

Chapter 809. CHILD CARE AND DEVELOPMENT

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

ON **APRIL 11, 2006**, THE TEXAS WORKFORCE COMMISSION ADOPTED THE BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated publication date of the adopted rules in the *Texas Register*: **April 28, 2006**

The rules will take effect: **May 1, 2006**

The Texas Workforce Commission (Commission) adopts amendments to the following sections of Chapter 809 relating to Child Care and Development without changes as published in the December 30, 2005, issue of the *Texas Register*:

Subchapter B. General Management, §809.14

Subchapter C. Requirements to Provide Child Care, §809.42

Subchapter K. Funds Management, §809.231

The Texas Workforce Commission (Commission) adopts amendments to the following sections of Chapter 809 relating to Child Care and Development with changes as published in the December 30, 2005, issue of the *Texas Register*:

Subchapter B. General Management, §809.15

The Commission adopts the repeal of the following section of Chapter 809 relating to Child Care and Development without changes as published in the December 30, 2005, issue of the *Texas Register*:

Subchapter C. Requirements to Provide Child Care, §809.49

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

Subchapter C. Requirements to Provide Child Care

The Commission adopts the repeal of §809.49 relating to parent advisory groups. Among other changes, House Bill (HB) 2961, enacted by the 79th Texas Legislature, Regular Session (2005), repealed Texas Human Resources Code §44.002(c), which required licensed child care centers to have a parent advisory committee if more than 30 percent of a center's licensed capacity was purchased through the child care subsidy system. The repeal became effective immediately upon signature of the Governor on May 27, 2005. As a result of the repeal, Commission rule §809.49,

which requires licensed child care centers to have a Parent Advisory Group, is no longer necessary.

Subchapter B. General Management and Subchapter K. Funds Management

The Commission adopts §809.14 and §809.15, relating to promoting consumer education and other quality improvement activities, respectively, in order to describe the allowable consumer education and other quality improvement activities that Local Workforce Development Boards (Boards) may fund with Commission child care funds. The Commission also adopts §809.231, relating to provider reimbursement rates, in order to include providers participating in certain school readiness models as eligible to receive a higher graduated reimbursement rate for the provision of direct child care services consistent with recent actions by the 79th Texas Legislature (2005).

The federal Child Care and Development Fund (CCDF) statute (42 U.S.C. §9858(e)) requires that at least four percent of the funds each state receives be expended on allowable quality activities as set forth in the CCDF regulations (45 C.F.R. §98.51(a)). These quality activities include:

- providing comprehensive consumer education to parents and the public;
- increasing parental choice; and
- improving the quality and availability of child care.

Until September 1, 2001, the Commission passed down the federal requirement for quality expenditures to each Local Workforce Development Board (Board). At that time, Commission rule §800.58 required that each Board use at least four percent of its total annual child care expenditures on quality activities. The intent of the rule was to ensure that the state would meet the federal four percent quality set-aside.

In 2001, the Legislature determined that much of the state's four percent quality expenditure requirement could be met through the child care licensing and monitoring activities conducted by the Texas Department of Family and Protective Services (DFPS), and appropriated CCDF dollars to DFPS for licensing and monitoring activities. This action signaled a strategic shift in responsibility for fulfilling the federal quality requirements from the Commission—whose subsidized child care activities typically are limited to about 12 percent of the total regulated child care market—to DFPS—whose licensing and monitoring activities affect the entire range of the regulated child care market. Since State Fiscal Year 2002 (SFY'02), the Legislature has continued to appropriate CCDF dollars to DFPS, and the state has relied primarily on those expenditures to meet the federal four percent quality requirement.

As a result of the Legislature's decision to rely primarily on DFPS licensing and monitoring activities to meet the federal quality requirement, the Commission's quality performance measures relating to professional development training and Texas Rising Star (TRS) Provider certification were reduced and eventually eliminated by the Legislature.

Based on the funding appropriated by the Legislature for each year beginning with SFY'02, and the corresponding annual targets for average number of children served per day assigned by the Legislative Budget Board, the Commission and the Boards have had to use the majority of CCDF funds appropriated to the Agency, including the quality earmarked funds, for direct child care subsidies. The Boards have also continued to fund direct quality child care through higher reimbursement rates for TRS providers. The Legislature clearly intended that the Commission focus on providing direct subsidized child care as a support service for parents who are transitioning from welfare or who are at risk of becoming dependent on welfare, consistent with the federal direction at CCDF's creation in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Only minimal amounts of child care funds have been available each year at the state and local levels for nondirect quality child care services.

To the extent that funds are available in excess of those required to meet legislative performance targets for direct child care services, the Legislature enacted several laws in 2003 and 2005 that focus those quality expenditures on certain activities that prepare children for school. Senate Bill (SB) 280, enacted by the 78th Texas Legislature, Regular Session (2003), amended Chapter 2308 of the Texas Government Code by adding §2308.319, which encourages Boards to use local funds for collaborative reading initiatives.

Also in 2003, the Legislature enacted SB 76, amending Chapter 29 of the Texas Education Code to encourage the coordination and integration of early childhood development and child care programs and the creation of a school readiness rating system. The law charges the State Center for Early Childhood Development (State Center) with establishing pilot sites where child care, prekindergarten, and Head Start entities may coordinate and share information, facilities, and resources. It also charges the State Center with designing a school readiness rating system that determines whether an early childhood program is preparing children for kindergarten. As a result of SB 76, the State Center established 11 Texas Early Education Model (TEEM) pilot sites across the state. In 2005, the Legislature increased funding for the State Center and expanded the TEEM pilots.

Article IX, Rider 14.36 of the General Appropriations Act, 79th Legislature (2005), states:

School Readiness Model. Out of federal funds appropriated to the Texas Workforce Commission in Strategies A.3.1, TANF Choices Child Care; A.3.2, Transitional Child Care; and A.3.3, At-risk Child Care, up to \$50 million for the biennium shall be made available to child care providers participating in integrated school readiness models developed by the State Center for Early Childhood Development at the University of Texas Health Science Center. This initiative shall be implemented in a way to avoid any decline in the number of children receiving child care during the 2006-07 biennium.

These legislative actions provide a framework for the legislative emphasis on preparing children for school.

Texas Government Code §531.0312 designates the Texas Information and Referral Network/2-1-1 Texas (2-1-1 Texas) operated by the Texas Health and Human Services Commission (HHSC) as the single point of coordination for statewide information and referral services.

Because 2-1-1 Texas is the state's designated entity for information and referral services, the Commission contracts with HHSC to provide comprehensive child care information and referral services to parents and the general public through 2-1-1 Texas.

Additionally, the 79th Texas Legislature, Regular Session (2005), enacted HB 2048 that directs HHSC expand its 2-1-1 Texas Web site to include information on all available public and private child care and early education services in order to provide the public with an accessible online statewide database. HB 2048 amends §531.0312 of the Texas Government Code to require Boards, independent school districts, and the Texas Head Start Collaboration Office to provide 2-1-1 Texas with eligibility and availability information on their respective services.

Therefore, based on the actions of the Legislature, the Commission adopts §809.15, relating to quality improvement activities, to provide that, to the extent that funds are available for quality improvement activities, the Boards may fund quality improvement activities designed to promote the following:

- 1) collaborative reading initiatives;
- 2) school readiness, early learning, and literacy; and
- 3) support for child care consumer education through 2-1-1 Texas.

The Commission also adopts §809.14, relating to consumer education, to include provisions relating to recent actions of the 79th Texas Legislature regarding the Texas Information and Referral System and the 2-1-1 Texas system, as well as to provide consumer education relating to school readiness and early learning. Further, the Commission adopts §809.231 in order to include child care providers participating in the State Center's school readiness models in the Commission's tiered reimbursement rates.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

(Note: Minor editorial changes are made throughout Chapter 809, Subchapters B, C, and K, that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER C. REQUIREMENTS TO PROVIDE CHILD CARE

§809.49. Provider Advisory Groups

The Commission adopts the repeal of §809.49 requiring licensed child care centers to establish a Parent Advisory Group, as previously provided in §44.002(c) of the Texas Human Resources Code. HB 2961 repealed §44.002 of the Texas Human Resources Code, thereby removing the statutory requirement for parent advisory committees.

The Commission received no comments on the proposed rule language.

SUBCHAPTER B. GENERAL MANAGEMENT

§809.14. Promoting Consumer Education

As provided by 42 U.S.C §9858(e) and further delineated in 45 C.F.R. §98.33(a), the Commission is required to certify that it collects and disseminates to parents and the general public consumer education information that promotes informed child care choices by parents. At a minimum, this information shall include information about the full range of child care providers available and health and safety requirements. Since December 2003, the Commission has contracted with HHSC to provide comprehensive child care information and referral services to parents and the general public through the statewide 2-1-1 Texas system. The amendments to §809.14 are designed to enhance the 2-1-1 Texas system relating to child care by requiring Boards to refer parents—including those who are not eligible or are no longer eligible for subsidized child care—to the 2-1-1 Texas system for child care information. The adopted rules also require Boards to include information concerning child care programs designed to improve school readiness, early learning, and literacy as part of the Boards' consumer education information.

The Commission adopts §809.14(a) to require Boards to provide consumer education information to parents who are eligible for Commission-funded child care services; parents who are placed on a Board's waiting list; parents who are no longer eligible for Commission-funded child care services; and applicants who are not eligible for Commission-funded child care services. The Commission adopts this provision in order to ensure that the Boards' child care consumer education is provided to as broad a population as possible. Additionally, the Commission believes that the requirement to provide consumer education information to parents no longer eligible for Commission-funded child care services further reinforces the requirements of §302.0046(b) of the Texas Labor Code and §809.72(6)(A) of this chapter, which require Boards to provide information regarding other child care services to parents whose children have been removed from care in order to serve a child in a priority group.

The Commission adopts §809.14(b) to describe what the consumer education information shall contain. The new §809.14(b)(1) states that the consumer information shall include information about the Texas Information and Referral Network/2-1-1 Texas information and referral system. This requirement is consistent with recent legislative direction that child care information and referral be provided by 2-1-1 Texas.

The new §809.14(b)(2) states that the consumer education information shall also contain the Web site and telephone number of DFPS, so parents may obtain health and safety requirements, including information on the prevention and control of infectious diseases (including immunizations), building and physical premises safety, minimum health and safety training appropriate to the provider setting, and the regulatory compliance history of child care providers. Because DFPS is the designated entity for the State of Texas to regulate child care providers, the Commission believes that the consumer information shall direct parents to the DFPS Web site and phone number to obtain this information. The Agency has reviewed the DFPS Web site and has determined that it contains the information required by federal child care regulations regarding health and safety. Although not required by the adopted rules, the Commission encourages Boards to review periodically the information provided on the DFPS Web site and provide printed material from the Web site to parents.

Adopted §809.14(b)(3) requires that the consumer education information provide a description of the full range of eligible child care providers meeting the requirements set forth in §809.41 of this chapter, including the option for parents to choose self-arranged care. The Commission includes this in order to implement the federal child care requirement in 45 C.F.R. 98.33(a), which states that parents be provided information on the full range of providers available to them.

Adopted §809.14(b)(4) requires that the consumer education information also include a description of programs available in the local workforce development area (workforce area) relating to school readiness and quality rating systems, including the school readiness models developed by the State Center, and the TRS criteria. The Commission includes this provision in order to emphasize the direction of the Legislature, particularly Article IX, Rider 14.36 of the 2005 General Appropriations Act, relating to school readiness, early learning, and literacy. The Commission includes a description of the TRS criteria because the TRS system is provided for in state law pursuant to Texas Government Code §2308.315.

Finally, the Commission adopts §809.14(c) requiring Boards to cooperate with HHSC to provide 2-1-1 Texas with information, as determined by HHSC, for inclusion in the 2-1-1 Texas statewide information and referral network. The Commission adopts this in order to implement the provisions of HB 2048, enacted by the 79th Texas Legislature (2005), which amends §531.0312 of the Texas Government Code to require Boards to provide 2-1-1 Texas with eligibility and availability information on their respective services.

Comment: One commenter supported the efforts to educate the public about the 2-1-1 Texas information system and supports the use of CCDF funds for the statewide development of a fully functioning 2-1-1 Texas system for child care information. In addition, the commenter supported providing consumer education information to the broadest population.

Response: The Commission agrees with the comment and appreciates the support of the rules.

Comment: One commenter inquired if §809.14 requires only that customers be referred to 2-1-1 Texas and if the referral could be provided orally.

Response: The information required in §809.14(b) encompasses more than an oral referral to 2-1-1 Texas. The consumer information details the contact information for DFPS so parents may obtain health and safety information, a description of the full range of eligible child care providers, and a description of programs available in the workforce area relating to school readiness and quality rating systems, as well as information on 2-1-1 Texas. The Commission's intent is that this consumer information be provided in writing.

Comment: One commenter stated that the consumer education information should also include information on existing child care programs that already meet or exceed the school readiness criteria outside of the school readiness models.

Response: The Commission appreciates the comment and emphasizes that the school readiness models currently being tested by the State Center represent the first step in the development of a school readiness rating system. When fully developed and implemented, the school readiness rating system is expected to include school readiness programs that may not currently be participating in the TEEM pilots. The language in §809.14(b)(4) is designed to anticipate the development of a statewide school readiness and quality rating system.

Comment: One commenter stated that the Board will bear a financial cost of replacing existing consumer guides with the new consumer education information and asked if the new requirements could be implemented once the existing guides have been depleted.

Response: The Commission does not believe that this requirement will result in additional costs for the Boards. The previous rules required Boards to update the consumer guides on a regular basis with information on individual child care providers in their workforce areas. By removing the requirement to provide information on individual providers, the Commission believes that the amount of consumer information will be reduced, which will result in reduced overall costs for the Boards. The Commission intends that the new requirements for consumer education be implemented as soon as practicable following the date these rules become effective.

Comment: One commenter requested guidance on whether the information related to quality rating systems applies to state accreditation from the State Center, the National Association for the Education of Young Children, or other accreditation.

Response: The Commission appreciates the commenter's request for guidance on including quality rating systems information. The rules require information related only to the school readiness models developed by the State Center and information related to TRS. However, Boards may include information related to other school readiness and quality rating systems that may exist within each workforce area.

§809.15. Quality Improvement Activities

The Commission adopts amendments to §809.15, relating to quality improvement activities, in order to align the allowable quality child care activities with the legislative direction relating to collaborative reading initiatives; school readiness, early learning, and literacy; and support for 2-1-1 Texas. The new §809.15(a) states that local public transferred funds and local private donated funds, as well as child care funds allocated to the Boards under Chapter 800, Subchapter B of this title (including the CCDF quality earmarked funds), to the extent used for nondirect care quality activities, may only be used for:

- collaborative reading initiatives;
- school readiness, early learning, and literacy; and
- local-level support to promote child care consumer education provided by 2-1-1 Texas.

During the rule development process, several Boards requested clarification from the Commission concerning the types of activities that may be funded to support collaborative reading, school readiness, early learning, and literacy. The Boards noted that professional

development and training, as well as the purchase of resource materials and curriculum for professional development, are key components in providing early learning and literacy activities for children. The Commission adopts §809.15(b) to allow professional development and training for child care providers as well as the purchase of curriculum and curriculum-related resources, provided that the professional development and training and curriculum and related resources are designed to support collaborative reading initiatives, school readiness, early learning, and literacy.

In order to provide additional guidance to the Boards, the Commission offers the following guidelines and examples of the types of activities that may be funded to support the allowable quality initiatives. It is the Commission's intention that Boards be allowed to expend quality dollars for professional development and training using research-based curriculum, as well as the purchase of resource materials that support a print-rich environment designed to aid in the early learning and literacy development of children. Examples of activities to support collaborative reading initiatives, school readiness, early learning, and literacy include, but are not limited to:

- professional development relating to early learning workshops;
- Center for Improving the Readiness of Children for Learning and Education (CIRCLE) Train the Trainer training;
- literacy kits for child care providers;
- school readiness, early learning, and literacy awareness campaigns;
- scholarships for college courses relating to early learning, literacy, and school readiness; and
- training using research-based curriculum approved by the State Board of Education, Texas Education Agency, or recognized by the State Center.

It is not the intention of the Commission that Boards use quality dollars to purchase classroom consumable materials such as pencils, crayons, or art supplies. While the Commission recognizes that these materials are a supporting element that aid in a child's progress toward school readiness, the Commission believes that quality dollars should be targeted toward building the infrastructure necessary to provide early education professionals with the training, curriculum, and curriculum-related resources needed to promote school readiness, early learning, and literacy.

During the rule development process, several Boards expressed concern that the focus on school readiness, early learning, and literacy would lead Boards to direct quality dollars toward preschool children and away from infants and toddlers. In the preamble to the proposed rules, the Commission emphasized that Boards would not be limited to funding quality activities only for preschool. The Commission believes that the proposed rules provide Boards with the flexibility to fund early learning and literacy activities for all age groups, including infants and toddlers.

However, in response to concerns addressed through public comment, the Commission has added new §809.15(c), which explicitly allows Boards to fund quality improvement activities designed to meet the needs of children in any age group eligible for Commission-funded child care, as well as children with disabilities. The Commission intends to allow Boards the flexibility to fund collaborative reading initiatives and school readiness, early learning, and

literacy activities that meet the specific needs of any target population or age group within each workforce area.

New §809.15(d) allows Boards to give priority in funding allowable nondirect child care quality activities to child care facilities:

—participating in the integrated school readiness models developed by the State Center;
—implementing components of school readiness curricula approved by the State Center; or —
participating in or voluntarily pursuing TRS Provider certification.

The Commission includes these provisions to address concerns by the Boards that they will not be able to continue providing appropriate professional development activities designed to promote the TEEM model or TRS certification.

The adopted §809.15(e) states that expenditures certified by a public entity may include expenditures for any quality improvement activity described in 45 C.F.R. §98.51. The Commission included this subsection to allow public entities and the Boards the flexibility to use the maximum amount of public expenditures allowed under federal regulations.

The Commission adopts the removal of §809.15(a) requiring Boards to ensure that providers receive orientation, technical assistance, and ongoing training to improve the quality of child care. The Legislative Budget Board has eliminated the Commission's quality performance measure relating to professional development training; therefore, the Commission finds this requirement is no longer necessary in Commission rules.

The Commission also adopts the removal of §809.15(b) requiring that Boards recognize TRS providers. However, the Commission clarifies that Boards are not prohibited from providing professional development and training to TRS providers. As mentioned previously, the Commission includes provisions in §809.15(b) and §809.15(c)(2) in order to include professional development training to TRS providers.

The Commission adopts the removal of §809.15(c) requiring Boards to provide quality activities described in 45 C.F.R. §98.51. This provision is removed in order to emphasize that child care funds, to the extent used for quality child care activities, shall be directed at activities described in adopted §809.15(a).

Finally, the Commission adopts the removal of §809.15(d) allowing Boards to establish other voluntary criteria for improving quality. The Commission removes this provision to emphasize that child care funds, to the extent used for quality child care activities, shall be directed at activities described in the adopted §809.15(a).

Comment: Five commenters supported the emphasis and focus on school readiness.

Response: The Commission thanks the commenters for their support.

Comment: One commenter was supportive of the Commission's emphasizing that Boards are not limited to funding quality activities targeted to serving preschool age children.

Response: The Commission appreciates the commenter's support.

Comment: One commenter supported the Commission's efforts to increase the number of three- and four-year-olds who have access to quality child care and early education.

Response: The Commission agrees and appreciates the commenter's support.

Comment: Ten commenters urged the Commission to continue to support quality child care for all children, including those between birth and three years of age, as well as children with disabilities. Two of the commenters expressed concern that under the proposed rules quality improvement activities geared toward infants and toddlers will not be promoted and the term "school readiness activities" implies a primary focus on three- and four-year-olds. Other commenters noted that meaningful professional development opportunities for child care providers are an essential factor in improving the quality of child care. The commenters also noted that specific training in the areas of serving children with disabilities, infants, and toddlers must be included in professional development activities. Additionally, one commenter recommended that the proposed rule changes include language specifying that quality activities will be designed to meet the needs of children of all ages receiving child care services.

Response: The Commission agrees and adds new §809.15(c) stating that allowable activities may be designed to meet the needs of any age group eligible for Commission-funded child care services, including children with disabilities. The Commission believes that the skills of each age group build upon each other and early learning, literacy, and school readiness activities should not be geared toward one specific age group.

Additionally, the Commission emphasizes that the rule provides Boards with the flexibility to fund early learning, literacy, and school readiness activities for children with disabilities. The Commission encourages Boards to explore professional development opportunities for child care providers that focus on strategies to assist children with disabilities in becoming prepared to enter school.

Comment: Five commenters noted that in the past Boards have utilized CCDF funds for caregiver training specifically related to the unique needs of infants and toddlers, including training on topics such as brain development and shaken baby syndrome.

Response: The Commission agrees that funds may be used for caregiver training to meet the needs of infants and toddlers. The Commission believes that elements of brain development training are related to early learning and would be allowable activities. However, training specific to shaken baby syndrome is related to health and safety and is a requirement for child care licensing. Therefore, it is the Commission's understanding that funding for training related to health and safety requirements would be provided through DFPS.

Comment: One commenter stated that investing in young children, starting at birth, to help them develop to their full potential, impacts the long-term economic outlook for all communities and that the TRS program is an important component in meeting those needs.

Response: The Commission agrees that investing in young children impacts the long-term economic outlook for communities. The proposed rules do not change the TRS program, which remains intact.

Comment: Eleven commenters noted that Boards need to have local flexibility in designing quality improvement activities that meet the unique needs of their workforce areas. The commenters stated that Boards have utilized CCDF funds for caregiver training on quality components of child care and on specific topics such as working with children with special needs; providing technical assistance to home-based providers; providing essential materials and equipment for classrooms; and providing lending libraries. Commenters also cited specific training on topics as indicated through local training needs surveys has included training on working with children with special needs, positive guidance techniques, recognizing child abuse and neglect, child growth and development, stress reduction for children, and applying developmentally appropriate practices.

The commenters also stated that CCDF has a broad focus and expressed appreciation for Boards' efforts to support a broad range of innovative programs and activities to strengthen the child care infrastructure and improve parents' access to high-quality child care services. The commenters also stated that Boards must have the flexibility to work with their communities to determine their individual needs and to develop supportive activities to meet those needs.

Response: The Commission believes that, given the limited resources of CCDF and the legislative priorities on early learning, the statewide focus must be on early learning, literacy, and school readiness. The Commission's intent in the proposed rules is to provide Boards the flexibility to focus on early learning for home-based providers or professional development activities specific to the training needs of the local area. The Commission agrees with the need for sustainability at the local level and believes that focusing the limited CCDF funds on building the infrastructure necessary to provide early education professionals with training, curriculum, and curriculum-related resources will lead to long-term investments with tangible outcomes. Further, the Commission believes that, with the exception of child abuse and neglect and stress reduction for children, all of the training topics in the commenters' list relate to early learning, literacy, and school readiness. Training on abuse and neglect and stress reduction are related to health and safety, the focus of DFPS, the agency that regulates health and safety of child care facilities. The Commission believes the proposed rules allow flexibility for Boards to work within their communities. In fact, the Commission encourages Boards to use CCDF funds for early learning, literacy, and school readiness to create partnerships with other groups in the workforce area to leverage their funds for other types of quality initiatives.

Although the CCDF program has a broad focus, a primary goal of the CCDF program is to assist low-income working parents in purchasing child care services. CCDF was not designed to be the only funding source for quality improvement initiatives. In fact, the Commission subsidizes direct child care services for about 12 percent of the total capacity of the regulated child care market. However, the licensing and monitoring activities of DFPS affect the entire regulated child care market. Therefore, Boards are encouraged and expected to work with local

community partners to determine how quality activities allowed by §809.15 can contribute to the broad child care needs of the community.

Comment: Three commenters requested that scholarships for both associate's degrees in child development and teachers currently working in licensed facilities be included as allowable quality activities. The commenters stated that child development fundamentals that are taught in college-level courses are essential to quality child care, and professional development training does not replace these fundamentals.

Response: The Commission believes that the rules allow flexibility for Boards to provide scholarships for specific courses related to early learning, literacy, and school readiness. However, the Commission believes that scholarships for degree plans that also include general coursework—such as English composition, college math, college algebra, and personal computing—are too broad and would not be considered allowable activities. The Commission includes professional development activities in college courses that are related to early learning, literacy, and school readiness.

Comment: One commenter urged the Commission to clearly define the types of professional development activities needed to ensure that very young children are "pre-school" ready.

Response: The Commission does not believe it is necessary to provide a precise definition of the types of professional development activities that are allowed in rule as this may unduly limit the flexibility of Boards to fund early learning and school readiness programs in their workforce areas.

Comment: Three commenters noted that, because of the recent hurricanes, Boards need the flexibility to give child care providers the necessary training to serve children who have been displaced from their homes and are in need of mental health services.

Response: The Commission agrees that the need exists for mental health training for child care providers in order to meet the needs of the families and children displaced by the hurricanes. However, the Commission recognizes that CCDF alone cannot meet the needs of those displaced by the hurricanes. For that reason, the Commission applied for and has received a National Emergency Grant to provide child care services to children displaced by the hurricanes. The Commission encourages Boards to work with the Texas Department of State Health Services, the agency charged with the delivery of public mental health services for adults and children.

Comment: One commenter stated that proposed §809.15(a) is too narrow and that quality indicators related to ratios, group sizes, and physical facilities should be addressed. The commenter noted that low child-to-staff ratios are positively correlated with good outcomes for children; group sizes allowed under DFPS place children in jeopardy of cognitive and academic delays; and physical facilities are directly responsible for academic delays.

Response: The Commission appreciates the comment that environmental factors related to ratios, group sizes, and physical facilities may be important factors in school success; however, the Commission does not believe these are the determining factors that affect academic success. Additionally, the Commission believes that issues related to child-to-staff ratios, group size, and

physical facilities (especially related to child safety) are best addressed through child care licensing and regulation. The Commission again emphasizes that it subsidizes direct child care services to about 12 percent of the total capacity of the regulated child care market. However, the licensing and monitoring activities of DFPS, which include standards for child-to-staff ratios and physical facilities, affect the entire regulated child care market. Additionally, the Commission has encouraged DFPS to establish a tiered-licensing system, which may include lower ratios for any licensed facility (beyond just those with subsidized children) seeking to exceed minimum licensing standards.

Comment: Regarding §809.15(b), one commenter noted that there is no mention of the ability to purchase assessment tools and that a teacher's planned, purposeful interaction with young children and the ability of a teacher to have objective information about a child's understanding and skills is essential to school readiness. The commenter questioned whether assessment tools would be considered a curriculum-related support resource.

Response: The Commission believes assessment tools are curriculum-related support resources. However, the Commission emphasizes that assessment tools must be connected to the implementation of a specific curriculum and include training related to school readiness, early learning, and literacy.

Comment: One commenter noted that the rule change would not allow the use of quality funding to purchase adaptive equipment for a child with a disability if it was needed by a provider, which seems contrary to the requirements of the Americans with Disabilities Act.

Response: The Commission believes that the adopted rules do allow for the purchase of adaptive equipment, as long as the purchase is in conjunction with training. However, the Commission encourages Boards to consider supplying the training and collaborating with local governments, local early childhood intervention offices, private nonprofits (such as Easter Seals and United Way) to identify other funding sources to provide adaptive equipment.

Comment: One commenter stated that the proposed rule changes do not sufficiently define "collaborative reading initiatives."

Response: The Commission agrees that guidance should be provided, but believes that a definition in rule would unnecessarily limit Boards' flexibility. The Commission will issue a Workforce Development Letter to provide further guidance on collaborative reading initiatives.

Comment: One commenter requested clarification on the definition in the proposed rules of providers who are "voluntarily pursuing participation" in the TEEM project. The commenter noted that a provider may voluntarily pursue participation in TEEM, but regardless of quality funds, may never meet the TEEM requirements. The commenter did not believe those providers should receive priority in the funding of quality activities.

Response: The Commission appreciates the comment and has revised language in §809.15(d). The Commission recognizes that child care facilities may not have the option to voluntarily participate in the TEEM project. Therefore, the Commission adds rule language to clarify that

Boards may give priority for quality activities to providers that may wish to implement components of school readiness curricula as approved by the State Center. The Commission appreciates the concern that child care facilities may not be in a position to meet the TEEM requirements. The rule language is not intended to require Boards to fund any facility implementing components of the school readiness curricula. Rather, the Commission intends that if a Board chooses to prioritize quality funds for non-TEEM facilities in order to assist facilities with implementing components of the curricula, the Board should provide such funds using criteria that includes the child care facility's willingness to make a commitment to meeting school readiness criteria.

Comment: One commenter stated that the local community has benefited from participation in TEEM and that the community will continue to support it. However, the commenter noted that not all child care centers have the structural support to successfully participate in the TEEM system. The commenter noted that expansion of TEEM should continue, while quality funds are directed toward provider training for quality components and specific topics such as children with special needs, technical assistance to home-based providers, essential classroom materials and equipment, lending libraries, and more.

Response: The Commission appreciates the commenter's concerns and is aware that not every child care facility may be in a community with a TEEM site. However, the Commission believes that the proposed rules allow Boards to provide professional development and curriculum support for child care providers (including home-based providers) who are not participating in TEEM, as long as the activities are directed toward caregiver training involving early learning, literacy, or school readiness. The Commission also believes that a focus on early learning, literacy, and school readiness does not exclude children with special needs. Caregivers working with children with special needs may benefit tremendously from training on preparing children with special needs for early learning and school readiness.

Comment: One commenter requested clarification of "TEEM activities" and whether center classrooms participate in TEEM in its entirety or whether the center can participate in selected components, such as only teacher training, use of CIRCLE curricula without instruction, or use of assessment tools without teacher training.

Response: The Commission clarifies that TEEM activities refer to child care providers participating in integrated school readiness models. In addition, the Boards may choose to fund quality activities for providers that are not included in the TEEM partnerships, but are incorporating components of the State Center's CIRCLE training. However, the Commission emphasizes that the purchase of curricula or resource materials must be linked with appropriate training.

Comment: Regarding the requirements under Article IX, Rider 14.36, relating to school readiness models, one commenter noted that the Board serves a 12-county workforce area, yet only one TEEM partnership currently exists in the urban part of the workforce area. Additional resources for this one project would divert funding away from the rural counties, thereby creating inequity.

Response: The Commission believes that Boards have the flexibility to design quality activities that will benefit the entire workforce area, and the Boards are not limited to directing activities solely to a TEEM project. The Commission emphasizes that Boards may choose to fund professional development activities for providers that are not included in the TEEM partnerships, but incorporate components of the State Center's CIRCLE training.

Comment: One commenter requested assurance that Boards can use quality funds to provide necessary tools to support home-based child care providers as well as providers caring for children with special needs.

Response: The Commission agrees that quality funds may be used for professional development specifically designed to meet the early learning and school readiness needs of children with disabilities or designed for home-based providers.

Comment: One commenter noted that collaboration between the private sector and public sector, as well as the for-profit and nonprofit sectors, should continue to be encouraged.

Response: The Commission agrees and encourages Boards to seek public-private partnerships in their workforce areas. The CCDF State Plan documents evidence of public-private partnerships such as the 2-1-1 Texas collaboration. TEEM also is an excellent example of collaboration among profit, nonprofit, and publicly supported providers.

Comment: Eight commenters expressed concern that the proposed rules imply an overly narrow definition of school readiness and early learning, one that places too heavy a focus on cognitive development at the expense of children's social and emotional development—two critical components in achieving school readiness. The commenters noted that a child's emotional and social well-being is as critical to early learning and literacy as phonemic awareness and print-rich environments. One of the commenters recommended that language be added in the proposed rule to include activities that support the social and emotional development of all children.

Response: The Commission disagrees that the proposed rules imply a narrow focus only on the cognitive development of children and only address the reading and literacy aspect of a child's development. The Commission agrees that each of the developmental domains is important for children. Dr. Susan Landry, Director of the State Center for Early Childhood Development, issued a report in 2005 entitled "Effective Early Childhood Programs." The report discusses the fact that all of the developmental domains are intertwined and linked in children's growth. Dr. Landry states that children's primary developmental domains—physical, social/emotional, and cognitive—have complex interrelations, and that school readiness requires a solid development, not only in the cognitive domain, but also in all of the major developmental domains. The Commission does not believe it is necessary to specify in rule that activities supporting the social and emotional development of children are included as quality activities. The rules do not limit activities to one particular developmental domain.

Comment: One commenter recommended the continued use of funds for children with disabilities and school age care.

Response: The Commission agrees with the comment and believes that the rules provide Boards with the flexibility to focus on professional development activities related to early learning and school readiness that meets the specific needs of school age children and children with disabilities. Collaborative reading activities that encourage reading may also be geared toward school age children.

Comment: Regarding the use of local match funds for quality activities, one commenter stated that Boards should be given the flexibility to continue supporting the needs of both children and providers.

Response: The Commission agrees that Boards should support the needs of both children and providers and believes that the proposed rules allow for that flexibility.

Comment: Two commenters noted that if a Board is meeting or is on track to meet its performance target, then the use of local match funds for quality activities is an excellent avenue to support the needs of the workforce area. One of the commenters recommended that the Commission allocate additional local match for direct care and, if it is not needed for Boards to meet the performance target for children in care, then reissue the funds for any quality activities.

Response: The Commission disagrees with the contention that as long as a Board is meeting, or is on track to meet, its performance targets it should be allowed to fund any type of quality activities with CCDF funds not needed to meet performance targets. The Commission believes that, in an environment of limited funds, quality dollars must be focused on statewide goals with high impact. Otherwise, funding for quality activities will be scattered and largely ineffective.

Comment: Two commenters noted that the Board depends upon its local partners to secure local match and the availability of quality funds enables the Board to continue building good relationships with its local partners because the Board needs to be giving back to the community in terms of quality, not just more children in care. The commenters also stated that at some point local contributors would not provide the level of local match if there were no return on their investment.

Response: The Commission acknowledges the support provided by local partners in the securing of local match. It is not the Commission's intent to limit local donations and the Commission believes that this will not happen. However, given the limited funds available, the Commission believes that it is essential that quality activities focus on early learning and school readiness. Furthermore, by specifying that CCDF quality funds be used for activities related to school readiness, early learning, and literacy as well as support for 2-1-1 Texas, Boards and local child care organizations should look to other funding sources to expand the total amount of dollars spent on quality child care. Viewing CCDF as the primary source for any and all quality initiatives reduces the incentive in local areas to look to other available funding sources that complement and enhance CCDF in order to meet the broad child care needs of local communities.

Comment: One commenter requested clarification regarding the use of matching funds derived from certification of expenditures from public entities for quality activities. The commenter inquired whether the federal funds could be spent on any quality activities.

Response: Regarding the use of federal funds derived from certification of expenditures from a public entity, the local funds can be expended on any quality activity allowed in the federal regulations set forth in 45 C.F.R. §98.51. However, pursuant to this chapter, the resulting federal funds can be expended only on activities related to early learning, literacy, school readiness, collaborative reading initiatives, or local support for 2-1-1 Texas.

SUBCHAPTER K. FUNDS MANAGEMENT

§809.231. Provider Reimbursement Rates

The Commission adopts §809.231(d) to require Boards to establish graduated reimbursement rates for child care providers participating in integrated school readiness models developed by the State Center. The Commission adopts this amendment to implement the direction of the Legislature as provided by Article IX, Rider 14.36 of the General Appropriations Act, 79th Texas Legislature (2005), which requires the Commission to make available up to \$50 million of the federal funds appropriated to the Commission for Choices, Transitional, and At-Risk Child Care in the 2006-07 biennium, to child care providers participating in State Center integrated school readiness models. By making more funds available, through higher reimbursement rates, to providers participating in the school readiness models, the Commission will be in a position to demonstrate its intention to implement the intent of Article IX, Rider 14.36, as required by the Legislature. The Commission also emphasizes that graduated reimbursement rates for TRS providers will remain a direct care quality expenditure, as directed by Texas Government Code §2308.315.

The Commission adopts §809.231(e) to provide that the minimum reimbursement rates established under §809.231(d) shall be at least five percent greater than the maximum rate established for providers not meeting the requirements of §809.231(d) for the same category of care up to, but not to exceed, the provider's published rate.

Finally, the Commission adopts the removal of §809.231(g), which allows Boards to provide incentives to providers to recognize other quality criteria in addition to those in §809.231(d). The Commission removes this provision to limit the use of graduated reimbursement rates to those programs recognized by state statute, such as programs participating in the integrated school readiness models (as provided in Article IX, Rider 14.36 of the General Appropriations Act, 79th Legislature) and the TRS providers (as provided in Texas Government Code §2308.315). The Commission emphasizes that it is not removing the ability of Boards to provide incentives to providers that voluntarily meet or attempt to meet quality criteria. The Commission believes that the new §809.15(b), which allows Boards to provide professional development and to purchase curriculum resources—as well as the newly adopted §809.15(c), which allows Boards to prioritize nondirect quality funds for providers participating in or pursuing participation in school readiness models and TRS certification pursuant to Texas Government

Code §2308.316—provide the Boards the opportunity to focus incentives on quality programs recognized by the Legislature.

Comment: One commenter expressed support for higher reimbursement rates for providers participating in TRS or TEEM.

Response: The Commission appreciates the commenter's support of higher reimbursement rates for TRS and TEEM providers.

Comment: One commenter questioned whether providers participating in TEEM, but not participating in TRS, will be required to have a provider agreement.

Response: The Commission will not require Boards to have a provider agreement with providers that are participating in the TEEM project.

Comment: One commenter noted that the TRS program is the only program recognized by the state to receive higher reimbursement rates; however, the TRS criteria do not measure school readiness.

Response: The Commission recognizes that the current TRS criteria do not measure school readiness outcomes of children. However, §2308.315 of the Texas Government Code requires Boards to establish graduated reimbursement rates for TRS providers. Section 809.221(d)(2) reflects this statutory requirement.

The Commission also notes that in 1999, when the Legislature required higher reimbursement rates for TRS providers, school readiness was not a stated goal of the TRS criteria. However, the Commission is currently considering adding school readiness as a criterion for TRS providers. Additionally, the Commission recognizes that TRS was the only program available in 1999 to receive the higher reimbursement. By adopting the new §809.221(d)(1), the Commission adds child care providers participating in the State Center's school readiness models as eligible to receive higher reimbursement rates.

Comment: Regarding provider reimbursement rates, one commenter requested clarification on TEEM providers being eligible for the graduated rate increase. The commenter asked whether the provider would only receive the rate increase for the age groups participating in the TEEM project (three- to four-year-olds) or would the rate increase apply across all of the provider's rates.

Response: It is the Commission's intent that the graduated reimbursement rate for a provider participating in the TEEM project will apply across all of the provider's age-group rates, not just the three-to-four year old age group. The Commission recognizes that separate reimbursement rates based on classroom age groups may pose an administrative burden for providers and Boards.

Comment: One commenter recommended that reimbursement rates need to be increased and should be based on the quality of the program. In addition, the commenter noted that

reimbursement rates should be determined by an annual market rate survey that encompasses all providers from all socioeconomic levels.

Response: The Commission notes that the existing rule requires Boards to establish reimbursement rates based on a market rate survey and other local factors. The Commission also notes that an annual market rate survey encompassing a representative sample of provider types is conducted annually and the Commission provides the results of the market rate survey to the Boards.

Comments were received from:

Senator Judith Zaffirini, Texas State Senate
Deborah L. Butts, East Texas Workforce Development Board
Woody Engebretson, Rural Capital Area Workforce Development Board
Ann McCain, Central Texas Workforce Board
Alan Miller, Alamo Workforce Development Board
Lisa Witkowski, Workforce Solutions for Tarrant County
Peggy Grunwell, Converse Child Care Center Board Liaison
Frank Guevara, Palo Alto College
Kaitlin Guthrow, Texas Early Childhood Education Coalition
Nancy Hard, Family Service Association
Suzanne Hinds, Collaborative for Children
Susan Hoff, Child Care Group
Tere Holmes, The Children's Courtyard
Sandra Lamm and Louanne Aponte, Texas Association of Child Care Resource and Referral Agencies
Ruth Lightfoot, Alamo Area Council of Governments
Dr. Teri Perryman, Texas Medical Association
Josette Saxton, Texans Care for Children
Jennifer Vogel, San Marcos Consolidated Independent School District
John A. Whitcamp, Child Care Associates
Dr. Stephen Barnett
Earlene Gonzales

The Agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the Agency's legal authority.

The rules are adopted 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 the Texas Human Resources Code §44.002, regarding Administrative Rules.

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

Chapter 809. CHILD CARE AND DEVELOPMENT

Subchapter B. General Management

§809.14. Promoting Consumer Education.

(a) A Board shall promote informed child care choices by providing consumer education information to:

- (1) parents who are eligible for Commission-funded child care services;
- (2) parents who are placed on a Board's waiting list;
- (3) parents who are no longer eligible for Commission-funded child care services;
and
- (4) applicants who are not eligible for Commission-funded child care services.

(b) The consumer education information shall contain, at a minimum:

- (1) information about the Texas Information and Referral Network/2-1-1 Texas information and referral system;
- (2) the Web site and telephone number of the Texas Department of Family and Protective Services (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 §809.41 of this chapter; and
- (4) a description of programs available in the local workforce development area relating to school readiness and quality rating systems, including the:
 - (A) school readiness models developed by the State Center for Early Childhood Development at the University of Texas Health Science Center;
and

(B) the Texas Rising Star Provider criteria.

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

~~(a) A Board shall make available to parents a consumer guide to child care providers who have Provider Agreements to provide Commission-funded child care in the local workforce development area and shall represent the name, address, and phone number of each provider and shall represent whether each provider:~~

~~(1) is licensed by or registered with the Texas Department of Protective and Regulatory Services;~~

~~(2) has met the Texas Rising Star criteria (formerly known as the Designated Vendor criteria) as established by the Commission;~~

~~(3) has submitted proof of general liability insurance; and~~

~~(4) has submitted proof of appropriate commercial transportation insurance.~~

~~(b) The consumer guide shall set forth the requirements to be licensed and registered with the Texas Department of Protective and Regulatory Services as set forth in Texas Human Resources Code, Chapter 42 and applicable administrative rules and a description of the types of facilities or homes, which may be licensed or registered including, but not limited to, the following: day care centers, group day care homes, and family homes.~~

~~(c) A Board shall ensure that the consumer guide also includes the telephone number of the Texas Department of Protective and Regulatory Services or applicable regulating agency, so parents may obtain or verify the information regarding the providers and check compliance history.~~

~~(d) The consumer guide may include additional information including, but not limited to, the following:~~

~~(1) information the Board determines would assist parents in choosing a provider; and~~

~~(2) information as established by the Commission.~~

§809.15. Quality Improvement Activities.

(a) Local public transferred funds and local private donated funds, as provided in §809.20 of this subchapter, as well as child care funds allocated to the Boards in Chapter 800, Subchapter B of this title, to the extent used for nondirect care quality improvement activities, shall only be used for the following:

(1) Collaborative reading initiatives

(2) School readiness, early learning, and literacy

(3) Local-level support to promote child care consumer education provided by 2-1-1 Texas

~~(a) A Board shall ensure that providers receive orientation, technical assistance, and ongoing training to improve the quality of child care.~~

(b) Allowable activities may include the following to support the quality improvement activities described in subsection (a) of this section:

(1) Professional development and training for child care providers

(2) Purchase of curriculum and curriculum-related support resources for child care providers

(c) Activities in subsection (a) of this section may be designed to meet the needs of children in any age group eligible for Commission-funded child care, as well as children with disabilities.

~~(b) A Board shall ensure that the quality of child care is improved by recognizing providers who voluntarily exceed the minimum regulatory standards set by the Texas Department of Protective and Regulatory Services by using the Texas Rising Star Provider criteria (formerly known as the Designated Vendor criteria) as established by the Commission.~~

(de) In funding quality activities allowable under this section, a Board may give priority to child care facilities providers participating in or voluntarily pursuing participation in:

(1) participating in the integrated school readiness models developed by the State Center for Early Childhood Development at the University of Texas Health Science Center; **and**

(2) implementing components of school readiness curricula as approved by the State Center; or

(3) participating in or voluntarily pursuing participation in Texas Rising Star Provider certification, pursuant to Texas Government Code §2308.316.

~~(e) A Board shall ensure that the quality of child care is improved by using quality improvement activities including, but not limited to, the activities described in 45 Code of Federal Regulations §98.51, except the Boards may not provide loans.~~

(ed) Expenditures certified by a public entity, as provided in §809.20 of this subchapter, may include expenditures for any quality improvement activity described in 45 C.F.R. §98.51.

~~(d) In addition to the Texas Rising Star Provider criteria, a Board may establish other voluntary criteria for improving quality and recognize providers that meet or exceed the voluntary standards for quality.~~

~~(1) The quality improvement criteria may include, but are not limited to one or more of the following activities:~~

~~(A) reducing group sizes;~~

~~(B) improving health and safety conditions;~~

~~(C) improving linkage to parents and community services; or~~

~~(D) improving teacher training.~~

~~(2) Boards may also choose to recognize professional accreditation as a means to improve quality.~~

SUBCHAPTER C. REQUIREMENTS TO PROVIDE CHILD CARE

§809.42. Minimum Requirements for Providers.

(a) A Board shall ensure that providers are at a minimum:

(1) licensed by the Texas Department of ~~Protective and Regulatory Services~~Family and Protective Services;

(2) registered with the Texas Department of ~~Protective and Regulatory Services~~Family and Protective Services;

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

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

(b) A Board shall ensure that the providers:

(1) provide child care in compliance with a Provider Agreement as specified in this subchapter; and

(2) are not the subject of corrective or adverse action with the Texas Department of ~~Protective and Regulatory Services~~Family and Protective Services, the Texas Department of State Health Services, the United States military services, or any other state or federal agency.

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

~~§809.49. Provider Advisory Groups~~

~~Providers, that are licensed centers, are required to establish a Parent Advisory Group consistent with Chapter 44 of the Texas Human Resources Code.~~

§SUBCHAPTER K. FUNDS MANAGEMENT

§809.231. Provider Reimbursement Rates.

- (a) Based on local factors, including a market rate survey provided by the Agency, a Board shall establish the reimbursement rates for purchased child care to ensure that the rates provide equal access to child care services in the local market and in a manner consistent with state and federal statutes and regulations governing child care.
- (b) A Board shall reimburse providers at the Board's maximum rate or the provider's published rate, whichever is lower.
- (c) A Board shall establish the same maximum reimbursement rate for all regulated providers, with or without signed agreements, for each category of care.
- (d) A Board shall establish ~~a~~ graduated reimbursement rates for:
 - (1) child care providers participating in integrated school readiness models developed by the State Center for Early Childhood Development at the University of Texas Health Science Center; and
 - (2) Texas Rising Star Providers (formerly known as Designated Vendors), pursuant to Texas Government Code §2308.315.
- ~~(e) The minimum reimbursement rates established under subsection (d) of this section for Texas Rising Star Providers shall be at least five percent greater than the maximum rate established for providers not meeting the requirements of subsection (d) non-Texas Rising Star Providers, for the same category of care up to, but not to exceed, the provider's published rate. The Texas Rising Star Provider rate differential established in this section shall be funded with federal Child Care and Development funds dedicated to quality improvement activities.~~
- (fe) The Board or its contractor shall not reimburse a provider retroactively for new reimbursement rates.
- (gf) A Board or its contractor shall ensure that providers who are reimbursed for additional staff needed to assist in the care of a child with disabilities are paid a rate up to 190% of the provider's reimbursement rate for a child of that same age.

- (1) The higher rate, which may be called an inclusion assistance rate, is an increased provider reimbursement rate to provide for additional staff to assist in the care of a child with disabilities, which shall take into consideration the estimated cost of the additional staff needed by a child with disabilities.
- (2) The Board shall ensure that a professional, who is familiar with assessing the needs of children with disabilities, certifies the need for the inclusion assistance rate.

~~(g) A Board may provide incentives to providers and self-arranged child care providers to recognize quality in addition to the provisions set forth in subsection (d) of this section.~~