

CHAPTER 809. CHILD CARE SERVICES

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

ON JULY 9, 2024, THE TEXAS WORKFORCE COMMISSION ADOPTED THE RULES BELOW WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Publication Date of the Adoption in the *Texas Register*: **July 26, 2024**

The Rules are Effective: **July 29, 2024**

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

Subchapter A. General Provisions, §809.2

Subchapter B. General Management, §§809.18 - 809.21

Subchapter C. Eligibility for Child Care Services, §§809.42, 809.51, and 809.56

Subchapter D. Parent Rights and Responsibilities, §809.73

Subchapter E. Requirements to Provide Child Care, §§809.92 - 809.94, and 809.96

Subchapter G. Texas Rising Star Program, §§809.130 - 809.134, and 809.136

Amended §§809.2, 809.18 - 809.21, 809.42, 809.51, 809.56, 809.73, 809.93 - 809.94, 809.96, 809.130 - 809.134, and 809.136 are adopted *without changes* to the proposal, as published in the May 17, 2024, issue of the *Texas Register* (49 TexReg 3504), and, therefore, the adopted rule text will not be published.

Section 809.92 is adopted with a technical correction, as published in the May 17, 2024, issue of the *Texas Register* (49 TexReg 3504), and, therefore, the adopted rule text will be published.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The amendments to Chapter 809:

- include changes to the Texas Rising Star program based on the program's four-year review as required by Texas Government Code §2308.3155(b);
- clarify that the eligibility period for child care during job search is for 12 months, with a three-month job search period;
- include the requirement that the Parent Share of Cost (PSoC) cannot exceed 7 percent of the family income, regardless of the number of children receiving child care services;
- add children with disabilities as a priority population for child care using contracted slots;
- remove rule provisions that expired on December 1, 2023, and remove specific dates for provisions that became effective on December 1, 2023; and
- change "provider reimbursement" to "provider payment" throughout the rules to align with §809.93, which requires that regulated child care providers (which exclude relatives) be paid prospectively rather than through reimbursement.

Texas Rising Star Four-Year Review

Texas Government Code §2308.3155(b) requires a regular review of the Texas Rising Star program with stakeholder input, and §809.130(e) of this chapter requires the review to take place every four years.

Beginning in July 2023, TWC's Child Care and Early Learning (CC&EL) Division convened a workgroup to review the guidelines. The workgroup included child care program directors from around the state; early childhood advocacy organization representatives; professional development providers; Local Workforce Development Board (Board) staff; and representatives from TWC, the Texas Health and Human Services Commission's (HHSC's) Child Care Regulation (CCR) division, the State Center for Early Childhood, and the Children's Learning Institute (CLI). The workgroup presented several recommendations for modifications to the Texas Rising Star guidelines.

The workgroup also recommended rule changes under Subchapter G, Texas Rising Star Program. TWC considered and incorporated the following workgroup recommendations into the rule amendments:

--Include reference to the points thresholds for high and medium-high CCR deficiencies established in the Texas Rising Star guidelines to the requirements for initial Texas Rising Star certification and to the standards for probationary status.

--Allow Texas Rising Star certified providers to retain certification for up to six months if the program undergoes a facility change and is issued an initial permit from CCR.

Additionally, as part of the Texas Rising Star Program review, CC&EL staff identified the following rule provisions for amendments:

--Modify the CCR licensing review period from 12 months to 6 months.

--Clarify that an Entry Level designated provider may receive new referrals if it is determined that the provider's licensing history will meet certification criteria by the end of the 24-month Entry Level period.

--Make a technical correction to clarify that TWC staff, rather than the three-member Commission, reviews and approves Texas Rising Star mentor education waivers.

--Clarify Texas Rising Star staff background checks as they relate to CCR background check requirements.

--Remove PSoC reductions for selecting a Texas Rising Star provider.

12-Month Eligibility Period for Child Care during Job Search

The rule amendments clarify that the eligibility period for child care during job search is for 12 months, with a three-month job search period, as allowed under 45 Code of Federal Regulations (CFR) §98.21(a)(2)(iii). TWC notes that this is not a change in policy. Current rule language in §809.56 of this chapter states that eligibility for child care during job search is limited to three months unless the parent becomes employed and meets the work requirements before the end of the job search period. If the parent meets work requirements, child care would continue for 12 months, inclusive of the three-month job search period.

The amended rules retain these time frames, but the rule language is amended to clarify that the child care eligibility period is for 12 months provided that the parent meets work requirements within the first three months of child care.

Capping the PSoC at 7 Percent of Family Income

The amended rules include the requirement that the PSoC cannot exceed 7 percent of the family income, regardless of the number of children receiving child care services. The amended language complies with the recently amended Child Care Development Fund (CCDF) regulations in CFR 45 §98.45(1), as published in the *Federal Register* (89 FR 15366 - 15417) on March 1, 2024, with an effective date of April 30, 2024.

Remove Expired Provisions

On September 13, 2022, TWC amended Chapter 809 with certain provisions set to be effective prior to December 1, 2023, and subsequently replaced by provisions set to be effective on December 1, 2023. The provisions effective prior to December 1, 2023, and those set to be effective on December 1, 2023, were adopted and published in the *Texas Register* (47 TexReg 6437). The affected sections are:

- §809.18. Maintenance of a Waiting List
- §809.19. Assessing the Parent Share of Cost
- §809.20. Maximum Provider Payment Rates
- §809.93. Provider Payment

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

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

SUBCHAPTER A. GENERAL PROVISIONS

TWC adopts the following amendments to Subchapter A:

§809.2. Definitions

Section 809.2 is amended to change "provider reimbursement" to "provider payment" in the definitions of "child care contractor" and "child care subsidies" to align with §809.93, which requires that child care providers be paid prospectively rather than as a reimbursement.

SUBCHAPTER B. GENERAL MANAGEMENT

TWC adopts the following amendments to Subchapter B:

§809.18. Maintenance of a Waiting List

Section 809.18 is amended to remove the provisions that are no longer effective as of December 1, 2023, and leaves the sections that were previously adopted by the Commission with an effective date of December 1, 2023.

Specifically, the rules that became effective December 1, 2023, removed the Board-determined process for determining the child is potentially eligible for services and the frequency in which parent information is updated and maintained. The rules also created a statewide policy to

require that Boards contact the parent every three months and remove the child from the waiting list if the parent indicates that child care services are no longer required or does not respond to the Board regarding the continued need for child care services.

§809.19. Assessing the Parent Share of Cost

Section 809.19 is amended to remove the provisions that are no longer effective as of December 1, 2023, and retains the sections that were previously adopted by the Commission with an effective date of December 1, 2023.

Specifically, the rules that became effective December 1, 2023, stated that the PSoC amount is established by TWC and determined on a sliding fee scale based on the family size and gross monthly income and represented by a percentage of the state median income, or SMI.

The rules effective December 1, 2023, removed the requirement that Board policy include the general criteria for determining affordability of the Board's PSoC, as the PSoC is no longer determined or established by the Board. The rules also removed the requirement that Boards have a definition of what constitutes frequent terminations and its process for assessing PSoC affordability.

Similarly, because the Board no longer determines the PSoC, the rules removed the requirement that Boards with frequent terminations for parent failure to pay the PSoC must reexamine their PSoC and adjust it to ensure the PSoC is not a barrier to assistance.

The rule amendments also remove the option for Boards to reduce the PSoC based on the parent selection of Texas Rising Star program providers. The intent of this reduction was to encourage parents to choose a Texas Rising Star program provider. However, because participation in the Texas Rising Star program is now a requirement for all Child Care Services (CCS) providers, this PSoC reduction is no longer necessary.

Additionally, the rule amendments include the requirement that the PSoC cannot exceed 7 percent of the family income, regardless of the number of children receiving child care services. The amended language complies with the recently amended CCDF regulations in CFR 45 §98.45(l). The US Department of Health and Human Services published the amended regulations in the *Federal Register* (89 FR 15366 - 15417) on March 1, 2024, with an effective date of April 30, 2024.

§809.20. Maximum Provider Reimbursement Rates

Section 809.20 is amended to rename the section "Maximum Provider Payment Rates" and remove "reimbursement" from the title and the section to align with §809.93 of this chapter, which requires that regulated child care providers be paid prospectively rather than as a reimbursement. This change aligns with the recently amended CCDF regulations in 45 CFR 45 §98.45(m), which requires states to pay providers in advance of or at the beginning of the delivery of child care services.

TWC notes that unregulated relative providers will continue to be paid as a reimbursement rather than prospectively. This is in accordance with the CCDF regulation language in 45 CFR 45 §98.45(m), which allows states to exclude certain types of providers from prospective payments if paying in advance is not a generally accepted practice for that provider type. TWC contends that there is no generally accepted practice of parents paying in advance for unregulated relatives caring for children related to them.

This section is also amended to remove the age groups used for payments that are no longer effective as of December 1, 2023, and retains the age groups that were previously adopted by the Commission with an effective date of December 1, 2023.

Specifically, the rules that became effective December 1, 2023, aligned the age groups for payment with the age groups defined by CCR as required by Texas Government Code §2308.315. The new age groups for payment are:

- Infants ages 0 through 11 months
- Infants ages 12 through 17 months
- Toddlers ages 18 through 23 months
- Toddlers age 2 years
- Preschool age 3 years
- Preschool age 4 years
- Preschool age 5 years
- School-age 6 years and older

§809.21. Determining the Amount of the Provider Reimbursement

Section 809.21 is amended to rename the section "Determining the Amount of the Provider Payment" and remove "reimbursement" from the title and the section to align with §809.93 of this chapter, which requires that child care providers be paid prospectively rather than as a reimbursement.

SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES

TWC adopts the following amendments to Subchapter C:

§809.42. Eligibility Verification, Determination, and Redetermination

Section 809.42(b) is amended to remove the child care during job search exception for a redetermination no sooner than 12 months. This clarifies that the eligibility period for child care during job search is for 12 months. Boards must not conduct a full eligibility redetermination following the initial 3-month job search period described in §809.56. Boards must only verify that the parent is meeting the work requirements outlined in §809.56(c).

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

Section 809.51(a) is amended to remove the child care during job search exception for a redetermination no sooner than 12 months. This clarifies that the eligibility period for child care during job search is for 12 months. Similarly, the amended language also removes the 12-month redetermination exception during the 12-month eligibility period for children experiencing homelessness. Section 809.52 regarding child care for children experiencing homelessness states

that the eligibility period is for 12 months; therefore, the exception for redetermination prior to the end of the 12-month eligibility period is not necessary for children experiencing homelessness.

§809.56. Child Care during Initial Job Search

Section 809.56(c) is amended to clarify that eligibility for child care during initial job search is for 12 months. The 12-month eligibility period consists of an initial 3-month job search period. The previous rule language stated that child care is limited to 3 months but shall continue for the remainder of a 12-month eligibility period if the parent meets work requirements before the end of the 3-month job search period. The amended language shifts the emphasis of the eligibility period from a 3-month initial period within a 12-month period that is contingent upon work requirements to a full 12-month eligibility period, with a 3-month initial job search period. The continuation of child care for the remainder of the 12-month eligibility period will continue to be contingent upon the parent meeting work requirements in §809.56(c). TWC makes this change to demonstrate compliance more fully with 45 CFR §98.21(a)(2)(iii).

SUBCHAPTER D. PARENT RIGHTS AND RESPONSIBILITIES

TWC adopts the following amendments to Subchapter D:

§809.73. Parent Reporting Requirements

Section 809.73(a) is amended to remove the references to child care during initial job search as a separate eligibility period from the general 12-month eligibility period described in §809.41. This change clarifies that the eligibility period for child care during job search is for 12 months and is aligned with the general 12-month eligibility period for child care services.

SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE

TWC adopts the following amendments to Subchapter E:

§809.92. Provider Responsibilities and Reporting Requirements

Section 809.92 is amended to change "reimbursement" to "payment" to align with §809.93, which requires that child care providers be paid prospectively rather than as a reimbursement.

A technical correction to the proposal was made to remove incorrect punctuation.

§809.93. Provider Reimbursement

Section 809.93 is amended to rename the section from "Provider Reimbursement" to "Provider Payment" and remove "reimbursement" from the section to align with the requirement that child care providers be paid prospectively rather than through reimbursement.

Section 809.93 is amended to remove the effective date of December 1, 2023, specific to §809.93(f) relating to the requirement that Boards pay regulated child care providers prospectively every two weeks based on the enrollment authorization.

§809.94. Providers Placed on Corrective or Adverse Action by Child Care Regulation

Section 809.94 is amended to remove "reimbursement" from the language to align with §809.93 requiring providers be paid prospectively rather than through reimbursement.

§809.96. Contracted Slots Agreements

Section 809.96 is amended to add children with disabilities as a priority population that can be served using contracted slots agreements. The amended language complies with the recently amended CCDF regulations in CFR 45 §98.30(b), which requires states to increase the use of grants or contracts for the delivery of child care services, including at a minimum for children in underserved areas (for example, in child care deserts), for infants and toddlers, and for children with disabilities.

TWC's current rules at §809.96(e)(1) already provides for contracted slots in child care deserts and underserved areas, and §809.96(e)(4) provides for contracted slots for infant and toddler child care.

SUBCHAPTER G. TEXAS RISING STAR PROGRAM

TWC adopts the following amendments to Subchapter G:

§809.130. Short Title and Purpose

Section 809.130(d)(4) is amended to state that the Texas Rising Star guidelines include a description of high and medium-high CCR deficiencies points thresholds required in §809.132 relating to CCR deficiencies that impact the certification status of a Texas Rising Star certified provider.

§809.131. Requirements for the Texas Rising Star Program

Section 809.131(a) is amended to clarify that this section applies to a child care provider's initial certification under the Texas Rising Star Program. Specifically, the requirement for a permanent (non-expiring) license or registration is a requirement for initial certification. A Texas Rising Star certified provider's certification will not be affected if the provider changes its operations that requires CCR to issue an initial license or registration such as changes in ownership or location coupled with changes in administrative or program staff and previous noncompliance with minimum standards.

Section 809.131(a)(2) is amended to include a required points threshold for high and medium-high CCR deficiencies for a provider to meet Texas Rising Star certification requirements. TWC makes this change to require initial certification to include a CCR deficiency points threshold similar to the requirement for an Entry Level Designation.

Section 809.131(a)(2) is also amended to reduce the Texas Rising Star review period of CCR licensing deficiencies from 12 months to 6 months. This change will support the review of a child care provider's most recent licensing deficiencies to more accurately describe the current status of quality of care being provided. This change also aligns with the current 6-month CCR deficiency history for probationary and suspension periods.

Section 809.131(b)(2) is amended to clarify the current practice that the points threshold for Entry Level Designation is described in the Texas Rising Star guidelines. Section 809.131(d)(2) is also amended to reduce the licensing deficiency period from 12 months to 6 months.

Section 809.131(e) is amended to clarify that beginning on the 18th month of Entry Level designation, the provider's licensing history will be reviewed and if it is determined that the provider will not be eligible by the end of the 24th month based on the most recent 6-month licensing history, the provider will not be able to receive referrals for new families. TWC has noted instances in which a provider would be eligible for certification following the 18th month but was not allowed to receive new referrals because of the current rule language. This rule change will allow a provider to receive new referrals if it is determined that the provider's licensing history will meet certification criteria by the end of the 24-month Entry Level period.

§809.132. Impacts on Texas Rising Star Certification

Section 809.132(a)(4) is amended to remove references to the number of high or medium-high CCR deficiencies that would place a Texas Rising Star certified provider on suspension status. The amended language states that a certified provider is placed on suspension status if the CCR deficiency points exceed the probationary status points threshold described in the Texas Rising Star guidelines.

Section 809.132(b) is amended to clarify that a provider placed on probation due to a "star level drop" will be reinstated at the provider's previous star level if CCR does not cite any additional specified star-level drop deficiencies during the probationary period. The previous rule language in §809.132(e) did not specify that the additional deficiencies must be related to the deficiencies that placed the provider on probation due to a star level drop. TWC makes this change to clarify that the additional deficiencies are related to the star level drop probationary deficiencies.

Similarly, §809.132(c) is amended to clarify that providers on probationary status due to specified probationary deficiencies and subsequently placed on a second probationary period that also included a star level drop will be reinstated at the provider's previous star level if CCR does not cite any additional probationary deficiencies during the second probationary period. The previous rule language in §809.132(e) that established this requirement did not specify that the additional deficiencies must be related to the deficiencies that placed the provider on probation.

Section 809.132(d) is amended to remove the total number of high or medium-high deficiencies required to place a certified provider on a probationary period. The amended language adds that certified providers whose total points for high or medium-high deficiencies fall within the points threshold described in the Texas Rising Star guidelines will be placed on a six-month probationary period.

Additionally, as with §809.132(c), §809.132(d) is amended to clarify that providers on a second probationary period that also included a star level drop will be reinstated at the provider's previous star level if CCR does not cite any high or medium-high deficiencies during the second probationary period. The previous rule language in §809.132(e) that established this requirement did not specify that the additional deficiencies must be related to the deficiencies that placed the provider on probation.

Section 809.132(b) through (d) is amended to reduce the licensing deficiency period from 12 months to 6 months.

TWC also makes technical changes in §809.132(c) and (d) to align applicable language in these two subsections.

TWC removes the previous §809.132(e), which stated that providers not on suspension status with a star level drop shall be reinstated at the former star level if no citations in subsections (b) through (d) are cited within six months. As explained previously, this language did not specify which deficiencies would be applicable to reinstating the provider's star level; thus, TWC has amended subsections (b) through (d) to clarify the process for reinstating a star level based on the deficiencies specific to each level of probationary status.

Section 809.132 is also amended to change "reimbursement" to "payment" to align with §809.93, which requires that providers be paid prospectively and not as a reimbursement.

§809.133. Application and Assessments for Texas Rising Star Certification

Section 809.133 is amended to remove subsection (h), which requires Boards to be responsible for the tasks assigned to the Texas Rising Star assessor entity, within their respective local workforce development areas, until the assessor entity is procured and designated by TWC. TWC has designated an assessor entity and this provision is no longer applicable.

§809.134. Minimum Qualifications for Texas Rising Star Staff

Section 809.134(a) is amended to modify the background check requirement for Texas Rising Star staff. The intent of the amended language is to clarify that the background check does not need to be conducted using the same procedures and criteria used by CCR to conduct background checks for child care providers and caregivers as required by Chapter 745 of the HHSC child care regulations, which requires a Federal Bureau of Investigation fingerprint check. The background checks required under Chapter 745 are designed for caregivers and individuals who have unsupervised contact with children in a child care facility. Texas Rising Star staff do not meet this standard and are not required to undergo this type of background check.

However, TWC continues to emphasize that Texas Rising Star staff should undergo a standard background check as part of the basic requirements for employment. The amended language requires the Board and the TWC's designated Texas Rising Star assessment entity to conduct a background check on each staff member prior to hiring and again every five years.

Section 809.134(d) is amended to clarify that TWC, rather than the three-member Commission, may grant the waiver regarding the minimum education requirements for Texas Rising Star mentors.

§809.136. Roles and Responsibilities of Texas Rising Star Staff

Section 809.136 is amended to remove the requirements for dual-role staff (that is, individuals who perform the functions of a Texas Rising Star mentor and assessor). With the separation of mentors as Board staff and assessors as staff of the designated assessment entity, the system will no longer have individuals performing dual roles, making these requirements unnecessary.

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

PART III. PUBLIC COMMENTS

The public comment period closed on June 17, 2024.

TWC received comments from Child Development Schools, Early Care & Education Consortium, and KinderCare Learning Companies.

COMMENT: Two commenters expressed their support for shortening the look-back period from 12 to six months and focusing disqualifying deficiencies on the most critical violations.

RESPONSE: The Commission appreciates the comments. No changes were made in response to these comments.

COMMENT: The commenters also addressed items that are typically part of Texas Rising Star guidelines. These topics include:

- Excluding any medium-high violation, especially if it is addressed at the point of infraction, to count towards their Texas Rising Star point total
- Increasing the point total when a CCS agreement is terminated
- Providing a "hold harmless" provision for all CCS agreements until the new rules become effective
- Enhancing and extending communication of Texas Rising Star status and updates
- Promoting closer alignment of Texas Rising Star with national accreditation program standards

RESPONSE: The Commission appreciates the comments. However, these Texas Rising Star topics are not addressed in TWC's Chapter 809 Child Care Services rules and are typically addressed in the Texas Rising Star guidelines. As such, these comments will be addressed during the current revisions of the Texas Rising Star guidelines. No changes were made in response to these comments.

COMMENT: The commenters recommended that TWC create a waiver and appeals process for certified providers when a provider's ability to serve CCS families is in jeopardy.

Two commenters suggested that during the appeals process TWC could establish a pre-probationary period that might allow existing CCS referrals to be maintained, but that a provider would be unable to accept *new* CCS referrals. This would allow providers time to remedy any issues, ensuring programs with the proper corrective action plans in place can continue to serve all children and avoid disruptions for families.

The two commenters also suggested that TWC create an extended waiver process for certified providers similar to the waiver process for entry-level providers. These waivers could be for lack of mentorship, child care deserts, underserved populations or communities, and for specific licensing considerations or point totals.

One commenter added that it would be beneficial to implement an efficient, real-time appeal and review process before a Texas Rising Star program is determined ineligible.

RESPONSE: Based on feedback from the Texas Rising Star Four-Year Review Workgroup, TWC is modifying the process for reviewing a Texas Rising Star-certified provider's CCR deficiencies from quarterly to real-time updates. TWC and TWC's Centralized Assessment Entity (the Children's Learning Institute) will access CCR's data daily and will immediately flag any certified provider whose deficiencies impact its Texas Rising Star certification status.

Regarding establishing a pre-probationary period, TWC's rule changes reduce the timeline that a child care program's licensing history will be reviewed from 12 months to six months. This change was proposed based on input from child care stakeholders. This proposed change allows a child care program to have its most recent licensing history reviewed and potentially be eligible for Texas Rising Star certification more quickly.

The Texas Rising Star program also allows for graduated impacts for certified programs, following a probationary period. This allows a certified program to remain at its certified star level despite having some CCR deficiencies before its star level is impacted from further noncompliance. If a certified child care program is unable to show continued compliance with CCR, it is ultimately placed in suspension status for up to 15 months. During this suspension status period, a child care program can be eligible for recertification if it can demonstrate six months of CCR licensing compliance.

Through these probationary periods and graduated impacts, TWC intends to allow child care programs the time to demonstrate compliance with CCR minimum standards before being determined ineligible to participate in the Child Care Services program.

Regarding appeals, TWC has an existing process for a provider that disagrees with the assessment score. Additionally, regarding licensing deficiencies, CCR has an appeals process for child care programs. TWC also notes that TWC and CLI do not impose any Texas Rising Star impacts for CCR deficiencies until CCR completes its appeals processes.

No changes were made in response to this comment.

COMMENT: One commenter suggested that staffing turnover at TWC is affecting the Texas Rising Star program. The commenter stated that staff consistency is needed for providing consistent mentoring and guidance and implementing positive program changes.

RESPONSE:

TWC acknowledges the challenges that the current labor market has with staff retention. As with many child care programs that are facing staffing challenges, TWC and Boards also are trying to recruit and retain high-quality Texas Rising Star mentors.

TWC has created a Mentor Microcredential program, which is intended to support high-quality mentoring and coaching. Additionally, mentors are required to participate in Texas Rising Star-specific training, attend monthly mentor meetings, and follow statewide protocols.

No changes were made in response to this comment.

PART IV. STATUTORY AUTHORITY

The rules are adopted under:

- Texas Government Code §2308.3155(b), which provides TWC with the specific authority to adopt rules to administer the Texas Rising Star Program;
- Texas Labor Code §301.0015(a)(6) and §302.002(d), which provide TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules relate to Title 4, Texas Labor Code, Chapter 302, and Title 10, Texas Government Code, Chapter 2308.

CHAPTER 809. CHILD CARE SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

§809.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Attending a job training or educational program--An individual is attending a job training or educational program if the individual:
 - (A) is considered by the program to be officially enrolled;
 - (B) meets all attendance requirements established by the program; and
 - (C) is making progress toward successful completion of the program as demonstrated through continued enrollment in the program upon eligibility redetermination as described in §809.42 of this chapter.
- (2) Child--An individual who meets the general eligibility requirements contained in this chapter for receiving child care services.
- (3) Child care contractor--The entity or entities under contract with the Board to manage child care services. This includes contractors involved in determining eligibility for child care services, contractors involved in the billing and provider payment process related to child care, as well as contractors involved in the funding of quality improvement activities as described in §809.16 of this chapter.
- (4) Child Care Desert--An area described in Texas Labor Code §302.0461 in which the number of children under age six with working parents is at least three times greater than the capacity of licensed child care providers in the area, based on data published annually by the Commission.
- (5) Child Care Regulation (CCR)--Division in the Texas Health and Human Services Commission responsible for protecting the health, safety, and well-being of children who attend or reside in regulated child care facilities and homes.
- (6) Child care services--Child care subsidies and quality improvement activities funded by the Commission.
- (7) Child care subsidies--Commission-funded child care payments to an eligible child care provider for the direct care of an eligible child.

- (8) Child experiencing homelessness--A child who is homeless, as defined in the McKinney-Vento Act (42 USC 11434(a)), Subtitle VII-B, §725.
- (9) Child with disabilities--A child who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. Major life activities include, but are not limited to, caring for oneself; performing manual tasks; walking; hearing; seeing, speaking, or breathing; learning; and working.
- (10) Educational program--A program that leads to:
 - (A) a high school diploma;
 - (B) a Certificate of High School Equivalency; or
 - (C) an undergraduate degree from an institution of higher education.
- (11) Excessive unexplained absences--More than 40 unexplained absences within a 12-month eligibility period as described in §809.78 of this chapter.
- (12) 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.
- (13) Household dependent--An individual living in the household who is:
 - (A) an adult considered 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.
- (14) Improper payments--Any payment of Child Care Development Fund (CCDF) 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.
- (15) Job training program--A program that provides training or instruction leading to:
- (A) basic literacy;
 - (B) English proficiency;
 - (C) an occupational or professional certification or license; or
 - (D) the acquisition of technical skills, knowledge, and abilities specific to an occupation.
- (16) Listed family home--A family home, other than the eligible child's own residence, that is listed, but not licensed or registered with, CCR pursuant to Texas Human Resources Code §42.052(c).
- (17) Military deployment--The temporary duty assignment away from the permanent military installation or place of residence for reserve components of the single military parent or the dual military parents. This includes deployed parents in the regular military, military reserves, or National Guard.
- (18) Parent--An individual who is responsible for the care and supervision of a child and is identified as the child's natural parent, adoptive parent, stepparent, legal guardian, or person standing in loco parentis (as determined in accordance with Commission policies and procedures). Unless otherwise indicated, the term applies to a single parent or both parents.
- (19) Protective services--Services provided when a child:
- (A) is at risk of abuse or neglect in the immediate or short-term future and the child's family cannot or will not protect the child without Texas Department of Family and Protective Services (DFPS) Child Protective Services (CPS) intervention;
 - (B) is in the managing conservatorship of DFPS and residing with a relative or a foster parent; or
 - (C) has been provided with protective services by DFPS within the prior six months and requires services to ensure the stability of the family.

- (20) Provider--A provider is defined as a:
- (A) regulated child care provider;
 - (B) relative child care provider; or
 - (C) listed family home subject to the requirements in §809.91(e) of this chapter.
- (21) Regulated child care provider--A provider caring for an eligible child in a location other than the eligible child's own residence that is:
- (A) licensed by CCR;
 - (B) registered with CCR; or
 - (C) operated and monitored by the United States military services.
- (22) Relative child care provider--An individual who is at least 18 years of age, and is, by marriage, blood relationship, or court decree, the child's:
- (A) grandparent;
 - (B) great-grandparent;
 - (C) aunt;
 - (D) uncle; or
 - (E) sibling (if the sibling does not reside in the same household as the eligible child).
- (23) Residing with--Unless otherwise stipulated in this chapter, a child is considered to be residing with the parent when the child is living with, and physically present with, the parent during the time period for which child care services are being requested or received.
- (24) Teen parent--A teen parent (teen) is an individual 18 years of age or younger, or 19 years of age and attending high school or the equivalent, who has a child.
- (25) Texas Rising Star program--A quality-based rating system of child care providers participating in Commission-subsidized child care.
- (26) Texas Rising Star provider--A regulated child care provider meeting the Texas Rising Star program standards. Texas Rising Star providers are:

- (A) designated as an Entry Level Provider;
 - (B) certified as a Two-Star Provider;
 - (C) certified as a Three-Star Provider; or
 - (D) certified as a Four-Star Provider.
- (27) Working--Working is defined as:
- (A) activities for which one receives monetary compensation such as a salary, wages, tips, and commissions;
 - (B) participation in Choices or Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T) activities; or
 - (C) engaging in job search at the time of eligibility determination or redetermination as described in §809.56 of this chapter.

SUBCHAPTER B. GENERAL MANAGEMENT

§809.18. Maintenance of a Waiting List.

- (a) A Board shall ensure that a list of parents and children waiting for child care services, because of the lack of funding or lack of providers, is maintained and available to the Commission upon request.
- (b) A Board shall ensure that the child is potentially eligible for child care services prior to placing the child on the waiting list.
- (c) A Board shall exempt children from the waiting list who are directly referred from a recognized pre-K or HS/EHS partnership, as described in §809.22 of this subchapter, to a child care provider to receive services in the contracted partnership program subject to the availability of funding and the availability of subsidized slots at the partnership site.
- (d) A Board shall contact the parent every three months and shall remove the child from the waiting list if the parent indicates that child care services are no longer required or does not respond to the Board regarding the continued need for child care services.

§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, Subchapter B of this title, and specifically §800.58 of this title), including local public transferred funds and local private donated funds, as provided in §809.17 of this subchapter, the following shall apply:
 - (1) The parent share of cost shall:
 - (A) be assessed to all parents, except in instances when an exemption under paragraph (3) of this subsection applies; and
 - (B) be established by the Commission and determined by a sliding fee scale based on the family's size and gross monthly income determined in §809.44 of this chapter and as represented by a percentage of the state median income (SMI) up to 85 percent SMI; and
 - (C) not exceed 7 percent of the family income, regardless of the number of children receiving child care services.
 - (2) A Board shall assess the parent share of cost in accordance with subsection (a)(1)(B) of this section and in a manner that results in the parent share of cost:
 - (A) being assessed only at the following times:
 - (i) initial eligibility determination;
 - (ii) 12-month eligibility redetermination;
 - (iii) upon the addition of a child in care;
 - (iv) upon a parent's report of a change in income, family size, or number of children in care that would result in a reduced parent share of cost assessment; and
 - (v) upon resumption of work, job training, or education activities following temporary changes described in §809.51(a) of this chapter, and upon resumption of work, job training, or education activities during the three-month continuation of care period described in §809.51(c) of this chapter; and
 - (B) not increasing above the amount assessed at initial eligibility determination or at the 12-month eligibility redetermination, except upon the addition of a child in care as described in clause (A)(iii) of this paragraph.
 - (3) Parents who are one or more of the following are exempt from paying the

parent share of cost:

- (A) Parents who are participating in Choices or who are in Choices child care described in §809.45 of this chapter;
 - (B) Parents who are participating in SNAP E&T services or who are in SNAP E&T child care described in §809.47 of this chapter;
 - (C) Parents of a child receiving Child Care for Children Experiencing Homelessness as described in §809.52 of this chapter; or
 - (D) Parents who have children who are receiving protective services child care pursuant to §809.49 and §809.54(c) of this chapter, unless DFPS assesses the parent share of cost.
- (4) Teen parents who are not covered under exemptions listed in paragraph (3) of this section shall be assessed a parent share of cost. The teen parent's share of cost is based solely on the teen parent's income and size of the teen's family as defined in §809.2 of this chapter.
- (b) A Board shall establish a policy stating whether or not the Board will pay providers when parents fail to pay the parent share of cost. If the Board does not pay providers under the adopted policy, the Board may establish a policy requiring the parent pay the provider before the family can be redetermined eligible for future child care services.
- (c) A Board shall establish a policy regarding termination of child care services within a 12-month eligibility period when a parent fails to pay the parent share of cost. The Board's policy must include:
- (1) a requirement to evaluate and document each family's financial situation for extenuating circumstances that may affect affordability of the assessed parent share of cost pursuant to paragraph (2) of this subsection, and a possible temporary reduction pursuant to subsection (d) of this section of this subsection before the Board or its child care contractor may terminate care under this section;
 - (2) a process to identify and assess the circumstances that may jeopardize a family's self-sufficiency under subsection (d) of this section; and
 - (3) maintenance of a list of all terminations due to failure to pay the parent share of cost.
- (d) The Board or its child care contractor may review the assessed parent share of cost for a possible temporary reduction if there are extenuating circumstances that jeopardize a family's self-sufficiency. The Board or its child care contractor may

temporarily reduce the assessed parent share of cost if warranted by these circumstances. Following the temporary reduction, the parent share of cost amount immediately prior to the reduction shall be reinstated.

- (e) If the parent is not covered by an exemption as specified in subsection (a)(3) of this section, then the Board or its child care contractor shall not waive the assessed parent share of cost under any circumstances.
- (f) If the parent share of cost, based on family income and family size, is calculated to be zero, then the Board or its child care contractor shall not charge the parent a minimum share of cost amount.
- (g) A Board may establish a policy to reduce the parent share of cost amount assessed pursuant to subsection (a)(1) upon the child's referral for part-time or blended care. Such Board policy shall ensure that the parent no longer receives the reduction if the referral is changed to full-time care.

§809.20. Maximum Provider Payment Rates.

- (a) Based on local factors, including a market rate survey provided by the Commission, a Board shall establish maximum provider payment rates for child care subsidies at or above a level established by the Commission to ensure that the rates provide equal access to child care in the local market and in a manner consistent with state and federal statutes and regulations governing child care. At a minimum, Boards shall establish provider payment rates for full-day and part-day units of service, as described in §809.93(f) of this chapter, for the following:
 - (1) Provider types:
 - (A) Licensed child care centers, including before- or after-school programs and school-age programs, as defined by CCR;
 - (B) Licensed child care homes as defined by CCR;
 - (C) Registered child care homes as defined by CCR; and
 - (D) Relative child care providers as defined in §809.2 of this chapter.
 - (2) Age groups in each provider type:
 - (A) Infants ages 0 through 11 months;
 - (B) Infants ages 12 through 17 months;
 - (C) Toddlers ages 18 through 23 months;

- (D) Toddlers age 2 years;
- (E) Preschool age 3 years;
- (F) Preschool age 4 years;
- (G) Preschool age 5 years; and
- (H) School-age 6 years and older.

(b) A Board shall establish enhanced payment rates:

- (1) for all age groups at certified Texas Rising Star provider facilities; and
- (2) only for infant, toddler, and preschool-age children at child care providers that participate in integrated school readiness models for those age groups pursuant to Texas Education Code §29.160.

(c) The minimum enhanced payment rates established under subsection (b) of this section shall be greater than the maximum rate established for providers not meeting the requirements of subsection (b) of this section for the same category of care up to, but not to exceed, the provider's published rate. The maximum rate must be at least:

- (1) 5 percent greater for a:
 - (A) certified Two-Star Provider; or
 - (B) child care provider meeting the requirements of subsection (b)(2) of this section;
- (2) 7 percent greater for a certified Three-Star Provider; and
- (3) 9 percent greater for a certified Four-Star Provider.

(d) Boards may establish a higher enhanced payment rate than those specified in subsection (c) of this section for certified Texas Rising Star providers, as long as there is a minimum 2 percentage point difference between each star level.

(e) A Board or its child care contractor shall ensure that providers that are paid for additional staff or equipment needed to assist in the care of a child with disabilities are paid a rate up to 190 percent of the provider's payment rate for a child of that same age. The higher rate shall take into consideration the estimated cost of the additional staff or equipment needed by a child with disabilities. The Board shall ensure that a professional, who is familiar with assessing the needs of children with disabilities, certifies the need for the higher payment rate described in this subsection.

- (f) The Board shall determine whether to pay providers that offer transportation as long as the combined total of the provider's published rate, plus the transportation rate, is subject to the maximum payment rate established in subsection (a) of this section.
- (g) A Board may establish a higher enhanced payment rate for nontraditional hours, as defined by the Board.

§809.21. Determining the Amount of the Provider Payment.

- (a) The actual payment that the Board or the Board's child care contractor pays to the provider shall be the Board's maximum daily rate or the provider's published daily rate, whichever is lower, less the following amounts:
 - (1) The parent share of cost assessed and adjusted when the parent share of cost is reduced; and
 - (2) Any child care funds received by the parent from other public or private entities.
- (b) A Board or its child care contractor shall ensure that the provider's published daily rates are calculated according to Commission guidance and include the provider's enrollment fees, supply fees, and activity fees.

SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES

§809.42. Eligibility Verification, Determination, and Redetermination.

- (a) A Board shall ensure that its child care contractor verifies all eligibility requirements for child care services prior to authorizing child care.
- (b) A Board shall ensure that eligibility for child care services shall be redetermined no sooner than 12 months following the initial determination or most recent redetermination.

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

- (a) A child meeting all of the applicable eligibility requirements for child care services in this subchapter on the date of the most recent eligibility determination or redetermination, the child shall be considered to be eligible and will receive services during the 12-month eligibility period described in §809.42 of this subchapter, regardless of any:
 - (1) change in family income, if that family income does not exceed 85 percent of SMI for a family of the same size; or

- (2) temporary change in the ongoing status of the child's parent as working or attending a job training or education program. A temporary change shall include, at a minimum, any:
 - (A) time-limited absence from work for an employed parent for periods of family leave (including parental leave) or sick leave;
 - (B) interruption in work for a seasonal worker who is not working between regular industry work seasons;
 - (C) student holiday or breaks within a semester, between the fall and spring semesters, or between the spring and fall semesters, for a parent participating in training or education;
 - (D) reduction in work, training, or education hours, as long as the parent is still working or attending a training or education program;
 - (E) other cessation of work or attendance in a training or education program that does not exceed three months;
 - (F) change in age, including turning 13 years old or a child with disabilities turning 19 years old during the eligibility period; and
 - (G) change in residency within the state.
- (b) During the period of time between eligibility redeterminations, a Board shall discontinue child care services due to a parent's loss of work or cessation of attendance at a job training or educational program that does not constitute a temporary change in accordance with subsection (a)(2) of this section. However, Boards must ensure that care continues at the same level for a period of not less than three months after such loss of work or cessation of attendance at a job training or educational program.
- (c) If a parent resumes work or attendance at a job training or education program at any level and at any time during the period described in subsection (b) of this section, then the Board shall ensure that:
 - (1) care will continue to the end of the 12-month eligibility period at the same or greater level, depending upon any increase in the activity hours of the parent;
 - (2) the parent share of cost will not be increased during the remainder of the 12-month eligibility period, including for parents who are exempt from the parent share of cost pursuant to §809.19 of this chapter; and
 - (3) the Board's child care contractor verifies only:

- (A) that the family income does not exceed 85 percent of SMI; and
 - (B) the resumption of work or attendance at a job training or education program.
- (d) The Board may suspend child care services during interruptions in the parent's work, job training, or education status only at the concurrence of the parent.

§809.56. Child Care during Initial Job Search.

- (a) A parent, including a parent in a dual-parent family, is eligible for child care services under this section if at initial eligibility determination the family does not meet the minimum participation requirements for At-Risk Child Care as described in §809.50 of this subchapter.
- (b) A Board shall allow parents to self-attest that the:
 - (1) family meets the requirements of subsection (a) of this section; and
 - (2) family income does not exceed 85 percent of the state median income.
- (c) The 12-month eligibility period for child care under this section consists of an initial three-month job search period. If total activity participation of at least 25 hours for a single-parent family or a total combined 50 hours per week for dual-parent families, which must include a minimum of 12 hours in employment for a single-parent family and a total combined 25 hours in employment for a dual-parent family, are met within the initial three months, eligibility will continue for the remainder of the 12-month eligibility period, provided that the family income does not exceed 85 percent of the state median income. If the family does not meet minimum activity requirements under this subsection within three months, care must be terminated.
- (d) For child care during the initial three-month job search period, the follow applies regarding the parent share of cost:
 - (1) A Board shall initially assess the parent share of cost at the highest amount based on the family size and number of children in care.
 - (2) The initially assessed amount will immediately be temporarily reduced to zero. This provision also applies to dual-parent families in which one parent is employed but the family meets the requirements in subsection (a) of this section for child care during initial job search.
 - (3) If the parent begins to meet participation requirements of subsection (c) of this section within or by the end of the three-month job search period, the parent share of cost shall be reinstated at the initially assessed amount or the amount based on the actual family income, whichever is lower.

- (e) Eligibility for child care under this section is limited to one initial three-month job search period per family within a 12-month period.
- (f) A Board shall ensure that the parent in child care for job search is registered with the state's labor exchange system and has access to appropriate services available through the one-stop delivery network described in §801.28 of this title.

SUBCHAPTER D. PARENT RIGHTS AND RESPONSIBILITIES

§809.73. Parent Reporting Requirements.

- (a) Boards shall ensure that during the 12-month eligibility period described in §809.41 of this chapter parents are only required to report items that impact a family's eligibility or that enable the Board or Board contractor to contact the family or pay the provider.
- (b) Pursuant to subsection (a) of this section, parents shall report to the child care contractor, within 14 calendar days of the occurrence, the following:
 - (1) Changes in family income or family size that would cause the family to exceed 85 percent of SMI for a family of the same size;
 - (2) Changes in work or attendance at a job training or educational program not considered to be temporary changes, as described in §809.51 of this chapter; and
 - (3) Any change in family residence, primary phone number, or e-mail (if available).
- (c) Failure to report changes described in subsection (a) of this section may result in fact-finding for suspected fraud as described in Subchapter F of this chapter.
- (d) A Board shall allow parents to report, and the child care contractor shall take appropriate action, regarding changes in:
 - (1) income and family size, which may result in a reduction in the parent share of cost pursuant to §809.19 of this chapter; and
 - (2) work, job training, or education program participation that may result in an increase in the level of child care services.

SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE

§809.92. Provider Responsibilities and Reporting Requirements.

- (a) A Board shall ensure that providers are given written notice of and agree to their responsibilities, reporting requirements, and requirements for payment under this subchapter prior to enrolling a child.
- (b) Providers shall:
 - (1) be responsible for collecting the parent share of cost as assessed under §809.19 of this chapter before child care services are delivered;
 - (2) be responsible for collecting other child care funds received by the parent as described in §809.21 of this chapter;
 - (3) report to the Board or the Board's child care contractor instances in which the parent fails to pay the parent share of cost; and
 - (4) follow attendance reporting and tracking procedures required by the Commission under §809.95 of this chapter, the Board, or, if applicable, the Board's child care contractor.
- (c) Providers shall not charge more than the Board's payment rate as determined under §809.21 of this chapter to parents:
 - (1) who are exempt from the parent share of cost assessment under §809.19 of this chapter;
 - (2) whose parent share of cost is calculated to be zero pursuant to §809.19 of this chapter; or
 - (3) parents in Child Care during Initial Job Search under §809.56 of this chapter during the initial three-month period.
- (d) A Board may develop a policy that allows providers to charge parents more than the assessed parent share of cost in instances where the provider's published rate exceeds the Board's payment rate (including the assessed parent share of cost) to all parents not included in subsection (c) of this section.
- (e) For Boards that allow providers to charge additional amounts pursuant to subsection (d) of this section, the Board must ensure the provider reports to the Board each month:
 - (1) the specific families that were charged an additional amount above the assessed amount;
 - (2) the frequency with which each family was charged; and
 - (3) the amount of each additional charge.

- (f) Boards that develop a policy under subsection (d) of this section must:
 - (1) provide the rationale for the Board's policy to allow providers to charge families additional amounts above the required copayment, including a demonstration of how the policy promotes affordability and access for families; and
 - (2) describe the Board's analysis of the interaction between the additional amounts charged to families with the required parent share of cost and the ability of current payment rates to provide access to care without additional fees.
- (g) Providers shall not deny a child care referral based on the parent's income status, receipt of public assistance, or the child's protective service status.
- (h) Providers shall not charge fees to a parent receiving child care subsidies that are not charged to a parent who is not receiving subsidies.

§809.93. Provider Payment.

- (a) A Board shall ensure that payment for child care is made only to the provider.
- (b) A Board or its child care contractor shall pay a regulated provider based on a child's monthly enrollment authorization, excluding periods of suspension at the concurrence of the parent, as described in §809.51(d) of this chapter.
- (c) A Board shall ensure that a relative child care provider is not reimbursed for days on which the child is absent.
- (d) A relative child care provider shall not be reimbursed for more children than permitted by the CCR minimum regulatory standards for Registered Child Care Homes. A Board may permit more children to be cared for by a relative child care provider on a case-by-case basis as determined by the Board.
- (e) A Board shall not pay providers that are debarred from other state or federal programs unless and until the debarment is removed.
- (f) Unless otherwise determined by the Board and approved by the Commission for automated reporting purposes, the monthly enrollment authorization described in subsection (b) of this section is based on the unit of service authorized, as follows:
 - (1) A full-day unit of service is 6 to 12 hours of care provided within a 24-hour period;
 - (2) A part-day unit of service is fewer than 6 hours of care provided within a 24-hour period; and

- (3) A blended-day unit of service is for a child enrolled in a school program, pre-K, HS, or EHS in which child care is part-day with care provided occasionally on a full-day basis.
- (g) A Board or its child care contractor shall ensure that providers are not paid for holding spaces open without a valid contracted slots agreement, as described in §809.96 of this chapter.
- (h) The Board or its child care contractor shall not pay a provider retroactively for new Board maximum payment rates or new provider published rates.
- (i) A Board or its child care contractor shall ensure that the parent's travel time to and from the child care facility and the parent's work, school, or job training site is included in determining the enrollment authorized under subsection (f) of this section.
- (j) A Board shall pay regulated child care providers prospectively every two weeks based on the enrollment authorization described in subsection (b) of this section.

§809.94. Providers Placed on Corrective or Adverse Action by Child Care Regulation.

- (a) For a provider placed on probation corrective action (probationary status) by CCR, Boards shall ensure that:
 - (1) parents with children in Commission-funded child care are notified in writing of the provider's probationary status no later than five business days after receiving notification from the Agency of CCR's decision to place the provider on probationary status; and
 - (2) no new referrals are made to the provider while on probationary status.
- (b) A parent receiving notification of a provider's probationary status with CCR pursuant to subsection (a) of this section may transfer the child to another eligible provider without being subject to the Board transfer policies described in §809.71 of this chapter if the parent requests the transfer within 14 calendar days of receiving such notification.
- (c) For a provider placed on probationary status by CCR, Boards shall ensure that the provider is not paid at the Boards' enhanced payment rates described in §809.20 while on probationary status.
- (d) For a provider against whom CCR is taking adverse action, Boards shall ensure that:
 - (1) parents with children enrolled in Commission-funded child care are notified no later than two business days after receiving notification from the Agency that

CCR intends to take adverse action against the provider;

- (2) children enrolled in Commission-funded child care with the provider are transferred to another eligible provider no later than five business days after receiving notification from the Agency that CCR intends to take adverse action against the provider; and
- (3) no new referrals for Commission-funded child care are made to the provider while CCR is taking adverse action.

§809.96. Contracted Slots Agreements.

- (a) In this section, the term "contracted slots agreement" is defined as a Board entering into a contract with a child care provider to reserve a specific number of places, or slots, for children participating in the child care subsidy program. This contract shall:
 - (1) define the number of slots to be reserved by age group (infant, toddler, preschool, or school-age); and
 - (2) meet the eligibility requirements as described in subsection (e) of this section.
- (b) Boards may enter into a contracted slots agreement with providers that agree to provide subsidized child care services to eligible children residing in the Board's workforce area.
- (c) A Board that enters into a contracted slots agreement shall include this strategy in the Board Plan, as described in §809.12 of this chapter.
- (d) Each contract between a Board and a provider must identify the number of places (slots) to be reserved for children participating in the child care subsidy program.
- (e) To be eligible for a contract, a child care provider must be a Texas Rising Star Three-Star or Four-Star provider and meet one of the following priorities:
 - (1) Be located in:
 - (A) a child care desert; or
 - (B) an underserved area that has been identified by a Board as having an inadequate supply of child care in accordance with the parameters described in the CCDF State Plan.
 - (2) Have a recognized partnership with local school districts to provide pre-K services;
 - (3) Have a recognized partnership with EHS or HS;

- (4) Increase the number of places reserved for infants and toddlers by high-quality child care providers;
 - (5) Increase the number of places reserved for children with disabilities; or
 - (6) Satisfy a priority identified in the Board's plan, as described in §809.12 of this chapter.
- (f) A Board that enters into a contracted slots agreement may continue payment for reserved slots during times of transition between the time that one child leaves the program and another child is placed in the slot. The period of continued payment shall adhere to the Board's policy for contracted slots agreements and may not exceed one month following the month of the vacancy.
- (g) Except for children directly referred from recognized partnerships, as described in §809.22 of this chapter, to fill open reserved slots, Boards shall contact families in order of the Board's waiting list:
- (1) that requested care in the ZIP code where the provider with the open reserved slot is located; and
 - (2) whose child is in the age group for which a slot is available.
- (h) In accordance with Commission guidelines, Boards that enter into contracted slots agreements shall submit a report to the Commission within six months of entering into a contract, determining the contract's effect on the:
- (1) financial stability of providers participating in the contract;
 - (2) availability of high-quality child care options available to participants in the Commission's subsidy program;
 - (3) number of high-quality providers in any part of the workforce area with a high concentration of families that need child care;
 - (4) percentage of children participating in the Commission's subsidized child care program at each Texas Rising Star provider in the workforce area; and
 - (5) additional information as requested by the Commission.
- (i) A Board shall resubmit the report every 12 months from the due date of the Board's initial report to the Commission.

SUBCHAPTER G. TEXAS RISING STAR PROGRAM

§809.130. Short Title and Purpose.

- (a) The rules contained in this subchapter may be cited as the Texas Rising Star Program rules.
- (b) The purpose of the Texas Rising Star Program rules is to interpret and implement Texas Government Code §2308.3155, which requires the Commission to establish rules to administer the Texas Rising Star program, including guidelines for rating a child care provider for Texas Rising Star certification and designation of an Entry Level child care provider.
- (c) The Texas Rising Star Program rules identify the organizational structure and categories of, and the scoring factors that shall be included in, the Texas Rising Star guidelines.
- (d) The Texas Rising Star guidelines shall:
 - (1) describe measures for Texas Rising Star certification that contain, at a minimum, measures for child care providers regarding:
 - (A) director and staff qualifications and training;
 - (B) teacher-child interactions;
 - (C) program administration; and
 - (D) indoor/outdoor environments;
 - (2) specify measures that:
 - (A) must be met in order for a provider to be certified at each star level; and
 - (B) are observed and have points awarded through on-site assessments;
 - (3) specify the scoring methodology and scoring thresholds for each certified star level;
 - (4) describe the high and medium-high CCR deficiencies points threshold pursuant to §809.131 and §809.132 of this chapter; and
 - (5) the process for designating providers at the Entry Level.
- (e) The Texas Rising Star guidelines:
 - (1) shall be reviewed and updated by the Commission at a minimum of every four years in conjunction with the rule review of this chapter, conducted pursuant to Texas Government Code §2001.039 and the Texas Rising Star guidelines

review shall:

- (A) consider input from stakeholders; and
- (B) include at least one public hearing held prior to submitting the stakeholder input to the Commission;
- (2) shall be adopted by the Commission subject to the requirements of the Texas Open Meetings Act; and
- (3) may be reviewed and amended as determined necessary by the Commission in accordance with the requirements of the Texas Open Meetings Act.

§809.131. Requirements for the Texas Rising Star Program.

- (a) A regulated child care provider is eligible for initial certification under the Texas Rising Star program if the provider has a current agreement to serve Commission-subsidized children and:
 - (1) has a permanent (nonexpiring) license or registration from CCR;
 - (2) has at least 12 months of licensing history with CCR and does not exceed the points threshold for high and medium-high CCR deficiencies within the most recent 6-month period as established in the Texas Rising Star guidelines pursuant to §809.130(d)(4), and is not on:
 - (A) corrective action with a Board pursuant to Subchapter F of this chapter;
 - (B) a "Notice of Freeze" with the Commission pursuant to Texas Labor Code, Chapter 213 (Enforcement of the Texas Unemployment Compensation Act) or Chapter 61 (Payment of Wages); or
 - (C) corrective or adverse action with CCR;
 - (3) meets the criteria for star-level certification in the Texas Rising Star guidelines pursuant to §809.130(d) of this subchapter; and
 - (4) has at minimum, a center director account registered in the Texas Early Childhood Professional Development System Workforce Registry; or
 - (5) is regulated by and in good standing with the United States Military.
- (b) Regulated child care providers not meeting the Texas Rising Star certification requirements described in this subchapter and established in the Texas Rising Star guidelines shall be initially designated as Entry Level if the child care provider:

- (1) is not on corrective or adverse action with CCR; and
 - (2) does not exceed the points threshold for high and medium-high CCR deficiencies within the most recent 6-month period as established in the Texas Rising Star guidelines pursuant to §809.130(d)(4).
- (c) A provider initially meeting the requirements in subsection (b) of this section is eligible for mentoring services through the Texas Rising Star program during the time periods described in subsections (d) - (f) of this section.
- (d) A provider shall be initially designated as Entry Level for no more than 24 months unless approved for a waiver under subsection (f) of this section.
- (e) An Entry Level provider will be reviewed for Texas Rising Star certification no later than the end of the 12th month of the 24-month period. Beginning on the 18th month, an Entry Level provider will be reviewed monthly for Texas Rising Star certification, and if it is determined that they will not be eligible by the end of their 24-month timeframe based on the 6-month licensing review time period (as described in subsection (a)(2) of this section), the provider shall not receive referrals for new families as an Entry Level provider, unless the provider is located in a child care desert or serves an underserved population and is approved by the Agency to accept new family referrals.
- (f) The Agency may approve a waiver to extend the time limit under subsection (d) of this section if the provider is:
- (1) located in a child care desert or serves an underserved population as determined by the Agency;
 - (2) unable to meet the certification requirements due to a federal or state declared emergency/disaster; or
 - (3) unable to meet the certification requirements due to conditions that the Agency determines are outside the provider's control.
- (g) Waivers approved under subsection (f) of this section shall not exceed a total of 36 months.

§809.132. Impacts on Texas Rising Star Certification.

- (a) A Texas Rising Star-certified provider shall be placed on suspension status if the provider:
- (1) is placed on corrective action with a Board pursuant to Subchapter F of this chapter;

- (2) is under a "Notice of Freeze" with the Commission pursuant to Texas Labor Code, Chapter 213 (Enforcement of the Texas Unemployment Compensation Act) or Chapter 61 (Payment of Wages);
 - (3) is placed on corrective or adverse action by CCR
 - (4) exceeds the probationary status points threshold as described in the Texas Rising Star guidelines pursuant to §809.130(d)(4);
 - (5) had more than four probationary impacts during its three-year certification period;
 - (6) had a consecutive third probationary impact;
 - (7) is cited for specified CCR minimum standards regarding weapons and ammunition; or
 - (8) is not meeting at least the Two-Star level due to noncompliance with Texas Rising Star guidelines at the most recent assessment of certification.
- (b) Texas Rising Star-certified providers with any of the specified "star level drop" licensing deficiencies listed in the Texas Rising Star guidelines during the most recent 6-month CCR licensing history shall be placed on a six-month Texas Rising Star probationary period. Furthermore:
- (1) reduction of one star level for each deficiency cited, so a Four-Star certified provider is reduced to a Three-Star provider, a Three-Star provider is reduced to a Two-Star provider, and a Two-Star provider is placed on suspension status; and/or
 - (2) if CCR does not cite any additional specified star-level drop deficiencies during the 6-month probationary period the provider shall be reinstated at the former star level.
- (c) Texas Rising Star-certified providers with any of the specified "probationary" licensing deficiencies listed in the Texas Rising Star guidelines during the most recent 6-month CCR licensing history shall be placed on a six-month Texas Rising Star probationary period. Furthermore:
- (1) Texas Rising Star-certified providers on a six-month probationary period that are cited by CCR within the probationary period for any additional specified probationary deficiencies within the probationary period shall be placed on a second, consecutive probation and lose a star level, with a Two-Star certified provider being placed on suspension status;
 - (2) if CCR does not cite any additional specified probationary deficiencies during

the probationary period, the provider can be removed from probation status and shall be reinstated at the former star level, if applicable; and

- (3) if any additional specified probationary deficiencies are cited by CCR during the second six-month probationary period, the provider shall be placed on suspension status.
- (d) Texas Rising Star-certified providers whose total points for high or medium-high deficiencies received during the most recent 6-month CCR licensing history fall within the prescribed points threshold range as described in the Texas Rising Star guidelines pursuant to §809.130(d)(4), shall be placed on a six-month Texas Rising Star program probationary period. Furthermore:
- (1) Texas Rising Star-certified providers on a six-month probationary period that are cited by CCR within the probationary period for any additional high or medium-high weighted deficiencies within the probationary period shall be placed on a second, consecutive probation and lose a star level, with a Two-Star certified provider being placed on suspension status;
 - (2) if CCR does not cite any additional high or medium-high weighted deficiencies during the probationary period, the provider can be removed from probation status and shall be reinstated at the former star level, if applicable; and
 - (3) if any additional high or medium-high weighted deficiencies are cited by CCR during the second six-month probationary period, the provider shall be placed on suspension status.
- (e) Certified providers in suspension status shall be eligible for a reassessment after six months following the suspension date, as long as no deficiencies described in subsections (b) - (c) of this section are cited during the previous six months.
- (f) Certified providers in suspension status shall achieve at least a Two-Star certification no later than 15 months following the suspension date. Failure to achieve at least a Two-Star certification within the 15-month period will result in the provider's ineligibility to provide child care services under this chapter.
- (g) Certified providers on suspension status:
- (1) shall be eligible to provide child care services under this chapter as long as the provider meets at least the Entry Level criteria described in §809.131(b) of this chapter;
 - (2) shall not be eligible for the enhanced payment rate and shall be paid at the Board's Entry Level rate; and

- (3) shall not be able to receive referrals from a new family during the last six months of the 15-month period, unless the provider is located in a child care desert or serves an underserved population and is approved by the Agency to accept new family referrals.
- (h) Certified providers in suspension status that fail to achieve at least a Two-Star certification by the end the 15-month suspension period:
- (1) are not eligible to provide child care services under this chapter;
 - (2) are not eligible for the Entry Level designation time frame described in §809.131(e) of this chapter;
 - (3) are not eligible for the extension waiver described in §809.131(f) of this chapter; and
 - (4) must subsequently meet at least a Two-Star certification eligibility and screening requirements to provide child care services under this subchapter.

§809.133. Application and Assessments for Texas Rising Star Certification.

- (a) Texas Rising Star certification applicants must complete:
- (1) an orientation on the Texas Rising Star guidelines, including an overview of the:
 - (A) Texas Rising Star program application process;
 - (B) Texas Rising Star program measures; and
 - (C) Texas Rising Star program assessment process;
 - (2) the creation of a continuous quality improvement plan; and
 - (3) a Texas Rising Star program self-assessment tool.
- (b) The Agency's designated Texas Rising Star assessment entity shall ensure that:
- (1) written acknowledgment of receipt of the application and self-assessment is sent to the provider;
 - (2) within 20 days of receipt of the application, the provider is sent an estimated time frame for scheduling the initial assessment;
 - (3) an assessment is conducted for any provider that meets the eligibility

requirements in §809.131 of this subchapter and requests certification under the Texas Rising Star program; and

- (4) Texas Rising Star certification is granted for any provider that is assessed and verified as meeting the Texas Rising Star provider certification criteria set forth in the Texas Rising Star guidelines.
- (c) The Agency's designated Texas Rising Star assessment entity shall ensure that Texas Rising Star certification assessments are conducted as follows:
- (1) On-site assessment of 100 percent of the provider classrooms at the initial assessment for Texas Rising Star certification and at each scheduled recertification; and
 - (2) Recertification of all certified Texas Rising Star providers every three years.
- (d) The Agency's designated Texas Rising Star assessment entity shall ensure that certified Texas Rising Star providers are monitored on an annual basis and the monitoring includes:
- (1) at least one unannounced on-site visit; and
 - (2) a review of the provider's licensing compliance as described in §809.132 of this chapter.
- (e) The Agency's designated Texas Rising Star assessment entity shall ensure compliance with the process and procedures in the Texas Rising Star guidelines for conducting assessments of nationally accredited child care facilities and child care facilities regulated by the United States Military.
- (f) The Agency's designated Texas Rising Star assessment entity shall ensure compliance with the process and procedures in the Texas Rising Star guidelines for conducting assessments of certified Texas Rising Star providers that have a change of ownership, move, or expand locations.
- (g) Boards shall ensure compliance with the process and procedures in the Texas Rising Star guidelines for implementing and supporting a continuous quality improvement framework.

§809.134. Minimum Qualifications for Texas Rising Star Staff.

- (a) Boards and the Agency's designated Texas Rising Star assessment entity shall:
- (1) conduct a background check on each Texas Rising Star staff member prior to hiring and again every five years; and

- (2) ensure that each Texas Rising Star staff completes the Texas Rising Star standards training, as described in the Texas Rising Star guidelines.
- (b) Boards shall ensure that Texas Rising Star mentor staff meets the minimum requirements in subsections (c) - (f) of this section.
- (c) Texas Rising Star mentor staff shall meet the minimum education requirements as follows:
 - (1) Bachelor's degree from an accredited four-year college or university in early childhood education, child development, special education, child psychology, educational psychology, elementary education, or family consumer science;
 - (2) Bachelor's degree from an accredited four-year college or university with at least 18 credit hours in early childhood education, child development, special education, child psychology, educational psychology, elementary education, or family consumer science with at least 12 credit hours in child development; or
 - (3) Associate's degree in early childhood education, child development, special education, child psychology, educational psychology, elementary education, or family consumer science, and two years of suitable experience in early childhood education as determined by the Board.
- (d) The Agency may grant a waiver of no more than two years to obtain the minimum education requirements in subsection (c) of this section if a Board can demonstrate that no applicants in its workforce area meet the minimum education requirements.
- (e) Texas Rising Star mentor staff shall meet the minimum work experience requirements of one year of full-time early childhood classroom experience in a child care, EHS, HS, or pre-K through third-grade school program.
- (f) All mentors must attain mentor microcredentialing, as described in the Texas Rising Star Guidelines.
- (g) The Agency's designated Texas Rising Star assessment entity shall ensure that Texas Rising Star assessor staff shall attain and maintain the Texas Rising Star Assessor Certification, as described in the Texas Rising Star Guidelines.

§809.136. Roles and Responsibilities of Texas Rising Star Staff.

Boards and the Agency's designated Texas Rising Star assessment entity shall ensure that Texas Rising Star staff members comply with their assigned responsibilities, as applicable.

- (1) A mentor is defined as a Board or Board contract staff member who helps providers obtain, maintain, or achieve higher star levels of certification.

- (2) An assessor is defined as a staff member or contractor of the Agency's designated Texas Rising Star assessment entity who assesses and monitors providers that obtain, maintain, and achieve higher levels of quality.
- (3) Texas Rising Star staff members are required to complete annual professional development and continuing education consistent with the Texas Rising Star annual minimum training hours requirement for a Texas Rising Star-certified child care center director.
- (4) Pursuant to Texas Family Code §261.101, Texas Rising Star staff members are mandated reporters when observing serious incidents as described in the Texas Rising Star guidelines.