

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 JUNE 14, 2018, THE TEXAS WORKFORCE COMMISSION ADOPTED THE BELOW**  
8 **RULES WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS REGISTER.**

9  
10 Estimated date of publication in the *Texas Register*: **June 29, 2018**  
11 The rules will take effect: **July 4, 2018**

12  
13 The Texas Workforce Commission (TWC) adopts the following new section to Chapter 809,  
14 relating to Child Care Services, *without* changes, as published in the March 2, 2018, issue of the  
15 *Texas Register* (43 TexReg 1236):

16  
17 Subchapter C. Eligibility for Child Care Services, §809.55

18  
19 TWC adopts amendments to the following sections of Chapter 809, relating to Child Care  
20 Services, *without* changes, as published in the March 2, 2018, issue of the *Texas Register* (43  
21 TexReg 1236):

- 22  
23 Subchapter A. General Provisions, §809.2
- 24 Subchapter B. General Management, §809.13 and §809.19
- 25 Subchapter D. Parent Rights and Responsibilities, §809.71, and §809.75
- 26 Subchapter E. Requirements to Provide Child Care, §809.93

27  
28 TWC adopts amendments to the following section of Chapter 809, relating to Child Care  
29 Services, *with* changes, as published in the March 2, 2018, issue of the *Texas Register* (43  
30 TexReg 1236):

31  
32 Subchapter D. Parent Rights and Responsibilities, §809.78

33  
34 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**  
35 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES**

36  
37 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

38 The purpose of the adopted Chapter 809 amendments is to include changes resulting from the  
39 federal Child Care and Development Fund (CCDF) final rules published September 30, 2016,  
40 and the CCDF Final Rule Frequently Asked Questions (FAQ) published December 14, 2016, by  
41 the US Department of Health and Human Services Administration for Children and Families  
42 (ACF).

43  
44 The federal Child Care and Development Block Grant (CCDBG) Act requires state lead agencies  
45 to ensure that once a child is determined eligible for CCDF-subsidized services, the child shall be  
46 considered eligible and shall receive services for a minimum of 12 months before eligibility can

1 be redetermined. The December 15, 2015, Notice of Proposed Rule Making (NPRM) issued by  
2 ACF, the federal administrator of the CCDBG Act, allows terminating care before 12 months  
3 only in situations in which:

4 --a change in family income caused the family's income to exceed 85 percent of the state median  
5 income (SMI); or

6 --a parent experiences a loss of work or cessation of attendance at a job training or educational  
7 program that is not a temporary change as defined in NPRM §98.21(a)(1)(ii).

8  
9 As the CCDBG Act and the guidance published in the NPRM required states to demonstrate  
10 compliance with the 12-month eligibility requirements by October 1, 2016, TWC adopted rules  
11 September 6, 2016, to be effective October 1, 2016. Subsequently, in the final rules, ACF revised  
12 its initial position in response to comments, adding new limited circumstances in which a lead  
13 agency may discontinue assistance before the next scheduled redetermination. Given that TWC's  
14 rules predated the CCDF final rules, ACF's additional factors were not included in current  
15 Chapter 809 rules; to be consistent with federal law and to ensure that Texas receives the benefit  
16 of any additional federal flexibility, TWC must add these new additional criteria to Chapter 809  
17 rules. Specifically, care may be discontinued where there has been:

18 --excessive unexplained absences, which continue after sufficient notice to the parent and  
19 provider; or

20 --intentional program violations that invalidate prior determinations of eligibility, including  
21 nonpayment of the family co-payment.

#### 22 23 Termination for Excessive Unexplained Absences

24 New 45 CFR §98.21(a)(5)(i) states that lead agencies may terminate care in circumstances in  
25 which there have been "excessive unexplained absences" as defined by the state. Section  
26 98.21(a)(5)(i) also requires that before terminating care for excessive absences, multiple attempts  
27 must be made to contact the family and the provider, including notification of possible  
28 discontinuation of assistance. Additionally, the preamble to the CCDF final rules includes the  
29 following guidance:

30  
31 Regarding termination due to excessive unexplained absences, we stress that every effort  
32 should be made to contact the family prior to terminating benefits. Such efforts should be  
33 made by the Lead Agency or designated entity, which may include coordinated efforts  
34 with the provider to contact the family.

35  
36 If a State chooses to terminate for this reason, the Lead Agency must define how many  
37 unexplained absences would constitute an "excessive" amount and therefore grounds for  
38 early termination. The definition of excessive should not be used as a mechanism for  
39 prematurely terminating eligibility and must be sufficient to allow for a reasonable  
40 number of absences. It is ACF's view that unexplained absences should account for at  
41 least 15 percent of a child's planned attendance before such absences are considered  
42 excessive. This 15 percent aligns generally with Head Start's attendance policy and ACF  
43 will consider it as a benchmark when reviewing and monitoring this requirement.

#### 44 45 Termination for Intentional Program Violations

1 New 45 CFR §98.21(a)(5)(iii) allows states to terminate care for "intentional program violations  
2 that invalidate prior determinations of eligibility." ACF further clarified in the CCDF FAQ that  
3 states have flexibility to define nonpayment of parent share of cost as an intentional program  
4 violation. Additionally, 45 CFR §98.45(k)(3) states that a lead agency's sliding fee scale shall  
5 provide for "affordable family co-payments that are not a barrier to families receiving assistance  
6 under this part." Therefore, if lack of payment becomes a common occurrence, and lead agencies  
7 are frequently ending assistance to families for not making co-payment, the lead agency may  
8 want to reexamine its sliding fee scale to ensure that it is not in violation of this requirement by  
9 being a barrier to assistance.

## 10 11 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND** 12 **RESPONSES**

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

### 15 16 **SUBCHAPTER A. GENERAL PROVISIONS**

#### 17 **TWC adopts the following amendments to Subchapter A.**

##### 18 19 **§809.2. Definitions**

20 Consistent with 45 CFR §98.21(a)(5)(i), TWC defines how many unexplained absences  
21 constitute an "excessive" amount, and would therefore be grounds for early termination, by  
22 proposing to amend §809.2 to define "excessive unexplained absences" as more than 40  
23 unexplained absences in a 12-month eligibility period.

24  
25 Paragraphs have been renumbered as needed.

26  
27 **Comment:** Several commenters requested clarification of the definition of "excessive  
28 unexplained absences" with regard to "Z" days (missed attendance recordings) counting  
29 toward the determination, as well as how to determine if an absence can later be  
30 "explained."

31  
32 **Response:** TWC clarifies that because termination does not occur until after 40  
33 unexplained absences accrue, absences that are due to documented chronic illness or  
34 disability or a court-ordered custody or visitation agreement may be removed from the  
35 accrual count. Additionally, if the parent or provider calls in a timely manner to explain  
36 why attendance recording was missed and is correcting the issue (i.e., the parent timely  
37 requests a replacement attendance tracking card or the provider requests to replace faulty  
38 equipment), those absences may be removed from the accrual, per local Board policy.  
39 Both parents and providers share responsibility for reporting attendance and for  
40 documenting reasons for absences; providers must ensure that the attendance recording  
41 device is available, connected and working properly, and parents are obligated to report  
42 attendance using the attendance recording device or through the 1-800 number. Parents  
43 also have the opportunity to revise attendance reporting within 6 days to correct instances  
44 of "Z" days where no attendance is reported. Parents may also call the Agency's Child  
45 Care Services unit to report the issue. The limit of 40 unexplained absences before  
46 termination takes into consideration reasonable amount of general absences (including

1 absences coded as “I”, “A,” or “C”) for non-chronic conditions before a child’s  
2 authorization for care is disrupted. Although not every missed attendance recording, or  
3 “Z” day, can justifiably be removed from the absence count, TWC emphasizes it is  
4 critical that the reporting system be used and reasons for absences be provided.  
5

6 **Comment:** One commenter asked for a detailed explanation of the statement, "intentional  
7 program violations that invalidate prior determinations of eligibility" as it was discussed  
8 in the preamble.  
9

10 **Response:** New 45 CFR 98.21(a)(5)(iii) allows lead agencies the option to discontinue  
11 assistance before the next redetermination in limited circumstances, including the  
12 presence of "intentional program violations," and allows lead agencies to define what  
13 actions rise to this definition. TWC uses §809.19(d) to identify failure to pay the parent  
14 share of cost as an intentional program violation that may invalidate a previous  
15 determination of eligibility and allow for termination of child care services.  
16

## 17 **SUBCHAPTER B. GENERAL MANAGEMENT**

### 18 **TWC adopts the following amendments to Subchapter B.**

#### 19 **§809.13. Board Policies for Child Care Services**

20 Based on ACF's clarification in the CCDF FAQ that states have flexibility to define nonpayment  
21 of parent share of cost as an intentional program violation, TWC proposes to amend  
22 §809.13(c)(3) to require Local Workforce Development Boards (Boards) to include in their  
23 parent share of cost policies an explanation that failure to pay the parent share of cost is a  
24 program violation that is subject to early termination of child care. The Board's policy also must  
25 include an assessment of what constitutes affordability when frequent terminations occur  
26 pursuant to §809.19(d) - (e).  
27

28  
29 **Comment:** Several comments were received requesting additional information on the  
30 criteria for determining the affordability of the parent share of cost.  
31

32 **Response:** Boards have flexibility in establishing their parent share of cost policy. Boards  
33 are encouraged to review the labor market, housing costs and economic conditions in  
34 their workforce areas, and other factors relevant in determining general affordability  
35 when establishing this policy. If a Board finds that excessive terminations are occurring  
36 due to failure to pay the parent share of cost, the Board must reevaluate its policy of  
37 affordability of care in the local area and determine whether local economic conditions  
38 have changed in order to determine if the sliding fee scale in the parent share of cost  
39 policy is a barrier to assistance.  
40

41 **Comment:** One comment was received regarding §809.13(c)(3)(A), asking TWC to  
42 clarify that termination of care due to failure to pay the parent share of cost is subject to  
43 local flexibility.  
44

45 **Response:** Although board policies may vary in considering the circumstances and the  
46 factors in place to mitigate the issue before termination of services, boards must terminate

1 care when an intentional violation of program rules related to paying parent share of cost  
2 has occurred.

3  
4 **Comment:** One comment was received regarding keeping all Board-required policies  
5 within §809.13, Board Policies for Child Care Services.

6  
7 **Response:** TWC understands the concern; however, §809.19(d) and §809.78(d) are  
8 intended to provide additional information that must be taken into consideration when  
9 developing the policy discussed in §809.13. For consistency with terminology,  
10 §809.78(d) is amended to remove "develop procedures to" in the rule. The rule now  
11 begins with "Boards shall ensure. . ."

12  
13 **§809.19. Assessing the Parent Share of Cost**

14 ACF noted in the CCDF FAQ that 45 CFR §98.45(k)(3) states that a lead agency's sliding fee  
15 scale shall provide for "affordable family co-payments that are not a barrier to families receiving  
16 assistance under this part." Therefore, if lack of payment becomes a common occurrence, and  
17 lead agencies are frequently ending assistance to families for not paying their co-payment, the  
18 lead agency may want to reexamine its sliding fee scale to ensure that it is not in violation of this  
19 requirement by being a barrier to assistance.

20  
21 Consistent with ACF guidance, §809.19(a)(1)(B) is amended to include a reexamination of the  
22 sliding fee scale if the Board finds a pattern of frequent terminations due to lack of co-payments.  
23 Additionally, §809.19(a)(1)(C) is amended to require Boards to set a parent share of cost that is  
24 affordable to all eligible families in the workforce area and not a barrier to families receiving  
25 assistance.

26  
27 New §809.19(d) is added to provide necessary criteria to the process for terminating child care  
28 for failure to pay the parent share of cost, including requirements for:  
29 --evaluating a family's financial circumstances for possible reduction of the parent share of cost  
30 before an early termination for nonpayment of parent share of cost;  
31 --determining general affordability of the parent share of cost;  
32 --maintenance of a list of all terminations due to failure to pay the parent share of cost;  
33 --the Board's definition of what constitutes frequent terminations; and  
34 --the Board's process for assessing the general affordability of its parent share of cost schedule.

35  
36 New §809.19(e) is added to require Boards to reexamine their sliding fee scales if there are  
37 frequent terminations of care for lack of payment of the parent share of cost, and to adjust the fee  
38 schedule to ensure that fees are not a barrier to assistance for families at certain income levels.

39  
40 New §809.19(f) is added to state that if a Board does not have a policy to reimburse providers  
41 when the parent fails to pay the parent share of cost, the Board has the option to require parents  
42 to repay the provider before being eligible for future child care services.

43  
44 The current provision that prohibits a child's future eligibility when a parent owes a parent share  
45 of cost repayment to a Board if the Board has a policy in place that reimburses providers for  
46 parents' unpaid fees is retained. Given the ability to terminate care before 12 months when a

1 parent fails to pay the parent share of cost, the financial risks associated with reimbursing  
2 providers will be substantially lower and more limited.

3  
4 Subsections and paragraphs are relettered and renumbered as needed.

5  
6 **Comment:** Several comments were received regarding §809.19(d)(2) and identifying the  
7 general criteria for determining affordability of a Board's parent share of cost.

8  
9 **Response:** Boards have flexibility in establishing their parent share of cost policy. Boards  
10 are encouraged to review the labor market, housing costs and economic conditions in  
11 their workforce areas, and other factors relevant in determining general affordability  
12 when establishing this policy. If a Board finds that excessive terminations are occurring  
13 due to failure to pay the parent share of cost, the Board must reevaluate its policy of  
14 affordability of care in the local area and determine whether local economic conditions  
15 have changed in order to determine if the sliding fee scale in the parent share of cost  
16 policy is a barrier to assistance.

17  
18 **Comment:** Several comments were received regarding §809.19(d)(3) and how to  
19 maintain a list of all terminations due to failure to pay the parent share of cost that  
20 includes family size, income, family circumstances, and the reason for termination.

21  
22 **Response:** TWC is scheduling upgrades in The Workforce Information System of Texas  
23 (TWIST) to reinstate several termination codes to help track terminations and to assist  
24 Boards in identifying patterns of frequent terminations.

25  
26 **Comment:** Several comments were received regarding §809.19(d)(4), which allows  
27 Boards to define what constitutes frequent terminations of care related to nonpayment of  
28 parent share of cost, and what parameters are used to determine the general affordability  
29 of a Board's parent share of cost schedule.

30  
31 **Response:** Boards have flexibility in establishing their parent share of cost policy,  
32 including what constitutes frequent terminations of care related to nonpayment of parent  
33 share of cost. Boards are encouraged to review the labor market, housing costs and  
34 economic conditions in their workforce areas, and other factors relevant in determining  
35 general affordability and frequent terminations of care when establishing this policy. If a  
36 Board finds that excessive terminations are occurring due to failure to pay the parent  
37 share of cost, the Board must reevaluate its policy of affordability of care in the local area  
38 and determine whether local economic conditions have changed in order to determine if  
39 the sliding fee scale in the parent share of cost policy is a barrier to assistance.

40  
41 **Comment:** One commenter asked if the requirement to evaluate and document a family's  
42 financial situation for extenuating circumstances that may affect affordability of the  
43 assessed parent share of cost, and a possible temporary reduction before the Board or its  
44 contractor may terminate care, must only happen if a parent requests a parent share of  
45 cost reduction.

1 **Response:** The Board must attempt to evaluate and document a family's financial  
2 situation for extenuating circumstances that may affect the family's ability to pay the  
3 assessed share of cost each time a parent is reported for failure to pay the share of cost.  
4

5 **Comment:** One commenter asked if Boards can limit the number of parent share of cost  
6 reductions allowed in a 12-month eligibility period.  
7

8 **Response:** The Board must assess the family's financial situation for extenuating  
9 circumstances each time the parent fails to pay the parent share of cost. Evaluations  
10 cannot be limited to a certain number of times per year. However, Board policy may  
11 establish how many parent-initiated parent share of cost reduction requests a family may  
12 make within an eligibility period.  
13

14 **Comment:** Two commenters indicated that the evaluations and possible reduction of a  
15 parent share of cost based on a family's extenuating circumstances will increase Board  
16 expenditures for those Boards that have a policy of reimbursing providers for unpaid  
17 parent share of cost and may cause an undue burden on Boards that are already  
18 overenrolled.  
19

20 **Response:** Reexamining and adjusting the sliding fee scale to ensure that parent fees are  
21 not a barrier to assistance for families at certain levels is a federal requirement. Board  
22 policy may establish how many parent-initiated parent share of cost reduction requests a  
23 parent is allowed to make within an eligibility period, however an assessment of the  
24 family's financial situation for extenuating circumstances must be completed each time  
25 the family is reported for non-payment.  
26

27 **Comment:** One comment was received regarding §809.19(f) and whether late fees that a  
28 provider charges are included as fees that the Board can require a family to pay to the  
29 provider, along with any unpaid parent share of cost, before the family can be  
30 redetermined eligible for future child care services.  
31

32 **Response:** No, late fees are not a part of the monthly cost of care assessed with the child  
33 care services eligibility determination. Late fees charged are outside the scope of child  
34 care services and are directly assessed to the parent by the provider. A provider may  
35 stipulate that a parent cannot return the child to care until late fees are paid, but for  
36 eligibility for future child care services, the repayment addressed in Board policy relates  
37 only to unpaid parent share of cost.  
38

39 **Comment:** One commenter asked if it is allowable to inform parents in writing to notify  
40 child care services in advance of the monthly parent share of cost due date if the parents  
41 have difficulty paying their parent share of cost.  
42

43 **Response:** Under §809.71(16), relating to parent rights, a Board shall ensure that the  
44 Board's child care contractor informs the parent in writing that the parent has the right to  
45 receive written notification of possible termination of child care services for failure to  
46 pay the parent share of cost, pursuant to §809.19(d). Although Boards have the flexibility

1 to request that parents notify child care services in advance of the new month if the  
2 parents anticipate having difficulty in paying the parent share of cost, terminating child  
3 care due to a failure to notify the Board in advance would create a new category of  
4 intentional program violation and is not one of the types of intentional program violations  
5 defined in federal statute at §98.21(a)(5) or child care services rules at §809.13(c)(3)(A).  
6 An evaluation of the family's financial circumstances must still take place to determine  
7 any extenuating factors that may have affected the family's ability to pay. Additionally, if  
8 a failure to pay the parent share of cost is identified, the termination notice must still be  
9 sent to the family before care can be terminated.

10  
11 **Comment:** One commenter asked if a family's inability to pay the parent share of cost  
12 automatically qualifies the family for a fee reduction, and about the level of effort that  
13 child care services staff would have to invest in gathering the documents to assess if a  
14 parent qualifies for a fee reduction. Additionally, the commenter asked how the  
15 delinquent share of cost will be resolved if a parent share of cost is already past due and a  
16 future reduction is applied.

17  
18 One commenter asked whether, if the family refuses to provide documentation to allow  
19 Boards to complete this evaluation, it will suffice for Boards to document their attempts  
20 and the family's noncooperation.

21  
22 **Response:** Section 809.19(c)(3) requires Boards to establish a policy on assessment of a  
23 parent share of cost, to include information that failure to pay is a program violation  
24 subject to early termination of child care services. In their local policy, Boards have  
25 flexibility in providing direction on how to proceed if a family is not cooperative or  
26 responsive to the attempts to evaluate the family's financial situation for extenuating  
27 circumstances, pursuant to §809.19(d)(1). There are many possible ways a past due  
28 parent share of cost could be reduced or resolved, depending on when the non-payment is  
29 reported. TWC is issuing guidance on how to resolve a past due share of cost and a future  
30 fee reduction.

31  
32 **Comment:** One commenter suggested that Boards should consider not retaining, but  
33 rather, changing their policies to require parents to repay the provider. Another  
34 commenter asked if the rule is reverting to not reimbursing providers, or if they can still  
35 reimburse providers and terminate care before the eligibility end date.

36  
37 **Response:** The Child Care Services rules allow Boards to develop this policy. If a Board  
38 has a policy to reimburse providers for unpaid parent share of cost, the Board may  
39 attempt to recoup that money directly from the parents. If the Board does not have a  
40 policy to reimburse providers for the unpaid share of cost, it can still develop a policy to  
41 require that parents repay the unpaid share of cost of care directly to the provider before  
42 being eligible for future child care services. Failure to pay the parent share of cost is an  
43 intentional program violation that is subject to termination of services before the 12-  
44 month eligibility end date.



1 **Comment:** One commenter asked how many unpaid parent share of cost infractions are  
2 allowed before a Board can terminate care for this reason and how quickly the  
3 termination notice and appeal notice must be mailed after nonpayment of parent share of  
4 cost has occurred.

5  
6 **Response:** Pursuant to §809.19(c)(3), Boards must develop a policy on assessment of the  
7 parent share of cost, to include information that failure to pay is a program violation,  
8 subject to early termination of child care services. Boards may include in their local  
9 policy the number or frequency of parent-initiated requests for a parent share of cost  
10 reduction. However, an assessment must occur each time the parent fails to pay the parent  
11 share of cost to determine if there are any extenuating circumstances. If a parent fails to  
12 pay the parent share of cost, there are no extenuating circumstances and the parent did not  
13 initiate a request for a parent share of cost reduction (per local Board policy), this is  
14 considered an intentional program violation and care must be terminated. Once the  
15 decision to terminate care has been reached, the termination letter and appeal notice must  
16 be mailed to the family, consistent with §809.74(a)(1).

17  
18 **Comment:** One Board commented that §809.19(d)(4) requires Boards to establish a  
19 policy that must include, ". . . its process for assessing the general affordability of Board's  
20 parent share of cost schedule . . ." indicating that this Board's policies do not also include  
21 procedures, since any changes would require approval from the Board of Directors.

22  
23 **Response:** TWC clarifies that the requirement is that Boards have a policy in place to  
24 assess the general affordability of the Board's parent share of cost schedule. This policy  
25 can include a requirement that the process is established by the contractor, or the Board  
26 can include specific requirements in Board policy that the Board wants the contractor to  
27 follow.

## 28 29 **SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES**

### 30 **TWC adopts the following amendments to Subchapter C.**

#### 31 32 **§809.55. Waiting Periods for Reapplication**

33 Current rules at §809.78(a)(3) establish a 12-month waiting period for children who exceed 65  
34 absences. However, to add clarity, waiting period information is being moved to this stand-alone  
35 section. New §809.55 is added to require a mandatory waiting period of 60 calendar days before  
36 a family can reapply or be placed on a waiting list for child care services if care is terminated due  
37 to excessive unexplained absences, as described in §809.78(a)(1), or unpaid parent share of cost,  
38 as described in §809.19(d).

39  
40 Furthermore, to more closely align with ACF guidance, the standard of 65 absences set forth in  
41 §809.78(a)(3) is changed to more than 40 unexplained absences in a 12-month eligibility period.  
42 Adding this clarification will prevent immediate reapplication for services when care is  
43 terminated.

1 However, to ensure full alignment between Child Care Services rules and the Choices program  
2 requirements, the mandatory waiting period will not apply to individuals who, during the 60-  
3 calendar day waiting period:

4 --become Choices participants who require child care to participate in the Choices program; or  
5 --are on Choices sanction status and require child care to demonstrate participation in Choices.  
6

7 **Comment:** One commenter expressed appreciation of reducing the waiting period for  
8 reapplication from 12 months to 60 days.

9  
10 **Response:** TWC appreciates the comment.  
11

12 **Comment:** Several commenters asked for clarification if the 60-day waiting period  
13 applies to the entire family or just the individual child. Another commenter asked for  
14 clarification regarding the waiting period for reapplication as it applies to termination of  
15 child care due to failure to pay the parent share of cost.  
16

17 **Response:** Section 809.55(a) states, "A parent is ineligible to reapply for child care  
18 services or to be placed on the waiting list for services for 60 calendar days if the  
19 *parent's eligibility or the child's enrollment* is terminated . . ."  
20

21 The 60-day waiting period applies to each individual child when care is terminated due to  
22 excessive unexplained absences. However, failure to pay parent share of cost will  
23 terminate the eligibility period for the entire family. Section 809.78(a)(1) is updated to  
24 clarify that termination of care occurs for the child due to excessive unexplained  
25 absences.  
26

27 **Comment:** One commenter asked whether a child on a 60-day sit out who has a sibling  
28 in care must still sit out of care for 60 days before being placed back on the waiting list or  
29 can be brought back into care after 60 days. If the child is only out for 60 days, this will  
30 require tracking and could impact the number of children who are brought into care in the  
31 future.  
32

33 **Response:** The 60-day sit out applies to the child, and the child must be out of care for 60  
34 days before the child can be placed back on the waiting list. Some Boards may have a  
35 Board-established priority group for siblings of children already in care; however, the  
36 child must still sit out for 60 calendar days before being placed in that priority group.  
37

38 **Comment:** Two commenters had questions related to the waiting period for reapplication  
39 as it applies to current and former Choices participants.  
40

41 **Comment:** One commenter had a question on families (income-eligible and/or Choices)  
42 that were previously on a 12-month waiting period for absences exceeding 65 days within  
43 an eligibility period and how those customers can return to care, specifically, if receipt of  
44 Temporary Assistance for Needy Families and participation in Choices allow the family  
45 to reengage with child care services sooner.  
46

1       **Response:** During the transition period between the old rule and the new rule, if the  
2 family is currently in a waiting period for re-application, the time frame will be reduced  
3 from the previous 12-month waiting period to the approved 60 calendar days. Families  
4 will not have their eligibility agreement interrupted during the current eligibility period,  
5 but when a consequence is applied, the new consequence timeframes will be applicable.  
6 Additional guidance will be provided through a WD Letter and updates to both the Child  
7 Care Services Guide and the Choices Guide.  
8

9       **Comment:** One commenter asked if being placed on the waiting list and reapplying for  
10 services are the same thing, given that §809.55(a) states that "a parent is ineligible to  
11 reapply for child care services or to be placed on the waiting list for 60 calendar days if  
12 the parent's eligibility or the child's enrollment is terminated . . ."  
13

14       **Response:** A family cannot be placed on the waiting list or have an eligibility  
15 determination completed until 60 calendar days have passed, if the parent's eligibility or  
16 the child's enrollment is terminated.  
17

18       If a child or family is ineligible to be recertified based on the previous rules and is in a  
19 waiting period for reapplication, that time frame will be reduced from the previous 12-  
20 month waiting period to the approved waiting period of 60 calendar days. Families will  
21 not have their eligibility agreements interrupted during the current eligibility period, but  
22 when a consequence is applied, the new consequence time frames will be applicable.  
23

## 24 **SUBCHAPTER D. PARENT RIGHTS AND RESPONSIBILITIES**

### 25 **TWC adopts the following amendments to Subchapter D.**

#### 26 **§809.71. Parent Rights**

27 New 45 CFR §98.21(a)(5)(i) states that lead agencies may terminate care in circumstances in  
28 which there have been "excessive unexplained absences," as defined by the state, and requires  
29 that before terminating care for excessive absences, multiple attempts be made to contact the  
30 family and provider, including notification of possible discontinuation of services.  
31

32 Based on this guidance within the CCDF final rules, §809.71 is amended by adding paragraphs  
33 (15) and (16) to require that a parent must receive written notification that child care services  
34 may be terminated within a 12-month eligibility period if:  
35

- 36 --a child has excessive unexplained absences, pursuant to §809.78(a)(1); or
- 37 --the family fails to pay the parent share of cost, pursuant to new §809.19(d).  
38

39       **Comment:** One commenter asked for clarification of "multiple attempts," which must be  
40 made to contact the family and provider, including notification of possible  
41 discontinuation of assistance.  
42

43       **Response:** Section 809.78(d)(1) instructs Boards to develop procedures to ensure that  
44 before terminating care for excessive unexplained absences, written notice is provided to  
45 the parent and provider at 15 and then 30 cumulative absences within a 12-month

1 eligibility period. Boards have flexibility to determine what constitutes multiple attempts  
2 as long as the required two attempts identified in §809.78(d)(1) are documented.  
3

4 **Comment:** One commenter asked about parent rights and notification requirements  
5 during the transition to terminating care during an eligibility period, and the effective  
6 dates of the notification, as it relates to implementing termination of care immediately  
7 and a parent's right to appeal.  
8

9 **Response:** Section 809.71, Parent Rights, will be implemented in a manner so that  
10 families will not have their eligibility agreement interrupted during the current eligibility  
11 period. If a consequence must be applied, due to failure of the parent to meet the current  
12 eligibility agreements identified at initial determination (such as accruing more than 65  
13 absences), it will not be applied during the current eligibility period. The parent will  
14 continue care, consistent with the agreement and notifications provided to the parent at  
15 initial eligibility determination. At the conclusion of that eligibility period, when the  
16 consequence is applied, the new consequence timeframes will be applicable.  
17

18 Boards will not need to disrupt a current eligibility period to notify parents of the rule  
19 changes. Boards will implement the rule changes at the beginning of each family's new  
20 eligibility period. Boards retain the responsibility to notify parents of the right to appeal if  
21 the parent's eligibility or child's enrollment is denied, delayed, reduced, suspended or  
22 terminated, pursuant to §809.74(a)(1)  
23

#### 24 **§809.75. Child Care during Appeal**

25 Section 809.75 is amended by adding new subsection (b) to prohibit continuation of child care  
26 during an appeal if child care is terminated due to excessive unexplained absences, pursuant to  
27 §809.78, or nonpayment of parent share of cost, pursuant to §809.19.  
28

29 Subsections are relettered as needed.  
30

31 No comments were received for this section.  
32

#### 33 **§809.78. Attendance Standards and Notice and Reporting Requirements**

34 New 45 CFR §98.21(a)(5)(i) states that lead agencies may terminate care within a 12-month  
35 eligibility period in circumstances in which there have been excessive unexplained absences as  
36 defined by the state. Additionally, the preamble to the final rules states the following:  
37

38 The definition of excessive should not be used as a mechanism for prematurely  
39 terminating eligibility and must be sufficient to allow for a reasonable number of  
40 absences. It is ACF's view that unexplained absences should account for at least 15  
41 percent of a child's planned attendance before such absences are considered excessive.  
42 This 15 percent aligns generally with Head Start's attendance policy and ACF will  
43 consider it as a benchmark when reviewing and monitoring this requirement.  
44

1 Section 809.78(a)(1) is amended to require Boards to notify parents regarding attendance  
2 standards and possible termination of child care services during the 12-month eligibility period  
3 when there have been "excessive unexplained absences."

4 Consistent with federal guidance in the preamble and 45 CFR §98.21(a)(5)(i) regarding the 15  
5 percent attendance standard, §809.78(a)(1)(A) and (B) are removed, and §809.78(a)(2) is  
6 amended to define acceptable attendance standards as no more than 40 unexplained absences  
7 within a 12-month eligibility period (which is 15 percent of a standard 260- to 262-calendar-day  
8 child care year, as recommended in the preamble of the CCDF final rule).

9 Current §809.78(a)(2) is amended to align with new federal rules at 45 CFR Part 98 regarding  
10 excessive unexplained absences.

11  
12 Current §809.78(a)(3) is amended because 65 absences in a 12-month period is no longer an  
13 applicable standard. Additionally, the current 12-month waiting period for children who exceed  
14 65 absences within an eligibility period is eliminated. This rule will be superseded by the ability  
15 to terminate care immediately after 40 absences, as well as by the reinstatement of a mandatory  
16 waiting period set forth in §809.55.

17  
18 Section 809.78(a)(3)(A) - (C) are added to define "unexplained absences."

19  
20 Section 809.78(c) is amended to explain that absences due to court-order visitation, chronic  
21 illness or a disability do not count toward the definition of "excessive unexplained absences" as  
22 described in §809.78(a).

23  
24 Although 45 CFR §98.21(a)(5)(i) permits states to terminate care within a 12-month eligibility  
25 period for excessive unexplained absences, it also requires that before terminating care for  
26 excessive unexplained absences, multiple attempts must be made to contact the family and  
27 provider, including notification of the possible discontinuation of assistance.

28  
29 Consistent with 45 CFR §98.21(a)(5)(i) and preamble guidance, §809.78(d) is added to require  
30 Boards to develop procedures to ensure that before terminating care for excessive unexplained  
31 absences pursuant to §809.78, the child care contractor makes multiple attempts to contact the  
32 family and the child care provider to determine why the child is absent and to explain the  
33 importance of regular attendance. The Board's procedures also must require documentation of  
34 attempts to provide notice to the parent and the child care provider of each child's general  
35 absences and the potential for termination of services, at reasonable times or through established  
36 communication channels, at a minimum when a child has reached five consecutive absences, and  
37 when a child reaches 15 and 30 general absences cumulatively within a 12-month eligibility  
38 period.

39  
40 Subsections have been relettered as needed.

41  
42 **Comment:** A recommendation to clarify whether in §809.78(a)(1) failure to meet  
43 attendance standards resulting in termination applies to the child or the family.  
44

1 **Response:** TWC agrees with this recommendation and added the phrase “the child due  
2 to” to §809.78(a)(1) so the phrase now reads: "Failure to meet attendance standards  
3 described in paragraph (2) of this subsection may result in termination of care for the  
4 child due to excessive unexplained absences pursuant to subsection (d) of this section."  
5

6 **Comment:** A recommendation was received to add "chronic" to the phrase "documented  
7 illness" in §809.78(a)(3)(A) to maintain consistency with the exceptions to unexplained  
8 absences discussed in §809.78(c).  
9

10 **Response:** TWC agrees with this recommendation and added "chronic" to the phrase in  
11 §809.78(a)(3)(A).  
12

13 **Comment:** Nine comments were received about §809.78(d)(1) regarding how and when  
14 the five consecutive absences will be counted and expressed concern about administrative  
15 burdens on staff, as well as concern for placing the responsibility on providers to report  
16 this attendance so that contractors can act in a timely manner as the fifth consecutive  
17 absence accrues.  
18

19 **Response:** Based on the number and nature of comments received, as well as the  
20 unintended burden placed on providers to report absences, TWC is persuaded to remove  
21 the requirement of the written notification at five consecutive absences from the proposed  
22 rules. The written notification requirement at 15 and 30 absences is retained.  
23 Additionally, the parent will still receive the written termination notice 15 days before  
24 termination of services as well as the appeal notification.  
25

26 **Comment:** Four comments were received regarding amending the requirement for  
27 "written notices" in §809.78(d)(1), specifically the requirements that the contractor must  
28 follow before terminating services. The comments referenced administrative and fiscal  
29 burdens that would occur with the increased written correspondence, as well as the staff  
30 time to research absences at those time frames. Additionally, some Boards use other  
31 methods, such as auto-dialers or automatic notification systems that log contact attempts.  
32

33 **Response:** TWC encourages Boards to make full use of alternative formats to provide  
34 written notices that may reduce the fiscal burden. However, with the recommendation to  
35 remove written notification to parents at five consecutive absences, TWC retains the  
36 requirement to send written notification at 15 and 30 absences.  
37

38 **Comment:** Several comments were received that recommended changes to TWIST to  
39 assist with appropriate tracking and monitoring of attendance standards.  
40

41 **Response:** TWC is implementing a TWIST enhancement to assist with the tracking and  
42 monitoring of attendance standards.  
43

44 **Comment:** Comments were received asking to define "multiple attempts" relating to  
45 §809.78(d)(2), which states that Boards shall ensure that the child care contractor

1 documents multiple attempts to determine why the child is absent and to explain the  
2 importance of regular attendance before termination of services.

3  
4 **Response:** Section 809.78(d)(1) instructs Boards to develop procedures to ensure that  
5 before terminating care for excessive unexplained absences, written notice is provided to  
6 the parent and provider at 15 and then 30 cumulative absences within a 12-month  
7 eligibility period. Boards have flexibility to determine what constitutes multiple attempts  
8 as long as the required two attempts identified in §809.78(d)(1) are documented.

9  
10 **Comment:** Several comments were received regarding the absence notification letters  
11 and whether the current Board-defined time frames will suffice. Comments were also  
12 received regarding the content of the letters and whether it is appropriate and permissible  
13 to add language on the possibility of discontinuation of care in each of the letters. An  
14 additional comment was received regarding when to send the termination notice and the  
15 appeal notification. One comment suggested sending notification letters at 15 and 30  
16 unexplained absences, rather than 15 and 30 general absences. Finally, one comment  
17 suggested sending an additional letter at 40 absences to inform the parent that one more  
18 unexplained absence will result in termination of care.

19  
20 **Response:** The purpose of the notification letters is to determine if the absences are  
21 explained due to documented chronic illness or court ordered visitation, pursuant to  
22 §809.73(a)(3)(A). The assessment of whether an absence is explained or unexplained  
23 must be completed before determining if care should end. The Board's attempts to notify  
24 the parent of the potential for termination of care must occur consistent with  
25 §809.78(d)(1), which requires notification letters to go out at 15 and 30 absences, and  
26 consistent with §809.71(a)(9) which requires the parent to receive written notification at  
27 least 15 calendar days before termination of child care services.

28  
29 **Comment:** One commenter asked for a definition of "established communication  
30 channels." Another commenter asked about the requirement to contact providers when a  
31 child accrues absences.

32  
33 **Response:** "Established communication channels" is a broad description to encompass  
34 the various methods that Boards may use to communicate with parents and providers. It  
35 is important to have communication with both the parent and the provider to identify any  
36 additional information about the child's absence that might change the "unexplained"  
37 determination. Consistent with §809.92(b)(4), providers shall follow attendance  
38 reporting and tracking procedures required by the Commission under §809.95, the Board,  
39 or if applicable, the Board's child care contractor. This provision has not changed and  
40 Boards retain the flexibility to have child care providers report absences at designated  
41 timeframes.

42  
43 **Comment:** One commenter asked if, after contacting the provider, it is determined that  
44 the child was not absent, but the attendance was not recorded, the "absence" still accrues  
45 toward the allowable absence limit.

1 **Response:** If the attendance-recording device was functioning and available at that  
2 provider, but the parent did not use the device (that is, failed to record attendance for a  
3 day), that absence may accrue toward the absence limit.  
4

5 **Comment:** One commenter asked if court-ordered visitation, chronic illness, or disability  
6 must be supported by documentation provided by the parent. Additionally, a commenter  
7 inquired about how to document missed attendance recording on or near the date of a  
8 doctor visit documented by a doctor's note and finally a request for clarification that the  
9 responsibility remains on the parent to ensure that an absence was due to an illness is  
10 documented correctly in the attendance recording system.  
11

12 **Response:** Section 809.78(a)(3)(A) clarifies that unexplained absences include "any  
13 absence that is not due to a child's documented chronic illness or disability, or to a court-  
14 ordered custody or visitation agreement." TWC allows Boards the flexibility to determine  
15 the level of detail required to show the dates of the documented chronic illness, disability,  
16 or court-ordered custody or visitation agreement consistent with TWC policy reflected in  
17 §809.78(a)(3)(A). Parents maintain the responsibility to use the attendance recording  
18 system correctly, pursuant to §809.78(a)(5).  
19

20 **Comment:** One commenter requested clarification on whether Boards are still able to  
21 terminate care when a child is absent for five consecutive days. Another commenter  
22 asked if outreach must continue at 10 total absences in a month.  
23

24 **Response:** No, Boards are only able to terminate care due to absences when the child has  
25 more than 40 unexplained absences. Boards can terminate at the 41st unexplained  
26 absence, after attempts to notify the family and determine the reason for the child's  
27 absences are documented and the appropriate termination and appeal notices are  
28 provided. The Board's attempts to notify the parent of the potential for termination of  
29 care must occur consistent with §809.78(d)(1), which requires notification letters to go  
30 out at 15 and 30 absences. Boards have flexibility to determine additional notices that  
31 may be sent as long as the required two attempts identified in §809.78(d)(1) are  
32 documented.  
33

34 **Comment:** Several commenters suggested that these changes to the number of allowable  
35 absences should apply at each family's recertification of eligibility, not in the middle of  
36 an eligibility period.  
37

38 **Response:** TWC will issue a WD Letter that will address the implementation of the new  
39 rules as it relates to eligibility periods for children. Families will not have their eligibility  
40 agreement interrupted during the current eligibility period, but when a consequence is  
41 applied, the new consequence timeframes will be applicable.  
42

43 **Comment:** One commenter asked TWC to confirm if termination of care due to  
44 excessive unexplained absences is subject to local flexibility.  
45



1 **Response:** No, termination of care due to excessive unexplained absences is not subject  
2 to local flexibility, pursuant to 45 CFR §98.21(a)(5)(i) and §809.78(a)(2). Parents must  
3 be notified of how many absences constitutes excessive unexplained absences and that  
4 failure to adhere to the absence limitations may result in termination of care if absences  
5 are unexplained. Boards do retain the flexibility to locally establish processes for  
6 determining why a child is absent and explaining the importance of regular attendance.  
7

8 **Comment:** One commenter asked whether, if the child has fewer than 40 absences and  
9 all parent share of cost payments have been made that were due and the family is  
10 redetermined to be eligible for the program and has another 12 months of eligibility  
11 authorized at the time the eligibility redetermination is completed, the contractor needs to  
12 continue to monitor absences and parent share of cost payments between the date the  
13 eligibility is determined and the date the new eligibility period starts, to ensure that there  
14 is no attendance standards violation in the interim.  
15

16 **Response:** Once a new eligibility period is established, any absences accrued or parent  
17 share of cost violations after the new eligibility determination is made, but before the  
18 current eligibility period ends, will not affect the new eligibility period. TWC is updating  
19 the Child Care Services guide to address counting absences for children.  
20

21 **Comment:** One commenter identified an increased cost to Boards to implement the  
22 changes. Specifically, multiple attempts to contact parents and providers to inquire about  
23 absences will increase staff time to handle the communication implied in these  
24 interactions.  
25

26 **Response:** Attempting to notify the parent and provider of a child's excessive  
27 unexplained absences is a federal requirement. Boards currently send notification letters  
28 to parents due to a child's absences once certain amounts of absences have accrued. In  
29 the proposed rule, the Board's attempts to notify the parent of the potential for  
30 termination of care must occur consistent with §809.78(d)(1), which requires notification  
31 letters to go out at 15 and 30 absences, and consistent with §809.71(a)(9) which requires  
32 the parent to receive written notification at least 15 calendar days before termination of  
33 child care services.  
34  
35

## 36 **SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE**

### 37 **TWC adopts the following amendments to Subchapter E.**

#### 38 **§809.93. Provider Reimbursement**

39 Section 809.93(b) is amended to remove "and §809.78(a)."  
40  
41

42 No comments were received for this section.  
43

#### 44 **COMMENTS WERE RECEIVED FROM:**

45 Ann Haines, Workforce Solutions East Texas

46 Teresa Watson, Workforce Solutions Heart of Texas

1 Julie Craig, Workforce Solutions Texoma  
2 Marla Moon, Workforce Solutions Northeast Texas  
3 Shawn Garrison, Workforce Solutions Alamo  
4 Lisa Colyer, Workforce Solutions of West Central Texas  
5 Shannon Richter, Workforce Solutions Rural Capital Area  
6 David Baggerly, Workforce Solutions Gulf Coast

7  
8 TWC hereby certifies that the adoption has been reviewed by legal counsel and found to be  
9 within TWC's legal authority to adopt.

10  
11 The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide TWC  
12 with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective  
13 administration of TWC services and activities, and Texas Human Resources Code §44.002,  
14 regarding Administrative Rules.

15  
16 The adopted rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as  
17 Texas Government Code, Chapter 2308.

18

1 **CHAPTER 809. CHILD CARE SERVICES**

2  
3 **Subchapter A. GENERAL PROVISIONS**

4  
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 attending a  
11 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 described in  
19 §809.42(b).  
20  
21 (2) Child--An individual who meets the general eligibility requirements contained  
22 in this chapter for receiving child care services.  
23  
24 (3) Child care contractor--The entity or entities under contract with the Board to  
25 manage child care services. This includes contractors involved in determining  
26 eligibility for child care services, contractors involved in the billing and  
27 reimbursement process related to child care subsidies, as well as contractors  
28 involved in the funding of quality improvement activities as described in  
29 §809.16.  
30  
31 (4) Child care services--Child care subsidies and quality improvement activities  
32 funded by the Commission.  
33  
34 (5) Child care subsidies--Commission-funded child care reimbursements to an  
35 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 the  
38 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 that  
41 substantially limits one or more major life activities, has a record of such an  
42 impairment, or is regarded as having such an impairment. Major life activities  
43 include, but are not limited to, caring for oneself; performing manual tasks;  
44 walking; hearing; seeing, speaking, or breathing; learning; and working.  
45  
46 (8) Educational program--A program that leads to:

- (A) a high school diploma;
- (B) a General Educational Development (GED) credential; or
- (C) a postsecondary degree from an institution of higher education.

(9) Excessive unexplained absences--More than 40 unexplained absences within a 12-month eligibility period as described in §809.78(a)(3).

(10)~~(9)~~ Family--Two or more individuals related by blood, marriage, or decree of court, who are living in a single residence and are included in one or more of the following categories:

- (A) Two individuals, married--including by common-law, and household dependents; or
- (B) A parent and household dependents.

(11)~~(10)~~ Household dependent--An individual living in the household who is one of the following:

- (A) An adult considered as a dependent of the parent for income tax purposes;
- (B) A child of a teen parent; or
- (C) A child or other minor living in the household who is the responsibility of the parent.

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

- (A) to an ineligible recipient;
- (B) for an ineligible service;
- (C) for any duplicate payment; and
- (D) for services not received.

(13)~~(12)~~ Job training program--A program that provides training or instruction leading to:

- 1  
2 (A) basic literacy;  
3  
4 (B) English proficiency;  
5  
6 (C) an occupational or professional certification or license; or  
7  
8 (D) the acquisition of technical skills, knowledge, and abilities specific to an  
9 occupation.

10  
11 (14)~~(13)~~ Listed family home--A family home, other than the eligible child's own  
12 residence, that is listed, but not licensed or registered with, the Texas  
13 Department of Family and Protective Services (DFPS) pursuant to Texas  
14 Human Resources Code §42.052(c).  
15

16 (15)~~(14)~~ Military deployment--The temporary duty assignment away from the  
17 permanent military installation or place of residence for reserve components of  
18 the single military parent or the dual military parents. This includes deployed  
19 parents in the regular military, military reserves, or National Guard.  
20

21 (16)~~(15)~~ Parent--An individual who is responsible for the care and supervision of a  
22 child and is identified as the child's natural parent, adoptive parent, stepparent,  
23 legal guardian, or person standing in loco parentis (as determined in  
24 accordance with Commission policies and procedures). Unless otherwise  
25 indicated, the term applies to a single parent or both parents.  
26

27 (17)~~(16)~~ Protective services--Services provided when:  
28

- 29 (A) a child is at risk of abuse or neglect in the immediate or short-term future  
30 and the child's family cannot or will not protect the child without DFPS  
31 Child Protective Services (CPS) intervention;  
32  
33 (B) a child is in the managing conservatorship of DFPS and residing with a  
34 relative or a foster parent; or  
35  
36 (C) a child has been provided with protective services by DFPS within the  
37 prior six months and requires services to ensure the stability of the  
38 family.  
39

40 (18)~~(17)~~ Provider--A provider is defined as:  
41

- 42 (A) a regulated child care provider as defined in §809.2(18);  
43  
44 (B) a relative child care provider as defined in §809.2(19); or  
45

1 (C) a listed family home as defined in §809.2(13), subject to the  
2 requirements in §809.91(b).

3  
4 (19)~~(18)~~ Regulated child care provider--A provider caring for an eligible child in a  
5 location other than the eligible child's own residence that is:

6  
7 (A) licensed by DFPS;

8  
9 (B) registered with DFPS; or

10  
11 (C) operated and monitored by the United States military services.

12  
13 (20)~~(19)~~ Relative child care provider--An individual who is at least 18 years of age,  
14 and is, by marriage, blood relationship, or court decree, one of the following:

15  
16 (A) The child's grandparent;

17  
18 (B) The child's great-grandparent;

19  
20 (C) The child's aunt;

21  
22 (D) The child's uncle; or

23  
24 (E) The child's sibling (if the sibling does not reside in the same household as  
25 the eligible child).

26  
27 (21)~~(20)~~ Residing with--Unless otherwise stipulated in this chapter, a child is  
28 considered to be residing with the parent when the child is living with and  
29 physically present with the parent during the time period for which child care  
30 services are being requested or received.

31  
32 (22)~~(21)~~ Teen parent--A teen parent (teen) is an individual 18 years of age or  
33 younger, or 19 years of age and attending high school or the equivalent, who  
34 has a child.

35  
36 (23)~~(22)~~ Texas Rising Star program--A voluntary, quality-based rating system of  
37 child care providers participating in Commission-subsidized child care.

38  
39 (24)~~(23)~~ Texas Rising Star Provider--A provider certified as meeting the TRS  
40 program standards. TRS providers are certified as one of the following:

41  
42 (A) 2-Star Program Provider;

43  
44 (B) 3-Star Program Provider; or

45  
46 (C) 4-Star Program Provider.

1  
2 ~~(25)(24)~~ Working--Working is defined as:

- 3  
4 (A) activities for which one receives monetary compensation such as a  
5 salary, wages, tips, and commissions; or  
6  
7 (B) participation in Choices or Supplemental Nutrition Assistance Program  
8 Employment and Training (SNAP E&T) activities.  
9

10 **SUBCHAPTER B. GENERAL MANAGEMENT**

11  
12 **§809.13. Board Policies for Child Care Services.**

- 13  
14 (a) A Board shall develop, adopt, and modify its policies for the design and management  
15 of the delivery of child care services in a public process in accordance with Chapter  
16 802 of this title.  
17  
18 (b) A Board shall maintain written copies of the policies that are required by federal and  
19 state law, or as requested by the Commission, and make such policies available to  
20 the Commission and the public upon request.  
21  
22 (c) At a minimum, a Board shall develop policies related to:  
23  
24 (1) how the Board determines that the parent is making progress toward successful  
25 completion of a job training or educational program as described in §809.2(1);  
26  
27 (2) maintenance of a waiting list as described in §809.18(b);  
28  
29 (3) assessment of a parent share of cost as described in §809.19(a)(1), including:  
30 (A)--provisions for a parent's failure to pay the parent share of cost, including  
31 the reimbursement of providers, ~~when a parent fails to pay the parent share of~~  
32 ~~cost;~~ as a program violation that is subject to early termination of child care  
33 services within a 12-month eligibility period; and  
34 (B)--criteria for determining the affordability of the parent share of cost, as  
35 described in §809.19(d) - (e);  
36  
37 (4) maximum reimbursement rates as provided in §809.20, including policies  
38 related to reimbursement of providers that offer transportation;  
39  
40 (5) family income limits as described in Subchapter C of this chapter (relating to  
41 Eligibility for Child Care Services);  
42  
43 (6) provision of child care services to a child with disabilities under the age of 19  
44 as described in §809.41(a)(1)(B);  
45

- (7) minimum activity requirements for parents as described in §809.48 and §809.50;
- (8) time limits for the provision of child care while the parent is attending an educational program as described in §809.41(b);
- (9) Board priority groups as described in §809.43(a);
- (10) transfer of a child from one provider to another as described in §809.71(3);
- (11) providers charging the difference between their published rate and the Board's reimbursement rate as provided in §809.92(d);
- (12) procedures for fraud fact-finding as provided in §809.111; and
- (13) policies and procedures to ensure that appropriate corrective actions are taken against a provider or parent for violations of the automated attendance requirements specified in §809.115(d) - (e).

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

(a) For child care funds allocated by the Commission pursuant to its allocation rules (generally, Chapter 800, General Administration, Subchapter B, Allocation and Funding, and specifically, §800.58, Child Care), including local public transferred funds and local private donated funds, as provided in §809.17, the following shall apply.

- (1) A Board shall set a parent share of cost policy that assesses the parent share of cost in a manner that results in the parent share of cost:
  - (A) being assessed to all parents, except in instances when an exemption under paragraph (2) of this subsection applies;
  - (B) being an amount determined by a sliding fee scale based on the family's size and gross monthly income, including a possible reexamination of the sliding fee scale if there are frequent terminations for lack of payment pursuant to subsection (e) of this section, and which also may consider the number of children in care;-
  - (C) being an amount that is affordable and does not result in a barrier to families receiving assistance;
  - (D)~~(E)~~ being assessed only at the following times:
    - (i) initial eligibility determination;



- 1 (ii) 12-month eligibility redetermination;
- 2
- 3 (iii) upon the addition of a child in care;
- 4
- 5 (iv) upon a parent's report of a change in income, family size, or number
- 6 of children in care that would result in a reduced parent share of cost
- 7 assessment; and
- 8
- 9 (v) upon resumption of work, job training, or education activities
- 10 following temporary changes described in §809.51(a)(2) and upon
- 11 resumption of work, job training, or education activities during the
- 12 three-month continuation of care period described in §809.51(c);
- 13 and
- 14

15 ~~(E)~~ not increasing above the amount assessed at initial eligibility  
 16 determination or at the 12-month eligibility redetermination based on the  
 17 factor in subparagraph (B) of this paragraph, except upon the addition of  
 18 a child in care as described in subsection (a)(1)(C)(iii) of this section.

- 19
- 20 (2) Parents who are one or more of the following are exempt from paying the
- 21 parent share of cost:
- 22
- 23 (A) Parents who are participating in Choices or who are in Choices child care
- 24 described in §809.45;
- 25
- 26 (B) Parents who are participating in SNAP E&T services or who are in
- 27 SNAP E&T child care described in §809.47;
- 28
- 29 (C) Parents of a child receiving Child Care for Children Experiencing
- 30 Homelessness as described in §809.52; or
- 31
- 32 (D) Parents who have children who are receiving protective services child
- 33 care pursuant to §809.49 and §809.54(c), unless DFPS assesses the
- 34 parent share of cost.
- 35
- 36 (3) Teen parents who are not covered under exemptions listed in paragraph (2) of
- 37 this subsection shall be assessed a parent share of cost. The teen parent's share
- 38 of cost is based solely on the teen parent's income and size of the teen's family
- 39 as defined in §809.2.
- 40

41 (b) For child care services funded from sources other than those specified in subsection  
 42 (a) of this section, a Board shall set a parent share of cost policy based on a sliding  
 43 fee scale. The sliding fee scale may be the same as or different from the provisions  
 44 contained in subsection (a) of this section.

1 (c) A Board shall establish a policy regarding reimbursement of providers when parents  
2 fail to pay the parent share of cost.

3  
4 (d) A Board shall establish a policy regarding termination of child care services within a  
5 12-month eligibility period when a parent fails to pay the parent share of cost. The  
6 Board's policy must include:

7  
8 (1) a requirement to evaluate and document each family's financial situation for  
9 extenuating circumstances that may affect affordability of the assessed parent  
10 share of cost pursuant to paragraph (2) of this subsection, and a possible  
11 temporary reduction pursuant to subsection (g) of this section before the Board  
12 or its child care contractor may terminate care under this section;

13  
14 (2) general criteria for determining affordability of a Board's parent share of cost,  
15 and a process to identify and assess the circumstances that may jeopardize a  
16 family's self-sufficiency under subsection (g) of this section;

17  
18 (3) maintenance of a list of all terminations due to failure to pay the parent share of  
19 cost, including family size, income, family circumstances, and the reason for  
20 termination, for use when conducting evaluations of affordability, as required  
21 under paragraph (4) of this subsection; and

22  
23 (4) the Board's definition of what constitutes frequent terminations and its process  
24 for assessing the general affordability of the Board's parent share of cost  
25 schedule, pursuant to subsection (e) of this section.

26  
27 (e) A Board with frequent terminations of care for lack of payment of the parent share of  
28 cost must reexamine its sliding fee scale and adjust it to ensure that fees are not a  
29 barrier to assistance for families at certain income levels.

30  
31 (f) A Board that does not have a policy to reimburse providers when parents fail to pay  
32 the parent share of cost may establish a policy to require the parent to pay the  
33 provider before the family can be redetermined eligible for future child care services.

34  
35 (g)(d) The Board or its child care contractor may review the assessed parent share of cost  
36 for a possible temporary reduction if there are extenuating circumstances that  
37 jeopardize a family's self-sufficiency. The Board or its child care contractor may  
38 temporarily reduce the assessed parent share of cost if warranted by these  
39 circumstances. Following the temporary reduction, the parent share of cost amount  
40 immediately prior to the reduction shall be reinstated.

41  
42 (h)(e) If the parent is not covered by an exemption as specified in subsection (a)(2) of  
43 this section, then the Board or its child care contractor shall not waive the assessed  
44 parent share of cost under any circumstances.

1 ~~(i)~~ If the parent share of cost, based on family income and family size, is calculated to  
2 be zero, then the Board or its child care contractor shall not charge the parent a  
3 minimum share of cost amount.  
4

5 ~~(i)~~ A Board may establish a policy to reduce the parent share of cost amount assessed  
6 pursuant to subsection (a)(1)(B) of this section upon the parent's selection of a TRS-  
7 certified provider. Such Board policy shall ensure:  
8

9 (1) that the parent continue to receive the reduction if:

10 (A) the TRS provider loses TRS certification; or

11 (B) the parent moves or changes employment within the workforce area and  
12 no TRS-certified providers are available to meet the needs of the parent's  
13 changed circumstances; and  
14

15 (2) that the parent no longer receives the reduction if the parent voluntarily  
16 transfers the child from a TRS-certified provider to a non-TRS-certified  
17 provider.  
18  
19  
20  
21

## 22 **SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES**

### 23 **§809.55. Waiting Period for Reapplication.**

24 (a) A parent is ineligible to reapply for child care services or to be placed on the waiting  
25 list for services for 60 calendar days if the parent's eligibility or the child's  
26 enrollment is terminated due to:  
27

28 (1) excessive unexplained absences under §809.78(a); or  
29

30 (2) nonpayment of parent share of cost pursuant to a Board's established policy  
31 under §809.19(d).  
32

33 (b) To ensure full alignment between Child Care Services rules and the Choices  
34 program requirements, the provisions of subsection (a) of this section will not apply  
35 to individuals who, during the 60-calendar day waiting period:  
36

37 (1) become Choices participants who require child care to participate in Choices;  
38 or  
39

40 (2) are on Choices sanction status and require child care to demonstrate  
41 participation in Choices.  
42  
43

1  
2 **SUBCHAPTER -D. PARENT RIGHTS AND RESPONSIBILITIES**  
3

4 **§809.71. Parent Rights.**  
5

6 A Board shall ensure that the Board's child care contractor informs the parent in writing  
7 that the parent has the right to:  
8

- 9 (1) choose the type of child care provider that best suits their needs and to be  
10 informed of all child care options available to them as included in the  
11 consumer education information described in §809.15;  
12  
13 (2) visit available child care providers before making their choice of a child care  
14 option;  
15  
16 (3) receive assistance in choosing initial or additional child care referrals including  
17 information about the Board's policies regarding transferring children from one  
18 provider to another;  
19  
20 (4) be informed of the Commission rules and Board policies related to providers  
21 charging parents the difference between the Board's reimbursement and the  
22 provider's published rate as described in §809.92(c) - (d);  
23  
24 (5) be represented when applying for child care services;  
25  
26 (6) be notified of their eligibility to receive child care services within 20 calendar  
27 days from the day the Board's child care contractor receives all necessary  
28 documentation required to initially determine eligibility for child care;  
29  
30 (7) receive child care services regardless of race, color, national origin, age, sex,  
31 disability, political beliefs, or religion;  
32  
33 (8) have the Board and the Board's child care contractor treat information used to  
34 determine eligibility for child care services as confidential;  
35  
36 (9) receive written notification at least 15 calendar days before termination of  
37 child care services;  
38  
39 (10) reject an offer of child care services or voluntarily withdraw their child from  
40 child care, unless the child is in protective services;  
41  
42 (11) be informed of the possible consequences of rejecting or ending the child care  
43 that is offered;  
44  
45 (12) be informed of the eligibility documentation and reporting requirements  
46 described in §809.72 and §809.73;

1  
2 (13) be informed of the parent appeal rights described in §809.74;~~and~~

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 (15) receive written notification pursuant to §809.78(d) of the possible termination  
10 of child care services for excessive absences, as described in §809.78(a)(1);  
11 and

12  
13 (16) receive written notification of possible termination of child care services for  
14 failure to pay the parent share of cost, pursuant to §809.19(d).

15  
16 **§809.75. Child Care during Appeal.**

17  
18 (a) For a child currently enrolled in child care, a Board shall ensure that child care  
19 services continue during the appeal process until a decision is reached, if the parent  
20 requests a hearing.

21  
22 (b) A Board shall ensure that child care does not continue during the appeal process if  
23 the child's enrollment is terminated due to excessive unexplained absences, pursuant  
24 to §809.78(a), or nonpayment of parent share of cost, pursuant to §809.19(d).

25  
26 (c)~~(b)~~ The cost of providing services during the appeal process is subject to recovery from  
27 the parent by the Board, if the appeal decision is rendered against the parent.

28  
29 **§809.78. Attendance Standards and Notice and Reporting Requirements.**

30  
31 (a) A Board shall ensure that parents are notified of the following:

32  
33 (1) Parents shall ensure that the eligible child attends on a regular basis consistent  
34 with the child's authorization for enrollment and attendance standards  
35 described in paragraph (2) of this subsection. -Failure to meet ~~monthly~~  
36 attendance standards described in paragraph (2) of this subsection may result in  
37 termination of care for the child due to excessive unexplained absences  
38 pursuant to subsection (d) of this section.=

39  
40 ~~(A) result in suspension of care, at the concurrence of the parent; or~~

41  
42 ~~(B) be grounds for determining that a change in the parent's participation in work,~~  
43 ~~job training, or an education program has occurred and care may be terminated~~  
44 ~~pursuant to the requirements in §809.51(b).~~

1 (2) Meeting attendance standards for child care services consists of no more than  
2 40 total unexplained absences in a 12-month eligibility period.;

3 —  
4 ~~(A) five consecutive absences during the month;~~

5 —  
6 ~~(B) ten total absences during the month.~~

7  
8 (3) Unexplained absences may include: ~~If a child exceeds 65 total absences during~~  
9 ~~the most recent eligibility period, then the child is not eligible for care at the~~  
10 ~~next eligibility determination and shall not be eligible for care for 12 months~~  
11 ~~from the end of the most recent eligibility period.~~

12 —  
13 (A) Any absence that is not due to a child's documented **chronic** illness or  
14 disability, or to a court-ordered custody or visitation agreement;

15 —  
16 (B) Any missed attendance recording that cannot be explained, except if the  
17 attendance reporting system is not available through no fault of the parent or  
18 provider; or

19  
20 (C) Any denied or rejected attendance recording in which the parent does not  
21 contact the Agency's Child Care Services unit to report the issue.

22  
23  
24 (4) Notwithstanding paragraph ~~(2)~~(3) of this subsection, child care providers may  
25 end a child's enrollment with the provider if the child does not meet the  
26 provider's established policy regarding attendance.

27  
28 (5) Parents shall use the attendance card to report daily attendance and absences.

29  
30 (6) Parents shall not designate anyone under age 16 as a secondary cardholder,  
31 unless the individual is a child's parent.

32  
33 (7) Parents shall not designate the owner, assistant director, or director of the child  
34 care facility as a secondary cardholder.

35  
36 (8) Parents shall:

37  
38 (A) ensure that the attendance card is not misused by secondary cardholders;

39  
40 (B) inform secondary cardholders of the responsibilities for using the  
41 attendance card;

42  
43 (C) ensure that secondary cardholders comply with these responsibilities; and

44  
45 (D) ensure the protection of attendance cards issued to them or secondary  
46 cardholders.

1  
2 (9) The parent or secondary cardholders giving the attendance card or the personal  
3 identification number (PIN) to another person, including the child care  
4 provider, is grounds for a potential fraud determination pursuant to Subchapter  
5 F of this chapter.  
6

7 (10) Parents shall report to the child care contractor instances in which a parent's  
8 attempt to record attendance in the child care automated attendance system is  
9 denied or rejected and cannot be corrected at the provider site. Failure to report  
10 such instances may result in an unexplained absence counted toward the  
11 attendance standards described in paragraphs (2) and (3) of this subsection.  
12

13 (b) Boards shall ensure that parents sign a written acknowledgment indicating their  
14 understanding of the attendance standards and reporting requirements at each of the  
15 following stages:  
16

17 (1) initial eligibility determination; and  
18

19 (2) each eligibility redetermination, as required in §809.42(b).  
20

21 (c) Boards shall ensure that absences due to a child's documented chronic illness or  
22 disability or court-ordered visitation are not counted in the number of unexplained  
23 absences in subsection (a)(2) and (3) of this section.  
24

25 (d) Boards shall ensure that before terminating care pursuant to §809.78(a)(1), the child  
26 care contractor:  
27

28 (1) provides written notice to the parent and the child care provider at reasonable  
29 times through established communication channels of the child's absences and  
30 the potential termination of services, at a minimum ~~is absent for 5 consecutive~~  
31 ~~days, and~~ when a child reaches 15, and 30 general absences cumulatively  
32 within a 12-month eligibility period; and  
33

34 (2) documents that multiple attempts were made, as described in paragraph (1) of  
35 this subsection, to determine why the child is absent and to explain the  
36 importance of regular attendance.  
37

38 (e)~~(d)~~ Where a child's enrollment has been ended by a provider in subsection (a)(4) of  
39 this section, Boards shall work with the parent to place the otherwise eligible child  
40 with another eligible provider.  
41

## 42 **SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE**

### 43 **§809.93. Provider Reimbursement.**

44 (a) A Board shall ensure that reimbursement for child care is paid only to the provider.  
45  
46

- 1  
2 (b) A Board or its child care contractor shall reimburse a regulated provider based on a  
3 child's monthly enrollment authorization, excluding periods of suspension at the  
4 concurrence of the parent as described in §809.51(d) ~~and §809.78(a)~~.  
5  
6 (c) A Board shall ensure that a relative child care provider is not reimbursed for days on  
7 which the child is absent.  
8  
9 (d) A relative child care provider shall not be reimbursed for more children than  
10 permitted by the DFPS minimum regulatory standards for Registered Child Care  
11 Homes. A Board may permit more children to be cared for by a relative child care  
12 provider on a case-by-case basis as determined by the Board.  
13  
14 (e) A Board shall not reimburse providers that are debarred from other state or federal  
15 programs unless and until the debarment is removed.  
16  
17 (f) Unless otherwise determined by the Board and approved by the Commission for  
18 automated reporting purposes, the monthly enrollment authorization described in  
19 subsection (b) of this section is based on the unit of service authorized, as follows:  
20  
21 (1) A full-day unit of service is 6 to 12 hours of care provided within a 24-hour  
22 period; and  
23  
24 (2) A part-day unit of service is fewer than 6 hours of care provided within a 24-  
25 hour period.  
26  
27 (g) A Board or its child care contractor shall ensure that providers are not paid for  
28 holding spaces open.  
29  
30 (h) A Board or the Board's child care contractor shall not pay providers:  
31  
32 (1) less, when a child enrolled full time occasionally attends for a part day; or  
33  
34 (2) more, when a child enrolled part time occasionally attends for a full day.  
35  
36 (i) The Board or its child care contractor shall not reimburse a provider retroactively for  
37 new Board maximum reimbursement rates or new provider published rates.  
38  
39 (j) A Board or its child care contractor shall ensure that the parent's travel time to and  
40 from the child care facility and the parent's work, school, or job training site is  
41 included in determining whether to authorize reimbursement for full-day or part-day  
42 care under subsection (f) of this section.  
43