

CHAPTER 811. CHOICES

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 14, 2012**, 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*: **August 31, 2012**
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The Texas Workforce Commission (Commission) proposes the following new sections to Chapter 811, relating to Choices:

- Subchapter C. Choices Services, §811.25
- Subchapter D. Choices Activities, §811.41 and §811.52

The Commission proposes amendments to the following sections of Chapter 811, relating to Choices:

- Subchapter A. General Provisions, §§811.1, 811.2, 811.4, 811.5
- Subchapter B. Choices Services Responsibilities, §§811.11 and 811.13 - 811.15
- Subchapter C. Choices Services, §§811.23, 811.29, 811.31, 811.32, and 811.34
- Subchapter D. Choices Activities, §§811.42 - 811.44, 811.50, and 811.51
- Subchapter E. Support Services and Other Initiatives, §811.61

The Commission proposes the repeal of the following sections of Chapter 811, relating to Choices:

- Subchapter C. Choices Services, §§811.25 - 811.28 and 811.33
- Subchapter D. Choices Activities, §§811.41, 811.45, 811.46, 811.48, and 811.49

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

The purpose of the proposed Chapter 811 rule change is to:

- streamline Choices services to promote employment at the earliest opportunity;
- focus resources on outcome-based performance measures, such as entered employment, employment retention, and earnings gains, which better reflect the success of the program; and
- incorporate technical changes for clarification and consistency throughout the chapter.

The Deficit Reduction Act of 2005 (Public Law 109-171) reauthorized the Temporary Assistance for Needy Families (TANF) program and instituted several changes. One change dramatically altered the level of documentation and verification of all reportable activities, particularly job search and job readiness. The federal performance measure for TANF has always been process-driven, focusing on an individual's number of participation hours in a countable activity. Under 45 Code of Federal Regulations (CFR) §261.10, a parent or caretaker receiving TANF benefits must engage in work when the state has determined that the individual is ready or after receipt of 24 months of TANF benefits. However, §261.10 also allows states the flexibility to define what it means to engage in work, which can include participation in work activities as outlined in Social Security Act §407.

The Commission is proposing new program parameters and a state service delivery design to give Boards the flexibility to design and deliver services that assist Choices customers in entering employment quickly by concentrating resources on the outcome-focused performance measures of entered employment, employment retention, and earnings gains.

Board performance measures are being redesigned to ensure that the state is on target to meet federal performance measures. Statistical models have shown Texas is on track to meet its federal obligations using these new outcome-focused measures.

For purposes of the work participation rate, Texas defines "engaged in work" to mean that a Choices participant is considered engaged in work by participating in:

- unsubsidized employment;
- subsidized employment;
- OJT; or
- educational services for Choices participants who are teen heads of household and have not completed secondary school or received a GED credential.

All other Choices services remain intact and available for Boards to use in assisting Choices customers with gaining employment. However, these services are not counted toward the work participation rate. For purposes of determining program performance, Boards will have six weeks from the initial date that a Choices eligible begins receiving TANF benefits in which to work with the individual before participation requirements are expected through unsubsidized employment, subsidized employment, OJT, or educational services in the case of Choices eligibles who are teen heads of household and have not completed secondary school or received a GED credential.

However, it should be noted that engagement of Choices customers begins with the Workforce Orientation for Applicants (WOA), which occurs prior to TANF certification. At the WOA, individuals have the opportunity to take advantage of Workforce Solutions Office resources. Boards will not be limited in the provision of other activities, such as job search. For example, if a customer requires job search for more than six weeks in a year, Boards will have the flexibility to provide such services, which will not be counted toward the federal participation requirements.

The intent of the Commission's outcome-driven paradigm shift and strategy is to promote long-term employment and independence from public assistance, and focus on helping Choices participants gain employment, then gain better employment, and, finally, retain employment.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

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

SUBCHAPTER A. GENERAL PROVISIONS

The Commission proposes the following amendments to Subchapter A:

§811.1. Purpose and Goal

Section 811.1(c) adds the TANF Work Verification Plan as an additional source of guidance for the Choices program.

Section 811.1(d) adds the TANF Work Verification Plan as an additional source of guidance for the Choices program.

§811.2. Definitions

New §811.2(4) defines the term "community service" as a program that provides employment and training activities to Choices participants through unsalaried, work-based positions in the public or private nonprofit sectors. Community service programs contain structured, supervised activities that are a direct benefit to the community and are designed to improve the employability of Choices participants who have been unable to find employment.

Section 811.2(5) amends the definition of "conditional applicant" by requiring that an adult or teen head of household who left TANF in a sanctioned status, but who is reapplying for TANF assistance, "must demonstrate cooperation with Choices program requirements for four consecutive weeks."

New §811.2(7) defines the term "Employment Planning Session (EPS)" as a meeting with a TANF recipient to introduce Choices services.

New §811.2(11) defines the term "job readiness" as short-term structured activities or a series of activities lasting less than six months designed to prepare a job seeker for unsubsidized employment and increase the job seeker's employability. Activities may include, but are not limited to: interviewing skills, job retention skills, personal maintenance skills, professional conduct skills, and introductory computer skills.

New §811.2(12) defines the term "job search" as acts of seeking or obtaining employment, or preparing to seek or obtain employment, including life skills training, substance abuse treatment, mental health treatment, or rehabilitation activities. Activities may include: information on and referral to available jobs; occupational exploration, including information on local emerging and demand occupations; job fairs; applying or interviewing for job vacancies; and contacting potential employers.

New §811.2(13) defines the term "job skills" as training or education for job skills required by an employer to provide a Choices participant with the ability to obtain employment or to advance or adapt to the changing demands of the workplace.

New §811.2(20) defines the "The Workforce Information System of Texas (TWIST)" as the Agency's automated data processing and case management system for the Texas workforce system.

New §811.2(21) defines the term "vocational educational training" as organized educational programs directly related to preparing Choices participants for employment in current or emerging occupations.

New §811.2(24) defines the term "work experience" as unpaid training in the public or private sector designed to improve the employability of Choices participants who have been unable to find employment.

Section 811.2(26) amends the definition of "work requirement" by specifying that a Choices participant is deemed to be engaged in work by participating in:

- (A) unsubsidized employment;
- (B) subsidized employment;
- (C) OJT; or
- (D) educational services for Choices participants who have not completed secondary school or received a GED credential as provided in §811.30.

This change is made strictly for the purposes of determining the federal work participation rate and is not for determining if a Choices participant is meeting participation requirements.

Certain paragraphs in this section have been renumbered to reflect additions or deletions.

§811.4. Policies, Memoranda of Understanding, and Procedures

Section 811.4(a)(2) requires Boards to adopt policies regarding limits on the amount of funds per Choices participant and the maximum duration of subsidized employment and OJT placements. This change is made to align with Workforce Investment Act policy, which imposes a limit on the duration and amount of funds provided.

§811.5. Documentation, Verification, and Supervision of Work Activities

Section 811.5(c):

--removes the term "paid" from work activities to align with the changes in Choices work activities;

--removes the requirement that "If participation is projected as described in §811.34(3), current and verified participation must be documented in TWIST at least every six months." The Administration for Children and Families (ACF) issued guidance requiring a recalculation of average weekly projected hours of employment each time new information was received showing a change in a Choices participant's actual hours. The Commission believes that ACF's guidance negates the benefits of projecting hours, thus projection of hours was not implemented; and

--adds a reference to §811.50, a Choices work activity.

Section 811.5(d) is removed. With the Commission's focus on outcome-based performance measures, only data entry of the Choices work activities set forth in §811.5(c) is required.

New §811.5(d) states that for educational services for teen heads of households who have not completed secondary school or received a GED credential, Boards shall ensure that:

- (1) good or satisfactory progress, as determined by the educational institution, is verified and documented in TWIST at least monthly;
- (2) all participation is supervised daily; and
- (3) all participation is verified and documented in TWIST at least monthly.

Section 811.5(e) is removed. The limitations relating to unpaid activities no longer apply.

SUBCHAPTER B. CHOICES SERVICES RESPONSIBILITIES

The Commission proposes the following amendments to Subchapter B:

§811.11. Board Responsibilities

Section 811.11(f) replaces the reference to "work" requirement with "Choices program requirements" to indicate that monitoring of Choices participants is ongoing and frequent as determined by the Board.

Section 811.11(f)(2) requires that tracking and reporting of all support services shall be entered into TWIST at least monthly. This clarification is added to emphasize the expectation that the provision of support services to participants be documented in TWIST.

Section 811.11(f)(3) specifies that tracking and reporting actual hours of participation is "in Choices work activities."

Section 811.11(f)(4) replaces the reference to "work" requirements with "Choices program requirements" to indicate that determining and arranging for any intervention needed to assist the Choices participant in complying with Choices program requirements as expected.

Section 811.11(f)(6) is removed. With the focus on four work activities, Workforce Solutions Office staff time is better spent assisting Choices participants in obtaining employment quickly rather than monitoring all other Choices activities. In addition, the requirement is duplicative of monitoring the Choices participants' progression toward achieving the goals and objectives of their family employment plan (FEP).

§811.13. Responsibilities of Choices Participants

Section 811.13(c)(1) updates the references to align with new §811.25(a) - (c).

Section 811.13(c)(2) is removed. With the new specification that work activities include only unsubsidized employment, subsidized employment, OJT, and educational services for Choices participants who have not completed secondary school or received a GED as specified in §811.50, the reference to core and non-core hours no longer applies.

Section 811.13(d)(1) updates the references to align with new §811.25(a).

Section 811.13(d)(2) is removed. With the Commission's emphasis on four employment activities, the references to core and non-core activities no longer apply.

Certain paragraphs in §811.13 have been renumbered to accommodate additions or deletions.

§811.14. Noncooperation

Section 811.14(a)(1) replaces the reference to "work" requirements with the term "Choices program requirements" to clarify that the FEP, as provided in §811.23, includes all Choices activities and is not limited to the four employment activities.

Section 811.14(b) replaces the reference to "work" requirements with the term "Choices program requirements" to clarify that failure to comply without good cause with all activities provided in the FEP is subject to a penalty or termination of support services.

Section 811.14(e) specifies that a Board shall ensure reasonable attempts to contact a mandatory Choices participant are documented "in TWIST." The change is made to emphasize the expectation that all contacts regarding noncooperation must be documented in TWIST.

Section 811.14(f)(1) replaces the term "work requirement" with the term "Choices program requirements" to clarify that HHSC is notified of a mandatory Choices participant's failure to comply with Choices program requirements.

§811.15. Demonstrated Cooperation

Section 811.15(a) states that conditional applicants are required to demonstrate four consecutive weeks of cooperation to be eligible for TANF cash assistance. The term "reinstatement of" is removed to clarify that if a conditional applicant left TANF in a sanction status, the individual must demonstrate cooperation in order to be reconsidered for eligibility for TANF cash assistance.

Section 811.15(b) clarifies that sanctioned families are required to demonstrate one month of cooperation "to reinstate" TANF cash assistance. This change is made because by definition sanctioned families have not yet been denied TANF cash assistance and must demonstrate cooperation in the second month in order to continue receiving TANF cash assistance.

Section 811.15(c)(1) replaces the reference to "work" requirements with the term "Choices program" requirements to clarify that a sanctioned family's demonstrated cooperation can be in all Choices activities and is not limited to the four employment activities.

Section 811.15(c)(2) replaces the reference to "work" requirements with the term "Choices program" requirements to clarify that conditional applicants' demonstrated cooperation can be in all Choices activities and is not limited to the four employment activities.

SUBCHAPTER C. CHOICES SERVICES

The Commission proposes the following amendments to Subchapter C:

§811.23. Family Employment Plan

Section 811.23(d)(5) replaces the reference to "work" requirements with the term "Choices program" requirements to clarify that all Choices activities are included in the FEP and are not limited to the four employment activities.

Section 811.23(e) clarifies that the FEP must be "regularly" evaluated and modified as appropriate to meet "job seeker and" employer needs in the local labor market. This change emphasizes that the FEP is a living document, not just a compliance document, and it must be regularly evaluated to guide both the job seeker and Workforce Solutions Office staff toward mutually agreed goals.

§811.25. TANF Core and TANF Non-Core Activities

Section 811.25 is repealed. With the emphasis on the four work activities, the references to core and non-core activities no longer apply.

§811.25. TANF Participation Requirements

New §811.25(a) requires Choices participants in a single-parent family to participate for at least a minimum weekly average of 30 hours.

New §811.25(b) requires Choices participants in two-parent families who are not receiving Commission-funded child care to have one or both adults in the family participate for at least a minimum weekly average of 35 hours.

New §811.25(c) requires Choices participants in two-parent families who are receiving Commission-funded child care to have one or both adults in the family participate for at least a minimum weekly average of 55 hours.

§811.26. Special Provisions Regarding Community Service

Section 811.26 is repealed. With the change to counting only the four work activities in the work participation rate as specified in new §811.41(a), the provisions regarding community service no longer apply.

§811.27. Special Provisions Regarding Job Search and Job Readiness

Section 811.27 is repealed. With the change to counting only the four work activities in the work participation rate as specified in new §811.41(a), the limitations on job search and job readiness no longer apply.

§811.28. Special Provisions Regarding Vocational Educational Training and Educational Services

Section 811.28 is repealed. With the change to counting only the four work activities in the work participation rate as specified in new §811.41(a), the limitations regarding vocational educational training and education services no longer apply.

§811.29. Special Provisions Regarding the Fair Labor Standards Act

Section 811.29(a)(1) removes the term "Food Stamp" benefits and replaces it with the current term "SNAP" benefits.

Section 811.29(a)(2) removes the term "Food Stamp" benefits and replaces it with the current term "SNAP" benefits.

Section 811.29(b) removes the reference to "core work activity" and replaces it with a reference to "participation" requirements. The term "core" also is removed. With the change to counting only the four work activities in the work participation rate as specified in new §811.41(a), the limitations on job search and job readiness no longer apply.

Additionally, references to §825.25(b) - (d) are replaced with §811.25(a) - (c).

§811.31. Special Provisions for Choices Participants in Single-Parent Families with Children under Age Six

Section 811.31(b) removes the reference to "core" activities and replaces it with the term "Choices" activities. With the change to counting only the four work activities in the work participation rate as specified in new §811.41(a), the limitations on job search and job readiness no longer apply.

§811.32. Special Provisions Regarding Exempt Choices Participants and Choices Participants with Reduced Work Requirements

Section 811.32(a) specifies that Boards may provide Choices services or support services as set forth in Subchapter C of this chapter to exempt Choices participants who participate to the extent determined able, as supported by medical documentation, but less than the required participation hours. This change allows support services to be provided to exempt Choices participants if they cannot fully participate.

Section 811.32(b)(2) updates the references to §811.25(b) - (d) to align with new §811.25(a) - (c).

Section 811.32(b)(3) updates the references to §811.25(b) - (d) to align with new §811.25(a) - (c).

§811.33. Other Special Provisions

Section 811.33 is repealed. Conditional applicants and sanctioned families can participate in all Choices activities and receive necessary support services during their demonstrated cooperation period. Therefore, these provisions no longer apply.

§811.34. Participation Provisions

Section 811.34 replaces the reference to "TANF core and non-core" activities with "Choices work" activities. With the change to counting only the four work activities in the work participation rate as specified in new §811.41(a), the limitations on job search and job readiness no longer apply.

Section 811.34(1) removes the term "paid" from work activities to align with the changes in Choices work activities.

New 811.34(2) addresses self-employment and states that Boards shall not count more hours toward the work participation rate for a self-employed Choices participant than the number derived from dividing the participant's net self-employment income (gross self-employment earnings minus business expenses) by the federal minimum wage.

Section 811.34(2) is removed. Under TANF federal regulations, short-term excused absences are not allowable for paid work activities.

Section 811.34(3) is removed. ACF issued guidance requiring a recalculation of average weekly projected hours of employment each time new information was received that showed a Choices participant's actual hours had changed. The Commission believes that ACF's guidance negates the benefits of projecting hours, thus projection of hours was not implemented.

SUBCHAPTER D. CHOICES ACTIVITIES

The Commission proposes the following amendments to Subchapter D:

§811.41. Job Search and Job Readiness Assistance

Section 811.41, Job Search and Job Readiness Assistance, is repealed. Due to the change in activities included in the work participation rate, the following activities are consolidated in new §811.52, relating to Other Choices Activities. To give the Boards the most flexibility, all restrictions and limitations on these activities are removed:

- Job search and job readiness assistance
- Community service
- Work experience
- Vocational educational training
- Job skills training
- Post-employment services, as set forth in §811.51

§811.41. Choices Work Activities

New §811.41(a) specifies that, for purposes of the work participation rate, a Choices participant is considered to be engaged in work by participating in:

- (1) unsubsidized employment, as specified in §811.42;
- (2) subsidized employment, as specified in §811.43;
- (3) OJT, as specified in §811.44; and
- (4) educational services for Choices participants who have not completed secondary school or received a GED, as specified in §811.50.

New §811.41(b) provides that educational services, as specified in new §811.41(a)(4), are limited to teen heads of household, as specified in §811.30.

New §811.41(c) provides the Boards the flexibility to use any other Choices activity set forth in new §811.52 that would reasonably be expected to assist Choices participants in obtaining and retaining employment.

This change incorporates the Commission's goal of promoting employment at the earliest opportunity by focusing on outcome-driven measures rather than a process-driven measure that focuses solely on whether individuals are being kept busy for their required hours of participation.

§811.42. Unsubsidized Employment

Section 811.42(a) is removed. With the emphasis on the four work activities, the references to core activities no longer apply.

New §811.42(b) defines self-employment as an income-producing enterprise that is intended to lead an individual on a clear pathway to self-sufficiency by lessening the family's reliance on public benefits. This subsection is added to give clear direction that self-employment must generate revenue for the family and to eliminate the use of in-kind employment or bartering situations.

Certain subparagraphs in this section have been relettered to reflect additions or deletions.

§811.43. Subsidized Employment

Section 811.43(a) is removed. With the emphasis on the four work activities, the references to core activities no longer apply.

Certain subsections in this section have been relettered to reflect additions or deletions.

§811.44. On-the-Job Training

Section 811.44(a) is removed. With the emphasis on the four work activities, the references to core activities no longer apply.

New 811.44(a) defines OJT as training in the public or private sector for a paid employee while he or she is engaged in productive work that provides knowledge and skills essential to the full and adequate performance of the job. The definition aligns with the federal definition of OJT in 45 CFR §261.2(f).

Section 811.44(c) removes the statement "Unsubsidized employment after satisfactory completion of the training is expected"; it is unnecessary because the Choices participant is already a paid employee.

§811.45. Work Experience

Section 811.45 is repealed. Because of the change in activities included in the work participation rate, all other activities, such as work experience, are consolidated in new §811.52, Other Choices Activities. To give Boards the most flexibility in providing other Choices activities, all restrictions and limitations on these activities are removed.

§811.46. Community Service

Section 811.46 is repealed. Because of the change in activities included in the work participation rate, all other activities, such as community service, are consolidated in new §811.52, Other

Choices Activities. To give Boards the most flexibility in providing other Choices activities, all restrictions and limitations on these activities are removed.

§811.48. Vocational Educational Training

Section 811.48 is repealed. Because of the change in activities included in the work participation rate, all other activities, such as vocational educational training, are consolidated in new §811.52, Other Choices Activities. To give Boards the most flexibility in providing other Choices activities, all restrictions and limitations on these activities are removed.

§811.49. Job Skills Training

Section 811.49 is repealed. Because of the change in activities included in the work participation rate, all other activities, such as job skills training, are consolidated in new §811.52, Other Choices Activities. To give Boards the most flexibility in providing other Choices activities, all restrictions and limitations on these activities are removed.

§811.50. Educational Services for Choices Participants Who Have Not Completed Secondary School or Received a General Educational Development Credential

Section 811.50 removes the reference to non-core activities. With the emphasis on the four work activities, the reference no longer applies.

Section 811.50(b)(1) replaces the reference to §811.2(13) with §811.2(18), the renumbered definition of secondary school.

§811.51. Post-Employment Services

Section 811.51(f)(2) replaces the term "food stamp" with the current term "SNAP."

§811.52. Other Choices Activities

New §811.52 allows Boards to provide any of the following Choices activities, without restriction, if the activities are reasonably expected to assist Choices participants in obtaining and retaining employment:

- (1) Job readiness and job search assistance, as defined in §811.2(11) and (12), respectively;
- (2) Community service, as defined in §811.2(4);
- (3) Work experience, as defined in §811.2(24);
- (4) Vocational educational training, as defined in §811.2(21);
- (5) Job skills training, as defined in §811.2(13); and
- (6) Post-employment services, as set forth in §811.51.

SUBCHAPTER E. SUPPORT SERVICES AND OTHER INITIATIVES

The Commission proposes the following amendments to Subchapter E:

§811.61. Support Services

Section 811.61(b) replaces the term "work" with "Choices program requirements." This change clarifies that Boards have flexibility for the provision of support services and acknowledges that a Choices participant can be meeting all Choices requirements set forth in Subchapter C of this chapter through activities other than the four work activities.

Section 811.61(c)(1) - (3) replaces the term "work" with "Choices program requirements." This change clarifies that Boards have flexibility for the provision of support services and acknowledges that a Choices participant can be meeting all Choices requirements through activities other than the four work activities.

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.

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.

Reagan Miller, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to provide activities and support services that focus the attention of the workforce system on assisting Choices customers in gaining employment at the earliest opportunity in order to attain self-sufficiency and become independent of public benefits. 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 January 31, 2012. The

Commission also conducted a conference call with Board executive directors and Board staff on February 3, 2012, 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 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 proposed rules affect Texas Labor Code, Title 4 and Texas Human Resources Code, Chapters 31 and 34.

CHAPTER 811. CHOICES

SUBCHAPTER A. GENERAL PROVISIONS

§811.1. Purpose and Goal.

- (a) The purposes of Temporary Assistance for Needy Families (TANF), as set forth in Title IV, Social Security Act, §401 (42 U.S.C.A. §601) are:
- (1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
 - (2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;
 - (3) prevent and reduce the incidence of out-of-wedlock pregnancies; and
 - (4) encourage the formation and maintenance of two-parent families.
- (b) The goal of Choices services is to end the dependence of needy parents on public assistance by promoting job preparation, work, and marriage. A Local Workforce Development Board (Board) may exercise flexibility in providing services to Choices eligibles to meet this Choices goal. A Board is also provided the flexibility and may engage in strategies that promote the prevention and reduction of out-of-wedlock pregnancies and encourage the formation and maintenance of two-parent families if those strategies support the primary goal of Choices services, which is employment and job retention.
- (c) The goal of the Texas Workforce Commission (Commission) is to ensure delivery of the employment and training activities as described in the TANF State Plan and the TANF Work Verification Plan.
- (d) Boards shall identify the workforce needs of local employers and design Choices services to ensure that local employer needs are met and that the services are consistent with the goals and purposes of Choices services as referenced in this section, and as authorized by PRWORA, the applicable federal regulations at 45 ~~CFR~~ ~~C.F.R. Parts~~ ~~Part~~ 260 - 265, the TANF State Plan, the TANF Work Verification Plan, this chapter, and consistent with a Board's approved integrated workforce training and services plan as referenced in §801.17 of this title.

§811.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

- (1) Applicant--An adult, or teen head of household, in a family who applies for ~~Temporary Assistance for Needy Families (TANF)~~ cash assistance, who previously did not leave TANF in a sanctioned status.
- (2) Choices eligible--An individual eligible to receive Choices services including an adult or teen head of household who is an applicant, conditional applicant, recipient, nonrecipient parent, former recipient, or sanctioned family as defined in this chapter.
- (3) Choices participant--A Choices eligible participating in or outreached for Choices services, including:
 - (A) Exempt Choices participant--A Choices eligible who is not required under Texas Human Resources Code, Chapter 31 or Texas Health and Human Services Commission (HHSC) rules (1 TAC, Chapter 372, Temporary Assistance for Needy Families and Supplemental Nutrition Assistance Program~~Texas Works~~) to participate in Choices services, but who may voluntarily participate in Choices services.
 - (B) -Mandatory Choices participant--A Choices eligible who is required under Texas Human Resources Code, Chapter 31 or HHSC rules (1 TAC, Chapter 372,~~Texas Works~~) to participate in Choices services.
- (4) Community service--A program that provides employment and training activities to Choices participants through unsalaried, work-based positions in the public or private nonprofit sectors. Community service programs contain structured, supervised activities that are a direct benefit to the community and are designed to improve the employability of Choices participants who have been unable to find employment.
- (5)(4) Conditional applicant--An adult or teen head of household who left TANF in a sanctioned status, but who is reapplying for TANF cash assistance and must demonstrate cooperation with Choices program requirements for four consecutive weeks.
- (6)(5) Earned Income Deduction (EID)--A standard work-related and income deduction, available for four months through HHSC.
- (7) Employment Planning Session (EPS)--A meeting with a TANF recipient to introduce Choices services.
- (8)(6) Extended TANF recipient--A recipient who receives TANF cash assistance past the 60-month federal time limit because of a hardship exemption as defined in Texas Human Resources Code, Chapter 31 and HHSC rules (1 TAC, Chapter 372,~~Texas Works~~).

~~(9)~~(7) Former recipient--An adult or teen head of household who no longer receives TANF cash assistance because of employment.

~~(10)~~(8) HHSC--Texas Health and Human Services Commission.

(11) Job readiness--Short-term structured activities or a series of activities lasting less than six months designed to prepare a job seeker for unsubsidized employment and increase the job seeker's employability. Activities may include, but are not limited to: interviewing skills, job retention skills, personal maintenance skills, professional conduct skills, and introductory computer skills.

(12) Job search--Acts of seeking or obtaining employment, or preparing to seek or obtain employment, including life skills training, substance abuse treatment, mental health treatment, or rehabilitation activities. Activities may include: information on and referral to available jobs; occupational exploration, including information on local emerging and demand occupations; job fairs; applying or interviewing for job vacancies; and contacting potential employers.

(13) Job skills training--Training or education for job skills required by an employer to provide a Choices participant with the ability to obtain employment or to advance or adapt to the changing demands of the workplace.

~~(14)~~(9) Nonrecipient parent--Adults or minor heads of household not receiving TANF cash assistance, but living with their own children who are receiving TANF cash assistance. Nonrecipient parents include parents who are not eligible for TANF cash assistance:

(A) due to a disqualification by the Texas Health and Human Services Commission. These disqualifications include parents who:

(i) refuse to comply with Medicaid third-party resource requirements;

(ii) do not comply with Social Security number requirements;

(iii) are found guilty of an intentional program violation;

(iv) fail to report the temporary absence of a certified child;

(v) are fugitives fleeing to avoid prosecution of, or confinement for, a felony criminal conviction, or are found by a court to be violating federal or state probation or parole;

- (vi) are convicted of a felony drug offense (not deferred adjudication) committed on or after April 1, 2002; or
- (vii) refuse to cooperate with the program integrity assessment process;
- (B) because they are receiving Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI); or
- (C) because they have exhausted their TANF state time limit.

~~(15)~~(10) PRWORA--The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105, as amended.

~~(16)~~(11) Recipient--An adult or teen head of household who receives TANF cash assistance.

~~(17)~~(12) Sanctioned family--An adult or teen head of household who must demonstrate cooperation for one month in order to reinstate TANF cash assistance.

~~(18)~~(13) Secondary school--Educational activities including middle school, high school leading to a high school diploma, or classes leading to the completion of a GED ~~General Educational Development (GED)~~-credential.

~~(19)~~(14) TANF cash assistance--The cash grant provided through HHSC to individuals who meet certain residency, income, and resource criteria as provided under federal and state statutes and regulations, including the PRWORA, the TANF block grant statutes, the TANF State Plan, TANF cash assistance provided under Texas Human Resources Code, Chapters 31 and 34, and other related regulations.

~~(20)~~ The Workforce Information System of Texas (TWIST)--the Agency's automated data processing and case management system for the Texas workforce system.

~~(21)~~ Vocational educational training--Organized educational programs directly related to preparing Choices participants for employment in current or emerging occupations.

~~(22)~~(15) Work-based services--Includes those employment programs defined in Texas Human Resources Code §31.0126.

~~(23)~~(16) Work eligible individual--Work eligible individuals are adults or minor heads of household receiving TANF cash assistance, and nonrecipient parents--with the following exceptions:

- (A) Noncitizens who are ineligible to receive cash assistance because of their immigration status;
- (B) Parents caring for a disabled family member who lives in the home (provided the need for such care is supported by medical documentation), on a case-by-case basis; and
- (C) Recipients of SSI or SSDI, on a case-by-case basis.

(24) Work experience--Unpaid training in the public or private sector designed to improve the employability of Choices participants who have been unable to find employment.

~~(25)~~(17) Work ready--A Choices eligible is considered work ready if he or she has the skills that are required by employers in the local workforce development area. A Board must ensure immediate access to the labor market to determine whether the Choices eligible has those necessary skills to obtain employment.

~~(26)~~(18) Work requirement--For the purposes of 42 USC U.S.C. §607 and 45 CFR C.F.R. §261.10, a Choices participant ~~eligible~~ is deemed to be engaged in work by participating in ~~cooperating with~~:

- (A) unsubsidized employment;
- (B) subsidized employment;
- (C) on-the-job training (OJT); or
- (D) educational services for Choices participants who have not completed secondary school or received a GED credential as provided in §811.30.

~~(A) all requirements set forth in the family employment plan, as described in this chapter; and~~

~~(B) all TANF core and non-core activities, as set forth in this chapter.~~

§811.4. Policies, Memoranda of Understanding, and Procedures.

(a) A Board shall establish policies regarding the following:

(1) A Choices service strategy, as defined in §811.3, that coordinates various service delivery approaches to:

- (A) assist applicants and conditional applicants in gaining employment as an alternative to public assistance;

- (B) ~~use~~utilize a work first design as referenced in §811.3(b)(2) to provide Choices participants access to the labor market; and
 - (C) assist former recipients with job retention and career advancement in order to remain independent of TANF cash assistance;
 - (2) Limits on the amount of funds per Choices participant and the maximum duration ~~The amount of wages subsidized~~ for subsidized employment and OJT placements; and
 - (3) The methods and limitations for provision of work-related expenses.
- (b) A Board may establish optional policies that:
- (1) require the use of the Eligible Training Provider Certification System (ETPS) and Individual Training Account (ITA) systems as described in Chapter 841 of this title to provide for Choices services for Choices participants and paid for with TANF funds; and
 - (2) make post-employment services available to:
 - (A) former recipients who are denied TANF cash assistance because of earnings; and
 - (B) sanctioned families and conditional applicants who obtain employment during their demonstrated cooperation period.
- (c) A Board shall ensure that the following Memoranda of Understanding (MOUs) and collaborative partnerships are developed:
- (1) Local-level MOUs with the appropriate agencies to serve Choices eligibles with disabilities to maximize their potential for success in employment;
 - (2) A local-level MOU in cooperation with HHSC for coordinated case management that is consistent with the MOU between HHSC and the Commission;
 - (3) A local-level MOU with the Texas Department of State Health Services for providing mental health and substance abuse services to Choices participants; and
 - (4) A collaborative partnership with housing authorities and sponsors of local housing programs and services to address the unmet housing needs of recipients.
- (d) A Board shall ensure that procedures are developed:

- (1) to ensure that job development services are available to Choices participants. These services include:
 - (A) contacting local employers or industry associations to request that job openings be listed with Workforce Solutions Offices~~Texas Workforce Centers~~, and other entities in the One-Stop Service Delivery Network selected by the Board;
 - (B) identifying the hiring needs of employers;
 - (C) assisting an employer in creating new positions for Choices participants based on the job developer's and employer's analysis of the employer's business needs; or
 - (D) finding opportunities with an employer for a specific Choices participant or a group of Choices participants;
- (2) to ensure that job placement services are available to Choices participants. Job placement services shall include:
 - (A) identifying employers' workforce needs;
 - (B) identifying Choices participants who have sufficient skills and abilities to be successfully linked with employment; and
 - (C) matching the skills of the Choices participant pool to the hiring needs of local employers;
- (3) to notify applicants and conditional applicants--in conjunction with HHSC--on the availability of regularly scheduled Workforce Orientations for Applicants (WOAs) and alternative WOAs;
- (4) to notify HHSC of applicants and conditional applicants who contacted a Workforce Solutions Office~~Texas Workforce Center~~ to request alternative WOAs;
- (5) to ensure that services are concentrated on Choices eligibles approaching their state or federal time limit, as identified in §811.3(b)(7)(A) and (B). Concentrated services may include targeted outreach, enhanced analysis of circumstances that may limit a Choices eligible's ability to participate, and targeted job development; and
- (6) to determine a family's inability to obtain child care.

- (e) If a Board elects to establish one or more of the optional policies described in subsection (b) of this section, the Board must ensure that corresponding procedures are developed for those policies.

§811.5. Documentation, Verification, and Supervision of Work Activities.

- (a) A Board shall ensure that all required information related to the documentation and verification of participation in Choices work activities, as described in this section, is documented in The Workforce Information System of Texas (TWIST).
- (b) A Board shall ensure that all participation in Choices is verified and documented and that self-attestation is not allowed.
- (c) For ~~paid~~ Choices work activities, as described in §§811.42, 811.43, ~~and 811.44, and 811.50~~, Boards shall ensure that all participation is verified and documented in TWIST at least monthly. ~~If participation is projected as described in §811.34(3), current and verified participation must be documented in TWIST at least every six months.~~
- (d) For educational services, as described in §811.50, for teen heads of household who have not completed secondary school or received a GED credential, Boards shall ensure that:
 - (1) good or satisfactory progress, as determined by the educational institution, is verified and documented in TWIST at least monthly;
 - (2) all participation is supervised daily; and
 - (3) all participation is verified and documented in TWIST at least monthly.
- ~~(d) For unpaid activities, as described in §§811.41, 811.45, and 811.46, Boards shall ensure that all participation is:~~
 - ~~(1) supervised daily; and~~
 - ~~(2) verified and documented in TWIST at least monthly.~~
- ~~(e) For unpaid activities, as described in §§811.48, 811.49, and 811.50, Boards shall ensure that:~~
 - ~~(1) no more than one hour of unsupervised study or homework time per each hour of class time is counted toward a Choices participant's family participation requirement;~~

- ~~(2) all study and homework time in excess of one hour per hour of class time is directly monitored, supervised, verified, and documented;~~
- ~~(3) study or homework time is only counted toward a Choices participant's family participation requirement if:
 - ~~(A) the study or homework time is directly correlated to the demands of the course work for out of class preparation as described by the educational institution; and~~
 - ~~(B) the educational institution's policy requires a certain number of out-of-class preparation hours for the class;~~~~
- ~~(4) good or satisfactory progress, as determined by the educational institution, is verified and documented in TWIST at least monthly;~~
- ~~(5) all participation is supervised daily; and~~
- ~~(6) all participation is verified and documented in TWIST at least monthly.~~

SUBCHAPTER B. CHOICES SERVICES RESPONSIBILITIES

§811.11. Board Responsibilities.

- (a) A Board shall ensure that:
 - (1) the WOA is offered frequently enough to allow applicants and conditional applicants to comply with the HHSC requirement that gives applicants and conditional applicants 10 calendar days from the date of their eligibility interview to attend a WOA;
 - (2) during a regularly scheduled WOA or alternative WOA, applicants and conditional applicants are informed of:
 - (A) employment services available through the One-Stop Service Delivery Network to assist applicants and conditional applicants in achieving self-sufficiency without the need for TANF cash assistance;
 - (B) benefits of becoming employed;
 - (C) impact of time-limited benefits;
 - (D) individual and parental responsibilities; and

- (E) other services and activities, including education and training, available through the One-Stop Service Delivery Network, including services and referrals for services available to Choices eligibles with disabilities;
 - (3) alternative WOAs are developed that allow applicants and conditional applicants with extraordinary circumstances to receive the information listed in paragraph (2) of this subsection;
 - (4) verification that applicants and conditional applicants attend a scheduled or alternative WOA is completed and HHSC is notified in accordance with HHSC rules (1 TAC, Chapter 372, Temporary Assistance for Needy Families and Supplemental Nutrition Assistance ProgramTexas Works); and
 - (5) applicants and conditional applicants are provided with an appointment to develop a family employment plan (FEP).
- (b) A Board shall ensure that:
- (1) Choices services are offered to applicants who attend a WOA; and
 - (2) conditional applicants who attend a WOA are immediately scheduled to begin Choices services.
- (c) A Board shall ensure that a Choices participant's eligibility is verified monthly.
- (d) A Board shall ensure that all extended TANF recipients are outreached and offered the opportunity to participate in Choices activities.
- (e) A Board shall ensure that post-employment services, including job retention and career advancement services, are available to Choices eligibles including mandatory Choices participants coded by HHSC as working at least 30 hours per week, earning at least \$700 per month, and receiving EID.
- (f) A Board shall ensure that ~~the monitoring of Choices program work~~ requirements is ongoing and frequent, as determined by ~~the a~~ Board, unless otherwise specified in this chapter, and consists of the following:
- (1) ensuring receipt of support services;
 - (2) tracking and reporting all support services and entering them into TWIST at least monthly;
 - (3) tracking and reporting actual hours of participation in Choices work activities, at least monthly, unless otherwise specified in this chapter;

- (4) determining and arranging for any intervention needed to assist the Choices participant in complying with Choices program work requirements; and
 - (5) ensuring that the Choices participant is progressing toward achieving the goals and objectives in the FEP family employment plan; and
 - ~~(6) monitoring all other work requirements.~~
- (g) A Board shall ensure that:
- (1) no less than four hours of training regarding family violence is provided to staff who:
 - (A) provide information to Choices eligibles;
 - (B) request penalties or grant good cause; or
 - (C) provide employment planning or employment retention services; and
 - (2) Choices eligibles who are identified as being victims of family violence are referred to an individual or an agency that specializes in issues involving family violence.
- (h) A Board shall ensure that documentation is obtained and maintained regarding all contact with Choices participants, including verification of participation hours, and data is entered into TWIST.
- (i) A Board shall ensure that a referral program is developed to provide Choices eligibles facing higher than average barriers to employment, as described in this chapter, with referrals to pre-employment and post-employment services offered by community-based and other organizations.

§811.13. Responsibilities of Choices Participants.

- (a) A Board shall ensure that Choices participants comply with the provisions contained in this section.
- (b) Choices participants shall:
 - (1) accept a job offer at the earliest possible opportunity;
 - (2) participate in or receive ancillary services necessary to enable Choices participants to work or participate in employment-related activities, including counseling, treatment, vocational or physical rehabilitation, and medical or health services;

- (3) report actual hours of participation in Choices work activities, including hours of employment; and
 - (4) attend scheduled appointments.
- (c) Within two-parent families, Choices participants shall participate in assessment and family employment planning sessions and assigned employment and training activities as follows:
- (1) participate in Choices employment and training as specified in §811.25(b) - (c)~~§811.25(e) - (d)~~;
 - ~~(2) comply with requirements regarding core and non-core activities, as specified in §§811.25 - 811.34;~~
 - ~~(3)~~(2) comply with all requirements specified in the FEP family employment plan; and
 - ~~(4)~~(3) sign a form that contains all the information identified in the Commission's Family Work Requirement form, as described in §811.24.
- (d) -Within single-parent families, Choices participants shall participate in assessment and employment planning sessions and assigned employment and training activities as follows:
- (1) participate in Choices employment and training activities as specified in §811.25(a)~~§811.25(b)~~; and
 - ~~(2) comply with requirements regarding core and non-core activities, as specified in §§811.25 - 811.34; and~~
 - ~~(3)~~(2) comply with all requirements specified in the FEP family employment plan.
- (e) A Board shall ensure that mandatory Choices participants coded by HHSC as working at least 30 hours per week, earning at least \$700 per month, and receiving the EID:
- (1) report to the Board actual hours of work, as defined in §811.34; and
 - (2) are provided with information on available post-employment services.

§811.14. Noncooperation.

- (a) A Board shall ensure that cooperation by Choices participants is verified each month to ensure that the Choices participants:

- (1) comply with Choices program-work requirements as set forth in the FEP, family employment plan as specified in §811.23; or
 - (2) have good cause as described in this chapter.
- (b) If Choices participants have not cooperated with Choices program-work requirements and do not have good cause, a Board shall ensure that:
- (1) a penalty is requested for mandatory Choices participants; or
 - (2) Choices services, including support services, are terminated for exempt Choices participants.
- (c) A Board shall ensure that timely and reasonable attempts, as defined by the Agency, are made to contact a mandatory Choices participant prior to requesting a penalty to:
- (1) determine the reason for noncooperation and whether good cause is applicable, as described in §811.16(c);
 - (2) inform the mandatory Choices participant of:
 - (A) the violation, if good cause has not been determined;
 - (B) the right to appeal; and
 - (C) the necessary procedures to demonstrate cooperation.
- (d) A Board shall ensure that timely and reasonable attempts, as defined by the Agency, are made to contact a sanctioned family and conditional applicants upon discovery of noncooperation during their demonstrated cooperation period to determine if good cause exists.
- (e) A Board shall ensure that the reasonable attempts to contact a mandatory Choices participant are documented in TWIST.
- (f) A Board shall ensure that:
- (1) HHSC is notified of a mandatory Choices participant's failure to comply with Choices program work requirements; and

- (2) the notification of noncooperation is submitted as early as possible in the same month in which the noncooperation occurs.

§811.15. Demonstrated Cooperation.

- (a) Conditional applicants are required to demonstrate four consecutive weeks of cooperation to ~~be become~~ eligible for ~~reinstatement~~ of TANF cash assistance.
- (b) Sanctioned families are required to demonstrate one month of cooperation to reinstate as a condition of eligibility for TANF cash assistance.
- (c) A Board shall ensure that HHSC is immediately notified if:
 - (1) a sanctioned family denied TANF cash assistance because of one month of noncooperation has demonstrated full cooperation with Choices program work requirements for the program month immediately following the program month in which the family noncooperated;
 - (2) a conditional applicant whose TANF case is closed because of two or more months of noncooperation has demonstrated full cooperation with Choices program work requirements for four consecutive weeks; or
 - (3) a sanctioned family or conditional applicant has been granted good cause during the demonstrated cooperation period.

SUBCHAPTER C. CHOICES SERVICES

§811.23. Family Employment Plan.

- (a) Boards must ensure that prior to the development of ~~an FEPA family employment plan~~ Choices participants receive general information about services provided through the One-Stop Service Delivery Network that will assist them in obtaining employment, if the Choices participants did not receive this information during the WOA.
- (b) ~~FEPA Family employment plans~~ are required for all Choices participants.
- (c) ~~FEPA Family employment plans~~ shall be developed with applicants and former recipients who choose to participate in Choices services.
- (d) A Board shall ensure that ~~an FEPA family employment plan~~ is developed during the assessment and:
 - (1) is based on assessments, as described in §811.22;

- (2) contains the goal of self-sufficiency through employment to meet the needs of the local labor market;
 - (3) contains the steps and services to achieve the goal, including:
 - (A) connecting the Choices participant immediately to the local labor market;
 - (B) addressing potential barriers that limit the Choices participant's ability to work or participate in activities;
 - (C) arranging support services for the Choices participant or the family to address circumstances that limit the Choices participant's ability to work or participate, including services for substance abuse, mental health, family violence, and disability-related issues;
 - (D) developing specific post-employment service strategies with methods and time frames for reaching the goal of an identified self-sufficiency wage; and
 - (E) requiring Choices participants to notify the Board's service provider of changes in family circumstances that may preclude participation in Choices services;
 - (4) is signed by the Choices participant--unless the Choices participant is a mandatory Choices participant coded by HHSC as working at least 30 hours per week, earning at least \$700 per month, and receiving the EID--and a Board's service provider;
 - (5) assigns required hours and sets forth the participation agreement for compliance with Choices program-work requirements. FEPs~~Family employment plans~~ for two-parent families must include a description of how the required hours of participation will be distributed between one or both adults in the two-parent household; and
 - (6) provides information about the penalty process, good cause process, right of appeal, and the importance of immediately contacting a case manager should individual or family circumstances arise that prevent participation.
- (e) A Board shall regularly ensure that progress ~~toward~~towards meeting the goals of the FEP~~family employment plan~~ is evaluated and the FEP~~family employment plan~~ is modified as appropriate to meet job seeker and employer needs in the local labor market.

§811.25. TANF Participation Requirements.

- (a) Choices participants in a single-parent family are required to participate for at least a minimum weekly average of 30 hours.
- (b) Choices participants in two-parent families who are not receiving Commission-funded child care are required to have one or both adults in the family participate for at least a minimum weekly average of 35 hours.
- (c) Choices participants in two-parent families who are receiving Commission-funded child care are required to have one or both adults in the family participate for at least a minimum weekly average of 55 hours.

~~§811.25. TANF Core and TANF Non-Core Activities.~~

~~(a) Participation hours are subject to the restrictions regarding TANF core and TANF non-core activities as set forth in 42 U.S.C. §607, 45 C.F.R. §§261.10, 261.12, 261.31, 261.32, and 261.33, as set forth in this section, and as set forth in §§811.26, 811.27, and 811.28.~~

~~(1) TANF core activities are:~~

- ~~(A) unsubsidized employment, as described in §811.42;~~
- ~~(B) subsidized employment, as described in §811.43;~~
- ~~(C) work experience, as described in §811.45;~~
- ~~(D) on-the-job training, as described in §811.44;~~
- ~~(E) job search and job readiness assistance, as described in §811.41;~~
- ~~(F) community service, as described in §811.46;~~
- ~~(G) vocational educational training, as described in §811.48; or~~
- ~~(H) child care services to a Choices participant in community service, as described in §811.47.~~

~~(2) TANF non-core activities are:~~

- ~~(A) job skills training, as described in §811.49; or~~

~~(B) educational services for Choices participants who have not completed secondary school or received a GED credential, as described in §811.50.~~

~~(b) Choices participants in a single-parent family are required to participate for at least a minimum weekly average of 30 hours. An average of 20 hours per week must be derived from participation in core activities. Up to an average of 10 hours per week may be derived from participation in non-core activities.~~

~~(c) Choices participants in two-parent families who are not receiving Commission-funded child care are required to have one or both adults in the family participate for at least a minimum weekly average of 35 hours. An average of 30 hours per week must be derived from participation in core activities. Up to an average of five hours per week may be derived from participation in non-core activities.~~

~~(d) Choices participants in two-parent families who are receiving Commission-funded child care, are required to have one or both adults in the family participate for at least a minimum weekly average of 55 hours. An average of 50 hours per week must be derived from participation in core activities. Up to an average of five hours per week may be derived from participation in non-core activities.~~

§811.26. Special Provisions Regarding Community Service.

~~(a) Choices participants, with the exception of those described in §811.30 and §811.33, who are not in an employment activity, must be placed into community service after four weeks of enrollment in Choices. Choices participants who are not in an employment activity after reaching their hourly limit per 12-month period, as set forth in §811.27, in job search and job readiness activities must be placed into community service. An employment activity is defined as:~~

~~(1) — unsubsidized employment, as described in §811.42;~~

~~(2) — subsidized employment, as described in §811.43;~~

~~(3) — on the job training, as described in §811.44; or~~

~~(4) — work experience, as described in §811.45.~~

~~(b) Choices participants required to participate in a community service activity must be scheduled to participate no less than the minimum weekly average hours calculated as specified in §811.21(b).~~

- (c) ~~Exempt Choices participants are not subject to the requirements set forth in subsection (a) of this section.~~

~~§811.27. Special Provisions Regarding Job Search and Job Readiness.~~

- (a) ~~Choices participants in unsubsidized employment as defined in §811.42, who lose that employment, may participate in job search activities as defined in §811.41(e) and job readiness activities as defined in §811.41(d) unless they have reached the 120 or 180-hour limit per 12-month period set forth in subsection (b)(2) of this section.~~
- (b) ~~Job search and job readiness activities as defined in §811.41 are limited as follows:~~
 - (1) ~~Choices participants may not be enrolled for more than four weeks of consecutive activity;~~
 - (2) ~~Choices participants may not be enrolled for more than:~~
 - (A) ~~120 hours per 12-month period for single parents with a child under age six; and~~
 - (B) ~~180 hours per 12-month period for all other Choices eligibles; and~~
 - (3) ~~After four consecutive weeks of participation in job search and job readiness activities, Choices participants are not eligible for additional participation in job search and job readiness activities until they have complied with §811.26(a), which requires that Choices participants be engaged in an employment activity or in community service.~~
- (c) ~~A Board may count a partial week (i.e., three or four days) of participation in job search and job readiness activities as a full week of participation only once for any Choices participant in a 12-month period.~~

~~§811.28. Special Provisions Regarding Vocational Educational Training and Educational Services.~~

- (a) ~~Choices participants may not be enrolled in vocational educational training, as defined in §811.48, for more than a cumulative total of 12 months.~~
- (b) ~~No more than 30% of Choices participants engaged in work activities in a month may be included in the Board's numerator because they are:~~
 - (1) ~~participating in vocational educational training; and~~

~~(2) teen heads of household participating in educational activities as described in §811.30.~~

~~(c) Choices participants shall be enrolled only in core and non-core activities.~~

§811.29. Special Provisions Regarding the Fair Labor Standards Act.

- (a) A Board shall ensure that employment and training activities are conducted in compliance with FLSA as follows.
 - (1) The amount of time per week that a Choices participant may be required to participate in activities that are not exempt from minimum wage and overtime under FLSA shall be determined by the TANF cash assistance and ~~SNAP~~Food Stamp benefits amount being divided by the minimum wage, so that the amount paid to the Choices participant is equal to or more than the amount required for payment of wages, including minimum wage and overtime; or
 - (2) The amount of time per week that a sanctioned family or conditional applicant may be required to participate in activities that are not exempt from minimum wage and overtime under FLSA shall be determined by the ~~SNAP~~Food Stamp benefits amount being divided by the minimum wage, so that the amount paid to the sanctioned family is equal to or more than the amount required for payment of wages, including minimum wage and overtime; and
 - (3) If a Board provides activities that meet all of the following categories, the activity is considered training under FLSA and minimum wage and overtime are not required:
 - (A) The training is similar to that given in a vocational school;
 - (B) The training is for the benefit of the trainees;
 - (C) The trainees do not displace regular employees;
 - (D) The employers derive no immediate advantage from trainees' activities;
 - (E) The trainees are not entitled to a job after training is completed; and
 - (F) The employers and trainees understand that trainees are not paid.
- (b) The number of hours that a Choices participant is required to participate in community service or another unpaid work activity shall be determined in compliance with FLSA as described in subsection (a) of this section. If a Choices participant's hours of community service or other unpaid work activity are not

sufficient to meet the participation ~~core work activity~~ requirement as set forth in §811.25(a) - (c)~~§811.25(b) - (d)~~, the Choices participant shall be enrolled in additional non-FLSA-covered ~~core~~ activities.

§811.31. Special Provisions for Choices Participants in Single-Parent Families with Children under Age Six.

- (a) A Board shall ensure that Choices participants in single-parent families with children under age six are notified of the penalty exception to Choices participation as described in §811.16(d).
- (b) A Choices participant in a single-parent family with children under age six shall count as engaged in work if he or she participates in ~~core~~ Choices activities for at least an average of 20 hours per week.

§811.32. Special Provisions Regarding Exempt Choices Participants and Choices Participants with Reduced Work Requirements.

- (a) A Board ~~may~~shall not provide Choices services or support services as set forth in this subchapter~~§§811.25—811.33~~ to exempt Choices participants who participate to the extent determined able, as supported by medical documentation, but less than the required participation hours. ~~fail to meet work requirements.~~
- (b) A Board shall ensure that a penalty is not requested for:
 - (1) exempt Choices participants;
 - (2) Choices participants with disabilities who participate to the extent determined able, as supported by medical documentation, but less than the required participation hours, as specified in §811.25(a) - (c)~~§811.25(b) - (d)~~ and §811.31(b); or
 - (3) Choices participants who are caring for a disabled family member, as supported by medical documentation, when the Choices participant participates to the extent determined able, but less than the required participation hours, as specified in §811.25(a) - (c)~~§811.25(b) - (d)~~ and §811.31(b).

~~§811.33. Other Special Provisions.~~

- ~~(a) Conditional Applicants. A Board shall ensure that conditional applicants enrolled in job search activities, as described in this chapter, receive staff-assisted services as defined in §811.41(b)(1)(B).~~

~~(b) Sanctioned Families. A Board shall ensure that sanctioned families enrolled in job search activities, as described in this chapter, receive staff-assisted services as defined in §811.41(b)(1)(B).~~

§811.34. Participation Provisions.

A Board shall count only actual hours of participation in Choices work ~~TANF core and non-core~~ activities as allowable work participation hours with the following exceptions, unless otherwise specified in this chapter:

(1) ~~For paid-work activities set forth in §§811.42 - 811.44, Boards may count paid holidays or other paid leave as actual participation hours.~~

(2) ~~For self-employment, Boards shall not count more hours toward the work participation rate for a self-employed Choices participant than the number derived from dividing the participant's net self-employment income (gross self-employment earnings minus business expenses) by the federal minimum wage.~~

~~(2) For unpaid work activities set forth in §811.41 and §§811.45 – 811.50, Boards may count short-term excused absences as actual participation if they meet the following conditions:~~

~~(A) A short-term excused absence:~~

~~(i) is because of a holiday; or~~

~~(ii) totals a maximum of 80 additional hours within a 12-month period and does not exceed 16 hours of excused absences per month.~~

~~(B) The Choices participant must have been scheduled to participate in an unpaid work activity during the time period in which the holiday or excused absence falls. Boards shall ensure credited participation hours do not exceed the number of hours the Choices participant was scheduled to participate.~~

~~(3) A Board may project participation hours in unsubsidized employment (except self-employment), subsidized employment, and on-the-job training, up to six months at a time, using an average of four weeks of current, verified, and documented actual hours. For self-employment, a Board:~~

~~(A) may project participation hours in self-employment, up to six months at a time, using an average of three months of current, verified, and documented actual hours.~~

~~(B) — may not count more hours toward the work participation rate for self-employed Choices participants than the number derived by dividing the Choices participant's net self-employment income (gross self-employment wages minus business expenses) by the federal minimum wage.~~

SUBCHAPTER D. CHOICES ~~WORK~~ ACTIVITIES

§811.41. Choices Work Activities.

(a) For purposes of the work participation rate, a Choices participant is considered to be engaged in work by participating in:

(1) unsubsidized employment, as specified in §811.42;

(2) subsidized employment, as specified in §811.43;

(3) OJT, as specified in §811.44; or

(4) educational services for Choices participants who have not completed secondary school or received a GED, as specified in §811.30.

(b) Educational services, as specified in subsection (a)(4) of this section, are limited to teen heads of household, as specified in §811.30.

(c) Boards may use any other Choices activity set forth in §811.52 that would reasonably be expected to assist Choices participants in obtaining and retaining employment.

~~§811.41. Job Search and Job Readiness Assistance.~~

~~(a) Job search and job readiness are core activities as defined in §811.25(a)(1).~~

~~(b) A Board shall ensure that job search and job readiness activities:~~

~~(1) incorporate the following:~~

~~(A) individual and group activities;~~

~~(B) staff-assisted services in which Texas Workforce Center staff provide direction and guidance to Choices participants, including appropriate referrals based on their skills and abilities to pre-scheduled job~~

interviews; and preparatory activities that are essential to obtaining and retaining employment; and

~~(C) customer directed activities that do not require direct staff involvement, and include activities in which Choices participants independently identify employment opportunities based upon their employment strengths, and perform preparatory activities that are essential to obtaining and retaining employment.~~

~~(2) are limited to activities necessary for Choices participants to secure immediate employment.~~

~~(3) provide individual assistance or coordinated, planned, and supervised activities that prepare Choices participants for seeking employment.~~

~~(e) Job search activities are defined as acts of seeking and obtaining employment, including:~~

~~(1) job referrals;~~

~~(2) information on available jobs;~~

~~(3) occupational exploration, including information on local emerging and demand occupations;~~

~~(4) job fairs;~~

~~(5) applying or interviewing for job vacancies; and~~

~~(6) making contacts with potential employers.~~

~~(d) Job readiness activities are designed to assist Choices participants with addressing issues that will aid them in seeking, obtaining, and retaining employment, including:~~

~~(1) life skills;~~

~~(2) guidance and motivation for development of positive work behaviors necessary for the labor market;~~

~~(3) job skills assessment;~~

~~(4) substance abuse treatment, mental health treatment, and rehabilitation activities, if the need for treatment and therapy activities is documented by a qualified medical, substance abuse, or mental health professional;~~

~~(5) job counseling;~~

~~(6) interviewing skills and practice interviews; and~~

~~(7) assistance with applications and resumes.~~

~~(e) Job search and job readiness activities are time-limited as defined in §811.27.~~

§811.42. Unsubsidized Employment.

~~(a) Unsubsidized employment is a core activity as defined in §811.25(a)(1).~~

~~(b)~~(a) Unsubsidized employment includes the following:

- (1) full-time or part-time employment, in which wages are paid in full by the employer;
- (2) unsubsidized internship with wages paid by the internship employer; and
- (3) self-employment.

(b) Self-employment is defined as an income-producing enterprise that will lead an individual on a clear pathway to self-sufficiency by lessening the family's reliance on public benefits.

§811.43. Subsidized Employment.

~~(a) Subsidized employment is a core activity as defined in §811.25(a)(1).~~

~~(b)~~(a) Subsidized employment is full-time or part-time employment that is subsidized in full or in part and complies with this section. Subsidized employment may occur in either the private sector or public sector. A Board shall not be the employer of record for Choices participants enrolled in a subsidized employment activity. Subsidized employment includes but is not limited to the following:

- (1) subsidized internship with a portion of the Choices participant's wages subsidized;
- (2) subsidized employment with a staffing agency acting as the employer of record; and
- (3) subsidized employment with the actual employer acting as the employer of record.

~~(e)~~(b) Wages.

- (1) Wages shall be at least federal or state minimum wage, whichever is higher.
- (2) Employers must provide the same wages and benefits to subsidized employees as for unsubsidized employees with similar skills, experience, and position.

~~(d)~~(c) Boards shall ensure subsidized employment placements prepare and move Choices participants into unsubsidized employment.

~~(e)~~(d) Boards shall ensure subsidized employment placements are allotted to employers who expect to retain Choices participants as regular unsubsidized employees once the subsidized placement has ended, unless successful completion of the placement is expected to result in unsubsidized employment with a different employer.

§811.44. On-the-Job Training.

(a) OJT is training in the public or private sector for a paid employee while he or she is engaged in productive work that provides knowledge and skills essential to the full and adequate performance of the job.

~~(a) On-the-job training is a core activity as defined in §811.25(a)(1).~~

(b) A Board shall ensure that a determination is made on a case-by-case basis whether to authorize, arrange, or refer a Choices participant for subsidized, time-limited training activities, to assist the Choices participant with obtaining knowledge and skills that are essential to the workplace while in a job setting. OJT~~On-the-job training~~ is training by an employer that is provided to a Choices participant on or off the work site while engaged in productive work in a job that:

- (1) provides knowledge or skills essential to the full and adequate performance of the job;
- (2) provides reimbursement to the employer of a percent of the wage rate of the Choices participant for the extraordinary costs of providing the training and additional supervision related to the training;
- (3) is limited in duration as appropriate to the occupation for which the Choices participant is being trained, taking into account the content of the training, the prior work experience of the Choices participant, and the service strategy of the Choices participant, as appropriate; and
- (4) includes training specified by the employer.

~~(c) Unsubsidized employment after satisfactory completion of the training is expected.~~ A Board shall not contract with employers who have previously exhibited a pattern of failing to provide Choices participants in OJT~~on-the-job training~~ with continued

long-term employment, which provides wages, benefits, and working conditions that are equal to those that are provided to regular employees who have worked a similar length of time and are doing a similar type of work.

- (d) Boards shall ensure on-the-job training placements are allotted to employers who expect to retain Choices participants as regular unsubsidized employees once the ~~OJT on-the-job training~~ placement has ended, unless successful completion of the placement is expected to result in unsubsidized employment with a different employer.

~~§811.45. Work Experience.~~

- ~~(a) Work experience is a core activity as defined in §811.25(a)(1).~~
- ~~(b) A Board shall ensure that a determination is made on a case-by-case basis whether to authorize, arrange, or refer Choices participants for unsalaried, work-based training positions to improve the employability of Choices participants who have been unable to find unsubsidized employment.~~
- ~~(c) A Board shall ensure that all Choices participants who are unemployed after completing job search services are evaluated on an individual basis to determine if enrollment in work experience shall be required, based on available resources and the local labor market.~~
- ~~(d) A Board shall ensure that each work experience placement:
 - ~~(1) is time limited;~~
 - ~~(2) is designed to move Choices participants quickly into regular employment; and~~
 - ~~(3) has designated hours, tasks, skills attainment objectives, and daily supervision.~~~~
- ~~(e) A Board shall ensure that entities that enter into nonfinancial agreements with a Board, identify work experience positions and provide job training and work experience within their organization. These positions shall enable Choices participants to gain the skills necessary to compete for positions within the entity as well as positions in the labor market.~~

~~§811.46. Community Service.~~

- ~~(a) Community service is a core activity as defined in §811.25(a)(1).~~
- ~~(b) A Board shall ensure that a determination is made, on a case-by-case basis, whether~~

~~to authorize, arrange, or refer Choices participants to a community service program that provides employment or training activities to Choices participants through unsalaried, work-based positions in the public or private nonprofit sectors. A Board shall not allow Choices participants to arrange their own community service placements. A Board shall ensure community service programs contain structured, supervised activities that are a direct benefit to the community and are designed to improve the employability of Choices participants who have been unable to find employment.~~

~~(c) A Board shall ensure that all mandatory Choices participants subject to §811.26(a) are referred to a community service program.~~

~~(d) Community service positions may include, but are not limited to, work performed in:~~

~~(1) a school or Head Start program;~~

~~(2) a church;~~

~~(3) a government or nonprofit agency; or~~

~~(4) Americorps, VISTA, or other volunteer organizations.~~

~~(e) A Board shall ensure community service placements are limited to positions that serve a useful community purpose in fields such as health, social service, environmental protection, education, urban and rural redevelopment, welfare, recreation, public facilities, public safety, and child care.~~

~~§811.48. Vocational Educational Training.~~

~~(a) Vocational educational training is a core activity as defined in §811.25(a)(1).~~

~~(b) A Board shall ensure that a determination is made, on a case-by-case basis, whether to authorize, arrange, or refer Choices participants for vocational educational training.~~

~~(c) The vocational educational training shall:~~

~~(1) prepare Choices participants for a specific trade, occupation, or vocation that requires training other than a baccalaureate or advanced degree;~~

~~(2) include activities that provide Choices participants with the knowledge and skills to perform a specific trade, occupation, or vocation;~~

~~(3) relate to current or emerging occupations;~~

~~(4) be consistent with employment goals identified in the family employment plan,~~

when possible;

~~(5) be provided only if there is an expectation that employment will be secured upon completion of the training;~~

~~(6) be subject to the time limitations as detailed in this subchapter; and~~

~~(7) be provided by education or training organizations, including but not limited to, vocational or technical schools, community colleges, postsecondary institutions, career schools and colleges, nonprofit organizations, and secondary schools offering vocational education.~~

~~§811.49. Job Skills Training.~~

~~(a) Job skills training is a non-core activity as defined in §811.25(a)(2).~~

~~(b) Job skills training services are designed to increase a Choices participant's employability. Job skills training may also include activities ensuring that Choices participants become familiar with workplace expectations and exhibit work behavior and attitudes necessary to compete successfully in the labor market. Various types of activities, which are directly related to employment, may qualify, such as personal development and preemployment classes.~~

~~(c) A Board shall ensure that a determination is made on a case-by-case basis whether to authorize, arrange, or refer Choices participants for job skills training as set forth in the family employment plan.~~

~~(d) Job skills training shall be:~~

~~(1) directly related to employment; and~~

~~(2) consistent with employment goals identified in the family employment plan, when possible.~~

~~(e) Job skills training includes:~~

~~(1) language instruction or literacy instruction;~~

~~(2) entrepreneurial training provided prior to business start up; and~~

~~(3) self-employment assistance:~~

~~(A) for Choices participants currently engaged in operating a small business;~~

~~(B) for Choices participants based upon an objective assessment process that identifies Choices participants who are likely to succeed; and~~

~~(C) that may include microenterprise services such as:~~

~~(i) business counseling;~~

~~(ii) financial assistance; and~~

~~(iii) technical assistance.~~

§811.50. Educational Services for Choices Participants Who Have Not Completed Secondary School or Received a General Educational Development Credential.

- (a) Educational services, ~~which are non-core activities as defined in §811.25(a)(2),~~ are only available for Choices participants who have not completed secondary school or who have not received a GED credential.
- (b) A Board shall ensure that a determination is made, on a case-by-case basis, whether to authorize, arrange, or refer Choices participants who are age 20 and older for the following educational or other training services:
 - (1) secondary school, as defined in §811.2(18) ~~§811.2(13)~~, when required as a prerequisite for employment;
 - (2) Adult Basic Education (ABE), language instruction, or literacy instruction; or
 - (3) other educational activities which are directly related to employment.
- (c) A Board shall ensure educational services related to employment directly provide education, knowledge, and skills for specific occupations, work settings, jobs, or job offers.

§811.51. Post-Employment Services.

- (a) A Board shall ensure that post-employment services, which include job retention, career advancement, and reemployment services, are offered to Choices participants who are employed, and to applicants, conditional applicants, and former recipients who have obtained employment but require additional assistance in retaining employment and achieving self-sufficiency.
- (b) A Board shall ensure that post-employment services are monitored, and ensure that hours of employment are required and reported by Choices participants for at least the length of time the Choices participants receive TANF cash assistance.
- (c) A Board shall ensure that ongoing contact is established with Choices eligibles receiving post-employment services at least monthly.

- (d) A Board may include mentoring techniques as part of a post-employment strategy.
- (e) The post-employment services may include the following:
 - (1) assistance and support for the transition into employment through direct services or referrals to resources available in the workforce area;
 - (2) child care, if needed, as specified in rules at Chapter 809 of this title;
 - (3) work-related expenses, including those identified in §811.64;
 - (4) transportation, if needed;
 - (5) job search, job placement, and job development services to help a former recipient who loses a job to obtain employment;
 - (6) referrals to available education or training resources to increase an employed Choices eligible's skills or to help the individual qualify for advancement and long-term employment goals;
 - (7) additional career planning and counseling; or
 - (8) referral to support services available in the community.
- (f) The maximum length of time a former recipient, conditional applicant, and sanctioned family may receive services under this section is dependent upon:
 - (1) family circumstances;
 - (2) the risk of returning to public assistance. A person is considered at risk of returning to TANF cash assistance if he or she is a SNAP~~food stamp~~ recipient, or receives Commission-funded child care;
 - (3) the ongoing need for these services; and
 - (4) the availability of funds for these services.
- (g) Post-employment service providers may include employers, community colleges, technical colleges, career schools and colleges, faith-based and community-based organizations.

§811.52. Other Choices Activities.

Boards may provide any of the following activities, without restriction, if the activities are reasonably expected to assist Choices participants in obtaining and retaining employment:

- (1) Job readiness and job search assistance, as defined in §811.2(11) and (12), respectively;
- (2) Community service, as defined in §811.2(4);
- (3) Work experience, as defined in §811.2(24);
- (4) Vocational educational training, as defined in §811.2(21);
- (5) Job skills training, as defined in §811.2(13); and
- (6) Post-employment services, as set forth in §811.51.

SUBCHAPTER E. SUPPORT SERVICES AND OTHER INITIATIVES

§811.61. Support Services.

- (a) A Board shall ensure that support services as specified in this subchapter are provided, if needed, to Choices participants to address barriers to employment or participation in Choices services, subject to availability of resources and funding. A Board shall ensure that support services provided to Choices participants are coordinated with the employer, when appropriate.
- (b) A Board shall ensure that support services, including Commission-funded child care, are provided only to Choices participants who are meeting Choices program requirements set forth in §§811.16, Subchapter B of this chapter, 811.23, and 811.25 – 811.34, and as set forth in §809.45 of this title. In applying this provision, a Board shall ensure support services are provided to Choices participants if it is determined support services are needed to comply with Choices program requirements set forth in §§811.16, Subchapter B of this chapter, 811.23, and 811.25 – 811.34, and as set forth in §809.45 of this title.
- (c) A Board shall ensure that:
 - (1) support services are terminated immediately upon a determination of failure to meet Choices program requirements by Choices participants unless otherwise determined by the Board's service provider as referenced in subsection (b) of this section;
 - (2) the Board's child care contractor is notified immediately of the failure to meet Choices program requirements; and
 - (3) upon notification, the Board's child care contractor immediately notifies the child care provider that services are terminating due to failure to meet Choices program requirements.

- (d) A Board shall ensure that support services, classified as cash assistance, for:
- (1) applicants and former recipients do not extend beyond four months for those who are unemployed and not receiving TANF cash assistance; and
 - (2) unemployed conditional applicants and sanctioned families do not extend beyond their demonstrated cooperation period.