

Chapter 809. CHILD CARE AND DEVELOPMENT
Sections 809.45, 809.46, 809.47, 809.221, 809.225

The following rule(s) will be effective October 18, 2000.

Chapter 809. CHILD CARE AND DEVELOPMENT
Subchapter C. REQUIREMENTS TO PROVIDE CHILD CARE

The Texas Workforce Commission (Commission) adopts the repeal of Chapter 809, Subchapter C. Requirements to Provide Child Care, §809.45 and §809.46, new §809.46, and amendments to §809.47, relating to assessing parents' share of cost for child care services without changes to the proposed text as published in the September 8, 2000, issue of the Texas Register (25 TexReg 8839). The text will not be republished.

Purpose: The purpose of the new and amended rules is to increase the flexibility of local workforce development boards (Boards) in setting parents' share of cost for child care services and to reinforce parent responsibility. The range of recommended fees will be determined by the Boards taking into account a family's ability to share in the cost of child care, the importance of personal responsibility, and the goal of assisting persons who are working, in training or education with becoming self-sufficient.

Background: To better facilitate self-sufficiency, the Commission asserts that it is important that parents take responsibility for sharing the cost of care for their own children. For that reason, the new and amended rules remove the recommendation of the 9 to 15 percent parents' share of cost range. However, the Commission suggests that Boards set a minimum of nine percent as the parents' share of cost to encourage personal responsibility. By setting policies that incorporate a progressive increase as parents' earnings increase, Boards will help support families and prepare them to pay the full cost of child care as they move toward self-sufficiency. A progressive increase in parents' share of cost will also make limited child care dollars go farther, thus allowing for services to more families who need care.

The new and amended rules no longer contain the provisions relating to the circumstances in which the Agency manages child care service since all 28 Boards are now operational and manage child care services in all workforce areas. For purposes of this preamble, the term "Agency" refers to the daily operations of the Texas Workforce Commission under the direction of the executive director, and the term "Commission" refers to the three-member body of governance composed of Governor-appointed members.

The new §809.46 also no longer contains subsection (f), which required that subsidies used for child care from other funding sources were required to follow the same share of cost policy as that which applied to funds allocated by the Commission for child care services. The new rules allow the Boards to set local parents' share of cost policies relating to funds not allocated by the Commission for child care services such as Welfare-to-Work (WtW) and Workforce Investment Act (WIA) funds. The new and amended rules will enable Boards to set integrated or funding-specific parent share of cost provisions to coordinate parents' share of cost policies in a manner as determined by the Board to best meet the needs of the local residents, and in particular, the needs of persons who are working toward self-sufficiency.

The Commission received comments from two commenters, one from a representative and the other from the North Central Texas Workforce Board. The commenters expressed both support and concerns regarding particular aspects of the rules. A summary of the comments and the responses are set forth as follows.

Comment: One commenter stated that the commenter supports the language changes in the proposed amendments to §809.47 and stated that this change correctly identifies what has been called the "parent's fee" as the parents' share of cost for child care. The commenter also supports the repeal of §809.45 and §809.46 and the issuance of one new rule designated as §809.46 relating to assessing parents' share of cost for child care services.

Response: The Commission strives to streamline the rules of the Agency whenever possible to reflect the goals of the Agency more fully and appreciates the commenter's time in providing comments.

Comment: Regarding §809.46(b), one commenter expressed a concern that a parent's share of cost for child care funded by the Workforce Investment Act (WIA) and/or Welfare-to-Work (WtW) could be considered a charge for participation. The commenter believed that the regulations for both WIA and WtW prohibited such charges. The commenter requested information about whether guidance or clarification had been received from the Department of Labor regarding whether the fees were permissible under WIA and WtW.

Response: The Commission did receive information from the U.S. Department of Labor that the "fee for service" prohibition in WIA and WtW would not prohibit parents sharing in the cost of the child care because the costs are those that would have belonged to the parents. The subsidy for child care is the portion that is provided to the parents to assist with the services that the parents, once becoming self-sufficient, would have the full responsibility of paying. The fee for service prohibition in WIA typically refers to charging participants for accessing the services such as an "application" fee. The Commission asserts that the parents' share of costs is not an access fee, but rather the portion of the shared cost that the parent is responsible for paying.

Comment: Regarding §809.46 generally, one commenter asserted that the issues regarding WIA and WtW parent fees should be addressed in WIA and WtW rules rather than the Child Care rules because the Board's Workforce Center Contractor, and not the Board's Child Care Contractor, is entirely responsible for determining the eligibility and suitability of the child care support service for the WIA and WtW participants.

Response: The Commission believes that the move to working on rules in a more function oriented manner would best suit the rules.

Comment: Regarding §809.46(b), one commenter stated that the addition of §809.46(b) was inappropriate in that it is not required by either State or federal law or regulation and reminded the Commission of its commitment not to impede on local control by imposing additional restrictions.

Response: The Commission intends to illustrate the flexibility for Boards to coordinate and streamline the services for WIA, WtW and Choices with the child care support service. In addition, the Commission is committed to the goals of personal responsibility as outlined in PRWORA. Assisting parents with becoming self-sufficient begins with requiring that families move toward taking a larger degree of personal responsibility as their income increases. The federal regulations at 45 C.F.R. §98.43 also place

importance on personal responsibility and the evidence of that personal responsibility in the form of parents sharing the costs of the child care for their children.

Comment: One commenter agreed that the policy regarding the amount applicable for the parents' share of costs should be a local decision and that the Boards are best suited to make that decision. The commenter also expressed that since the rule changes affect child care and have the potential to significantly alter the amount families pay, that the Commission track the impact of the new and amended rules.

Response: The Commission intends that the information on Board policies regarding parent fees be tracked as well as the numbers of persons served in each type of care (Applicant, Choices, Transitional, and At Risk Income Eligible) so that the information can be used to best assist the Boards in managing the funds for eligible families that are working, in training or in education.

40 TAC §809.45, §809.46

The rules are repealed under Texas Labor Code §§301.061 and 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

40 TAC §809.46, §809.47

The rules are adopted under Texas Labor Code §§301.061 and 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

Subchapter K. FUNDS MANAGEMENT

40 TAC §809.221, §809.225

The Texas Workforce Commission (Commission) adopts amendments to §§809.221 and 809.225 relating to General Funds Management and Continuity of Care for child care services and priorities for Choices, Transitional and Texas Workforce Applicant Child Care services, without changes to the proposed rules as published in the September 1, 2000, issue of the Texas Register (25 TexReg 8619). The text will not be republished.

Purpose: The purpose of the rule amendments is to reinforce the statutory and regulatory priorities on Child Care services and provide guidance regarding the objectives of affording continuity of care for families receiving Commission-funded child care services.

Generally, the amendments to rules continue to require placing eligible Choices, Transitional or Texas Workforce Applicant's children into child care. However, the rules make it clear that if necessary, due to limitation of funds, a child's care may be discontinued to ensure that the statutory and regulatory priority clients receive child care services. The rule amendments give local flexibility to ensure that funds are used for families that are striving for but have not achieved self-sufficiency and who are required to receive child care services to assist them in becoming self-sufficient.

The rule amendments require Boards to develop policies that reinforce the priorities set forth in the rules that are based on federal and state law. The policies should inform families that are not within the statutory and regulatory categories (Choices, Transitional or Texas Workforce Applicant) that the provision of child care services may be terminated at a specified time, but not less than 15 days, after written notice of the termination of child care services. The notice period must be no less than 15 days as required by §809.72(5), which provides that parents have the right to "(5) written notification by the Board's contractor at least 15 days before the denial, delay, reduction, or termination of child care"

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The Commission received one comment from a faith-based provider from the Alamo Workforce Development Area. A summary of the comment and the response is set forth as follows.

Comment: The commenter stated that it appears the purpose of the amendment is to terminate care for all children currently eligible for subsidized child care unless they are in Choices, Transitional or Agency Applicant child care. The commenter asserted that under the proposed amendment, many children currently receiving care will be swept from the rolls and thrown back into the welfare arena. The commenter asked what criteria would be applied to reduce the existing rolls and to determine which children will be removed first. The commenter recommended that the current language in §809.225 be retained, that enrolled children continue to receive care as long as the family remains eligible, and that the rolls be reduced through normal attrition.

Response: The Commission recognizes and appreciates the concern expressed by the commenter and wishes to clarify that the purpose of the proposed amendment is not to reduce the number of Agency-subsidized children in care. Nor is it the Commission's intent to terminate care for currently enrolled children in eligible families. The purpose of the amendment is to reinforce the priority for child care services that Boards are required to afford to recipients of TANF cash assistance who are engaged in employment-related activities, families who are in the process of transitioning off public assistance, and applicants for TANF cash assistance who find employment before they are certified to receive TANF cash benefits. Boards may need the flexibility to remove some children in low-income working families from care in order to serve children in those groups that have the highest priority for services.

Boards will be given the flexibility to set their own criteria for income level eligibility within the limits set within the federal regulations for low-income, working families that will lose Agency-subsidized child care services first, should that become necessary to keep services available to families with the highest priority for child care. The Boards are in the best position to determine the policies that best serve the needs and goals of the workforce areas.

The amended rules are adopted under Texas Labor Code §§301.061 and 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Chapter 302, and Texas Human Resources Code, Chapters 31 and 44.