

## Chapter 809. Child Care and Development

ADOPTED RULES TO BE SUBMITTED TO THE TEXAS REGISTER. THIS DOCUMENT WILL NOT HAVE ANY SUBSTANTIVE CHANGES BUT IS SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE TEXAS REGISTER.

The Texas Workforce Commission (Commission) adopts amendments to Subchapter A. General Provisions, §809.2; Subchapter B. General Management Requirements, §809.20; Subchapter G. Child Care for People Transitioning off Public Assistance, §809.103 and §809.105; and Subchapter K. Funds Management, §§809.221 and 809.225, relating to child care services with changes to the proposed text as published in the June 29, 2001 issue of the *Texas Register* (26 TexReg 4848). The Commission adopts amendments to Subchapter A. General Provisions, §809.1; the repeal of Subchapter A. General Provisions, §809.5; amendments to Subchapter B. General Management Requirements, §§809.11, 809.14 and 809.15; Subchapter C. Requirements to Provide Child Care, §§809.43, 809.46-809.48; Subchapter D. Self-Arranged Care, §809.61; Subchapter G. Child Care for People Transitioning off Public Assistance, §809.101, §809.102 and §809.104; the repeal of Subchapter I. Child Care Training Center Pilot Programs, §§809.171-809.174; and amendments to Subchapter K. Funds Management, §809.231 and §809.233 without changes to the proposed text. These rules will not be republished.

The purposes of amending the rules are to offer clarification of priorities for service, adjust the parent's share of cost provision, incorporate the new Texas Rising Star provider identity for Designated Vendors, which includes higher reimbursement rates, and remove unnecessary provisions.

The rule amendments continue to require placing eligible Choices, Transitional or Texas Workforce Applicants' children into care. However, the rule amendments make clear that if necessary, due to the limitation of funds, a child's care may be discontinued to ensure that the statutory and regulatory priorities receive child care services. Therefore, a Board must ensure that policies are in place for discontinuing child care services for families that are other than Choices, Transitional, or Texas Workforce Applicants if funding is limited. The amendments ensure that funds are used for low-income families who are working or are in training or educational activities and who must receive child care services to assist them in becoming self-sufficient.

The exemption to the parent's share of cost provision relating to Temporary Assistance for Needy Families (TANF) is changed to an exemption for Choices participants. The purpose for the rule change is to provide for the exemption from paying a parent's share of cost for persons participating in the Choices services or activities who are working, in training or in an education activity. The intent of the rule change is to encourage parents to voluntarily participate in Choices if they are still receiving TANF, thus making them eligible for a broader range of services and further assisting them in becoming self-sufficient. TANF recipients who are not mandatory or voluntary participants in a Choices service or activity will be responsible for paying the parent's share of cost as determined by the Board.

The rule amendments also remove the parent's share of cost exemption for Supplemental Security Income (SSI) recipients to provide for the exemption from the parent's share of cost to apply only to Choices participants.

The rule amendments replace the Designated Vendor title with the new Texas Rising Star provider identity. This title has been established in coordination with local Boards and contractors and more accurately describes the higher quality of care that is found in these facilities. In addition, the rule amendments incorporate references to the statutory change resulting from House Bill 3333, 76<sup>th</sup> Legislature, Regular Session (1999), which put into place a minimum five percent increase in the reimbursement rate for Designated Vendor (Texas Rising Star) providers as long as the rate does not exceed the published rate and incorporated a provision that each Board shall establish graduated reimbursement rates for child care based on the Texas Workforce Commission's Designated Vendor program. Specifically, the bill required that the reimbursement rate for Designated Vendors must be at least five percent greater than the maximum rate established for nondesignated vendors for the same category of care and that the Designated Vendor rate differential shall be funded with the federal Child Care and Development Funds (CCDF) dedicated to quality improvement activities.

The rule amendments remove certain portions of the rules that are obsolete or have expired, such as the child care training center pilot programs.

For purposes of this preamble, the term "Agency" refers to the daily operations of the Texas Workforce Commission under the direction of the executive director, and the term "Commission" refers to the three-member body of governance composed of Governor-appointed members.

In §809.1, subsection (b), the word "or" replaces the word "and". Also, in section (b), the phrase "continues to" is deleted, and the word "administer" is changed to plural form.

In §809.2, paragraphs (1) and (2), the definitions regarding the Board and Child Care are redefined which are consistent with §800.2. Changes have been made to paragraph (2) clarification purposes regarding the role of the Commission.

Section 809.5. Child Care State Advisory Committee is repealed in its entirety.

In §809.14, paragraph (3) of subsection (a), the phrase "Designed Vendor standards of" is replaced by the phrase "Texas Rising Star criteria as established by." In addition, the phrase "(formerly known as the Designated Vendor criteria)" is appended to the end of subsection (b). In subsection (d), the phrase "Designated Vendor" is replaced by the phrase "Texas Rising Star Provider."

In §809.15, subsection (b), the phrase "Designated Vendor criteria" is replaced by the phrase "Texas Rising Star Provider criteria." In addition, the phrase "(formerly known as the Designated Vendor criteria)" is appended to the end of subsection (b). In subsection (d), the phrase "Designated Vendor" is replaced by the phrase "Texas Rising Star Provider."

In §809.20, subsection (f), changes have been made for clarification purposes.

In §809.46, subparagraph (B) of paragraph (2) of subsection (a), the sentence was removed, and the subsequent subsections were renamed appropriately.

In §809.61, a new subsection (c) was inserted between subsection (b) and subsection (c). All subsections following the new subsection (c) were renamed appropriately.

In §809.103, subsection (c), the phrase “one year” was replaced by the phrase “12 months or until the family reaches the Board's income limit for eligibility, whichever occurs first. Subject to the availability of funds and the continuing employment of the parent(s), children who are otherwise eligible for at-risk child care and whose time limit for Applicant child care has expired, may be continued in care subject to the Board's policies for at-risk child care. At-risk care includes eligibility under any provision contained in Subchapter H of this title relating to Children of Parents At-Risk of Becoming Dependent on Public Assistance.”

In §809.105, changes were made to clarify TDPRS Child Care.

Subchapter I. Child Care Training Center Pilot Programs is repealed in its entirety.

§809.221 was reworded entirely for clarification purposes.

In §809.225, subsection (c), the phrase “if eligible to receive care based on other eligibility criteria or if the Texas Department of Protective and Regulatory Services (TDPRS) or its case worker indicates that the child is in need of protective services.” was replaced by the phrase "if the children are otherwise eligible under the Board's child care policies and meet the minimum requirements for eligibility set forth in the federal regulations, and if it does not result in removing another child from care. Children Needing to Receive Child Protective Services (CPS) referred by a TDPRS CPS worker that are no longer funded through TDPRS shall remain in care for the period of time determined appropriate by TDPRS. The provision of care shall not exceed six months and shall not result in another child being removed from care. In addition, the entire subsection (d) was deleted. Changes were made to these subsections to clarify TDPRS Child Care.

In §809.231, a new subsection (b) was added, subsequent subsections were renamed appropriately, and a new subsection (e) was added.

In §809.233, paragraph (1), each phrase stating “parent fees” was replaced by the phrase “parent's share of costs.”

The Commission received comments on the rules from five commenters, which included:  
the Alamo Workforce Development Board,  
the Coastal Bend Workforce Development Board,  
the North Central Workforce Development Board,

the Southeast Workforce Development Board, and the West Central Workforce Development Board.

The commenters expressed support for the rules and one commenter asked questions related to the rules. The comment summaries and the responses are as follows:

Comment: Regarding §809.46, Assessing and Collecting Parent's Share of Cost, one commenter stated appreciation for the flexibility to review and assess families for the parent's share of cost. The commenter also stated that the proposed rule will provide the Board with the latitude of evaluating and determining any policy changes of assessing parent's share of cost to others if the financial circumstances require such action and that the parent's share of cost is one tool to assist the families in assuming the parental responsibilities that are a part of self-sufficiency.

The Commission agrees with the commenter's statements and appreciates the feedback on the proposed changes to the rules.

Comment: Regarding §809.105, one commenter recommended that if continued coordination with TDPRS is required, Boards should be able to count these children in the Board's performance measures.

Response: The Commission agrees that any child care services for former TDPRS children paid for out of the Commission's child care allocation to the local workforce development areas should be counted in the Board's performance measures. However, the performance targets stipulated by the Legislature for the Commission and Boards currently are based on the child care funds allocated by the Commission, which reflects the average number of children in care and excludes children receiving child care services funded by TDPRS.

Comment: Regarding §809.225, one commenter questioned why the TDPRS children should be given priority over other children in care, especially in the light of the demands for funds resulting from the expected increase in the number of Choices clients needing child care. The commenter explained that if the TDPRS refers a child to an open slot and fills that slot and then the following week a Choices eligible child needs care, there are no more available slots because the TDPRS child is filling that slot. Regarding §809.225(c), another commenter stated that it was not clear whether former TDPRS children will need to meet income guidelines as a requirement for receiving care.

Response: The Commission acknowledges that there are concerns regarding which children receive priority care. However, the Commission intends that, consistent with the Federal CCDF regulations at 45 CFR 98.44, children with special needs are given priority for care. Specifically, children needing protective services are included in the definition of "children with special needs" as reflected in the State's CCDF Plan. As §809.221 stipulates, TDPRS children that were formerly funded by TDPRS, who have been determined on a case-by-case basis by TDPRS to need protective services related child care (former TDPRS children needing protective services related child care) are in the second tier of priority and do not take precedence over children eligible for Choices and Transitional child care. TDPRS children that were formerly funded by TDPRS which have not been determined by TDPRS to need

protective services related child care (former TDPRS funded children not needing protective services related child care) are not included in this priority; however, such children may be eligible for care as at-risk care. Sections 809.221 and 809.225 both indicate that continuing former TDPRS children determined to need protective services related child care after the children are no longer eligible for TDPRS funding is contingent on not requiring that another child be removed from care. Beyond those provisions, the Board is able to set further priorities related to former TDPRS children not determined to need protective services related child care.

Comment: Regarding §809.221(a)(2), one commenter recommended that in order to enhance the funds allocation flexibility to the Boards, it would be more feasible to allow Boards to set up priority groups to address local needs and the commenter agreed that Choices Child Care be listed as 1, Transitional Child Care listed as 2, Workforce Orientation for Applicants listed as 3 along with at risk, teen parents and children with disabilities. Regarding §809.103 and §809.221, another commenter stated that clarification is appreciated on the listing of priorities as well as the addition of TDPRS children in the second priority.

Response: The State and federal welfare reform work requirements demand that priority for child care services be given to parents participating in Choices activities. A reference to the Choices Child Care in state law may be found at Texas Human Resources Code Section 31.012(e) and is included in Child Care rules at Section 809.102. State law further establishes Transitional Child Care as a priority pursuant to Human Resources Code Section 31.0035(e). This priority is specified in the Child Care rules at 40 TAC §809.101. The Commission's own rules established Workforce Orientation Applicant (WOA) Child Care as a priority in order to provide assistance to parents to enable them to support themselves and their children. Child Care services may help parents continue working or attending school or training; thus saving time-limited benefits for the future. The Commission rule at 40 TAC §809.103 sets forth the provisions relating to Texas Workforce Applicant Child Care.

The priority for TDPRS children is a requirement as referenced in the Federal CCDF regulation at 45 CFR §98.44, which requires that children with special needs be given priority for care. "Children with Special Needs" as defined in the State's CCDF Plan, includes children needing protective services that were formerly funded by TDPRS and which TDPRS has on a case-by-case basis determined that the child needs protective services related Child Care.

Because of the statutory and policy rationale for the particular priorities as set forth in this response, the Commission does not see a need to move the priority for Texas Workforce Applicants to a lower priority. Once the referenced priorities are served, the Commission intends that Boards may exercise local flexibility to establish other priority groups for child care services such as priorities for children in at-risk families, teen parents, and children with disabilities.

Comment: Regarding §809.231(b), one commenter stated that the Texas Rising Star providers have expressed concern about not being able to receive higher payments as a result of

providing higher quality care because their published rate is under the Board's maximum rate. Private pay families force the provider's published rate to stay lower. The commenter suggested that the Commission might allow the payment of 5 percent over the published rate but not to exceed the Board's maximum rates, affecting more providers operating at lower rates.

Response: House Bill 3333, 76<sup>th</sup> Legislature, Regular Session (1999), which put into place a minimum five percent increase in the reimbursement rate for Texas Rising Star providers as long as the rate does not exceed the published rate and incorporated a provision that each Board shall establish a graduated reimbursement rate for child care based on the Texas Workforce Commission's Designated Vendor (Texas Rising Star) program. Specifically, the bill required that the reimbursement rate for Designated Vendors (Texas Rising Star Providers) must be at least five percent greater than the maximum rate established for nondesignated vendors for the same category of care and that the designated vendor rate differential shall be funded with the federal CCDF dedicated to quality improvement activities. The Boards have the flexibility to set maximum rates consistent with the Commission's rule at §809.231 regarding Provider Reimbursement Rates. The financial management reporting requirements dictate that the State may not pay more than the published or market rate for a service.

Comment: One commenter expressed appreciation for the changes to the rule that provide exemption for Choices participants rather than TANF recipients from the co-payment process because the commenter believes that this change will encourage individuals to voluntarily participate in the Choices program. The commenter also stated that the Commission has done well in eliminating unnecessary parts of the rule and adding local flexibility when possible.

Response: The Commission appreciates the support of and input from the Boards in commenting on the rules and providing valuable feedback to assist the Commission in setting policies designed to help working parents obtain and retain a job.

After consideration of the comments received and for the reasons stated, the Commission agrees to make some changes to the proposed language at this time.

For information about the Commission please visit our web page at [www.texasworkforce.org](http://www.texasworkforce.org).

The rule amendments are adopted under Texas Labor Code §§301.061 and 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Chapter 302, and Texas Human Resources Code, Chapters 31 and 44.

## **Chapter 809. CHILD CARE AND DEVELOPMENT**

## SUBCHAPTER A. GENERAL PROVISIONS

### § 809.1. Short Title and Purpose

- (a) The rules contained in this chapter may be cited as the Child Care and Development Rules. The purpose of these rules is to interpret and implement the requirements of state and federal statutes and regulations governing child care and quality improvement activities funded through the Commission, fully integrating child care services with other workforce training and services under the jurisdiction of local workforce development boards.
- (b) For local workforce development areas where there is no certified local workforce development board with an approved plan or the Commission administers the delivery of child care services, the rules contained in this chapter shall apply to the Commission, its contractors, and its providers of services.
- (c) The effective date of the rules in this Chapter 809 relating to Child Care and Development shall be twenty days after the date of filing the adoption in the Office of the Secretary of State; however, until September 1, 1999, the Boards shall continue to comply with the rules in effect on January 1, 1999 with the following exception. If a Board is unable to implement the provisions of §809.62(a)(1) by September 1, 1999, due to inability to complete automation or programmatic changes as needed, the Board shall implement the provisions of §809.62(a)(1) as soon thereafter as possible but not later than December 1, 1999. Pending implementation of §809.62(a)(1), not later than December 1, 1999, the Board may continue to make payments for child care services directly to eligible parents who choose to self-arrange child care.

### §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) Board -- A Local Workforce Development Board created pursuant to Texas Government Code §2308.253 and certified by the Governor pursuant to Texas Government Code §2308.261. This includes such a Board when functioning as the Local Workforce Investment Board as described in the Workforce Investment Act §117 (29 U.S.C.A. §2832), including those functions required of a Youth Council, as provided for under the Workforce Investment Act §117(i). The definition of "Board" shall apply to all uses of the term in the rules contained in this Part 20, or unless otherwise defined, relating to the Texas Workforce Commission that are adopted after February 1, 2001.

~~(1) Board -- A certified local workforce development board with an approved plan pursuant to The Workforce and Economic Competitiveness Act, Texas Government Code, Chapter 2308, as amended.~~

(2) Child Care -- Child care services funded through the **Commission**, which may include services funded under the Child Care and Development Fund, Welfare-to-Work, WIA, and other funds available to the **Commission** or a Board to provide

quality child care to assist families seeking to become independent from, or who are at risk of becoming dependent on public assistance while parents are either working or participating in educational or training activities in accordance with state and federal statutes and regulations.

~~(2) **Child Care**--Child Care services funded through the Commission.~~

(3) **Commission**--The Texas Workforce Commission.

(4) **Grant Recipient**--The entity approved by the Commission under Texas Government Code §2308.263.

(5) **Local workforce development area**--The designated geographic area for which a Board provides services funded through the Commission, pursuant to Texas Government Code §2308.252.

(6) **Parent**--An individual responsible for the care and supervision of the child identified as the child's natural parent, adoptive parent, stepparent, or legal guardian.

(7) **Provider**--A person or entity that meets the minimum qualifications as set forth in this chapter for providing child care funded through the Commission. Unless specifically stated otherwise, the term "provider" does not refer to a self-arranged provider.

(8) **Self-arranged provider**--A person or entity that meets the minimum qualifications for providing self-arranged child care as set forth in this chapter.

(9) **TANF**--Temporary Assistance for Needy Families provided for under the federal Personal Responsibility and Work Opportunity Reconciliation Act and the Temporary Assistance for Needy Families block grant statutes and regulations, as amended.

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The rules are repealed under Texas Labor Code §§301.061 and 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Texas Labor Code, Chapter 302, and Texas Human Resources Code, Chapters 31 and 44.

#### Subchapter A. General Provisions

#### §809.5. Child Care State Advisory Committee

#### ~~§809.5. Child Care State Advisory Committee~~

~~(a) The Commission appoints the State Advisory Committee on Child Care Programs.~~

~~(b) The advisory committee shall consist of 20 members, not including ex officio members.~~

~~(c) The advisory committee appointees will be a balanced representation of:~~

~~(1) parents, guardians, or custodians of children who use child care programs;~~

- ~~(2) child care advocacy groups;~~
  - ~~(3) operators and providers of child care programs and services representing rural and urban communities;~~
  - ~~(4) for profit and nonprofit providers of child care services representing rural and urban communities;~~
  - ~~(5) experts in early childhood development and education;~~
  - ~~(6) experts in child health and nutrition;~~
  - ~~(7) other child care professionals;~~
  - ~~(8) the general public; and~~
  - ~~(9) ex officio representatives from each state agency, as determined by the Commission, that have an interest or role in state child care programs.~~
- ~~(d) At least one of the members of the committee, in addition to the qualifications required for that member, must represent a local workforce development board.~~
  - ~~(e) The Commission shall provide staff support and other support necessary to the advisory committee to operate the committee.~~
  - ~~(f) Subject to appropriations, the advisory committee may be reimbursed for travel expenses incurred while conducting the business of the board.~~
  - ~~(g) The advisory committee shall advise the Commission in developing coordinated state policies for the use of federal and state funds in child care programs.~~
  - ~~(h) The advisory committee shall review child care policies and programs for compliance with applicable guidelines and shall advise the Commission on the results of the review in accordance with the Texas Human Resources Code, Chapter 44, Subchapter C, as amended.~~
  - ~~(i) The Commission with the assistance of the advisory committee shall hold biennial public hearings on state and federal child care programs to elicit public response and recommendations regarding the quality, accessibility, and affordability of child care services. The hearings must be held in at least three separate geographical regions of the state and may be held in conjunction with other public hearings on child care held by the Commission.~~
  - ~~(j) The advisory committee shall annually report its findings and recommendations to the Commission, and the local workforce development boards will be sent a copy of this report.~~

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The rule amendments are adopted under Texas Labor Code §§301.061 and 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Chapter 302, and Texas Human Resources Code, Chapters 31 and 44.

## SUBCHAPTER B. GENERAL MANAGEMENT REQUIREMENTS

### §809.11. Board Responsibilities

- (a) A certified Board with a local plan approved by the Governor is responsible for the administration of child care in a manner consistent with Texas Government Code, Chapter 2308, as amended, and related provisions under Chapter 801 of this title (relating to Local Workforce Development Boards).
- (b) Access to child care shall be available through all ~~career development~~ one-stop centers within a local workforce development area where a Board has been certified and a local plan approved by the Governor.
- (c) Child care services are part of workforce training and services under Texas Government Code, Chapter 2308 and Chapter 801 of this title.
- (d) A Board shall provide the Commission with access to child care administration records and submit related information ~~related~~ for review and monitoring, pursuant to Commission rules and policies.

### §809.14. Promoting Consumer Education

- (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) is registered with the Texas Department of Protective and Regulatory Services;~~
  - ~~(2)~~ (3) has met the Texas Rising Star criteria (formerly known as the Designated Vendor criteria) as established by Designated Vendor standards of the Commission;
  - ~~(3)~~ (4) has submitted proof of general liability insurance; and
  - ~~(4)~~ (5) 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) A Board shall ensure that providers receive orientation, technical assistance, and ongoing training to improve the quality of child care.
- (b) A Board shall ensure that the quality of child care is improved by recognizing providers who voluntarily exceed the minimum regulatory standards for qualification 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) ~~Designated Vendor criteria~~ as established by the Commission.
- (c) 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.
- (d) In addition to the Texas Rising Star Provider ~~Designated Vendor~~ 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 ~~center~~-accreditation as a means to improve quality.

#### **§809.20. Leveraging Local Resources**

- (a) Leveraging Local Funds. The Commission encourages Boards to secure ~~as much~~ local public and private funds for match to the extent as possible ~~in order to~~ leverage all available resources ~~for to address~~ child care needs in the community.
  - (1) A Board may secure local funds for match in the form of one or more of the methods in order to leverage (match) against federal funds available through the Commission:
    - (A) donations of funds from a private entity;
    - (B) transfers of funds from a public entity; or

(C) certifications of expenditures by a public entity that represents expenditures eligible for federal match.

(2) A Board's performance in securing and leveraging local funds for match may make the Board eligible for incentive awards.

(b) Securing Local Funds to Access Federal Matching Funds from the Commission.

(1) A Board shall manage the securing of funds, including the selection of pledged and completed donations, transfers, and certifications that are used by the Board to receive federal matching funds through the Commission.

(2) A Board shall ensure that federal matching funds are maximized by securing local funds for match in an amount that may exceed the amount required to match available federal funds.

(c) Documenting Pledged Donations, Transfers and Certifications. A Board shall maintain written documentation of pledged donations, transfers and certifications that contain, at a minimum, the following:

(1) the signature of the representative of the Board;

(2) the signature of the potential contributor;

(3) the potential contributor's commitment to fulfill the pledge of the donation, transfer or certification by paying or certifying the funds to the Commission for use in a specific workforce area on a set payment or certification schedule;

(4) the Board's commitment to use the donated or transferred funds as requested by the contributor, as long as it is consistent with federal regulations at 45 CFR §98.53; and

(5) sufficient information to determine that the funds will be used in a manner consistent with 45 CFR §98.53.

(d) Submitting Pledged Donations, Transfers and Certifications for Acceptance by the Commission. A Board shall submit pledged donations, transfers, and certifications to the Commission for acceptance.

(e) Completing Donations, Transfers and Certifications.

(1) A Board shall ensure that donations of cash and transfers of funds are paid to the Agency Commission—and that certifications are also submitted to the Agency Commission.

(2) Donations and transfers are considered complete to the extent that the funds have been paid to the Agency Commission.

(3) Certifications are considered complete to the extent that a signed written instrument is delivered to the Agency Commission that reflects that the public entity has expended a specific amount of funds on eligible child care services.

(f) Reporting. A Board shall report information relating to pledged and completed donations, transfers and certifications as referenced in subsections (d) and (e) of this

~~section and §800.72. Reporting Requirements in the monthly expenditure and service level reports as referenced in §800.83 of this title relating to Funds Utilization and Service Level Plan and Reports.~~

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

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The rule amendments are adopted under Texas Labor Code §§301.061 and 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Chapter 302, and Texas Human Resources Code, Chapters 31 and 44.

## **SUBCHAPTER C. REQUIREMENTS TO PROVIDE CHILD CARE**

### **§809.43. Provider Agreements**

- (a) Provider Agreements are agreements between the Board or the Board's designee and the providers of child care, which:
  - (1) are in writing and signed by the provider and the Board or the Board's designee before child care services are rendered, and
  - (2) specify the roles and responsibilities of the parties.
- (b) A Board shall ensure that the Provider Agreements include notices, statements, and terms that detail provider obligations for complying with federal and state statutes and regulations relating to child care including, but not limited to, statements to ensure that discrimination is prohibited as referenced in 45 Code of Federal Regulations §§98.20, 98.46, and 98.47, as may be amended.
- (c) Failure to maintain a Provider Agreement ~~may~~ shall result in disallowed costs by the Commission.

### **§809.46. Assessing and Collecting Parent's' Share of Cost.**

- (a) For child care funds allocated by the Commission pursuant to its allocation rules (Chapter 800. General Administration, Subchapter B. Allocation and Funding §800.58), the following shall apply.
  - (1) A Board shall set a parent's' share of cost policy in accordance with the requirements set forth in §809.12 of this chapter (relating to Board Policies and Plans for Child Care Services) that shall assess parent's' share of cost in a manner that results in ~~the~~ parent's' share of cost:
    - (A) being assessed to all parents or caretakers, except in instances when an exemption under paragraph (2) of this subsection applies;

- (B) being based on the family's size and gross monthly income, and may also be based on the number of children in care; and
  - (C) not exceeding the cost of care.
- (2) Parents that are one or more of the following are exempt from paying a parent's share of cost:
- (A) parents who are participating in Choices~~receive TANF~~;
  - (B) ~~parents who receive Supplemental Security Income (SSI)~~;
  - ~~(C)~~ parents who participate in the Food Stamp Employment and Training; or
  - (C)~~(D)~~ parents who have children that are receiving protective services unless the Texas Department of Protective and Regulatory Services assesses a parent's share of cost.
- (3) Teen parents who live with their parents and who are not covered under exceptions outlined under paragraph (2) of this subsection shall be assessed a parent's share of cost. The parent's share of cost is based solely on the teen parent's income.
- (4) ~~A~~ parent's share of cost shall be assessed to families in which the child is the only TANF or SSI recipient.
- (b) For child care services funded from sources other than those sources for funds allocated by the Commission for Child Care Services pursuant to its allocation rules, a Board shall set a parent's share of cost policy based on a sliding fee scale that may be the same as or different from the provisions contained in subsection (a) of this section.
- (c) Providers shall collect assessed parent's share of cost and subsidies before child care is delivered.
- (d) It is the sole responsibility of the provider to collect assessed parent's share of cost and subsidies.
- (e) A Board shall establish a policy regarding reimbursement of providers to address consequences for providers in situations when parents fail to pay parent's share of cost and subsidies.

**§809.47. Reduction of Assessed Parent's Share of Cost.**

- (a) The Board or its contractor shall review the assessed parent's share of cost for possible reduction if there are extenuating circumstances that jeopardize a family's self-sufficiency. The Board or its contractor may reduce the assessed parent's share of cost if warranted by these circumstances.
- (b) The Board or its contractor shall not waive parent's share of cost under any circumstances.

**§809.48. Attendance Tracking**

- (a) A Board shall set the attendance standards for eligible children in the local workforce development area, including provisions consistent with §809.224 of this Chapter

(relating to Custody and Visitation Arrangements). Providers and self-arranged providers shall document and maintain a record of each child's attendance and submit such documents to the Board's designated contractor upon request.

- (b) When an enrolled child is absent, providers shall inform the Board's designated contractor and shall follow attendance reporting and tracking procedures required by the Commission, Board, or, if applicable, the Board's contractor.
- (c) Failure by the provider to keep required attendance records may result in withholding payment or in termination of the Provider Agreement.

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The rule amendments are adopted under Texas Labor Code §§301.061 and 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Chapter 302, and Texas Human Resources Code, Chapters 31 and 44.

#### **SUBCHAPTER D. SELF-ARRANGED CARE**

##### **§ 809.61. Qualifications to Provide Self-Arranged Care**

- (a) A relative who is at least 18 years of age and is one of the following is eligible to provide self-arranged care:
  - (1) the child's grandparent;
  - (2) the child's great-grandparent;
  - (3) the child's aunt;
  - (4) the child's uncle; or
  - (5) the child's sibling, if the sibling does not reside in the same household as the eligible child.
- (b) If chosen by the parent, a person or entity who has not signed a Provider Agreement is eligible to provide self-arranged care if:
  - (1) licensed by the Texas Department of Protective and Regulatory Services;
  - (2) registered with the Texas Department of Protective and Regulatory Services;
  - (3) listed with the Texas Department of Protective and Regulatory Services;
  - (4) licensed by the Texas Department of Health as a youth day camp; or
  - (5) operated and monitored by the United States military services.
- (c) A relative providing self-arranged care under subsection (a) of this section shall not be reimbursed ~~paid~~ for more children than permitted by the Texas Department of Protective and Regulatory Services' minimum regulatory standards for Registered Family Homes. ~~A~~The Board may permit more children to be cared for in self-arranged care situations on a case-by-case basis as determined by the Board.

(de) A Board shall ensure that requests made by the Texas Department of Protective and Regulatory Services, for specific providers or persons eligible to provide self-arranged care, are enforced for children in protective services.

(ed) Before authorizing a person or entity "listed" with the Texas Department of Protective and Regulatory Services to provide child care, a Board shall ensure that there are in effect, under local law, requirements designated to protect the health and safety of children that are applicable to the persons or entities "listed" with the Texas Department of Protective and Regulatory Services. Boards may choose to not allow "listed" providers as self-arranged providers. Pursuant to federal regulations at 45 Code of Federal Regulations § 98.41, the requirements shall include:

- (1) the prevention and control of infectious diseases (including, immunizations);
- (2) building and physical premises safety; and
- (3) minimum health and safety training appropriate to the child care setting.

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The rule amendments are adopted under Texas Labor Code §§301.061 and 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Chapter 302, and Texas Human Resources Code, Chapters 31 and 44.

## **SUBCHAPTER G. CHILD CARE FOR PEOPLE TRANSITIONING OFF PUBLIC ASSISTANCE**

### **§809.101. Transitional Child Care**

- (a) A Board shall ensure that transitional child care services will be provided for children of parents who have been denied TANF because of:
  - (1) employment and an increase in earnings which results in being ineligible for TANF payments, or
  - (2) expiration of TANF time limits.
- (b) Transitional child care ~~shall be~~ available for a period of up to 12 months, depending on income eligibility and whether the person is working, except in the case of an exempt TANF client who voluntarily participates in the Choices program. For these individuals, transitional child care is available for a period up to 18 months.
- (c) TANF clients who are not employed when TANF expires ~~shall~~may receive up to 4 weeks of transitional child care in order to allow these individuals to search for work as needed.
- (d) TANF clients who are engaged in an education or training component that extends beyond the date that TANF expires, may receive transitional child care in order to complete the component.

**§809.102. Choices Child Care~~Children of Parents Participating in the Choices Program~~**

- (a) Children eligible to receive Choices child care include children of TANF recipients participating in the Choices program, in accordance with the provisions of the Texas Human Resources Code, §§31.0035 and 31.012(c).
- (b) Child care shall be provided to children of parents participating in the Choices program who need child care to accept employment and remain employed.
- (c) Child care services for children of parents participating in the Choices program shall continue for parents to participate in on-the-job training unless the parent's<sup>1</sup> on-the-job training earnings cause the denial of a TANF grant.
- (d) Persons approved for Choices but waiting to enter an approved initial component of the program may receive up to two weeks of child care:
  - (1) when child care will prevent loss of the Choices placement, and
  - (2) if child care is available to meet the needs of the child and parent.

**§809.103. Texas Workforce Orientation Commission~~Commission~~-Applicant Child Care**

- (a) Children are eligible for Applicant Child Care if their parents meet the criteria for eligibility of children living at low incomes, as detailed in §809.121 of this chapter, (relating to Children Living At Low Incomes), and meet all of the following criteria:
  - (1) need child care to accept employment;
  - (2) receive a referral from the Texas Department of Human Services to attend a Workforce Orientation for Applicants;
  - (3) locate employment prior to TANF certification.
- (b) To receive Applicant Child Care, parents shall not have voluntarily terminated paid employment of at least 30 hours a week within 30 days prior to receiving the referral from the Texas Department of Human Services to attend a Workforce Orientation for Applicants, unless the voluntary termination was for good cause connected with the parent's<sup>1</sup> work.
- (c) Subject to the availability of funds and the continued employment of the parent(s), Applicant Child Care shall be provided for up to ~~one year~~ 12 months or until the family reaches the Board's income limit for eligibility, whichever occurs first. Subject to the availability of funds, children who are otherwise eligible for at-risk child care and whose time limit for Applicant child care has expired, may be continued in care subject to the Board's policies for at-risk child care. At-risk care includes eligibility under any provision contained in Subchapter H. of this title relating to Children of Parents at Risk of Becoming Dependent on Public Assistance.

**§809.104. Child Care Children of Parents Participating in the Food Stamp Employment and Training Program**

Children are eligible to receive child care if their parents are participating in the Food Stamp Employment and Training services program, in accordance with the provisions of 7 Federal Regulations, Part 273, and whose case plan remains open.

**§809.105. Children Receiving or Needing Protective Services**

(a) A Board shall ensure that determinations of eligibility for children needing protective services are performed by the Texas Department of Protective and Regulatory Services (TDPRS). ~~(b) Child care continues as long as authorized and funded by the TDPRS. Texas Department of Protective and Regulatory Services.~~

(b)(e) In closed In-cases where the TDPRS Child Protective Services cases (TDPRS cases) is closed and child care where will child care is no longer be funded by the TDPRS, the following shall apply:

(1) Former TDPRS Children Needing Protective Services Related Child Care. Regardless of whether the family meets the income eligibility requirements of the Board or is working, or in an education or training activity, if the TDPRS 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 other Commission, funding for the child care slot for up to six months after the they are no longer eligible for TDPRS Texas Department of Protective and Regulatory Services case is closed funds if the CPS worker or other Texas Department of Protective and Regulatory Services staff states that the child needs to receive protective services and child care is an integral factor of those services; and

(2) Former TDPRS Children Not Needing Protective Services Related Child Care. If the family meets income eligibility requirements of the Board and if the TDPRS case worker or other TDPRS staff 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 (2) of this subsection, the parent must be working, or in a training or education activity.

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The rules are repealed under Texas Labor Code §§301.061 and 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Texas Labor Code, Chapter 302, and Texas Human Resources Code, Chapters 31 and 44.

## Subchapter I. Child Care Training Center Pilot Programs

§809.171. Purpose

§809.172. Definitions

§809.172. Training Center Selection Criteria

§809.174. Implementation Requirements

### **SUBCHAPTER I. CHILD CARE TRAINING CENTER PILOT PROGRAMS**

#### **§809.171. Purpose**

~~The purpose of the child care training center pilot programs is to establish pilot programs for providing training for recipients of public assistance in basic skills, child care, child care vendor entrepreneurial training and early childhood education to enable the trainees to obtain employment in the child care field.~~

~~The provisions of this §809.171 adopted to be effective March 1, 1998, as published in the Texas Register, February 20, 1998, 23 TexReg 1640.~~

#### **§809.172. Definitions**

~~**Commission**—The Texas Workforce Commission.~~

~~**Public Assistance**—Financial assistance under Texas Human Resources Code Chapter 31.~~

~~**Trainee**—A recipient of public assistance who is receiving training under the child care training center pilot program.~~

~~**Training center**—A child care facility licensed under Texas Human Resources Code, Chapter 42, which provides both academic coursework and practicum hours. The training center must directly provide either the academic or practicum hours, and may subcontract the other function.~~

~~The provisions of this § 809.172 adopted to be effective March 1, 1998, as published in the Texas Register, February 20, 1998, 23 TexReg 1640.~~

#### **§ 809.173. Training Center Selection Criteria**

~~(a) The child care training center pilot programs funded by the Texas Workforce Commission shall meet all requirements of Texas Labor Code, § 302.005, 302.003.~~

~~(b) Child care training center pilot programs will provide specific training and certification in a minimum of four geographic areas of the state, with at least one site in an urban area and at least one site in a rural area.~~

~~(c) The training center will be selected by the Commission through a Request for Proposal process. Evaluation of each proposal shall include consideration of:~~

~~(1) level of training of the staff employed by the training center and the training center's subcontractor;~~

- ~~(2) history of the child care facility offering practicum hours in delivering high quality care;~~
- ~~(3) ability to offer training which will result in academic credit which is accepted by colleges or universities in this state;~~
- ~~(4) ability to provide and maintain a mentor relationship with each trainee being trained by the training center;~~
- ~~(5) the provision of child care services to the children of trainees at the same discounted rate charged to other employees of the child care facility;~~
- ~~(6) experience and qualifications of proposed subcontractors; and~~
- ~~(7) utilization of all available resources to fund the program including private contributions as well as local, state and federal funds.~~

*The provisions of this § 809.173 adopted to be effective March 1, 1998, as published in the Texas Register, February 20, 1998, 23 TexReg 1640.*

#### **~~§ 809.174. Implementation Requirements~~**

~~If the Commission determines that a proposal is appropriate for funding through the child care training center pilot programs, the Commission may enter into a contract with the training center. All contracts with training centers will include the following:~~

- ~~(1) the names of the entities referring public assistance recipients to the training center and the method of referral;~~
- ~~(2) the number of academic and practicum hours which will be provided to each trainee by the training center;~~
- ~~(3) the timeline for implementation of the child care training center pilot program;~~
- ~~(4) the reporting requirements; and~~
- ~~(5) the format for trainee evaluations.~~

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The rule amendments are adopted under Texas Labor Code §§301.061 and 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Chapter 302, and Texas Human Resources Code, Chapters 31 and 44.

#### **SUBCHAPTER K. FUNDS MANAGEMENT**

##### **§809.221. General Funds Management**

Boards shall ensure that resources are proportionately allocated among the following priority groups so that child care services are assured for the first priority groups, and then subject to the availability of funds, the remaining priorities in descending order are served.

- (1) The first priority group includes children of parents eligible for the following:
- (A) Choices Child Care as referenced in 809.102; and
  - (B) Transitional Child Care as referenced in 809.101 ~~eligible parents.~~
- (2) The second ~~remaining~~ priority groups includes:
- (A) children of parents eligible for ~~Texas~~ Workforce Orientation Applicant Child Care ~~(s)~~; and
  - (B) children who need to receive protective services related child care as referenced in §809.105(b)(1) of this Chapter.**
- (3) The third priority group includes any other priority adopted ~~elected~~ by the Boards, which may include but is not limited to:
- (A) teen parents;
  - (B) children with disabilities; or
  - (C) other persons at risk of becoming dependent on public assistance that meet the income eligibility level as determined by the Board.
- ~~(a) Boards shall ensure that resources are proportionately allocated among eligibility groups so that child care services are assured for Choices, Transitional and Texas Workforce Applicant eligible children.~~
- ~~(b) Children referred by Child Protective Services (CPS) workers, for which care shall be provided through Texas Department of Protective and Regulatory Services funds, shall also receive priority for available child care openings. When Texas Department of Protective and Regulatory Services funding stops and the CPS worker indicates that the child continues to need protective services, the Boards shall continue the child care using the Child Care and Development funds up to six months after they are no longer eligible for Texas Department of Protective and Regulatory Services funds, so long as the provision of care to the child does not result in another child being removed from care.~~

### **§809.225. Continuity of Care**

- (a) General Principle. Enrolled children shall receive child care as long as the parent remains eligible for any available source of Commission-funded child care except as otherwise provided under subsection (b) of this section.
- (b) Exceptions. 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 one or more of the following types of priority child care:
  - (1) Choices Child Care under §809.102 of this Chapter,
  - (2) Transitional Child Care under §809.101 of this Chapter, or

- (3) ~~Texas-Workforce Orientation Commission~~-Applicant Child Care under §809.103 of this Chapter.
- (c) **Former Texas Department of Protective and Regulatory Services (TDPRS) children as referenced in §809.105(b)(1) of this Chapter shall also continue receiving child care funded through the Commission for the period chosen by TDPRS, which shall not exceed six months, so long as it does not result in another child being removed from care.**
- (d) **Former TDPRS ~~children as referenced in §809.105(b)(2) of this Chapter who no longer receive Texas Department of Protective and Regulatory Services funded care~~ may shall also continue receiving child care funded through the Commission if it does not result in removing another child from care.**

~~if eligible to receive care based on other eligibility criteria or if the Texas Department of Protective and Regulatory Services or its caseworker indicates that the child is in need of protective services.~~

- ~~(d) Children currently enrolled in child care shall remain in care when the Board assumes management of the child care services contract and shall remain eligible as long as eligibility criteria are met unless otherwise required on a case-by-case basis to provide priority child care as referenced in subsection (b) of this section.~~

### **§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 establish a graduated reimbursement rate for Texas Rising Star Providers (formerly known as Designated Vendors), pursuant to Texas Government Code §2308.315. The minimum reimbursement rate for Texas Rising Star Providers shall be at least five percent greater than the maximum rate established for 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.
- ~~(c)~~The Board or its contractor shall not reimburse a provider retroactively for new reimbursement rates.
- ~~(d)~~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.

(e) 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 (b).

**§809.233. Reduction of Parent's Share of Costs ~~Parent Fees and Child Care Subsidies~~**

The reimbursement to the provider is reduced by an amount equal to:

- (1) the parent's share of costs ~~parent fees~~ assessed and adjusted when the parent's share of costs ~~parent fees~~ are reduced; and
- (2) any child care subsidy received by the parent from other state or federal programs. The provider reports the amount of the subsidies collected to the Board's contractor.