to continue receiving child care by the same provider, or another provider if agreed to by the parent in advance of the leave, upon return from the court-ordered custody or visitation arrangement.
- ~~(f) A Board may encourage parents of other children to temporarily utilize the space the child under court ordered custody or visitation arrangement has vacated until the child returns so he or she can return to the same provider.~~
- ~~(g) A Board shall ensure that parents who choose to accept temporary child care to fill a position opened because of court ordered custody or visitation shall not lose their place on the waiting list.~~

~~(h) A Board shall ensure that parents who choose not to accept temporary child care to fill a position opened because of court-ordered custody or visitation shall not lose their place on the waiting list.~~

~~**§809.55. Mandatory Waiting Period for Reapplication.**~~

~~(a) A parent is ineligible to reapply for child care services or to be placed on the waiting list for services for at least 30 days but not to exceed 90 days as determined by Board policy if the parent's eligibility or child's enrollment is denied, delayed, reduced, suspended, or terminated pursuant to established Board policies and procedures for any of the following:~~

~~(1) Excessive absences;~~

~~(2) Nonpayment of parent share of cost;~~

~~(3) Five consecutive absences on authorized days of care with no parent contact with the child care provider or child care contractor; or~~

~~(4) A parent's failure to report, within 10 days of occurrence, any change in the family's circumstances that would have rendered the family ineligible for subsidized care.~~

~~(b) A Board may allow the waiting period to extend beyond the 90 days for parents on a repayment schedule if Board policy requires that the parents fully repay the obligation prior to reapplying for child care services.~~

SUBCHAPTER D. PARENT RIGHTS AND RESPONSIBILITIES

§809.71. Parent Rights.

A Board shall ensure that the Board's child care contractor informs the parent in writing that the parent has the right to:

- (1) choose the type of child care provider that best suits their needs and to be informed of all child care options available to them as included in the consumer education information described in §809.15;
- (2) visit available child care providers before making their choice of a child care option;
- (3) receive assistance in choosing initial or additional child care referrals including information about the Board's policies regarding transferring children from one provider to another;

- (4) be informed of the Commission rules and Board policies related to providers charging parents the difference between the Board's reimbursement and the provider's published rate as described in §809.92(c) - (d);
- (5) be represented when applying for child care services;
- (6) be notified of their eligibility to receive child care services within 20 calendar days from the day the Board's child care contractor receives all necessary documentation required to initially determine or redetermine eligibility for child care;
- (7) receive child care services regardless of race, color, national origin, age, sex, disability, political beliefs, or religion;
- (8) have the Board and the Board's child care contractor treat information used to determine eligibility for child care services as confidential;
- (9) receive written notification, ~~except as provided by paragraph (10) of this section,~~ at least 15 days before ~~the denial, delay, reduction, or~~ termination of child care services ~~unless:~~

~~(A) the services are authorized to cease immediately because either the parent is no longer participating in the Choices or SNAP E&T program or services are authorized to end immediately for children in protective services child care; or~~

~~(B) the services are authorized to cease immediately as required by Board policy because the child has been absent for five consecutive authorized days of care and the parent has failed to contact the child care provider or the child care contractor by the end of the fifth authorized day;~~

~~(10) receive 30-day written notification from the Board's child care contractor if child care is to be terminated in order to make room for a priority group described in §809.43(a)(1), as follows:~~

~~(A) Written notification of denial, delay, reduction, or termination shall include information regarding other child care options for which the recipient may be eligible.~~

~~(B) If the notice on or before the 30th day before denial, delay, reduction, or termination in child care would interfere with the ability of the Board to comply with its duties regarding the number of children served or would require the expenditure of funds in excess of the amount allocated to the Board, notice may be provided on the earliest date on which it is practicable for the Board to provide notice;~~

(10)(11) reject an offer of child care services or voluntarily withdraw their child from child care, unless the child is in protective services;

~~(11)(12)~~ be informed of the possible consequences of rejecting or ending the child care that is offered;

~~(12)(13)~~ be informed of the eligibility documentation and reporting requirements described in §809.72 and §809.73;

~~(13)(14)~~ be informed of the parent appeal rights described in §809.74; and

~~(15) be informed of the Board's attendance policy as required in §809.13(d)(13) and the consequences for five consecutive absences without contact as described in paragraph (9)(B) of this section; and~~

~~(14)(16)~~ be informed of required background and criminal history checks for relative child care providers through the listing process with DFPS, as described in §809.91(e), before the parent or guardian selects the relative child care provider.

§809.72. Parent Eligibility Documentation Requirements.

- (a) Except for a child experiencing homelessness pursuant to §809.52 at initial eligibility, before a child can be initially determined or redetermined eligible for child care services and care authorized, pParents shall provide the Board's child care contractor with all information necessary to determine eligibility according to the Board's administrative policies and procedures.
- (b) A parent's failure to submit eligibility documentation ~~may shall~~ result in initial denial or termination of child care services or termination of services at the 12-month eligibility redetermination period.

§809.73. Parent Reporting Requirements.

- (a) Boards shall ensure that during the 12-month eligibility period, parents are only required to report items that impact a family's eligibility or that enable the Board or Board contractor to contact the family or pay the provider.
- (b) Pursuant to subsection (a) of this section, Pparents shall report to the child care contractor, within ~~10~~ 14 calendar days of the occurrence, the following:
- (1) Changes in family income or family size that would cause the family to exceed 85 percent of SMI for a family of the same size;
 - ~~(2) Changes in family size;~~
 - ~~(2)(3)~~ Changes in work or attendance in at a job training or educational program not considered to be temporary changes, as described in §809.42; and
 - (3) Any change in family residence, primary phone number, or e-mail (if available).

~~(4) The receipt or the awarding of any child care funds from other public or private entities; or~~

~~(5) Any other changes that may affect the child's eligibility or parent share of cost for child care.~~

~~(c)(b)~~ Failure to report changes described in subsection (a) of this section may result in:

~~(1) termination of child care;~~

~~(2) recovery of payments by the Board, the Board's child care contractor, or the Commission; or~~

~~(3) fact-finding for suspected fraud as described in Subchapter F of this chapter.~~

(d) A Board shall allow parents to report and the child care contractor shall take appropriate action regarding changes in:

(1) income and family size, which may result in -a reduction in the parent share of cost pursuant to §809.19; and

(2) work, job training, or education program participation that may result in an increase in the level of child care services.

~~(e) The receipt of child care services for which the parent is no longer eligible constitutes grounds on which to suspect fraud.~~

§809.74. Parent Appeal Rights.

(a) Unless otherwise stated in this section, a parent may request a hearing pursuant to Chapter 823 of this title:

(1) if the parent's eligibility or child's enrollment is denied, delayed, reduced, suspended, or terminated by the Board's child care contractor, Choices caseworker, or SNAP E&T caseworker; or

(2) regarding the amount of recoupment determined pursuant to Subchapter F of this chapter.

(b) A parent may have an individual represent him or her during this process.

(c) A parent of a child in protective services may not appeal pursuant to Chapter 823 of this title, but shall follow the procedures established by DFPS.

§809.75. Child Care during Appeal.

(a) For a child currently enrolled in child care, a Board shall ensure that child care services continue during the appeal process until a decision is reached, if the parent

requests a hearing.

- ~~(b) A Board shall ensure that child care does not continue during the appeal process if the parent's eligibility or child's enrollment is denied, delayed, reduced, suspended, or terminated because of:~~
 - ~~(1) excessive absences;~~
 - ~~(2) voluntary withdrawal from child care;~~
 - ~~(3) change in federal or state laws or regulations that affect the parent's eligibility;~~
 - ~~(4) lack of funding because of increases in the number of enrolled children in state and Board priority groups;~~
 - ~~(5) a sanctions finding against the parent participating in the Choices program;~~
 - ~~(6) voluntary withdrawal of a parent from the Choices program;~~
 - ~~(7) nonpayment of parent share of cost;~~
 - ~~(8) a parent's failure to report, within 10 days of occurrence, any change in the family's circumstances that would have rendered the family ineligible for subsidized child care;~~
 - ~~(9) a suspension of child care services pursuant to §809.51 (related to Child Care during Temporary Interruptions in Work, Education, or Training); or~~
 - ~~(10) five consecutive absences and the parent has failed to contact the child care provider or the child care contractor by the end of the fifth authorized day.~~

~~(b)~~^(e) The cost of providing services during the appeal process is subject to recovery from the parent by the Board, if the appeal decision is rendered against the parent.

~~§809.76. Parent Responsibility Agreement.~~

- ~~(a) The parent of a child receiving child care services is required to sign a parent PRA as part of the child care enrollment process, unless covered by the provisions of Texas Human Resources Code §31.0031. The parent's compliance with the provisions of the agreement shall be reviewed at each eligibility redetermination.~~
- ~~(b) The PRA requires that:~~
 - ~~(1) the parent shall:
 - ~~(A) cooperate with the Office of the Attorney General (OAG), if necessary, to establish paternity of the parent's children and to enforce child support on an ongoing basis by:~~~~

- ~~(i) providing documentation to the Board's child care contractor that the parent has an open child support case with OAG and is cooperating with OAG; or~~
 - ~~(ii) opening a child support case with OAG and providing documentation to the Board's child care contractor that the parent is cooperating with OAG; or~~
- ~~(B) provide documentation as determined by Board policy to the Board's child care contractor that the parent has an arrangement with the absent parent for child support and is receiving child support on a regular basis. Such documentation shall include evidence of child support history, which may include:
 - ~~(i) a Board established minimum amount of child support; and~~
 - ~~(ii) in-kind child support;~~~~
- ~~(2) each parent shall not use, sell, or possess marijuana or other controlled substances in violation of Texas Health and Safety Code, Chapter 481, and abstain from alcohol abuse; and~~
- ~~(3) each parent shall ensure that each family member younger than 18 years of age attends school regularly, unless the child has a high school diploma or a GED credential, or is specifically exempted from school attendance by Texas Education Code §25.086.~~
- ~~(c) Failure by the parent to comply with any of the provisions of the PRA within three months of initial eligibility shall result in termination of the family's child care services.~~
- ~~(d) Boards shall ensure that a parent whose child care services are terminated due to failure to comply with the requirements of the PRA, as set forth in this section, shall not be eligible for child care services until the parent demonstrates compliance.~~

~~§809.77. Exemptions from the Parent Responsibility Agreement.~~

~~Notwithstanding the requirements set forth in §809.76(b)(1), the parent is not required to comply with those requirements if one or more of the following situations exist:~~

- ~~(1) The paternity of the child cannot be established after a reasonable effort to do so;~~
- ~~(2) The child was conceived as a result of incest or rape;~~
- ~~(3) The parent of the child is a victim of domestic violence;~~

- ~~(4) Adoption proceedings for the child are pending;~~
- ~~(5) The parent of the child has been working with an agency for three months or less to decide whether to place the child for adoption;~~
- ~~(6) The child may be physically or emotionally harmed by cooperation;~~
- ~~(7) The parent may be physically or emotionally harmed by cooperation, to the extent of impairing the parent's ability to care for the child; or~~
- ~~(8) A person is standing in loco parentis for a child with a parent in military deployment.~~

§809.78. ~~Parent~~ Attendance Standards and Reporting Requirements.

(a) A Board shall ensure that parents are notified of the following:

- (1) Parents shall ensure that the eligible child attends on a regular basis consistent with the child's authorization for enrollment. Failure to meet attendance standards described in paragraph (2) of this section may:
 - (A) result in suspension of care; or
 - (B) be grounds for determining that a change in the parent's participation in work, job training, or an education program has occurred and care may be terminated pursuant to the requirements in §809.51(b).
- (2) Meeting attendance standards for child care services consists of fewer than:
 - (A) five consecutive absences during the month;
 - (B) ten total absences during the month; or
 - (C) forty-one total absences over a 12-month period.
- (3) Child care providers may end a child's enrollment with the provider if the child does not meet the provider's established policy regarding attendance.
- ~~(4)(1) Parents shall use the attendance card to report daily attendance and absences.~~
- ~~(2) Child care services may be terminated and parents may be held responsible for paying the provider for attendance and absences that are not reimbursed by the Board.~~
- ~~(5)(3) Parents shall not designate anyone under age 16 as a secondary cardholder, unless the individual is a child's parent.~~

~~(6)(4)~~ Parents shall not designate the owner, assistant director, or director of the child care facility as a secondary cardholder.

~~(7)(5)~~ Parents shall:

- (A) ensure the attendance card is not misused by secondary cardholders;
- (B) inform secondary cardholders of the responsibilities for using the attendance card;
- (C) ensure that secondary cardholders comply with these responsibilities; and
- (D) ensure the protection of attendance cards issued to them or secondary cardholders.

~~(8)(6)~~ ~~Child care services may be terminated if the~~ The parent or secondary cardholders give ing the attendance card or the personal identification number (PIN) to another person, including the child care provider, is grounds for a potential fraud determination pursuant to Subchapter F of this chapter.

~~(9)(7)~~ Parents shall report to the child care contractor instances in which a parent's attempt to record attendance in the child care automated attendance system is denied or rejected and cannot be corrected at the provider site. Failure to report such instances may result in an absence counted toward the ~~Board's maximum number of allowable absences or the parent being liable for the reimbursement to the provider~~ attendance standards described in paragraph (2) of this subsection.

~~(8)~~ ~~Five consecutive absences on authorized days of care, with no contact from the parent with the child care provider or child care contractor, may result in termination of child care services. Additionally, the 15-day notice of termination is not required in this circumstance, and child care shall not continue during any appeal.~~

(b) Boards shall ensure that parents sign a written acknowledgment indicating their understanding of ~~the parent~~ attendance standards and reporting card responsibilities requirements; at each of the following stages:

- (1) initial eligibility determination; and
- (2) each eligibility redetermination, ~~conducted at a frequency determined by the Board,~~ as required in §809.42(b)~~(2)~~.

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~~(17)~~;
 - (2) relative child care providers as described in §809.2~~(18)~~, subject to the requirements in subsection (e) of this section;
 - (3) at the Board's option, listed family homes as defined in §809.2~~(12)~~, subject to the requirements in subsection (b)(2) of this section; or
 - (4) 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; and
 - (C) The provider shall agree to comply with the requirements of this chapter and all Board policies and Board child care contractor procedures.
- (b) ~~For providers listed with DFPS, the following applies:~~
- ~~(1) A Board shall not prohibit a relative child care provider who is listed with DFPS and who meets the minimum requirements of this section from being an eligible relative child care provider.~~
- ~~(2) If a Board chooses to include listed family homes, as defined in §809.2(12), that provide care for children unrelated to the provider, a Board shall ensure that there are in effect, under local law, requirements applicable to the listed family homes designated to protect the health and safety of children. Pursuant to 45 CFR §98.41, the requirements shall include:~~
- ~~(A) the prevention and control of infectious diseases (including immunizations);~~
 - ~~(B) building and physical premises safety; and~~
 - ~~(C) minimum health and safety training appropriate to the child care setting.~~
- (c) Except as provided by the criteria for TRS Provider certification, a Board or the Board's child care contractor shall not place requirements on regulated providers that:
- (1) exceed 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 DFPS; however, pursuant to 45 CFR §98.41(e), relative child care providers listed with DFPS shall be exempt from the health and safety requirements of 45 CFR §98.41(a) and subsection (b)(2) of this section.
 - (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~~(6)~~, 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-](#), 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.

§809.92. Provider Responsibilities and Reporting Requirements.

- (a) A Board shall ensure that providers are given written notice of and agree to their responsibilities, reporting requirements, and requirements for reimbursement under this subchapter prior to enrolling a child.
- (b) Providers shall:
- (1) be responsible for collecting the parent share of cost as assessed under §809.19 before child care services are delivered;
 - (2) be responsible for collecting other child care funds received by the parent as described in §809.21(2);
 - (3) report to the Board or the Board's child care contractor instances in which the parent fails to pay the parent share of cost; and
 - (4) follow attendance reporting and tracking procedures required by the Commission [under §809.95](#), [the](#) Board, or, if applicable, the Board's child care contractor. ~~At a minimum, the provider shall:~~
 - ~~(A) document and maintain a record of each child's attendance and submit attendance records to the Board's child care contractor upon request;~~
 - ~~(B) inform the Board's child care contractor when an enrolled child is absent; and~~
 - ~~(C) inform the Board's child care contractor that the child has not attended the first three days of scheduled care. The provider has until the close of the third day of scheduled attendance to contact the Board's child care contractor regarding the child's absence.~~
- (c) Providers shall not charge the difference between the provider's published rate and the amount of the Board's reimbursement rate as determined under §809.21 to parents:
- (1) who are exempt from the parent share of cost assessment under §809.19(a)(2); or
 - (2) whose parent share of cost is calculated to be zero pursuant to §809.19(f).
- (d) A Board may develop a policy that prohibits providers from charging the difference between the provider's published rate and the amount of the Board's reimbursement rate (including the assessed parent share of cost) to all parents eligible for child care services.
- (e) Providers shall not deny a child care referral based on the parent's income status, receipt of public assistance, or the child's protective service status.
- (f) Providers shall not charge fees to a parent receiving child care subsidies that are not

charged to a parent who is not receiving subsidies.

§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.~~

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

(d)~~(e)~~ A relative child care provider shall not be reimbursed for more children than permitted by the DFPS 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)~~(d)~~ A Board shall not reimburse providers that are debarred from other state or federal programs unless and until the debarment is removed.

(f)~~(e)~~ Unless otherwise determined by the Board and approved by the Commission for automated reporting purposes, reimbursement for child care is based on the unit of service delivered, 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)~~(f)~~ A Board or its child care contractor shall ensure that providers are not paid for holding spaces open ~~except as consistent with attendance policies as established by the Board.~~

(h)~~(g)~~ 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)~~(h)~~ 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)~~(i)~~ 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 (ef) of this section.

§809.94. Providers Placed on Corrective or Adverse Action by the Texas Department of Family and Protective Services.

- (a) For a provider placed on evaluation corrective action (evaluation status) by DFPS, Boards shall ensure that:
 - (1) parents with children enrolled in Commission-funded child care are notified in writing of the provider's evaluation status no later than five business days after receiving notification from the Agency of DFPS' decision to place the provider on evaluation status; and
 - (2) parents choosing to enroll children in Commission-funded child care with the provider are notified in writing of the provider's evaluation status prior to enrolling the children with the provider.
- (b) For a provider placed on probation corrective action (probationary status) by DFPS, Boards shall ensure that:
 - (1) parents with children in Commission-funded child care are notified in writing of the provider's probationary status no later than five business days after receiving notification from the Agency of DFPS' decision to place the provider on probationary status; and
 - (2) no new referrals are made to the provider while on probationary status.
- (c) A parent receiving notification of a provider's evaluation or probationary status with DFPS pursuant to subsections (a) and (b) of this section may ~~choose to transfer the child to another eligible provider without being subject to the Board transfer policies described in §809.71(3) or continue the enrollment of a child with the provider~~ if the parent ~~signs and returns to the Board's child care contractor~~ requests the transfer within ~~10-14~~ business days of receiving such notification ~~a written acknowledgment that the parent is aware of the provider's status with DFPS, but chooses to enroll the child with the provider.~~
- (d) For a provider placed on evaluation or probationary status by DFPS, Boards shall ensure that the provider is not reimbursed at the Boards' enhanced reimbursement rates described in §809.20 while on evaluation or probationary status.
- (e) For a provider against whom DFPS is taking adverse action, Boards shall ensure that:
 - (1) parents with children enrolled in Commission-funded child care are notified no later than two business days after receiving notification from the Agency that DFPS intends to take adverse action against the provider;
 - (2) children enrolled in Commission-funded child care with the provider are transferred to another eligible provider no later than five business days after receiving notification from the Agency that DFPS intends to take adverse

action against the provider; and

- (3) no new referrals for Commission-funded child care are made to the provider while DFPS is taking adverse action.
- (f) For adverse actions in which DFPS has determined that the provider poses an immediate risk to the health or safety of children and cannot operate pending appeal of the adverse action, but for which there is a valid court order that overturns DFPS' determination and allows the provider to operate pending administrative review or appeal, Boards shall take action consistent with subsection (e) of this section.

§809.95. Provider Automated Attendance Agreement.

Boards shall notify providers of the following:

- (1) Employees of child care providers shall not:
 - (A) possess, have on the premises, or otherwise have access to the attendance card of a parent or secondary cardholder;
 - (B) accept or use the attendance card or PIN of a parent or secondary cardholder; or
 - (C) perform the attendance or absence reporting function on behalf of the parent;
- (2) The owner, director, or assistant director of a child care provider shall not be designated as the secondary cardholder by a parent with a child enrolled with the provider;
- (3) Providers shall report misuse of attendance cards and PINs to the Board or the Board's child care contractor; and
- (4) Providers shall report to the child care contractor authorized days that do not match the referral in the Agency's automated attendance system within five days of receiving the authorization. Failure to report the discrepancy may result in withholding payment to the provider.
- (5) [Misuse of attendance reporting and violation of the requirements in this section are grounds for a potential fraud determination pursuant to Subchapter F of this chapter.](#)

SUBCHAPTER F. FRAUD FACT-FINDING AND IMPROPER PAYMENTS

§809.111. General Fraud Fact-Finding Procedures.

- (a) This subchapter establishes authority for a Board to develop procedures for the prevention of fraud by a parent, provider, or any other person in a position to commit

fraud consistent with fraud prevention provisions in the Agency-Board Agreement.

(b) ~~(b)~~ In this subchapter, a person commits fraud if, to obtain or increase a benefit or other payment, either for the person or another person, the person:

(1) makes a false statement or representation, knowing it to be false; or

(2) knowingly fails to disclose a material fact.

(c)~~(b)~~ A Board shall ensure that procedures for researching and fact-finding for possible fraud are developed and implemented to deter and detect suspected fraud for child care services in the workforce area.

(d)~~(e)~~ These procedures shall include provisions that suspected fraud is reported to the Commission in accordance with Commission policies and procedures.

(e)~~(d)~~ Upon review of suspected fraud reports, the Commission may either accept the case for investigation and action at the state level, or return the case to the Board or its child care contractor for action including, but not limited to, the following:

(1) further fact-finding; or

(2) other corrective action as provided in this chapter or as may be appropriate.

(f)~~(e)~~ The Board shall ensure that a final fact-finding report is submitted to the Commission after a case is returned to the Board or its child care contractor and all feasible avenues of fact-finding and corrective actions have been exhausted.

§809.112. Suspected Fraud.

(a) A parent, provider, or any other person in a position to commit fraud may be suspected of fraud if the person presents or causes to be presented to the Board or its child care contractor one or more of the following items:

(1) A request for reimbursement in excess of the amount charged by the provider for the child care; or

(2) A claim for child care services if evidence indicates that the person may have:

(A) known, or should have known, that child care services were not provided as claimed;

(B) known, or should have known, that information provided is false or fraudulent;

(C) received child care services during a period in which the parent or child was not eligible for services;

- (D) known, or should have known, that child care subsidies were provided to a person not eligible to be a provider; or
- (E) otherwise indicated that the person knew or should have known that the actions were in violation of this chapter or state or federal statute or regulations relating to child care services.

(b) The following parental actions may be grounds for suspected fraud and cause for Boards to conduct fraud fact-finding or the Commission to initiate a fraud investigation:

(1) Not reporting or falsely reporting at initial eligibility or at eligibility redetermination:

(A) household composition, or income sources or amounts that would have resulted in ineligibility or a higher parent share of cost; or

(B) work, training, or education hours that would have resulted in ineligibility; or

(2) Not reporting during the 12-month eligibility period:

(A) changes in income or household composition that would cause the family income to exceed 85 percent of SMI (taking into consideration fluctuations of income); or

(B) a permanent loss of job or cessation of training or education that exceeds 90 days; and

(C) improper or inaccurate reporting of attendance.

§809.113. Action to Prevent or Correct Suspected Fraud.

(a) The Commission; ~~Board,~~ or Boards ~~s-child care contractor~~ may take the following actions pursuant to Commission policy if the Commission or Board finds that a provider has committed fraud:

- (1) Temporary withholding of payments to the provider for child care services delivered;
- (2) Nonpayment of child care services delivered;
- (3) Recoupment of funds from the provider;
- (4) Stop authorizing care at the provider's facility or location;
- (5) Prohibiting future eligibility to provide Commission-funded child care

services; or

~~(6)(5)~~ Any other action consistent with the intent of the governing statutes or regulations to investigate, prevent, or stop suspected fraud.

(b) The Commission; ~~Board~~; or Board's ~~child care contractor~~ may take the following actions pursuant to Commission policy if the Commission or Board finds that a parent has committed fraud:

(1) recouping funds from the parent;

(2) prohibiting future child care eligibility, provided that the prohibition does not result in a Choices or SNAP E&T participant becoming ineligible for child care;

(3) limiting the enrollment of the parent's child to a regulated child care provider;

(4) terminating care during the 12-month eligibility period if eligibility was determined using fraudulent information provided by the parent; or

~~(5)(4)~~ any other action consistent with the intent of the governing statutes or regulations to investigate, prevent, or stop suspected fraud.

§809.115. Corrective Adverse Actions.

(a) When determining appropriate corrective actions, the Board or Board's child care contractor shall consider:

(1) the scope of the violation;

(2) the severity of the violation; and

(3) the compliance history of the person or entity.

(b) Corrective actions for providers may include, but are not limited to, the following:

(1) Closing intake;

(2) Moving children to another provider selected by the parent;

(3) Withholding provider payments or reimbursement of costs incurred; and

~~(4) Termination of child care services; and~~

~~(4)(5)~~ Recoupment of funds.

(c) When a provider violates a provision of Subchapter E of this chapter, a written

Service Improvement Agreement may be negotiated between the provider and the Board or the Board's child care contractor. At the least, the Service Improvement Agreement shall include the following:

- (1) The basis for the Service Improvement Agreement;
 - (2) The steps required to reach compliance including, if applicable, technical assistance;
 - (3) The time limits for implementing the improvements; and
 - (4) The consequences of noncompliance with the Service Improvement Agreement.
- (d) The Board shall develop policies and procedures to ensure that the Board or the Board's child care contractor take corrective action consistent with subsections (a) - (c) of this section against a provider when a provider:
- (1) possesses, or has on the premises, attendance cards without the parent being present at the provider site;
 - (2) accepts or uses an attendance card or PIN of a parent or secondary cardholder; or
 - (3) performs the attendance reporting function on behalf of a parent.
- (e) The Board shall develop policies and procedures to require the Board's child care contractor to take corrective action consistent with subsections (a) - (c) of this section against a parent when a parent or parent's secondary cardholder gives his or her:
- (1) card to a provider; or
 - (2) PIN to a provider.

~~§809.116. Recovery of Improper Payments.~~

- ~~(a) A Board shall attempt recovery of all improper payments. The Commission shall not pay for improper payments.~~
- ~~(b) Recovery of improper payments shall be managed in accordance with Commission policies and procedures.~~

§809.117. Recovery of Improper Payments to a Provider or Parent.

- (a) A Board shall attempt recovery of all improper payments as defined in §809.2.
- (b) Recovery of improper payments shall be managed in accordance with Commission

policies and procedures.

(c)~~(a)~~ The provider shall repay improper payments for child care services received in the following circumstances:

- (1) Instances involving fraud;
- (2) Instances in which the provider did not meet the provider eligibility requirements in this chapter;
- (3) Instances in which the provider was paid for the child care services from another source;
- (4) Instances in which the provider did not deliver the child care services;
- (5) Instances in which referred children have been moved from one facility to another without authorization from the child care contractor; and
- (6) Other instances when repayment is deemed an appropriate action.

(d)~~(b)~~ A parent shall repay improper payments for child care only in the following circumstances:

- (1) Instances involving fraud as defined in this subchapter;
- (2) Instances in which the parent has received child care services while awaiting an appeal and the determination is affirmed by the hearing officer; or
- (3) Instances in which the parent fails to pay the parent share of cost and the Board's policy is to pay the provider for the parent's failure to pay the parent share of cost ~~Other instances in which repayment is deemed an appropriate corrective action.~~

(e) A Board shall ensure that a parent subject to the repayment provisions in subsection (d) of this section shall prohibit future child care eligibility until the prepayment amount is recovered, provided that the prohibition does not result in a Choices or SNAP E&T participant becoming ineligible for child care.