

1 **CHAPTER 809. CHILD CARE SERVICES**

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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.**  
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7 The Texas Workforce Commission (Commission) adopts amendments to the following sections  
8 of Chapter 809, relating to Child Care Services, *without* changes, as published in the September  
9 16, 2011, issue of the *Texas Register* (36 TexReg 6135):

10  
11 Subchapter D. Parent Rights and Responsibilities, §809.71

12 Subchapter E. Requirements to Provide Child Care, §809.91

13  
14 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

15 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

16  
17 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

18 The purpose of the adopted changes to Chapter 809, Child Care Services rules, is to meet the  
19 requirements of Senate Bill 76 (SB 76), 82nd Texas Legislature, Regular Session (2011). SB 76  
20 added Chapter 313 to the Texas Labor Code, which requires relative providers of Commission-  
21 subsidized child care services to be listed as a family home with the Texas Department of Family  
22 and Protective Services (DFPS).

23  
24 SB 76 amends Texas Labor Code, Subtitle B, Title 4, and requires that:

25 --all relatives providing Commission-funded child care services be listed with DFPS as a family  
26 home and, therefore, be subject to background checks; and

27 --parents and guardians choosing relative child care be informed of the required background  
28 checks through the listing process with DFPS.

29  
30 Additionally, SB 76 instructs the Commission to ensure that effective November 1, 2011,  
31 payments for subsidized child care are made only to relative child care providers who are listed  
32 as a family home with DFPS.

33  
34 Pursuant to previous statutory definitions, relatives providing child care exclusively in the child's  
35 home (in-home child care) were not subject to background checks. Commission rule  
36 §809.91(e)(2) requires Boards to ensure that relative in-home care providers do not appear on the  
37 Texas Department of Public Safety (DPS) Sex Offender Registry, pursuant to Texas Code of  
38 Criminal Procedure, Chapter 62. This rule is now being amended to provide the expanded  
39 protections, consistent with SB 76.

40  
41 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

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

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

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

3  
4 **§809.71. Parent Rights**

5 Section 809.71(16) adds the requirement for Local Workforce Development Boards (Boards) to  
6 provide notice of the background and criminal history check requirement to the parent or  
7 guardian of the child who will receive care through a relative child care provider before the  
8 parent or guardian selects the relative child care provider.

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10 **SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE**

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

12  
13 **§809.91. Minimum Requirements for Providers**

14 Section 809.91(e)(1) removes the reference to relative providers "caring for a child in the  
15 relative's own home, which is not the child's home" and requires all relative providers to list with  
16 DFPS as a family home in order to be eligible for reimbursement for Commission-funded child  
17 care services. This paragraph also adds a reference to "subsection (b)(2) of this section" as an  
18 exemption for relative health care providers listed with DFPS pursuant to 45 CFR §98.41(e).

19  
20 Section 809.91(e)(2) is removed. The provision requiring Boards to ensure that relatives who  
21 care for a child in the child's home are not on the DPS Sex Offender Registry no longer applies  
22 because the background check conducted by DFPS for listed family homes includes a sex  
23 offender registry check.

24  
25 New §809.91(e)(2) adds a phrase specifying that a Board shall allow relative "child care  
26 providers to care for a child in the child's home," only as set forth in subparagraphs (A) - (D) of  
27 this paragraph.

28  
29 Certain paragraphs in this section are renumbered to accommodate additions or deletions.

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31 No comments were received.

32  
33 The Agency hereby certifies that the adoption has been reviewed by legal counsel and found to  
34 be within the Agency's legal authority to adopt.

35  
36 The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the  
37 Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for  
38 the effective administration of Agency services and activities, and the Texas Human Resources  
39 Code §44.002, regarding Administrative Rules.

40  
41 The adopted rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as  
42 Texas Government Code, Chapter 2308.



- 1  
2 (B) The Choices program participants and children in protective services  
3 child care are notified of denial, delay, reduction, or termination of child  
4 care and the effective date of such actions by the Choices caseworker or  
5 DFPS;  
6  
7 (10) receive 30-day written notification from the Board's child care contractor if  
8 child care is to be terminated in order to make room for a priority group  
9 described in §809.43(a)(1), as follows:  
10  
11 (A) Written notification of denial, delay, reduction, or termination shall  
12 include information regarding other child care options for which the  
13 recipient may be eligible.  
14  
15 (B) If the notice on or before the 30th day before denial, delay, reduction, or  
16 termination in child care would interfere with the ability of the Board to  
17 comply with its duties regarding the number of children served or would  
18 require the expenditure of funds in excess of the amount allocated to the  
19 Board, notice may be provided on the earliest date on which it is  
20 practicable for the Board to provide notice;  
21  
22 (11) reject an offer of child care services or voluntarily withdraw their child from  
23 child care unless the child is in protective services;  
24  
25 (12) be informed of the possible consequences of rejecting or ending the child care  
26 that is offered;  
27  
28 (13) be informed of the eligibility documentation and reporting requirements  
29 described in §809.72 and §809.73;  
30  
31 (14) be informed of the parent appeal rights described in §809.74;  
32  
33 (15) be informed of the Board's attendance policy as required in §809.13(d)(13); and  
34  
35 (16) be informed of required background and criminal history checks for relative  
36 child care providers through the listing process with DFPS, as described in  
37 §809.91(e), before the parent or guardian selects the relative child care  
38 provider.  
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## 41 **SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE**

### 42 **§809.91. Minimum Requirements for Providers.**

- 43  
44 (a) A Board shall ensure that child care subsidies are paid only to:  
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- 1 (1) regulated child care providers as described in §809.2(17);  
2  
3 (2) relative child care providers as described in §809.2(18), subject to the  
4 requirements in subsection (e) of this section; or  
5  
6 (3) at the Board's option, listed family homes as defined in §809.2(12), subject to  
7 the requirements in subsection (b)(2) of this section.  
8  
9 (b) For providers listed with DFPS, the following applies:  
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11 (1) A Board shall not prohibit a relative child care provider who is listed with  
12 DFPS and who meets the minimum requirements of this section from being an  
13 eligible relative child care provider.  
14  
15 (2) If a Board chooses to include listed family homes, as defined in §809.2(12),  
16 that provide care for children unrelated to the provider, a Board shall ensure  
17 that there are in effect, under local law, requirements applicable to the listed  
18 family homes designated to protect the health and safety of children. Pursuant  
19 to 45 CFR §98.41, the requirements shall include:  
20  
21 (A) the prevention and control of infectious diseases (including  
22 immunizations);  
23  
24 (B) building and physical premises safety; and  
25  
26 (C) minimum health and safety training appropriate to the child care setting.  
27  
28 (c) Except as provided by the criteria for Texas Rising Star Provider Certification, a  
29 Board or the Board's child care contractor shall not place requirements on regulated  
30 providers that:  
31  
32 (1) exceed the state licensing requirements stipulated in Texas Human Resources  
33 Code, Chapter 42; or  
34  
35 (2) have the effect of monitoring the provider for compliance with state licensing  
36 requirements stipulated in Texas Human Resources Code, Chapter 42.  
37  
38 (d) When a Board or the Board's child care contractor, in the course of fulfilling its  
39 responsibilities, gains knowledge of any possible violation regarding regulatory  
40 standards, the Board or its child care contractor shall report the information to the  
41 appropriate regulatory agency.  
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43 (e) For relative child care providers to be eligible for reimbursement for Commission-  
44 funded child care services, the following applies:  
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- (1) Relative child care providers shall list with DFPS; however, pursuant to 45 CFR §98.41(e), relative child care providers listed with DFPS shall be exempt from the health and safety requirements of 45 CFR §98.41(a) and subsection (b)(2) of this section.
  
- (2) A Board shall allow relative child care providers to care for a child in the child's home (in-home child care) only for the following:
  - (A) A child with disabilities as defined in §809.2(6), and his or her siblings;
  - (B) A child under 18 months of age, and his or her siblings;
  - (C) A child of a teen parent; and
  - (D) When the parent's work schedule requires evening, overnight, or weekend child care in which taking the child outside of the child's home would be disruptive to the child.
  
- (3) A Board may allow relative in-home child care for circumstances in which the Board's child care contractor determines and documents that other child care provider arrangements are not available in the community.