

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 **AUGUST 30, 2011**, 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*: **September 16, 2011**
Estimated End of Comment Period: **October 17, 2011**

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

Subchapter D. Parent Rights and Responsibilities, §809.71
Subchapter E. Requirements to Provide Child Care, §809.91

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

The purpose of the proposed changes to Chapter 809, Child Care Services rules, is to meet the requirements of Senate Bill 76 (SB 76), 82nd Texas Legislature, Regular Session (2011). SB 76 added Chapter 313 to the Texas Labor Code, which requires relative providers of Commission-subsidized child care services to be listed as a family home with the Texas Department of Family and Protective Services (DFPS).

SB 76 amends Texas Labor Code, Subtitle B, Title 4, and requires that:

--all relatives providing Commission-funded child care services be listed with DFPS as a family home and, therefore, be subject to background checks; and
--parents and guardians choosing relative child care be informed of the required background checks through the listing process with DFPS.

Additionally, SB 76 instructs the Commission to ensure that effective November 1, 2011, payments for subsidized child care are made only to relative child care providers who are listed as a family home with DFPS.

Pursuant to previous statutory definitions, relatives providing child care exclusively in the child's home (in-home child care) were not subject to background checks. Commission rule §809.91(e)(2) requires Boards to ensure that relative in-home care providers do not appear on the Texas Department of Public Safety (DPS) Sex Offender Registry, pursuant to Texas Code of

Criminal Procedure, Chapter 62. This rule is now being amended to provide the expanded protections, consistent with SB 76.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

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

SUBCHAPTER D. PARENT RIGHTS AND RESPONSIBILITIES

The Commission proposes the following amendments to Subchapter D:

§809.71. Parent Rights

Section 809.71(16) adds the requirement for Local Workforce Development Boards (Boards) to provide notice of the background and criminal history check requirement to the parent or guardian of the child who will receive care through a relative child care provider before the parent or guardian selects the relative child care provider.

SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE

The Commission proposes the following amendments to Subchapter E:

§809.91. Minimum Requirements for Providers

Section 809.91(e)(1) removes the reference to relative providers "caring for a child in the relative's own home, which is not the child's home" and requires all relative providers to list with DFPS as a family home in order to be eligible for reimbursement for Commission-funded child care services. This paragraph also adds a reference to "subsection (b)(2) of this section" as an exemption for relative health care providers listed with DFPS pursuant to 45 CFR §98.41(e).

Section 809.91(e)(2) is removed. The provision requiring Boards to ensure that relatives who care for a child in the child's home are not on the DPS Sex Offender Registry no longer applies because the background check conducted by DFPS for listed family homes includes a sex offender registry check.

New §809.91(e)(2) adds a phrase specifying that a Board shall allow relative "child care providers to care for a child in the child's home," only as set forth in subparagraphs (A) - (D) of this paragraph.

Certain paragraphs in this section are 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 and to local governments as a result of enforcing or administering the rules.

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

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

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

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

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 for these conclusions is as follows:

The administrative costs to DFPS for conducting background and criminal history checks and checks with the DPS Sex Offender Registry for listed family homes (which would now include those relative care providers caring for the child in the child's own home) would increase by an estimated \$96,000 per year in federal Child Care and Development Fund amounts.

This new requirement:

- is created by the enactment of SB 76, not the proposal of these rules;
- is currently included in the adopted budget for the Texas Workforce Commission for Fiscal Year 2012 (FY'12) in an interagency contract with DFPS;
- is estimated to be included in the Agency's baseline budget for the FY'12–13 biennium; and
- constitutes only a minimal proportion of the Agency's child care program.

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

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:

- protect the health and safety of children served by Commission-funded child care;
- and
- ensure that public child care funds are spent in accordance with federal and state 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's 28 Local Workforce Development Boards. The Commission provided the concept paper regarding these rule amendments to the Boards for consideration and review on August 1, 2011. The Commission also conducted a conference call with Board executive directors and Board staff on August 5, 2011, 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. 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 D. PARENT RIGHTS AND RESPONSIBILITIES

§809.71. Parent Rights.

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

- (1) choose the type of child care provider that best suits their needs and to be informed of all child care options available to them as included in the consumer education information described in §809.15;
- (2) visit available child care providers before making their choice of a child care option;
- (3) receive assistance in choosing initial or additional child care referrals including information about the Board's policies regarding transferring children from one provider to another;
- (4) be informed of the Commission rules and Board policies related to providers charging parents the difference between the Board's reimbursement and the provider's published rate as described in §809.92(c) - (d);
- (5) be represented when applying for child care services;
- (6) be notified of their eligibility to receive child care services within 20 days from the day the Board's child care contractor receives all necessary documentation required to determine eligibility for child care;
- (7) receive child care services regardless of race, color, national origin, age, sex, disability, political beliefs, or religion;
- (8) have the Board and the Board's child care contractor treat information used to determine eligibility for child care services as confidential;
- (9) receive written notification, except as provided by paragraph (10) of this section, from the Board's child care contractor at least 15 days before the denial, delay, reduction, or termination of child care services unless the following exceptions apply:
 - (A) Notification of denial, delay, reduction, or termination of child care services is not required when the services are authorized to cease immediately because either the parent is no longer participating in the Choices program or services are authorized to end immediately for children in protective services child care; or

- (B) The Choices program participants and children in protective services child care are notified of denial, delay, reduction, or termination of child care and the effective date of such actions by the Choices caseworker or DFPS;
- (10) receive 30-day written notification from the Board's child care contractor if child care is to be terminated in order to make room for a priority group described in §809.43(a)(1), as follows:
 - (A) Written notification of denial, delay, reduction, or termination shall include information regarding other child care options for which the recipient may be eligible.
 - (B) If the notice on or before the 30th day before denial, delay, reduction, or termination in child care would interfere with the ability of the Board to comply with its duties regarding the number of children served or would require the expenditure of funds in excess of the amount allocated to the Board, notice may be provided on the earliest date on which it is practicable for the Board to provide notice;
 - (11) reject an offer of child care services or voluntarily withdraw their child from child care unless the child is in protective services;
 - (12) be informed of the possible consequences of rejecting or ending the child care that is offered;
 - (13) be informed of the eligibility documentation and reporting requirements described in §809.72 and §809.73;
 - (14) be informed of the parent appeal rights described in §809.74; ~~and~~
 - (15) be informed of the Board's attendance policy as required in §809.13(d)(13); and;
 - (16) be informed of required background and criminal history checks for relative child care providers through the listing process with DFPS, as described in §809.91(e), before the parent or guardian selects the relative child care provider.

SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE

§809.91. Minimum Requirements for Providers.

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

- (1) regulated child care providers as described in §809.2(17);
 - (2) relative child care providers as described in §809.2(18), subject to the requirements in subsection (e) of this section; or
 - (3) at the ~~Board's Board~~-option, listed family homes as defined in §809.2(12), subject to the requirements in subsection (b)(2) of this section.
- (b) For providers listed with DFPS, the following applies:
- (1) A Board shall not prohibit a relative child care provider who is listed with DFPS and who meets the minimum requirements of this section from being an eligible relative child care provider.
 - (2) If a Board chooses to include listed family homes, as defined in §809.2(12), that provide care for children unrelated to the provider, a Board shall ensure that there are in effect, under local law, requirements applicable to the listed family homes designated to protect the health and safety of children. Pursuant to 45 ~~CFR~~~~C.F.R.~~ §98.41, the requirements shall include:
 - (A) the prevention and control of infectious diseases (including immunizations);
 - (B) building and physical premises safety; and
 - (C) minimum health and safety training appropriate to the child care setting.
- (c) Except as provided by the criteria for Texas Rising Star Provider Certification, a Board or the Board's child care contractor shall not place requirements on regulated providers that:
- (1) exceed the state licensing requirements stipulated in Texas Human Resources Code, Chapter 42; or
 - (2) have the effect of monitoring the provider for compliance with state licensing requirements stipulated in Texas Human Resources Code, Chapter 42.
- (d) When a Board or the Board's child care contractor, in the course of fulfilling its responsibilities, gains knowledge of any possible violation regarding regulatory standards, the Board or its child care contractor shall report the information to the appropriate regulatory agency.
- (e) For relative child care providers to be eligible for reimbursement for Commission-funded child care services, the following applies:

- (1) Relative child care providers ~~earing for a child in the relative's own home, which is not the child's home,~~ shall list with DFPS; however, pursuant to 45 ~~CFRC.F.R.~~ §98.41(e), relative child care providers listed with DFPS shall be exempt from the health and safety requirements of 45 ~~CFRC.F.R.~~ §98.41(a) and subsection (b)(2) of this section.
- ~~(2) For relative child care providers caring for a child in the child's own home (in-home child care), Boards shall ensure that relative child care providers do not appear on the Texas Department of Public Safety's (DPS) Sex Offender Registry, pursuant to Texas Code of Criminal Procedure, Chapter 62, at the following points:~~
 - ~~(A) The parent's initial eligibility determination;~~
 - ~~(B) The parent's redetermination; and~~
 - ~~(C) When the parent transfers the care to a different relative in-home child care provider.~~
- ~~(2)(3)~~ A Board shall allow relative child care providers to care for a child in the child's home (in-home child care) only for the following:
 - (A) A child with disabilities as defined in §809.2(6), and his or her siblings;
 - (B) A child under 18 months of age, and his or her siblings;
 - (C) A child of a teen parent; and
 - (D) When the parent's work schedule requires evening, overnight, or weekend child care in which taking the child outside of the child's home would be disruptive to the child.
- ~~(3)(4)~~ A Board may allow relative in-home child care for circumstances in which the Board's child care contractor determines and documents that other child care provider arrangements are not available in the community.