

1 **CHAPTER 809. CHILD CARE SERVICES**

2
3 **ADOPTED RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS***
4 ***REGISTER*. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS**
5 **SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE *TEXAS REGISTER*.**
6

7 **ON SEPTEMBER 6, 2016**, THE TEXAS WORKFORCE COMMISSION ADOPTED THE
8 BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

9
10 Estimated date of publication in the *Texas Register*: **September 23, 2016**
11 The rules will take effect: **September 26, 2016**

12
13 The Texas Workforce Commission (Commission) adopts amendments to the following sections
14 of Chapter 809, relating to Child Care Services, *without* changes, as published in the June 17,
15 2016, issue of the *Texas Register* (41 TexReg 4394):

- 16 Subchapter B. General Management, §809.13, §§809.15 - 809.17,
- 17 Subchapter C. Eligibility for Child Care Services, §§809.42 - 44, §809.46, §§809.48 - 49, and
- 18 §809.53
- 19 Subchapter D. Parent Rights and Responsibilities, §809.72, §§809.74 - 809.75
- 20 Subchapter E. Requirements to Provide Child Care, §809.94, and §809.95
- 21 Subchapter F. Fraud Fact-Finding and Improper Payments, §809.111, 809.113, §809.115
- 22

23
24 The Texas Workforce Commission (Commission) adopts amendments to the following sections
25 of Chapter 809, relating to Child Care Services, *with* changes, as published in the June 17, 2016,
26 issue of the *Texas Register* (41 TexReg 4394):

- 27 Subchapter A. General Provisions, §809.2
- 28 Subchapter B. General Management, §§809.19 - 809.20
- 29 Subchapter C. Eligibility for Child Care Services, §809.41, §809.45, §809.47, §§809.50 -51,
- 30 and §809.54
- 31 Subchapter D. Parent Rights and Responsibilities, §809.71, §809.73, §809.78
- 32 Subchapter E. Requirements to Provide Child Care, §§809.91 - 809.94
- 33 Subchapter F. Fraud Fact-Finding and Improper Payments, §809.112 and §809.117
- 34

35
36 The Commission adopts the following new section to Chapter 809, relating to Child Care
37 Services, *without* changes, as published in the June 17, 2016, issue of the *Texas Register* (41
38 TexReg 4394):

- 39 Subchapter C. Eligibility for Child Care Services, §809.52
- 40

41
42 The Commission adopts the repeal of the following sections of Chapter 809, relating to Child
43 Care Services, *without* changes, as published in the June 17, 2016, issue of the *Texas Register*
44 (41 TexReg 4394):

- 45 Subchapter C. Eligibility for Child Care Services, §809.55
- 46 Subchapter D. Parent Rights and Responsibilities, §§809.76 - 809.77
- 47 Subchapter F. Fraud Fact-Finding and Improper Payments, §809.116
- 48

1
2 PART I. PURPOSE, BACKGROUND, AND AUTHORITY
3 PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND
4 RESPONSES
5

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

7 The purpose of the adopted Chapter 809 rule change is to amend the Commission's Child Care
8 Services rules to address changes resulting from the Child Care and Development Block Grant
9 Act (CCDBG Act) of 2014. The adopted amendments to Chapter 809 also include, where
10 appropriate, changes in rule language based on the Notification of Proposed Rulemaking
11 (NPRM) issued December 24, 2015, by the U.S. Health and Human Services Administration for
12 Children and Families.

13
14 The CCDBG Act authorizes the federal Child Care and Development Fund (CCDF), which is the
15 primary federal funding source for providing child care subsidy assistance to low-income
16 families and for improving the quality of care for all children. The Texas Workforce
17 Commission (Agency) is the CCDF Lead Agency in Texas. The CCDF program is administered
18 by the 28 Local Workforce Development Boards (Boards). Additionally, the Texas Department
19 of Family and Protective Services (DFPS) is responsible for administering the health and safety
20 requirements of the CCDF program.

21
22 On November 19, 2014, President Obama signed the CCDBG Act of 2014, reauthorizing the
23 CCDBG Act for the first time since 1996. The new law makes significant changes to the CCDF
24 program, designed to promote children's healthy development and safety, improve the quality of
25 child care, and provide support for parents who are working or are in training or education.

26
27 The primary purpose of the Commission's amendments to Chapter 809 is to implement the
28 following changes to the CCDF program resulting from the CCDBG Act of 2014:

29
30 *Twelve-Month Eligibility Period*

31 The CCDBG Act of 2014 added a 12-month eligibility and redetermination period requirement
32 for children determined eligible for subsidized child care. This change to the CCDF program is
33 designed to provide more stable assistance to families, protection for working families, and
34 increased opportunities for children to remain in child care services.

35
36 CCDBG Act §658E(c)(2)(N)(i) and (ii) require states to demonstrate in the CCDF State Plan that
37 after initial eligibility, each child who receives assistance will be considered to meet all
38 eligibility requirements for such assistance and will receive such assistance for not fewer than 12
39 months before the state or designated local entity redetermines the eligibility of the child. The
40 12-month eligibility period applies regardless of changes in income--as long as income does not
41 exceed the federal threshold of 85 percent of the state median income (SMI)--or temporary
42 changes in participation in work, training, or educational activities.

43
44 Therefore, a state shall not terminate assistance prior to the end of the 12-month period if the
45 family experiences a temporary job loss or temporary change in participation in a training or
46 educational activity.

1 Although the CCDBG Act requires a period of 12-month minimum eligibility and receipt of
2 child care services prior to redetermination, §658E(c)(2)(N)(iii) allows states the option to
3 terminate eligibility due to a permanent (nontemporary) change in work, training, or education.
4 However, the CCDBG Act requires that prior to terminating a subsidy, the state must continue to
5 provide child care assistance for a period of at least three months to allow parents to engage in
6 job search, resume work, or attend an educational or training program as soon as possible.
7

8 *Parent Share of Cost during the 12-Month Eligibility Period*

9 To support continued care throughout the 12-month eligibility period, NPRM §98.21(a)(3):

10 --prohibits states from increasing the parent share of cost during the 12-month eligibility period,
11 regardless of increases in the family income; and

12 --requires that states act upon information provided by the parent that would result in a reduction
13 in the parent share of cost.
14

15 NPRM §98.45(k)(2) requires that the parent share of cost be based on income and the size of the
16 family and may be based on other factors as appropriate, but may not be based on the cost of care
17 or amount of the subsidy payment.
18

19 *Income Calculation to Consider Irregular Income Fluctuations*

20 CCDBG Act §658E(c)(2)(N)(i)(II) requires that states take into consideration irregular
21 fluctuations of earnings when calculating income for eligibility. NPRM §98.21(c) further
22 clarifies this requirement by adding that the calculation of income policies ensure that temporary
23 increases in income, "including temporary increases that result in monthly income exceeding 85
24 percent of SMI (calculated on a monthly basis), do not affect eligibility or family co-payments."
25

26 *Graduated Phaseout of Eligibility*

27 Where a Lead Agency or designated local agency has established an initial eligibility threshold
28 below 85 percent of SMI, CCDBG Act §658E(c)(2)(N)(iv) requires Lead Agencies to have a
29 "Graduated Phaseout of Eligibility" that includes policies and procedures to continue child care
30 assistance at the time of redetermination for children of parents who are working or attending a
31 job training or educational program and whose income has risen above the Lead Agency's initial
32 income eligibility threshold to qualify for assistance but remains at or below 85 percent of SMI.
33

34 *Priority and Eligibility for Children Experiencing Homelessness*

35 CCDBG Act §650E(3)(B)(i) and NPRM §98.46(a)(3) and §98.51 require states to give priority
36 for services to children experiencing homelessness. NPRM §98.2 defines a "child experiencing
37 homelessness" as a child meeting the definition of homelessness under the McKinney-Vento
38 Homelessness Act of 1987 (McKinney-Vento Act).
39

40 The NPRM preamble clarifies that Lead Agencies have flexibility in how they offer priority to
41 these populations, including by prioritizing enrollment, waiving copayments, paying higher
42 rates for access to higher-quality care, or using grants or contracts to reserve slots for priority
43 populations.
44

45 Additionally, the CCDBG Act and the NPRM require that state procedures permit enrollment
46 (after an initial eligibility determination) of children experiencing homelessness while required
47 documentation is being obtained.
48

1 *Attendance and Provider Reimbursements*

2 CCDBG Act §658E(c)(2)(S) and NPRM §98.45(m) require implementation of provider payment
3 practices that:

- 4 --align with generally accepted payment practices for children who do not receive CCDF funds;
- 5 and
- 6 --support the fixed costs of providing child care services by delinking provider payments from a
7 child's occasional absences.

8
9 *Consumer Education Information*

10 CCDBG Act §658E(c)(2)(E) and NPRM §98.33 require that states collect and disseminate,
11 through a consumer-friendly and easily accessible website, consumer education information to
12 parents of eligible children, the general public, and, where applicable, providers regarding:

- 13 --availability of the full diversity of child care services;
- 14 --quality of providers;
- 15 --state processes for licensing, conducting background checks, and monitoring child care
16 providers;
- 17 --other programs for which families that receive child care services may be eligible;
- 18 --research and best practices concerning children's development; and
- 19 --state policies regarding social-emotional behavioral health of children.

20
21 Additionally, NPRM §98.33(d) requires that parent consumer education include information on:

- 22 --licensing compliance information for the provider selected by the parent;
- 23 --how to submit a complaint regarding a child care provider;
- 24 --how to contact community resources that assist parents in locating quality child care; and
- 25 --how CCDF subsidies are designed to promote equal access to the full range of child care
26 providers.

27
28 CCDBG Act §658E(c)(2)(E) also requires that Lead Agencies provide eligible parents with
29 information on existing resources and other services in the state that conduct developmental
30 screening and provide referrals and services, when appropriate, for children eligible for
31 subsidized child care, including:

- 32 --the Medicaid Early and Periodic Screening, Diagnosis, and Treatment program; and
- 33 --the Early Childhood Intervention (ECI) and Preschool Program for Children with Disabilities
34 developmental screening services.

35
36 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND**
37 **RESPONSES**

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

40
41 **SUBCHAPTER A. GENERAL PROVISIONS**

42 **The Commission adopts the following amendments to Subchapter A:**

43
44 **§809.2. Definitions**

45 *Attending a Job Training or Educational Program*

46 Consistent with CCDBG Act §658E(c)(2)(N)(i) - (ii), the definition of "attending a job training
47 or educational program" is amended to clarify that the requirement in the definition that the

1 individual be making progress toward successful completion of the program as determined by
2 the Board, is only applied at the parent's 12-month redetermination.

3
4 Consistent with the CCDBG Act, care cannot be discontinued during the 12-month eligibility
5 period for failure to make progress toward completion of an education or training program.
6 However, the NPRM allows additional eligibility requirements at the 12-month redetermination
7 period. Boards must ensure that the parent is making progress toward completion of the
8 program, as determined by the Board, when redetermining eligibility for continued care, but are
9 prohibited from making this a condition of eligibility at the parent's initial eligibility
10 determination. When developing policies and procedures for determining if the parent is making
11 progress toward completion of the program, the Commission cautions against relying solely on
12 the parent's grade point average (GPA), particularly one semester's GPA. If a Board uses the
13 GPA, the Commission encourages Boards to establish a minimum threshold that would
14 demonstrate if a parent has consistently failed to complete coursework during the eligibility
15 period.

16
17 The requirement in the definition that the individual must be considered by the program to be
18 officially enrolled in and meeting the attendance requirements of the program is retained without
19 change because enrollment and attendance in the program should be maintained throughout the
20 12-month eligibility period. Discontinuing care due to a nontemporary cessation of attendance in
21 a training or education activity during the 12-month eligibility period is addressed in §809.51(b).

22
23 As described in amended §809.73, parents are required to report items that impact a family's
24 eligibility during the 12-month eligibility period. Boards may develop procedures for
25 confirming continued enrollment and attendance during the 12-month eligibility period,
26 including requesting that education institutions and training providers confirm enrollment at each
27 semester and the resumption of training classes in order to determine that the parent has not had
28 a nontemporary cessation of education or training activities.

29
30 The Commission notes that the language in §809.41 regarding Board policies for child care
31 during education, including time limits or eligibility based on the type of education pursued by
32 the parent, is not changed by these amendments.

33 34 *A Child Experiencing Homelessness*

35 Consistent with NPRM §98.2, §809.2 is amended to add the definition for a "child experiencing
36 homelessness" as a child meeting the definition of homeless pursuant to the McKinney-Vento
37 Act.

38 39 *Child with Disabilities*

40 The definition of a "child with disabilities" is amended to align with the definition under §504 of
41 the Rehabilitation Act of 1973.

42 43 *Family*

44 The definition of a "family" is amended to mirror the Workforce Innovation and Opportunity Act
45 (WIOA) definition of a family. The intent of this change is to clarify, consistent with current
46 practice for both the child care and WIOA programs, that the individuals in a family are "living
47 in a single household." Additionally, consistent with WIOA, the definition of married

1 individuals includes "common-law" marriages. Consistent with the WIOA program guidelines,
2 written attestation must be obtained from both parties affirming the common-law marriage.

3
4 *Improper Payments*

5 The definition of "improper payments" is amended to align with the current definition of an
6 improper payment in CCDF regulation §98.100(d). The amended §809.2(11) defines an
7 improper payment as:

8
9 Any payment of CCDF grant funds that should not have been made or that was made
10 in an incorrect amount (including overpayments and underpayments) under statutory,
11 contractual, administrative, or other legally applicable requirements governing the
12 administration of CCDF grant funds and includes:

- 13 --to an ineligible recipient;
- 14 --for an ineligible service;
- 15 --for any duplicate payment; and
- 16 --for services not received.

17
18 *Regulated Child Care Provider*

19 The definition of a "regulated child care provider" is amended to remove providers licensed by
20 the Texas Department of State Health Services (DSHS) as a youth day camp as eligible providers
21 of subsidized child care services.

22
23 CCDBG Act §658H and NPRM §98.43 require that states have in effect "requirements, policies,
24 and procedures to require and conduct criminal background checks for child care staff members
25 of all licensed, regulated, or registered child care providers and all providers eligible to deliver
26 services." These requirements include a Federal Bureau of Investigation (FBI) fingerprint check.
27 Relative providers are exempt from this requirement, which must otherwise be implemented no
28 later than September 30, 2017.

29
30 DSHS youth day camps are not subject to DFPS child care licensing and monitoring
31 requirements. DSHS conducts background checks of staff in compliance with state law for
32 youth camps, but unlike the CCDBG Act and NPRM, state law does not require an FBI
33 fingerprint criminal background check for youth day camp staff. Nonetheless, certain youth day
34 camps may be eligible for DFPS to license as child care centers. Therefore, to allow sufficient
35 time for day camps that serve subsidized children to choose to work with DFPS to become
36 licensed, the Commission will not implement this provision until September 30, 2017.

37
38 *Working*

39 The definition of "working" is amended to remove job search activities from the definition.
40 Child care during periods of cessation of work, job training, or education is addressed in
41 §809.51.

42
43 **Comment:**

44 One commenter strongly supported the requirement that the parent demonstrate
45 successful progress toward completion of an education program only be applied at the
46 12-month redetermination date.

47
48 **Response:**

1 The Commission appreciates the comment.

2
3 **Comment:**

4 Commenters requested that the requirement for the parent to be making progress toward
5 successful completion of the education program be applied at initial eligibility if the
6 parent is already enrolled in an education or job training program.

7
8 **Response:**

9 Past performance in an education or training program should not be considered in initial
10 eligibility for child care. The parent's progress toward completion of the program should
11 only be based on the performance while the parent is receiving child care, as the lack of
12 stable child care may have been a contributing factor to the parent's inability to work
13 toward successful completion of the education or training activity.

14
15 **Comment:**

16 Commenters requested that the criteria for determining if a parent is making progress
17 toward successful completion of an education and/or training program be consistent
18 across the state. The commenters stated that allowing various standards in the state leads
19 to confusion when a parent moves from one local workforce development area
20 (workforce area) to another. One commenter stated that there should not be more than
21 one way to define the completion of a college course (i.e., grade point average) and that
22 individual Boards should not have differing criteria to determine the extent of progress.
23 Parents deserve to have equal access to child care assistance regardless of where they live
24 or attend school.

25
26 **Response:**

27 The Commission understands the concerns; however, the Commission believes that this
28 standard should remain a local decision based on local needs and factors specific to
29 education and training programs in the workforce area. Local Workforce Development
30 Boards (Boards) are in the best position, based on their knowledge of and experience
31 with local training and education programs, to make policies regarding the criteria for
32 determining whether the parent is making progress toward successful completion of the
33 program.

34
35 **Comment:**

36 Commenters requested that if a parent is officially enrolled in the training or education
37 program and meeting the program's attendance requirements, that should be sufficient
38 documentation for a Board to determine that the parent is making progress toward
39 program completion.

40
41 **Response:**

42 Boards have the flexibility within the rule to determine that being enrolled in and meeting
43 attendance standards of the program would meet the Board standard for making progress
44 toward completion of the program.

45
46 **Comment:**

1 A commenter requested clarification as to whether the parent would be eligible for the
2 three-month continued care (described in §809.51) once the Board determines that the
3 minimum threshold for making progress has not been met.
4

5 **Response:**

6 The requirement that the parent is making successful progress toward completion of the
7 program is only applied at the 12-month eligibility redetermination. If the parent is
8 determined as not meeting this requirement at redetermination, then the parent is not
9 eligible for care for the next eligibility period (unless the parent meets other eligibility
10 requirements regarding participation in work activities). The three-month period of
11 continued care does not apply to parents who do not meet the eligibility requirements at
12 the 12-month eligibility redetermination.
13

14 **Comment:**

15 One commenter supported the change to the definition of a "child with disabilities" to
16 include the language change from "incapable of performing" to "substantially limits."
17 The commenter also supported expanding the definition to include children who may not
18 have a formal diagnosis but are "regarded to have a disability," as there are many reasons
19 why a child may not have a formal diagnosis (e.g., the family does not have access to
20 regular medical care) but would certainly benefit from additional support services.
21

22 **Response:**

23 The Commission appreciates the comment.
24

25 **Comment:**

26 One commenter requested that acceptable forms of documentation to verify impairments
27 listed in the definition of a child with disabilities (if required) be specified in the Child
28 Care Services Guide.
29

30 **Response:**

31 The definition is based on §504 of the Rehabilitation Act of 1973. The Agency will
32 review documentation related to this Act and update the Child Care Services Guide
33 accordingly.
34

35 **Comment:**

36 Commenters requested that the definition of a "family" align more closely with the
37 WIOA definition, specifically to include the statement that the individuals are "living in a
38 single household," as this would clarify the current practice in child care and match the
39 WIOA definition. Another commenter stated that aligning the definitions would increase
40 opportunities to streamline Board eligibility determination processes.
41

42 **Response:**

43 The Commission agrees and has modified the definition of a "family" to mirror, but not
44 replicate, the definition of a family in WIOA. Consistent with the current child care
45 practice of including all household dependents in the family, the amended rule language
46 modifies the WIOA definition to include all household dependents, not just the children,
47 in the definition of a family.
48

1 **Comment:**

2 Several commenters requested clarification regarding the inclusion of payments "for
3 services not received" in the definition of "improper payments." The commenters stated
4 that this appears to be in conflict with §809.93(b), which states that providers are
5 reimbursed on authorized enrollment, not attendance. The commenters stated that
6 "services not delivered" may be read to include payments for absences, which is required
7 under §809.93(b).

8
9 **Response:**

10 Payment for enrollment is a requirement in the rule, and payment for absences is allowed
11 as long as the child remains enrolled under a valid authorization for care. The
12 Commission clarifies that the term "services not received" in the definition of "improper
13 payments" is intended to cover instances in which payment is made to a provider without
14 a valid authorization and care was not provided. Further, the definition of improper
15 payment is also intended to apply to quality improvement activities. It would be
16 considered an improper payment if payment is made for a quality activity, such as
17 professional development or equipment, and the services or equipment were not
18 delivered.

19
20 **Comment:**

21 One commenter supported the new definition of "child experiencing homelessness."

22
23 **Response:**

24 The Commission appreciates the comment.

25
26 **Comment:**

27 Several commenters requested that the rule language for a "child experiencing
28 homelessness" include the statutory language from the McKinney-Vento Act for the
29 definition of a child experiencing homelessness. The commenters stated that this would
30 ensure consistent implementation of the definition. One commenter also requested that
31 acceptable forms of documentation to verify compliance with the definition should be
32 included in the Child Care Services Guide.

33
34 **Response:**

35 The Child Care Services Guide will provide a link to the pertinent section of the
36 McKinney-Vento Act, but actual language from that statute will not be included in rule.
37 Doing so would require keeping the Texas Administrative Code (TAC) updated with any
38 changes to the McKinney-Vento Act. Providing a link to the most current citation will
39 ensure that the most current definition is used.

40
41 Additional guidance regarding the definition of homelessness and determining eligibility
42 for children experiencing homelessness will be provided in the Child Care Services
43 Guide.

44
45 **Comment:**

46 One commenter strongly supported the removal of youth day camp providers from the
47 definition of a "regulated child care provider," and, therefore, being ineligible to serve

1 subsidized children. The commenter commends the state on providing additional support
2 and an extended timeline for these providers to become licensed through DFPS.
3

4 The commenter stated that ensuring the safety of all children, regardless of age and
5 placement, by requiring an FBI fingerprint criminal background check for youth day
6 camp staff is a responsible state policy. The commenter urges the Commission to
7 consider extending FBI fingerprint criminal background checks to all child care
8 providers, regardless of whether they serve subsidized children.
9

10 **Response:**

11 The Commission appreciates the comment. The Commission also notes that the CCDBG
12 Act of 2014 requires FBI fingerprint background checks for all licensed, regulated, or
13 registered child care providers (excluding eligible relatives), not just providers serving
14 subsidized children.
15

16 **Comment:**

17 One commenter recommended adding definitions for both "temporary" and
18 "nontemporary" regarding parent status changes in work, training, and education
19 activities.
20

21 **Response:**

22 The Commission declines to make this change. Temporary changes are listed in
23 §809.51(a)(2) and conform to the requirements in the proposed CCDF regulations.
24 Nontemporary changes are clarified in §809.51(b) to be "a loss of work or cessation of
25 attendance at a job training or educational program *that does not constitute a temporary*
26 *change* in accordance with §809.51(a)(2)." If the status change is not a temporary change
27 listed in §809.51(a)(2), then it would be considered a nontemporary change.
28

29 **Comment:**

30 One commenter recommended adding a definition for a "job training program," which is
31 part of the eligibility criteria defined in §809.41(a)(3)(B), but is not defined, while the
32 other two criteria--educational programs and working--are defined.
33

34 **Response:**

35 The Commission points out that "job training program" is defined in §809.2(12).
36

37 **SUBCHAPTER B. GENERAL MANAGEMENT**

38 **The Commission adopts the following amendments to Subchapter B:**
39

40 **§809.13. Board Policies for Child Care Services**

41 Section 809.13 is amended to remove the requirement in subsection (c) for Boards to submit
42 policy modifications, amendments, or new policies to the Commission within two weeks of
43 adopting the policy. This section retains the requirement that Boards submit Board policies to
44 the Commission upon request. The additional requirement to submit changes to policies within a
45 specific time frame is redundant. The Commission makes this change to reduce administrative
46 burden on both Board and Agency staff. Section 809.13 is amended to remove multiple Board
47 policy requirements that no longer apply under the CCDBG Act.
48

1 Consistent with the CCDBG Act 12-month eligibility period requirement, §809.13 is amended to
2 remove the requirement for Boards to have a policy on frequency of eligibility determinations, as
3 the frequency is now established under federal law.

4
5 Section 809.13 is amended to remove the option for Boards to have a policy to include provider
6 eligibility for nonrelative-listed family homes. CCDBG Act §658E(c)(2)(K) requires annual
7 unannounced inspections of all CCDF-subsidized providers for compliance with health, safety,
8 and fire standards. Relative providers are exempt from this requirement. By state statute, listed
9 family homes are not inspected by DFPS child care licensing (unless there is a report of abuse or
10 neglect at the facility). Therefore, under the CCDBG Act, nonrelative listed family homes are
11 not eligible to provide CCDF-subsidized services.

12
13 Section 809.13 is amended to remove the requirement that Boards establish policies for
14 attendance standards in order to be consistent with CCDBG Act §658E(c)(2)(S), which requires
15 that provider reimbursement policies support the fixed costs of providing child care services by
16 delinking provider payments from a child's occasional absences. Attendance standards are
17 established in amended §809.78, and reimbursement policies based on enrollments are
18 established in §809.93.

19
20 Section 809.13 is amended to remove the requirement that Boards have procedures for imposing
21 sanctions when a parent fails to comply with the provisions of the parent responsibility
22 agreement (PRA). As explained in the changes to Subchapter D, the PRA is no longer a
23 requirement.

24
25 Section 809.13 is amended to remove the requirement that Boards have a policy regarding the
26 mandatory waiting period for reapplying or being placed on the waiting list. As explained in the
27 changes to Subchapter C, the mandatory waiting period is no longer required.

28
29 **Comment:**

30 One commenter recommended that all of the required Board policies for child care
31 services be removed from the rules and that the Agency standardize all child care rules
32 and provide clear intent and implementation direction. In order to ensure equitable
33 services be available to all parents, regardless of where the parent resides within the state
34 of Texas, the commenter stated that the rules must be standardized and applied
35 consistently across all Board areas.

36
37 **Response:**

38 The Commission declines this recommendation. The Chapter 809 Child Care Services
39 rules provide for Agency oversight of the program in order to comply with federal and
40 state laws and regulations and to ensure that the rules are applied consistently throughout
41 the state. However, state statute requires that child care services be administered by
42 Boards and requires that the Agency provide Boards with flexibility in administering
43 workforce programs, including child care.

44
45 **Comment:**

46 One commenter strongly recommended that the Commission retain the requirement that
47 Boards submit policy modifications, amendments, or new policies to the Agency within
48 two weeks of adopting the policy.

1
2 The commenter contended that receiving notice of policy modifications after their
3 adoption effectively removes all authority from the Agency to establish consistent
4 standards. Removing a timeline for providing Board policies means that the state may be
5 completely unaware of requirements for regulated child care providers for an extended
6 period of time, including new policies that may be contradictory to federal or state law.
7 Relying on the initiative of an individual Board to report changes or waiting for Agency
8 staff to proactively ask about new policies is an unreliable system for compliance.
9 Contrary to the Commission's interpretation, requiring a two-week standing deadline is
10 not redundant to offering information only upon request.
11

12 While the commenter acknowledged there is an administrative responsibility that may be
13 challenging, the risk of allowing inappropriate or possibly noncompliant policies to be
14 implemented on a local level is much greater.
15

16 **Response:**

17 The Commission disagrees that receiving notification of policy changes after their
18 adoption removes all authority from the Agency to establish consistent standards.
19

20 The Agency and the Agency's Child Care Technical Assistance staff review all Board
21 policies prior to conducting technical assistance site visits. Additionally, the Agency's
22 Subrecipient Monitoring department also reviews Board policies prior to monitoring
23 visits. Agency staff participates in Board meetings, is aware of changes to Board policies
24 as they occur, and responds appropriately and timely if the policies do not comply with
25 Agency rules and policies. These routine activities are sufficient to meet the Agency's
26 oversight responsibilities.
27
28

29 **§809.15. Promoting Consumer Education**

30 Section 809.15(b) is amended to clarify that consumer education information includes consumer
31 education information provided on the Board's website.
32

33 Section 809.15(b)(4) is amended to remove the requirement that Boards include in consumer
34 education information for parents a description of the school readiness certification system, as
35 the program has been discontinued.
36

37 *Information on Resources for Developmental Screening*

38 CCDBG Act §658E(c)(2)(E)(ii) requires that states provide eligible parents with information on
39 existing resources and other services in the state that conduct developmental screening and
40 provide referrals to services, when appropriate, for children eligible for subsidized child care
41 regarding:

- 42 --the Medicaid Early and Periodic Screening, Diagnosis, and Treatment program; and
43 --Early Childhood Intervention (ECI) and Preschool Program for Children with Disabilities
44 developmental screening services.
45

46 Information on developmental screenings must also include a description of how a family or
47 eligible child care provider can use available resources and services to obtain developmental

1 screenings for children receiving assistance who may be at risk for cognitive or other
2 developmental delays, which may include social, emotional, physical, or linguistic delays.

3
4 NPRM §98.33(c) clarifies that the developmental screening information should be made
5 available to parents as part of the intake process and to providers through training and education.

6
7 Consistent with CCDBG Act §658E(c)(2)(E)(ii) and NPRM §98.33(c), §809.15(b) is amended to
8 add the requirement, pursuant to CCDBG Act §658E(c)(2)(E)(ii), that Boards include:

9 --information on resources and services available in the workforce area for conducting
10 developmental screenings and providing referrals to services when appropriate for children
11 eligible for child care services, including the use of:

12 --the Early and Periodic Screening, Diagnosis, and Treatment program under 42 U.S.C.
13 1396 et seq.; and

14 --developmental screening services available under Part B and Part C of the Individuals
15 with Disabilities Education Act (20 U.S.C. 1419, 1431 et seq.); and

16 --a link to the Agency's designated child care consumer education website.

17
18 The Commission clarifies that Boards are not required to make referrals or to ensure that
19 developmental screenings are conducted. The only requirement is that Boards provide
20 information to parents regarding available local resources and developmental screenings.

21
22 Additional information and guidance regarding the manner in which information on
23 developmental screenings is made available will be provided by the Agency through updates to
24 the Child Care Services Guide. Additionally, the Agency is working with statewide training
25 partners regarding making training and education on developmental screenings available to
26 providers.

27
28 The Commission also notes that this provision does not affect the rules, policies, and procedures
29 currently in place regarding approval of the inclusion rate pursuant to §809.20(e).

30 31 *Consumer Education*

32 CCDBG Act §658E(c)(2)(E) and NPRM §98.33 require that states collect and disseminate
33 consumer education information to parents of eligible children, the general public, and, where
34 applicable, providers regarding:

35 --availability of the full diversity of child care services;

36 --quality of providers;

37 --state processes for licensing, conducting background checks, and monitoring child care
38 providers;

39 --other programs for which families that receive child care services may be eligible;

40 --research and best practices concerning children's development; and

41 --state policies regarding social-emotional behavioral health of children.

42
43 Additional information and guidance regarding the manner in which consumer education
44 information is made available will be provided by the Agency through updates to the Child Care
45 Services Guide, including guidance on:

46 --providing licensing compliance information;

47 --making consumer education information available in printed form; and

1 --ensuring consumer education information is accessible to both individuals with disabilities and
2 individuals with limited English proficiency.

3
4 Additionally, NPRM §98.33(d) requires that parent consumer education include information on:
5 --licensing compliance information of the provider selected by the parent;
6 --how to submit a complaint regarding a child care provider;
7 --how to contact community resources that assist parents in locating quality child care; and
8 --how CCDF subsidies are designed to promote equal access to the full range of child care
9 providers.

10
11 All consumer education required by the final CCDF regulations is available on the Texas Child
12 Care Solutions website at www.texaschildcaresolutions.org.

13
14 Section 809.15 is amended to require that Boards provide a link to the Agency's designated child
15 care consumer education website as part of the consumer education information provided to
16 parents.

17
18 **Comment:**

19 Commenters requested additional information on how referrals for developmental
20 screenings will be made and if a referral to 2-1-1 Texas would be sufficient. One
21 commenter inquired whether the Agency will be providing the Boards with information
22 on existing resources and services available within the workforce area for developmental
23 screenings.

24
25 **Response:**

26 The Commission clarifies that there is no requirement that a referral for developmental
27 screening is made. The rule language only requires that information be included in
28 consumer education materials regarding resources and services for conducting
29 developmental screenings, and providing referrals is included in consumer education
30 materials. The information provided to parents will state how the parent can connect
31 with the resources.

32
33 The Agency will provide information to Boards in the Child Care Services Guide on
34 procedures for providing information to parents regarding screenings, including links to
35 state websites and the option to provide printed materials. Additional information
36 specific to resources in the workforce area should be provided by the Board.

37
38 **§809.16. Quality Improvement Activities**

39 Section 809.16 is amended to remove outdated CCDF regulatory citations. The current CCDF
40 regulations are being amended by the U.S. Department of Health and Human Services and the
41 NPRM language has changed citations for quality improvement activities and the use of CCDF
42 for construction. Further, the list of allowable quality activities in the CCDF regulations has
43 been expanded to include quality activities listed in the CCDBG Act. Section 809.16 removes
44 the specific citations list of quality activities, and replaces it with the general reference for CCDF
45 in 45 C.F.R., Part 98.

46
47
48 **§809.17. Leveraging Local Resources**

1 Section 809.17 is amended with language moved, without changes, from Subchapter C
2 §809.42(c) related to public entities certifying expenditures for direct child care, as the language
3 is more relevant to the local match process described in §809.17 than to eligibility for child care
4 services described in §809.42(c).

5
6 **Comment:**

7 One commenter requested additional information on the expectations of how the public
8 entity shall verify that children meet eligibility requirements.

9
10 **Response:**

11 The Commission notes that there are no changes to the rule provisions. Guidance
12 regarding the requirements for local match is provided in Section C-202-a of the Child
13 Care Services Guide.

14
15 **§809.19. Assessing the Parent Share of Cost**

16
17 *Parent Share of Cost during the 12-Month Eligibility Period*

18 To support continued care throughout the 12-month eligibility period, NPRM §98.21(a)(3):

19 --prohibits states from increasing the parent share of cost during the 12-month eligibility period,
20 regardless of increases in the family income; and
21 --requires that states act upon information provided by the parent that would result in a reduction
22 in the parent share of cost.

23
24 Consistent with the NPRM, §809.19(a) is amended to add the requirement that the parent share
25 of cost is assessed only at the following times:

26 --Initial eligibility determination;

27 --12-month eligibility redetermination;

28 --The addition of a child in care;

29 --Upon a parent's report of a change in income, family size, or number of children in care that
30 would result in a reduced parent share of cost assessment; and

31 --Upon resumption of work, job training, or education activities following temporary changes
32 described in §809.51(a)(2) and during the three-month continuation of care period described in
33 §809.51(c).

34
35 In order to ensure compliance with the requirement in the NPRM that prohibits states from
36 increasing the parent share of cost during the 12-month eligibility period, regardless of increases
37 in the family income, the Commission adds §809.19(a)(1)(D), requiring Boards to ensure that the
38 parent share of cost amount does not increase above the amount assessed at initial eligibility or at
39 the 12-month eligibility redetermination, except upon the addition of a child in care as described
40 in §809.19(a)(1)(C)(iii).

41
42 Additionally, the Commission amends §809.19(a)(2)(A) - (B) to clarify that parents participating
43 in Choices or Supplemental Nutrition and Assistance Program Employment and Training (SNAP
44 E&T), as well as a parent in Choices child care at §809.45 or SNAP E&T child care at §809.47,
45 are exempt from the parent share of cost for the 12-month eligibility period.

46
47 *Basing the Parent Share of Cost on the Cost of Care or Subsidy Amount*

1 NPRM §98.45(k)(2) requires that the parent share of cost be based on income and the size of the
2 family and may be based on other factors as appropriate, but may not be based on the cost of care
3 or amount of the subsidy payment.

4
5 Section 809.19 is amended to remove the provision that the assessed parent share of cost must
6 not exceed the Board's maximum reimbursement rate or the provider's published rate, whichever
7 is lower. This provision is contrary to the requirement in the NPRM that the assessed parent
8 share of cost must not be based on the cost of care or the amount of the subsidy payment.

9
10 The parent share of cost must only be based on the following factors:

11 --the family's size and income; and

12 --may also consider the number of children in care and parent selection of a provider certified by
13 the Texas Rising Star (TRS) program, as described in §809.19(a)(1)(B).

14
15 The Commission retains the rule language in §809.19(d) that allows Boards to review the
16 assessed parent share of cost for possible reduction if there are extenuating circumstances that
17 jeopardize a family's self-sufficiency. However, this reduction shall not be based on the Board's
18 maximum reimbursement rate or the provider's published rate.

19
20 The Commission notes that the current rules at §809.19(d) allow Boards to review the assessed
21 parent share of cost for possible reductions if there are extenuating circumstances that jeopardize
22 a family's self-sufficiency. Extenuating circumstances include unexpected temporary costs such
23 as medical expenses and work-related expenses that are not reimbursed by the employer. The
24 Commission is aware that some Boards may allow a limited number of these reductions during
25 the eligibility period. Such policies are still allowed, but Boards must ensure that the parent
26 share of cost is reduced any time the parent reports a change in income, family size, or number of
27 children in care that would result in a reduced parent share of cost.

28
29 The Commission further notes that amended §809.73 requires that parents report such changes
30 within 14 calendar days of the change. Changes in the parent share of cost should be made at the
31 beginning of the month following the reported change. If the parent does not report the change
32 within that time period, the Board is not required to make the change retroactive from the actual
33 date of the reduction.

34
35 The Commission is also aware that some Boards reduce the parent share of cost for a limited
36 period of time during the initial eligibility period in order to assist the parent, particularly newly
37 employed parents, with the parent share of cost. This remains an allowable practice under
38 §809.19(d) regarding a reduction of the assessed parent share of cost. After this initial reduction,
39 the parent share of cost may be regularly assessed based on the family size and income and
40 number of children in care, as required by §809.19(a)(1)(B).

41
42 *Exemptions for Parents of Children Experiencing Homelessness*

43 CCDBG Act §650E(3)(B)(i) and NPRM §98.46(a)(3) and §98.51 require that states give priority
44 for services to children experiencing homelessness. The NPRM preamble clarifies that Lead
45 Agencies have flexibility as to how they offer priority to these populations, including by
46 prioritizing enrollment, waiving copayments, paying higher rates for access to higher-quality
47 care, or using grants or contracts to reserve slots for priority populations.

1 Section 809.19(a)(2) is amended to require that parents of a child receiving child care for
2 children experiencing homelessness described in §809.52 be exempt from the parent share of
3 cost.

4
5 The Commission emphasizes that pursuant to §809.19(e), the Board or its child care contractor
6 shall not waive the assessed parent share of cost unless the parent is covered by an exemption
7 specified in §809.19(a)(2).

8
9 *Parent Share of Cost Incentives to Consider Selection of a TRS-Certified Provider*

10 NPRM §98.30(h) includes provisions designed to provide parents with incentives that
11 encourage the selection of high-quality child care without violating parental choice
12 provisions. The NPRM provides states with flexibility in determining what types of
13 incentives to use to encourage parents to choose high-quality providers, including the option
14 to lower the parent share of cost for parents who choose a high-quality provider.

15
16 Consistent with NPRM §98.30(h) and to encourage parents to select a TRS-certified provider,
17 and, thus, encourage greater provider participation in the TRS program, the Commission adds
18 §809.19(g) to allow Boards to reduce the assessed parent share of cost amount based on the
19 parent's selection of a TRS-certified provider.

20
21 If a Board elects to have such a policy, the policy must ensure that the parent continues to
22 receive the reduction if:

- 23 --the TRS provider loses TRS certification; or
24 --the parent moves or changes employment within the workforce area and no TRS-certified
25 providers are available to meet the needs of the parent's changed circumstances.

26
27 However, the policy must also ensure that the parent no longer receives the reduction if the
28 parent voluntarily transfers the child from a TRS-certified provider to a non-TRS-certified
29 provider.

30
31 **Comment:**

32 Several commenters requested clarification regarding the requirements surrounding
33 reductions in the assessed parent share of cost amount.

34
35 Several Boards requested that the reduction of the parent share of cost during a three-
36 month continuation of care period after the nontemporary employment loss be considered
37 a temporary reduction and the parent share of cost be reassessed if the parent resumes
38 activities during the three-month period.

39
40 Similarly, several Boards requested to reassess a parent share of cost when the parent
41 resumes activities following a temporary loss of employment. This is not stated in the
42 proposed rule change. Without the ability to reassess the parent share of cost upon
43 gaining new employment or resuming the parent share of cost originally established, the
44 parent share of cost would remain at the reduced amount through the remainder of the
45 eligibility period.

46
47 **Response:**

1 The Commission has added clarification language at §809.19(a)(1)(C)(v) to allow for a
2 reassessment of the parent share of cost upon the resumption of work, job training, or
3 education activities following temporary changes described in §809.51(a)(2) and
4 following nontemporary changes described in §809.51(c).
5

6 However, in order to ensure compliance with the requirement in NPRM that prohibits
7 states from increasing the parent share of cost during the 12-month eligibility period,
8 regardless of increases in the family income, the Commission adds §809.19(a)(1)(D)
9 requiring Boards to ensure that the parent share of cost amount does not increase above
10 the amount assessed at initial eligibility or at the 12-month eligibility redetermination,
11 except upon the addition of a new child in care.
12

13 **Comment:**

14 Several commenters requested clarification regarding whether or not reductions made for
15 extenuating circumstances are required to be permanent for the remainder of the
16 eligibility period. The commenters recommended that reductions in parent share of cost
17 due to extenuating circumstances in §809.19(d) be temporary and that the parent share of
18 cost return to its previous rate once the extenuating circumstances no longer exist.
19

20 **Response:**

21 The Commission agrees and has modified the language in §809.19(d) to clarify that the
22 reductions due to extenuating circumstances are temporary and that following the
23 temporary reduction, the parent share of cost amount immediately prior to the temporary
24 reduction shall be reinstated.
25

26 **Comment:**

27 One commenter suggested that the language in §809.19(a)(1)(C)(iii) regarding the
28 amount added to the parent share of cost upon the addition of a child in care should read
29 "an additional amount for the family" instead of an additional amount "for the child."
30

31 **Response:**

32 The Commission has modified the language in §809.19(a)(1)(C)(iii) to streamline the
33 rules by stating that the reassessment is done upon the addition of a child in care.
34

35 **Comment:**

36 Several commenters requested clarification on the parent share of cost reduction based on
37 the parent's selection of a TRS-certified provider. In light of the requirement that the
38 assessed parent share of cost amount cannot increase during the eligibility period, the
39 commenters asked if the reduction would continue if the parent transfers to a non-TRS-
40 certified provider.
41

42 **Response:**

43 The Commission appreciates the comment and has made changes to the proposed rule
44 language to add §809.19(g) to clarify the requirements for TRS parent share of cost
45 reduction.
46

47 The Commission has removed the proposed language that the selection of a TRS provider
48 is a factor in the parent share of cost assessment. Instead, the rule language in §809.19(g)

1 is intended to clarify that the selection of a TRS provider would be, at the Board's option,
2 a reduction of the amount of the parent share of cost assessed in §809.19(a)(1).
3

4 The parent would continue to receive the applicable TRS reduction through the end of the
5 eligibility period, if during the 12-month period, the TRS provider selected by the parent
6 loses TRS certification, or the parent moves or changes employment and no TRS
7 providers are available to meet the needs of the parent's changed circumstance.
8

9 However, if the parent voluntarily transfers the child from a quality provider to a non-
10 quality provider, then the parent would no longer be eligible for the TRS reduction.
11

12 **Comment:**

13 As will be discussed in §809.45, regarding Choices child care, and §809.47, regarding
14 SNAP E&T child care, several commenters requested clarification regarding the parent
15 share of cost exemption for parents participating in Choices and SNAP E&T.

16 Commenters suggested ending the exemption from the parent share of cost once the
17 parent stops participating in Choices or SNAP E&T.
18

19 Additionally, several commenters requested that the parent share of cost exemption for
20 parents of children experiencing homelessness should end and a parent share of cost be
21 assessed if the parent becomes employed or is otherwise eligible for At-Risk child care,
22 following the initial three-month eligibility period for homeless children.
23

24 **Response:**

25 Consistent with the NPRM requirement §98.21(a)(3) that prohibits states from increasing
26 the parent share of cost during the 12-month eligibility period, regardless of increases in
27 the family income, the exemption from the parent share of cost for parents in Choices
28 child care at §809.45 and SNAP E&T child care at §809.47 must continue during the 12-
29 month eligibility period.
30

31 Accordingly, the Commission has modified §809.19(a)(2)(A) - (B) to clarify that parents
32 participating in Choices or SNAP E&T, as well as parents in Choices child care at
33 §809.45 or SNAP E&T child care at §809.47, are exempt from the parent share of cost.
34 This change clarifies that the parent share of cost exemption is retained throughout the
35 eligibility period, even if the parent's participation in these programs changes.
36

37 Similarly, the Commission has also modified §809.19(a)(2)(C) to state that parents with
38 children receiving child care for children experiencing homelessness, as described in
39 §809.52, are exempt from the parent share of cost. This change clarifies that the parent
40 share of cost exemption is retained throughout the eligibility period, even if the child's
41 homelessness status changes.
42

43 **Comment:**

44 One commenter strongly supported the option for Boards to consider the parent selection
45 of a TRS-certified provider in assessing the parent share of cost. Reducing the parent
46 share of cost, along with increasing the provider's payment rate for selection and
47 participation in the TRS program, are effective strategies to encourage parents to select a
48 TRS-certified provider and to encourage greater provider participation in the TRS

1 program. The commenter encouraged the Commission to consider extending this as a
2 requirement for all Boards. The commenter also strongly urged the Commission to
3 ensure Boards secure funding to set their TRS-certified provider reimbursement rate
4 bonus at a level that accommodates any reduction in the parent share of cost without
5 reducing eligibility or creating a waiting list.
6

7 **Response:**

8 The Commission appreciates the support. However, the Commission declines to require
9 this of all Boards. The decision to include the TRS parent share of cost reduction should
10 remain a local decision as determined by the Board--taking into consideration the need
11 for such an incentive and the availability of funds at the local level.
12

13 **Comment:**

14 One commenter recommended that the Commission clarify in the rule language that the
15 Board's consideration of parent selection of a TRS-certified provider result in the
16 reduction of the parent share of cost, as intended by the Commission's rule explanation of
17 NPRM §98.30(h). The current proposed rule language leaves the interpretation of
18 "consider" too vague.
19

20 **Response:**

21 The Commission appreciates the comment and, as explained previously, the Commission
22 has modified the language and added §809.19(g) to clarify that this is a reduction in the
23 assessed parent share of cost, at the Board's discretion.
24

25 **Comment:**

26 One commenter disagreed that the selection of a TRS-certified provider as a
27 consideration in the parent share of cost assessment will encourage providers to
28 participate in the TRS program. Providers are required to collect the parent share of cost
29 at the beginning of the month, and reducing the amount collected at the beginning of the
30 month will not encourage providers to become TRS-certified. The commenter
31 recommended that if the parent share of cost is reduced for selecting a TRS provider, then
32 the TRS provider should be reimbursed at the beginning of the month based on the
33 enrollment authorization.
34

35 **Response:**

36 The Commission's intent is for Boards, at their option, to provide incentives for parents to
37 choose a TRS-certified provider, and, as a result, encourage more providers to become
38 TRS certified in order for the parent to take advantage of this incentive.
39

40 The Commission understands the payment issue described by the commenter and notes
41 that amendments to §809.93 change reimbursements from being based on daily
42 attendance to being based on authorized monthly enrollments. The Commission declines
43 to provide reimbursements prior to the delivery of services under that authorization to
44 account for instances in which the authorization may change during the week or month.
45 This is also consistent with the general principle that reimbursements using public funds
46 occurs following the delivery of services.
47

48 **Comment:**

1 One commenter requested that the Commission allow Boards to waive the parent share of
2 cost for families at or below 100 percent of the federal poverty guidelines, as allowed
3 under the CCDF regulations. This would align with income limits for Early Head Start
4 and Head Start and would help Boards coordinate with local partners in providing
5 "wraparound care" for families.
6

7 **Response:**

8 Pursuant to §809.19(e), the Commission has waived the parent share of cost only to
9 parents in an exempted group in §809.19(a)(2). However, the requirement that the parent
10 share of cost be a sliding fee scale based on income and family size is intended to result
11 in the parent share of cost amount starting at a low amount for families with very low
12 incomes and gradually increase as the family moves to higher income ranges for the same
13 family size. Families at or below 100 percent of poverty would have a lower parent share
14 of cost than families at higher income ranges. Additionally, pursuant to §809.19(f),
15 families whose income is calculated to be zero shall have a zero parent share of cost.
16

17 **Comment:**

18 One commenter did not agree with prohibiting increases in parent share of cost if a parent
19 or family experiences an income increase during the eligibility period.
20

21 **Response:**

22 The Commission notes that the rule reflects requirements in the NPRM. The intent of the
23 rule is described in the preamble to the NPRM as follows:
24

25 The limitation on raising copayments, by protecting the child's benefit level for the
26 minimum 12-month eligibility period, is consistent with the statutory requirement that
27 once deemed eligible, a child shall 'receive such assistance for not less than 12
28 months.' Raising copayments earlier than the 12-month period could potentially
29 destabilize the child's access to assistance and has the unintended consequence of
30 forcing working parents to choose between advancing in the workplace and child care
31 assistance.
32

33 **Comment:**

34 Several commenters requested clarification regarding current Board policies that allow
35 for reductions in the parent share of cost based on factors other than the selection of a
36 TRS-certified provider. Specifically, the commenters inquired whether the Boards are
37 allowed to reduce the assessed parent share of cost based on the level of care authorized
38 (e.g., part-day or part-week).
39

40 **Response:**

41 Pursuant to §809.19(a)(1)(B), the amount of the parent share of cost, including any
42 reduction pursuant to §809.19(a)(1)(C)(iv), due to changes during the eligibility period, is
43 determined by a sliding fee scale based on the family's size and gross monthly income
44 and may also take into consideration the number of children in care. Those are the only
45 factors allowed to determine the amount of the parent share of cost.
46

47 Reductions to that assessed amount are only allowed if the reduction is:
48 --temporary due to extenuating circumstances (§809.19(d)); or

1 --based on the selection of a TRS-certified provider (§809.19(g)).

2
3 NPRM §98.45(k)(2) prohibits the parent share of cost from being based on the cost of
4 care or the subsidy amount. Basing the parent share of cost on the level of services
5 would be considered as basing the parent share of cost on the cost of care or the subsidy
6 amount.

7
8 Reductions for "part-day" and "part-week" care do not meet the intent of the NPRM or
9 §809.19(d) (regarding reductions due to extenuating circumstances), as these reductions
10 are based on the level of services, and not based on family income, family size, number
11 of children in care, temporary extenuating circumstances, or the selection of a TRS
12 provider, as required in the rule. Therefore, these reductions are not allowable.

13
14 As mentioned in the explanation on the rule changes, the Commission amended §809.19
15 to remove the provision that the assessed parent share of cost must not exceed the Board's
16 maximum reimbursement rate or the provider's published rate, whichever is lower. This
17 provision is contrary to the requirement in the NPRM that the assessed parent share of
18 cost must not be based on the cost of care or the amount of the subsidy payment.

19
20 The Commission acknowledges that this type of reduction was allowed previously ;
21 however, upon review of the rules that have been in place, these reductions do not
22 conform to the requirements in the NPRM.

23
24 **Comment:**

25 Many commenters expressed concerns regarding parents who may fail to pay the parent
26 share of cost as terminating care because the failure to pay the parent share of cost is no
27 longer allowed during the eligibility period. Commenters inquired if Boards may
28 continue to have a policy that limits transfers to another provider if the parent owes a
29 parent share of cost at the current provider. The commenters expressed concerns that
30 parents should be held responsible during the eligibility period for failure to pay the
31 parent share of cost.

32
33 Commenters expressed concerns that the only option to enforce the parent share of cost
34 would be to require Boards to have a policy that reimburses the provider, and the parent
35 would not be allowed back into care at the 12-month eligibility redetermination until the
36 amount is repaid.

37
38 One Board requested consideration to use a suspension process when parents do not pay
39 their assigned parent share of cost, similar to the suspensions allowed for excessive
40 absences. The Board does not want to pay the parent share of cost to the provider when
41 the parent does not pay, as the Board believes this will be setting a negative precedent.
42 The Board specifically requested to be allowed to withhold a transfer or suspend care
43 until the parent has paid the parent share of cost to the provider in full.

44
45 **Response:**

46 Boards may prohibit transfers or allow a certain number of transfers if a parent is not
47 current on the parent share of cost, as long as it does not have the effect of terminating

1 care during the 12-month period. A Board cannot terminate care during the eligibility
2 period for a parent's failure to pay the parent share of cost.

3
4 Providers should report timely for failure to pay the parent share of cost, and Board child
5 care contractors should work with parents to determine why the payments are not being
6 made and possibly temporarily reduce the parent share of cost if necessary.

7
8 Pursuant to §809.13(c)(3), at their option, Boards may choose to have a policy to
9 reimburse the provider when a parent fails to pay the parent share of cost. Where the
10 Board has such a policy, pursuant to §809.117(d)(3), the Board must recoup the costs at
11 the next eligible determination. Where a parent fails to fully repay the cost, the parent is
12 not eligible until the repayment is made, pursuant to §809.117(e).

13
14 To ensure continuity of care for children and to assist working parents with child care,
15 suspensions should only occur in instances in which the parent determines that care is not
16 needed for a temporary amount of time (such as temporary interruptions in activities, or
17 other reasons as determined by the parent that may affect the child's continued
18 attendance). However, failure to pay the parent share of cost is not a reason for the child
19 care contractor to suspend care, as it is not a factor in demonstrating that care is not
20 needed for a temporary amount of time.

21
22 As explained in §809.51, regarding care during interruptions in activities, the preamble to
23 the NPRM notes that, consistent with §658E(c)(2)(N)(i) of the CCDBG Act, "during the
24 minimum 12-month eligibility period Lead Agencies also may not end or suspend child
25 care authorization or provider payments due to a temporary change in a parent's work,
26 training, or education status." Consistent with this guidance, a Board or a Board child
27 care contractor cannot suspend a child's care for the parent's failure to pay the parent
28 share of cost.

29 **Comment:**

30 One commenter inquired if a provider is allowed to end enrollment at the provider's
31 facility if a parent fails to pay the parent share of cost and if those practices are in the
32 provider's established policies.

33
34 **Response:**

35 Yes, a provider may discontinue care at the provider's facility, consistent with established
36 policies related to parents who do not pay for the services provided. However, this must
37 not result in the contractor's termination of the child's eligibility for the subsidy during
38 the 12-month eligibility period.

39
40 **Comment:**

41 One commenter inquired if a new redetermination is conducted and a new parent share of
42 cost assessed if the parents get married, have a baby, or add a sibling to care.

43
44 **Response:**

45 Pursuant to §809.42, family eligibility can only be redetermined at the 12-month
46 eligibility period. Changes in family composition or the addition of a child in care are
47 not factors in eligibility redetermination. If the changes result in a change in family size
48 that would result in a reduced parent share of cost, then such reduction must be made.

1 However, the parent share of cost cannot be increased based on the increase in income
2 during the 12-month period. The addition of a new baby or sibling to care would
3 constitute a change to the number of children to which the parent share of cost is applied.
4 Additional guidance on how to apply the parent share of cost for changes in family size
5 amount added for the child will be provided in the Child Care Services Guide.
6

7 **Comment:**

8 One commenter requested clarification regarding the phrase in the preamble that the
9 parent share of cost may be based on "other factors as appropriate."

10
11 **Response:**

12 This is CCDF regulatory language quoted in the preamble. In Chapter 809 rules, "other
13 factors as appropriate" are set out in §809.19(a)(1)(B) regarding the number of children
14 in care.
15

16 **Comment:**

17 One commenter inquired if parents with currently enrolled children will be able to
18 request their parent share of cost to be reduced due to new exclusions of income sources
19 in §809.44. The commenter suggested parents must wait until January 1, 2017, to request
20 a parent share of cost to be reevaluated or until significant status change occurs or the
21 case comes up for review. This will assist Board contractor staff in managing workload.
22 Otherwise, there will be a significant need for overtime in order for all these cases to be
23 processed timely due to the majority of parents who receive some other income besides
24 income received from work.
25

26 **Response:**

27 The income calculation in §809.44 is used to determine family income at the following
28 points:

- 29 --Initial eligibility determination;
30 --12-month redetermination; and
31 --When a parent reports a change in income that would result in a lower parent share of
32 cost or result in the family exceeding 85 percent of SMI.
33
34

35 Beginning on October 1, 2016, the new income calculation methodology for continued
36 eligibility and the parent share of cost assessment will be used at the family's scheduled
37 redetermination. Upon the effective date of the rules, parents with children currently
38 enrolled in care may report a change in family income or family size that could result in a
39 reduction of the parent share of cost, and the parent share of cost will be calculated under
40 the new income calculation guidelines. At their discretion, Boards may determine
41 whether to consider a reevaluation of family income or family size as a redetermination.
42 If Boards choose to do so, the requirements of §809.42 apply.
43

44 **Comment:**

45 One commenter pointed out that the reference to §809.54(c)(1) in the proposed
46 §809.19(a)(2)(D) is incorrect.
47

48 **Response:**

1 The Commission appreciates the comment and agrees. This was an error in the proposed
2 rules. The reference should be to §809.54(c), as paragraph (1) has been removed from
3 the final rules.
4

5 **§809.20. Maximum Provider Reimbursement Rates**

6 Section 809.20(b) is amended to remove the requirement that Boards establish enhanced
7 reimbursement rates for preschool-age children at providers that obtain school readiness
8 certification, as the school readiness certification system has been discontinued.
9

10 Section 809.20(c) is amended to remove the September 1, 2015, effective date for the TRS tiered
11 reimbursement rates as these requirements are currently in effect.
12

13 Section 809.20(d) is amended to clarify in rule language the current requirement and practice
14 that there must be a two percentage point difference between the TRS star levels.
15

16 **Comment:**

17 One commenter pointed out that the reference to §809.93(e) in the proposed §809.20(a) is
18 incorrect.
19

20 **Response:**

21 The Commission appreciates the comment and agrees. This was an error in the proposed
22 rules. The reference should be to §809.93(f), and this has been corrected in the final
23 rules.
24

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

26 **The Commission adopts the following amendments to Subchapter C:**
27

28 **§809.41. A Child's General Eligibility for Child Care Services**

29 CCDBG Act §658E(c)(2)(N)(i) requires that each child who receives CCDF assistance be
30 considered to meet all eligibility requirements and receive assistance for not less than 12 months
31 before eligibility redetermination. NPRM §98.20 clarifies that general eligibility requirements
32 are applicable "at the time of eligibility determination or redetermination."
33

34 Consistent with CCDBG Act §658E(c)(2)(N)(i) and NPRM §98.20, §809.41 is amended to add
35 language clarifying that a child's general eligibility requirements--i.e., child's age, citizenship
36 status, and residency, and the family's income, work status, and attendance in a job training or
37 educational activity--are applied at the time of eligibility determination or redetermination.
38 Changes to the child's age or residency, the family's income, participation in work, job training,
39 or education activities that occur during the 12-month eligibility period and affect the child's
40 continued care and eligibility are covered in §809.42.
41

42 The CCDBG Act revised the definition of eligibility at §658P(4)(B) so that, in addition to being
43 at or below 85 percent of SMI for a family of the same size, the "family assets do not exceed
44 \$1,000,000 (as certified by a member of such family)." This requirement is included in NPRM
45 §98.20(a)(2)(ii).
46

47 Section 809.41(a)(3)(A) is amended to include this requirement and clarify that a family member
48 must certify that the family assets do not exceed the \$1,000,000 threshold. This certification will

1 be based on the parent's self-attestation and will be included in the application for services.
2 Boards are not required to verify this certification; however, if it is discovered that the family
3 may exceed the \$1 million asset threshold, the parent may be subject to fraud fact-finding
4 procedures, as described in Subchapter F. Additional guidance will be provided in the Child
5 Care Services Guide.

6
7 As mentioned previously, CCDBG Act §650E(3)(B)(i) and NPRM §98.46(a)(3) and §98.51
8 require states to give priority for services to children experiencing homelessness. The NPRM
9 preamble clarifies that Lead Agencies have flexibility as to how they offer priority to this
10 population.

11
12 Consistent with this requirement, §809.41(a)(2)(A) is amended to include language that
13 families meeting the definition of experiencing homelessness in §809.2 are considered as
14 having income that does not exceed 85 percent of SMI. Therefore, Boards are not required
15 to conduct income eligibility determinations for families with a child experiencing
16 homelessness.

17
18 Section 809.41 is amended to remove subsection (d) related to job search limitations. Continued
19 child care for job search is described in §809.51.

20
21 CCDBG Act §658E(c)(2)(N)(iv) requires Lead Agencies to have a "Graduated Phaseout of
22 Eligibility" that includes policies and procedures to continue child care assistance at the time of
23 redetermination for children of parents who are working or attending a job training or
24 educational program and whose income has risen above the Lead Agency's initial income
25 eligibility threshold to qualify for assistance but remains at or below 85 percent of SMI.

26
27 NPRM §98.21(b) provides two options for states to use for the CCDBG Act's graduated phaseout
28 requirement. The phaseout can be accomplished either by:
29 --establishing a second tier of eligibility at 85 percent of SMI if the parents, at the time of
30 redetermination, are working or attending a job training or educational program, even if their
31 income exceeds the initial income limit; or
32 --using the approach specified above, but only for a limited period of not less than an additional
33 12 months.

34
35 Section 809.41 is amended to add language requiring that Boards that establish initial family
36 income eligibility at a level less than 85 percent of the SMI must ensure that the family remains
37 eligible for care after passing the Board's initial income eligibility limit, up to 85 percent of SMI.

38
39 This language is consistent with NPRM §98.21(b)(1)(i), which provides the option to require that
40 the family remain income-eligible for care after passing the initial income eligibility limit,
41 including at the family's scheduled 12-month eligibility redetermination, as long as the family
42 income does not exceed 85 percent of SMI.

43
44 In determining whether the family exceeds 85 percent of SMI, the Board shall use income
45 calculation methodology and guidance that take into consideration fluctuations of income
46 pursuant to §809.44(a).

1 The Commission notes that Boards are not required to establish initial family income eligibility
2 at a level less than 85 percent of the SMI. The graduated phaseout requirements only apply to
3 Boards that have established income eligibility thresholds pursuant to §809.41(a) that are less
4 than 85 percent of the SMI. Boards are reminded that the establishment of income eligibility
5 thresholds must be done in accordance with requirements for Board approving policies in an
6 Open Meeting.
7

8 **Comment:**

9 Two commenters inquired if there is a federal requirement that WIOA-funded child care
10 follow requirements in the CCDBG Act and the NPRM. The comments stated that
11 Boards should be allowed to use WIOA funds for child care services without requiring
12 the 12-month eligibility if the WIOA customer ends WIOA participation.
13

14 **Response:**

15 The Commission appreciates the comment and has amended §809.41 to add paragraph (f)
16 to state that Subchapter C applies only to child care services using CCDF allocated by the
17 Agency pursuant to its allocation rules at Chapter 800 General Administration rule
18 §800.58, and local public transferred funds and local private donated funds described in
19 §809.17.
20

21 **Comment:**

22 One commenter requested clarification regarding the provision in §809.41(c) related to
23 time limits for child care if the parent is enrolled in an associate's degree program that
24 will prepare the parent for a job in a high-growth, high-demand occupation as determined
25 by the Board. The commenter suggested that this language be changed to read a
26 "postsecondary degree program" and not specify the degree, as there is no Agency
27 definition for what constitutes a high-growth, high-demand occupation. Additionally, the
28 commenter asked what happens to eligibility if a parent is meeting eligibility
29 requirements in one workforce area with his or her enrollment in an educational program
30 but moves to another area and no longer meets eligibility due to a program/occupation
31 not being on the new Board's list, since high-growth, high-demand occupation lists can
32 vary significantly across the state. The commenter also requested clarification to confirm
33 that students' career fields no longer will need to be attached to a targeted or demand
34 occupation list.
35

36 **Response:**

37 The Commission declines to make the requested changes. To clarify, there is no
38 requirement in Chapter 809 that a student's career field must be attached to a target or
39 demand occupation in order to be eligible for child care services. However, a Board may
40 choose to have a local policy that places this restriction as a condition of eligibility
41 pursuant to §809.41(b) and §809.41(c), which require four years of eligibility if the
42 parent is enrolled in such a degree program.
43

44 Section 809.41(b) allows Boards to establish policies for the provision of child care,
45 including time limits, for the provision of child care services while the parent is attending
46 an educational program. Section 809.41(c) requires that the time limits must ensure child
47 care for four years if the parent is enrolled in a high-growth, high-demand occupation as
48 determined by the Board. However, the provisions in §809.41(b) - (c) do not require

1 parents to be in such a program leading to a high-growth, high-demand, or targeted
2 occupation, absent a local policy placing this restriction.
3

4
5 Regarding the issue of a parent with an enrolled child moving to a workforce area that
6 has a different educational requirement for eligibility, the educational eligibility
7 requirement of the new Board can only be applied at the parent's scheduled 12-month
8 redetermination.
9

10 **§809.42. Eligibility Verification, Determination, and Redetermination**

11 Section 809.42 is amended to include rule provisions related to eligibility verification,
12 determination, and redetermination consistent with the CCDBG Act.
13

14 Section 809.42(a) is amended to emphasize that a Board shall ensure that all eligibility
15 requirements for child care are verified prior to authorizing care. Due to the requirement in
16 CCDBG Act §658E(c)(2)(N)(i) that each child who receives CCDF assistance will be considered
17 to meet all eligibility requirements and will receive assistance for not less than 12 months before
18 the eligibility is redetermined, it is critical that eligibility is properly and accurately verified prior
19 to authorizing care.
20

21 Consistent with CCDBG Act §658E(c)(2)(N)(i) and NPRM §98.21, amended §809.42(b)
22 requires that Boards ensure that eligibility for child care services shall be redetermined no sooner
23 than 12 months following the initial determination or most recent redetermination.
24

25 **Comment:**

26 Several commenters strongly supported the establishment of a 12-month eligibility
27 period. One commenter stated that this supports continuity of care for children while
28 allowing for wage growth for families on a path toward economic stability.
29

30 **Response:**

31 The Commission appreciates the comment.
32

33 **Comment:**

34 One commenter expressed concern that the 12-month eligibility period in §809.42 will
35 result in fewer children receiving child care services in Texas and across the nation
36 unless there is additional funding for the child care portion of services. The result will be
37 an increase in an already long waiting list for services. The commenter understands that
38 this eligibility period is a requirement of the CCDBG Act; however, there may be
39 unintended consequences that affect the ability to realistically move people back into the
40 workforce.
41

42 **Response:**

43 The Agency agrees that the changes are required due to the changes in the CCDBG Act,
44 and the Agency provided comments to the U.S. Department of Health and Human
45 Services Administration for Children and Families (ACF) on the potential impact to the
46 number of children in care. The Agency will very closely monitor the impact of the 12-
47 month eligibility period on the number of children served and associated costs and any
48 other unintended consequences.

1
2 **Comment:**

3 One commenter stated that leaving the recertification requirement open ended to occur
4 not before 12 months, and not defining an absolute requirement for Board or contractor
5 actions within a certain time period, Boards and contractors could be left open to an
6 arbitrary assignment of improper payment based on failure to conduct due diligence.
7

8 **Response:**

9 The CCDBG Act and the NPRM clearly state that once a child is determined eligible, the
10 child is assumed to be meeting the eligibility requirements for the 12-month eligibility
11 period. Additionally, the NPRM clarifies that payments made during the eligibility
12 period shall not be considered as improper payments due to a change in the family's
13 circumstances. Agency rules further state that recoupments from the parents should only
14 occur for instances in which eligibility was determined on information fraudulently
15 reported or misreported.
16

17 With these guidelines in mind, it is important that the Board ensures that contractors
18 continue to conduct due diligence for determining eligibility at the beginning of the
19 eligibility period.
20

21 Additionally, the Agency will work with the Boards to develop data analysis tools and
22 reports to assist Boards in identifying potential changes in a parent's ongoing eligibility
23 during the 12-month period.
24

25 **Comment:**

26 Many commenters requested clarification regarding the language that eligibility for child
27 care services shall be redetermined "no sooner than 12 months following the initial
28 determination or most recent redetermination." Commenters stated that the language is
29 unclear if eligibility redetermination needs to occur during the 12th month of care or the
30 13th month of care. One commenter acknowledged that this language matches the
31 language used in the NPRM, however, recommended clarifying that the redetermination
32 process occurs prior to the end of the 12th month with an effective redetermination date
33 after the 12th month. Two commenters recommended that the contractors be allowed to
34 initiate the eligibility redetermination process prior to the end of the 12th month of
35 eligibility, with any changes effective the day following the end of the 12th month of
36 eligibility.
37

38 **Response:**

39 The rule language is identical to the language in the proposed CCDF regulations and
40 CCDBG Act. The Commission agrees that the process for redetermining eligibility
41 should begin prior to the end of the 12-month period and the actual redetermination
42 decision should be made prior to the end of the 12-month eligibility period. However, if
43 the parent is determined ineligible prior to the end of the eligibility period, then care shall
44 continue through the end of the 12-month eligibility period. The time frame for
45 beginning the redetermination process is determined by the Board. However, the time
46 frame and deadlines for parents should ensure that sufficient time is allowed for parents
47 to complete the eligibility process, and allow for the required 15-day notification of

1 termination prior to the end of the current eligibility period (if the parent is determined
2 ineligible).

3
4 The Commission also notes that CCDBG Act §658E(c)(2)(N)(ii) requires states to certify
5 that parents ". . . are not required to unduly disrupt their employment in order to comply
6 with the State's or designated local entity's requirements for redetermination."
7

8 Additional operational guidance regarding the redetermination process will be provided
9 in the Child Care Services Guide.
10

11 **§809.43. Priority for Child Care Services**

12 Consistent with CCDBG Act §650E(3)(B)(i) and NPRM §98.46(a)(3) and §98.51, which require
13 states to give priority for services to children experiencing homelessness, the Commission
14 amends §809.43 to add children experiencing homelessness as a second priority group served,
15 subject to the availability of funds. This priority group will follow the three priority groups in
16 state statute--children in protective services, children of a qualified veteran or spouse, and
17 children of foster youth.
18

19 **Comment:**

20 One commenter pointed out that the Sunset Review directs the Agency to study potential
21 methods of providing incentives for parents participating in the child care subsidy
22 program to choose providers with a TRS quality designation and include the results in its
23 2017 report to the legislature. The commenter recommended incentivizing parents to
24 choose quality-rated programs by placing them on a priority wait list and when space is
25 available at one of these programs, parents may choose a program with the commitment
26 to keep their child in that program for at least six months. Program types would include
27 TRS quality-rated programs and programs participating in the Early Head Start--Child
28 Care Partnership grant.
29

30 **Response:**

31 The Commission thanks for the commenter for the suggestion. The Agency will take this
32 under consideration as part of the study on providing incentives to parents to choose
33 quality care.
34

35 **Comment:**

36 One Board recommended adding language to clarify that priority as defined in this
37 section is applicable at initial enrollment. Otherwise, the language regarding service
38 being subject to the availability of funds for the second priority group appears to
39 contradict the 12-month eligibility period. The commenter inquired if "subject to the
40 availability of funds" gives Boards the authority to terminate services for families in the
41 second priority group during the 12-month eligibility period if funding is not available.
42

43 **Response:**

44 The Commission clarifies that the CCDBG Act requires that care shall continue through
45 the 12-month eligibility period unless the family has a permanent end of employment, job
46 training, or education participation of three months. Additionally, Continuity of Care
47 rules at §809.54(b) state, "Nothing in this chapter shall be interpreted in a manner as to
48 result in a child being removed from care." Boards should closely monitor funding levels

1 prior to opening enrollment to new initial eligibility determinations. Additionally, the
2 Agency will work with the Boards to develop data analysis tools and reports to assist
3 Boards in projecting enrollments and managing funds in order to ensure that care for
4 enrolled children is not discontinued due to the unavailability of child care funds.
5

6 **Comment:**

7 The Board recommends that §809.43(a)(2) be reworded to read, "The second priority
8 group is served subject to the availability of funds and includes, in the following order of
9 priority..." in order to ensure clarity of the intent that the priority groups outlined in the
10 second priority group Item 2 be served in the order listed in the rule.
11

12 **Response:**

13 The Commission declines to make the change in rule language; however, the Child Care
14 Services Guide will clarify the order of the priority group.
15

16 **Comment:**

17 One commenter requested that The Workforce Information system of Texas (TWIST) be
18 changed to track local priorities.
19

20 **Response:**

21 The Agency will review the feasibility of making this change in TWIST.
22

23 **§809.44. Calculating Family Income**

24 CCDBG Act §658E(c)(2)(N)(i)(II) and NPRM §98.21(c) require that states take into
25 consideration irregular fluctuations of earnings when calculating income for eligibility. The
26 NPRM further clarifies this requirement by adding that the calculation of income policies
27 ensures that temporary increases in income, "including temporary increases that result in
28 monthly income exceeding 85 percent of SMI (calculated on a monthly basis), do not affect
29 eligibility or family co-payments."
30

31 Section 809.44(a) is amended to reflect these new requirements. The rule language requires that
32 Boards ensure family income is calculated in accordance with Commission guidelines.
33 Consistent with the CCDBG Act, rule language also requires that Commission guidelines:
34 --take into account irregular fluctuations in earnings; and
35 --ensure that temporary increases in income, including temporary increases that result in monthly
36 income exceeding 85 percent SMI, do not affect eligibility or parent share of cost.
37

38 A standard and uniform methodology applied consistently across all 28 workforce areas is
39 important to ensure that the state is meeting the requirements of the CCDBG Act regarding
40 fluctuations of income. Moreover, statewide consistency is important because child care is also
41 required to continue if a parent moves to another workforce area.
42

43 The Commission will be developing guidelines to align income calculation methodology with
44 federal program guidance regarding fluctuations in earnings. The guidance will include, but not
45 be limited to, the following:

- 46 --Income documentation requirements at initial eligibility that may differ from requirements at
47 redetermination;
- 48 --Documentation requirements for gaps in income;

- 1 --Calculation of bonuses received during the 12-month eligibility period;
- 2 --The methodology and documentation used to determine family income for changes reported
- 3 during the 12-month eligibility period; and
- 4 --The methodology and documentation used to determine family income for parents who resume
- 5 work, training, or education during the three-month period of nontemporary cessation of
- 6 activities.

7
8 Section 809.44(b) is amended to provide an updated itemized list of income sources that are
9 specifically excluded from determining family income. This list includes income sources that
10 are specifically excluded by various federal laws or regulations in determining eligibility for
11 public assistance programs, including CCDF, as well as income sources that are excluded by the
12 WIOA adult program.

13
14 The specific exclusions are:

- 15 --Medicare, Medicaid, SNAP benefits, school meals, and housing assistance;
- 16 --Monthly monetary allowances provided to or for children of Vietnam veterans born with
- 17 certain birth defects;
- 18 --Needs-based educational scholarships, grants, and loans, including financial assistance under
- 19 Title IV of the Higher Education Act--Pell Grants, Federal Supplemental Educational
- 20 Opportunity grants, Federal Work Study Program, PLUS, Stafford loans, and Perkins loans;
- 21 --Individual Development Account (IDA) withdrawals for the purchase of a home, medical
- 22 expenses, or educational expenses;
- 23 --Onetime cash payments, including tax refunds, Earned Income Tax Credit (EITC) and
- 24 Advanced EITC, onetime insurance payments, gifts, and lump sum inheritances;
- 25 --VISTA and AmeriCorps living allowances and stipends;
- 26 --Noncash or in-kind benefits such as employer-paid fringe benefits, food, or housing received in
- 27 lieu of wages;
- 28 --Foster care payments and adoption assistance;
- 29 --Special military pay or allowances, including subsistence allowances, housing allowances,
- 30 family separation allowances, or special allowances for duty subject to hostile fire or imminent
- 31 danger;
- 32 --Income from a child in the household between 14 and 19 years of age who is attending school;
- 33 --Early withdrawals from qualified retirement accounts specified as hardship withdrawals as
- 34 classified by the Internal Revenue Service (IRS);
- 35 --Unemployment compensation;
- 36 --Child support payments;
- 37 --Cash assistance payments, including Temporary Assistance for Needy Families (TANF),
- 38 Supplemental Security Income (SSI), Refugee Cash Assistance, general assistance, emergency
- 39 assistance, and general relief;
- 40 --Onetime income received in lieu of TANF cash assistance;
- 41 --Income earned by a veteran while on active military duty and certain other veterans' benefits,
- 42 such as compensation for service-connected death, vocational rehabilitation, and education
- 43 assistance;
- 44 --Regular payments from Social Security, such as Old-Age, and Survivors Insurance Trust Fund;
- 45 --Lump sum payments received as assets in the sale of a house, in which the assets are to be
- 46 reinvested in the purchase of a new home (consistent with IRS guidance);
- 47 --Payments received as the result of an automobile accident insurance settlement that are being
- 48 applied to the repair or replacement of an automobile; and

1 --Any income sources specifically excluded by federal law or regulation.

2
3 The Commission understands that the new income calculation methodology and income
4 exemptions may equate to lower parent share of cost assessments, thereby increasing the cost of
5 care and reducing the number of children the Board may be able to serve. The Agency will
6 continue to analyze Board costs, including parent share of cost, as part of the Agency's
7 performance target methodology.

8
9 New §809.44(c) states that income that is not listed in §809.44(b) as excluded from income is
10 included as income.

11
12 **Comment:**

13 One commenter supported a standard and uniform methodology that is applied
14 consistently across all 28 Boards.

15
16 One commenter supported the amendment to require Boards to calculate family income
17 by taking into account irregular fluctuations in earnings and to ensure that temporary
18 increases in income do not affect eligibility or parent share of cost. The commenter
19 commends the Commission on its recognition of and commitment to creating a standard
20 and uniform methodology applied consistently across all 28 workforce areas in order to
21 best meet the requirements of the CCDBG Act.

22
23 One commenter supported the Commission's amendment identifying income sources
24 excluded from the calculation of family income, especially the exclusion of income
25 earned by a veteran while on active military duty. The commenter has firsthand
26 experience with the challenges military parents face and commends the state on
27 recognizing the unique needs of military families. One commenter strongly supported
28 the exclusion of child support payment, SSI, Social Security, and unemployment
29 insurance (UI).

30
31 **Response:**

32 The Commission appreciates the comments.

33
34 **Comment:**

35 One commenter requested clarification regarding the exclusion of income earned by a
36 veteran while on active military duty. The commenter requested confirmation that this
37 means regular base pay of parents in the military is excluded and wondered whether
38 special pay would continue to be excluded.

39
40 **Response:**

41 It is not the intent of the Commission that base pay of parents in the military be excluded
42 as income. The rule language exempts income earned by a current veteran (a veteran at
43 the time of eligibility determination or redetermination) during the time the individual
44 was serving on active duty. It is also intended to exempt income earned by a current
45 veteran who may have been called back on active duty. The base pay of parents on active
46 military duty, however, is considered income. Further, special military pay would
47 continue to be excluded, pursuant to §809.44(b)(9).

1 **Comment:**

2 One commenter requested clarification regarding the inclusion or exclusion of workers'
3 compensation and alimony. The commenter suggested that workers' compensation, SSI,
4 Social Security Disability Insurance (SSDI), UI, and alimony be included as income, as
5 all of these sources are taxable.
6

7 **Response:**

8 The Commission clarifies that workers' compensation, SSDI, and alimony are not
9 specifically excluded, and therefore, are included as income. However, the other
10 payments (SSI and UI) are excluded from income, consistent with WIOA.
11

12 **Comment:**

13 One commenter requested clarification regarding payments from SSDI. The commenter
14 noted that regular payments from Social Security (such as Old-Age and Survivors
15 Insurance Trust Fund) are listed as excluded income; however, SSDI is not listed as being
16 excluded. SSDI is very similar to regular payments from Social Security.
17

18 **Response:**

19 The Commission notes that recent guidance from the U.S. Department of Labor
20 specifically requires that SSDI not be excluded from income for WIOA. Consistent with
21 WIOA, SSDI is not listed as being excluded, and therefore, is included as income for
22 child care eligibility and the parent share of cost assessment.
23

24 **Comment:**

25 Many commenters stated that a list of income that is excluded is difficult for frontline
26 staff to operationalize, and, likewise, will be difficult for families to understand as well.
27 The commenters recommended that the rules for calculating income include both an
28 inclusion list as well as an exclusion list.
29

30 **Response:**

31 The income calculation guidelines in the Child Care Services Guide will clarify this
32 issue. Similar to WIOA, it is expected that the parent will report all family income.
33 When calculating income, the contractor should review the income reported and exclude
34 from the calculation the sources that are excluded in rule. The Agency will work with
35 Boards to provide ongoing technical assistance regarding this issue.
36

37 **Comment:**

38 Two commenters requested that the calculation methodology be made available for
39 public comment prior to implementation.
40

41 **Response:**

42 The Agency is working with Boards to develop the income calculation methodology.
43 The income calculation methodology will be available in the Child Care Services Guide,
44 which is available to the public. The Agency welcomes input from the public on these
45 operational guidelines.
46

47 **Comment:**

1 One commenter expressed appreciation for the efforts by the Agency to establish a
2 standard and uniform methodology for calculating family income, but wishes to stress
3 that it is imperative that this guidance be provided no later than September 1, 2016, in
4 order for staff to employ the methodology when determining eligibility for customers
5 whose eligibility redetermination is due at the beginning of October 2016.
6

7 In addition to establishing such a methodology, the Board would also recommend that the
8 Agency provide forms and/or checklists that might be helpful in ensuring that the process
9 is being followed accurately, and that all required documentation for calculating income
10 has been ascertained.
11

12 **Response:**

13 The Agency will make the methodology, guidance, and technical assistance available at
14 the earliest date possible upon the adoption of the final rules.
15

16 **Comment:**

17 In order to meet the requirement that the methodology take into consideration
18 fluctuations of income, one commenter recommended that bonuses and incentive
19 payments be excluded from income, as these sources fluctuate greatly. Additionally, as
20 bonuses are considered to be a reward for high-performing employees, including these
21 irregular amounts as countable income is believed to be contrary to the intent of the
22 CCDBG Act of 2014.
23

24 **Response:**

25 The Commission appreciates the comments. The Commission's Chapter 809 rules
26 include bonuses as part of the family income because the bonus may be a significant and
27 stable source of family income. However, the calculation methodology will be designed
28 to appropriately account for fluctuations in bonus amounts.
29

30 **Comment:**

31 One commenter recommended that the income calculation not follow the WIOA
32 methodology requesting proof of income for the last six months, as this creates a barrier
33 for most parents. Including income from a previous employment worked during the prior
34 six months, but which has now ended, does not accurately reflect future wages. The
35 commenter suggested three months of income as a more appropriate methodology. The
36 commenter suggested that the methodology provide for multiple options for parents to
37 report and document income, including the use of the year-to-date amounts and the most
38 recent tax returns.
39

40 **Response:**

41 The Commission appreciates the comments and will take these suggestions into
42 consideration in the income calculation methodology.
43

44 **Comment:**

45 Several commenters requested clarification on specific elements of the income
46 calculation methodology, including:

- 47 --gaps in income;
- 48 --payments on commission-only;

1 --cash-only income;
2 --self-employment income;
3 --temporary increases that may be over 85 percent of SMI; and
4 --the methodology for calculating monthly income for individuals who are paid twice a
5 month.

6
7 **Response:**

8 The Commission appreciates the comments. The income methodology will provide
9 guidance on how these payments will be calculated.

10
11 **§809.45. Choices Child Care**

12 Section 809.45(b) is amended to clarify that for a parent receiving Choices child care who ceases
13 participation in the Choices program during the 12-month eligibility period, Boards must ensure
14 that Choices child care continues:

15 --for the three-month period pursuant to §809.51(b); and
16 --for the remainder of the eligibility period, if the parent resumes participation in Choices or
17 begins participation in work or attendance in a job training or education program during the
18 three-month period described in §809.51(c).

19
20 **Comment:**

21 One Board supported the Commission's efforts to stabilize child care for at-risk and
22 vulnerable children whose parents are in the Choices, TANF Applicant, SNAP E&T, and
23 child protective services child care programs. The commenter noted the September 2012
24 jointly funded brief by ACF's Office of Child Care and Office of Head Start Convened by
25 the National Center on Child Care Professional Development Systems and Workforce
26 Initiatives concluded that "Research has shown that babies who experience multiple
27 disruptions in their early child care are more likely to show aggression and be less
28 outgoing in the preschool years. Further, children's relationships with adult caregivers
29 are vital for shaping the brain, early childhood development, and the foundations of
30 school readiness."

31
32 Additionally, the commenter stated that the irrational and harmful practice of disrupting
33 the care and education of young children whose parents are enrolled in these programs
34 should end. The churning on and off of CCDF as parents lose assistance and later return
35 fails to support CCDF's intentions to stabilize families, increase the quality of care for
36 children, and support the child care industry.

37
38 **Response:**

39 The Commission appreciates the comment.

40
41 **Comment:**

42 Many Boards requested that the Commission consider the negative impact on Choices
43 performance that can occur if Boards are required to provide child care for three months
44 after a Choices participant ceases participation in the Choices program.

45
46 It is recommended that child care ceases when a Choices participant stops participating in
47 the Choices program as required.

1 Customers participating in Choices may receive assistance with child care expenses.
2 Eligibility is determined monthly. Unlike other customers who receive assistance with
3 child care expenses when eligibility is determined for a 12-month period, Choices
4 eligibility is a month-to-month issue. The Boards would support a rule that limits
5 assistance with child care expenses to:

- 6 (a) continued meeting participation requirements; and/or
- 7 (b) continued receipt of TANF benefits.

8
9 Just as eligibility is redetermined on a 12-month basis, Choices eligibility is determined
10 monthly. If the customer does not meet the criteria for continued eligibility for Choices,
11 then we should take action to stop the assistance with child care expenses.

12
13 **Response:**

14 The Commission emphasizes that ending child care prior to three-month continuation of
15 care period is expressly disallowed under the CCDBG Act and the proposed CCDF
16 regulations.

17 The Agency will closely monitor the impact of the changes to cost and performance.

18
19 **Comment:**

20 Many commenters requested clarification regarding which funding source should be used
21 during the three-month continuation of when the Choices parent stops participating in
22 Choices.

23
24 **Response:**

25 The Commission appreciates the comments and has modified §809.45(b)(1) and (2) to
26 clarify that the continued care will be funded as Choices child care.

27
28 Once initially determined eligible for Choices child care, the parent is eligible to receive
29 Choices child care throughout the entire 12-month eligibility period. However, if the
30 parent stops participating in Choices, then Choices child care will continue during the
31 required three-month continuation of care period. Choices child care will cease at the
32 end of the 12-month eligibility period or after three months of nonparticipation in either
33 Choices or other work, education, or training activities.

34
35 **Comment:**

36 Many commenters recommended that the current practice of determining eligibility for
37 income-eligible child care services, complete with the assignment of a parent share of
38 cost, be continued once a Choices participant is no longer participating in Choices.

39
40 **Response:**

41 As stated previously, once determined eligible for Choices child care, Choices child care
42 will continue through the 12-month period as long as the parent is participating in
43 Choices *or* work, training, or education activities. Also, as stated in the discussion on the
44 parent share of cost in §809.19, parents participating in Choices are exempt from the
45 parent share of cost at initial eligibility and the amount cannot increase during the 12-
46 month eligibility period, as this would be contrary to the intent of the CCDBG Act and
47 the NPRM.

1 **Comment:**

2 Several commenters asked whether the parent is placed in a job search for the three
3 months and what documentation is required during the three months.

4
5 **Response:**

6 The Commission clarifies that there is no requirement to document that the parent is
7 engaged in job search or other activities during the three-month continuation of care. The
8 preamble to the NPRM also states, "In fact, we strongly discourage such policies, as they
9 would be an additional burden on families and be inconsistent with the purposes of
10 CCDF and this proposed rule."
11

12 **Comment:**

13 Several commenters inquired if there had been any consideration given to the fact that
14 continued care under the CCDBG Act might have a negative impact on Choices and
15 SNAP E&T workforce performance. The commenters inquired if TWC will readjust
16 each Board's target number of units due to the higher cost associated with Choices child
17 care.
18

19 **Response:**

20 The Agency will monitor any impact to Choices performance and Boards' child care
21 performance targets.
22

23 **Comment:**

24 One commenter inquired whether an individual owes recoupment from suspected fraud
25 and whether they still receive three months once Choices ends.
26

27 **Response:**

28 For prospective fraud determinations, we refer the commenter to the discussion on
29 suspected fraud and fraud determinations in Subchapter F.
30

31 As stated previously, once determined eligible for Choices child care, Choices child care
32 will continue through the 12-month period as long as the parent is participating in
33 Choices or work, training, or education activities. This would include parents who owe
34 recoupments.
35

36 Section 809.117(e) states that a parent subject to repayment for a fraud determination
37 shall be prohibited from future eligibility until the repayment is made "provided that the
38 prohibition does not result in a Choices or SNAP E&T participant becoming ineligible
39 for child care." Future eligibility is considered to be at the parent's 12-month
40 redetermination or the next time the parent applies for child care services. If a parent
41 owes recoupments, but is eligible for Choices child care or SNAP E&T child care at
42 initial eligibility due to participation in those activities, then care must be authorized.
43 However, if the parent is no longer participating in either of these programs at
44 redetermination or the next time the parent applies, then the parent is not eligible for care
45 until the debt is repaid.
46

47 **Comment:**

1 One commenter asked when a Choices customer becomes Transitional before the 12-
2 month eligibility period ends, does this mean he or she will not be assessed a parent share
3 of cost until the next eligibility period or will the eligibility characteristic remain the
4 same until the next recertification period?
5

6 **Response:**

7 The Choices eligibility period will last the full 12 months (unless the parent ceases to
8 participate in Choices or other work, training, or education activity for three months). At
9 the parent's 12-month redetermination, the parent will be redetermined based on
10 Transitional child care eligibility requirements in §809.48 or At-Risk Child Care
11 eligibility requirements in §809.50.
12

13 **Comment:**

14 Several commenters inquired if TWIST will be updated to allow a *Child Care Program*
15 *Detail* with the Choices eligibility characteristic while a *Choices Program Detail* is
16 closed? This will be required if a Choices child care customer ceases participation in the
17 Choices program as their *Choices Program Detail* will be closed as a result; however,
18 Boards will still be required to continue child care for the three-month period.
19

20 **Response:**

21 TWIST does not require an open *Choices Program Detail* in order to open a *Choices*
22 *Child Care Program Detail*.
23

24 **§809.46. Temporary Assistance for Needy Families Applicant Child Care**

25 Section 809.46 is amended to remove provisions that:

- 26 --duplicate the 12-month eligibility period specified in §809.42; or
 - 27 --would end care prior to the end of the 12-month eligibility period.
- 28

29 **§809.47. Supplemental Nutrition Assistance Program Employment and Training Child**
30 **Care**

31 Section 809.47 is amended to remove language stating that SNAP Employment and Training
32 (SNAP E&T) care continues as long as the case remains open.
33

34 Section 809.47(b) is added to clarify that for a parent receiving SNAP E&T child care who
35 ceases participation in the E&T program during the 12-month eligibility period, Boards must
36 ensure that:

- 37 --child care continues for the three-month period pursuant to §809.51; and
 - 38 --the provisions of §809.51 shall apply if the parent resumes participation in the E&T program or
39 begins participation in work or attendance in a job training or education program during the
40 three-month period.
- 41

42 **Comment:**

43 Many commenters requested clarification regarding which funding source should be used
44 during the three-month continuation of when the SNAP E&T parent stops participating in
45 SNAP E&T.
46

47 **Response:**

1 The Commission appreciates the comments and, consistent with Choices child care in
2 §809.45, has modified §809.47(b)(1) and (2) to clarify that the continued care will be
3 considered as SNAP E&T child care.
4

5 Once initially determined eligible for SNAP E&T child care, the parent is eligible to
6 receive SNAP E&T child care throughout the entire 12-month eligibility period.
7 However, if the parent stops participating in E&T, then SNAP E&T child care will
8 continue during the required three-month continuation of care period. SNAP E&T child
9 care will cease at the end of the 12-month eligibility period or after three months of
10 nonparticipation in either SNAP E&T or other work, education, or training activities.
11

12 **Comment:**

13 Many commenters recommended that the current practice of determining eligibility for
14 income-eligible child care services, complete with the assignment of a parent share of
15 cost, be continued once a SNAP E&T participant is no longer participating in SNAP
16 E&T.
17

18 **Response:**

19 As stated previously, once determined eligible for SNAP E&T child care, SNAP E&T
20 child care will continue through the 12-month period as long as the parent is participating
21 in SNAP E&T *or* work, training, or education activities. Also, as stated in the discussion
22 on the parent share of cost in §809.19, parents participating in SNAP E&T are exempt
23 from the parent share of cost at initial eligibility and the amount cannot increase during
24 the 12-month eligibility period as this would be contrary to the intent of the CCDBG Act
25 and the NPRM.
26
27

28 **§809.48. Transitional Child Care**

29 Section 809.48 is amended to remove provisions that would end care prior to the end of the 12-
30 month eligibility period.
31

32 **Comment:**

33 One commenter requested confirmation that the only change to this section was to
34 remove those individuals who were not employed when TANF expired from eligibility
35 for Transitional child care. The commenter stated that the current practice is to have the
36 parent come in and determine eligibility for transitional care, and asked if this would still
37 be the process.
38

39 **Response:**

40 The only changes to the section involved removing the provisions that would end care
41 prior to the end of the 12-month eligibility period for Transitional child care. Once
42 Choices child care ends at the end of the 12-month eligibility period, the family would be
43 redetermined for eligibility as Transitional, if the conditions of §809.48 are met, or At-
44 Risk, if the conditions of §809.50 are met.
45
46

47 **§809.49. Child Care for Children Receiving or Needing Protective Services**

1 Section 809.49 is amended to clarify that child care discontinued by DFPS prior to the end of the
2 12-month eligibility period shall be subject to the Continuity of Care provisions in §809.54(c)
3 regarding continued care for closed DFPS Child Protective Services (CPS) cases.

4
5 Section 809.49 is also amended to clarify that the requirements of §809.91(f)(1) do not apply to
6 foster parents whose care is authorized by DFPS. The language clarifies that requests made by
7 DFPS for specific eligible providers are enforced for children in protective services, including
8 children of foster parents when the foster parent is the owner, director, assistant director, or other
9 individual with an ownership interest in the provider.

10
11 A technical change to §809.49(a)(2) is made to clarify that DFPS may authorize care for a child
12 under the age of 19.

13
14 **Comment:**

15 The Commission received many comments regarding the continuation of care through the
16 end of the 12-month eligibility period for closed DFPS CPS cases as required in
17 §809.54(c) and §809.49(a)(3). Commenters submitted that this provision would strain
18 Board funding and would lead to many low-income customers not receiving care. One
19 commenter suggested that the Commission make an exception to the continuity of care
20 provision for DFPS customers. One commenter asked if there would be a minimum
21 amount of time that the child will be required to be funded by DFPS before DFPS
22 discontinues funding and the child is served using Board funds.

23
24 **Response:**

25 As mentioned regarding continued care for Choices and SNAP E&T, discontinuing care
26 prior to the end of the 12-month period is not allowed under the CCDBG Act or the
27 proposed CCDF regulations. The preamble to the CCDF regulations states:

28
29 Based on feedback from the States and various stakeholders, ACF has already
30 considered possible exceptions to the minimum 12-month eligibility period for certain
31 populations, such as children in families receiving TANF and children in protective
32 services, but has decided that such special considerations would be in conflict with the
33 CCDBG Act, which clearly provides 12-month eligibility for all children.

34
35 The Agency will closely monitor the impact of the changes to cost and performance.

36
37 **Comment:**

38 Several commenters requested clarification as to whether the eligibility requirements
39 outlined in §809.41 apply to families receiving protective services child care once DFPS
40 funding has ended. The commenters are aware that many parents receiving DFPS CPS
41 funding for child care are not eligible under §809.41 because they are not meeting work,
42 training, or educational requirements or they are earning over 85 percent of SMI. The
43 commenters stated that families not meeting the eligibility requirements in §809.41
44 would need to be terminated once DFPS eligibility expires.

45
46 One commenter suggested that once CPS funding ends, children are allowed to be placed
47 in CCDF funding for three months. At the end of the three months, the Board contractor

1 would determine if parents are meeting eligibility requirements. If the family is no
2 longer eligible, the care should end.
3

4 **Response:**

5 As stated in §809.41(a), the eligibility requirements in that section do not apply to
6 children authorized for care by DFPS under §809.49. The CCDBG Act and the NPRM
7 require that during the period of time between redetermination, if the child met all of the
8 requirements for eligibility on the date of the most recent eligibility determination or
9 redetermination, the child shall be considered to be eligible and will receive services for
10 the 12-month eligibility period.
11

12 DFPS determines that the child meets eligibility requirements for CPS child care pursuant
13 to §98.20(a)(3)(ii) of the CCDF regulations, which allows for children in protective
14 services to be eligible for care if the parent or caretaker is not working or if family
15 income is over 85 percent of SMI.
16

17 Once DFPS makes that determination, pursuant to the CCDBG Act, the child is
18 considered eligible for the 12 months. Once DFPS closes the child protective case, then
19 DFPS-funded care will end and Agency-funded care will begin through the remainder of
20 the eligibility period.
21

22 **Comment:**

23 Many commenters inquired if former DFPS children will be made a required priority
24 group or will be subject to the availability of funds. Many commenters recommended
25 that former CPS be included as a second priority group, subject to the availability of
26 funds.
27

28 **Response:**

29 Once DFPS authorizes care for a child in protective services, the Boards must provide
30 child care services to that child. As mentioned previously, care must continue through
31 the end of the 12-month eligibility period. At the end of the 12-month eligibility period,
32 the child's eligibility will be redetermined for continued care under any eligibility type in
33 Subchapter C.
34

35 The Agency acknowledges that CPS cases must be served and not be subject to the
36 availability of funds. The Agency will closely monitor the impact of the changes to cost
37 and performance.
38

39 **Comment:**

40 Several commenters requested clarification on when the 12-month eligibility begins for
41 DFPS cases. The commenter inquired if the 12-month period begins when DFPS case
42 opened the authorization or when DFPS case is closed.
43

44 **Response:**

45 The 12-month eligibility period begins when DFPS first authorizes the care.
46

47 **Comment:**

1 Several commenters requested information on the process for continuing care for former
2 CPS cases. One commenter asked if the DFPS cases will be closed and referred to the
3 Board contractor as "Former DFPS," or will the child be considered as at-risk. Another
4 commenter requested clarification on what information will be requested or required
5 from the parent or guardian.
6

7 **Response:**

8 The DFPS program detail will be closed and a new "Former DFPS" program detail will
9 be opened with an end date that is 12 months from the start of initial DFPS authorization.
10 The Agency will work with DFPS to ensure that information necessary for the Board to
11 continue care is provided to the Board. Additional information on the process for
12 continuing the care will be addressed in the Child Care Services Guide.
13

14 **§809.50. At-Risk Child Care**

15 Section 809.50 is amended to clarify that eligibility requirements for At-Risk child care are
16 applied at initial determination and at the 12-month eligibility redetermination, pursuant to
17 §809.41 and §809.42.
18

19 **Comment:**

20 One commenter stated that with the rule that services must continue when there is a
21 change in residency within the state, the allowance for the Board to set a higher number
22 of hours per week may be difficult for parents at the point of redetermination. If the
23 parent moves from a Board area that uses the 25 hours per week rule and is eligible and
24 then moves into another Board area that requires a higher number of hours for each
25 parent, the child would remain in care for the remainder of the 12 months, but at the point
26 of redetermination, the parent would then have to meet the current Board's higher rule.
27 The commenter recommended to remove the allowance of the Board to set a higher
28 number of hours per week in order to ensure consistent eligibility across the state.
29

30 **Response:**

31 The Commission declines to make this change and will continue to allow Boards the
32 local flexibility to have higher minimum work hours than the minimum Agency
33 requirement. This is a local decision based on local needs and local factors as determined
34 by the Board.
35

36 **Comment:**

37 One commenter pointed out that the proposed rules at §809.50(a)(1) made a reference to
38 §809.41(a)(2)(A) instead of (a)(3)(A) in regards to income limits established by the
39 Board.
40

41 **Response:**

42 The Commission appreciates the comment and has made the correction on the final rules.
43

44 **§809.51. Child Care during Interruptions in Work, Education, or Job Training**

45 Section 809.51 is amended to include CCDBG Act and NPRM requirements regarding the
46 provision of child care during interruptions in work, education, or job training. The section
47 contains the rules related to both temporary interruptions and permanent cessation of activities
48 during the 12-month eligibility period.

1
2 Section 809.51(a) is amended to include the CCDBG Act requirement that if a child met all of
3 the applicable eligibility requirements for any child care service in Subchapter C on the date of
4 the most recent eligibility determination or redetermination, the child shall be considered to be
5 eligible and will receive services during the 12-month eligibility period, regardless of any:
6 --change in family income, if that family income does not exceed 85 percent of SMI for a family
7 of the same size; or
8 --temporary change in the ongoing status of the child's parent as working or attending a job
9 training or education program.

10
11 Consistent with language in the NPRM, a temporary change shall include, at a minimum, any:
12 --time-limited absence from work for an employed parent for periods of family leave (including
13 parental leave) or sick leave;
14 --interruption in work for a seasonal worker who is not working between regular industry work
15 seasons;
16 --student holiday or breaks within a semester, between the fall and spring semesters, or between
17 the spring and fall semesters, for a parent participating in training or education;
18 --reduction in work, training, or education hours, as long as the parent is still working or
19 attending a training or education program;
20 --other cessation of work or attendance in a training or education program that does not exceed
21 three months;
22 --change in age, including turning 13 years old or a child with disabilities turning 19 years old
23 during the eligibility period; and
24 --change in residency within the state.

25
26 Section 809.51(b) is amended to require that during the period of time between eligibility
27 redeterminations, a Board shall discontinue child care services due to a parent's loss of work or
28 cessation of attendance at a job training or educational program that does not constitute a
29 temporary change in accordance with paragraph (b)(2) of this subsection. However, Boards
30 must ensure that care continues at the same level for a period of not less than three months after
31 such loss of work or cessation of attendance at a job training or educational program.

32
33 Section 809.42(c) is amended to state that if a parent resumes work or attendance at a job
34 training or education program at any level and at any time during the three months, Boards shall
35 ensure that:
36 --care will continue to the end of the 12-month eligibility period at the same or greater level,
37 depending upon any increase in the activity hours of the parent; and
38 --the parent share of cost will not be increased during the remainder of the 12-month eligibility
39 period, including for parents who are exempt from the parent share of cost pursuant to §809.19.

40
41 This is consistent with NPRM §98.21(a)(3), which prohibits states from increasing the parent
42 share of cost during the 12-month eligibility period, regardless of increases in the family income.

43
44 The rule language also clarifies that the Board child care contractor shall verify only:
45 --that the family income does not exceed 85 percent SMI; and
46 --the resumption of work or attendance at a job training or education program.

1 Section 809.51(d) is amended to state that the Board may suspend child care services during
2 interruptions in the parent's work, job training, or education only with the concurrence of the
3 parent.

4
5 *School Holidays and Breaks*

6 The Commission clarifies that student holidays such as spring break and breaks between the fall
7 and spring semesters, or between the spring and fall semesters (including the summer break), are
8 considered temporary changes, and care shall continue during those breaks. However, breaks of
9 the full fall or the full spring semesters are considered nontemporary, and care ends if the parent
10 does not resume attendance at an education or job training program, or does not participate in
11 work within three months from the end of the previous enrollment.

12
13 *Reductions in Work, Training, or Education for Dual-Parent Families*

14 The Commission clarifies that in a dual-parent family, if both parents have a nontemporary loss
15 of job (or end of training/education activities), then the family would be subject to the three-
16 month job search period prior to termination. However, if one parent experiences a
17 nontemporary change, then this would be considered a reduction in the dual-parent 50-hour
18 participation requirements. Under the CCDBG Act, a reduction in work is not considered a
19 permanent loss of job and is not subject to discontinuation of the child's care. Care would
20 continue through the 12-month period without requiring care to end if one parent does not
21 resume activities within three months. The child is still residing with at least one parent who is
22 working and is still eligible under the CCDBG Act.

23
24 *Continued Care for Children over the Age of 13 or the Age of 19 for a Child with Disabilities*

25 The Commission notes that the DFPS Child Care Licensing allows children under the age of 14
26 (and under the age of 19 for children with disabilities) to receive care at a regulated facility.
27 However, the Commission is aware that some child care facilities do not serve children over the
28 age of 13 or 19 (for a child with disabilities). In such a case, the Board must ensure that
29 eligibility does not end and work with parents and provider to continue care at a different
30 provider selected by the parent until the end of the child's eligibility period, unless the parent
31 voluntarily withdraws from child care services.

32
33 *Continued Care for Children and Families Relocating to Another Workforce Area*

34 Under the CCDBG Act, a change in the child's residence is not grounds for ending care in the
35 state, regardless of the enrollment status of the workforce area to which the parent moved. The
36 Commission understands that a Board at full enrollment would be required to enroll and fund
37 children even if the Board enrollment of new children is closed at the time. The movement of
38 children both into and out of workforce areas is anticipated to be balanced throughout the year.
39 However, the Agency will track this movement and the fiscal impact on Boards to determine if
40 funding amounts should be adjusted accordingly.

41
42 Additional policies, procedures, and documenting requirements regarding continuation of care
43 for children and families who relocate to another workforce area will be provided through
44 updates to the Child Care Services Guide.

45
46 The Commission clarifies that the Board that determined eligibility at the beginning of the 12-
47 month period is responsible for any subsequent finding of improper eligibility determinations.
48 However, the Board in the workforce area in which the family relocates is responsible for

1 verifying that the move did not result in a nontemporary loss of work, training, or education, and
2 the family is not over 85 percent of the SMI.

3
4 The Commission clarifies that if the move to a different workforce area does not result in a
5 change of provider (i.e., the child remains at the originating workforce area provider), then care
6 would continue at that provider under the originating Board's agreement, rates, and funding
7 through the remainder of the authorization for care and the end of the 12-month eligibility
8 period. However, if the move to a different workforce area results in or is accompanied by a
9 change in provider, then the receiving Board will establish and fund the authorization.

10
11 The Commission also clarifies that if a parent is participating in the three-month period of
12 continued care and relocates to a different workforce area without resuming activities, then the
13 parent would not receive a new three-month period, but is entitled to continue the three-month
14 period that began in the previous workforce area.

15
16 *Other Cessation of Work, Training, or Education Activities*

17 The Commission recognizes that there are situations, such as parent incarcerations or other
18 circumstances, that may not be clearly defined in the rules. The Commission will work with
19 Boards to provide guidance on these situations. As a general rule, if the separation from
20 activities is of a length that would allow the parent to continue participation within three months,
21 then care would continue through the remainder of the 12-month eligibility period. If, however,
22 the separation is expected to last over three months, then care would be discontinued three
23 months after the cessation of work, training, or education.

24
25 *Number of Three-Month Periods in a 12-Month Eligibility Period*

26 The CCDBG Act requires that care continue for at least 12 months following the initial
27 eligibility determination. Neither the CCDBG Act nor the NPRM allows states to put limits on
28 the number of three-month periods of continued care that a parent may have during the 12-month
29 eligibility period. Parents will be allowed a three-month period of continued care for each
30 nontemporary cessation of activities within the 12-month eligibility period.

31
32 *Parent Share of Cost during the Three-Month Period of Continued Care*

33 As required in §809.19(a)(1)(c), the parent share of cost is reassessed if a parent reports a change
34 in income that would result in a reduced parent share of cost. Accordingly, the parent share of
35 cost should be reassessed during the three-month period due to the resulting reduction of family
36 income. As mentioned in the discussion on calculating family income in §809.44, the
37 Commission will provide guidance on the methodology used to calculate income during this
38 period in order to take into consideration fluctuation in income. During this period, Boards may
39 also reduce the parent share of cost based on the Board policies for reductions due to extenuating
40 circumstances pursuant to §809.19(d).

41
42 *Increases in the Level of Care following the Three-Month Period of Continued Care*

43 Section 809.51(c) requires care to continue to the end of the 12-month eligibility period at the
44 same or greater level, depending on any increase in the activity hours of the parent. The
45 Commission expects that the parent should provide documentation to verify that such an increase
46 is warranted.

47
48 *Suspensions of Child Care during the 12-month Eligibility Period*

1 The preamble to the NPRM notes that, consistent with §658E(c)(2)(N)(i) of the CCDBG Act,
2 "during the minimum 12-month eligibility period Lead Agencies also may not end or suspend
3 child care authorization or provider payments due to a temporary change in a parent's work,
4 training, or education status." However, the preamble also notes that "despite the language that
5 the child 'will receive such assistance,' the receipt of such services remains at the option of the
6 family." The law does not require the family to continue receiving services, nor would it force
7 the family to remain with a provider if the family no longer chooses to receive such services.

8
9 Therefore, the amended Commission rules require that any suspensions of care during the 12-
10 month eligibility period shall only be upon concurrence from the parent. This provision is
11 included in §809.51 regarding optional suspensions of care during interruptions in work, job
12 training, or education. As will be discussed in §809.78 regarding attendance standards, the
13 requirement that care can only be suspended at the concurrence of the parent is also included for
14 suspensions of care under §809.78.

15
16 *Implementation of the 12-Month Eligibility Period*

17 The Commission clarifies that eligibility determinations under the new rules will go into effect at
18 the family's first scheduled redetermination (under the Board's previous determination period)
19 following October 1, 2016.

20
21 **Comment:**

22 Several commenters supported the requirements regarding continuation of care during
23 interruptions of work, training, or education activities. One commenter strongly
24 supported the proposed amendments stating that it will make it easier for parents to
25 maintain employment or complete education programs, and supports both family
26 financial stability and the relationship between children and their caregivers.

27
28 Another commenter supported the continuation of child care for the 12-month eligibility
29 period if one parent in a dual-parent household experiences a permanent loss of job or
30 end of training or education activities. The commenter supports efforts to decrease the
31 churning on and off of subsidized care as parents lose assistance then later return. The
32 commenter is aware of the harm this can cause children and understands that it runs
33 counter to the CCDF's purpose to stabilize the care and education of low-income
34 children.

35
36 Another commenter supported the changes to ensure the continuity of care and putting
37 the welfare of the child first.

38
39 **Response:**

40 The Commission appreciates the comments.

41
42 **Comment:**

43 One commenter noted that some summer breaks slightly exceed the three-month period
44 cited in the rule language as a temporary break. The commenter requested clarification
45 as to whether summer breaks are included as a temporary break or a nontemporary break.

46
47 **Response:**

1 The Commission appreciates the comment and agrees that summer breaks should be
2 considered as temporary breaks in education. The rule has been modified to state that
3 breaks between the fall and spring semesters, or between the spring and fall semesters,
4 are considered temporary changes. This would include summer breaks as meeting the
5 standard in §809.51(a)(2)(C) as a temporary break in education.
6

7 **Comment:**

8 One commenter noted that parent-requested suspensions are not mentioned in the new
9 rules. The commenter inquired if parents will continue to be allowed to suspend care
10 during temporary breaks in work or training periods. The commenter noted that some
11 parents prefer to have their children at home with them on breaks and not pay the parent
12 share of cost while on the breaks, including suspensions for court-ordered visitations.
13

14 **Response:**

15 The Commission appreciates the comment and, as discussed previously, has added a
16 provision in §809.51(d) that parents may suspend care during interruptions in work,
17 training, or education. The rule requires that the suspension must be at the concurrence
18 of the parent.
19

20 **Comment:**

21 One commenter inquired if a child with disabilities turns 19 during the 12-month
22 eligibility period, does the child remain in care until the end of the eligibility period or
23 would the child's care end from care the day before their 19th birthday.
24

25 **Response:**

26 The Commission appreciates the comment and has modified the rule to include that
27 eligibility for children with disabilities continues through the end of the 12-month
28 eligibility period if the child turns 19 during the eligibility period.
29

30 **Comment:**

31 Many commenters disagreed with the provision that allows for one parent in a dual-
32 parent family to experience a permanent loss of a job and for the change to be considered
33 a reduction in work. Commenters submitted that allowing such families to continue to
34 receive care effectively held single-parent families to a higher participation standard than
35 two-parent families.
36

37 **Response:**

38 The CCDBG Act and the CCDF regulations do not specifically address this issue of
39 single or dual-parent families.
40

41 In the Act and the regulations, a child's eligibility requirement is to reside with "a parent
42 or parents who are working or attending a job training or educational program" (CCDBG
43 Act 658P(4)(C)(i); NPRM §98.20(a)(3)(i)). The language is unchanged in the
44 reauthorization and proposed regulations.
45

46 Both the Act (658E(c)(2)(N)) and the NPRM (§98.21) require that the child remain
47 eligible between eligibility periods regardless of a temporary change in "the parent's"
48 (singular) status. Both use the singular "parent" regarding the *state option* to end care if a

1 "parent" has a nontemporary cessation of activities. Because this is a state option, there
2 is no requirement in the Act or the regulations that the state must end care if one parent in
3 a dual-parent family has a permanent cessation of activities.
4

5 In fact, the preamble states that the default is to continue care for 12 months in order to
6 ensure that the goal of continuity of care is maintained and child care is available to assist
7 the parent if he or she regains employment.
8

9 Therefore, in order to comply with the intent of the CCDBG Act that child care continue
10 for 12 months, both parents must have a permanent cessation of activities in order to end
11 care after the three-month continuation of care period. This would ensure that the goal of
12 continuity of care for the child is maintained and ensure that child care is continued while
13 one parent is working while the other parent reenters the workforce.
14

15 **Comment:**

16 One commenter asked if §809.51 (a)(2)(D) means that the parent can be working less than
17 25 hours and if this would be considered temporary.
18

19 **Response:**

20 The minimum activity requirement of 25 hours per week (50 hours for a dual-parent
21 family) is a state requirement. NPRM §98.21(a)(1)(ii)(D) includes reduction in hours, as
22 long as the parent is working or in training or education, as a temporary status change,
23 and the child will remain eligible for care through the 12-month eligibility period.
24

25 **Comment:**

26 One commenter requested clarification on how Boards "must ensure" eligibility continues
27 at a different provider when a child turns 13. Boards do not have any control over
28 providers or their policies regarding the age of the youth they serve.
29

30 **Response:**

31 The Commission understands that providers may discontinue a child's care when the
32 child turns 13, pursuant to the provider policy. However, Boards must ensure that the
33 eligibility is not ended. The Board must ensure that the child remains eligible during the
34 eligibility period. Boards are strongly encouraged to assist parents in locating providers
35 that care for 13-year-old children and should make a diligent effort to find and encourage
36 local providers to care for children through the age of 13.
37

38 As provided in §809.51(d), parents may decide to have care suspended pending the
39 choice of an acceptable provider.
40

41 **Comment:**

42 One commenter inquired if the three-month continuation of care is three calendar months
43 or 90 calendar days. The commenter preferred to establish three calendar months as the
44 benchmark. The commenter also requested this clarification regarding the three-month
45 initial eligibility for children experiencing homelessness.
46

47 **Response:**

1 The Commission clarifies that the requirement is for three months, not 90 days.
2 Therefore, the standard will be to use three calendar months.
3

4 **Comment:**

5 Many commenters requested clarification and guidance on specific scenarios that may
6 occur during the 12-month eligibility period related to continuing care or ending care
7 after the three-month period. The commenters also requested clarification on the process,
8 documentation requirements, and handling provider payments when a child in care moves
9 from one workforce area to another. One commenter requested that guidance be
10 provided in the Child Care Services Guide.
11

12 **Response:**

13 The Commission appreciates the comments and will review each scenario and provide
14 guidance in the Child Care Services Guide.
15

16 **Comment:**

17 One commenter inquired if care continues for the year of eligibility if a parent moves out
18 of state after the child is determined eligible for care.
19

20 **Response:**

21 Agency child care funds cannot be used for customers who do not reside in Texas.
22
23
24

25 **§809.52. Child Care for Children Experiencing Homelessness**

26 New §809.52 is added to include initial eligibility for children experiencing homelessness.
27 CCDBG Act §658E(c)(3) requires that state procedures permit enrollment (after an initial
28 eligibility determination) of children experiencing homelessness while required documentation is
29 obtained.
30

31 Consistent with this requirement, §809.52(a) requires that for a child experiencing homelessness,
32 a Board shall ensure that the child is initially enrolled for a period not to exceed three months.
33

34 Section 809.52(b)(1) states that if, during the three-month enrollment period, the parent of a
35 child experiencing homelessness is unable to provide documentation verifying that the child
36 meets the age and citizenship status requirements under §809.41(a)(1) - (2), then care shall be
37 discontinued following the three-month enrollment period. Consistent with NPRM §98.51,
38 payments of child care services for this three-month period are not considered improper
39 payments.
40

41 Section 809.52(b)(2) states that if, during the three-month enrollment period, a parent provides
42 documentation verifying eligibility under §809.41(a) (regarding the child's age and citizenship
43 status, and the parent's participation in work, job training, or education activities) then care shall
44 continue through the end of the 12-month initial eligibility period (inclusive of the three-month
45 initial enrollment period).
46

47 For parents of children experiencing homelessness, parent self-attestation of the eligibility
48 requirements under §809.41(a)(1) - (2) will be allowed for the first three months for all eligibility

1 requirements, as long as the family meets the definition of homelessness. This can be verified
2 through another entity such as a school district or housing authority, or by the Board contractor.

3
4 The Agency will work with Boards to provide guidance on determining initial and continuing
5 eligibility for homeless families.

6
7 The Commission clarifies that parents of children experiencing homelessness must have appeal
8 rights pursuant to §809.74.

9
10 **Comment:**

11 One commenter requested clarification as to whether or not initial eligibility includes
12 verifying employment, training, and education activities for family members, and, if so, if
13 verification documentation must be presented at that time or if self-attestation is
14 adequate. The commenter understands that documentation related to age and citizenship
15 does not have to be presented at initial eligibility but must be presented within three
16 months for care to continue. The Board appreciates the Agency's stated commitment to
17 providing guidance on determining initial and continuing eligibility for homeless
18 families, and requests that this guidance be included in the Child Care Services Guide.

19
20 **Response:**

21 The Commission clarifies that initial eligibility for homeless children does not include the
22 parent's participation in work, training, or education. However, verification of these
23 requirements must be conducted in order for care to continue after the initial eligibility
24 period.

25
26 **Comment:**

27 One commenter requested clarification regarding acceptable documentation to verify
28 homelessness. For example, is self-attestation acceptable only at initial eligibility
29 determination and is the initial certification period only for three months, with a zero
30 parent share of cost assessed? Then, at the end of the three-month certification, must all
31 required eligibility documents be provided in order to continue care through the
32 remainder of the 12-month period? At that point, is the parent share of cost assessed
33 based on the sliding fee scale?

34
35 **Response:**

36 The Commission clarifies that self-attestation is acceptable to verify homelessness at
37 initial eligibility. All required documentation to verify eligibility under §809.41 is
38 required at three months. Pursuant to §809.19(a)(2), parents of homeless children are
39 exempt from the parent share of cost for the entire 12-month eligibility period.

40
41 **§809.53. Child Care for Children Served by Special Projects**

42 Section 809.53 is amended to clarify that the provisions related to child care for children serviced
43 by special projects are only for special projects funded through non-CCDF sources.

44
45 **Comment:**

46 Two commenters inquired if there is a federal requirement that WIOA-funded Child Care
47 follow requirements in the CCDBG Act and the NPRM. The comments stated that

1 Boards should be allowed to use WIOA funds for child care services without requiring
2 the 12-month eligibility if the WIOA customer ends WIOA participation.
3

4 **Response:**

5 The Commission appreciates the comment and has amended §809.41 to add paragraph (f)
6 to state that Subchapter C applies only to child care services using funds allocated
7 by TWC pursuant to its allocation rules at §800.58, and local public transferred funds and
8 local private donated funds described in §809.17.
9

10 **§809.54. Continuity of Care**

11 Section 809.54 is amended to clarify that for enrolled children, including children whose
12 eligibility for Transitional child care has expired, care continues through the end of the
13 applicable eligibility periods described in §809.42.
14

15 Rule language also clarifies that enrolled children of military parents in military deployment
16 remain eligible for continued care, including parents in military deployment at the end of the 12-
17 month eligibility redetermination period.
18

19 Section 809.54 also removes the temporary placement of a child if space is available due to
20 another child's absence due to custody arrangements, as temporary placements are contrary to the
21 CCDBG Act's 12-month eligibility requirements.
22

23 **Comment:**

24 Regarding §809.54(c), many commenters submitted identical or similar comments in
25 §809.49 regarding continued care for closed DFPS Child Protective Services.
26

27 **Response:**

28 Responses to comments submitted in §809.54(c) are addressed in the discussion in
29 §809.49.
30

31 **Comment:**

32 Many commenters requested clarification regarding the allowability of two providers
33 being reimbursed for the same period when parents have joint custody and the child is
34 cared for by two different providers every other week.
35

36 **Response:**

37 Section 809.93(b) requires that providers be reimbursed based on the child's monthly
38 enrollment authorization, excluding periods of suspensions. Section 809.78(c) requires
39 that absences due to court-ordered visitation are not included in the child's total absences
40 for meeting attendance standards.
41

42 The monthly child care enrollments for joint-custody arrangements such as the one
43 described in the comment should be consistent with the court order. If the court-ordered
44 joint custody arrangement calls for a change in child care arrangements every other week,
45 then the monthly enrollment must reflect that and the provider be reimbursed according
46 to the monthly authorization.
47

48 **Comment:**

1 One commenter expressed appreciation for removing the temporary placement of a child
2 in a slot made open during another child's court-ordered custody arrangements.

3
4 **Response:**

5 The Commission appreciates the comment.
6

7 **Comment:**

8 One commenter requested clarification regarding filling a slot temporarily for a child on
9 court-ordered visitation since temporarily filling a slot is no longer allowed due to the 12-
10 month eligibility period once a child is determined eligible for care. However, the
11 commenter stated that the Board must ensure that a child can return to the same provider
12 pursuant to §809.54(e). The commenter asked how the Board would pay for that child's
13 enrollment during the time the child is away on court-ordered visitation. The commenter
14 is concerned that the provider will not want to hold the spot unless the Board reimburses
15 the provider. The commenter asked if the provider charges the client to hold the spot.
16

17 Another commenter requested guidance if child care during custody arrangements would
18 be considered a suspension of care.
19

20 **Response:**

21 The Commission clarifies that §809.54(e) does not require that the child return to the
22 same provider following a court-ordered visitation. The rule requires that the child return
23 to care "at the same provider or a different provider if agreed to by the parent in advance
24 of the leave." The enrollment during the court-ordered arrangement should continue
25 during the court-ordered visitation. However, the parent will still be responsible for
26 paying the parent share of cost for care during the court-ordered visitation. If the parent
27 decides to suspend the authorization and not pay the parent share of cost, then the
28 provider is not allowed to hold the spot open, as holding spots open without an
29 enrollment authorization is not allowed under §809.93(g). The Commission clarifies that
30 the suspension of care must be at the option of the parent.
31

32 **Comment:**

33 One commenter pointed out that the reference in §809.54(b) to §809.75(b) regarding care
34 during appeals was removed.
35

36 **Response:**

37 The Commission appreciates the comment and has made the correction to the reference
38 in the final rule at §809.48.
39

40 **§809.55. Mandatory Waiting Period for Reapplication**

41 Section 809.55, regarding a mandatory waiting period for reapplication if care is terminated for
42 certain reasons, is repealed because the listed termination reasons for ending care are no longer
43 applicable.
44

45 The Commission did not receive comments on the repeal of this section.
46

47 **SUBCHAPTER D. PARENT RIGHTS AND RESPONSIBILITIES**

48 **The Commission adopts the following amendments to Subchapter D:**

1
2 **§809.71. Parent Rights**

3 Section 809.71 is amended to clarify that the 20-day eligibility notification following receipt of
4 eligibility documentation from the parent is applicable only at the initial eligibility
5 determination.

6
7 Section 809.71(9) is amended to remove the exceptions to the 15-day notification of termination
8 for instances in which care is to end immediately due to a parent no longer participating in
9 Choices or SNAP E&T or due to a child being absent five consecutive days, as these are no
10 longer eligible reasons to terminate care during the 12-month eligibility period.

11
12 Regarding the 15-day termination notice, the Commission clarifies that for parents with a
13 nontemporary cessation of activities, at a minimum, notification must be provided at least 15
14 calendar days prior to the end of the three-month period of continued care. However, Boards
15 should also clearly notify or provide clear instructions to parents at the beginning of the three-
16 month period that care will end if the parent does not resume participation at any level within
17 three months.

18
19 Section 809.71 is amended to remove the 30-day notification due to terminations to make room
20 for a priority group member, as this is no longer an allowable reason to terminate care during the
21 12-month period.

22
23 Section 809.71 is also amended to remove the requirement that parents be informed of the
24 Board's attendance policies. Notification of the attendance standards are located in amended
25 §809.78.

26
27 **Comment:**

28 Two commenters disagreed that the 20-day notification of eligibility be applied at both
29 the initial eligibility determination and the eligibility redetermination, as required in the
30 proposed rules. The commenters stated that the notification within 20 days upon receipt
31 of all necessary documentation is pertinent for initial determination. However,
32 redeterminations must be completed with sufficient time in order to meet the 15-day
33 termination notification prior to end of the 12-month period. Therefore, the same
34 allowance to receive all necessary documentation and then determine and notify within
35 20 days is not applicable.

36
37 Since the child is already receiving care, and if the intent is not to have an interruption in
38 services, the commenters recommend that the required documentation be received at least
39 30 days in advance of the end of the eligibility period, which will allow for processing
40 time, and in the event the parent is not eligible for services to continue, the termination of
41 services could be realized and care would not continue past the 12-month end date.

42
43 **Response:**

44 The Commission agrees with the commenters and has modified the rules to establish the
45 20-day notification of eligibility or denial only for initial eligibility determinations. The
46 Commission also agrees with the commenters and clarifies that if the family is
47 determined to not be eligible for care at the eligibility redetermination, then the family

1 must be notified of termination at least 15-days before the end of the current 12-month
2 eligibility period.
3

4 The Commission believes that the timeline for parent submission of documentation is at a
5 Board's discretion. However, a Board must ensure that the deadline for submitting
6 redetermination documentation provides sufficient time for a Board child care contractor
7 to accurately redetermine eligibility and to ensure that the Board child care contractor
8 provide the 15-day notification of termination prior to the end of the 12-month eligibility
9 period, if it is determined that the family is not eligible for care.
10

11 **Comment:**

12 Several commenters recommended that the 20-day notification of the eligibility
13 determination be extended to allow for quality assurance. Since significant resources are
14 being committed due to the 12-month eligibility period, the commenters stated that it is
15 critical that accuracy is maintained and recommended additional time be allowed for
16 review of case processing.
17

18 **Response:**

19 The Commission declines to extend the 20-day requirement for initial eligibility
20 determinations. The Commission agrees that accuracy and quality assurance is vital,
21 especially with the 12-month eligibility period; however, this quality assurance should be
22 conducted within 20 days in order to ensure that parents who need child care do not have
23 a delay in services.
24

25 **Comment:**

26 Many commenters requested clarification as to whether the 15-day notification of
27 termination is provided during the period of care or at the end of the care. Several
28 commenters recommended that the clarification provided in the preamble that the
29 notification of termination notice be provided at least 15 days prior to the end of the
30 three-month period of continued care be adopted in all instances in which this notification
31 is required to be sent. To send the notification on the termination date requires the Board
32 to pay for an additional 15 days of care and adds to the increased cost of care.
33

34 **Response:**

35 The Commission clarifies that the 15-day notification is required at least 15 days prior to
36 ending care at the end of the eligibility period, if the parent is determined not to be
37 eligible, or at the end of the three-month continuation of care period, if the parent has not
38 resumed activities, and emphasizes that the 12-month eligibility period cannot be
39 extended to allow for the 15-day notice of termination.
40

41 **Comment:**

42 Two commenters recommended that proposed language stating the customer has the right
43 to receive written notification at least 15 days before termination of child care services be
44 changed to say the customer has the right to be sent written notification at least 15 days
45 before termination of child care services. The commenter questions how the Board or
46 contractor would determine the customer received the written notification.
47

48 **Response:**

1 The Commission declines to make changes to this rule. This is a long-standing
2 requirement with which Boards and Board contractors should be familiar. It is correct
3 that there is no guarantee that the parent would actually receive the notification,
4 particularly if the parent moves and did not notify the Board. However, the intent of the
5 language is that the Board's contractor must send the notification to ensure, under normal
6 circumstances, that the parent would receive the notification at least 15 days of
7 termination.

8
9 **Comment:**

10 One commenter inquired if, during the redetermination process, the family income
11 exceeds 85 percent of SMI, does the customer still have 15 days from the day the parent
12 is notified of the termination of child care services.

13
14 **Response:**

15 The Commission clarifies that the parent must receive a notification at least 15 days prior
16 to terminating care at the end of the 12-month eligibility period, including for cases
17 determined ineligible due to family income exceeding 85 percent of SMI.

18
19 **§809.72. Parent Eligibility Documentation Requirements**

20 Section 809.72(a) is amended to clarify that child care cannot be determined or redetermined and
21 care cannot be authorized until parents provide to the Board's child care contractor all the
22 information necessary to determine eligibility.

23
24 Section 809.72(b) is amended to clarify that a parent's failure to submit required documentation
25 shall result in initial denial of child care service or the termination of services at the 12-month
26 redetermination period.

27
28 As mentioned in §809.42(a), due to the requirement in CCDBG Act §658E(c)(2)(N)(i) that each
29 child who receives CCDF-funded child care will be considered to meet all eligibility
30 requirements and will receive assistance for not less than 12 months before the eligibility is
31 redetermined, it is critical that all eligibility documentation submitted is properly and accurately
32 verified prior to authorizing care. As described in §809.42(c), an exception to this requirement
33 exists for a child experiencing homelessness.

34
35 **§809.73. Parent Reporting Requirements**

36 CCDBG Act §658E(c)(2)(N)(ii) and NPRM §98.21(e)(2) state that any requirement for parents
37 to provide notification of changes in circumstances shall not constitute an undue burden on
38 families. Any such requirements shall:

- 39 --limit notification requirements to changes that impact a family's eligibility (e.g., only if income
40 exceeds 85 percent of SMI, or there is a nontemporary change in the status of the child's parent
41 as working or attending a job training or educational program) or changes that impact the Lead
42 Agency's ability to contact the family or pay providers;
43 --not require an office visit to fulfill notification requirements; and
44 --offer a range of notification options (e.g., phone, e-mail, online forms, extended submission
45 hours) to accommodate the needs of working parents.

46
47 Further NPRM language states that Lead Agencies must allow families the option to voluntarily
48 report changes on an ongoing basis:

1
2 --Lead Agencies are required to act on the information provided by the family if it would reduce
3 the family's copayment or increase the family's subsidy.

4 --Lead Agencies are prohibited from acting on information that would reduce the family's
5 subsidy unless the information provided indicates that the family's income exceeds 85 percent of
6 SMI for a family of the same size, taking into account irregular income fluctuations, or, at the
7 option of the Lead Agency, if the family has experienced a nontemporary change in work,
8 training, or educational status.

9
10 Section 809.73 related to parent reporting requirements is amended consistent with this guidance.

11
12 Section 809.73(a) is amended to require Boards to ensure that during the 12-month eligibility
13 period, parents are only required to report items that impact a family's eligibility or that enable
14 the Board or Board contractor to contact the family or pay the provider.

15
16 This is further clarified in §809.73(b), which is amended to state that parents shall report to the
17 child care contractor, within 14 calendar days of the occurrence, the following:

18 --Changes in family income or family size that would cause the family to exceed 85 percent of
19 SMI for a family of the same size;

20 --Changes in work or attendance at a job training or educational program not considered to be
21 temporary changes, as described in §809.51; and

22 --Any change in family residence, primary phone number, or e-mail (if available).

23
24 The amendment extends the number of days to report from the current 10 calendar days to 14
25 calendar days. This will allow additional time for parents to report changes while also allowing
26 sufficient time for Boards to make any requested changes in the parent share of cost or for other
27 authorization changes to become effective, as well as sufficient time to adjust the parent's
28 eligibility (if the reported change caused the family to exceed 85 percent SMI or constitutes a
29 nontemporary change in activity status).

30
31 Because the CCDBG Act limits termination of eligibility for care to the parent's permanent
32 cessation of work, training, or education activities, or the family exceeding 85 percent of SMI
33 (taking into consideration fluctuations of income), §809.73 is also amended to remove the
34 provision that care may be terminated and costs may be recovered due to a parent failure to
35 report a change in §809.73(b). However, the provision that failure to report a change may result
36 in fact-finding for suspected fraud as described in Subchapter F is retained.

37
38 Section 809.73 is also amended to require Boards to allow parents to report, and require the child
39 care contractor to take appropriate action, regarding changes in:

40 --income and family size, which may result in a reduction in the parent share of cost pursuant to
41 §809.19; and

42 --work, job training, or education program participation that may result in an increase in the level
43 of child care services.

44
45 The CCDBG Act requires that reporting requirements during the 12-month period do not
46 constitute an undue burden on working parents, and the NPRM clarifies that the reporting
47 requirements must only be on information that affects eligibility or the ability to contact the
48 parent and pay the provider. Therefore, the Commission emphasizes that Boards must not

1 require parents to report any changes during the 12-month period other than those specified in
2 amended §809.73(a) - (b).

3
4 The Agency will work with Boards to provide technical assistance on establishing clear and
5 family-friendly information for parents on when they are required to report income and family
6 changes.

7
8 Additionally, the Agency will work with Boards to provide reports and tools, including tools
9 associated with wage records and a child's attendance tracking, to assist Boards in identifying
10 parents and families that:

11 --may have changes in income or family size that may have resulted in the family income
12 exceeding 85 percent of the SMI; or

13 --may have experienced a nontemporary change in work, training, or education activities.
14

15 *Implementation of the Reporting Requirements*

16 The Commission clarifies that parents with children enrolled prior to the effective date of the
17 rule amendments may be notified of the new parent reporting requirements at the parent's next
18 scheduled redetermination. However, the standards for assessing any reported changes to the
19 parent's eligibility as well as changes in the consequences for failure to report will be effective on
20 the effective date of the amended rules. Therefore, the Board must ensure that if a parent fails to
21 report a change that was required under the former rules, care shall not be terminated and
22 recoupment is not required for this failure to report, subject to the requirements in Subchapter F
23 regarding recoupments.

24 **Comment:**

25 Several commenters stated that the 14 calendar days to report changes seems irrelevant.
26 While a reporting requirement is needed, since care will continue during the 12-month
27 eligibility period, a time frame is not necessary. At whatever point the parent reports,
28 fact-finding would have to occur to determine the start date of the change to determine
29 eligibility. There is no adverse action that can occur if the parent does not report within
30 14 days.
31

32
33 One commenter recommended that the reporting requirement remain but remove the 14
34 days. The commenter also recommended that "parent shall" language be removed since
35 there is no action (i.e., termination of services) that can be the result if the parent does not
36 report.
37

38 **Response:**

39 The 14-day reporting requirement is to place the parent on notice that any changes that
40 affect eligibility or that enable the Board or Board contractor to contact the family or pay
41 the provider must be reported as soon as possible in order to allow appropriate time for
42 the contractor to review and verify the documentation and to determine the appropriate
43 action to take. If it is discovered, either upon eligibility redetermination or during the 12-
44 month eligibility period, that a change affecting eligibility was not reported timely, then
45 that failure to report may be grounds for fact-finding for suspected fraud.
46

47 **Comment:**

1 Several commenters suggested that parents report all changes and allow the contractor to
2 determine whether or not that change impacts the family's eligibility. The commenters
3 stated that it is easier for parents to remember to report all changes rather than tasking
4 them with making the determination themselves as to whether a change may affect their
5 eligibility. If the change reported does not constitute a change that impacts eligibility, no
6 action will be taken by contractor staff. Encouraging parents to report all changes lowers
7 their risk of receiving services for which they are not eligible. It could also impact the
8 family positively because if they report a change that does not impact eligibility, it could
9 still potentially reduce their parent share of cost or increase their level of subsidy. Since
10 the preamble indicates that parents are required to report one type of change, and are
11 encouraged to voluntarily report all other changes, it would benefit both the parent and
12 contractor staff if given the flexibility to continue to ask (not require) parents to report all
13 changes to the contractor.

14
15 **Response:**

16 The Commission declines to require that parents report all changes. The CCDBG Act
17 states that any requirements for parents to provide notification of changes shall not
18 constitute an undue burden on families. The Commission agrees that parents need clear
19 instructions and guidelines on what information would rise to the level of a required
20 report.

21
22 The Agency will work with Boards to provide clear income and family size levels that, if
23 surpassed, would be over the 85 percent of the SMI eligibility requirement. Clear
24 guidance should also be provided to parents regarding actions that would constitute a
25 temporary change and not need to be reported. The Child Care Services Guide will
26 include guidance for helping parents understand what is considered a temporary change.

27
28 **Comment:**

29 One commenter requested that Boards be allowed to sanction parents for any status
30 changes that would affect eligibility that is not reported, such as changes in income,
31 household size, and address.

32
33 **Response:**

34 The Commission notes that pursuant to §809.112, certain parental actions may be
35 grounds for suspected fraud and cause for Boards to conduct fraud fact-finding or the
36 Agency to initiate a fraud investigation. This will be discussed in greater detail in
37 Subchapter F, Fraud Fact-Finding and Improper Payments.

38
39 **Comment:**

40 Two commenters asked if the various exception reports from Agency (UI Early Warning,
41 Work & Training, Identity Mismatch, and Income Exceptions) will still be necessary.

42
43 One commenter also requested Board flexibility in continuing to contact parents when
44 information available to the contractor (via TIERS, UI, or exception reports provided by
45 the Agency) may indicate that the parent is facing an eligibility issue (such as loss of
46 employment, a second job that puts them over the 85 percent of SMI guidelines, or has
47 had a change in work, training, or education status).

1 **Response:**

2 The Commission agrees that these reports will continue to be very important tools that
3 Boards should use to identify potential changes to the parent's work or income status that
4 may have occurred during the 12-month eligibility period.
5

6 Additionally, the Commission agrees that parents must be contacted when information
7 becomes available that may indicate that a family is no longer eligible. In fact, the
8 Commission notes that the exception reports and data analysis tools should not be the
9 sole source used to determine whether the parent has, in fact, experienced a change in
10 income or a change in work, training, or education participation. The parent must be
11 contacted and given the opportunity to explain the exception and submit documentation,
12 if necessary, to demonstrate that the change did not result in the family exceeding 85
13 percent of SMI or did not result in a permanent cessation of work, training, or education
14 activities.
15

16 **Comment:**

17 Several commenters inquired if the contractor receives information from a source other
18 than the parent regarding potential eligibility issues, will the contractor be allowed to
19 contact the parent to request additional information. Additionally, one commenter asked
20 what consequences are allowed to be imposed for not responding to the inquiry within a
21 set number of days.
22

23 **Response:**

24 The activities described in the comment are allowable. However, care cannot be
25 terminated based solely on the reports or the parent's failure to respond to the request for
26 information. The CCDBG Act and the NPRM state that once the child is determined
27 eligible, the child is assumed to be eligible for the 12-month period.
28

29 If a parent does not respond to requests for information, then a Board may need to
30 address this at either the 12-month redetermination or as part of a potential fraud fact-
31 finding, or both. Additional guidance will be provided in the Child Care Services Guide.
32

33 **Comment:**

34 One commenter requested guidance on situations in which an individual on a temporary
35 summer semester break intends to go back to school after the break, but then does not go
36 back to school. Do they receive three months of continued care from the time school let
37 out or from the time they decided not to go back to school? The commenter also asked
38 what happens if a temporary break turns into a permanent end and is not reported.
39

40 **Response:**

41 The Commission has clarified in rule that a break between the spring and fall semesters
42 would constitute a temporary break in activities. The three months of continued care
43 would start from the date that the temporary break due to the summer semester change
44 became a permanent change. In this example, the summer break is considered a
45 temporary change, but the failure to return to school following this period would be the
46 permanent change and child care would continue only for three months following the
47 permanent change, namely, the failure to return to school. If the parent does not report

1 the permanent change in status and this is discovered at eligibility redetermination, then
2 the failure to report is grounds for fraud fact-finding.

3
4 **Comment:**

5 Several commenters inquired if it is the continued expectation that parents enrolled in a
6 training institution be monitored by each semester, as they are now. The preamble noted
7 that the enrollment information should be obtained from the training or education
8 institution, *instead of requiring the parent to submit this documentation*. The
9 commenters indicated that most training institutions in their area will not produce this
10 type of enrollment information for their students.

11
12 The commenters noted that the preamble states that "Boards may develop procedures for
13 confirming continued enrollment and attendance *during* the 12-month eligibility
14 period...." The commenters requested clarification of the intent behind verifying this
15 information when temporary changes do not impact the required 12-month eligibility
16 period.

17
18 The commenters requested clarification on the statement that Boards may request that
19 educational institutions and training providers confirm enrollment and resumption of
20 training classes. Are Boards limited to collecting this information directly from
21 educational institutions or may the information be requested from parents? Educational
22 institutions are unlikely to release such information directly to Boards.

23
24 This issue is causing some confusion, as it would seem that if parents do not report a
25 nontemporary cessation of education or training activities, and if they are not monitored
26 by semester, the possibility of fraud review may increase. However, this seems to go
27 against the 12-month eligibility determination philosophy.

28
29 **Response:**

30 Section 809.73 requires parents to report a nontemporary (permanent) change in the
31 education status during the 12-month period. Section 809.51(a)(2)(C) has been amended
32 to clarify that student holidays or breaks within a semester or between the fall and spring
33 semesters, or between the spring and fall semesters, are temporary and do not need to be
34 reported.

35
36 However, for parents solely in education activities, parents must report breaks in these
37 education activities that are longer than the breaks described in § 809.51(a)(2)(C) (e.g.,
38 breaks between the fall and summer semester or breaks that include two full semesters).
39 Therefore, Boards may develop procedures for confirming during the 12-month
40 eligibility period, including requesting that education institutions and training providers
41 confirm enrollment at each semester and the resumption of training classes in order to
42 determine that the parent has not had a nontemporary cessation of education or training
43 activities. The Commission understands that educational institutions may not be able to
44 provide such information. However, this is an allowable Board procedure.

45
46 Also, the resumption of enrollment after the nontemporary break between semesters does
47 not need to be reported by the parent for continuation of care through the end of the 12-

1 month period. The resumption of enrollment is only required at the 12-month
2 redetermination period.
3

4 **§809.74. Parent Appeal Rights**

5 Section 809.74 is amended to clarify that parents may appeal the amount of any recoupment
6 determined pursuant to Subchapter F of this chapter.
7

8
9 **§809.75. Child Care during Appeal**

10 Section 809.75 is amended to remove the provisions for not continuing care during a parent
11 appeal as the reasons for terminating care provided in this section no longer apply.
12

13 **Comment:**

14 One commenter stated that his experience shows that parents who are ineligible choose to
15 continue care regardless of the possibility of having to pay for child care. Commenters
16 request that if a hearing officer affirms a determination of ineligibility that there be no
17 recoupment owed by the parent.
18

19 **Response:**

20 The Commission declines to change the rule regarding repayment of child care provided
21 during the appeal if the decision that the parent was ineligible for care is affirmed upon
22 appeal. An affirmation of termination of care is a verification that the parent was not
23 eligible to continue to receive services. The rule language at §809.71(13) also requires
24 that parents be informed of the appeal rights, including that the cost of care during the
25 appeal is subject to recovery. Failure to attempt recovery of payments for services for
26 which the person was not eligible is not allowed.
27

28 **Comment:**

29 One commenter stated that the modified rule language implies that child care during an
30 appeal is required and does not have to be requested by the parent. If the parent does
31 request child care during an appeal, is it automatically approved? If the local review of
32 the appeal process upholds the termination and the parent received child care during an
33 appeal, how can we seek recoupment of these funds if the parent did not request child
34 care during an appeal?
35

36 **Response:**

37 The Commission clarifies that the rule language has not changed regarding child care
38 continuing during appeal. The language does not require that child care continue only if
39 requested by the parent. The rule retains the statement that the cost of providing services
40 during the appeal is subject to recovery if the decision is rendered against the parent.
41 Rule language at §809.71(13) also requires that parents be informed of the appeal rights,
42 including that the cost of care during the appeal is subject to recovery. Boards must
43 inform parents of this and allow the parent the option of not continuing care during the
44 appeal. If the parent agrees that child care should continue, then the rules require that
45 care continue during the appeal.
46

47 **Comment:**

1 One commenter inquired if the Board can set local policy that states customers must pay
2 this amount in full before they can apply to receive services again.

3
4 **Response:**

5 The Commission agrees and notes that §809.117, regarding recovery of improper
6 payments, includes the requirement that payments made during the appeal in which the
7 appeal is rendered against the parent are subject to full recovery in order for the parent to
8 be eligible for future child care.

9
10 **§809.76. Parent Responsibility Agreement**

11 As stated previously, CCDBG Act §658E(c)(2)(N) states that each child who receives assistance
12 will be considered to meet all eligibility requirements for such assistance and will receive such
13 assistance for not less than 12 months before the state redetermines eligibility.

14
15 NPRM §98.20(b)(4) clarifies that the state may establish additional eligibility conditions,
16 regarding the child's age, citizenship, residing in a family with an income that does not exceed 85
17 percent SMI, and residing with parents who are working or in job training or education, as long
18 as the additional requirements do not impact eligibility other than at the time of eligibility
19 determination or redetermination. Additionally, CCDBG Act §658E(c)(2)(N)(ii) and NPRM
20 §98.21(d) require that Lead Agency eligibility redetermination requirements do not unduly
21 disrupt parent work, training, or education activities.

22
23 The PRA in §809.76 requires that the parent shall:

24 --pursue child support by:

25 --cooperating with the Office of the Attorney General (OAG), if necessary, to establish
26 paternity and to enforce child support on an ongoing basis by either:

27 --providing documentation that the parent has an open case with OAG and is cooperating
28 with OAG; or

29 --opening a child support case with OAG and providing documentation that the parent is
30 cooperating with OAG; or

31 --providing documentation that the parent has an arrangement with the absent parent for child
32 support and is receiving child support on an ongoing basis;

33 --not use, sell, or possess marijuana or other controlled substances; and

34 --ensure that each family member younger than 18 years of age attend school regularly (unless
35 exempt under state law).

36
37 Current §809.76(c) requires that the parent demonstrate compliance with these provisions within
38 three months of initial eligibility. If the parent does not demonstrate compliance within three
39 months, child care is required to end. Some Boards require parents to demonstrate compliance
40 with the PRA at the time of initial eligibility.

41
42 Boards have reported that parents meet PRA requirements by opening an OAG case at initial
43 determination, closing the case immediately following initial determination, and then reopening
44 the case immediately prior to redetermination. This increases OAG's workload and requires
45 Boards and Board contractors to track parent compliance with the PRA—without meeting the
46 PRA's intent.

1 Therefore, §809.76 regarding the PRA is repealed, as the requirements of the provisions of the
2 PRA:

- 3 --cannot be applied or enforced during the 12-month eligibility period;
- 4 --cause delays in determining eligibility; and
- 5 --cause errors in calculating income due to inconsistent receipt of child support.

6
7 **Comment:**

8 Several commenters expressed appreciation to the Commission for the Commission's
9 willingness to review and accept the request to remove the PRA as a requirement for
10 child care eligibility.

11
12 **Response:**

13 The Commission appreciates the comment.

14
15 **Comment:**

16 One commenter, although appreciative of the removal of the PRA, inquired if the
17 Commission will take into consideration the impact of removal of PRA on performance
18 since the removal of the PRA affects parent income, which could affect parent share of
19 cost and the final amount the Board pays.

20
21 **Response:**

22 The Agency will monitor any impact to child care performance targets.

23
24 **§809.77. Exemptions from the Parent Responsibility Agreement**

25 Section 809.77 related to exemptions from the PRA is repealed.

26
27 **§809.78. Attendance Standards and Reporting Requirements**

28 CCDBG Act §658E(c)(2)(S) and NPRM §98.45(m) require implementation of provider payment
29 practices that:

- 30 --align with generally accepted payment practices for children who do not receive CCDF funds;
- 31 and
- 32 --support the fixed costs of providing child care services by delinking provider payments from a
33 child's occasional absences.

34
35 NPRM §98.45(m)(2) included four options that states may consider to meet the statutory
36 requirement to support the fixed costs of providing child care by delinking payments from a
37 child's occasional absence. The options include:

- 38 --paying providers based on a child's enrollment, rather than attendance;
- 39 --providing full payment to providers as long as a child attends for at least 85 percent of the
40 authorized time;
- 41 --providing full payment to providers as long as a child is absent for five or fewer days in a
42 four-week period; and
- 43 --requiring states that do not choose one of these three approaches to describe their approach
44 in the State Plan, including how the approach is not weaker than one of the three listed
45 above.

46
47 Currently, Chapter 809 requires Boards to establish a policy on attendance standards and
48 procedures regarding reimbursement to providers for absence days. Chapter 809 requires Boards

1 to terminate services if a child exceeds the Board-allowed number of paid absences during a
2 year. If care is terminated due to excessive absences, then the parent must wait 30 days before
3 reapplying for services.

4
5 Neither the CCDBG Act nor the NPRM grants states the authority to terminate care due to a
6 child not meeting the state's attendance standards.

7
8 As described in §809.93, consistent with the requirements in the CCDBG Act and the NPRM,
9 the Commission amends §809.93 to state that providers shall be reimbursed based on the child's
10 enrollment, rather than daily attendance.

11
12 The Commission must ensure that authorizations for reimbursement based on enrollments do not
13 result in underutilization of services, and must reduce the potential for waste, fraud, or abuse of
14 public child care funds. The Commission establishes statewide attendance standards designed to
15 encourage parents to fully use child care services. The rules also require that 12-month
16 attendance standards must be met in order for the child to continue to be eligible at the 12-month
17 recertification.

18
19 Section 809.78(a)(1) is amended to require that parents shall be notified that the eligible child
20 shall attend on a regular basis consistent with the child's authorization for enrollment. Failure to
21 meet monthly attendance standards may:

22 --result in suspension of care, at the concurrence of the parent; and
23 --be grounds for determining that a change in the parent's participation in work, job training, or
24 an education program has occurred and care may be terminated pursuant to the requirements in
25 §809.51(b).

26
27 Section 809.78(a)(2) establishes allowable attendance standards as fewer than:

28 --five consecutive absences during the month; or
29 --ten total absences during the month.

30
31 Section 809.78(a)(3) requires parents to be notified that if a child exceeds 65 total absences
32 during the most recent 12-month period, then the child is not eligible for continued care at the
33 12-month eligibility redetermination period and shall not be eligible for a minimum of 12
34 months.

35
36 Section 809.78(a)(4) includes in the parent notification that child care providers may end a
37 child's enrollment with the provider if the child does not meet the provider's established
38 attendance policy. As will be discussed in Subchapter E, regarding provider reimbursement
39 based on enrollment, a child's eligibility cannot end based on the number of absences. However,
40 parents must be notified that a provider is allowed to discontinue enrollment of the child at the
41 provider facility if the child does not meet attendance standards established by the provider.

42
43 Section 809.78(a) is also amended to remove the provisions that child care services may be
44 terminated for absences or misuse of attendance automation policies. However, the rules at
45 §809.78(a)(9) state that the parent or secondary cardholders giving the attendance card or
46 personal identification number (PIN) to another person, including the provider, is grounds for a
47 potential fraud determination pursuant to Subchapter F of this chapter.

1 Section 809.78(c) is added to state that Boards shall ensure that absences due to a child's
2 documented chronic illness or disability or court-ordered visitation are not included in the
3 number of absences in paragraphs (2) and (3) (related to monthly and the 12-month attendance
4 standards).

5
6 Section 809.78(d) is added to state that when a child's enrollment has been ended by a provider
7 in §809.78(d)(4), Boards shall work with the parent to place the otherwise eligible child in
8 another eligible provider.

9
10 The Commission acknowledges that the rule amendments related to enrollments and absences
11 will require substantial modifications to existing Board policies and procedures as well as
12 changes to the Agency's information and attendance automation systems. The Agency will work
13 with Boards regarding these changes and to develop necessary reports to assist Boards, parents,
14 and providers in tracking attendance.

15
16 **Comment:**

17 Several commenters agreed that the goal of preventing potential waste, fraud, or abuse
18 was to ensure that the child care authorizations are being used. The commenters also
19 understood that the CCDBG Act and the NPRM absences are not listed as an allowable
20 termination of care reason during the 12-month eligibility period. Several commenters
21 supported the development of statewide attendance standards designed to encourage
22 parents to fully use child care services. One commenter stated that encouraging parents
23 to maintain regular attendance for their child in a high-quality early education program
24 results in stronger outcomes for children and families. The commenter was pleased to
25 see that the Commission has considered multiple opportunities to quantify absences, and
26 interpreted this as a commitment to supporting the development of the whole family and
27 their needs outside of child care.

28
29 **Response:**

30 The Commission appreciates the comment.

31
32 **Comment:**

33 Many commenters expressed concerns regarding the lack of enforcement of attendance
34 standards. The commenters stated that the enforcement mechanisms (suspension,
35 determining a change in parents' activity participation) are not efficient or effective to
36 enforce compliance with attendance reporting requirements or attendance standards.

37
38 One commenter pointed out that the Agency commented to ACF that attendance should
39 be considered an eligibility requirement. While TWC provided comment to ACF
40 requesting the consideration of termination of services due to excessive absences, without
41 being able to end services, the additional 10 in a month or 41 in a year are not needed.

42
43 Many commenters requested that Boards be allowed to set local policy for
44 redeterminations that consider whether or not attendance standards were met during the
45 previous eligibility period.

46
47 **Response:**

1 The Commission understands the commenters' concerns. As one of the commenters
2 pointed out, the Commission provided comments to the NPRM recommending that the
3 regulations to allow states the flexibility to end services during the 12-month eligibility
4 period for children and families that do not meet state attendance standards. However,
5 pending the final rules, there is no statement in the CCDBG Act or the NPRM that
6 expressly gives states this flexibility.
7

8 Regarding the recommendation that Boards be allowed to set local policy for
9 redeterminations that consider whether or not attendance standards were met during the
10 previous eligibility period, the Commission agrees that a child's attendance during the
11 previous eligibility period should be taken into consideration at eligibility
12 redetermination. However, the Commission does not agree that this should be
13 established by Board policy. The Commission believes it is important to have statewide
14 attendance standards in order to ensure that families and providers are treated consistently
15 across the state regarding payments for absences and consequences for failure to meet
16 attendance standards and reporting requirements.
17

18 Therefore, the Commission modified the proposed rules at §809.98(a)(3) to require that
19 parents be notified that if a child is absent more than 65 days during the 12-month
20 eligibility period, then the child is not eligible for continued care at the 12-month
21 eligibility redetermination period and shall not be eligible for a minimum of 12 months.
22

23 The 65 total absences number is based on 75 percent attendance during a typical 12-
24 month eligibility period of 260 authorized days. However, the Commission clarifies that
25 the attendance standard is not 75 percent of any individual authorized enrollment. The
26 attendance standard is fewer than 65 absences on any authorizations, including
27 authorizations in which care may be for more than five days a week based on a parent's
28 flexible work schedule or fewer than five days a week based on the parent's needs.
29

30 The 65-day attendance standard should not be confused with a provider's own attendance
31 policies. As stated previously, individual provider attendance standards are at the
32 discretion of the provider's operational policies. A provider could end enrollment for a
33 child that does not meet the provider's attendance standards. However, if a provider ends
34 the care due to violations of the provider attendance standards, the child care contractor
35 must work with the parent to place the otherwise eligible child in another eligible
36 provider. The Commission has added §809.78(d) to emphasize this point.
37

38 **Comment:**

39 Several commenters inquired if absences due to extenuating circumstances such as illness
40 or absences due to court-ordered visitations would be included in the absence totals for
41 the attendance standards. One commenter provided specific suggestions regarding the
42 circumstances in which these absences would or would not be counted, including
43 partially counting particular absences over the course of a particular period.
44

45 **Response:**

46 In order to ensure that the attendance standards are consistently applied and enforced, the
47 Commission believes that the treatment of these types of absences should be included in
48 Commission rules. Therefore, the Commission has added §809.78(c) to state that Boards

1 shall ensure that absences due to a child's documented chronic illness or disability or
2 court-ordered visitation are not included in the number of absences in §809.78(a)(2) - (3).
3

4 **Comment:**

5 Many commenters requested clarification regarding the use of suspensions during the 12-
6 month authorization period as a method for enforcing attendance standards and requested
7 guidance on how to implement suspensions. Several commenters requested that Boards
8 be given local flexibility to define how the suspension process works in the workforce
9 area since the proposed rules do not address this issue.
10

11 **Response:**

12 As noted earlier in the section entitled "Suspensions of Child Care during the 12-month
13 Eligibility Period," the preamble to the NPRM notes that, consistent with
14 §658E(c)(2)(N)(i) of the CCDBG Act, once determined eligible, the child "will receive
15 such assistance" for the 12-month eligibility period, and "during the minimum 12-month
16 eligibility period Lead Agencies also may not end or suspend child care authorization or
17 provider payments due to a temporary change in a parent's work, training, or education
18 status."
19

20 However, the preamble also notes that "despite the language that the child 'will receive
21 such assistance,' the receipt of such services remains at the option of the family." The
22 law does not require the family to continue receiving services nor would it force the
23 family to remain with a provider if the family no longer chooses to receive such services.
24

25 Consistent with this guidance, the Commission modifies §809.78(a)(1) to require that the
26 parent must concur with the suspension. The Board cannot suspend care without the
27 agreement and concurrence of the parent. Suspension of care without the request or
28 concurrence from the parent is not allowed during the 12-month eligibility period under
29 the guidance provided by the NPRM.
30

31 Board child care contractors are encouraged to contact parents to determine the reason for
32 the absences, including if the absences are due to a change in activity status.
33

34 Contractors should work with the parent, including sending letters to the parents, to
35 encourage attendance, recommend potential suspensions or reduction in the authorization
36 and remind the parent of potential consequences, including termination of care at the 12-
37 month redetermination period with the child not being eligible for care for future child
38 care services for 12 months. Boards and contractors are reminded that suspensions or
39 reductions in the authorizations can only occur with the concurrence of the parent. This
40 will also be clarified in the Child Care Services Guide.
41

42 **Comment:**

43 Several Boards pointed out that some Boards are not currently reimbursing providers for
44 the parent's failure to report attendance and asked if these Boards would now be required
45 to pay for the non-reported attendance.
46

47 **Response:**

1 As discussed in §809.93, provider reimbursement will be based on the child's monthly
2 authorized enrollment, excluding periods of suspensions. Providers will be reimbursed
3 for all authorized days, including absences and days in which the parent did not report
4 attendance. Boards currently not reimbursing providers for non-reported attendance days
5 must start reimbursing the providers under the new rules.
6

7 **Comment:**

8 Several commenters inquired if the parent's failure to report attendance using the child
9 care attendance automation (CCAA) system would be counted as an absence. One
10 commenter noted that often the five-day and 10-day consecutive absences are the result
11 of the unavailability of the CCAA attendance card, as either the card has not been
12 received by the parent or the card needs to be replaced.
13

14 Many commenters noted that the language in §809.78(a)(10) includes language that the
15 failure to report attendance or the denial of the attendance report by the automated system
16 "may" result in an absence counted toward the attendance standards. The commenters
17 requested that Boards have the local flexibility to develop policy for how this will be
18 counted; and, if so, that the guidance should be either added to the rule language or
19 included in the Child Care Services Guide.
20

21 One commenter requested that if the intent is to include non-reported days as an absence,
22 then language should be added to the rule stating that "absences and non-reported
23 attendance" are counted as absences.
24

25 **Response:**

26 The Commission appreciates the comments, but declines to include rule language
27 specifying that all non-reported attendance should be counted as an absence. As one
28 commenter noted, the non-reported attendance could be the result of the inability to
29 record attendance due to issues with the attendance card.
30

31 However, the Commission agrees that the procedures for including or excluding non-
32 reported attendance as an absence should be included in the Child Care Services Guide.
33 Currently, such guidance to Boards is provided in §E-804: "Board Absence Policies for
34 Parent Failure to Report Attendance" of the Child Care Services Guide. The guidance
35 requires Boards to ensure that the decision to include the non-reported day must take into
36 consideration situations that are beyond the control of the parent. The guidance in the
37 revised Child Care Services Guide will be consistent with this requirement.
38

39 Providers will also continue to be able to report attendance that the parent was unable to
40 report due to the CCAA system.
41

42 The Commission will make modifications to §E-804 to reflect the new rules for Boards to
43 ensure that their procedures for including non-reported days as an absence comply with
44 the Child Care Services Guide.
45

46 **Comment:**

47 One commenter requested information regarding the methodology used for determining
48 these allowable attendance standards, as the commenter believed the proposed 41

1 absences in a 12-month period seem excessive. The commenter stated that no employer
2 would accept an employee being absent for 41 days. The commenter stated that this 12-
3 month period absence limit seems too generous and wasteful of taxpayer funds,
4 especially when other families will be on the child care services waiting list for services.
5

6 **Response:**

7 The proposed rule language allows for a total of 40 absences in 12-months. This equated
8 to 85 percent attendance of the standard 260 annual child care days, which is
9 approximately three days a month and is listed in the NPRM as the minimal acceptable
10 annual attendance standard for providers to receive full payment.
11

12 Because the Commission has made a change as an enforcement mechanism of the
13 attendance standards, the Commission believes it is necessary to increase the annual
14 amount from 40 to 65 absences in a 12-month period. This is approximately five
15 absences a month. Although this may not be an acceptable standard for adults in the
16 workplace, the Commission believes that five absences over the course of a month is
17 appropriate for children in a child care setting, particularly if the child's continued
18 eligibility at the 12-month redetermination period is at stake if the annual amount is
19 exceeded.
20

21 The Commission notes that rules specifically exclude absences due to a child's
22 documented chronic illness and disability, but do not exclude all absences due to
23 illnesses. Young children experience a higher rate of non-chronic illnesses, particularly
24 during their early years, and the Commission believes it is important to account for the
25 absences in the absence count, but allow for a reasonable threshold as to not jeopardize
26 continued eligibility.
27

28 Additionally, the annual absence requirement takes into consideration authorizations in
29 which care may be for more than five days a week based on a parent's flexible work
30 schedule. The Commission recognizes that many parents have work schedules that may
31 be seven days one week, three days another week, and four days in other weeks, and that
32 these schedules are not established on a routine basis. The monthly authorization must
33 reflect this variation and the provider must make the space available to the child. Some
34 absences on many of those authorized, but non-working days, are to be expected and the
35 65 total absences during the year account for these variations.
36

37 **Comment:**

38 Several commenters requested clarification as to whether care is to be terminated if the
39 child does not meet the attendance standards in the rules. One commenter stated that if
40 care cannot be terminated during the eligibility period, and the absences are only to alert
41 the contractor to check into the parent's status, then this would appear to be a burden.
42 Another commenter asked how absence letters will work with these changes.
43

44 **Response:**

45 The Commission emphasizes that the CCDBG Act and the NPRM do not allow for care
46 to be terminated during the 12-month period for absences. Contractors should work with
47 the parent, including sending letters to the parents, to encourage attendance, recommend
48 potential suspensions or reduction in the authorization, and remind the parent of potential

1 consequences, including termination of care at the 12-month redetermination period with
2 the child not being eligible for care for future child care services for 12 months. Boards
3 and contractors are reminded that suspensions or reductions in the authorizations can only
4 occur with the concurrence of the parent. This will also be clarified in the Child Care
5 Services Guide.
6

7 **Comment:**

8 Several commenters requested clarification regarding the rule language stating the
9 parents must be notified that providers may end the child's enrollment with the provider if
10 the child does not meet the provider's established policy regarding attendance. Several
11 commenters inquired if the Board contractor is required to review all the provider
12 attendance policies to ensure the provider is in compliance with this language.
13

14 One commenter asked if parents would be able to request a transfer if a provider ends
15 child's enrollment due to absences.
16

17 **Response:**

18 The Board's child care contractor will not be responsible for maintaining copies of
19 providers' attendance policies. If a provider policy is to require adherence to attendance
20 standards, then the Board cannot require the provider to keep the child enrolled. It is not
21 expected that Boards monitor provider policies to ensure the policies are equitably
22 enforced. This notification to the parent is intended to ensure that, even though the
23 child's eligibility cannot end due to absences, the parent must be notified that absences
24 may result in the provider ending care if the child is not attending in accordance with the
25 provider's attendance standards.
26

27 Parents will be able to transfer, and Boards should work with parents in finding
28 placements for, the child. Boards should also work with the parent to determine the
29 cause of the absences and recommend strategies to reduce absences.
30

31 **Comment:**

32 One commenter was appreciative of the statement in rule that providers may end care at
33 the provider facility if absences exceed the provider policy.
34

35 **Response:**

36 The Commission appreciates the comment.
37

38 **Comment:**

39 One commenter requested clarification as to whether the attendance standards are based
40 on one calendar month or 30 calendar days.
41

42 **Response:**

43 The time period specifies a month, not 30 days. This is to align with the monthly
44 authorization.
45

46 **Comment:**

47 A commenter asked how Boards that pay providers weekly or biweekly should calculate
48 the required attendance for payment to the providers. Rule states that providers are

1 reimbursed on enrollment; however, there is also an attendance requirement for the
2 family to meet. Please clarify whether these are two separate items and whether parents
3 not meeting attendance requirements would not affect full enrollment payment to
4 providers.

5
6 Another commenter asked how the absences affect payments. It appears that the Agency
7 is considering funding based solely on enrollment, but an absence policy based on a
8 percentage of the enrollment may have a financial impact on providers.

9
10 **Response:**

11 The Commission clarifies that payments on enrollments and the attendance standards are
12 two separate issues. Payments to providers will be based on authorized enrollment, not
13 daily attendance. Attendance tracking will help ensure that services are being used by
14 alerting contractor staff to provide additional case management in situations in which a
15 child is not regularly attending. Further, the annual attendance standard is taken into
16 consideration at the eligibility redetermination.

17
18 **Comment:**

19 Many commenters questioned the continued use of CCAA. The commenters stated that
20 to be fully consistent with CCDBG changes, it is recommended that the Commission
21 eliminate any attendance standards, and that the \$3 million currently budgeted for CCAA
22 be reallocated to direct care and quality. Since providers are already required to track
23 attendance as part of DFPS minimum standards, CCAA is a duplication. Furthermore,
24 since using CCAA cannot be enforced during the 12-month eligibility period, it should be
25 removed, like the PRA requirements. The change from paying providers based on
26 authorized enrollment rather than attendance also supports the recommendation to stop
27 using the CCAA system.

28
29 The commenters cited the policy brief on Attendance Policies and Systems authored by
30 ACF Office of Child Care, which states, "Time and attendance systems should support
31 program payment policies and goals, not drive them. IT systems should be flexible and
32 cost-effective to maintain, and not act as impediments to change." The commenters
33 stated that the CCAA system is neither flexible nor cost-effective. The commenters
34 stated that there are other, more cost-effective attendance tracking systems available.

35
36 One commenter suggested that there may be a way to collaborate with Child Care
37 Licensing at both the local and state levels to create a more robust provider fraud
38 prevention program. The commenter pointed out that the entire public school system
39 bases certain allocations on attendance, but the school administration is responsible for
40 reporting 100 percent of its attendance, not parents.

41
42 Another commenter stated that child care centers located on military bases are having
43 difficulty meeting the requirement for CCAA since the military will not allow a point-of-
44 service machine to be connected to their system for security reasons.

45
46 **Response:**

47 Tracking and reporting attendance will continue to be important parts of child care
48 services, and CCAA will continue to be used for this purpose. Particularly during the 12-

1 month eligibility period, it is very important for the Agency, Boards, and contractors to
2 be aware of changes and trends in a child's attendance in order to contact the parent to
3 determine why absences are occurring and if, with the concurrence of the parent, changes
4 need to be made in the monthly authorization in order to reduce the number of absences
5 for authorized days.

6
7 Timely attendance reporting and tracking is also an important tool in identifying potential
8 nontemporary changes in the parent work, training, and education status.

9
10 However, the Commission will work with Boards to gather input on any future
11 recommended changes to the automated attendance system resulting from the changes in
12 the rules.

13 14 **SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE**

15 **The Commission adopts the following amendments to Subchapter E:**

16 17 **§809.91. Minimum Requirements for Providers**

18 CCDBG Act §658E(c)(2)(K) requires annual unannounced inspections of all CCDF providers
19 for compliance with health, safety, and fire standards. Relative providers are exempt from this
20 requirement. By state statute, listed family homes are not inspected by DFPS child care
21 licensing (unless there is a report of abuse or neglect at the facility). Therefore, under the
22 CCDBG Act, nonrelative listed family homes are not eligible to provide CCDF services.
23 Therefore, the Commission amends §809.91(a)(3) and (b) to remove requirements for Boards
24 choosing to allow nonrelative listed homes as eligible child care providers as these providers are
25 no longer eligible to care for CCDF-subsidized children.

26
27 Section 809.91(f) is amended to clarify that foster parents who are also directors, assistant
28 directors, or have an ownership in the child care center, may receive reimbursement if authorized
29 by DFPS.

30 31 **Comment:**

32 One commenter strongly supported the amendment to remove nonrelative listed homes as
33 eligible to care for CCDF-subsidized children. All of Texas' children deserve access to
34 child care options that meet the standards of health and safety as confirmed through
35 annual, unannounced site inspections. The commenter commended the state on
36 recognizing the critical importance of DFPS licensing standards and monitoring. DFPS
37 child care licensing establishes minimum standards and monitoring processes that ensure
38 the health and safety of children in care. Investment of state and federal funds should be
39 made in safe, quality early childhood programs that deliver educational outcomes.

40 41 **Response:**

42 The Commission appreciates the comment. The Commission also notes that the final
43 rules have been modified from the proposed rules to include removing §809.91(a)(3),
44 which gave Boards the option to allow nonrelative listed family homes. This provision
45 was inadvertently retained in the proposed rules.

46 47 **§809.92. Provider Responsibilities and Reporting Requirements**

1 Section 809.92(b) is amended to remove the specific attendance reporting requirements for
2 providers to:

3 --document and maintain a list of each child's attendance and submit the list upon request;

4 --inform the Board when an enrolled child is absent; and

5 --inform the Board that a child has not attended the first three days of scheduled care.

6
7 The implementation of the child care attendance automation system eliminates the need for
8 providers to report this attendance to the Board. However, the Commission notes that removing
9 the requirement from Chapter 809 that providers document and maintain a list of each child's
10 attendance does not remove the DFPS child care licensing requirement for providers to maintain
11 a daily sign-in sheet for all children enrolled at the facility.

12
13 **Comment:**

14 One commenter noted that the requirement to maintain attendance records is removed in
15 the proposed rules. However, the commenter stated that the contractor uses the sign-in
16 sheets required by Child Care Licensing as evidence in potential fraud cases and would
17 like to continue to request the sign-in sheets that are required by Child Care Licensing.

18
19 **Response:**

20 The Commission clarifies that Boards may continue to request these sign-in sheets from
21 providers as part of fraud fact-finding.

22
23 **Comment:**

24 One commenter requested clarification on the purpose of the requirement that providers
25 report when the parent fails to pay the parent share of cost since Boards are not allowed
26 to impose consequences to parents failing to comply. The only reason for providers, that
27 we can see, is if Boards are required to pay the parent share of cost when parents fail to
28 do so.

29
30 **Response:**

31 A Board may have a policy that prohibits transfers if a parent is not current on their
32 parent share of cost (as long as this policy does not have the effect of terminating a child's
33 care). A Board may also have a policy that reimburses the provider if the parent fails to
34 pay the parent share of cost. Both of these policies depend on the provider's timely
35 reporting to the child care contractor that the parent is not current on the parent share of
36 cost pursuant to §809.93(b)(3).

37
38 The requirement that providers report this information to the contractor will be vital to
39 ensuring that appropriate actions are taken with the parent, including potential temporary
40 reductions in the parent share of cost. Boards will be able to better anticipate costs
41 associated with "making the provider whole," and the contractor will be alerted to
42 families that require outreach and case management.

43
44 The Child Care Services Guide will provide guidance on working with parents who are
45 not paying their parent share of cost.

46
47 **Comment:**

1 While not stated in rule, there is a common understanding among the Board child care
2 network representatives that the provider may end services with the parent if the parent
3 does not pay the parent share of cost. This is not based on proposed rule. Should it
4 actually be considered, the environment of "provider hopping" will occur. The parent
5 will not pay provider A. Provider A ends the services. Parent transfers to provider B,
6 and it starts again.
7

8 The Agency provided comment to ACF that allows for termination of services for
9 nonpayment of parent share of cost. That request is fully supported. The termination of
10 services for nonpayment of parent share of cost, if allowed, is the best solution to support
11 the providers and to support the parent. If the provider reports the nonpayment of parent
12 share of cost appropriately, then the parent share of cost could be paid to the provider.
13 The parent would then have services terminated or would pay the parent share of cost to
14 the Board to have services continued.
15

16 If it remains that services cannot be terminated due to nonpayment of parent share of
17 cost, then recommend that the rule remain as it is that the provider must report and the
18 child care contractor works with the parent to pay the parent share of cost to the provider
19 before any consideration of a transfer is given.
20

21 **Response:**

22 Pursuant to the NPRM, a child's care may not be terminated within the 12-month
23 eligibility period for any reason other than income exceeding 85 percent of SMI for a
24 family of the same size, or a permanent cessation of work, training, or education has
25 occurred and three months of continuing care have been provided to allow the parent to
26 resume the work, training, or education activity.
27

28 A Board may establish a policy prohibiting transfers when a parent has failed to pay his
29 or her share of cost, as long as the policy does not have the effect of terminating care
30 during the 12-month eligibility period.
31

32 Boards may enact policies to pay providers when parents fail to pay their share of cost.
33 The Child Care Services Guide will provide guidance for contractor staff regarding
34 parents who may qualify for a temporary reduction in their parent share of cost.
35

36 **Comment:**

37 One commenter noted that the Agency commented to ACF disagreement that states or
38 local areas cannot allow providers to charge parents above the copay for provider
39 mandatory fees, preferring that the decision should be based on local needs and provider
40 base. Yet, the Agency issued Workforce Development (WD) Letter 33-13 implementing
41 a methodology on calculating a provider's published rates, stating that the intent is to
42 ensure that provider's published daily rates are consistently calculated across the state.
43 The calculation includes enrollment fees, supply fees, and activity fees. If indeed there
44 are additional mandatory fees, then all mandatory fees should be included in the
45 standardized method of calculating daily rate. This would negate Agency disagreement
46 that states or local areas cannot allow providers to charge parents above the co-pay for
47 provider mandatory fees.
48

1 **Response:**

2 The calculation in the referenced WD Letter concerns the methodology for calculating an
3 individual provider's published rate, which does require the inclusion of provider
4 mandatory fees. However, this is not the same as the Board maximum rate. Board
5 maximum rates may be higher or lower than an individual provider's published rate. If
6 the Board maximum rate is lower than the provider's published rate, then the current rules
7 retain the provision that a Board may prohibit providers from charging parents the
8 difference between the lower Board maximum rate and the higher provider published
9 rate. However, this should be a local decision.

10
11 **§809.93. Provider Reimbursement**

12 As explained in §809.78 regarding a child's attendance standards, CCDBG Act §658E(c)(2)(S)
13 and NPRM §98.45(m) require implementation of provider payment practices that:
14 --align with generally accepted payment practices for children who do not receive CCDF funds;
15 and
16 --support the fixed costs of providing child care services by delinking provider payments from a
17 child's occasional absences.

18
19 NPRM §98.45(m)(2) included four options that states may consider to meet the statutory
20 requirement to support the fixed costs of providing child care by delinking payments from a
21 child's occasional absence. The options include:
22 --paying providers based on a child's enrollment, rather than attendance;
23 --providing full payment to providers as long as a child attends for at least 85 percent of the
24 authorized time;
25 --providing full payment to providers as long as a child is absent for five or fewer days in a
26 four-week period; and
27 --requiring states that do not choose one of these three approaches to describe their approach
28 in the State Plan, including how the approach is not weaker than one of the three listed
29 above.

30
31 Currently, Chapter 809 requires Boards to establish a policy on attendance standards and
32 procedures regarding reimbursement to providers for absence days. Chapter 809 requires Boards
33 to terminate services if a child exceeds the Board-allowed number of paid absences during a
34 year. If care is terminated due to excessive absences, then the parent must wait 30 days before
35 reapplying for services.

36
37 Neither the CCDBG Act nor the NPRM grants states the authority to terminate care due to a
38 child not meeting the state's attendance standards.

39
40 To ensure statewide consistency for families and statewide compliance to the requirements in
41 CCDBG Act §658E(c)(2)(S) and NPRM §98.45(m), §809.93 is amended to implement a
42 statewide policy that reimburses regulated providers based on the child's enrollment, rather than
43 daily attendance. The rule language at §809.93(b) states that a Board or its contractor shall
44 reimburse a regulated provider based on a child's monthly enrollment, excluding periods of
45 suspension (at the concurrence of the parent).

46
47 Additionally, the Commission reletters §809.93(g) to §809.93(f) and amends the language to
48 remove references to reimbursements based on the unit of services delivered. The amended

1 language states that the monthly enrollment authorization is based on the unit of service
2 authorized (either as an authorized part-day unit or an authorized full-day unit).

3
4 The rules retain the requirement that relative child care providers are not reimbursed for days on
5 which the child is absent. The Commission retains this provision based on the contention that
6 unregulated relative providers do not have the same fixed costs as regulated providers do in order
7 to meet regulatory standards.

8
9 **Comment:**

10 One commenter noted that §809.93(b) states that providers will be reimbursed based on
11 "monthly enrollment." However, §809.93(f) states that "reimbursement for child care is
12 based on the unit of service delivered," which is then defined on a daily basis. Monthly
13 enrollment implies that providers are paid their monthly rate for the entire month; "unit of
14 service delivered" defined on a daily basis implies that providers are reimbursed a daily
15 amount (current practice), whether based on enrollment or attendance. The commenter
16 recommended that §809.93 should be modified to be clear on which basis providers are
17 reimbursed.

18
19 **Response:**

20 The Commission appreciates the comment and has modified the language in §809.93(f)
21 accordingly.

22
23 **Comment:**

24 One commenter strongly supported the rule change to reimburse a regulated provider
25 based on a child's monthly enrollment authorization. As the Commission noted, CCDBG
26 Act §658E(c)(2)(S) and NPRM §98.45(m) require implementation of provider payment
27 practices that align with generally accepted payment practices for children who do not
28 receive CCDF funds and support the fixed costs of providing child care services by
29 delinking provider payments from a child's occasional absences. This change will bring
30 Texas into the forefront of states that are committed to ensuring equal access for children
31 receiving subsidy.

32
33 The commenter would like to offer support, input, and feedback on any rules or
34 guidelines needed to fully implement this payment structure. As this is a major change to
35 existing practice that will greatly support currently participating providers and encourage
36 new providers to participate in CCDF, the commenter also supports the Agency in any
37 request for additional funding to comply with this requirement.

38
39 **Response:**

40 The Commission appreciates the comment.

41
42 **Comment:**

43 One commenter stated that with the 12-month eligibility period and care being paid based
44 upon authorization, not on attendance, that greater consideration must be given to paying
45 the early care and education providers at the beginning of each month based upon
46 authorized days in the month. This would align the child care services with the early care
47 and education industry. It would encourage more providers to participate, as the funds
48 would be paid at the beginning of each month. This may also encourage providers to

1 expand their infant and toddler capacity and to provide care during nontraditional hours
2 because they would have the funds at the beginning of each month. They would be
3 incentivized to work with the parents and the children to deliver stable, consistent, quality
4 care in order to maintain the children in care and the payment upfront.
5

6 **Response:**

7 The Commission declines to make this change. It is a matter of generally accepted
8 practice that public funds be expended after the authorized services are delivered in order
9 to ensure greater integrity of the public funds and to minimize the amount that may be
10 required to be recovered if spent improperly. Additionally, the authorization may change
11 during the month due to the parent requesting an increase in services from part-time to
12 full-time, a requested parent suspension of care, or the family's eligibility period ending
13 during the month and the family is not redetermined as eligible. The payments made
14 prior to these changes would need to be recovered.
15

16 **Comment:**

17 One commenter recommended that the Commission add language to support child care
18 providers in managing fixed costs to include that "A Board or its child care contractor
19 shall reimburse a regulated provider based on a child's monthly enrollment authorization,
20 regardless of whether eligibility changes during the month." This change is especially
21 impactful since daily attendance is no longer reported and many fixed costs recur
22 monthly, such as rent.
23

24 **Response:**

25 The Commission declines to make this change. If the family eligibility changes during
26 the month and the family is no longer eligible, then the authorization must end and the
27 provider cannot be reimbursed.
28

29 **Comment:**

30 One commenter noted that this section requires Boards to ensure that providers are not
31 paid for holding spaces open and requested clarification on the difference between paying
32 to hold spaces open and paying for authorized enrollment when a child is not attending.
33

34 **Response:**

35 The Commission clarifies that paying a provider without an authorized enrollment would
36 be considered paying a provider for holding a space open.
37

38 With an enrollment authorization, the Board is not paying for an open slot because the
39 enrolled child fills the slot.
40

41 **Comment:**

42 Several commenters stated that this section prohibits child care services from ending
43 because of attendance, but proposes to only pay providers 85 percent of the rate if the
44 children do not meet the standards of attendance. The commenters stated that this would
45 not allow provider to cover its fixed costs. The commenters highly object to that burden
46 being placed on providers. And in many cases already, the provider is not being paid the
47 published rate, but is being paid below that.
48

1 **Response:**

2 The Commission clarifies that the amended rule requires that payment be based upon
3 authorized enrollment, not daily attendance. The Commission anticipates that, consistent
4 with the requirement in the CCDBG Act, this will assist providers in meeting the fixed
5 costs of providing care. The rules do not limit the payments to 85 percent of the rate if
6 the children do not meet attendance standards.
7

8 **§809.94. Providers Placed on Corrective or Adverse Action by the Texas Department of**
9 **Family and Protective Services**

10 Section 809.94(c) is amended to remove language stating that a parent receiving notification of a
11 provider's corrective action may choose to continue care with the provider if the parent signs the
12 notification acknowledging that the parent is aware of the provider status. The effect of this
13 language is to end the child's care unless the parent signs the notification and acknowledges that
14 the parent chooses to continue care at the facility. Under the CCDBG Act, care cannot end
15 during the 12-month period for a parent's failure to return the acknowledgement to continue care
16 at the facility.
17

18 Therefore, §809.94(c) is amended to state that the parent may transfer the child to another
19 provider without being subject to the Board's transfer policies if the parent requests the transfer
20 within 14 calendar days of receiving the notification.
21

22 **Comment:**

23 One commenter pointed out that the parent must request the transfer within 14 business
24 days of receiving the notification. The commenter stated that 14 business days is too
25 long for the parent to pick another provider to transfer their children. It would be most
26 beneficial if this rule were changed to 14 calendar days, which would align with the new
27 parent reporting requirement.
28

29 **Response:**

30 This is an oversight in the proposed rules. The language should be 14 calendar days to
31 align with the parent reporting requirements.
32

33 **Comment:**

34 One commenter expressed concern about removing the requirement that a parent must
35 sign an acknowledgement that the parent is aware of the provider's licensing status. If
36 something subsequently were to happen to the parent's child, then the Board would have
37 no documentation to support the fact that the parent was informed of the provider status
38 and chose to keep their child at the facility anyway.
39

40 One commenter asked if the case remains open if the contractor does not hear anything
41 back from the parent after sending notice to the parent.
42

43 One commenter asked if a parent chooses to keep a child at a provider that is on
44 corrective action would this be considered a voluntary withdrawal from child care
45 services.
46

47 **Response:**

1 The Commission clarifies that care cannot be terminated due to the parent not returning
2 the acknowledgement that the provider is on corrective action. The contractor should
3 retain a copy of the notification sent to the parent, either on hard copy or electronic
4 format, in order to document that the contractor provided notification to the parent.
5 Additionally, parents may choose to continue care in a provider that is on corrective
6 action as corrective action does not disqualify a provider from serving subsidized
7 children.

8
9
10 **§809.95. Provider Automated Attendance Agreement**

11 Section 809.95 is amended to clarify that provider misuse of attendance reporting and violation
12 of the requirements in this section are grounds for fraud determination pursuant to Subchapter F
13 of this chapter.

14
15 **Comment:**

16 One commenter strongly recommended the Commission clarify the reporting requirement
17 for providers, specifically with regards to "authorized days," and how that differs from
18 attendance, which providers will no longer be required to report.

19
20 **Response:**

21 The Commission clarifies that the authorized days consist of the number of days, the days
22 of the week, and the level of care (part-day or full-day) that will determine the monthly
23 authorization. The attendance associated with the authorized enrollment will be reported
24 by the parent through the automated attendance. Although the providers are no longer
25 required to report individual attendance days in order to be reimbursed, providers are
26 required to notify the contractor if the authorized days in the automated system are
27 different than the authorization received by the provider and the parent, in order to ensure
28 that the proper number of days for reimbursement is correct.

29
30 **Comment:**

31 Since payment for services will be based on authorized days and not on attendance, the
32 rules associated with CCAA usage seem overly harsh and in most cases not necessary.
33 The CCAA system will primarily be used for tracking absence and non-records of
34 attendance as a tool for the child care contractor to determine which parents need to be
35 contacted.

36
37 **Response:**

38 CCAA will be used to track absences to determine if parents should be contacted in
39 regards to attendance. However, the attendance system will also be used to verify that
40 the child's authorized enrollment is being used for continued provider payments.
41 Instances in which the parent removed the child from the provider without informing the
42 child care contractor, yet the child's attendance is still being recorded through automated
43 attendance and the provider continues to receive payments on the enrollment, will be
44 grounds for determination of fraud fact-finding.

45
46
47 **SUBCHAPTER F. FRAUD FACT-FINDING AND IMPROPER PAYMENTS**

48 **The Commission adopts the following amendments to Subchapter F:**

1
2 **§809.111. General Fraud Fact-Finding Procedures**

3 Under *Program Integrity* on page 80488, the NPRM preamble provided the following
4 clarification regarding the Administration for Children and Families' (ACF) intent regarding
5 fraud and recoupments:
6

7 ACF would like to clarify that there is no Federal requirement for Lead Agencies to
8 recoup CCDF overpayments, except in instances of fraud. We also strongly
9 discourage such policies as they may impose a financial burden on low-income
10 families that is counter to CCDF's long-term goal of promoting family economic
11 stability. The Act affirmatively states an eligible child "will be considered to meet all
12 eligibility requirements" for a minimum of 12 months regardless of increases in
13 income (as long as income remains at or below 85 percent of SMI) or temporary
14 changes in parental employment or participation in education and training. Therefore,
15 there are very limited circumstances in which a child would not be considered eligible
16 after an initial eligibility determination.
17

18 When implementing their CCDF programs, Lead Agencies must balance ensuring
19 compliance with eligibility requirements with other considerations, including
20 administrative feasibility, program integrity, promoting continuity of care for
21 children, and aligning child care with Head Start, Early Head Start, and other early
22 childhood programs. These proposed changes are intended to remove any uncertainty
23 regarding applicability of Federal eligibility requirements for CCDF and the threat of
24 potential penalties or disallowances that otherwise may inhibit Lead Agencies ability
25 to balance these priorities in a way that best meets the needs of children.
26

27 Existing regulations at §98.60 indicate that Lead Agencies shall recover child care
28 payments that are the result of fraud from the responsible party. While ACF does not
29 define the term fraud and leaves flexibility to Lead Agencies, fraud in this context
30 typically involves knowing and willful misrepresentation of information to receive a
31 benefit. We urge Lead Agencies to carefully consider what constitutes fraud,
32 particularly in the case of individual families.
33

34 In accordance with this guidance, §809.111 is amended to provide a definition of fraud in
35 relation to child care services. The amended rule states that a person commits fraud if, to obtain
36 or increase a benefit or other payment, either for the person or another person, the person:
37 --makes a false statement or representation, knowing it to be false; or
38 --knowingly fails to disclose a material fact.
39

40 This definition is consistent with the definition of fraudulently obtaining benefits under Texas
41 Labor Code §214.001.
42

43 **§809.112. Suspected Fraud**

44 Section 809.112 is amended to clarify specific parental actions that may be grounds for
45 suspected fraud and cause the Board to conduct fact-finding or the Commission to initiate a fraud
46 investigation. These actions include:
47

--not reporting or falsely reporting at initial eligibility or at eligibility redetermination:

1 --household composition, or income sources or amounts that would have resulted in
2 ineligibility or a higher parent share of cost; or
3 --work, training, or education hours that would have resulted in ineligibility; or
4 --not reporting during the 12-month eligibility period:
5 --changes in income or household composition that would cause the family income to
6 exceed 85 percent of SMI (taking into consideration fluctuations of income);
7 --a permanent loss of job or cessation of training or education that exceeds three months;
8 or
9 --improper or inaccurate reporting of attendance.

10
11 **Comment:**

12 One commenter suggested that the "90-day" reference in §809.112(b)(2) regarding a
13 permanent loss of job be changed to "three months" to align with the language in
14 §809.51(a)(2)(E) regarding other temporary cessations of activities.

15
16 **Response:**

17 The Commission agrees and for consistency has modified the language as suggested.

18
19 **Comment:**

20 One commenter pointed out that the last two actions considered as grounds for suspected
21 fraud in §809.112(b)(2) should be separated by an "or," not "and." Using the word "and"
22 implies that both instances have to be true to suspect fraud.

23
24 **Response:**

25 The Commission agrees and has modified the language as suggested.

26 **Comment:**

27 One commenter requested that the rules clarify what actions should be taken at
28 redetermination if the contractor needs to process fact-finding for suspected fraud due to
29 the parent failure to report changes.

30
31 **Response:**

32 Section 809.112 specifies parent actions that would be grounds for suspected fraud,
33 which includes not reporting or falsely reporting family size or income that would result
34 in the family being over 85 percent of SMI for a family of the same size. Section
35 809.112 also includes failure to report a permanent change in work, education, or
36 training.

37
38 The Agency is developing procedures regarding fact-finding actions to determine fraud
39 and provide guidance through a WD Letter or in the Child Care Services Guide.

40
41 **Comment:**

42 One commenter recommended the household composition be defined based upon
43 marriage certificates, public records, legal and financial records, and client admittance.

44
45 **Response:**

46 The definition of a family in §809.2 has been changed to include marriage, including
47 common-law marriage.

1 **Comment:**

2 One commenter stated that further fact-finding may be initiated if the parent entered a
3 legal union of matrimony during the 12-month eligibility period and fails to disclose a
4 change in household composition at eligibility redetermination.
5

6 **Response:**

7 If the marriage increased the family size, then this would be considered a change of
8 family size that must be reported. If two unmarried parents reported as residing together
9 at eligibility, then both parents would be included in the family size. The couples getting
10 married during the 12-month eligibility period would not change the family size.
11 However, if the marriage increased the family size and income, then that must be
12 reported and would be subject to fraud fact-finding.
13

14 **Comment:**

15 One commenter recommended that if a parent does not report a change in income or
16 household composition that causes the family income to exceed 85 percent of SMI, this
17 failure to report should not be considered grounds for fraud, as the family may not be
18 aware of the SMI guidelines. It is the parent's responsibility to ensure such changes are
19 reported at initial eligibility and eligibility redeterminations.
20

21 **Response:**

22 The Commission understands the concern that a parent may not be fully versed in the
23 specific income calculation used to determine eligibility or if a change in activity status
24 constitutes a nontemporary change. The Agency will work with Boards to provide clear
25 information to parents regarding the family size and income amounts that must be
26 reported if exceeded, and to provide clear guidance on changes that are considered
27 temporary changes.
28

29 **Comment:**

30 One commenter requested clarification on what constitutes improper reporting of
31 attendance described in §809.112(b)(2)(C).
32

33 **Response:**

34 Improper reporting of attendance includes misuse of the attendance automation system
35 and reporting of attendance that did not occur.
36
37

38 **§809.113. Action to Prevent or Correct Suspected Fraud**

39 Section 809.113 is amended to remove the provision that a child care contractor may take certain
40 actions if a provider or parent has committed fraud. Although a Board's child care contractor is
41 expected to take these actions, the language implied that the contractor determines which action
42 to take without the involvement of the Board or the Commission.
43

44 Amended language in §809.113 clarifies that actions taken against a provider or parent shall be
45 consistent with and pursuant to Commission policy.
46

47 Further, §809.113 is amended to include the following options:

1 --A provider may be prohibited from future eligibility to provide Commission-funded child care
2 services; and
3 --A parent's eligibility may be terminated during the 12-month eligibility period if eligibility was
4 determined using fraudulent information provided by the parent.
5

6 **Comment:**

7 One commenter requested clarification on §809.113(b)(4) regarding termination of a
8 parent's care during the 12-month eligibility period, if eligibility was determined using
9 fraudulent information provided by the parent. The commenters asked if this would
10 require the appeal or fraud review to take place first before terminating the parent's care.
11 Would fraud have to be confirmed first before terminating the parent's care or can the
12 parent be terminated for suspected fraud?
13

14 Another commenter asked if a parent is found to have committed fraud, is the Board
15 required to give 15 days' notice of termination or is the care terminated immediately.
16

17 **Response:**

18 The language in §809.113(b) states that the actions are based on a finding of fraud. A
19 finding of fraud would be a fraud determination. The required 15-day notification must
20 be provided, and the parent must be allowed to appeal the decision as required in
21 §809.74.
22

23 **Comment:**

24 One commenter recommended that to achieve the explanation in the preamble, it is
25 recommended that the revision be, "The Commission, Board, or Board's child care
26 contractor (with Board approval)..."
27

28 Another commenter recommended that the wording in §809.113 (a) and (b) be modified
29 to read, "the Commission, Board, or Board's child care contractor at the direction of the
30 Board..." in recognition of the fact that the contractor is expected to take these actions
31 while addressing the concern that they should not be taken without the involvement of the
32 Board or the Commission.
33

34 **Response:**

35 The Commission declines to make this change. The intent of the rule language in
36 §809.113 is to list actions that may be taken against a provider or parent for a finding of
37 fraud. The decision on the actions taken is the responsibility of the Board, not the Board
38 contractor. The contractor may present the results of the fact-finding to the Board and
39 recommend that the Board determine that fraud occurred. The Commission understands
40 that the contractor will ultimately implement the action as determined by the Board
41 regarding a finding of fraud, but the intent of the language is to establish that the
42 Commission or the Board, not the contractor, will take action regarding fraud
43 determinations.
44

45 **Comment:**

46 One commenter requested clarification on what is considered fraud and provided specific
47 scenarios and inquired if those scenarios would be considered fraud and the funds subject
48 to recovery.

1
2 **Response:**

3 The Agency will develop guidelines and criteria for fraud determinations. RID will
4 continue to provide training to Boards and Board contractors on fact-finding.
5

6
7 **§809.115. Corrective Adverse Actions**

8 Section 809.115 is amended to remove §809.115(b)(4) to remove termination of child care
9 services as a possible corrective action for parents' noncompliance with this chapter.
10

11 **Comment:**

12 One commenter requested that a list of corrective actions for parents be provided as was
13 done for providers in §809.115(b). One commenter asked if giving a CCAA card or PIN
14 to a provider are the only parent actions for which Boards may take corrective actions
15 against parents.
16

17 **Response:**

18 The actions taken against a parent are included in §809.117(d) and involve recovery of
19 improper payments for instances:
20 -- involving fraud;
21 -- in which the parent has received child care services while awaiting an appeal and the
22 determination is affirmed by the hearing officer; and
23 -- in which the parent fails to pay the parent share of cost and the Board's policy is to pay
24 the provider.
25

26 **Comment:**

27 One commenter requested clarification on whether or not Boards have local flexibility to
28 impose sanctions on parents for other reasons at the discretion of the Board.
29

30 **Response:**

31 Boards may only take corrective action as allowed under Subchapter F. Any termination
32 of care within the 12 months must be in compliance with this subchapter.
33

34 **Comment:**

35 One commenter stated that the corrective actions for the CCAA card seem overly harsh
36 and in most cases not necessary. The CCAA system will primarily be used for tracking
37 absence and non-records of attendance as a tool for the child care services contractor to
38 determine which parents need to be contacted. There are no corrective actions that can be
39 taken against the parent for non-usage if the parent is and remains eligible for services.
40

41 **Response:**

42 In this subchapter, the definition of "fraud" includes knowingly making a false statement
43 or declaration in order to obtain or increase payments either for the person or another
44 person. Knowingly making false attendance reporting in order to bypass the attendance
45 standards with the goal of continuing care at the next eligibility redetermination could be
46 considered grounds for a finding of fraud.
47

48 **§809.116. Recovery of Improper Payments**

1 Section 809.116 is repealed and combined with §809.117.
2

3 **§809.117. Recovery of Improper Payments to a Provider or Parent**

4 Section 809.117 is amended to clarify the circumstances in which parents are required to repay
5 improper payments. The language clarifies that a parent shall repay improper payments only in
6 the following circumstances:

7 --Instances involving fraud;

8 --Instances in which the parent has received child care services awaiting an appeal and the
9 determination is affirmed by the hearing officer; or

10 --Instances in which the parent fails to pay the parent share of cost and the Board's policy is to
11 pay the provider for the parent's failure to pay the parent share of cost.

12
13 Section 809.117 is amended to prohibit a parent subject to the repayment provisions above from future
14 child care eligibility until the repayment amount is recovered, provided that the prohibition does not result
15 in a Choices or SNAP E&T participant becoming ineligible for child care.

16
17 A technical amendment to §809.117(e) is made to change the word "prepayment" to "repayment."
18

19 **Comment:**

20 One commenter asked if upon finding an eligibility error that resulted in the customer
21 receiving services for which they were not eligible, whether contractors will be able to
22 discontinue services or is the customer still entitled to receive a full 12 months of
23 services. Additionally, the commenter asked who would be responsible for paying back
24 the improper payment.

25
26 **Response:**

27 The actions taken and any possible recoupments will be included in Agency guidelines
28 regarding fraud determinations and recoupments that are currently under development.
29

30 **Comment:**

31 One commenter stated that to align with the proposed change to not recoup overpayments
32 from parents due to not timely reporting changes, it is recommended that contractors not
33 be assessed disallowed costs from overpayments due to unintended errors.
34

35 The commenter stated that this is particularly true during this transition period of
36 enacting major changes, including 12-month certifications, and enhanced quality
37 assurance will need to be developed. To allow time for training and review processes to
38 be fully implemented, it is recommended that contractors be exempt from disallowed cost
39 charges so resources can be devoted to areas that benefit families. These include training
40 staff on new rules that better adhere to the interests of the children and internally
41 monitoring cases to ensure new rules are being administered accurately. Uniform
42 statewide training is also recommended, given the significant changes being proposed to
43 Chapter 809.
44

45 **Response:**

46 The Agency will provide training on the new requirements and new processes and will
47 provide technical assistance to Boards and contractors on the new requirements.

48 However, the Agency cannot exempt contractors from disallowed costs, even during the

1 implementation period. Any findings of disallowed costs due to contractor error will be
2 handled in accordance with Agency policy.

3
4 **Comment:**

5 One commenter noted that §809.117(d)(2) states that improper payments should be
6 repaid in "instances in which the parent has received child care services awaiting an
7 appeal and the determination is affirmed by the hearing officer." One commenter asked
8 if this refers to the first step of the appeal process--the local review--or the second step of
9 the appeal process--the Board level hearing--or both.

10
11 Are parents required to repay the cost of child care during an appeal if the termination is
12 upheld even with the first level of appeal as they do now?

13
14 **Response:**

15 The repayment amount will be based on the final appeal determination.

16
17 **Comment:**

18 Several commenters asked if the Board's current process of using repayment schedules
19 (payments received over a period of time) and allowing parents to remain in care as long
20 as they are paying on their repayment schedules will still be allowed.

21
22 The current proposed rule does not allow for parents who are complying with their
23 recoupment payment plan to be eligible to receive services. Under the current proposed
24 rule, if a Choices or SNAP E&T participant receives services and then becomes eligible
25 for At-Risk child care services, the parent would have to be denied under current
26 proposed rule because the recoupment amount has not been paid in full.

27
28 One commenter recommended to allow for eligibility for services if a parent is
29 complying with recoupment payments.

30
31 One commenter asked for clarification if the language in §809.117(e) means the
32 repayment must be paid in full prior to determination of eligibility.

33
34 **Response:**

35 Full payment must be made in order for the parent to be eligible for future child care at
36 the eligibility redetermination or at the next time the parent applies for care. This is
37 necessary due to the 12-month eligibility period and the requirement that care cannot be
38 terminated during the eligibility period. There is a possibility that a parent may make one
39 payment at the beginning the repayment plan in order to be determined eligible, then not
40 make a payment for the remainder of the eligibility period.

41
42 **Comment:**

43 One commenter inquired as to whether Boards have local flexibility on how to handle
44 recoupments owed under current rules. If Boards do not have flexibility, the commenter
45 requested guidance on how to handle current recoupments effective October 1, 2016.

46
47 **Response:**

1 As stated previously in the discussion in §809.111 regarding general fraud fact-finding
2 procedures, there is no federal requirement for Lead Agencies to recoup CCDF
3 overpayments, except in instances of fraud. However, the Commission is obligated to
4 ensure that child care funds are effectively and efficiently targeted toward eligible
5 low-income families. As noted in the NPRM preamble, when implementing CCDF
6 program, Lead Agencies must balance ensuring compliance with eligibility
7 requirements with other considerations, including administrative feasibility and
8 program integrity. The Commission has long had a strong focus on program integrity
9 and a significant Rapid Process Improvement review is underway to streamline and
10 standardize Boards' fraud fact-finding investigations and adverse action determination
11 procedures. As Agency and Board procedures become more clear and efficient,
12 recoupment efforts will become more focused on fraud detection.
13

14 To ensure that recoupment of amounts owed prior to the effective date of these rules are
15 consistent with the revised Agency and Board fraud-related standards moving forward,
16 the Commission proposes to limit consideration during eligibility determination and
17 redetermination of prior recoupments solely to debts from court-ordered restitution.
18 Therefore, amounts owed other than those that are court-ordered restitution cannot be
19 considered during eligibility redetermination.
20

21 **GENERAL COMMENTS**

22 **Comment:**

23 The Commission received many comments from Boards as well as from the Board Child
24 Care Network in support of the changes to ensure continuity of care. However, the
25 commenters were also concerned that many of the changes resulting from the CCDBG
26 reauthorization will make it even more difficult for Boards to accurately forecast
27 expenditures in the first couple of years, such as reductions in parent share of cost,
28 transfers between workforce areas, and the requirement to fund all former DFPS children
29 with CCDF funds for the remainder of the eligibility period. Since DFPS families do not
30 have a parent share of cost, it will be more expensive to serve these families compared to
31 At-Risk families. Additionally, potential changes in the methodology for calculating
32 income are likely to reduce parent shares of cost resulting in higher Board costs. Over
33 half of the Boards currently do not reimburse providers for non-attendance days and the
34 change to reimbursing providers based on authorized enrollment will further increase the
35 amount of funds needed to provide care for these Boards. These factors, along with
36 higher utilization rates, will present new challenges to Boards in managing funds. These
37 factors may necessitate the need of Boards to terminate services rather than exceed their
38 child care allocations.
39

40
41 One Board recommended that the Agency develop specialized technical assistance in this
42 area and that adequate resources be made available to develop and run specialized or
43 canned reports.
44

45 The child care network and several Boards recommended that the ability of Boards to end
46 services in order to stay within budget be added to the Chapter 809 rules.
47

48 **Response:**

1 The Commission appreciates the comments and understands the concerns mentioned.
2 The Agency will closely monitor the impact of the changes to cost and.
3

4 The Commission will also provide technical assistance and specialized data analysis as
5 requested to Boards on an individual and group basis in order to develop strategies and
6 identify best practices during the implementation of the rules.
7

8 Regarding the recommendation to end services in order to stay within budget, CCDBG
9 Act 658E(c)(2)(N) states that the child will receive assistance for not less than 12 months
10 "before the State or designated local entity redetermines the eligibility of the child under
11 this subchapter." Additionally, the Act further states that there are procedures in place ". .
12 . to ensure that working parents (especially parents in families receiving assistance under
13 [TANF] are not required to unduly disrupt their employment in order to comply with the
14 State's or designated local entity's requirement for redetermination of eligibility for
15 assistance in accordance with this subchapter."
16

17 The CCDBG Act promotes continuity of services and does not provide for dropping an
18 otherwise eligible child for continued care at redetermination.
19

20 The Agency's child care rules reflect this intent. Section 809.54(b) states that "nothing in
21 this chapter shall be interpreted in a manner as to result in a child being removed from
22 care." Additionally, §809.50 regarding At-Risk child care specifically states that a parent
23 is eligible under this section "at eligibility determination *and* at eligibility
24 redetermination," if the child and the family meet the eligibility requirements.
25

26 **Comment:**

27 One Board commented that it supports the concept of continuity of care; however, as the
28 Agency has acknowledged in the preamble to §809.44 related to calculating family
29 income, these changes, as well as changes to other rules (in particular, those related to
30 assignment of parent share of cost and serving populations not required to pay parent
31 share of cost), may result in increased costs of care and reduce the number of children the
32 Board may be able to serve.
33

34 The Board is grateful to see that the Agency plans to perform ongoing analyses of these
35 and other factors that may affect performance and be open to making adjustments
36 accordingly, especially since remedies once available to Boards for managing over
37 expenditures (such as termination policies) are no longer allowable and are, therefore,
38 unavailable as an option for mitigating risk.
39

40 **Response:**

41 The Commission appreciates the comment.
42

43 **Comment:**

44 Commenters expressed concern about the deadline to implement the reauthorization and
45 new state rules on October 1, 2016. The amended rules and the income calculation
46 redesign constitute major operational changes that will require changes to processes,
47 systems, customer and provider communications, and finally training for staff. In the
48 meantime, customers needing to be recertified receive notices 20-45 days in advance,

1 depending on the region. In some cases this is well before final rules are even adopted.
2 In order to ensure clear communication to customers and ensure that the rules are
3 implemented appropriately, we would request that the rules be phased in starting on
4 October 1, 2016, and that time be allowed to implement the changes required.
5

6 **Response:**

7 The Commission understands the concern and is planning to provide training webinars in
8 September in preparation for the October 1, 2016, rule implementation. Training and
9 technical assistance will also be provided throughout the 2017 Board contract year.
10 Additionally, the Agency has issued guidance to Boards that the rules in effect prior to
11 the effective date of these amendments allow Boards to establish their own eligibility
12 periods. Therefore, Boards may extend the eligibility periods of children in care prior to
13 the effective date of these rules in order to ensure minimum disruption to service delivery
14 and to allow time for Board and Board contractors to receive training on the new rules
15 and to modify processes and procedures.
16

17 **Comment:**

18 One commenter was "overwhelmingly excited" to see the changes coming and cannot
19 wait until October 1, 2016. The commenter has used child care services for several years
20 and thinks it is a great program.
21

22 **Response:**

23 The Commission appreciates the comment.
24

25 **Comment:**

26 Several commenters noted that scattered throughout the document are limitations or time
27 frames when parents can report changes, request a transfer after the provider is placed on
28 corrective action by DFPS, etc. However, these date limitations do not appear to be
29 consistent and make the rules more challenging than necessary. Additionally, sometimes
30 the term "calendar days" is used, while other times, the term "business days" is used.
31 Using "calendar days" is our preferred method. Consistency with limitations and time
32 frames among all of the sections of the proposed rules would be appreciated (if
33 allowable).
34

35 **Response:**

36 The Commission appreciates the comment. Generally, the time frames in the rules are
37 "calendar" days, and the rules will be modified to make this clarification, where
38 applicable. However, to account for the weekend and to allow the greatest amount of
39 time possible, deadlines of five days or fewer will remain "business days."
40

41 **Comment:**

42 One commenter appreciated the opportunity to provide comment on proposed rule
43 changes. The commenter believes that 30 days is insufficient time to thoroughly review
44 each proposed rule and suggests rules that address the intent and implementation of the
45 Reauthorization Act of 2014. These 30 days have been the first opportunity for the
46 public to provide comments. Given the sweeping changes that the Act allows, the
47 commenter respectfully requests that the Commission and/or Boards host forums to
48 receive input from parents, providers, private and public entities, and early care and

1 education associations. Guidelines may have to be issued in order to comply with an
2 October 1, 2016, implementation date but after that, host public forums--gather the input
3 from the public on how they see the future implementation of the CCDF rules in Texas.
4

5 **Response:**

6 The Commission appreciates the comment and thanks the commenter for reviewing the
7 proposed rules and providing input. The Commission encourages input from all
8 stakeholders regarding the Child Care Services program.
9

10 **Comment:**

11 One provider submitted that the provider has always been willing to be paid less for the
12 sake of these families and children and over the years have seen families use the system
13 and then get out of it, making room for others and being successful.
14

15 The provider reported seeing much abuse by parents who fail to record attendance, fail to
16 turn in their paperwork and are then removed from the system, but get back on and the
17 cycle continues. The commenter believes there should be some accountability for the
18 parent to do what is required, and the penalty should not be placed on the provider who is
19 already not being compensated at the rate they are charging. If an open child support
20 case is no longer required, allowing parents to neglect the cost and care of their child,
21 then the burden falls on the taxpayer.
22

23 The provider is supporting the current workforce by providing care for young children as
24 well as educating the young children in care to become the workforce of tomorrow.
25

26 The commenter stated that parents should be required to attend education classes,
27 parenting classes, budgeting classes, and self-improvement classes, if they are allowed to
28 remain in the system. The provider is required to train staff and follow all the rules in
29 order to care for children. Parents should have to do the same.
30

31 The commenter also stated that parents complain about having to pay their copay
32 amounts. Many have an entitlement mentality. The commenter stated the understanding
33 that many Child Care Services customers have little education or life skills, but wondered
34 when the cycle will be broken if we continue to enable parents to remain in the cycle
35 their parents were in.
36

37 There should be a limit of how long parents are allowed to stay in the system. If parents
38 knew they would never receive funds after a certain amount of time, perhaps they would
39 be more diligent in becoming self-sufficient.
40

41 **Response:**

42 The Commission appreciates the comments and appreciates the challenges faced by
43 providers. The Commission has implemented several initiatives to assist child care
44 providers with funding and professional development to improve the quality of child care
45 services.
46

47 Additionally, the Agency strives to support the fixed costs of providing subsidized child
48 care services by paying providers on enrollment rather than daily attendance.

1
2 The Commission appreciates the commenter's support for the current workforce and
3 helping to develop and educate the future workforce. The 12-month eligibility period and
4 the emphasis on continuity of care will assist children in obtaining stable and consistent
5 care and early education opportunities. The consistent and stable care will also assist
6 parents in obtaining and maintaining consistent and stable employment to lead to self -
7 sufficiency.
8
9

10 **COMMENTS WERE RECEIVED FROM:**

11
12 Rachel Garcia, Senior Operations Manager, Lower Rio Grande Valley
13 Sharon Felderhoff, Workforce Texoma Board of Directors
14 Julie Craig, Child Care Contracts Manager, Texoma
15 Marsha Lindsey, Deputy Director/EO Officer, Workforce Solutions Texoma
16 Dr. Jeremy P. McMillen, President, Grayson College
17 Angela Magers, Director, Montessori Academy of North Texas
18 Kelly Langley
19 Tammy Flores
20 Debra English
21 Shannon Richter, Contract Manager, Workforce Solutions Rural Capital Area
22 Kelley Fontenot, Child Care Manager, North Central Texas Council of Governments, Workforce
23 Solutions for North Central Texas
24 Shari Anderson, VP Child Care Assistance, ChildCareGroup
25 Shawn Garrison, Child Care Policy Analyst, Workforce Solutions Alamo
26 Rita Morris, Director of Child Care Management Services, Child Care Associates (Tarrant
27 County)
28 Pam McPeak, Owner and Executive Director, Little People's Learning Center
29 Sandy Balk
30 Kerry Echard
31 Workforce Solutions Concho Valley
32 Workforce Solutions of West Central Texas
33 City of San Antonio, Workforce Solutions Alamo's child care contractor
34 Kathy Talbert, Owner/Director, Little Cougar, Inc.
35 September Jones, Government Relations Manager, KinderCare Education, LLC
36 Sharron Benson Powell, Houston-Galveston Area Council, Workforce Solutions Gulf Coast
37 Janet Bono, Workforce Services Program Administrator, Workforce Solutions Borderplex
38 YWCA El Paso
39 Workforce Solutions Northeast Texas
40 Rosa Hernandez, Workforce Solutions South Plains
41 Elaine Clark, Child Care Programs Manager, Workforce Solutions Capital Area
42 Julie Talbert, Manager of Child Care & Public Transportation, Workforce Solutions for the Heart
43 of Texas
44 Marvin Albright, Nomah Albright, Alison Albright, Imelda Davila-Leon, Marissa Hudler, and
45 Todd Hudler
46 Neil Hanson, Senior Director of Public Sector Solutions, Neighborhood Centers Inc.
47

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

3
4 The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the
5 Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for
6 the effective administration of Agency services and activities, and Texas Human Resources Code
7 §44.002, regarding Administrative Rules.

8
9 The adopted rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as
10 Texas Government Code, Chapter 2308.

11
12

1
2
3 **CHAPTER 809. CHILD CARE SERVICES**

4 **SUBCHAPTER A. GENERAL PROVISIONS**

5 **§809.2. Definitions.**

6
7 The following words and terms, when used in this chapter, shall have the following
8 meanings, unless the context clearly indicates otherwise.

- 9
10 (1) Attending a job training or educational program--An individual is
11 attending a job training or educational program if the individual:
12
13 (A) is considered by the program to be officially enrolled;
14
15 (B) meets all attendance requirements established by the program; and
16
17 (C) is making progress toward successful completion of the program as
18 determined by the Board upon eligibility redetermination as
19 described in §809.42(b).
20
21 (2) Child--An individual who meets the general eligibility requirements
22 contained in this chapter for receiving child care services.
23
24 (3) Child care contractor--The entity or entities under contract with the
25 Board to manage child care services. This includes contractors involved
26 in determining eligibility for child care services, contractors involved in
27 the billing and reimbursement process related to child care subsidies, as
28 well as contractors involved in the funding of quality improvement
29 activities as described in §809.16.
30
31 (4) Child care services--Child care subsidies and quality improvement
32 activities funded by the Commission.
33
34 (5) Child care subsidies--Commission-funded child care reimbursements to
35 an eligible child care provider for the direct care of an eligible child.
36
37 (6) Child experiencing homelessness--A child who is homeless as defined in
38 the McKinney-Vento Act (42 U.S.C. 11434(a)), Subtitle VII-B, §725.
39
40 (7) Child with disabilities--A child who has a physical or mental impairment
41 that substantially limits one or more major life activities, has a record of
42 such an impairment, or is regarded as having such an impairment. Major
43 life activities include, but are not limited to, caring for oneself;
44 performing manual tasks; walking; hearing; seeing, speaking, or
45 breathing; learning; and working.
46
47 (8) Educational program--A program that leads to:
48

- 1 (A) a high school diploma;
2
3 (B) a General Educational Development (GED) credential; or
4
5 (C) a postsecondary degree from an institution of higher education.
6
7 (9) Family--Two or more individuals related by blood, marriage, or decree
8 of court, who are living in a single residence and are included in one or
9 more of the following categories:
10
11 (A) Two individuals, married--including by common-law, and
12 household dependents; or
13
14 (B) A parent and household dependents.
15
16 (10) Household dependent--An individual living in the household who is
17 one of the following:
18
19 (A) An adult considered as a dependent of the parent for income tax
20 purposes;
21
22 (B) A child of a teen parent; or
23
24 (C) A child or other minor living in the household who is the
25 responsibility of the parent.
26
27 (11) Improper payments--Any payment of CCDF grant funds that should not
28 have been made or that was made in an incorrect amount (including
29 overpayments and underpayments) under statutory, contractual,
30 administrative, or other legally applicable requirements governing the
31 administration of CCDF grant funds and includes payments:
32
33 (A) to an ineligible recipient;
34
35 (B) for an ineligible service;
36
37 (C) for any duplicate payment; and
38
39 (D) for services not received.
40 .
41
42 (12) Job training program--A program that provides training or instruction
43 leading to:
44
45 (A) basic literacy;
46
47 (B) English proficiency;
48

- 1 (C) an occupational or professional certification or license; or
2
3 (D) the acquisition of technical skills, knowledge, and abilities specific
4 to an occupation.
5
6 (13) Listed family home--A family home, other than the eligible child's own
7 residence, that is listed, but not licensed or registered with, the Texas
8 Department of Family and Protective Services (DFPS) pursuant to Texas
9 Human Resources Code §42.052(c).
10
11 (14) Military deployment--The temporary duty assignment away from the
12 permanent military installation or place of residence for reserve
13 components of the single military parent or the dual military parents.
14 This includes deployed parents in the regular military, military reserves,
15 or National Guard.
16
17 (15) Parent--An individual who is responsible for the care and supervision of
18 a child and is identified as the child's natural parent, adoptive parent,
19 stepparent, legal guardian, or person standing in loco parentis (as
20 determined in accordance with Commission policies and procedures).
21 Unless otherwise indicated, the term applies to a single parent or both
22 parents.
23
24 (16) Protective services--Services provided when:
25
26 (A) a child is at risk of abuse or neglect in the immediate or short-term
27 future and the child's family cannot or will not protect the child
28 without DFPS Child Protective Services (CPS) intervention;
29
30 (B) a child is in the managing conservatorship of DFPS and residing
31 with a relative or a foster parent; or
32
33 (C) a child has been provided with protective services by DFPS within
34 the prior six months and requires services to ensure the stability of
35 the family.
36
37 (17) Provider--A provider is defined as:
38
39 (A) a regulated child care provider as defined in §809.2(18);
40
41 (B) a relative child care provider as defined in §809.2(19); or
42
43 (C) a listed family home as defined in §809.2(13), subject to the
44 requirements in §809.91(b).
45
46 (18) Regulated child care provider--A provider caring for an eligible child in
47 a location other than the eligible child's own residence that is:
48

- 1 (A) licensed by DFPS;
2
3 (B) registered with DFPS; or
4
5
6 (C) operated and monitored by the United States military services.
7
8 (19) Relative child care provider--An individual who is at least 18 years of
9 age, and is, by marriage, blood relationship, or court decree, one of the
10 following:
11
12 (A) The child's grandparent;
13
14 (B) The child's great-grandparent;
15
16 (C) The child's aunt;
17
18 (D) The child's uncle; or
19
20 (E) The child's sibling (if the sibling does not reside in the same household as
21 the eligible child).
22
23 (20) Residing with--Unless otherwise stipulated in this chapter, a child is
24 considered to be residing with the parent when the child is living with
25 and physically present with the parent during the time period for which
26 child care services are being requested or received.
27
28 (21) Teen parent--A teen parent (teen) is an individual 18 years of age or
29 younger, or 19 years of age and attending high school or the equivalent,
30 who has a child.
31
32 (22) Texas Rising Star program--A voluntary, quality-based rating system of
33 child care providers participating in Commission-subsidized child care.
34
35 (23) Texas Rising Star Provider--A provider certified as meeting the TRS
36 program standards. TRS providers are certified as one of the following:
37
38 (A) 2-Star Program Provider;
39
40 (B) 3-Star Program Provider; or
41
42 (C) 4-Star Program Provider.
43
44 (24) Working--Working is defined as:
45
46 (A) activities for which one receives monetary compensation such as a
47 salary, wages, tips, and commissions; or
48

1
2 (B) participation in Choices or Supplemental Nutrition Assistance Program
3 Employment and Training (SNAP E&T) activities.
4

5 **SUBCHAPTER B. GENERAL MANAGEMENT**
6

7 **§809.13. Board Policies for Child Care Services.**
8

- 9 (a) A Board shall develop, adopt, and modify its policies for the design and management
10 of the delivery of child care services in a public process in accordance with Chapter
11 802 of this title.
12
- 13 (b) A Board shall maintain written copies of the policies that are required by federal and
14 state law, or as requested by the Commission, and make such policies available to
15 the Commission and the public upon request.
16
- 17 (c) At a minimum, a Board shall develop policies related to:
18
- 19 (1) how the Board determines that the parent is making progress toward successful
20 completion of a job training or educational program as described in §809.2(1);
21
 - 22 (2) maintenance of a waiting list as described in §809.18(b);
23
 - 24 (3) assessment of a parent share of cost as described in §809.19, including the
25 reimbursement of providers when a parent fails to pay the parent share of cost;
26
 - 27 (4) maximum reimbursement rates as provided in §809.20, including policies
28 related to reimbursement of providers that offer transportation;
29
 - 30 (5) family income limits as described in Subchapter C of this chapter (relating to
31 Eligibility for Child Care Services);
32
 - 33 (6) provision of child care services to a child with disabilities under the age of 19
34 as described in §809.41(a)(1)(B);
35
 - 36 (7) minimum activity requirements for parents as described in §809.48 and
37 §809.50;
38
 - 39 (8) time limits for the provision of child care while the parent is attending an
40 educational program as described in §809.41(b);
41
 - 42
 - 43 (9) Board priority groups as described in §809.43(a);
44
 - 45 (10) transfer of a child from one provider to another as described in §809.71(3);
46
47
48

- 1 (11) providers charging the difference between their published rate and the Board's
2 reimbursement rate as provided in §809.92(d);
3
4 (12) procedures for fraud fact-finding as provided in §809.111;
5 and
6
7 (13) policies and procedures to ensure that appropriate corrective actions are taken
8 against a provider or parent for violations of the automated attendance
9 requirements specified in §809.115(d) - (e).

10
11 **§809.15. Promoting Consumer Education.**

- 12
13 (a) A Board shall promote informed child care choices by providing consumer education
14 information to:
15
16 (1) parents who are eligible for child care services;
17
18 (2) parents who are placed on a Board's waiting list;
19
20 (3) parents who are no longer eligible for child care services; and
21
22 (4) applicants who are not eligible for child care services.
23
24 (b) The consumer education information, including consumer education information
25 provided through a Board's website, shall contain, at a minimum:
26
27 (1) information about the Texas Information and Referral Network/2-1-1 Texas
28 (2-1-1 Texas) information and referral system;
29
30 (2) the website and telephone number of DFPS, so parents may obtain health and
31 safety requirements including information on:
32
33 (A) the prevention and control of infectious diseases (including
34 immunizations);
35
36 (B) building and physical premises safety;
37
38 (C) minimum health and safety training appropriate to the provider setting;
39 and
40
41 (D) the regulatory compliance history of child care providers;
42
43 (3) a description of the full range of eligible child care providers set forth in
44 §809.91; and
45
46 (4) a description of programs available in the workforce area relating to school
47 readiness and quality rating systems, including:
48

- 1 (A) Texas Rising Star (TRS) Provider criteria, pursuant to Texas
2 Government Code §2308.315; and
3
- 4 (B) integrated school readiness models, pursuant to Texas Education Code
5 §29.160;
6
- 7 (5) a list of child care providers that meet quality indicators, pursuant to Texas
8 Government Code §2308.3171;
9
- 10 (6) information on existing resources and services available in the workforce area
11 for conducting developmental screenings and providing referrals to services
12 when appropriate for children eligible for child care services, including the use
13 of:
14
 - 15 (A) the Early and Periodic Screening, Diagnosis, and Treatment program
16 under 42 U.S.C. 1396 et seq.; and
17
 - 18 (B) developmental screening services available under Part B and Part C of
19 the Individuals with Disabilities Education Act (20 U.S.C. 1419, 1431 et
20 seq.; and
21
- 22 (7) a link to the Agency's designated child care consumer education website,
23
- 24 (c) A Board shall cooperate with the Texas Health and Human Services Commission
25 (HHSC) to provide 2-1-1 Texas with information, as determined by HHSC, for
26 inclusion in the statewide information and referral network.
27

28 **§809.16. Quality Improvement Activities.**
29

- 30 (a) Child care funds allocated by the Commission pursuant to its allocation rules
31 (generally, Chapter 800, General Administration, Subchapter B, Allocation and
32 Funding, and specifically §800.58, Child Care), including local public
33 transferred funds and local private donated funds, as provided in §809.17, to the
34 extent they are used for nondirect care quality improvement activities, may be
35 expended on any quality improvement activity described in 45 CFR Part 98.
36
- 37 (b) Boards must ensure compliance with 45 CFR Part 98 regarding construction
38 expenditures, as follows:
39
 - 40 (1) State and local agencies and nonsectarian agencies or organizations.
41
 - 42 (A) Funds shall not be expended for the purchase or improvement of
43 land, or for the purchase, construction, or permanent improvement
44 of any building or facility.
45
 - 46 (B) Funds may be expended for minor remodeling, and for upgrading
47 child care facilities to ensure that providers meet state and local

1 child care standards, including applicable health and safety
2 requirements.

3
4 (2) Sectarian agencies or organizations.

5
6 (A) The prohibitions in paragraph (1) of this subsection apply.

7
8 (B) Funds may be expended for minor remodeling only if necessary to
9 bring the facility into compliance with the health and safety
10 requirements established pursuant to 45 CFR Part 98.

11
12 (c) Expenditures certified by a public entity, as provided in §809.17(b)(3), may
13 include expenditures for any quality improvement activity described in 45 CFR
14 Part 98.

15
16 **§809.17. Leveraging Local Resources.**

17
18 (a) Leveraging Local Funds.

19
20 (1) The Commission encourages Boards to secure local public and private funds
21 for the purpose of matching federal funds in order to maximize resources for
22 child care needs in the community.

23
24 (2) A Board is encouraged to secure additional local funds in excess of the amount
25 required to match federal funds allocated to the Board in order to maximize its
26 potential to receive additional federal funds should they become available.

27
28 (3) A Board's performance in securing and leveraging local funds for match may
29 make the Board eligible for incentive awards.

30
31 (b) The Commission accepts the following as local match:

32
33 (1) Funds from a private entity that:

34
35 (A) are donated without restrictions that require their use for:

36
37 (i) a specific individual, organization, facility, or institution; or

38
39 (ii) an activity not included in the CCDF State Plan or allowed under
40 this chapter;

41
42 (B) do not revert back to the donor's facility or use;

43
44 (C) are not used to match other federal funds; and

45
46 (D) are certified by both the donor and the Commission as meeting the
47 requirements of subparagraphs (A) - (C) of this paragraph.
48

- 1 (2) Funds from a public entity that:
2
3 (A) are transferred without restrictions that would require their use for an
4 activity not included in the CCDF State Plan or allowed under this
5 chapter;
6
7 (B) are not used to match other federal funds; and
8
9 (C) are not federal funds, unless authorized by federal law to be used to
10 match other federal funds.
11
12 (3) Expenditures by a public entity certifying that the expenditures:
13
14 (A) are for an activity included in the CCDF State Plan or allowed under this
15 chapter;
16
17 (B) are not used to match other federal funds; and
18
19 (C) are not federal funds, unless authorized by federal law to be used to
20 match other federal funds.
21
22 (c) A Board shall ensure that a public entity certifying expenditures for direct child care
23 as described in §809.17(b)(3) determines and verifies that the expenditures are for
24 child care provided to an eligible child. At a minimum, the public entity shall verify
25 that the child:
26
27 (1) is under 13 years of age, or at the option of the Board, is a child with
28 disabilities under 19 years of age; and
29
30 (2) resides with:
31
32 (A) a family whose income does not exceed 85 percent of the state median
33 income for a family of the same size; and
34
35 (B) a parent who requires child care in order to work or attend a job training
36 or educational program.
37
38 (d) A Board shall submit private donations, public transfers, and public certifications to
39 the Commission for acceptance, with sufficient information to determine that the
40 funds meet the requirements of subsection (b) of this section.
41
42 (e) Completing Private Donations, Public Transfers, and Public Certifications.
43
44 (1) A Board shall ensure that:
45
46 (A) private donations of cash and public transfers of funds are paid to the
47 Commission; and
48

1 (B) public certifications are submitted to the Commission.
2

3 (2) Private donations and public transfers are considered complete when the funds
4 have been received by the Commission.
5

6 (3) Public certifications are considered complete to the extent that a signed written
7 instrument is delivered to the Commission that reflects that the public entity
8 has expended a specific amount of funds on eligible activities described in
9 subsection (b)(3) of this section.
10

11 (f) A Board shall monitor the funds secured for match and the expenditure of any
12 resulting funds to ensure that expenditures of federal matching funds available
13 through the Commission do not exceed an amount that corresponds to the private
14 donations, public transfers, and public certifications that are completed by the end of
15 the program year.
16

17
18 **§809.19. Assessing the Parent Share of Cost.**
19

20 (a) For child care funds allocated by the Commission pursuant to its allocation rules
21 (generally, Chapter 800, General Administration, Subchapter B, Allocation and
22 Funding, and specifically, §800.58, Child Care), including local public transferred
23 funds and local private donated funds, as provided in §809.17, the following shall
24 apply.
25

26 (1) A Board shall set a parent share of cost policy that assesses the parent share of
27 cost in a manner that results in the parent share of cost:
28

29 (A) being assessed to all parents, except in instances when an exemption
30 under paragraph (2) of this subsection applies;
31

32 (B) being an amount determined by a sliding fee scale based on the family's
33 size and gross monthly income, and also may consider the number of
34 children in care.
35

36 (C) being assessed only at the following times:
37

38 (i) initial eligibility determination;
39

40 (ii) 12-month eligibility redetermination;
41

42 (iii) upon the addition of a child in care;
43

44 (iv) upon a parent's report of a change in income, family size, or
45 number of children in care that would result in a reduced parent
46 share of cost assessment; and
47

- 1 (v) upon resumption of work, job training, or education activities
2 following temporary changes described in §809.51(a)(2) and upon
3 resumption of work, job training, or education activities during the
4 three-month continuation of care period described in §809.51(c);
5 and
6
- 7 (D) not increasing above the amount assessed at initial eligibility
8 determination or at the 12-month eligibility redetermination based on the
9 factor in subparagraph (B) of this paragraph, except upon the addition of
10 a child in care as described in (a)(1)(C)(iii).
11
- 12 (2) Parents who are one or more of the following are exempt from paying the
13 parent share of cost:
14
- 15 (A) Parents who are participating in Choices or who are in Choices child care
16 described in §809.45;
17
- 18 (B) Parents who are participating in SNAP E&T services or who are in
19 SNAP E&T child care described in §809.47;
20
- 21 (C) Parents of a child receiving Child Care for Children Experiencing
22 Homelessness as described in §809.52; or
23
- 24 (D) Parents who have children who are receiving protective services child
25 care pursuant to §809.49 and §809.54(c), unless DFPS assesses the
26 parent share of cost.
27
- 28 (3) Teen parents who are not covered under exemptions listed in paragraph (2) of
29 this subsection shall be assessed a parent share of cost. The teen parent's share
30 of cost is based solely on the teen parent's income and size of the teen's family
31 as defined in §809.2.
32
- 33 (b) For child care services funded from sources other than those specified in subsection
34 (a) of this section, a Board shall set a parent share of cost policy based on a sliding
35 fee scale. The sliding fee scale may be the same as or different from the provisions
36 contained in subsection (a) of this section.
37
- 38 (c) A Board shall establish a policy regarding reimbursement of providers when parents
39 fail to pay the parent share of cost.
40
- 41 (d) The Board or its child care contractor may review the assessed parent share of cost
42 for a possible temporary reduction if there are extenuating circumstances that
43 jeopardize a family's self-sufficiency. The Board or its child care contractor may
44 temporarily reduce the assessed parent share of cost if warranted by these
45 circumstances. Following the temporary reduction, the parent share of cost amount
46 immediately prior to the reduction shall be reinstated.
47

- 1 (e) If the parent is not covered by an exemption as specified in subsection (a)(2) of this
2 section, then the Board or its child care contractor shall not waive the assessed parent
3 share of cost under any circumstances.
4
- 5 (f) If the parent share of cost, based on family income and family size, is calculated to
6 be zero, then the Board or its child care contractor shall not charge the parent a
7 minimum share of cost amount.
8
- 9 (g) A Board may establish a policy to reduce the parent share of cost amount assessed
10 pursuant to subparagraph (a)(1)(B) of this section upon the parent's selection of a
11 TRS-certified provider. Such Board policy shall ensure:
12
- 13 (1) that the parent continue to receive the reduction if:
14
- 15 (A) the TRS provider loses TRS certification; or
16
- 17 (B) the parent moves or changes employment within the workforce area and no
18 TRS-certified providers are available to meet the needs of the parent's
19 changed circumstances; and
20
- 21 (2) that the parent no longer receives the reduction if the parent voluntarily transfers
22 the child from a TRS-certified provider to a non-TRS-certified provider.
23

24 **§809.20. Maximum Provider Reimbursement Rates.**
25

- 26 (a) Based on local factors, including a market rate survey provided by the
27 Commission, a Board shall establish maximum reimbursement rates for child
28 care subsidies to ensure that the rates provide equal access to child care in the
29 local market and in a manner consistent with state and federal statutes and
30 regulations governing child care. At a minimum, Boards shall establish
31 reimbursement rates for full-day and part-day units of service, as described in
32 §809.93(f), for the following:
33
- 34 (1) Provider types:
35
- 36 (A) Licensed child care centers, including before- or after-school
37 programs and school-age programs, as defined by DFPS;
38
- 39 (B) Licensed child care homes as defined by DFPS;
40
- 41 (C) Registered child care homes as defined by DFPS; and
42
- 43 (D) Relative child care providers as defined in §809.2.
44
- 45 (2) Age groups in each provider type:
46
- 47 (A) Infants age 0 to 17 months;
48

- (B) Toddlers age 18 to 35 months;
- (C) Preschool age children from 36 to 71 months; and
- (D) School age children 72 months and over.

(b) A Board shall establish enhanced reimbursement rates:

- (1) for all age groups at TRS provider facilities;
and
- (2) only for preschool-age children at child care providers that participate in integrated school readiness models pursuant to Texas Education Code §29.160.

(c) The minimum enhanced reimbursement rates established under subsection (b) of this section shall be greater than the maximum rate established for providers not meeting the requirements of subsection (b) of this section for the same category of care up to, but not to exceed, the provider's published rate. The maximum rate must be at least:

- (1) 5 percent greater for a:
 - (A) 2-Star Program Provider; or
 - (B) child care provider meeting the requirements of subsection (b)(2) of this section;
- (2) 7 percent greater for a 3-Star Program Provider; and
- (3) 9 percent greater for a 4-Star Program Provider.

(d) Boards may establish a higher enhanced reimbursement rate than those specified in subsection (c) of this section for TRS providers, as long as there is a minimum 2 percentage point difference between each star level.

(e) A Board or its child care contractor shall ensure that providers that are reimbursed for additional staff or equipment needed to assist in the care of a child with disabilities are paid a rate up to 190 percent of the provider's reimbursement rate for a child of that same age. The higher rate shall take into consideration the estimated cost of the additional staff or equipment needed by a child with disabilities. The Board shall ensure that a professional, who is familiar with assessing the needs of children with disabilities, certifies the need for the higher reimbursement rate described in this subsection.

(f) The Board shall determine whether to reimburse providers that offer transportation as long as the combined total of the provider's published rate, plus

1 the transportation rate, is subject to the maximum reimbursement rate
2 established in subsection (a) of this section.
3

4 **SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES**
5

6 **§809.41. A Child's General Eligibility for Child Care Services.**
7

8 (a) Except for a child receiving or needing protective services as described in §809.49,
9 for a child to be eligible to receive child care services, at the time of eligibility
10 determination or redetermination, a Board shall ensure that the child:
11

12 (1) meets one of the following age requirements:
13

14 (A) be under 13 years of age; or
15

16 (B) at the option of the Board, be a child with disabilities under 19 years of
17 age;
18

19 (2) is a U.S. citizen or legal immigrant as determined under applicable federal
20 laws, regulations, and guidelines; and
21

22 (3) resides with:
23

24 (A) a family within the Board's workforce area :

25 (i) whose income does not exceed the income limit established by the
26 Board, which income limit must not exceed 85 percent of the state
27 median income (SMI) for a family of the same size; and

28 (ii) whose assets do not exceed \$1,000,000 as certified by a family
29 member; or

30 (iii) that meets the definition of experiencing homelessness as defined in
31 §809.2.
32

33 (B) parents who require child care in order to work or attend a job training or
34 educational program; or
35

36 (C) a person standing in loco parentis for the child while the child's parent is
37 on military deployment and the deployed military parent's income does
38 not exceed the limits set forth in subparagraph (A) of this paragraph.
39

40 (b) Notwithstanding the requirements set forth in subsection (c) of this section, a Board
41 shall establish policies, including time limits, for the provision of child care services
42 while the parent is attending an educational program.
43

44 (c) Time limits pursuant to subsection (b) of this section shall ensure the provision of
45 child care services for four years, if the eligible child's parent is enrolled in an
46 associate's degree program that will prepare the parent for a job in a high-growth,
47 high-demand occupation as determined by the Board.

- 1
2 (d) A Board may establish a policy to allow parents attending a program that leads to a
3 postsecondary degree from an institution of higher education to be exempt from
4 residing with the child as defined in §809.2.
5
6 (e) Boards that establish initial family income eligibility at a level less than 85 percent
7 of SMI must ensure that the family remains income-eligible for care after passing the
8 Board's initial income eligibility limit.
9
10 (f) Unless otherwise specified, this subchapter applies only to child care services using
11 funds allocated pursuant to §800.58 of this title, including local public transferred
12 funds and local private donated funds described in §809.17.
13

14 **§809.42. Eligibility Verification, Determination, and Redetermination.**
15

- 16 (a) A Board shall ensure that its child care contractor verifies all eligibility requirements
17 for child care services prior to authorizing child care.
18
19 (b) A Board shall ensure that eligibility for child care services shall be redetermined no
20 sooner than 12 months following the initial determination or most recent
21 redetermination.
22
23

24 **§809.43. Priority for Child Care Services.**
25

- 26 (a) A Board shall ensure that child care services are prioritized among the following
27 three priority groups:
28
29 (1) The first priority group is assured child care services and includes children of
30 parents eligible for the following:
31
32 (A) Choices child care as referenced in §809.45;
33
34 (B) Temporary Assistance for Needy Families (TANF) Applicant child care
35 as referenced in §809.46;
36
37 (C) SNAP E&T child care as referenced in §809.47; and
38
39 (D) Transitional child care as referenced in §809.48.
40
41 (2) The second priority group is served subject to the availability of funds and
42 includes, in the order of priority:
43
44 (A) children who need to receive protective services child care as referenced
45 in §809.49;
46
47 (B) children of a qualified veteran or qualified spouse as defined in §801.23
48 of this title;

- (C) children of a foster youth as defined in §801.23 of this title;
- (D) children experiencing homelessness as defined in §809.2 and described in §809.52;
- (E) children of parents on military deployment as defined in §809.2 whose parents are unable to enroll in military-funded child care assistance programs;
- (F) children of teen parents as defined in §809.2; and
- (G) children with disabilities as defined in §809.2.

(3) The third priority group includes any other priority adopted by the Board.

(b) A Board shall not establish a priority group under subsection (a)(3) of this section based on the parent's choice of an individual provider or provider type.

§809.44. Calculating Family Income.

(a) For the purposes of determining family income and assessing the parent share of cost, Boards shall ensure that family income is calculated in accordance with Commission guidelines that:

- (1) take into account irregular fluctuations in earnings; and
- (2) ensure that temporary increases in income, including temporary increases that result in monthly income exceeding 85 percent of SMI do not affect eligibility or parent share of cost.

(b) In accordance with Commission income calculation guidelines, Boards shall ensure that the following income sources are excluded from the family income:

- (1) Medicare, Medicaid, SNAP benefits, school meals, and housing assistance;
- (2) Monthly monetary allowances provided to or for children of Vietnam veterans born with certain birth defects;
- (3) Needs-based educational scholarships, grants, and loans; including financial assistance under Title IV of the Higher Education Act--Pell Grants, Federal Supplemental Educational Opportunity grants, Federal Work Study Program, PLUS, Stafford loans, and Perkins loans;
- (4) Individual Development Account (IDA) withdrawals for the purchase of a home, medical expenses, or educational expenses;

- 1 (5) Onetime cash payments, including tax refunds, Earned Income Tax Credit
2 (EITC) and Advanced EITC, onetime insurance payments, gifts, and lump sum
3 inheritances;
- 4
- 5 (6) VISTA and AmeriCorps living allowances and stipends;
- 6
- 7 (7) Noncash or in-kind benefits such as employer-paid fringe benefits, food, or
8 housing received in lieu of wages;
- 9
- 10 (8) Foster care payments and adoption assistance;
- 11
- 12 (9) Special military pay or allowances, including subsistence allowances, housing
13 allowances, family separation allowances, or special allowances for duty
14 subject to hostile fire or imminent danger;
- 15
- 16 (10) Income from a child in the household between 14 and 19 years of age who is
17 attending school;
- 18
- 19 (11) Early withdrawals from qualified retirement accounts specified as hardship
20 withdrawals as classified by the Internal Revenue Service (IRS);
- 21
- 22 (12) Unemployment compensation;
- 23
- 24 (13) Child support payments;
- 25
- 26 (14) Cash assistance payments, including Temporary Assistance for Needy Families
27 (TANF), Supplemental Security Income (SSI), Refugee Cash Assistance,
28 general assistance, emergency assistance, and general relief;
- 29
- 30 (15) Onetime income received in lieu of TANF cash assistance;
- 31
- 32 (16) Income earned by a veteran while on active military duty and certain other
33 veterans' benefits, such as compensation for service-connected death,
34 vocational rehabilitation, and education assistance;
- 35
- 36 (17) Regular payments from Social Security, such as Old-Age, and Survivors
37 Insurance Trust Fund;
- 38
- 39 (18) Lump sum payments received as assets in the sale of a house, in which the
40 assets are to be reinvested in the purchases of a new home (consistent with IRS
41 guidance);
- 42
- 43 (19) Payments received as the result of an automobile accident insurance settlement
44 that are being applied to the repair or replacement of an automobile; and

1
2 (20) Any income sources specifically excluded by federal law or regulation.
3

4 (c) Income that is not listed in subsection (b) of this section as excluded from income is
5 included as income.
6

7 **§809.45. Choices Child Care.**
8

9 (a) A parent is eligible for Choices child care if the parent is participating in the Choices
10 program as stipulated in Chapter 811 of this title.
11

12 (b) For a parent receiving Choices child care who ceases participation in the Choices
13 program during the 12-month eligibility period, Boards must ensure that Choices
14 child care continues:
15

16 (1) for the three-month period pursuant to §809.51(b); and
17

18 (2) for the remainder of the eligibility period, if the parent resumes participation in
19 Choices or begins participation in work or attendance in a job training or
20 education program during the three-month period described in §809.51(c).
21

22 **§809.46. Temporary Assistance for Needy Families Applicant Child Care.**
23

24 (a) A parent is eligible for TANF Applicant child care if the parent:
25

26 (1) receives a referral from the Health and Human Services Commission (HHSC)
27 to attend a Workforce Orientation for Applicants (WOA);
28

29 (2) locates employment or has increased earnings prior to TANF certification; and
30

31 (3) needs child care to accept or retain employment.
32

33 (b) To receive TANF Applicant child care, the parent shall be working and not have
34 voluntarily terminated paid employment of at least 25 hours a week within 30 days
35 prior to receiving the referral from HHSC to attend a WOA, unless the voluntary
36 termination was for good cause connected with the parent's work.
37

38 **§809.47. Supplemental Nutrition Assistance Program Employment and Training Child**
39 **Care.**
40

41 (a) A parent is eligible to receive SNAP E&T child care services if the parent is
42 participating in SNAP E&T services, in accordance with the provisions of 7 CFR
43 Part 273.
44

45 (b) For a parent receiving SNAP E&T child care services who ceases participation in the
46 E&T program during the 12-month eligibility period, Boards must ensure that SNAP
47 E&T child care continues:
48

- (1) for the three-month period pursuant to §809.51(b); and
- (2) for the remainder of the eligibility period, if the parent resumes participation in the SNAP E&T program or begins participation in work or attendance in a job training or education program during the three-month period described in §809.51(c).

§809.48. Transitional Child Care.

- (a) A parent is eligible for Transitional child care services if the parent:
 - (1) has been denied TANF and was employed at the time of TANF denial; or
 - (2) has been denied TANF within 30 days because of expiration of TANF time limits; and
 - (3) requires child care to work or attend a job training or educational program for a combination of at least an average of 25 hours per week for a single-parent family or 50 hours per week for a two-parent family, or a higher number of hours per week as established by a Board.
- (b) Boards may establish an income eligibility limit for Transitional child care that is higher than the eligibility limit for At-Risk child care, pursuant to §809.50, provided that the higher income limit does not exceed 85 percent of the state median income for a family of the same size.
- (c) For former TANF recipients who are employed when TANF is denied, Transitional child care shall be available for:
 - (1) a period of up to 12 months from the effective date of the TANF denial; or
 - (2) a period of up to 18 months from the effective date of the TANF denial in the case of a former TANF recipient who was eligible for child caretaker exemptions pursuant to Texas Human Resources Code §31.012(c) and voluntarily participates in the Choices program.
- (d) A Board may allow a reduction to the requirement in subsection (a)(3) of this section if a parent's documented medical disability or need to care for a physically or mentally disabled family member prevents the parent from participating in work, education, or job training activities for the required hours per week.
- (e) For purposes of meeting the education requirements stipulated in subsection (a)(3) of this section, the following shall apply:
 - (1) each credit hour of postsecondary education counts as three hours of education activity per week; and

- 1 (2) each credit hour of a condensed postsecondary education course counts as six
2 education activity hours per week.
3

4 **§809.49. Child Care for Children Receiving or Needing Protective Services.**
5

- 6 (a) A Board shall ensure that determinations of eligibility for children needing
7 protective services are performed by DFPS.
8
9 (1) Child care will continue as long as authorized and funded by DFPS.
10
11 (2) DFPS may authorize child care for a child under court supervision under the
12 age of 19.
13
14 (3) Child care discontinued by DFPS prior to the end of the 12-month eligibility
15 period shall be subject to the Continuity of Care provisions in §809.54.
16
17 (b) A Board shall ensure that requests made by DFPS for specific eligible providers are
18 enforced for children in protective services, including children of foster parents when
19 the foster parent is the owner, director, assistant director or other individual with an
20 ownership interest in the provider.
21

22 **§809.50. At-Risk Child Care.**
23

- 24 (a) A parent is eligible for child care services under this section if at initial eligibility
25 determination and at eligibility redetermination as described in §809.42:
26
27 (1) the family income does not exceed the income limit established by the Board
28 pursuant to §809.41(a)(3)(A); and
29
30 (2) child care is required for the parent to work or attend a job training or
31 educational program for a combination of at least an average of 25 hours per
32 week for a single-parent family or 50 hours per week for a two-parent family,
33 or a higher number of hours per week as established by the Board.
34
35 (b) A Board may allow a reduction to the work, education, or job training activity
36 requirements in subsection (a)(2) of this section if a parent's documented medical
37 disability or need to care for a physically or mentally disabled family member
38 prevents the parent from participating in these activities for the required hours per
39 week.
40
41 (c) For purposes of meeting the education requirements stipulated in subsection (a)(2) of
42 this section, the following shall apply:
43
44 (1) each credit hour of postsecondary education counts as three hours of education
45 activity per week;
46
47 (2) each credit hour of a condensed postsecondary education course counts as six
48 education activity hours per week; and

1
2 (3) teen parents attending high school or the equivalent shall be considered as
3 meeting the education requirements in subsection (a)(2) of this section.
4

5 (d) When calculating income eligibility for a child with disabilities, a Board shall deduct
6 the cost of the child's ongoing medical expenses from the family income.
7

8 (e) Boards may establish a higher income eligibility limit for teen parents than the
9 eligibility limit established pursuant to §809.41(a)(3)(A) provided that the higher
10 income limit does not exceed 85 percent of the state median income for a family of
11 the same size.
12

13 (f) A teen parent's family income is based solely on the teen parent's income and size of
14 the teen's family as defined in §809.2(9) .
15

16 (g) Boards may establish a higher income eligibility limit for families with a child who
17 is enrolled in Head Start, Early Head Start, or public pre-K provided that the higher
18 income limit does not exceed 85 percent of the state median income for a family of
19 the same size.
20

21 **§809.51. Child Care during Interruptions in Work, Education, or Job Training.**
22

23 (a) Except for a child experiencing homelessness, as described in §809.52, if the child
24 met all of the applicable eligibility requirements for child care services in this
25 subchapter on the date of the most recent eligibility determination or
26 redetermination, the child shall be considered to be eligible and will receive services
27 during the 12-month eligibility period described in §809.42, regardless of any:
28

29 (1) change in family income, if that family income does not exceed 85 percent of
30 SMI for a family of the same size; or
31

32 (2) temporary change in the ongoing status of the child's parent as working or
33 attending a job training or education program. A temporary change shall
34 include, at a minimum, any:
35

36 (A) time-limited absence from work for an employed parent for periods of
37 family leave (including parental leave) or sick leave;
38

39 (B) interruption in work for a seasonal worker who is not working between
40 regular industry work seasons;
41

42 (C) student holiday or breaks within a semester, between the fall and spring
43 semesters, or between the spring and fall semesters, for a parent
44 participating in training or education;
45

46 (D) reduction in work, training, or education hours, as long as the parent is still
47 working or attending a training or education program;
48

- (E) other cessation of work or attendance in a training or education program that does not exceed three months;
- (F) change in age, including turning 13 years old or a child with disabilities turning 19 years old during the eligibility period; and
- (G) change in residency within the state.

(b) During the period of time between eligibility redeterminations, a Board shall discontinue child care services due to a parent's loss of work or cessation of attendance at a job training or educational program that does not constitute a temporary change in accordance with paragraph (a)(2) of this section. However, Boards must ensure that care continues at the same level for a period of not less than three months after such loss of work or cessation of attendance at a job training or educational program.

(c) If a parent resumes work or attendance at a job training or education program at any level and at any time during the period described in subsection (b), then the Board shall ensure that:

- (1) care will continue to the end of the 12-month eligibility period at the same or greater level, depending upon any increase in the activity hours of the parent;
- (2) the parent share of cost will not be increased during the remainder of the 12-month eligibility period, including for parents who are exempt from the parent share of cost pursuant to §809.19; and
- (3) the Board's child care contractor verifies only:
 - (A) that the family income does not exceed 85 percent of SMI; and
 - (B) the resumption of work or attendance at a job training or education program.

(d) The Board may suspend child care services during interruptions in the parent's work, job training, or education status only at the concurrence of the parent.

§809.52. Child Care for Children Experiencing Homelessness.

- (a) For a child experiencing homelessness, as defined in §809.2, a Board shall ensure that the child is initially enrolled for a period of three months.
- (b) If, during the three-month initial enrollment period, the parent of a child experiencing homelessness:
 - (1) is unable to provide documentation verifying that the child is eligible under §809.41(a)(1)-(2) (regarding age and citizenship status), then care shall be discontinued following the three-month enrollment period; or

- 1 (2) provides documentation verifying eligibility under §809.41 (a), then care shall
2 continue through the end of the 12-month initial eligibility period (inclusive of
3 the three-month initial enrollment period).
4

5 **§809.53. Child Care for Children Served by Special Projects.**
6

- 7 (a) Special projects developed in federal and state statutes or regulations and funded
8 using non-CCDF sources may add groups of children eligible to receive child care.
9
10 (b) The eligibility criteria as stated in the statutes, regulations, or funding sources shall
11 control for the special project, unless otherwise indicated by the Commission.
12
13 (c) The time limit for receiving child care for children served by special projects may
14 be:
15
16 (1) specifically prescribed by federal or state statutes or regulations according to
17 the particular project;
18
19 (2) otherwise set by the Commission depending on the purpose and goals of the
20 special project; and
21
22 (3) limited to the availability of funds.
23

24 **§809.54. Continuity of Care.**
25

- 26 (a) Enrolled children, including children whose eligibility for Transitional child care has
27 expired, shall receive child care through the end of the applicable eligibility periods
28 described in §809.42.
29
30 (b) Except as provided by §809.75 relating to child care during appeal, nothing in this
31 chapter shall be interpreted in a manner as to result in a child being removed from
32 care.
33
34 (c) In closed DFPS CPS cases (DFPS cases) where child care is no longer funded by
35 DFPS, child care shall continue through the end of the applicable eligibility periods
36 described in §809.42 using funds allocated to the Board by the Commission.
37
38 (d) A Board shall ensure that no enrolled children of military parents in military
39 deployment have a disruption of child care services or eligibility during military
40 deployment, including parents in military deployment at the end of the 12-month
41 eligibility redetermination period.
42
43 (e) A Board shall ensure that a child who is required by a court-ordered custody or
44 visitation arrangement to leave a provider's care is permitted to continue receiving
45 child care by the same provider, or another provider if agreed to by the parent in
46 advance of the leave, upon return from the court-ordered custody or visitation
47 arrangement.

1
2
3 **SUBCHAPTER D. PARENT RIGHTS AND RESPONSIBILITIES**
4

5 **§809.71. Parent Rights.**
6

7 A Board shall ensure that the Board's child care contractor informs the parent in writing
8 that the parent has the right to:
9

- 10 (1) choose the type of child care provider that best suits their needs and to be
11 informed of all child care options available to them as included in the
12 consumer education information described in §809.15;
13
14 (2) visit available child care providers before making their choice of a child care
15 option;
16
17 (3) receive assistance in choosing initial or additional child care referrals including
18 information about the Board's policies regarding transferring children from one
19 provider to another;
20
21 (4) be informed of the Commission rules and Board policies related to providers
22 charging parents the difference between the Board's reimbursement and the
23 provider's published rate as described in §809.92(c) - (d);
24
25 (5) be represented when applying for child care services;
26
27 (6) be notified of their eligibility to receive child care services within 20 calendar
28 days from the day the Board's child care contractor receives all necessary
29 documentation required to initially determine eligibility for child care;
30
31 (7) receive child care services regardless of race, color, national origin, age, sex,
32 disability, political beliefs, or religion;
33
34 (8) have the Board and the Board's child care contractor treat information used to
35 determine eligibility for child care services as confidential;
36
37 (9) receive written notification at least 15 calendar days before termination of
38 child care services ;
39
40 (10) reject an offer of child care services or voluntarily withdraw their child from
41 child care, unless the child is in protective services;
42
43 (11) be informed of the possible consequences of rejecting or ending the child care
44 that is offered;
45
46 (12) be informed of the eligibility documentation and reporting requirements
47 described in §809.72 and §809.73;
48

1 (13) be informed of the parent appeal rights described in §809.74; and
2

3
4 (14) be informed of required background and criminal history checks for relative
5 child care providers through the listing process with DFPS, as described in
6 §809.91(e), before the parent or guardian selects the relative child care
7 provider.
8

9 **§809.72. Parent Eligibility Documentation Requirements.**

10
11 (a) Except for a child experiencing homelessness pursuant to §809.52 at initial
12 eligibility, before a child can be initially determined or redetermined eligible for
13 child care services and care authorized, parents shall provide the Board's child care
14 contractor with all information necessary to determine eligibility according to the
15 Board's administrative policies and procedures.
16

17 (b) A parent's failure to submit eligibility documentation shall result in initial denial of
18 child care services or termination of services at the 12-month eligibility
19 redetermination period.
20

21 **§809.73. Parent Reporting Requirements.**

22
23 (a) Boards shall ensure that during the 12-month eligibility period, parents are only
24 required to report items that impact a family's eligibility or that enable the Board or
25 Board contractor to contact the family or pay the provider.
26

27 (b) Pursuant to subsection (a) of this section, parents shall report to the child care
28 contractor, within 14 calendar days of the occurrence, the following:
29

30 (1) Changes in family income or family size that would cause the family to exceed
31 85 percent of SMI for a family of the same size;
32

33
34 (2) Changes in work or attendance at a job training or educational program not
35 considered to be temporary changes, as described in §809.51; and
36

37 (3) Any change in family residence, primary phone number, or e-mail (if
38 available).
39

40 (c) Failure to report changes described in subsection (a) of this section may result in
41 fact-finding for suspected fraud as described in Subchapter F of this chapter.

1 (d) A Board shall allow parents to report and the child care contractor shall take
2 appropriate action regarding changes in:

3
4 (1) income and family size, which may result in a reduction in the parent share of
5 cost pursuant to §809.19; and

6
7 (2) work, job training, or education program participation that may result in an
8 increase in the level of child care services.
9

10
11 **§809.74. Parent Appeal Rights.**

12
13 (a) Unless otherwise stated in this section, a parent may request a hearing pursuant to
14 Chapter 823 of this title:

15
16 (1) if the parent's eligibility or child's enrollment is denied, delayed, reduced,
17 suspended, or terminated by the Board's child care contractor, Choices
18 caseworker, or SNAP E&T caseworker; or

19
20 (2) regarding the amount of recoupment determined pursuant to Subchapter F of
21 this chapter.
22

23 (b) A parent may have an individual represent him or her during this process.

24
25 (c) A parent of a child in protective services may not appeal pursuant to Chapter 823 of
26 this title, but shall follow the procedures established by DFPS.
27

28 **§809.75. Child Care during Appeal.**

29
30 (a) For a child currently enrolled in child care, a Board shall ensure that child care
31 services continue during the appeal process until a decision is reached, if the parent
32 requests a hearing.
33

34 (b) The cost of providing services during the appeal process is subject to recovery from
35 the parent by the Board, if the appeal decision is rendered against the parent.
36
37
38

39 **§809.78. Attendance Standards and Reporting Requirements.**

40
41 (a) A Board shall ensure that parents are notified of the following:

42
43 (1) Parents shall ensure that the eligible child attends on a regular basis consistent
44 with the child's authorization for enrollment. Failure to meet monthly
45 attendance standards described in paragraph (2) of this subsection may:

46
47 (A) result in suspension of care, at the concurrence of the parent; or
48

- 1 (B) be grounds for determining that a change in the parent's participation in
2 work, job training, or an education program has occurred and care may be
3 terminated pursuant to the requirements in §809.51(b).
4
- 5 (2) Meeting attendance standards for child care services consists of fewer than:
6
7 (A) five consecutive absences during the month;
8
9 (B) ten total absences during the month
10
- 11 (3) If a child exceeds 65 total absences during the most recent eligibility period,
12 then the child is not eligible for care at the next eligibility determination and
13 shall not be eligible for care for 12 months from the end of the most recent
14 eligibility period.
15
- 16 (4) Notwithstanding paragraph (3) of this subsection, child care providers may end
17 a child's enrollment with the provider if the child does not meet the provider's
18 established policy regarding attendance.
19
- 20 (5) Parents shall use the attendance card to report daily attendance and absences.
21
- 22 (6) Parents shall not designate anyone under age 16 as a secondary cardholder,
23 unless the individual is a child's parent.
24
- 25 (7) Parents shall not designate the owner, assistant director, or director of the child
26 care facility as a secondary cardholder.
27
- 28 (8) Parents shall:
29
30 (A) ensure the attendance card is not misused by secondary cardholders;
31
32 (B) inform secondary cardholders of the responsibilities for using the
33 attendance card;
34
35 (C) ensure that secondary cardholders comply with these responsibilities;
36 and
37
38 (D) ensure the protection of attendance cards issued to them or secondary
39 cardholders.
40
- 41 (9) The parent or secondary cardholders giving the attendance card or the personal
42 identification number (PIN) to another person, including the child care
43 provider, is grounds for a potential fraud determination pursuant to Subchapter
44 F of this chapter.
45
- 46 (10) Parents shall report to the child care contractor instances in which a parent's
47 attempt to record attendance in the child care automated attendance system is
48 denied or rejected and cannot be corrected at the provider site. Failure to

1 report such instances may result in an absence counted toward the attendance
2 standards described in paragraphs (2) and (3) of this subsection.

- 3
4
- 5 (b) Boards shall ensure that parents sign a written acknowledgment indicating their
6 understanding of the attendance standards and reporting requirements at each of the
7 following stages:
 - 8 (1) initial eligibility determination; and
 - 9 (2) each eligibility redetermination, as required in §809.42(b).
 - 10 (c) Boards shall ensure that absences due to a child's documented chronic illness or
11 disability or court-ordered visitation are not counted in the number of absences in
12 paragraphs (a)(2) and (3) of this section.
 - 13 (d) Where a child's enrollment has been ended by a provider in paragraph (4) of this
14 section, Boards shall work with the parent to place the otherwise eligible child with
15 another eligible provider.
- 16
17
18
19
20

21 **SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE**

22 **§809.91. Minimum Requirements for Providers.**

- 23
- 24 (a) A Board shall ensure that child care subsidies are paid only to:
 - 25 (1) regulated child care providers as described in §809.2;
 - 26 (2) relative child care providers as described in §809.2, subject to the requirements
27 in subsection (e) of this section; or
 - 28 (3) at the Board's option, child care providers licensed in a neighboring state,
29 subject to the following requirements:
 - 30 (A) Boards shall ensure that the Board's child care contractor reviews the
31 licensing status of the out-of-state provider every month, at a minimum,
32 to confirm the provider is meeting the minimum licensing standards of
33 the state;
 - 34 (B) Boards shall ensure that the out-of-state provider meets the requirements
35 of the neighboring state to serve CCDF-subsidized children; and
 - 36 (C) The provider shall agree to comply with the requirements of this chapter
37 and all Board policies and Board child care contractor procedures.
 - 38 (b) A Board shall not prohibit a relative child care provider who is listed with DFPS and
39 who meets the minimum requirements of this section from being an eligible relative
40 child care provider.
- 41
42
43
44
45
46
47
48

- 1
2 (c) Except as provided by the criteria for TRS Provider certification, a Board or the
3 Board's child care contractor shall not place requirements on regulated providers
4 that:
5
6 (1) exceed the state licensing requirements stipulated in Texas Human Resources
7 Code, Chapter 42; or
8
9 (2) have the effect of monitoring the provider for compliance with state licensing
10 requirements stipulated in Texas Human Resources Code, Chapter 42.
11
12 (d) When a Board or the Board's child care contractor, in the course of fulfilling its
13 responsibilities, gains knowledge of any possible violation regarding regulatory
14 standards, the Board or its child care contractor shall report the information to the
15 appropriate regulatory agency.
16
17 (e) For relative child care providers to be eligible for reimbursement for Commission-
18 funded child care services, the following applies:
19
20 (1) Relative child care providers shall list with DFPS; however, pursuant to 45
21 CFR §98.41(e), relative child care providers listed with DFPS shall be exempt
22 from the health and safety requirements of 45 CFR §98.41(a) and subsection
23 (b)(2) of this section.
24
25 (2) A Board shall allow relative child care providers to care for a child in the
26 child's home (in-home child care) only for the following:
27
28 (A) A child with disabilities as defined in §809.2, and his or her siblings;
29
30 (B) A child under 18 months of age, and his or her siblings;
31
32 (C) A child of a teen parent; and
33
34 (D) When the parent's work schedule requires evening, overnight, or
35 weekend child care in which taking the child outside of the child's home
36 would be disruptive to the child.
37
38 (3) A Board may allow relative in-home child care for circumstances in which the
39 Board's child care contractor determines and documents that other child care
40 provider arrangements are not available in the community.
41
42 (f) Boards shall ensure that subsidies are not paid for a child at the following child care
43 providers:
44
45 (1) Except for foster parents authorized by DFPS pursuant to §809.49, licensed
46 child care centers, including before- or after-school programs and school-age
47 programs, in which the parent or his or her spouse, including the child's parent

1 or stepparent, is the director or assistant director, or has an ownership interest;
2 or

- 3
4 (2) Licensed, registered, or listed child care homes where the parent also works
5 during the hours his or her child is in care.
6

7 **§809.92. Provider Responsibilities and Reporting Requirements.**
8

- 9 (a) A Board shall ensure that providers are given written notice of and agree to their
10 responsibilities, reporting requirements, and requirements for reimbursement under
11 this subchapter prior to enrolling a child.
12

- 13 (b) Providers shall:

- 14
15 (1) be responsible for collecting the parent share of cost as assessed under §809.19
16 before child care services are delivered;
17
18 (2) be responsible for collecting other child care funds received by the parent as
19 described in §809.21(a)(2);
20
21 (3) report to the Board or the Board's child care contractor instances in which the
22 parent fails to pay the parent share of cost; and
23
24 (4) follow attendance reporting and tracking procedures required by the
25 Commission under §809.95, the Board, or, if applicable, the Board's child care
26 contractor.
27

- 28 (c) Providers shall not charge the difference between the provider's published rate and
29 the amount of the Board's reimbursement rate as determined under §809.21 to
30 parents:
31

- 32 (1) who are exempt from the parent share of cost assessment under §809.19(a)(2);
33 or

- 34 (2) whose parent share of cost is calculated to be zero pursuant to §809.19(f).
35
36

- 37 (d) A Board may develop a policy that prohibits providers from charging the difference
38 between the provider's published rate and the amount of the Board's reimbursement
39 rate (including the assessed parent share of cost) to all parents eligible for child care
40 services.
41

- 42 (e) Providers shall not deny a child care referral based on the parent's income status,
43 receipt of public assistance, or the child's protective service status.

- 1
2 (f) Providers shall not charge fees to a parent receiving child care subsidies that are not
3 charged to a parent who is not receiving subsidies.
4

5 **§809.93. Provider Reimbursement.**
6

- 7 (a) A Board shall ensure that reimbursement for child care is paid only to the provider.
8
9 (b) A Board or its child care contractor shall reimburse a regulated provider based on a
10 child's monthly enrollment authorization, excluding periods of suspension at the
11 concurrence of the parent as described in §809.51(d) and §809.78(a).
12
13 (c) A Board shall ensure that a relative child care provider is not reimbursed for days
14 on which the child is absent.
15
16 (d) A relative child care provider shall not be reimbursed for more children than
17 permitted by the DFPS minimum regulatory standards for Registered Child Care
18 Homes. A Board may permit more children to be cared for by a relative child care
19 provider on a case-by-case basis as determined by the Board.
20
21 (e) A Board shall not reimburse providers that are debarred from other state or federal
22 programs unless and until the debarment is removed.
23
24 (f) Unless otherwise determined by the Board and approved by the Commission for
25 automated reporting purposes, the monthly enrollment authorization described in
26 paragraph (b) of this section is based on the unit of service authorized, as follows:
27
28 (1) A full-day unit of service is 6 to 12 hours of care provided within a 24-hour
29 period; and
30
31 (2) A part-day unit of service is fewer than 6 hours of care provided within a 24-
32 hour period.
33
34 (g) A Board or its child care contractor shall ensure that providers are not paid for
35 holding spaces open.
36
37 (h) A Board or the Board's child care contractor shall not pay providers:
38
39 (1) less, when a child enrolled full time occasionally attends for a part day; or
40
41 (2) more, when a child enrolled part time occasionally attends for a full day.
42
43 (i) The Board or its child care contractor shall not reimburse a provider retroactively for
44 new Board maximum reimbursement rates or new provider published rates.
45
46 (j) A Board or its child care contractor shall ensure that the parent's travel time to and
47 from the child care facility and the parent's work, school, or job training site is

1 included in determining whether to authorize reimbursement for full-day or part-day
2 care under subsection (f) of this section.
3

4 **§809.94. Providers Placed on Corrective or Adverse Action by the Texas Department**
5 **of Family and Protective Services.**
6

7 (a) For a provider placed on evaluation corrective action (evaluation status) by DFPS,
8 Boards shall ensure that:

9
10 (1) parents with children enrolled in Commission-funded child care are notified in
11 writing of the provider's evaluation status no later than five business days after
12 receiving notification from the Agency of DFPS' decision to place the provider
13 on evaluation status; and
14

15 (2) parents choosing to enroll children in Commission-funded child care with the
16 provider are notified in writing of the provider's evaluation status prior to
17 enrolling the children with the provider.
18

19 (b) For a provider placed on probation corrective action (probationary status) by DFPS,
20 Boards shall ensure that:

21
22 (1) parents with children in Commission-funded child care are notified in writing
23 of the provider's probationary status no later than five business days after
24 receiving notification from the Agency of DFPS' decision to place the provider
25 on probationary status; and
26

27 (2) no new referrals are made to the provider while on probationary status.
28

29 (c) A parent receiving notification of a provider's evaluation or probationary status with
30 DFPS pursuant to subsections (a) and (b) of this section may transfer the child to
31 another eligible provider without being subject to the Board transfer policies
32 described in §809.71(3) if the parent requests the transfer within 14 calendar days of
33 receiving such notification.
34

35 (d) For a provider placed on evaluation or probationary status by DFPS, Boards shall
36 ensure that the provider is not reimbursed at the Boards' enhanced reimbursement
37 rates described in §809.20 while on evaluation or probationary status.
38

39 (e) For a provider against whom DFPS is taking adverse action, Boards shall ensure
40 that:

41
42 (1) parents with children enrolled in Commission-funded child care are notified no
43 later than two business days after receiving notification from the Agency that
44 DFPS intends to take adverse action against the provider;
45

46 (2) children enrolled in Commission-funded child care with the provider are
47 transferred to another eligible provider no later than five business days after

1 receiving notification from the Agency that DFPS intends to take adverse
2 action against the provider; and

3
4 (3) no new referrals for Commission-funded child care are made to the provider
5 while DFPS is taking adverse action.

6
7 (f) For adverse actions in which DFPS has determined that the provider poses an
8 immediate risk to the health or safety of children and cannot operate pending appeal
9 of the adverse action, but for which there is a valid court order that overturns DFPS'
10 determination and allows the provider to operate pending administrative review or
11 appeal, Boards shall take action consistent with subsection (e) of this section.

12
13 **§809.95. Provider Automated Attendance Agreement.**

14
15 Boards shall notify providers of the following:

16
17 (1) Employees of child care providers shall not:

18
19 (A) possess, have on the premises, or otherwise have access to the attendance
20 card of a parent or secondary cardholder;

21
22 (B) accept or use the attendance card or PIN of a parent or secondary
23 cardholder; or

24
25 (C) perform the attendance or absence reporting function on behalf of the
26 parent;

27
28 (2) The owner, director, or assistant director of a child care provider shall not be
29 designated as the secondary cardholder by a parent with a child enrolled with
30 the provider;

31
32 (3) Providers shall report misuse of attendance cards and PINs to the Board or the
33 Board's child care contractor; and

34
35 (4) Providers shall report to the child care contractor authorized days that do not
36 match the referral in the Agency's automated attendance system within five
37 days of receiving the authorization. Failure to report the discrepancy may
38 result in withholding payment to the provider.

39
40 (5) Misuse of attendance reporting and violation of the requirements in this section
41 are grounds for a potential fraud determination pursuant to Subchapter F of this
42 chapter.

1
2 **SUBCHAPTER F. FRAUD FACT-FINDING AND IMPROPER PAYMENTS**
3

4 **§809.111. General Fraud Fact-Finding Procedures.**
5

- 6 (a) This subchapter establishes authority for a Board to develop procedures for the
7 prevention of fraud by a parent, provider, or any other person in a position to commit
8 fraud consistent with fraud prevention provisions in the Agency-Board Agreement.
9
- 10 (b) In this subchapter, a person commits fraud if, to obtain or increase a benefit or other
11 payment, either for the person or another person, the person:
12
13 (1) makes a false statement or representation, knowing it to be false; or
14
15 (2) knowingly fails to disclose a material fact.
16
- 17 (c) A Board shall ensure that procedures for researching and fact-finding for possible
18 fraud are developed and implemented to deter and detect suspected fraud for child
19 care services in the workforce area.
20
- 21 (d) These procedures shall include provisions that suspected fraud is reported to the
22 Commission in accordance with Commission policies and procedures.
23
- 24 (e) Upon review of suspected fraud reports, the Commission may either accept the case
25 for investigation and action at the state level, or return the case to the Board or its
26 child care contractor for action including, but not limited to, the following:
27
28 (1) further fact-finding; or
29
30 (2) other corrective action as provided in this chapter or as may be appropriate.
31
- 32 (f) The Board shall ensure that a final fact-finding report is submitted to the
33 Commission after a case is returned to the Board or its child care contractor and all
34 feasible avenues of fact-finding and corrective actions have been exhausted.
35

36 **§809.112. Suspected Fraud.**
37

- 38 (a) A parent, provider, or any other person in a position to commit fraud may be
39 suspected of fraud if the person presents or causes to be presented to the Board or its
40 child care contractor one or more of the following items:
41
42 (1) A request for reimbursement in excess of the amount charged by the provider
43 for the child care; or
44
45 (2) A claim for child care services if evidence indicates that the person may have:
46
47 (A) known, or should have known, that child care services were not provided
48 as claimed;

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- (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 services.

(b) The following parental actions may be grounds for suspected fraud and cause for Boards to conduct fraud fact-finding or the Commission to initiate a fraud investigation:

- (1) Not reporting or falsely reporting at initial eligibility or at eligibility redetermination:
 - (A) household composition, or income sources or amounts that would have resulted in ineligibility or a higher parent share of cost; or
 - (B) work, training, or education hours that would have resulted in ineligibility; or
- (2) Not reporting during the 12-month eligibility period:
 - (A) changes in income or household composition that would cause the family income to exceed 85 percent of SMI (taking into consideration fluctuations of income); or
 - (B) a permanent loss of job or cessation of training or education that exceeds three months; or
 - (C) improper or inaccurate reporting of attendance.

§809.113. Action to Prevent or Correct Suspected Fraud.

- (a) The Commission or Board may take the following actions pursuant to Commission policy if the Commission or Board finds that a provider has committed fraud:
 - (1) Temporary withholding of payments to the provider for child care services delivered;
 - (2) Nonpayment of child care services delivered;

- 1 (3) Recoupment of funds from the provider;
- 2
- 3 (4) Stop authorizing care at the provider's facility or location;
- 4
- 5 (5) Prohibiting future eligibility to provide Commission-funded child care
- 6 services; or
- 7
- 8 (6) Any other action consistent with the intent of the governing statutes or
- 9 regulations to investigate, prevent, or stop suspected fraud.

10
11 (b) The Commission or Board may take the following actions pursuant to Commission
12 policy if the Commission or Board finds that a parent has committed fraud:

- 13
- 14 (1) recouping funds from the parent;
- 15
- 16 (2) prohibiting future child care eligibility, provided that the prohibition does not
- 17 result in a Choices or SNAP E&T participant becoming ineligible for child
- 18 care;
- 19
- 20 (3) limiting the enrollment of the parent's child to a regulated child care provider;
- 21
- 22 (4) terminating care during the 12-month eligibility period if eligibility was
- 23 determined using fraudulent information provided by the parent; or
- 24
- 25 (5) any other action consistent with the intent of the governing statutes or
- 26 regulations to investigate, prevent, or stop suspected fraud.
- 27

28
29 **§809.115. Corrective Adverse Actions.**

30
31 (a) When determining appropriate corrective actions, the Board or Board's child care
32 contractor shall consider:

- 33
- 34 (1) the scope of the violation;
- 35
- 36 (2) the severity of the violation; and
- 37
- 38 (3) the compliance history of the person or entity.
- 39

40 (b) Corrective actions for providers may include, but are not limited to, the following:

- 41
- 42 (1) Closing intake;
- 43
- 44 (2) Moving children to another provider selected by the parent;
- 45
- 46 (3) Withholding provider payments or reimbursement of costs incurred; and
- 47

- 1 (4) Recoupment of funds.
2
3 (c) When a provider violates a provision of Subchapter E of this chapter, a written
4 Service Improvement Agreement may be negotiated between the provider and the
5 Board or the Board's child care contractor. At the least, the Service Improvement
6 Agreement shall include the following:
7
8 (1) The basis for the Service Improvement Agreement;
9
10 (2) The steps required to reach compliance including, if applicable, technical
11 assistance;
12
13 (3) The time limits for implementing the improvements; and
14
15 (4) The consequences of noncompliance with the Service Improvement
16 Agreement.
17
18 (d) The Board shall develop policies and procedures to ensure that the Board or the
19 Board's child care contractor take corrective action consistent with subsections (a) -
20 (c) of this section against a provider when a provider:
21
22 (1) possesses, or has on the premises, attendance cards without the parent being
23 present at the provider site:
24
25 (2) accepts or uses an attendance card or PIN of a parent or secondary cardholder;
26 or
27
28 (3) performs the attendance reporting function on behalf of a parent.
29
30 (e) The Board shall develop policies and procedures to require the Board's child care
31 contractor to take corrective action consistent with subsections (a) - (c) of this
32 section against a parent when a parent or parent's secondary cardholder gives his or
33 her:
34
35 (1) card to a provider; or
36
37 (2) PIN to a provider.
38
39

40 **§809.117. Recovery of Improper Payments to a Provider or Parent.**
41

- 42 (a) A Board shall attempt recovery of all improper payments as defined in §809.2.
43
44 (b) Recovery of improper payments shall be managed in accordance with Commission
45 policies and procedures.
46
47 (c) The provider shall repay improper payments for child care services received in the
48 following circumstances:

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- (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.