

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

**ADOPTED RULES TO BE PUBLISHED IN THE *TEXAS REGISTER*. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE OFFICE OF THE SECRETARY OF STATE.**

ON **MAY 19, 2026**, THE TEXAS WORKFORCE COMMISSION ADOPTED THE RULES BELOW WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Publication Date of the Adoption in the *Texas Register*: **June 5, 2026**

The Rules are Effective: **June 6, 2025**

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

Subchapter F. Fraud Fact-Finding and Improper Payments, §§809.111 - 809.115 and §809.117

TWC adopts the following new section to Chapter 809, relating to Child Care Services:

Subchapter F. Fraud Fact-Finding and Improper Payments, §809.116

Amended §§809.111, 809.112, 809.114, 809.115, and 809.117, and new 809.116 are adopted *without changes* to the proposal, as published in the March 27, 2026, issue of the *Texas Register* (51 TexReg 2020), and, therefore, the adopted rule text will not be published.

Amended §809.113 is adopted *with changes* to the proposal, as published in the March 27, 2026, issue of the *Texas Register* (51 TexReg 2020), and, therefore, the adopted rule text will be published.

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

The purpose of the Chapter 809 rule change is to strengthen the integrity of the child care services program by enhancing fraud detection, prevention, and enforcement mechanisms. The amendments clarify procedures for investigating suspected fraud, specify corrective actions, establish clear accountability measures for Local Workforce Development Boards (Boards), and reinforce TWC's authority to recover improper payments. These changes are designed to safeguard public funds and ensure that child care subsidies are directed to eligible Texas families and qualified providers.

### **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 F. FRAUD FACT-FINDING AND IMPROPER PAYMENTS**

TWC adopts the following amendments to Subchapter F:

### **§809.111. General Fraud Fact-Finding Procedures**

Section 809.111 is amended to clarify TWC's authority over fraud cases and its oversight role with Boards and to better align the definition of fraud. Amendments to §809.111 also include technical corrections regarding the use of "Agency" and "Commission."

Section 809.111(b) is amended to redefine the knowledge standard for fraud from "knowing it to be false" to "knew or should have known" standard, consistent with program integrity best practices.

Section 809.111(e), (f), and (g) are amended to clarify TWC's procedures and Board responsibilities for reporting, investigating, and documenting cases of suspected fraud.

New §809.111(h) explicitly states TWC's jurisdiction to intervene in fraud cases when a Board fails to adhere to established procedures or needs assistance.

New §809.111(i) requires Fraud Deterrence and Compliance Monitoring approval before a Board restricts a provider's eligibility to provide Commission-funded child care services due to a finding of fraud, which will allow TWC to ensure consistent standards are applied.

### **§809.112. Suspected Fraud**

Section 809.112 is amended to make several technical edits including correcting the use of "Agency" and "Commission," clarifying that suspected fraud includes payments, clarifying what constitutes suspected fraud, and removing reference to specific eligibility periods.

### **§809.113. Action to Prevent or Correct Suspected Fraud**

Section 809.113 is amended to more clearly delineate the corrective actions that TWC or a Board may take against a provider versus a parent when fraud is found. A key amendment adds language allowing TWC to prohibit future eligibility for providers determined to have committed fraud, owners and directors of those providers, or individuals found to have engaged, aided or abetted the fraudulent activities, and is a critical tool to prevent fraudulent actors from reentering the program under a new business name.

### **§809.114. Failure to Comply with Commission Rules and Board Policies**

Section 809.114 is renamed "Failure to Comply with Commission Rules and Agency and Board Policies."

Section 809.114 is amended to require parents and providers to comply with TWC's policies, to include "other contracted entity" to the list of parties subject to corrective action, which reinforces that all entities involved in the child care system must comply with Commission rules. New §809.114(d) requires Boards to develop and implement a plan to monitor child care providers compliance with Commission rules and TWC and Board policies. The monitoring plan must include in-person site visits. New subsection (e) clarifies the authority for the Director of Child Care Services to issue corrective actions or sanctions for a Board's failure to comply with the requirements of Chapter 809.

**§809.115. Corrective Adverse Actions**

Section 809.115 is amended to make several technical edits including correcting the use of "Agency" and "Commission."

**§809.116. Referral for Criminal Prosecution**

New §809.116 is added to mandate that Boards refer cases of fraud to prosecutors for criminal prosecution in accordance with TWC policy. New §809.116 strengthens the program's stance against fraud by pursuing legal consequences beyond administrative recovery and requires that such referrals be documented in TWC's case management system.

**§809.117. Recovery of Improper Payments to a Provider or Parent**

Section 809.117 is amended to clarify the responsibilities for recovering improper payments, assigning recovery efforts to the entity that issued the determination (either TWC or the Board).

TWC hereby certifies that the rules have been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

**PART III. PUBLIC COMMENTS**

The comment period ended on April 27, 2026.

TWC received comments from the following:

- Day Nursery of Abilene
- TXPOST

**COMMENT:** Day Nursery of Abilene stated that fraud does not appear to be the primary concern related to improper payments in their area. The provider noted concerns with accurate and timely payment to providers, clear and consistent communication, and documentation being modified after the fact.

**RESPONSE:** The Commission appreciates the comment and understands the provider's concerns. The Commission recognizes the importance of accurate and timely payment for CCS providers and agrees that most improper payments are not related to fraud. TWC and the Boards will continue to work to improve communication and eliminate issues related to provider payments. However, the purpose of this rulemaking is to strengthen the integrity of the child care services program by enhancing fraud detection, prevention, and enforcement mechanisms; therefore, the commenter's concerns fall outside the scope of the proposed rulemaking. No changes were made in response to this comment.

**COMMENT:** TXPOST expressed concern that including "board member" in the proposed rule language for §809.113(a)(4) could create unintended consequences for volunteers serving on the boards of nonprofit child care providers. The commenter suggested replacing "an owner, director, or board member of the provider" with either "controlling person" or "designee." The commenter recommended tightening §809.113(a)(4) and tying it to the individuals listed on a provider's license.

**RESPONSE:** The Commission appreciates the comment, which identified a potential unintended consequence for volunteer board members. The Commission agrees that board members should be removed from §809.113(a)(4)(B), because board members are not involved in the day-to-day operations to the same degree as owners and directors. However, if a board member is found to have engaged, aided, or abetted in fraudulent activities, the board member could be prohibited from future participation in Commission-funded child care services under §809.113(a)(4)(E).

Accordingly, TWC has modified §809.113(a)(4)(B) to remove board members. Board members, including volunteer board members, will not be included under §809.113(a)(4) unless they are found to have engaged, aided, or abetted in fraudulent activities.

**COMMENT:** Day Nursery of Abilene stated their support for the proposed rules and efforts to further alleviate fraud. The provider noted that further integrating automated platforms for child care authorizations and provider tracking tools can significantly reduce the risk of fraud by eliminating duplicate data entry, ensuring real-time consistency, and strengthening oversight across systems. Additionally, active caseworkers conducting periodic on-site visits provide an essential layer of independent verification. This approach maintains clear roles between providers who focus on delivering quality care and the case management responsibilities of the child care contractor. With adequate training and open communication, services can be delivered seamlessly with reduced administrative burdens on providers.

**RESPONSE:** The Commission appreciates the comment and the commenter's support. The Commission is continuously evaluating efforts to improve program integrity and service delivery and will take these suggestions into consideration. No changes were made in response to this comment.

#### **PART IV. STATUTORY AUTHORITY**

The rules are adopted under the authority of:

- Texas Labor Code, §301.192, which requires TWC to ensure that corrective action is taken against a child care provider or parent who commits fraud; and
- Texas Labor Code, §301.0015(6) and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules relate to Texas Labor Code, Title 4, particularly Chapters 301 and 302, and Texas Government Code, Chapter 2308.

## CHAPTER 809. CHILD CARE SERVICES

### SUBCHAPTER F. FRAUD FACT-FINDING AND IMPROPER PAYMENTS

#### §809.111. General Fraud Fact-Finding Procedures.

- (a) This subchapter establishes:
  - (1) procedures for the Agency to issue fraud determinations and take appropriate corrective actions involving Commission-funded child care, including child care quality improvement activities, child care statewide initiatives, and child care special projects pursuant to the Agency's authority under Texas Labor Code, §§301.191, 301.192, and 301.201; and
  - (2) requirement for a Board to develop procedures for the prevention of fraud by a parent, provider, or any other person in a position to commit fraud consistent with fraud prevention provisions in the Agency-Board Agreement.
- (b) In this subchapter, a person commits fraud if, to obtain or increase a benefit or other payment, either for the person or another person, the person:
  - (1) makes a false statement or representation that the person knew or should have known was false; or
  - (2) fails to disclose a fact when the person knew or should have known the fact was material.
- (c) A Board shall ensure that procedures for researching and fact-finding for possible fraud are developed and implemented to deter and detect suspected fraud for child care services in the workforce area.
- (d) These procedures shall include provisions that suspected fraud is reported to the Agency in accordance with Agency policies and procedures.
- (e) The Board shall report cases of suspected fraud identified by the Board to the Agency and shall conduct fact-finding in accordance with Agency policies and procedures.
- (f) The Board shall review and complete fact-finding for all cases of suspected fraud that the Agency refers to the Board.
- (g) The Board shall document all cases of suspected fraud, including cases referred to the Board, in the Agency's case management system. The Board shall include in this documentation information on fact finding, determinations, appeals, decisions, and

improper payment recovery in accordance with Agency policies and procedures.

- (h) The Agency retains jurisdiction over fraud cases and can intervene in a case if a Board fails to follow Agency policies and procedures or if a Board requires assistance.
- (i) A Board must notify the Fraud Deterrence and Compliance Monitoring Division and receive approval before issuing a determination that removes, limits, or prohibits a provider from providing Commission-funded child care services due to a finding of fraud. A determination issued without the required approval cannot become final.

**§809.112. Suspected Fraud.**

- (a) A parent, provider, or any other person in a position to commit fraud may be suspected of fraud if the person presents or causes to be presented to the Agency, Board, or its child care contractor one or more of the following items:
  - (1) A request for payment or reimbursement in excess of the amount charged by the provider for the child care; or
  - (2) An application, document, record, or statement related to the eligibility to receive or provide child care services or to receive payment of child care funds, if evidence indicates that the person may have:
    - (A) known, or should have known, that child care services were not provided as claimed;
    - (B) known, or should have known, that information provided is false or fraudulent;
    - (C) received child care services during a period in which the parent or child was not eligible for services;
    - (D) known, or should have known, that child care subsidies were provided to a person not eligible to be a provider; or
    - (E) otherwise indicated that the person knew or should have known that the actions were in violation of this chapter or state or federal statute or regulations relating to child care funds.
- (b) The following parental actions may be grounds for suspected fraud:
  - (1) Not reporting or falsely reporting at initial eligibility or at eligibility redetermination:
    - (A) household composition, or income sources or amounts that would have



- (5) Any other action consistent with the intent of the governing statutes or regulations to investigate, prevent, or stop suspected fraud.
- (b) The Agency or Board may take the following actions pursuant to Agency policy if the Agency or Board finds that a parent has committed fraud:
    - (1) recouping funds from the parent;
    - (2) prohibiting future child care eligibility, provided that the prohibition does not result in a Choices or SNAP E&T participant becoming ineligible for child care;
    - (3) limiting the enrollment of the parent's child to a regulated child care provider;
    - (4) terminating care during the eligibility period if eligibility was determined using fraudulent information provided by the parent; or
    - (5) any other action consistent with the intent of the governing statutes or regulations to investigate, prevent, or stop suspected fraud.

**§809.114. Failure to Comply with Commission Rules and Agency and Board Policies.**

- (a) The Board shall ensure that parents and providers comply with Commission rules and Agency and Board policies.
- (b) The Agency, Board, or Board's child care contractor may consider failure by a provider, parent, or other contracted entity to comply with this chapter as an act that may warrant corrective and adverse action as detailed in §809.115 of this subchapter.
- (c) Failure by a provider, parent, or other contracted entity to comply with this chapter shall also be considered a breach of contract, which may also result in corrective action as detailed in this subchapter.
- (d) The Board shall develop and implement a system to monitor providers for compliance with Commission rules and Agency and Board policies. The monitoring system must include in-person site visits to providers.
- (e) The Agency may issue an intent to sanction, a sanction, a penalty, or other corrective action if a Board does not comply with the requirements of this chapter subject to the rules and procedures set forth in Chapter 802, Subchapters G and H of this title, except to the extent that such sections are clearly inapplicable or contrary to provisions set out under this chapter. The Director of the Agency's Child Care Services Division determines whether a corrective action or sanction shall be imposed, including whether it is appropriate to impose a sanction level on the Board and whether it is appropriate

to assign a penalty.

**§809.115. Corrective Adverse Actions.**

- (a) When determining appropriate corrective actions, the Agency, Board, or Board's child care contractor shall consider:
  - (1) the scope of the violation;
  - (2) the severity of the violation; and
  - (3) the compliance history of the person or entity.
- (b) Corrective actions for providers may include, but are not limited to, the following:
  - (1) Closing intake;
  - (2) Moving children to another provider selected by the parent;
  - (3) Withholding provider payments or reimbursement of costs incurred; and
  - (4) Recoupment of funds.
- (c) When a provider violates a provision of Subchapter E of this chapter, a written Service Improvement Agreement may be negotiated between the provider and the Board or the Board's child care contractor. At the least, the Service Improvement Agreement shall include the following:
  - (1) The basis for the Service Improvement Agreement;
  - (2) The steps required to reach compliance including, if applicable, technical assistance;
  - (3) The time limits for implementing the improvements; and
  - (4) The consequences of noncompliance with the Service Improvement Agreement.
- (d) The Board shall develop policies and procedures to ensure that the Board or the Board's child care contractor take corrective action consistent with subsections (a) - (c) of this section against a provider when a provider performs the attendance reporting function on behalf of a parent.
- (e) The Board shall develop policies and procedures to require the Board's child care contractor to take corrective action consistent with subsections (a) - (c) of this section against a parent when a parent violates the Commission rules and Agency

procedures related to attendance reporting.

**§809.116. Referral for Criminal Prosecution.**

- (a) A Board shall refer cases of fraud, in accordance with Agency policies and procedures, to federal, state, and/or local prosecutors for criminal prosecution.
- (b) The Board shall document the referral and subsequent updates in the Agency's case management system in accordance with Agency policies and procedures.

**§809.117. Recovery of Improper Payments to a Provider or Parent.**

- (a) A Board must attempt recovery of all improper payments as defined in §809.2 of this chapter, that were identified in a Board-issued determination or decision. The Agency must attempt recovery of all improper payments as defined in §809.2 of this chapter, that were identified in an Agency-issued determination or decision.
- (b) Recovery of improper payments shall be managed in accordance with Agency policies and procedures.
- (c) The provider shall repay improper payments for child care services received in the following circumstances:
  - (1) Instances involving fraud;
  - (2) Instances in which the provider did not meet the provider eligibility requirements in this chapter;
  - (3) Instances in which the provider was paid for the child care services from another source;
  - (4) Instances in which the provider did not deliver the child care services;
  - (5) Instances in which referred children have been moved from one facility to another without authorization from the child care contractor; and
  - (6) Other instances when repayment is deemed an appropriate action.
- (d) A parent shall repay improper payments for child care only in the following circumstances:
  - (1) Instances involving fraud as defined in this subchapter;
  - (2) Instances in which the parent has received child care services while awaiting an appeal and the determination is affirmed by the hearing officer; or

- (3) Instances in which the parent fails to pay the parent share of cost and the Board's policy is to pay the provider for the parent's failure to pay the parent share of cost.
- (e) A Board shall ensure that a parent subject to the repayment provisions in subsection (d) of this section shall prohibit future child care eligibility until the repayment amount is recovered, provided that the prohibition does not result in a Choices or SNAP E&T participant becoming ineligible for child care.