

## **CHAPTER 809. CHILD CARE SERVICES**

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

**ON NOVEMBER 25, 2008**, THE TEXAS WORKFORCE COMMISSION PROPOSED THE BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated Publication Date of the Proposal in the *Texas Register*: **December 12, 2008**  
Estimated End of Comment Period: **January 12, 2009**

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

Subchapter C. Eligibility for Child Care Services, §809.41

- PART I. PURPOSE, BACKGROUND, AND AUTHORITY
- PART II. EXPLANATION OF INDIVIDUAL PROVISIONS
- PART III. IMPACT STATEMENTS
- PART IV. COORDINATION ACTIVITIES

### **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, as amended, requires that providers of federal public benefits verify the citizenship or immigration status of all beneficiaries of public assistance. The Child Care and Development Fund (CCDF) is among the U.S. Health and Human Services programs that are subject to the verification provisions of PRWORA. On November 25, 1998, the Administration for Children and Families (ACF) issued Program Instruction ACYF-PI-CC-98-08 to clarify that the child is the primary beneficiary of the CCDF program and as such *only the child's* citizenship or immigration status is subject to verification.

PRWORA §432(d), as amended, exempts nonprofit charitable organizations that provide federal, state, or local public benefits from determining, verifying, or otherwise requiring proof of citizenship or immigration status from any applicant for such benefits. In Program Instruction ACYF-PI-CC-98-08, ACF affirmed that this exemption is applicable when nonprofit charitable organizations determine eligibility for CCDF, but *not* applicable when governmental entities or nonprofits that are not charitable organizations determine eligibility. Additionally, the CCDF Lead Agency cannot require nonprofit charitable organizations determining eligibility for the CCDF program to verify citizenship and immigration status.

Texas Labor Code §302.023 requires that the administration of workforce development programs be delegated to the Local Workforce Development Boards (Boards) and Texas Government Code §2308.264(a) prohibits Boards from directly determining eligibility for services. As a

result, child care eligibility is determined by entities that contract with Boards--a majority of which are nonprofit charitable organizations. ACF guidance in ACYF-PI-CC-98-08 did not specify whether the CCDF Lead Agency contracting with nonprofit charitable organizations--which are exempt from verifying a child's citizenship or immigration status--retains the responsibility for ensuring that such verification is conducted.

On May 2, 2008, ACF issued Program Instruction CCDF-ACF-PI-2008-01 to clarify its previous guidance and respond to inquiries from a number of states regarding verification of citizenship or immigration status of CCDF applicants. The Program Instruction states that while nonprofit charitable organizations are exempt from the verification requirements mandated by Title IV of PRWORA, the CCDF Lead Agency is not exempt from its responsibility to ensure that only eligible individuals receive services. Therefore, when contracting directly or indirectly with a nonprofit charitable organization that elects not to verify the citizenship or immigration status of applicants for CCDF services, the Texas Workforce Commission, as the CCDF Lead Agency, remains responsible for ensuring that a child's citizenship and immigration status is verified.

As a result of this clarification, the Commission proposes to amend Chapter 809, Child Care Services rules, to ensure that a child's citizenship or legal immigrant status is verified as part of the basic eligibility determination for CCDF services.

## **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

### **SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES**

**The Commission proposes the following amendment:**

#### **809.41. A Child's General Eligibility for Child Care Services**

New §809.41(a)(2) is added to require that Boards must ensure that a child's citizenship or legal status is verified as a component of eligibility for child care services.

This change reflects guidance from ACF that a child's citizenship or immigration status must be verified to comply with PRWORA requirements.

Pursuant to §809.42(a), prior to authorizing child care a Board must ensure that its child care contractor verifies eligibility for child care services, which includes a child's citizenship or immigration status. Program Instruction CCDF-ACF-PI-2008-01 states that Lead Agencies have flexibility to establish procedures for verifying an applicant's citizenship or immigration status. However, the procedures must be in accordance with U.S. Department of Justice (DOJ) requirements set forth in the November 17, 1997, DOJ Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of PRWORA found at <http://www.dhhs.gov/ocr/nationalorigin/interimguidance.pdf>. The Commission will issue guidance to the Boards on methods for verifying a child's citizenship or immigration status that comply with the DOJ guidance.

Also, because some child care contractors are nonprofit charitable organizations and exempt from verifying citizenship or immigration status under PRWORA §432(d), the Commission will

also issue guidance to Boards that maintains this exemption but ensures that the verifications are performed.

Certain paragraphs in §809.41 have been renumbered to accommodate additions or deletions.

### **PART III. IMPACT STATEMENTS**

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

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

There are no estimated reductions in costs to the state government as a result of enforcing or administering the rules. There may be additional costs to Local Workforce Development Boards (local governments), but these costs are not expected to be significant.

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

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

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

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

#### **Economic Impact Statement and Regulatory Flexibility Analysis**

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

The reasoning that led to these conclusions for the following changes is as follows:

Program Instruction CCDF-ACF-PI-2008-01--"Verification of Citizenship and Immigration Status by Non-Profit Organizations and Head Start Grantees"--states that:

Section 432(d) of PRWORA, as amended, provides that, 'a nonprofit charitable organization, in providing any Federal public benefit...or any State or local public benefit...is not required under this chapter to determine, verify, or otherwise require proof of eligibility of any applicant for such benefits.' (8 USC 1642(d)). A Lead Agency may not require non-profit organizations determining eligibility in the CCDF program to verify citizenship and immigration status. In ACYF-PI-CC-98-08, the Child Care Bureau stated that the exemption at section 432(d) of PRWORA does not apply where

eligibility for services is determined by a governmental entity, but does apply if eligibility for CCDF services is determined by a non-profit charitable organization. The guidance did not clarify whether a CCDF Lead Agency would retain responsibility for verifying an applicant's legal status in circumstances where the Lead Agency has selected a non-profit charitable organization to determine eligibility for CCDF services on the Lead Agency's behalf, and the non-profit organization elects not to verify citizenship and immigration status.

This Program Instruction clarifies that, while non-profit organizations are exempt from verification requirements mandated by title IV of PRWORA, this exemption does not release the Lead Agency from its responsibilities to assure that only individuals 'eligible' for services receive them. If a non-profit organization contracted by the Lead Agency elects not to verify the citizenship and immigration status of applicants for CCDF benefits, the Lead Agency retains this responsibility and therefore must establish procedures for verification. A Lead Agency may want to consider this fact when entering into an agreement with the non-profit charitable organization. A Lead Agency could choose to enter into contracts only with non-profit organizations that are willing to verify citizenship and immigration status when determining eligibility for CCDF services.

Child care eligibility for CCDF programs is determined in Texas by entities contracting with workforce Boards, a majority of which are "non-profit charitable organizations." Former ACF guidance in ACYF-PI-CC-98-08 did not specify whether the CCDF Lead Agency contracting with nonprofit charitable organizations (which are not required to verify the child's citizenship or immigration status) retains the responsibility for ensuring that such verification is conducted. This latest guidance, however, clarifies that the state's CCDF Lead Agency is responsible for ensuring that only individuals who are eligible for CCDF services receive them, and TWC is clarifying in these rules that workforce Boards are responsible for assuring that only eligible individuals are served in CCDF programs in their workforce area, including the verification of a child's citizenship and immigration status when "non-profit charitable organizations" have elected not to verify such information.

Program Instruction CCDF-ACF-PI-2008-01 states that Lead Agencies have flexibility to establish procedures for verifying an applicant's citizenship or immigration status. However, the procedures must be in accordance with U.S. Department of Justice (DOJ) requirements set forth in the November 17, 1997, DOJ Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of PRWORA. Program staff has reviewed the DOJ guidance and documentation that verifies citizenship or immigration status and point out that review of the documentation indicates that a majority of the documentation used to verify citizenship--such as birth certificates, baptismal records, hospital or public health birth records, or public assistance or social service records--may also be used to verify the child's age. Verification of the child's age is currently a requirement under §809.41(a)(1). Program staff concludes, therefore, that because verifying citizenship can be accomplished during the current process for verifying the child's age, this new requirement is not expected add additional costs on workforce Board child care contractors. Furthermore, the DOJ documentation requirement to verify a non-citizen's legal immigration status is very specific and typically the legal immigrant family has ready access to such documentation. Program staff does not expect that requesting

this additional documentation will place any additional costs on the workforce Board's child care contractor.

The actual costs of verification of a child's citizenship and immigration status may vary, depending upon the circumstances. In cases where such verification may not be done currently (i.e., if a nonprofit charitable organization has elected not to verify such information) and the pertinent workforce Board must now make procurement changes to assure that such verification is completed, then it may be logical to expect that additional costs will be incurred. However, there is no obvious basis to estimate the amount of such a cost increase, (a) particularly when such verification can occur using the same documentation currently used to verify the child's age; (b) irrespective of whether virtually all or some lesser proportion of citizenship and immigration status for children in subsidized child care is currently verified, and with no obvious pattern of association, there is a significant variance among workforce Boards in the cost per subsidized child care unit for "administration" and "operations" and in combined "administration" and "operations" as a proportion of child care allocations (eligibility determination being a subset of "administration" and "operations"); and (c) there is no readily available information from ACF or state sources on the actual or a target cost for eligibility verification or child citizenship and immigration status verification. Additionally, however, it is well to note that such costs are likely to be not significant, as child citizenship and immigration status verification for child care is a one-time procedure per child (i.e., as compared to parental working status and income level, which may be verified as much as four times per year), and may alternatively be satisfied through the required verification process associated with some other program, such as qualification for Temporary Assistance for Needy Families or food stamps, prior to qualification for subsidized child care.

These rules would not have adverse economic effects on small businesses or microbusinesses because small businesses or microbusinesses are not regulated or otherwise affected by the rules.

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

Laurence M. Jones, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to ensure that public child care funds are spent in accordance with federal laws, regulations, and guidelines.

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

#### **PART IV. COORDINATION ACTIVITIES**

In the development of these rules for publication and public comment, the Commission sought the involvement of Texas' 28 Boards. The Commission provided the concept paper regarding these rule amendments to the Boards for consideration and review on August 5, 2008. The Commission also conducted a conference call with Board executive directors and Board staff on August 8, 2008, to discuss the concept paper. During the rulemaking process, the Commission

considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

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

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

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

## Chapter 809. CHILD CARE SERVICES

### SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES

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

- (a) Except for a child receiving or needing protective services as described in §809.49, for a child to be eligible to receive child care services, a Board shall ensure that the child shall:
- (1) meets meet one of the following age requirements:
    - (A) be under 13 years of age; or
    - (B) at the option of the Board, be a child with disabilities under 19 years of age; ~~and~~
  - (2) is a U.S. citizen or legal immigrant as determined under applicable federal laws, regulations, and guidelines; and
  - (3)~~(2)~~ residesreside with:
    - (A) a family whose income does not exceed the income limit established by the Board, which income limit must not exceed 85% of the state median income for a family of the same size; and
    - (B) parents who require child care in order to work or attend a job training or educational program.
- (b) Notwithstanding the requirements set forth in subsection (c) of this section, a Board shall establish policies, including time limits, for the provision of child care services while the parent is attending an educational program.
- (c) Time limits pursuant to subsection (b) of this section shall ensure the provision of child care services for four years, if the eligible child's parent is enrolled in an associate's degree program that will prepare the parent for a job in a high-growth, high-demand occupation as determined by the Board.
- (d) Unless otherwise subject to job search limitations as stipulated in this title, the following shall apply:
- (1) For child care funds allocated by the Commission pursuant to its allocation rules (generally, Chapter 800, General Administration, Subchapter B, Allocation and Funding, and specifically, §800.58 Child Care), an enrolled child may be eligible for child care services for four weeks within a federal fiscal year in order for the child's parent to search for work because of interruptions in the parent's employment.

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