

## **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 JUNE 10, 2008, THE TEXAS WORKFORCE COMMISSION PROPOSED THE BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.**

Estimated Publication Date of the Proposal in the *Texas Register*: **June 27, 2008**  
Estimated End of Comment Period: **July 28, 2008**

The Texas Workforce Commission (Commission) proposes the following new sections to Chapter 811, relating to Choices:

Subchapter A. General Provisions, §811.4 and §811.5

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

Subchapter A. General Provisions, §811.2 and §811.3

Subchapter B. Choices Services Responsibilities, §§811.11, 811.14, and 811.16

Subchapter C. Choices Services, §§811.21, 811.26, 811.27, 811.29, and 811.34

Subchapter D. Choices Work Activities, §811.41, §§811.43–811.46, and §§811.48–811.51

Subchapter E. Support Services and Other Initiatives, §811.64

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

Subchapter D. Choices Work Activities, §811.47

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

**PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

**PART III. IMPACT STATEMENTS**

**PART IV. COORDINATION ACTIVITIES**

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

The purpose of this Chapter 811 amendment is to:

- implement the regulatory requirements issued by the United States Department of Health and Human Services (HHS);
- align Chapter 811 with previously released Commission guidance (i.e., Workforce Development (WD) Letters, Technical Assistance Bulletins, policy clarifications);

- implement changes based on the findings in the State Auditor's Office October 2007 audit of the Choices program; and
- incorporate technical changes for clarification and consistency throughout the chapter.

In February 2006, the Deficit Reduction Act (DRA) of 2005 (P.L. 109-171) reauthorized the Temporary Assistance for Needy Families (TANF) program through Federal Fiscal Year 2010. In addition to providing ongoing funding for TANF, DRA also changed several provisions in law related to TANF work participation. DRA directed HHS to issue regulations regarding:

- allowable work activities;
- verification, documentation, and internal control procedures; and
- inclusion of certain child-only cases in the calculation of work participation rates.

On February 5, 2008, HHS issued TANF final regulations (final regulations), which include changes from the June 29, 2006, interim final regulations. The final regulations also provide clarification on a number of elements retained from the interim final regulations.

The final regulations become effective on October 1, 2008. Local Workforce Development Boards (Boards) have been informed of the major changes affecting Choices services, through a Commission meeting, policy concept, and conference call, prior to this proposed rulemaking. While there may be more stringent requirements under this chapter, the Commission's intent is to provide Boards the same flexibility offered under the TANF interim final regulations.

In addition to the changes made to comply with the final regulations, and to align the rules with other current federal regulations, technical changes are made to:

- simplify and clarify rule language;
- consolidate policies, procedures, and memoranda of understanding (MOUs) requirements;
- consolidate documentation, supervision, and verification requirements;
- update terminology and definitions; and
- remove obsolete provisions.

## **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:**

#### **§811.2. Definitions**

Section 811.2(2) adds the term "nonrecipient parent" to the definition of Choices eligible to incorporate the federal definition of "work eligible individual," which is included as new §811.2(16). Senate Bill (SB) 589, enacted by the 80th Texas Legislature, Regular Session (2007), makes nonrecipient parents eligible to receive Choices services. This legislation was in response to the interim final regulations, which included nonrecipient parents in states' performance calculations for the first time.

Section 811.2(3)(A), the definition of exempt Choices participant, replaces the term "an adult or teen head of household" with the term "Choices eligible" to provide consistency with other definitions in this chapter.

Section 811.2(3)(B), the definition of mandatory Choices participant, replaces the text "An adult or teen head of household, including an extended TANF recipient, conditional applicant, and sanctioned family, as defined in this section" with the term "Choices eligible" to provide consistency with other definitions in this chapter.

New §811.2(9)(A)–(C) defines the term "nonrecipient parent" as adults or minor heads of household not receiving financial assistance, but living with their own children who are receiving financial assistance. The definition of nonrecipient parent is added to align with HHS's definition of "work eligible individual," as defined in new §811.2(16), which includes certain nonrecipient parents. Nonrecipient parents include parents who are not eligible for TANF cash assistance for the following reasons:

(A) disqualification by the Texas Health and Human Services Commission (HHSC). 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.

SB 589 makes nonrecipient parents eligible to receive Choices services. This legislation was in response to the interim final regulations, which included nonrecipient parents in states' performance calculations for the first time.

New §811.2(13) defines the term "secondary school" as educational activities including middle school, high school leading to a high school diploma, or classes leading to the completion of a General Educational Development (GED) credential.

New §811.2(16)(A)–(C) defines the term "work eligible individual" as 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.

Certain paragraphs in §811.2 have been renumbered to accommodate additions or deletions.

### **§811.3. Choices Service Strategy**

Section 811.3(b), requiring local policies for a Choices service strategy, is removed and incorporated in §811.4(a)(1).

Section 811.3(c) has been renumbered as new §811.3(b).

Section 811.3(b)(5) removes the text "assistance with completion of secondary school or a General Educational Development (GED) credential" and replaces it with the text "secondary school" as defined in new §811.2(13) for clarity and consistency.

Section 811.3(b)(6) removes the text requiring Boards to develop MOUs with agencies to serve Choices eligibles with disabilities and incorporates it into new §811.4(c)(1).

Section 811.3(b)(9), requiring a local-level MOU in cooperation with HHSC for coordinated case management, is removed and incorporated in §811.4(c)(2).

Section 811.3(b)(10), requiring Boards to establish housing partnerships, is removed and incorporated in §811.4(c)(4).

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

New §811.4 is added to consolidate all requirements for the development of policies, procedures, and MOUs throughout Chapter 811.

Section 811.4(a)(1)–(3) requires Boards to 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) 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 TANF recipients with job retention and career advancement in order to remain independent of TANF cash assistance;

- (2) the amount of wages subsidized for subsidized employment placements; and
- (3) the methods and limitations for provision of work-related expenses.

Section 811.4(b)(1)–(2) provides that Boards may establish optional policies that:

- (1) require the use of the Eligible Training Provider Certification System (ETPS) and Individual Training Accounts (ITAs) as described in Chapter 841 of this title to provide Choices services for Choices participants paid for with TANF funds; and
- (2) make post-employment services available to:
  - (A) former TANF 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.

Section 811.4(c)(1)–(4) requires Boards to ensure that the following 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.

Section 811.4(d)(1)–(6) requires Boards to ensure that procedures are developed to:

- (1) ensure that job development services are available to Choices participants, including:
  - (A) contacting local employers or industry associations to request that job openings be listed with 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 the 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) ensure that job placement services are available to Choices participants;

(3) notify applicants and conditional applicants, in conjunction with HHSC, on the availability of regularly scheduled Workforce Orientations for Applicants (WOAs) and alternative WOAs;

(4) notify HHSC of applicants and conditional applicants who have contacted a Texas Workforce Center to request alternative WOAs;

(5) ensure that services are concentrated on Choices eligibles approaching their state or federal time limit, as identified in §811.3(c)(7)(A) and (B); and

(6) determine a family's inability to obtain child care.

Section 811.4(e) requires that Boards electing to establish one or more of the optional policies described in §811.4(b) shall ensure that corresponding procedures are also developed for those policies.

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

New §811.5 consolidates all requirements for documentation, verification, and supervision of Choices work activities throughout the chapter.

Section 811.5(a) clarifies that all required information, including but not limited to pay stubs, contact names, and time sheets related to the documentation and verification of participation in Choices work activities, as described in §811.5, shall be documented and verified in The Workforce Information System of Texas (TWIST), the Agency's automated information system. Although previously not set forth in rule, this requirement conforms with Commission guidance.

Section 811.5(b) clarifies that all participation in Choices shall be verified and documented and that self-attestation is not allowed. Although previously not set forth in rule, this requirement conforms with Commission guidance.

Section 811.5(c) requires that participation in paid work activities, as described in §§811.42–811.44 of Subchapter D, be documented and verified at least monthly in TWIST unless participation is projected, as described in §811.34(3) of Subchapter C. If participation is projected, participation in paid work activities shall be documented and verified in TWIST at least every six months.

Section 811.5(d)(1)–(2) requires that participation in unpaid activities, as described in §811.41, §811.45, and §811.46 of Subchapter D, be supervised daily and verified and documented at least monthly in TWIST, replacing the previous requirement that documentation be entered biweekly. Although previously not set forth in rule, this requirement conforms with Commission guidance.

Section 811.5(e)(1)–(2) requires that up to one hour of unsupervised homework time for every hour of class time in unpaid activities, as described in §§811.48–811.50 of Subchapter D, can be counted toward a Choices participant's work requirement. All homework hours in excess of one hour per every hour of class time shall be directly monitored, supervised, verified, and documented.

Section 811.5(e)(3) requires that study or homework time in unpaid activities, as described in §§811.48–811.50, shall be counted only toward a Choices participant's family participation requirement if:

- (A) 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.

Section 811.5(e)(4) requires that good or satisfactory progress as determined by the educational institution must be verified and documented in TWIST at least monthly for unpaid activities, as described in §§811.48–811.50.

Section 811.5(e)(5) requires that all participation in unpaid activities, as described in §§811.48–811.50, be supervised daily.

Section 811.5(e)(6) requires that all participation be verified and documented in TWIST at least monthly. Although previously not set forth in rule, this requirement conforms with Commission guidance.

## **SUBCHAPTER B. CHOICES SERVICES RESPONSIBILITIES**

**The Commission proposes the following amendments to Subchapter B:**

### **§811.11. Board Responsibilities**

Section 811.11(a)(1), requiring Boards to ensure that procedures are developed, in conjunction with HHSC, to notify applicants and conditional applicants on the availability of regularly scheduled WOAs and alternative WOAs, is removed and incorporated in §811.4(d)(3).

Section 811.11(a)(5), requiring Boards to ensure that procedures are developed to notify HHSC of applicants and conditional applicants who have contacted a Texas Workforce Center to request alternative WOAs, is removed and incorporated in §811.4(d)(4).

Section 811.11(d), requiring Boards to ensure that procedures are developed to ensure that services are concentrated on Choices eligibles approaching their state or federal time limit, is removed and incorporated in §811.4(d)(5).

Certain subsections in §811.11 have been relettered, and certain paragraphs have been renumbered, to accommodate additions or deletions.

#### **§811.14. Noncooperation**

Section 811.14(c) and §811.14(d) replace the term "Board" with the term "Agency" with regard to defining timely and reasonable attempts. Previously, Boards were required to make a timely and reasonable attempt—as defined by the Board—to contact Choices participants prior to requesting a sanction for failure to meet Choices work requirements. The rule allowed Boards to establish their own policies, procedures, and time frames for timely and reasonable attempts.

In October 2007, the State Auditor's Office (SAO) released an audit report on the Agency's Choices program. The SAO report highlights concerns surrounding the timeliness of requests to sanction customers who do not comply with Choices work requirements. In 43 percent of the sanction cases tested, SAO found that caseworkers did not request sanctions promptly for these customers. As a result, customers who were no longer eligible continued to receive Choices services.

Agency monitoring staff has also raised concerns about the lack of clearly defined time frames in Boards' timely and reasonable attempt policies. Lack of specific time frames can result in delays in requesting—and thereby imposing—sanctions. This can result in inequitable treatment of Choices participants—some may be sanctioned quickly, while for others the process is lengthy.

An Agency-standardized timely and reasonable attempt policy will ensure that Choices participants across the state receive the same information about participation requirements, the consequences of not participating, good cause, and the right to appeal sanctions. Additionally, a standardized policy will ensure equitable treatment and timelines for all Choices participants who fail to comply with work requirements.

#### **§811.16. Good Cause for Choices Participants**

Section 811.16(c)(4) is deleted; new §811.16(c)(4) provides for a single good cause reason for all Choices participants caring for an ill or disabled family member regardless of whether the family member attends school full time. This change conforms with the final regulations, which now allow all work-eligible individuals caring for an ill or disabled family member to be disregarded from federal work participation rates, regardless of whether the family member attends school full time.

New §811.16(c)(6)(A) removes language referring to §811.47, which is repealed.

WD Letter 59-07, issued September 27, 2007, and entitled "Choices: New and Expiring TWIST Activity Codes," removes providing child care services to Choices participants in community service as an allowed activity effective October 1, 2007, because of verification requirements in the interim final regulations, guidance provided by the Administration for Children and Families (ACF) on Texas' Work Verification Plan, and the lack of participation in this activity. The verification required by HHS is not cost-effective based on the number of participants in this activity.

Section 811.16(d) removes the requirement for Boards to promulgate policies and procedures for determining a family's inability to obtain child care and incorporates the requirement in §811.4(d)(6).

Certain paragraphs in §811.16 have been renumbered to accommodate additions or deletions.

### **SUBCHAPTER C. CHOICES SERVICES**

**The Commission proposes the following amendments to Subchapter C:**

#### **§811.21. General Provisions**

Section 811.21(d), providing Boards the option to require the use of the Eligible Training Provider Certification System (ETPS) and Individual Training Accounts (ITAs), is removed and incorporated in §811.4(b)(1) and §811.4(e).

Section 811.21(e), requiring Boards to make job development services available, is removed and incorporated in §811.4(d)(1).

Section 811.21(g), requiring Boards to make job placement services available, is removed and incorporated in §811.4(d)(2).

Certain subsections in §811.21 have been relettered to accommodate additions or deletions.

#### **§811.26. Special Provisions Regarding Community Service**

Section 811.26(a) removes the term "participation" when referring to the required four weeks of Choices service and replaces it with the term "enrollment." This change is made for consistency with guidance on when the community service requirement begins.

Further, §811.26(a) removes the six-week limit on participation in job search and job readiness activities per federal fiscal year and replaces it with an hourly limit per 12-month period for consistency with the requirements set forth in 45 C.F.R. §261.34 and §811.27.

Section 811.26(c) removes the term "Exempt recipients who voluntarily participate in Choices services" and replaces it with the term "Exempt Choices participants." This change is made to provide consistency with the definition of exempt Choices participants in §811.2(3)(A).

#### **§811.27. Special Provisions Regarding Job Search and Job Readiness**

Section 811.27 reflects the new federal limits on participation in job search and job readiness activities from six weeks per federal fiscal year to an hourly limit per 12-month period, as required by 45 C.F.R. §261.34. The final regulations maintain the limit of four consecutive weeks of participation in job search and job readiness activities but convert the six-week limit to hours (120 for single parents with a child under age six and 180 for all other Choices eligibles) and change the period from a federal fiscal year to a rolling 12-month period.

Section 811.27(a) changes the job search limit from six weeks to 120 or 180 hours as described in §811.27(b)(2), and changes the period of measurement for the job search and job readiness limit from a federal fiscal year to a 12-month period. These changes are necessary to comply with the final regulations.

New §811.27(b)(2)(A) reflects the change in the job search limit from six weeks to 120 hours for single parents with a child under age six and the change in the period of measurement for the job search and job readiness limit from a federal fiscal year to a 12-month period.

New §811.27(b)(2)(B) reflects the change in the job search limit from six weeks to 180 hours for all other Choices eligibles and the change in the period of measurement for the job search and job readiness limit from a federal fiscal year to a 12-month period. These changes are necessary to comply with the final regulations.

Section 811.27(b)(3) is modified to provide consistency with changes in §811.27(b)(2), stating that 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).

Section 811.27(c) clarifies that in order for a partial week of participation in job search and job readiness activities to count as a full week of participation, a Choices participant must participate in job search and job readiness for at least three days. This subsection is also amended to reflect the change in the period of measurement for the partial-week limit from a federal fiscal year to a 12-month period.

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

Section 811.29(b) further clarifies that if a customer cannot participate in FLSA-covered activities for enough hours to satisfy the core activity requirement, Boards shall enroll the customer in additional "non-FLSA-covered" core activities to meet the core-hour requirement. This change is required to be consistent with current Agency guidance.

Section 811.29(b)(1), requiring that Choices participants shall be enrolled in additional core activities, is removed and incorporated in §811.29(b).

Section 811.29(b)(2) is deleted, thereby removing the deeming of hours provision from the Choices rules. The final regulations maintain the deeming provision, which allows states to count any family that participates the maximum hours per month allowed under the minimum-wage requirement of the Fair Labor Standards Act (FLSA) as having satisfied the 20-hour-per-week core activity requirement—even if actual participation falls short of 20 hours per week. However, WD Letter 23-07, issued March 28, 2007, and entitled "Implementation of Amended Choices Rules," instructs Boards not to implement the deeming provision. This guidance was subsequently amended by WD Letter 23-07, Change 1, issued December 27, 2007, and entitled "Implementation of Amended Choices Rules: *Update*."

The deeming provision was suspended based on guidance from HHS during the process of approving Texas' Work Verification plan. HHS guidance requires Texas to deem hours based on TANF and food stamp benefits received as of the last day of the month, rather than allowing deemed hours to be determined based on benefits received at the beginning of a month. Changes to existing interfaces with HHSC are required because HHSC currently does not provide the Agency with all information needed in order to comply with federal guidance.

The lack of these interface changes results in the following:

- The Agency is unable to automate the calculation of deemed hours of participation, which is problematic because of the stricter documentation and verification requirements from HHS.
- HHSC's quarterly reports to HHS include full TANF and food stamp benefits information for all TANF recipients, however, the Agency does not receive this same complete information. Therefore, the Agency's calculation of hours to be deemed will not match HHS's calculation, which is likely to result in a lower-than-anticipated participation rate for Texas.
- Supplemental TANF and food stamp benefits can be issued at any time. Thus, Boards may count on the deeming provision to fulfill a customer's work requirement—only to discover at the end of the month that the customer has received supplemental benefits and should have participated more hours in core activities due to a reduction in deemed hours.

At present, if a customer cannot participate in FLSA-covered activities for enough hours to satisfy the core activity requirement, Boards must enroll the customer in additional non-FLSA-covered activities to meet the core-hour requirement. The Commission believes that this practice—in place prior to the interim final regulations—remains a workable solution to address concerns about implementing the deeming provision in the current environment.

#### **§811.34. Participation Provisions**

Section 811.34(2)(A)(ii) converts excused absence provisions from days to hours. Maximum excused absences are now 80 hours per 12 months and 16 hours per month. This change conforms with the final regulations at 45 C.F.R. §261.60(b).

Section 811.34(3) adds the requirement that hours used to project participation in unsubsidized employment (other than self-employment), subsidized employment, and on-the-job training must be verified, in addition to being current and documented. This change conforms with the final regulations at 45 C.F.R. §261.60(c).

Section 811.34(3)(A) adds the requirement that hours used to project participation in self-employment must be verified, in addition to being current and documented. This change conforms with the final regulations at 45 C.F.R. §261.60(c).

### **SUBCHAPTER D. CHOICES WORK ACTIVITIES**

**The Commission proposes the following amendments to Subchapter D:**

#### **§811.41. Job Search and Job Readiness Assistance**

Section 811.41(b)(4), requiring daily supervision of participation in job search and job readiness activities, is removed and incorporated in §811.5(d).

Section 811.41(b)(5), requiring daily documentation of participation, is removed. New §811.5(d) sets forth the requirement to document participation on a monthly basis.

Section 811.41(b)(6), requiring Boards to ensure that job readiness activities that include allowable treatment or therapy activities necessary to assist Choices participants with seeking, obtaining, or retaining employment be certified by qualified medical or mental health

professionals, is deleted. The final regulations at 45 CFR §261.2(g) no longer require certification of these activities—only documentation.

Section 811.41(d)(4) removes the requirement for substance abuse treatment, mental health treatment, and rehabilitation activities to be certified because the final regulations no longer require certification—only documentation. Boards are only required to ensure that the need for treatment and therapy activities is documented by a qualified medical, substance abuse, or mental health professional.

Certain paragraphs in §811.41 have been renumbered to accommodate additions or deletions.

### **§811.43. Subsidized Employment**

Section 811.43(c)(1) removes the requirement for Boards to set a policy establishing the amount of wage subsidies and incorporates this requirement in §811.4(a)(2).

Section 811.43(e) adds language to allow Boards to place Choices participants in subsidized employment placements where the employer is not expected to retain the participant, if successful completion of the placement is expected to result in unsubsidized employment with a different employer.

The final regulations clarify that certain statements in the interim final regulations—i.e., that subsidized employment should be of limited duration, and that employers should be expected to hire participants at the end of such placements—were intended as recommendations, not requirements.

### **§811.44. On-the-Job Training**

Section 811.44(b) adds language clarifying that on-the-job training may be provided on or off the work site. This change is made for consistency with the final regulations.

Section 811.44(d), requiring Boards to ensure the daily supervision of Choices participants enrolled in on-the-job-training, is deleted. Paid work activities, including on-the-job training, are supervised by the employer and Boards are not required to ensure additional supervision.

New §811.44(d) requires that Boards ensure on-the-job training 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.

The final regulations clarify that certain statements in the interim final regulations—i.e., that on-the-job training should be of limited duration, and that employers should be expected to hire participants at the end of such placements—were intended as recommendations, not requirements.

Boards have informed the Agency of successful programs that provide Choices participants with experience and skills that then enable them to obtain unsubsidized employment with a different employer. Boards have found these programs advantageous to service delivery strategies and—

if not for the restrictions in the interim final regulations—Boards would have continued the programs.

Section 811.44(e), requiring Boards to ensure that on-the-job training is documented in TWIST at least every two weeks, is deleted; new monthly documentation requirements are set forth in new §811.5(c).

Certain subsections in §811.44 have been relettered to accommodate additions or deletions.

**§811.45. Work Experience**

Section 811.45(f), requiring Boards to ensure that work experience activities are documented in TWIST at least every two weeks, is deleted, because biweekly documentation of work activities is no longer required by the final regulations; monthly verification and documentation requirements are set forth in new §811.5(d).

**§811.46. Community Service**

Section 811.46(f), requiring that Choices participants in community service programs be supervised daily, is removed and incorporated in new §811.5(d).

Section 811.46(g), requiring that community services activities be documented in TWIST at least every two weeks, is deleted because biweekly documentation of work activities is no longer required by the final regulations; monthly verification and documentation requirements are set forth in new §811.5(d).

**§811.47. Child Care Services to Choices Participants in Community Service**

Section 811.47, providing child care services to Choices participants in community service as an allowed activity, is repealed. WD Letter 59-07, issued September 27, 2007, and entitled "Choices: New and Expiring TWIST Activity Codes," removes this activity effective October 1, 2007, because of verification requirements in the interim final regulations, guidance provided by ACF on Texas' Work Verification Plan, and the lack of participation in this activity. The verification required by HHS is not cost-effective based on the number of participants in this activity.

**§811.48. Vocational Educational Training**

Section 811.48(d) is deleted; new §811.5(e)(1)–(3) adds that up to one hour of unsupervised homework time for every hour of class time can be counted toward a Choices participant's work requirement and any homework hours in excess of one hour per every hour of class time must be directly monitored, supervised, verified, and documented.

Section 811.48(e), requiring verification of good or satisfactory progress as determined by the educational institution, is removed and incorporated in new §811.5(e)(4).

Section 811.48(f), requiring that Choices participants in vocational education be supervised daily, is removed and incorporated in new §811.5(e)(5).

Section 811.48(g), requiring that vocational educational training be documented in TWIST at least every two weeks, is deleted because biweekly documentation of work activities is no longer required by the final regulations; monthly verification and documentation requirements are set forth in new §811.5(e)(6).

**§811.49. Job Skills Training**

Section 811.49(f), allowing Boards to count supervised study or homework time toward a Choices participant's family participation requirement under specified circumstances, is deleted; new §811.5(e)(1)–(3) adds that up to one hour of unsupervised homework time for every hour of class time can be counted toward a Choices participant's work requirement and any homework hours in excess of one hour per every hour of class time must be directly monitored, supervised, verified, and documented.

Section 811.49(g), requiring verification of good or satisfactory progress as determined by the educational institution, is deleted and incorporated in new §811.5(e)(4).

Section 811.49(h), requiring that Choices participants in job skills training be supervised daily, is deleted and incorporated in new §811.5(e)(5).

Section 811.49(i), requiring that Boards ensure job skills training is documented in TWIST at least every two weeks, is deleted because biweekly documentation of work activities is no longer required by the final regulations; monthly documentation requirements are set forth in new §811.5(e)(6).

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

Section 811.50(a)(1) is removed and incorporated in §811.50(a) to clarify that educational services are not core activities for any Choices participants, including those under age 20.

Section 811.50(a)(2) is deleted and incorporated in §811.50(a) to clarify that educational services are not core activities for any Choices participants, including those under age 20.

This clarification is based on guidance from HHS during the process of approving Texas' Work Verification plan, and does not change the work requirements for Choices participants under age 20.

Section 811.50(b)(1) removes the phrase "leading to a high school diploma or a GED credential" and replaces it with "as defined in §811.2(13)," the definition of secondary school.

Section 811.50(d) is deleted; new §811.5(e)(1)–(3) adds that up to one hour of unsupervised homework time for every hour of class time can be counted toward a Choices participant's work requirement and any homework hours in excess of one hour per every hour of class time must be directly monitored, supervised, verified, and documented.

Section 811.50(e), requiring verification of good or satisfactory progress as determined by the educational institution, is removed and incorporated in new §811.5(e)(4).

Section 811.50(f), requiring that Choices participants in educational services be supervised daily, is removed and incorporated in new §811.5(e)(5).

Section 811.50(g), requiring that Boards ensure educational services are documented in TWIST at least every two weeks, is deleted because biweekly documentation of work activities is no longer required by the final regulations; monthly documentation requirements are set forth in new §811.5(e)(6).

**§811.51. Post-Employment Services**

Section 811.51(e), giving Boards the option to provide post-employment services to certain former TANF recipients, sanctioned families, and conditional applicants, is removed and incorporated in new §811.4(b)(2).

Certain subsections in §811.51 have been relettered to accommodate additions or deletions.

**SUBCHAPTER E. SUPPORT SERVICES AND OTHER INITIATIVES**

**The Commission proposes the following amendments to Subchapter E:**

**§811.64. Work-Related Expenses**

Section 811.64(b), requiring Boards to develop policies related to the methods and limitations for provision of work-related expenses, is removed and incorporated in new §811.4(a)(3).

Certain subsections in §811.64 have been relettered to accommodate additions or deletions.

**PART III. IMPACT STATEMENTS**

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

There are no additional estimated costs to the state and local governments expected as a result of enforcing or administering the rules. Although we estimate that there will be a cost associated with implementing provisions of these rules of approximately \$5.1 million over the five-year period (Fiscal Year 2009–2013), there will be no *additional* costs to the state and to local governments as a result of enforcing or administering the rules. As the Agency provided in its Agency cost estimates communicated to the Legislative Budget Board (LBB) for SB 589 during the Legislature's deliberations of this legislation (prior to its ultimate enactment) during the Regular Session of the 80th Legislature in 2007, the funding for serving "nonrecipient parents" is already included in amounts in the Agency's baseline appropriation. The cost estimate for serving this population of customers has been developed by the Workforce Development Division, based on Health and Human Services Commission data. The cost estimate for serving such "nonrecipient parents" has declined significantly from those earlier Agency cost estimates communicated last year to the LBB, to approximately \$502,000 per year and \$526,000 per year for associated child care for FY 2009–13. These estimates, however, conclude that there is not an *increase* in costs to the state because these amounts have already been appropriated to the

Agency (i.e., at least for the FY 2008–09 biennium) and will continue to be appropriated to the Agency throughout this five-year period.

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.

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

Laurence M. Jones, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to provide activities and support services in a more consistent manner to meet the needs of TANF recipients in order to help them become self-sufficient and independent of public assistance, and to provide employers with a skilled workforce. Additionally, failure to implement these changes as proposed may ultimately result in a financial penalty for the Choices program.

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 policy concept regarding these rule amendments to the Boards for consideration and review. The Commission also conducted a conference call with Board executive directors and Board staff on May 2, 2008, to discuss the policy concept. During the rulemaking process, the Commission considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

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

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the 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

#### §811.2. 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~~An adult or teen head of household~~ who is not required under Texas Human Resources Code, Chapter 31 or Texas Health and Human Services Commission (HHSC) rules (1 TAC, Chapter 372, Texas Works); to participate in Choices services, but who may voluntarily participate in Choices services.
  - (B) Mandatory Choices participant -- A Choices eligible~~An adult or teen head of household, including an extended TANF recipient, conditional applicant, and sanctioned family, as defined in this section;~~ 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) Conditional applicant -- An adult or teen head of household who left TANF in a sanctioned status, but who is reapplying for TANF cash assistance.
- (5) Earned Income Deduction (EID) -- A standard work-related and income deduction, available for four months through HHSC.
- (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).
- (7) Former recipient -- An adult or teen head of household who no longer receives TANF cash assistance because of employment.

- (8) HHSC -- Texas Health and Human Services Commission.
- (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.
- ~~(10)~~(9) PRWORA -- The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105, as amended.
- ~~(11)~~(10) Recipient -- An adult or teen head of household who receives TANF cash assistance.
- ~~(12)~~(11) Sanctioned family -- An adult or teen head of household who must demonstrate cooperation for one month in order to reinstate TANF cash assistance.
- (13) Secondary school -- Educational activities including middle school, high school leading to a high school diploma, or classes leading to the completion of a General Educational Development (GED) credential.

~~(14)~~(12) 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.

~~(15)~~(13) Work-based services -- Includes those employment programs defined in Texas Human Resources Code §31.0126.

(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.

~~(17)~~(14) 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.

~~(18)~~(15) Work requirement -- For the purposes of 42 U.S.C. §607 and 45 C.F.R. §261.10, a Choices eligible is deemed to be engaged in work by cooperating with:

(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.

### **§811.3. Choices Service Strategy.**

(a) A Board shall ensure that its strategic planning process includes an analysis of the local labor market to:

(1) determine employers' needs;

(2) determine emerging and demand occupations; and

(3) identify employment opportunities, which include those with a potential for career advancement that may assist a Choices eligible's progression ~~toward~~towards self-sufficiency.

~~(b) A Board shall set local policies for a Choices service strategy that coordinates various service delivery approaches to:~~

- ~~(1) assist applicants and conditional applicants in gaining employment as an alternative to public assistance;~~
- ~~(2) utilize a work first design as referenced in subsection (c)(2) of this section to provide Choices participants access to the labor market; and~~
- ~~(3) assist former recipients in job retention and career advancement to remain independent of TANF cash assistance.~~

~~(b)(e)~~ The Choices service strategy shall include:

(1) Workforce Orientation for Applicants (WOA). As a condition of eligibility, applicants and conditional applicants are required to attend a workforce orientation that includes information on options available to allow them to enter the Texas workforce.

(2) Work First Design.

(A) The work first design:

- (i) allows Choices participants to take immediate advantage of the labor market and secure employment, which is critical due to individual time-limited benefits; and
- (ii) meets the needs of employers by linking Choices participants with skills that match those job requirements identified by the employer.

(B) Boards shall provide Choices participants access to other services and activities available through the One-Stop Service Delivery Network, which includes the WOA, to assist with employment in the labor market before certification for TANF cash assistance.

(C) Post-employment services shall be provided in order to assist a Choices participant's progress toward self-sufficiency as described in subsection (b)(3) of this section and §811.51.

(D) In order to assist a Choices eligible's progress toward self-sufficiency:

- (i) Boards shall provide Choices eligibles who are employed, including mandatory Choices participants coded by HHSC as working at least 30 hours per week, earning at least \$700 per month, and receiving the EID, with information on available post-employment services; or

- (ii) Boards may provide Choices eligibles with post-employment services as determined by Board policy. The length of time these services may be provided is subject to §811.51.
  - (E) In order to assist employers, Boards shall coordinate with local employers to address needs related to:
    - (i) employee post-employment education or training;
    - (ii) employee child care, transportation or other support services available to obtain and retain employment; and
    - (iii) employer tax credits.
  - (F) Boards shall ensure that a family employment plan is based on employer needs, individual skills and abilities, and individual time limits for TANF cash assistance.
- (3) Post-Employment Services. A Board shall ensure that post-employment services are designed to assist Choices participants with job retention, career advancement, and reemployment, as defined in §811.51. Post-employment services are a continuum in the Choices service strategy to support a Choices participant's job retention, wage gains, career progression, and progression to self-sufficiency.
  - (4) Adult Services. A Board shall ensure that services for adults shall include activities individually designed to lead to employment and self-sufficiency as quickly as possible.
  - (5) Teen Services. A Board shall ensure that services for teen heads of household shall include secondary school, as defined in §811.2(13), ~~assistance with completion of secondary school or a General Educational Development (GED) credential~~ and making the transition from school to employment, as described in §811.30 and §811.50.
  - (6) Choices Eligibles with Disabilities. A Board shall ensure that services for Choices eligibles with disabilities include reasonable accommodations to allow the Choices eligibles to access and participate in services, where applicable by law. ~~A Board shall ensure that Memoranda of Understanding (MOUs) are established with the appropriate agencies to serve Choices eligibles with disabilities, and that referrals are made, as appropriate, to allow Choices eligibles with disabilities to maximize their potential for success in employment.~~
  - (7) Target Populations. A Board shall ensure that services are concentrated, as further defined in §811.11(d) and (e), on the needs of the following:

- (A) recipients who have six months or less remaining of their state TANF time limit, irrespective of any extension of time due to a hardship exemption;
  - (B) recipients who have 12 months or less remaining of their 60-month federal TANF time limit, irrespective of any extension of time due to a hardship exemption; and
  - (C) recipients who are extended TANF recipients.
- (8) Local Flexibility. A Board may develop additional service strategies that are consistent with the goal and purpose of this chapter and the One-Stop Service Delivery Network.
- ~~(9) Local Level MOU. A Board shall ensure the development of a local level MOU in cooperation with HHSC for coordinated case management that is consistent with the MOU between HHSC and the Commission.~~
- ~~(10) Housing Partnerships. A Board shall establish a collaborative partnership with housing authorities and sponsors of local housing programs and services to address the unmet housing needs of recipients.~~

**§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) 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) The amount of wages subsidized for subsidized employment 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 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 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(c)(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 §811.4(b), 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 work activities, as described in §811.42, §811.43, and §811.44, 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 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) procedures are developed, in conjunction with HHSC, to notify applicants and conditional applicants on the availability of regularly scheduled Workforce Orientations for Applicants (WOAs) and alternative WOAs;~~

~~(1)(2)~~ 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)(3)~~ 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)~~(4) alternative WOAs are developed that allow applicants and conditional applicants with extraordinary circumstances to receive the information listed in paragraph ~~(2)~~(3) of this subsection;

~~(5)~~ procedures are developed to notify HHSC of applicants and conditional applicants who contacted a Texas Workforce Center to request alternative WOAs;

~~(4)~~(6) 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, Texas Works); and

~~(5)~~(7) applicants and conditional applicants are provided with an appointment to develop a family employment plan.

(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 develop policies and procedures to ensure that services are concentrated on Choices eligibles approaching their state or federal time limit, as identified in §811.3(e)(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.

~~(d)~~(e) A Board shall ensure that all extended TANF recipients are outreached and offered the opportunity to participate in Choices activities.

~~(e)~~(f) 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)~~(g) A Board shall ensure that the monitoring of work requirements is ongoing and frequent, as determined by a Board, unless otherwise specified in this chapter, and consists of the following:

- (1) ensuring receipt of support services;
- (2) tracking and reporting support services;
- (3) tracking and reporting actual hours of participation, 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 work requirements;
- (5) ensuring that the Choices participant is progressing toward achieving the goals and objectives in the family employment plan; and
- (6) monitoring all other work requirements.

~~(g)~~(h) 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)~~(i) 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 ~~The Workforce Information System of Texas (TWIST)~~.

~~(i)~~(j) 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.

#### **§811.14. Noncooperation.**

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

- (1) comply with work requirements as set forth in the family employment plan; or
  - (2) have good cause as described in this chapter.
- (b) If Choices participants have not cooperated with 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 Board, 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 Board, 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.
- (f) A Board shall ensure that:
- (1) HHSC is notified of a mandatory Choices participant's failure to comply with work requirements; and
  - (2) the notification of noncooperation is submitted as early as possible in the same month in which the noncooperation occurs.

**§811.16. Good Cause for Choices Participants.**

- (a) Good cause applies to Choices participants. A Board shall ensure that good cause is determined as provided in this chapter.
- (b) A Board shall ensure that a good cause determination:
  - (1) is based on individual and family circumstances;
  - (2) is based on face-to-face or telephone contact;
  - (3) covers a temporary period when Choices participants may be unable to attend scheduled appointments or participate in ongoing work activities;
  - (4) is made at the time the change in circumstances is made known to the Board's service provider; and
  - (5) is conditional upon efforts to address circumstances that limit the ability to participate in Choices services as required in the family employment plan.
- (c) The following reasons may constitute good cause for purposes of this chapter:
  - (1) Temporary illness or incapacitation;
  - (2) Choices participants with disabilities or caring for a disabled family member who participate to the extent determined able, as supported by medical documentation, but less than the required participation hours, as set forth in §811.25(b)–(d) and §811.31(b);
  - (3) Court appearance;
  - ~~(4) Caring for a disabled family member who does not attend school full time and requires the Choices participant's presence in the home. Boards shall ensure the need for such care is supported by medical documentation;~~
  - ~~(4)(5)~~ Caring for a disabled family member who ~~attends school full time and~~ requires the Choices participant's presence in the home. Boards shall ensure the need for such care is supported by medical documentation;
  - ~~(5)(6)~~ A demonstration that there is:
    - (A) no available transportation and the distance prohibits walking; or
    - (B) no available job within reasonable commuting distance, as defined by the Board;

~~(6)(7)~~ An inability to obtain needed child care, as defined by the Board and based on the following reasons:

- (A) Informal child care by a relative or under other arrangements is unavailable or unsuitable, and based on, where applicable, Board policy regarding child care as specified in §811.47. Informal child care may also be determined unsuitable by the parent;
- (B) Eligible child care providers are unavailable, as defined in Chapter 809 of this title;
- (C) Affordable child care arrangements within maximum rates established by the Board are unavailable; and
- (D) Appropriate child care within a reasonable distance from home or the work site is unavailable;

~~(7)(8)~~ An absence of other support services necessary for participation;

~~(8)(9)~~ Receipt of a job referral that results in an offer below the federal minimum wage, except when a lower wage is permissible under federal minimum wage law;

~~(9)(10)~~ An individual or family crisis or a family circumstance that may preclude participation, including substance abuse, mental health, and disability-related issues, provided the Choices participant engages in problem resolution through appropriate referrals for counseling and support services; or

~~(10)(11)~~ A Choices participant is a victim of family violence.

(d) A Board shall ~~promulgate policies and procedures for determining a family's inability to obtain child care and shall ensure that mandatory Choices participants in single-parent families caring for children under age six are informed of:~~

(1) the penalty exception to the family work requirement, including the criteria and applicable definitions for determining whether a mandatory Choices participant has demonstrated an inability to obtain needed child care, as defined in subsection ~~(c)(6)(A)-(D)(e)(7)(A)-(D)~~ of this section.

(2) a Board's policy and procedures for determining a family's inability to obtain needed child care, and any other requirements or procedures, such as fair hearings, associated with this provision, as required by 45 C.F.R. §261.56.

(e) A Board shall ensure that good cause:

(1) is reevaluated at least on a monthly basis;

- (2) is extended if the circumstances giving rise to the good cause exception are not resolved after available resources to remedy the situation have been considered;
- (3) that is based on the existence of family violence does not exceed a total of twelve consecutive months per occurrence; and
- (4) is determined separately from granting Choices participants short-term excused absences from participation, as defined in §811.34(2).

## **SUBCHAPTER C. CHOICES SERVICES**

### **§811.21. General Provisions.**

- (a) A Board shall ensure that services are available to assist Choices eligibles with obtaining employment as quickly as possible and, if employed, with retaining employment. These services may include:
  - (1) job readiness and job search-related services;
  - (2) work-based services;
  - (3) post-employment services;
  - (4) education and training services as described in this chapter; and
  - (5) support services.
- (b) A Board shall ensure that employment and training activities are conducted in compliance with the Fair Labor Standards Act (FLSA) as specified in §811.29.
- (c) A Board shall ensure that placement in work-based services does not result in the displacement of currently employed workers or impair existing contracts for services or collective bargaining agreements.
- ~~(d) A Board may, through local policies and procedures, 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.~~
- ~~(e) A Board shall, through local policies and procedures, make available job development services, which include:
 
  - ~~(1) contacting local employers or industry associations to request that job openings be listed with Texas Workforce Centers, and other entities in the One-Stop Service Delivery Network selected by the Board;~~~~

- ~~(2) identifying the hiring needs of employers;~~
- ~~(3) assisting the 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~~
- ~~(4) finding opportunities with an employer for a specific Choices participant or a group of Choices participants.~~

~~(d)(f)~~ A Board shall ensure that job development services identify, at a minimum, job openings for current mandatory Choices participants.

~~(g)~~ A Board shall, through local policies and procedures, make available job placement services. Job placement services shall include:

- ~~(1) identifying employers' workforce needs;~~
- ~~(2) identifying Choices participants who have sufficient skills and abilities to be successfully linked with employment; and~~
- ~~(3) matching the skills of the Choices participant pool to the hiring needs of local employers.~~

**§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 participation~~ in Choices services. Choices participants who are not in an employment activity after reaching their hourly limit per 12-month period, as set forth in §811.27, ~~six-week limit per federal fiscal year~~ 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~~ recipients who voluntarily participate in Choices services 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(c) and job readiness activities as defined in §811.41(d) unless they have reached the 120- or 180-hour six-week-limit per 12-month period set forth in §811.27(b)(2) federal fiscal year.
- (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 ~~six weeks of total activity in a federal fiscal year;~~
    - (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) in order for Choices participants to qualify for their remaining two weeks of job search and job readiness, they must first comply with §811.26(a), which requires that Choices participants be engaged in an employment activity or in community service; and
- (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 only once per federal fiscal year may a partial week count as a full week of participation, per Choices participant.

**§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 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 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 core work activity requirement as set forth in §811.25(b)–(d), the Choices participant shall be enrolled in additional non-FLSA-covered core activities.

~~(1) the Choices participant shall be enrolled in additional core activities; or~~

~~(2) Boards shall deem the remaining core hours as having met the core work activity requirement.~~

#### **§811.34. Participation Provisions.**

A Board shall count only actual hours of participation in 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 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 ~~8040~~ additional hours~~days~~ within a 12-month period and does not exceed 16 hours of ~~two~~-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. 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.
  - ~~(4) are supervised daily.~~
  - ~~(5) are documented daily in TWIST.~~
  - ~~(6) are allowable treatment or therapy activities that include substance abuse treatment, mental health treatment, or rehabilitation activities determined to be necessary to assist Choices participants with seeking, obtaining, or retaining employment. Boards shall ensure treatment and therapy activities are certified by a qualified medical or mental health professional.~~
- (c) 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) mental health treatment;~~
- ~~(6) rehabilitation activities;~~
- ~~(5)(7) job counseling;~~
- ~~(6)(8) interviewing skills and practice interviews; and~~
- ~~(7)(9) assistance with applications and resumes.~~

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

### **§811.43. Subsidized Employment.**

- (a) Subsidized employment is a core activity as defined in §811.25(a)(1).
- (b) 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.
- (c) Wages.
  - (1) Wages shall be at least federal or ~~state~~State minimum wage, whichever is higher.  
~~Boards must set a policy to establish the amount of the wage that is subsidized.~~
  - (2) Employers must provide the same wages and benefits to subsidized employees as for unsubsidized employees with similar skills, experience, and position.
- (d) Boards shall ensure subsidized employment placements prepare and move Choices participants into unsubsidized employment.
- (e) 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) 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. 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 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 on-the-job training placement has ended, unless successful completion of the placement is expected to result in unsubsidized employment with a different employer.
- ~~(d) A Board shall ensure Choices participants enrolled in on-the-job training are supervised daily.~~
- ~~(e) A Board shall ensure on-the-job training is documented in TWIST at least every two weeks.~~

**§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.
- ~~(f) A Board shall ensure work experience activities are documented in TWIST at least every two weeks.~~

**§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.
- ~~(f) A Board shall ensure Choices participants in community service programs are supervised daily.~~
- ~~(g) A Board shall ensure community service activities are documented in TWIST at least every two weeks.~~

**~~§811.47. Child Care Services to Choices Participants in Community Service.~~**

- ~~(a) Child care services to Choices participants in community service are a core activity as defined in §811.25.~~
- ~~(b) A Choices participant may provide child care services for another recipient who is engaged in a community service activity, as described in §811.46. Boards that elect to allow this activity must set local policies that include:~~
- ~~(1) ensuring the health, safety, and well-being of the children in care; and~~
  - ~~(2) limiting the maximum number of children that may be cared for.~~
- ~~(c) A Board shall ensure an assignment to provide child care services is effective in moving the provider toward self-sufficiency.~~
- ~~(d) A Board shall ensure Choices participants providing child care services are supervised daily.~~
- ~~(e) A Board shall ensure child care services provided by Choices participants are documented at least every two weeks.~~
- ~~(f) A Board shall count only actual hours of participation in child care activities as allowable work participation hours. Actual hours cannot exceed the number of hours in which Choices participants for whom they are providing child care participate in community service activities plus two additional hours per day for the time the children are in the~~

~~participants care while the parent is traveling to and from the child care location. Any exceptions to the two hour travel time must be documented in TWIST.~~

**§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.
- ~~(d) Boards may count supervised study or homework time toward a Choices participant's family participation requirement if:
  - ~~(1) 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;~~
  - ~~(2) the educational institution's policy requires a certain number of out-of-class preparation hours for the class; and~~
  - ~~(3) study or homework time is directly monitored, supervised, and documented.~~~~
- ~~(e) A Board shall verify whether the Choices participant is making good or satisfactory progress as determined by the educational institution.~~

~~(f) A Board shall ensure Choices participants enrolled in vocational educational training are supervised daily.~~

~~(g) A Board shall ensure vocational educational training is documented in TWIST at least every two weeks.~~

#### **§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.

- ~~(f) Boards may count supervised study or homework time toward a Choices participants family participation requirement if:~~
- ~~(1) 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;~~
  - ~~(2) the educational institution's policy requires a certain number of out of class preparation hours; and~~
  - ~~(3) study or homework time is directly monitored, supervised, and documented.~~
- ~~(g) A Board shall verify whether the Choices participant is making good or satisfactory progress as determined by the job skills training provider.~~
- ~~(h) A Board shall ensure Choices participants enrolled in job skills training are supervised daily.~~
- ~~(i) A Board shall ensure job skills training is documented in TWIST at least every two weeks.~~

**§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, ~~as follows:~~
- ~~(1) Educational services for Choices participants age 20 or older are non core activities as defined in §811.25(a)(2).~~
  - ~~(2) Educational services for Choices participants who are teen heads of household age 19 and younger are core activities as defined in §811.30.~~
- (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(13)~~leading to a high school diploma or a GED credential~~, 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.
- ~~(d) Boards may count supervised study or homework time toward a Choices participant's family participation requirement if:
 
  - ~~(1) 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;~~
  - ~~(2) the educational institution's policy requires a certain number of out-of-class preparation hours; and~~
  - ~~(3) study or homework time is directly monitored, supervised, and documented.~~~~
- ~~(e) A Board shall verify whether the Choices participant is making good or satisfactory progress as determined by the educational institution.~~
- ~~(f) A Board shall ensure Choices participants enrolled in educational services are supervised daily.~~
- ~~(g) A Board shall ensure educational services are documented in TWIST at least every two weeks.~~

**§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) A Board may, through local policies and procedures, make post-employment services available to:
 
  - ~~(1) former recipients who are denied TANF cash assistance because of earnings; and~~~~

~~(2) sanctioned families and conditional applicants who obtain employment during their demonstrated cooperation period.~~

~~(e)(f)~~ 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)(g)~~ 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 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)(h)~~ Post-employment service providers may include employers, community colleges, technical colleges, career schools and colleges, faith-based and community-based organizations.

## SUBCHAPTER E. SUPPORT SERVICES AND OTHER INITIATIVES

### §811.64. Work-Related Expenses.

- (a) If other resources are not available, work-related expenses necessary for Choices individuals to accept or retain specific and verified job offers that pay at least the federal minimum wage may be provided or reimbursed.
- ~~(b) A Board shall ensure that written policies are developed related to the methods and limitations for provision of work-related expenses.~~
- (b)(e) Work-related expenses may include: tools, uniforms, equipment, transportation, car repairs, housing or moving expenses, and the cost of vocationally required examinations or certificates.