

1 **CHAPTER 811. CHOICES**

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 The Texas Workforce Commission (Commission) adopts the following new sections, without
8 changes, to Chapter 811, relating to Choices, as published in the June 27, 2008, issue of the
9 *Texas Register* (33 TexReg 4981):

10
11 Subchapter A. General Provisions, §811.4 and §811.5

12
13 The Commission adopts amendments to the following sections, without changes, of Chapter 811,
14 relating to Choices, as published in the June 27, 2008, issue of the *Texas Register* (33 TexReg
15 4981):

16
17 Subchapter A. General Provisions, §811.2 and §811.3

18 Subchapter B. Choices Services Responsibilities, §§811.11, 811.14, and 811.16

19 Subchapter C. Choices Services, §§811.21, 811.26, 811.27, 811.29, and 811.34

20 Subchapter D. Choices Work Activities, §811.41, §§811.43 - 811.46, and §§811.48 - 811.51

21 Subchapter E. Support Services and Other Initiatives, §811.64

22
23 The Commission adopts the repeal of the following section of Chapter 811, relating to Choices,
24 as published in the June 27, 2008, issue of the *Texas Register* (33 TexReg 4981):

25
26 Subchapter D. Choices Work Activities, §811.47

27
28 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

29 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND**
30 **RESPONSES**

31
32 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

33 The purpose of this Chapter 811 amendment is to:

34
35 --implement the regulatory requirements issued by the United States Department of Health and
36 Human Services (HHS);

37 --align Chapter 811 with previously released Commission guidance (i.e., Workforce
38 Development (WD) Letters, Technical Assistance Bulletins, policy clarifications);

39 --implement changes based on the findings in the State Auditor's Office October 2007 audit of
40 the Choices program; and

41 --incorporate technical changes for clarification and consistency throughout the chapter.
42

43 In February 2006, the Deficit Reduction Act (DRA) of 2005 (P.L. 109-171) reauthorized the
44 Temporary Assistance for Needy Families (TANF) program through Federal Fiscal Year 2010.
45 In addition to providing ongoing funding for TANF, DRA also changed several provisions in law
46 related to TANF work participation. DRA directed HHS to issue regulations regarding:

- 1 --allowable work activities;
- 2 --verification, documentation, and internal control procedures; and
- 3 --inclusion of certain child-only cases in the calculation of work participation rates.

4
5 On February 5, 2008, HHS issued TANF final regulations (final regulations), which include
6 changes from the June 29, 2006, interim final regulations. The final regulations also provide
7 clarification on a number of elements retained from the interim final regulations.

8
9 The final regulations become effective on October 1, 2008. Local Workforce Development
10 Boards (Boards) have been informed of the major changes affecting Choices services, through a
11 Commission meeting, policy concept, and conference call, prior to the approval of this
12 rulemaking. While there may be more stringent requirements under this chapter, the
13 Commission's intent is to provide Boards the same flexibility offered under the TANF interim
14 final regulations.

15
16 In addition to the changes made to comply with the final regulations, and to align the rules with
17 other current federal regulations, technical changes are made to:

- 18 --simplify and clarify rule language;
- 19 --consolidate policies, procedures, and memoranda of understanding (MOUs) requirements;
- 20 --consolidate documentation, supervision, and verification requirements;
- 21 --update terminology and definitions; and
- 22 --remove obsolete provisions.

23 24 25 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND** 26 **RESPONSES**

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

29 30 **SUBCHAPTER A. GENERAL PROVISIONS**

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

32 33 **§811.2. Definitions**

34 Section 811.2(2) adds the term "nonrecipient parent" to the definition of Choices eligible to
35 incorporate the federal definition of "work eligible individual," which is included as new
36 §811.2(16). Senate Bill (SB) 589, enacted by the 80th Texas Legislature, Regular Session
37 (2007), makes nonrecipient parents eligible to receive Choices services. This legislation was in
38 response to the interim final regulations, which included nonrecipient parents in states'
39 performance calculations for the first time.

40
41 Section 811.2(3)(A), the definition of exempt Choices participant, replaces the term "an adult or
42 teen head of household" with the term "Choices eligible" to provide consistency with other
43 definitions in this chapter.

44
45 Section 811.2(3)(B), the definition of mandatory Choices participant, replaces the text "An adult
46 or teen head of household, including an extended TANF recipient, conditional applicant, and

1 sanctioned family, as defined in this section " with the term "Choices eligible" to provide
2 consistency with other definitions in this chapter.

3
4 New §811.2(9)(A) - (C) defines the term "nonrecipient parent" as adults or minor heads of
5 household not receiving financial assistance, but living with their own children who are receiving
6 financial assistance. The definition of nonrecipient parent is added to align with HHS's
7 definition of "work eligible individual," as defined in new §811.2(16), which includes certain
8 nonrecipient parents. Nonrecipient parents include parents who are not eligible for TANF cash
9 assistance for the following reasons:

10
11 (A) disqualification by the Texas Health and Human Services Commission (HHSC). These
12 disqualifications include parents who:

- 13
14 (i) refuse to comply with Medicaid third-party resource requirements;
15 (ii) do not comply with Social Security number requirements;
16 (iii) are found guilty of an intentional program violation;
17 (iv) fail to report the temporary absence of a certified child;
18 (v) are fugitives fleeing to avoid prosecution of, or confinement for, a felony criminal
19 conviction, or are found by a court to be violating federal or state probation or parole;
20 (vi) are convicted of a felony drug offense (not deferred adjudication) committed on or after
21 April 1, 2002; or
22 (vii) refuse to cooperate with the program integrity assessment process;

23
24 (B) because they are receiving Supplemental Security Income (SSI) or Social Security Disability
25 Insurance (SSDI); or

26
27 (C) because they have exhausted their TANF state time limit.

28
29 SB 589 makes nonrecipient parents eligible to receive Choices services. This legislation was in
30 response to the interim final regulations, which included nonrecipient parents in states'
31 performance calculations for the first time.

32
33 New §811.2(13) defines the term "secondary school" as educational activities including middle
34 school, high school leading to a high school diploma, or classes leading to the completion of a
35 General Educational Development (GED) credential.

36
37 New §811.2(16)(A) - (C) defines the term "work eligible individual" as adults or minor heads of
38 household receiving TANF cash assistance, and nonrecipient parents--with the following
39 exceptions:

40
41 (A) Noncitizens who are ineligible to receive cash assistance because of their immigration
42 status;

43
44 (B) Parents caring for a disabled family member who lives in the home (provided the need for
45 such care is supported by medical documentation), on a case-by-case basis; and

1 (C) Recipients of SSI or SSDI, on a case-by-case basis.

2
3 Certain paragraphs in §811.2 have been renumbered to accommodate additions or deletions.

4
5 **§811.3. Choices Service Strategy**

6 Section 811.3(b), requiring local policies for a Choices service strategy, is removed and
7 incorporated in §811.4(a)(1).

8
9 Section 811.3(c) has been renumbered as new §811.3(b).

10
11 Section 811.3(b)(5) removes the text "assistance with completion of secondary school or a
12 General Educational Development (GED) credential" and replaces it with the text "secondary
13 school" as defined in new §811.2(13) for clarity and consistency.

14
15 Section 811.3(b)(6) removes the text requiring Boards to develop MOUs with agencies to serve
16 Choices eligibles with disabilities and incorporates it into new §811.4(c)(1).

17
18 Section 811.3(b)(9), requiring a local-level MOU in cooperation with HHSC for coordinated
19 case management, is removed and incorporated in §811.4(c)(2).

20
21 Section 811.3(b)(10), requiring Boards to establish housing partnerships, is removed and
22 incorporated in §811.4(c)(4).

23
24 **§811.4. Policies, Memoranda of Understanding, and Procedures**

25 New §811.4 is added to consolidate all requirements for the development of policies, procedures,
26 and MOUs throughout Chapter 811.

27
28 Section 811.4(a)(1) - (3) requires Boards to establish policies regarding the following:

29
30 (1) a Choices service strategy, as defined in §811.3, that coordinates various service delivery
31 approaches to:

32
33 (A) assist applicants and conditional applicants in gaining employment as an alternative to
34 public assistance;

35
36 (B) utilize a work first design as referenced in §811.3(b)(2) to provide Choices participants
37 access to the labor market; and

38
39 (C) assist former TANF recipients with job retention and career advancement in order to
40 remain independent of TANF cash assistance;

41
42 (2) the amount of wages subsidized for subsidized employment placements; and

43
44 (3) the methods and limitations for provision of work-related expenses.

45
46 Section 811.4(b)(1) - (2) provides that Boards may establish optional policies that:

1
2 (1) require the use of the Eligible Training Provider Certification System (ETPS) and Individual
3 Training Accounts (ITAs) as described in Chapter 841 of this title to provide Choices services
4 for Choices participants paid for with TANF funds; and

5
6 (2) make post-employment services available to:

7
8 (A) former TANF recipients who are denied TANF cash assistance because of earnings; and

9
10 (B) sanctioned families and conditional applicants who obtain employment during their
11 demonstrated cooperation period.

12
13 Section 811.4(c)(1) - (4) requires Boards to ensure that the following MOUs and collaborative
14 partnerships are developed:

15
16 (1) Local-level MOUs with the appropriate agencies to serve Choices eligibles with disabilities
17 to maximize their potential for success in employment;

18
19 (2) A local-level MOU in cooperation with HHSC for coordinated case management that is
20 consistent with the MOU between HHSC and the Commission;

21
22 (3) A local-level MOU with the Texas Department of State Health Services for providing mental
23 health and substance abuse services to Choices participants; and

24
25 (4) A collaborative partnership with housing authorities and sponsors of local housing programs
26 and services to address the unmet housing needs of recipients.

27
28 Section 811.4(d)(1) - (6) requires Boards to ensure that procedures are developed to:

29
30 (1) ensure that job development services are available to Choices participants, including:

31
32 (A) contacting local employers or industry associations to request that job openings be listed
33 with Texas Workforce Centers, and other entities in the One-Stop Service Delivery Network
34 selected by the Board;

35
36 (B) identifying the hiring needs of employers;

37
38 (C) assisting the employer in creating new positions for Choices participants based on the
39 job developer's and employer's analysis of the employer's business needs; or

40
41 (D) finding opportunities with an employer for a specific Choices participant or a group of
42 Choices participants;

43
44 (2) ensure that job placement services are available to Choices participants;

1 (3) notify applicants and conditional applicants, in conjunction with HHSC, on the availability
2 of regularly scheduled Workforce Orientations for Applicants (WOAs) and alternative WOAs;

3
4 (4) notify HHSC of applicants and conditional applicants who have contacted a Texas
5 Workforce Center to request alternative WOAs;

6
7 (5) ensure that services are concentrated on Choices eligibles approaching their state or federal
8 time limit, as identified in §811.3(c)(7)(A) and (B); and

9
10 (6) determine a family's inability to obtain child care.

11
12 Section 811.4(e) requires that Boards electing to establish one or more of the optional policies
13 described in §811.4(b) shall ensure that corresponding procedures are also developed for those
14 policies.

15
16 **Comment:** One commenter stated that a local-level MOU with the Texas Department of
17 State Health Services is not needed. The commenter asserted that Boards should be able to
18 determine locally which agencies need an MOU or other types of local operating agreements.

19
20 **Response:** The Commission appreciates the comment. However, the Commission believes
21 it is necessary to establish an MOU because some Texas Department of State Health
22 Services' activities to which Choices participants are referred may count toward their
23 participation requirements. Given the new verification and documentation requirements
24 under the TANF final regulations, a strong agreement must be in place to ensure that each
25 party has a clear understanding of its role in service delivery and its requirements for
26 supervision, documentation, and verification.

27
28 **Comment:** One commenter stated that the wording of §811.4(d)(3), "to notify applicants
29 and conditional applicants--in conjunction with HHSC--on the availability of regularly
30 scheduled Workforce Orientations for Applicants (WOAs) and alternative WOAs" places an
31 unnecessary burden on Boards. The commenter stated that Boards should be required to
32 ensure that regularly scheduled WOAs and alternative WOAs are held and to notify HHSC of
33 the same. The commenter expressed that Boards should not be required to "notify applicants
34 and conditional applicants" of these WOAs--the notification should be HHSC's
35 responsibility.

36
37 **Response:** The Commission appreciates the comment; however, the Commission points out
38 that this is not a new requirement. New §811.4(d)(3) merely incorporates the contents of
39 previous §811.11(a)(1).

40
41 **§811.5. Documentation, Verification, and Supervision of Work Activities**

42 New §811.5 consolidates all requirements for documentation, verification, and supervision of
43 Choices work activities throughout the chapter.

1 Section 811.5(a) clarifies that all required information, including but not limited to pay stubs,
2 contact names, and time sheets related to the documentation and verification of participation in
3 Choices work activities, as described in §811.5, shall be documented and verified in The
4 Workforce Information System of Texas (TWIST), the Agency's automated information system.
5 Although previously not set forth in rule, this requirement conforms with Commission guidance.
6

7 Section 811.5(b) clarifies that all participation in Choices shall be verified and documented and
8 that self-attestation is not allowed. Although previously not set forth in rule, this requirement
9 conforms with Commission guidance.
10

11 Section 811.5(c) requires that participation in paid work activities, as described in §§811.42 -
12 811.44 of Subchapter D, be documented and verified at least monthly in TWIST unless
13 participation is projected, as described in §811.34(3) of Subchapter C. If participation is
14 projected, participation in paid work activities shall be documented and verified in TWIST at
15 least every six months.
16

17 Section 811.5(d)(1) - (2) requires that participation in unpaid activities, as described in §§811.41,
18 811.45, and 811.46 of Subchapter D, be supervised daily and verified and documented at least
19 monthly in TWIST, replacing the previous requirement that documentation be entered biweekly.
20 Although previously not set forth in rule, this requirement conforms with Commission guidance.
21

22 Section 811.5(e)(1) - (2) requires that up to one hour of unsupervised homework time for every
23 hour of class time in unpaid activities, as described in §§811.48 - 811.50 of Subchapter D, can be
24 counted toward a Choices participant's work requirement. All homework hours in excess of one
25 hour per every hour of class time shall be directly monitored, supervised, verified, and
26 documented.
27

28 Section 811.5(e)(3) requires that study or homework time in unpaid activities, as described in
29 §§811.48 - 811.50, shall be counted only toward a Choices participant's family participation
30 requirement if:

- 31 (A) study or homework time is directly correlated to the demands of the course work for out-of-
32 class preparation as described by the educational institution; and
- 33 (B) the educational institution's policy requires a certain number of out-of-class preparation
34 hours for the class.
35

36 Section 811.5(e)(4) requires that good or satisfactory progress as determined by the educational
37 institution must be verified and documented in TWIST at least monthly for unpaid activities, as
38 described in §§811.48 - 811.50.
39

40 Section 811.5(e)(5) requires that all participation in unpaid activities, as described in §§811.48 -
41 811.50, be supervised daily.
42

43 Section 811.5(e)(6) requires that all participation be verified and documented in TWIST at least
44 monthly. Although previously not set forth in rule, this requirement conforms with Commission
45 guidance.
46

1 **Comment:** One commenter stated that proposed 40 TAC §811.5(e)(3)(B) should be
2 amended to read, "the educational institution's policy requires a certain number of out-of-
3 class preparation hours for the class (a requirement by an instructor within the scope of the
4 instructor's authority at the institution for out-of-class preparation hours shall be deemed to
5 be policy of the institution)." The commenter explained that the reason for this improvement
6 is that whether or not out-of-class preparation hours will be needed may depend on the
7 particular subject matter being studied, on the level of student ability in the particular class
8 section, on the health of the students at a particular time, and other variables that are best left
9 to the instructor, as long as the instructor's requirement is within the scope of the instructor's
10 authority.

11
12 **Response:** While the Commission agrees that an individual instructor can be a
13 representative for an educational institution's program, the Commission must seek further
14 guidance from the Administration for Children and Families (ACF) on the TANF final
15 regulations. Specifically, a determination is needed on whether the final regulations require
16 that an educational institution's program standard be applied to all participants when
17 determining out-of-class homework preparation hours or whether it can be individualized for
18 each participant by the instructor representing the educational institution's program. The
19 Commission will issue further guidance based on ACF's response.

20 21 **SUBCHAPTER B. CHOICES SERVICES RESPONSIBILITIES**

22 **The Commission adopts the following amendments to Subchapter B:**

23 24 **§811.11. Board Responsibilities**

25 Section 811.11(a)(1), requiring Boards to ensure that procedures are developed, in conjunction
26 with HHSC, to notify applicants and conditional applicants on the availability of regularly
27 scheduled WOAs and alternative WOAs, is removed and incorporated in §811.4(d)(3).

28
29 Section 811.11(a)(5), requiring Boards to ensure that procedures are developed to notify HHSC
30 of applicants and conditional applicants who have contacted a Texas Workforce Center to
31 request alternative WOAs, is removed and incorporated in §811.4(d)(4).

32
33 Section 811.11(d), requiring Boards to ensure that procedures are developed to ensure that
34 services are concentrated on Choices eligibles approaching their state or federal time limit, is
35 removed and incorporated in §811.4(d)(5).

36
37 Certain subsections in §811.11 have been relettered, and certain paragraphs have been
38 renumbered, to accommodate additions or deletions.

39 40 **§811.14. Noncooperation**

41 Section 811.14(c) and §811.14(d) replace the term "Board" with the term "Agency" with regard
42 to defining timely and reasonable attempts. Previously, Boards were required to make a timely
43 and reasonable attempt--as defined by the Board--to contact Choices participants prior to
44 requesting a sanction for failure to meet Choices work requirements. The rule allowed Boards to
45 establish their own policies, procedures, and time frames for timely and reasonable attempts.

1 In October 2007, the State Auditor's Office (SAO) released an audit report on the Agency's
2 Choices program. The SAO report highlights concerns surrounding the timeliness of requests to
3 sanction customers who do not comply with Choices work requirements. In 43 percent of the
4 sanction cases tested, SAO found that caseworkers did not request sanctions promptly for these
5 customers. As a result, customers who were no longer eligible continued to receive Choices
6 services.

7
8 Agency monitoring staff has also raised concerns about the lack of clearly defined time frames in
9 Boards' timely and reasonable attempt policies. Lack of specific time frames can result in delays
10 in requesting--and thereby imposing--sanctions. This can result in inequitable treatment of
11 Choices participants--some may be sanctioned quickly, while for others the process is lengthy.

12
13 An Agency-standardized timely and reasonable attempt policy will ensure that Choices
14 participants across the state receive the same information about participation requirements, the
15 consequences of not participating, good cause, and the right to appeal sanctions. Additionally, a
16 standardized policy will ensure equitable treatment and timelines for all Choices participants
17 who fail to comply with work requirements.

18
19 **§811.16. Good Cause for Choices Participants**

20 Section 811.16(c)(4) is deleted; new §811.16(c)(4) provides for a single good cause reason for all
21 Choices participants caring for an ill or disabled family member regardless of whether the family
22 member attends school full time. This change conforms with the final regulations, which now
23 allow all work-eligible individuals caring for an ill or disabled family member to be disregarded
24 from federal work participation rates, regardless of whether the family member attends school
25 full time.

26
27 New §811.16(c)(6)(A) removes language referring to §811.47, which is repealed.

28 WD Letter 59-07, issued September 27, 2007, and entitled "Choices: New and Expiring TWIST
29 Activity Codes," removes providing child care services to Choices participants in community
30 service as an allowed activity effective October 1, 2007, because of verification requirements in
31 the interim final regulations, guidance provided by ACF on Texas' Work Verification Plan, and
32 the lack of participation in this activity. The verification required by HHS is not cost-effective
33 based on the number of participants in this activity.

34
35 Section 811.16(d) removes the requirement for Boards to promulgate policies and procedures for
36 determining a family's inability to obtain child care and incorporates the requirement in
37 §811.4(d)(6).

38
39 Certain paragraphs in §811.16 have been renumbered to accommodate additions or deletions.

40
41 **SUBCHAPTER C. CHOICES SERVICES**

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

43
44 **§811.21. General Provisions**

1 Section 811.21(d), providing Boards the option to require the use of the Eligible Training
2 Provider Certification System (ETPS) and Individual Training Accounts (ITAs), is removed and
3 incorporated in §811.4(b)(1) and §811.4(e).

4
5 Section 811.21(e), requiring Boards to make job development services available, is removed and
6 incorporated in §811.4(d)(1).

7
8 Section 811.21(g), requiring Boards to make job placement services available, is removed and
9 incorporated in §811.4(d)(2).

10
11 Certain subsections in §811.21 have been relettered to accommodate additions or deletions.

12
13 **§811.26. Special Provisions Regarding Community Service**

14 Section 811.26(a) removes the term "participation" when referring to the required four weeks of
15 Choices service and replaces it with the term "enrollment." This change is made for consistency
16 with guidance on when the community service requirement begins.

17
18 Further, §811.26(a) removes the six-week limit on participation in job search and job readiness
19 activities per federal fiscal year and replaces it with an hourly limit per 12-month period for
20 consistency with the requirements set forth in 45 C.F.R. §261.34 and §811.27.

21
22 Section 811.26(c) removes the term "Exempt recipients who voluntarily participate in Choices
23 services" and replaces it with the term "Exempt Choices participants." This change is made to
24 provide consistency with the definition of exempt Choices participants in §811.2(3)(A).

25
26 **§811.27. Special Provisions Regarding Job Search and Job Readiness**

27 Section 811.27 reflects the new federal limits on participation in job search and job readiness
28 activities from six weeks per federal fiscal year to an hourly limit per 12-month period, as
29 required by 45 C.F.R. §261.34. The final regulations maintain the limit of four consecutive
30 weeks of participation in job search and job readiness activities but convert the six-week limit to
31 hours (120 for single parents with a child under age six and 180 for all other Choices eligibles)
32 and change the period from a federal fiscal year to a rolling 12-month period.

33
34 Section 811.27(a) changes the job search limit from six weeks to 120 or 180 hours as described
35 in §811.27(b)(2), and changes the period of measurement for the job search and job readiness
36 limit from a federal fiscal year to a 12-month period. These changes are necessary to comply
37 with the final regulations.

38
39 New §811.27(b)(2)(A) reflects the change in the job search limit from six weeks to 120 hours for
40 single parents with a child under age six and the change in the period of measurement for the job
41 search and job readiness limit from a federal fiscal year to a 12-month period.

42
43 New §811.27(b)(2)(B) reflects the change in the job search limit from six weeks to 180 hours for
44 all other Choices eligibles and the change in the period of measurement for the job search and
45 job readiness limit from a federal fiscal year to a 12-month period. These changes are necessary
46 to comply with the final regulations.

1
2 Section 811.27(b)(3) is modified to provide consistency with changes in §811.27(b)(2), stating
3 that after four consecutive weeks of participation in job search and job readiness activities,
4 Choices participants are not eligible for additional participation in job search and job readiness
5 activities until they have complied with §811.26(a).
6

7 Section 811.27(c) clarifies that in order for a partial week of participation in job search and job
8 readiness activities to count as a full week of participation, a Choices participant must participate
9 in job search and job readiness for at least three days. This subsection is also amended to reflect
10 the change in the period of measurement for the partial-week limit from a federal fiscal year to a
11 12-month period.
12

13 **Comment:** One commenter asked what changes will take place in TWIST to assist frontline
14 staff with tracking this rolling 12-month period for the four/six weeks of job search, the
15 partial week credit, and the short-term excused absence. The commenter stated that this is a
16 major programmatic change and that it would be helpful if TWIST tracked all activities that
17 are restricted to this 12-month period automatically, i.e., four/six weeks of job search, the
18 partial week that would count for a full week of participation, and short-term excused
19 absences.
20

21 **Response:** The Commission's intent is to provide frontline staff with user-friendly
22 automation solutions to the new rule changes. Therefore, the changes to track the use of
23 excused absences and job search and job readiness hours in TWIST have begun.
24

25 **§811.29. Special Provisions Regarding the Fair Labor Standards Act**

26 Section 811.29(b) further clarifies that if a customer cannot participate in Fair Labor Standards
27 Act (FLSA)-covered activities for enough hours to satisfy the core activity requirement, Boards
28 shall enroll the customer in additional "non-FLSA-covered" core activities to meet the core-hour
29 requirement. This change is required to be consistent with current Agency guidance.
30

31 Section 811.29(b)(1), requiring that Choices participants shall be enrolled in additional core
32 activities, is removed and incorporated in §811.29(b).
33

34 Section 811.29(b)(2) is deleted, thereby removing the deeming of hours provision from the
35 Choices rules. The final regulations maintain the deeming provision, which allows states to
36 count any family that participates the maximum hours per month allowed under the FLSA
37 minimum-wage requirement as having satisfied the 20-hour-per-week core activity requirement--
38 even if actual participation falls short of 20 hours per week. However, WD Letter 23-07, issued
39 March 28, 2007, and entitled "Implementation of Amended Choices Rules," instructs Boards not
40 to implement the deeming provision. This guidance was subsequently amended by WD Letter
41 23-07, Change 1, issued December 27, 2007, and entitled "Implementation of Amended Choices
42 Rules: *Update*."
43

44 The deeming provision was suspended based on guidance from HHS during the process of
45 approving Texas' Work Verification Plan. HHS guidance requires Texas to deem hours based on
46 TANF and food stamp benefits received as of the last day of the month, rather than allowing

1 deemed hours to be determined based on benefits received at the beginning of a month. Changes
2 to existing interfaces with HHSC are required because HHSC currently does not provide the
3 Agency with all information needed in order to comply with federal guidance.
4

5 The lack of these interface changes results in the following:

6 --The Agency is unable to automate the calculation of deemed hours of participation, which is
7 problematic because of the stricter documentation and verification requirements from HHS.

8 --HHSC's quarterly reports to HHS include full TANF and food stamp benefits information for
9 all TANF recipients, however, the Agency does not receive this same complete information.
10 Therefore, the Agency's calculation of hours to be deemed will not match HHS's calculation,
11 which is likely to result in a lower-than-anticipated participation rate for Texas.

12 --Supplemental TANF and food stamp benefits can be issued at any time. Thus, Boards may
13 count on the deeming provision to fulfill a customer's work requirement--only to discover at the
14 end of the month that the customer has received supplemental benefits and should have
15 participated more hours in core activities due to a reduction in deemed hours.
16

17 At present, if a customer cannot participate in FLSA-covered activities for enough hours to
18 satisfy the core activity requirement, Boards must enroll the customer in additional non-FLSA-
19 covered activities to meet the core-hour requirement. The Commission believes that this
20 practice--in place prior to the interim final regulations--remains a workable solution to address
21 concerns about implementing the deeming provision in the current environment.
22

23 **Comment:** One commenter asked what plans are in place to ramp up the interface between
24 HHSC and TWC so that Texas can take advantage of the deeming provision in the new
25 federal rules. The commenter stated that without this provision, Texas participants may be
26 unfairly penalized and made to participate in unnecessary non-core hours, which would result
27 in Texas being more restrictive than other states when implementing the new federal rules.
28 The commenter maintained that removing the deeming of hours may create a hardship for
29 both the Choices participant and Board contractor staff who sometimes struggle in finding
30 non-core alternatives and forcing individuals to participate in non-core alternatives.
31

32 **Response:** The Commission appreciates the comment. The deeming provision was
33 suspended based on guidance from HHS during the process of approving Texas' Work
34 Verification Plan. The guidance requires Texas to deem hours based on TANF and food
35 stamp benefits received as of the last day of the month, rather than allowing deemed hours to
36 be determined based on benefits received at the beginning of a month. Changes to existing
37 interfaces with HHSC would be required because HHSC currently does not provide the
38 Agency with all needed information to comply with HHS guidance. For example, if a
39 participant receives any supplemental benefits for the month and the Board has not included
40 this amount in its calculation of deemed hours, the calculation will be incorrect, and hours of
41 core activities reduced inappropriately. The Commission believes that these changes will
42 require extensive and costly resources and technical research and at this time, the current
43 process provides satisfactory data.
44

45 Currently, Boards continue to calculate hours manually based on the amount of TANF and
46 food stamp benefits received as of the last day of the month. If a customer cannot participate

1 in FLSA-covered activities for enough hours to satisfy the core activity requirement, Boards
2 must enroll the customer in additional non - FLSA-covered activities to meet the core-hour
3 requirement. The Commission believes that this remains a workable solution to address
4 concerns about implementing the deeming provision in the current environment.
5

6 The Commission also clarifies that when participants cannot participate in enough FLSA-
7 covered activities to meet their core-hour requirement, Texas Workforce Center staff must
8 find additional core activities--not non-core activities--for the participants.
9

10 **§811.34. Participation Provisions**

11 Section 811.34(2)(A)(ii) converts excused absence provisions from days to hours. Maximum
12 excused absences are now 80 hours per 12 months and 16 hours per month. This change
13 conforms with the final regulations at 45 C.F.R. §261.60(b).
14

15 Section 811.34(3) adds the requirement that hours used to project participation in unsubsidized
16 employment (other than self-employment), subsidized employment, and on-the-job training must
17 be verified, in addition to being current and documented. This change conforms with the final
18 regulations at 45 C.F.R. §261.60(c).
19

20 Section 811.34(3)(A) adds the requirement that hours used to project participation in self-
21 employment must be verified, in addition to being current and documented. This change
22 conforms with the final regulations at 45 C.F.R. §261.60(c).
23

24 **Comment:** One commenter asked what changes will take place in TWIST to assist frontline
25 staff with tracking this rolling 12-month period for the four/six weeks of job search, the
26 partial week credit, and the short-term excused absence. The commenter stated that this is a
27 major programmatic change and that it would be helpful if TWIST could track all activities
28 that are restricted to this 12-month period automatically, i.e., four/six weeks of job search,
29 the partial week that would count for a full week of participation, and short-term excused
30 absences.
31

32 **Response:** The Commission's intent is to provide frontline staff with user-friendly
33 automation solutions to the new rule changes. Therefore, the changes to track the use of
34 excused absences and job search and job readiness hours in TWIST have begun.
35

36 **SUBCHAPTER D. CHOICES WORK ACTIVITIES**

37 **The Commission adopts the following amendments to Subchapter D:**
38

39 **§811.41. Job Search and Job Readiness Assistance**

40 Section 811.41(b)(4), requiring daily supervision of participation in job search and job readiness
41 activities, is removed and incorporated in §811.5(d).
42

43 Section 811.41(b)(5), requiring daily documentation of participation, is removed. New
44 §811.5(d) sets forth the requirement to document participation on a monthly basis.
45

1 Section 811.41(b)(6), requiring Boards to ensure that job readiness activities that include
2 allowable treatment or therapy activities necessary to assist Choices participants with seeking,
3 obtaining, or retaining employment be certified by qualified medical or mental health
4 professionals, is deleted. The final regulations at 45 CFR §261.2(g) no longer require
5 certification of these activities--only documentation.

6
7 Section 811.41(d)(4) removes the requirement for substance abuse treatment, mental health
8 treatment, and rehabilitation activities to be certified because the final regulations no longer
9 require certification--only documentation. Boards are only required to ensure that the need for
10 treatment and therapy activities is documented by a qualified medical, substance abuse, or
11 mental health professional.

12
13 Certain paragraphs in §811.41 have been renumbered to accommodate additions or deletions.

14
15 **§811.43. Subsidized Employment**

16 Section 811.43(c)(1) removes the requirement for Boards to set a policy establishing the amount
17 of wage subsidies and incorporates this requirement in §811.4(a)(2).

18
19 Section 811.43(e) adds language to allow Boards to place Choices participants in subsidized
20 employment placements where the employer is not expected to retain the participant, if
21 successful completion of the placement is expected to result in unsubsidized employment with a
22 different employer.

23
24 The final regulations clarify that certain statements in the interim final regulations--i.e., that
25 subsidized employment should be of limited duration, and that employers should be expected to
26 hire participants at the end of such placements--were intended as recommendations, not
27 requirements.

28
29 **§811.44. On-the-Job Training**

30 Section 811.44(b) adds language clarifying that on-the-job training may be provided on or off the
31 work site. This change is made for consistency with the final regulations.

32
33 Section 811.44(d), requiring Boards to ensure the daily supervision of Choices participants
34 enrolled in on-the-job-training, is deleted. Paid work activities, including on-the-job training, are
35 supervised by the employer and Boards are not required to ensure additional supervision.

36
37 New §811.44(d) requires that Boards ensure on-the-job training placements are allotted to
38 employers who expect to retain Choices participants as regular unsubsidized employees once the
39 subsidized placement has ended, unless successful completion of the placement is expected to
40 result in unsubsidized employment with a different employer.

41
42 The final regulations clarify that certain statements in the interim final regulations--i.e., that on-
43 the-job training should be of limited duration, and that employers should be expected to hire
44 participants at the end of such placements--were intended as recommendations, not requirements.

1 Boards have informed the Agency of successful programs that provide Choices participants with
2 experience and skills that then enable them to obtain unsubsidized employment with a different
3 employer. Boards have found these programs advantageous to service delivery strategies and --if
4 not for the restrictions in the interim final regulations--Boards would have continued the
5 programs.

6
7 Section 811.44(e), requiring Boards to ensure that on-the-job training is documented in TWIST
8 at least every two weeks, is deleted; new monthly documentation requirements are set forth in
9 new §811.5(c).

10
11 Certain subsections in §811.44 have been relettered to accommodate additions or deletions.

12
13 **§811.45. Work Experience**

14 Section 811.45(f), requiring Boards to ensure that work experience activities are documented in
15 TWIST at least every two weeks, is deleted, because biweekly documentation of work activities
16 is no longer required by the final regulations; monthly verification and documentation
17 requirements are set forth in new §811.5(d).

18
19 **§811.46. Community Service**

20 Section 811.46(f), requiring that Choices participants in community service programs be
21 supervised daily, is removed and incorporated in new §811.5(d).

22
23 Section 811.46(g), requiring that community services activities be documented in TWIST at least
24 every two weeks, is deleted because biweekly documentation of work activities is no longer
25 required by the final regulations; monthly verification and documentation requirements are set
26 forth in new §811.5(d).

27
28 **§811.47. Child Care Services to Choices Participants in Community Service**

29 Section 811.47, providing child care services to Choices participants in community service as an
30 allowed activity, is repealed. WD Letter 59-07, issued September 27, 2007, and entitled
31 "Choices: New and Expiring TWIST Activity Codes," removes this activity effective October 1,
32 2007, because of verification requirements in the interim final regulations, guidance provided by
33 ACF on Texas' Work Verification Plan, and the lack of participation in this activity. The
34 verification required by HHS is not cost-effective based on the number of participants in this
35 activity.

36
37 **§811.48. Vocational Educational Training**

38 Section 811.48(d) is deleted; new §811.5(e)(1) - (3) adds that up to one hour of unsupervised
39 homework time for every hour of class time can be counted toward a Choices participant's work
40 requirement and any homework hours in excess of one hour per every hour of class time must be
41 directly monitored, supervised, verified, and documented.

42
43 Section 811.48(e), requiring verification of good or satisfactory progress as determined by the
44 educational institution, is removed and incorporated in new §811.5(e)(4).

1 Section 811.48(f), requiring that Choices participants in vocational education be supervised
2 daily, is removed and incorporated in new §811.5(e)(5).

3
4 Section 811.48(g), requiring that vocational educational training be documented in TWIST at
5 least every two weeks, is deleted because biweekly documentation of work activities is no longer
6 required by the final regulations; monthly verification and documentation requirements are set
7 forth in new §811.5(e)(6).

8
9 **§811.49. Job Skills Training**

10 Section 811.49(f), allowing Boards to count supervised study or homework time toward a
11 Choices participant's family participation requirement under specified circumstances, is deleted;
12 new §811.5(e)(1) - (3) adds that up to one hour of unsupervised homework time for every hours
13 of class time can be counted toward a Choices participant's work requirement and any homework
14 hours in excess of one hour per every hour of class time must be directly monitored, supervised,
15 verified, and documented.

16
17 Section 811.49(g), requiring verification of good or satisfactory progress as determined by the
18 educational institution, is deleted and incorporated in new §811.5(e)(4).

19
20 Section 811.49(h), requiring that Choices participants in job skills training be supervised daily, is
21 deleted and incorporated in new §811.5(e)(5).

22
23 Section 811.49(i), requiring that Boards ensure job skills training is documented in TWIST at
24 least every two weeks, is deleted because biweekly documentation of work activities is no longer
25 required by the final regulations; monthly documentation requirements are set forth in new
26 §811.5(e)(6).

27
28 **§811.50. Educational Services for Choices Participants Who Have Not Completed**
29 **Secondary School or Received a General Educational Development Credential**

30 Section 811.50(a)(1) is removed and incorporated in §811.50(a) to clarify that educational
31 services are not core activities for any Choices participants, including those under age 20.

32
33 Section 811.50(a)(2) is deleted and incorporated in §811.50(a) to clarify that educational services
34 are not core activities for any Choices participants, including those under age 20.

35
36 This clarification is based on guidance from HHS during the process of approving Texas' Work
37 Verification Plan, and does not change the work requirements for Choices participants under age
38 20.

39
40 Section 811.50(b)(1) removes the phrase "leading to a high school diploma or a GED credential"
41 and replaces it with "as defined in §811.2(13)," the definition of secondary school.

42
43 Section 811.50(d) is deleted; new §811.5(e)(1) - (3) adds that up to one hour of unsupervised
44 homework time for every hour of class time can be counted toward a Choices participant's work
45 requirement and any homework hours in excess of one hour per every hour of class time must be
46 directly monitored, supervised, verified, and documented.

1
2 Section 811.50(e), requiring verification of good or satisfactory progress as determined by the
3 educational institution, is removed and incorporated in new §811.5(e)(4).

4
5 Section 811.50(f), requiring that Choices participants in educational services be supervised daily,
6 is removed and incorporated in new §811.5(e)(5).

7
8 Section 811.50(g), requiring that Boards ensure educational services are documented in TWIST
9 at least every two weeks, is deleted because biweekly documentation of work activities is no
10 longer required by the final regulations; monthly documentation requirements are set forth in
11 new §811.5(e)(6).

12
13 **Comment:** One commenter asked why educational services for teens are being changed to
14 non-core hours. The commenter stated that this change in designation of school hours to a
15 non-core activity for teen parents creates an unnecessary hardship for these already fragile
16 family systems.

17
18 **Response:** This change is based on guidance from HHS during the process of approving
19 Texas' Work Verification Plan and does not change the work requirements for Choices
20 participants under age 20. When the original TANF regulations were released on April 12,
21 1999, the Agency interpreted the regulations to consider educational activities--including
22 satisfactory school attendance--as core activities for teens without a high school diploma or
23 GED. When Texas submitted its original work verification plan, HHS informed the Agency
24 that hours of participation in educational activities, including satisfactory school attendance,
25 were considered non-core hours for all participants.

26
27 It is important to note that this clarification does not change the required hours of
28 participation for teens without a high school diploma or GED. If teens attend school
29 satisfactorily, there is no set hourly requirement and no core-hour requirement to meet
30 participation requirements. Teens who participate in other educational activities for an
31 average of 20 hours per week also have no core-hour requirement.

32
33 However, teens who do not attend school satisfactorily, or who participate in other
34 educational activities for less than an average of 20 hours per week, must participate a total
35 of 30 hours per week, with 20 hours in core activities (educational activities, including school
36 attendance, do not count as core activities) to meet participation requirements. If the teens
37 have a child under age six, their work requirement is reduced to an average of 20 hours per
38 week in core activities (educational activities, including school attendance, do not count as
39 core activities).

40
41 In response to HHS' clarification, the Commission released Technical Assistance Bulletin
42 168 on December 27, 2007, which further explains the change and its impact, and gives
43 examples such as the following:

44 --Teen heads of household who have not attained either their high school diploma or GED
45 credential will still be included in the All Families Participation Rate numerator if they attend

1 school satisfactorily or participate in other educational activities for an average of 20 hours
2 per week.

3 --Teen heads of household who have a child under age six and participate in core activities
4 for an average of 20 hours per week will be included in the All Families Participation Rate
5 numerator.

6 --Two-parent household with two teen heads of household who have not attained their high
7 school diploma or GED credential, both attending school satisfactorily, or participating in
8 other educational activities for 20 hours per week will be included in the Two Parent
9 Families Participation Rate numerator.

10
11 **§811.51. Post-Employment Services**

12 Section 811.51(e), giving Boards the option to provide post-employment services to certain
13 former TANF recipients, sanctioned families, and conditional applicants, is removed and
14 incorporated in new §811.4(b)(2).

15
16 Certain subsections in §811.51 have been relettered to accommodate additions or deletions.

17
18 **SUBCHAPTER E. SUPPORT SERVICES AND OTHER INITIATIVES**

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

20
21 **§811.64. Work-Related Expenses**

22 Section 811.64(b), requiring Boards to develop policies related to the methods and limitations
23 for provision of work-related expenses, is removed and incorporated in new §811.4(a)(3).

24
25 Certain subsections in §811.64 have been relettered to accommodate additions or deletions.

26
27 **COMMENTS WERE RECEIVED FROM:**

28 Bruce P. Bower, Austin, Texas

29 Marsha Lindsey, Texoma Workforce Development Board

30
31 The Agency hereby certifies that the adoption has been reviewed by legal counsel and found to
32 be within the Agency's legal authority to adopt.

33
34 The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the
35 Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it
36 deems necessary for the effective administration of Agency services and activities.

37
38 The adopted rules affect Texas Labor Code, Title 4 and Texas Human Resources Code, Chapters
39 31 and 34.

1 **Chapter 811. CHOICES**

2 **SUBCHAPTER A. GENERAL PROVISIONS**

3
4 **§811.2. Definitions.**

5
6 The following words and terms, when used in this chapter, shall have the following meanings
7 unless the context clearly indicates otherwise.

- 8
9 (1) Applicant -- An adult, or teen head of household, in a family who applies for
10 Temporary Assistance for Needy Families (TANF) cash assistance, who previously
11 did not leave TANF in a sanctioned status.
12
13 (2) Choices eligible -- An individual eligible to receive Choices services including an
14 adult or teen head of household who is an applicant, conditional applicant, recipient,
15 nonrecipient parent, former recipient, or sanctioned family as defined in this chapter.
16
17 (3) Choices participant -- A Choices eligible participating in or outreached for Choices
18 services, including:
19
20 (A) Exempt Choices participant -- A Choices eligible who is not required under
21 Texas Human Resources Code, Chapter 31 or Texas Health and Human
22 Services Commission (HHSC) rules (1 TAC, Chapter 372, Texas Works) to
23 participate in Choices services, but who may voluntarily participate in Choices
24 services.
25
26 (B) Mandatory Choices participant -- A Choices eligible who is required under
27 Texas Human Resources Code, Chapter 31 or HHSC rules (1 TAC, Chapter
28 372, Texas Works) to participate in Choices services.
29
30 (4) Conditional applicant -- An adult or teen head of household who left TANF in a
31 sanctioned status, but who is reapplying for TANF cash assistance.
32
33 (5) Earned Income Deduction (EID) -- A standard work-related and income deduction,
34 available for four months through HHSC.
35
36 (6) Extended TANF recipient -- A recipient who receives TANF cash assistance past the
37 60-month federal time limit because of a hardship exemption as defined in Texas
38 Human Resources Code, Chapter 31 and HHSC rules (1 TAC, Chapter 372, Texas
39 Works).
40
41 (7) Former recipient -- An adult or teen head of household who no longer receives TANF
42 cash assistance because of employment.
43
44 (8) HHSC -- Texas Health and Human Services Commission.
45

- 1 (9) Nonrecipient parent -- Adults or minor heads of household not receiving TANF cash
2 assistance, but living with their own children who are receiving TANF cash
3 assistance. Nonrecipient parents include parents who are not eligible for TANF cash
4 assistance:
5
6 (A) due to a disqualification by the Texas Health and Human Services Commission.
7 These disqualifications include parents who:
8
9 (i) refuse to comply with Medicaid third-party resource requirements;
10
11 (ii) do not comply with Social Security number requirements;
12
13 (iii) are found guilty of an intentional program violation;
14
15 (iv) fail to report the temporary absence of a certified child;
16
17 (v) are fugitives fleeing to avoid prosecution of, or confinement for, a felony
18 criminal conviction, or are found by a court to be violating federal or state
19 probation or parole;
20
21 (vi) are convicted of a felony drug offense (not deferred adjudication) committed
22 on or after April 1, 2002; or
23
24 (vii) refuse to cooperate with the program integrity assessment process;
25
26 (B) because they are receiving Supplemental Security Income (SSI) or Social
27 Security Disability Insurance (SSDI); or
28
29 (C) because they have exhausted their TANF state time limit.
30
31 (10) PRWORA -- The Personal Responsibility and Work Opportunity Reconciliation Act
32 of 1996, Pub. L. No. 104-193, 110 Stat. 2105, as amended.
33
34 (11) Recipient -- An adult or teen head of household who receives TANF cash assistance.
35
36 (12) Sanctioned family -- An adult or teen head of household who must demonstrate
37 cooperation for one month in order to reinstate TANF cash assistance.
38
39 (13) Secondary school -- Educational activities including middle school, high school
40 leading to a high school diploma, or classes leading to the completion of a General
41 Educational Development (GED) credential.
42
43 (14) TANF cash assistance -- The cash grant provided through HHSC to individuals who
44 meet certain residency, income, and resource criteria as provided under federal and
45 state statutes and regulations, including the PRWORA, the TANF block grant

1 statutes, the TANF State Plan, TANF cash assistance provided under Texas Human
2 Resources Code, Chapters 31 and 34, and other related regulations.

3
4 (15) Work-based services -- Includes those employment programs defined in Texas
5 Human Resources Code §31.0126.

6
7 (16) Work eligible individual - Work eligible individuals are adults or minor heads of
8 household receiving TANF cash assistance, and nonrecipient parents--with the
9 following exceptions:

10
11 (A) Noncitizens who are ineligible to receive cash assistance because of their
12 immigration status;

13
14 (B) Parents caring for a disabled family member who lives in the home (provided the
15 need for such care is supported by medical documentation), on a case-by-case
16 basis; and

17
18 (C) Recipients of SSI or SSDI, on a case-by-case basis.

19
20 (17) Work ready -- A Choices eligible is considered work ready if he or she has the skills
21 that are required by employers in the local workforce development area. A Board
22 must ensure immediate access to the labor market to determine whether the Choices
23 eligible has those necessary skills to obtain employment.

24
25 (18) Work requirement -- For the purposes of 42 U.S.C. §607 and 45 C.F.R. §261.10, a
26 Choices eligible is deemed to be engaged in work by cooperating with:

27
28 (A) all requirements set forth in the family employment plan, as described in this
29 chapter; and

30
31 (B) all TANF core and non-core activities, as set forth in this chapter.

32
33 **§811.3. Choices Service Strategy.**

34
35 (a) A Board shall ensure that its strategic planning process includes an analysis of the local
36 labor market to:

37
38 (1) determine employers' needs;

39
40 (2) determine emerging and demand occupations; and

41
42 (3) identify employment opportunities, which include those with a potential for career
43 advancement that may assist a Choices eligible's progression toward self-sufficiency.

44
45 (b) The Choices service strategy shall include:

1 (1) Workforce Orientation for Applicants (WOA). As a condition of eligibility,
2 applicants and conditional applicants are required to attend a workforce orientation
3 that includes information on options available to allow them to enter the Texas
4 workforce.
5

6 (2) Work First Design.
7

8 (A) The work first design:
9

10 (i) allows Choices participants to take immediate advantage of the labor
11 market and secure employment, which is critical due to individual time-
12 limited benefits; and
13

14 (ii) meets the needs of employers by linking Choices participants with skills
15 that match those job requirements identified by the employer.
16

17 (B) Boards shall provide Choices participants access to other services and activities
18 available through the One-Stop Service Delivery Network, which includes the
19 WOA, to assist with employment in the labor market before certification for
20 TANF cash assistance.
21

22 (C) Post-employment services shall be provided in order to assist a Choices
23 participant's progress toward self-sufficiency as described in subsection (b)(3)
24 of this section and §811.51.
25

26 (D) In order to assist a Choices eligible's progress toward self-sufficiency:
27

28 (i) Boards shall provide Choices eligibles who are employed, including
29 mandatory Choices participants coded by HHSC as working at least 30
30 hours per week, earning at least \$700 per month, and receiving the EID,
31 with information on available post-employment services; or
32

33 (ii) Boards may provide Choices eligibles with post-employment services as
34 determined by Board policy. The length of time these services may be
35 provided is subject to §811.51.
36

37 (E) In order to assist employers, Boards shall coordinate with local employers to
38 address needs related to:
39

40 (i) employee post-employment education or training;
41

42 (ii) employee child care, transportation or other support services available to
43 obtain and retain employment; and
44

45 (iii) employer tax credits.
46

1 (F) Boards shall ensure that a family employment plan is based on employer needs,
2 individual skills and abilities, and individual time limits for TANF cash
3 assistance.
4

5 (3) Post-Employment Services. A Board shall ensure that post-employment services are
6 designed to assist Choices participants with job retention, career advancement, and
7 reemployment, as defined in §811.51. Post-employment services are a continuum in
8 the Choices service strategy to support a Choices participant's job retention, wage
9 gains, career progression, and progression to self-sufficiency.
10

11 (4) Adult Services. A Board shall ensure that services for adults shall include activities
12 individually designed to lead to employment and self-sufficiency as quickly as
13 possible.
14

15 (5) Teen Services. A Board shall ensure that services for teen heads of household shall
16 include secondary school, as defined in §811.2(13), and making the transition from
17 school to employment, as described in §811.30 and §811.50.
18

19 (6) Choices Eligibles with Disabilities. A Board shall ensure that services for Choices
20 eligibles with disabilities include reasonable accommodations to allow the Choices
21 eligibles to access and participate in services, where applicable by law.
22

23 (7) Target Populations. A Board shall ensure that services are concentrated, as further
24 defined in §811.11(d) and (e), on the needs of the following:
25

26 (A) recipients who have six months or less remaining of their state TANF time
27 limit, irrespective of any extension of time due to a hardship exemption;
28

29 (B) recipients who have 12 months or less remaining of their 60-month federal
30 TANF time limit, irrespective of any extension of time due to a hardship
31 exemption; and
32

33 (C) recipients who are extended TANF recipients.
34

35 (8) Local Flexibility. A Board may develop additional service strategies that are
36 consistent with the goal and purpose of this chapter and the One-Stop Service
37 Delivery Network.
38

39 **§811.4. Policies, Memoranda of Understanding, and Procedures.**
40

41 (a) A Board shall establish policies regarding the following:
42

43 (1) A Choices service strategy, as defined in §811.3, that coordinates various service
44 delivery approaches to:
45

- 1 (A) assist applicants and conditional applicants in gaining employment as an
2 alternative to public assistance;
3
- 4 (B) utilize a work first design as referenced in §811.3(b)(2) to provide Choices
5 participants access to the labor market; and
6
- 7 (C) assist former recipients with job retention and career advancement in order to
8 remain independent of TANF cash assistance;
9
- 10 (2) The amount of wages subsidized for subsidized employment placements; and
11
- 12 (3) The methods and limitations for provision of work-related expenses.
13
- 14 (b) A Board may establish optional policies that:
15
- 16 (1) require the use of the Eligible Training Provider Certification System (ETPS) and
17 Individual Training Account (ITA) systems as described in Chapter 841 of this title to
18 provide for Choices services for Choices participants and paid for with TANF funds;
19 and
20
- 21 (2) make post-employment services available to:
22
- 23 (A) former recipients who are denied TANF cash assistance because of earnings; and
24
- 25 (B) sanctioned families and conditional applicants who obtain employment during
26 their demonstrated cooperation period.
27
- 28 (c) A Board shall ensure that the following Memoranda of Understanding (MOUs) and
29 collaborative partnerships are developed:
30
- 31 (1) Local-level MOUs with the appropriate agencies to serve Choices eligibles with
32 disabilities to maximize their potential for success in employment;
33
- 34 (2) A local-level MOU in cooperation with HHSC for coordinated case management that
35 is consistent with the MOU between HHSC and the Commission;
36
- 37 (3) A local-level MOU with the Texas Department of State Health Services for providing
38 mental health and substance abuse services to Choices participants; and
39
- 40 (4) A collaborative partnership with housing authorities and sponsors of local housing
41 programs and services to address the unmet housing needs of recipients.
42
- 43 (d) A Board shall ensure that procedures are developed:
44
- 45 (1) to ensure that job development services are available to Choices participants. These
46 services include:

- 1
2 (A) contacting local employers or industry associations to request that job openings be
3 listed with Texas Workforce Centers, and other entities in the One-Stop Service
4 Delivery Network selected by the Board;
5
6 (B) identifying the hiring needs of employers;
7
8 (C) assisting an employer in creating new positions for Choices participants based on
9 the job developer's and employer's analysis of the employer's business needs; or
10
11 (D) finding opportunities with an employer for a specific Choices participant or a
12 group of Choices participants;
13
14 (2) to ensure that job placement services are available to Choices participants. Job
15 placement services shall include:
16
17 (A) identifying employers' workforce needs;
18
19 (B) identifying Choices participants who have sufficient skills and abilities to be
20 successfully linked with employment; and
21
22 (C) matching the skills of the Choices participant pool to the hiring needs of local
23 employers;
24
25 (3) to notify applicants and conditional applicants--in conjunction with HHSC--on the
26 availability of regularly scheduled Workforce Orientations for Applicants (WOAs)
27 and alternative WOAs;
28
29 (4) to notify HHSC of applicants and conditional applicants who contacted a Texas
30 Workforce Center to request alternative WOAs;
31
32 (5) to ensure that services are concentrated on Choices eligibles approaching their state or
33 federal time limit, as identified in §811.3(c)(7)(A) and (B). Concentrated services
34 may include targeted outreach, enhanced analysis of circumstances that may limit a
35 Choices eligible's ability to participate, and targeted job development; and
36
37 (6) to determine a family's inability to obtain child care.
38
39 (e) If a Board elects to establish one or more of the optional policies described in subsection
40 (b) of this section, the Board must ensure that corresponding procedures are developed for
41 those policies.
42

1 **§811.5. Documentation, Verification, and Supervision of Work Activities.**

2
3 (a) A Board shall ensure that all required information related to the documentation and
4 verification of participation in Choices work activities, as described in this section, is
5 documented in The Workforce Information System of Texas (TWIST).

6
7 (b) A Board shall ensure that all participation in Choices is verified and documented and that
8 self-attestation is not allowed.

9
10 (c) For paid work activities, as described in §§811.42, 811.43, and 811.44, Boards shall
11 ensure that all participation is verified and documented in TWIST at least monthly. If
12 participation is projected as described in §811.34(3), current and verified participation
13 must be documented in TWIST at least every six months.

14
15 (d) For unpaid activities, as described in §§811.41, 811.45, and 811.46, Boards shall ensure
16 that all participation is:

17 (1) supervised daily; and

18
19 (2) verified and documented in TWIST at least monthly.

20
21 (e) For unpaid activities, as described in §§811.48, 811.49, and 811.50, Boards shall ensure
22 that:

23 (1) no more than one hour of unsupervised study or homework time per each hour of
24 class time is counted toward a Choices participant's family participation requirement;

25 (2) all study and homework time in excess of one hour per hour of class time is directly
26 monitored, supervised, verified, and documented;

27 (3) study or homework time is only counted toward a Choices participant's family
28 participation requirement if:

29 (A) the study or homework time is directly correlated to the demands of the course
30 work for out-of-class preparation as described by the educational institution; and

31 (B) the educational institution's policy requires a certain number of out-of-class
32 preparation hours for the class;

33 (4) good or satisfactory progress, as determined by the educational institution, is verified
34 and documented in TWIST at least monthly;

35 (5) all participation is supervised daily; and

36 (6) all participation is verified and documented in TWIST at least monthly.

1
2 **SUBCHAPTER B. CHOICES SERVICES RESPONSIBILITIES**

3
4 **§811.11 Board Responsibilities.**

- 5 (a) A Board shall ensure that:
- 6 (1) the WOA is offered frequently enough to allow applicants and conditional applicants to
 - 7 comply with the HHSC requirement that gives applicants and conditional applicants 10
 - 8 calendar days from the date of their eligibility interview to attend a WOA;
 - 9
 - 10
 - 11 (2) during a regularly scheduled WOA or alternative WOA, applicants and conditional
 - 12 applicants are informed of:
 - 13 (A) employment services available through the One-Stop Service Delivery Network
 - 14 to assist applicants and conditional applicants in achieving self-sufficiency
 - 15 without the need for TANF cash assistance;
 - 16
 - 17 (B) benefits of becoming employed;
 - 18
 - 19 (C) impact of time-limited benefits;
 - 20
 - 21 (D) individual and parental responsibilities; and
 - 22
 - 23 (E) other services and activities, including education and training, available through
 - 24 the One-Stop Service Delivery Network, including services and referrals for
 - 25 services available to Choices eligibles with disabilities;
 - 26
 - 27 (3) alternative WOAs are developed that allow applicants and conditional applicants with
 - 28 extraordinary circumstances to receive the information listed in paragraph (2) of this
 - 29 subsection;
 - 30
 - 31 (4) verification that applicants and conditional applicants attend a scheduled or alternative WOA
 - 32 is completed and HHSC is notified in accordance with HHSC rules (1 TAC, Chapter 372,
 - 33 Texas Works); and
 - 34
 - 35 (5) applicants and conditional applicants are provided with an appointment to develop a
 - 36 family employment plan.
 - 37
- 38 (b) A Board shall ensure that:
- 39 (1) Choices services are offered to applicants who attend a WOA; and
 - 40
 - 41 (2) conditional applicants who attend a WOA are immediately scheduled to begin
 - 42 Choices services.
 - 43
- 44 (c) A Board shall ensure that a Choices participant's eligibility is verified monthly.
- 45
46
47

- 1
2
3 (d) A Board shall ensure that all extended TANF recipients are outreached and offered the
4 opportunity to participate in Choices activities.
5
6 (e) A Board shall ensure that post-employment services, including job retention and career
7 advancement services, are available to Choices eligibles including mandatory Choices
8 participants coded by HHSC as working at least 30 hours per week, earning at least \$ 700
9 per month, and receiving EID.
10
11 (f) A Board shall ensure that the monitoring of work requirements is ongoing and frequent,
12 as determined by a Board, unless otherwise specified in this chapter, and consists of the
13 following:
14
15 (1) ensuring receipt of support services;
16
17 (2) tracking and reporting support services;
18
19 (3) tracking and reporting actual hours of participation, at least monthly, unless
20 otherwise specified in this chapter;
21
22 (4) determining and arranging for any intervention needed to assist the Choices
23 participant in complying with work requirements;
24
25 (5) ensuring that the Choices participant is progressing toward achieving the goals and
26 objectives in the family employment plan; and
27
28 (6) monitoring all other work requirements.
29
30 (g) A Board shall ensure that:
31
32 (1) no less than four hours of training regarding family violence is provided to staff who:
33
34 (A) provide information to Choices eligibles;
35
36 (B) request penalties or grant good cause; or
37
38 (C) provide employment planning or employment retention services; and
39
40 (2) Choices eligibles who are identified as being victims of family violence are referred
41 to an individual or an agency that specializes in issues involving family violence.
42
43 (h) A Board shall ensure that documentation is obtained and maintained regarding all contact
44 with Choices participants, including verification of participation hours, and data is entered
45 into TWIST.
46

- 1 (i) A Board shall ensure that a referral program is developed to provide Choices eligibles
2 facing higher than average barriers to employment, as described in this chapter, with
3 referrals to pre-employment and post-employment services offered by community-based
4 and other organizations.
5

6 **§811.14. Noncooperation.**
7

- 8 (a) A Board shall ensure that cooperation by Choices participants is verified each month to
9 ensure that the Choices participants:

10 (1) comply with work requirements as set forth in the family employment plan; or

11 (2) have good cause as described in this chapter.
12

- 13 (b) If Choices participants have not cooperated with work requirements and do not have good
14 cause, a Board shall ensure that:
15

16 (1) a penalty is requested for mandatory Choices participants; or
17

18 (2) Choices services, including support services, are terminated for exempt Choices
19 participants.
20

- 21 (c) A Board shall ensure that timely and reasonable attempts, as defined by the Agency, are
22 made to contact a mandatory Choices participant prior to requesting a penalty to:
23

24 (1) determine the reason for noncooperation and whether good cause is applicable, as
25 described in §811.16(c);
26

27 (2) inform the mandatory Choices participant of:
28

29 (A) the violation, if good cause has not been determined;
30

31 (B) the right to appeal; and
32

33 (C) the necessary procedures to demonstrate cooperation.
34

- 35 (d) A Board shall ensure that timely and reasonable attempts, as defined by the Agency, are
36 made to contact a sanctioned family and conditional applicants upon discovery of
37 noncooperation during their demonstrated cooperation period to determine if good cause
38 exists.
39

- 40 (e) A Board shall ensure that the reasonable attempts to contact a mandatory Choices
41 participant are documented.
42

- 43 (f) A Board shall ensure that:
44
45
46

- 1 (1) HHSC is notified of a mandatory Choices participant's failure to comply with work
2 requirements; and
- 3
- 4 (2) the notification of noncooperation is submitted as early as possible in the same month
5 in which the noncooperation occurs.
- 6

7 **§811.16. Good Cause for Choices Participants.**

- 8
- 9 (a) Good cause applies to Choices participants. A Board shall ensure that good cause is
10 determined as provided in this chapter.
- 11
- 12 (b) A Board shall ensure that a good cause determination:
 - 13
 - 14 (1) is based on individual and family circumstances;
 - 15
 - 16 (2) is based on face-to-face or telephone contact;
 - 17
 - 18 (3) covers a temporary period when Choices participants may be unable to attend
19 scheduled appointments or participate in ongoing work activities;
 - 20
 - 21 (4) is made at the time the change in circumstances is made known to the Board's service
22 provider; and
 - 23
 - 24 (5) is conditional upon efforts to address circumstances that limit the ability to
25 participate in Choices services as required in the family employment plan.
 - 26
- 27 (c) The following reasons may constitute good cause for purposes of this chapter:
 - 28
 - 29 (1) Temporary illness or incapacitation;
 - 30
 - 31 (2) Choices participants with disabilities or caring for a disabled family member who
32 participate to the extent determined able, as supported by medical documentation, but
33 less than the required participation hours, as set forth in §811.25(b) - (d) and
34 §811.31(b);
 - 35
 - 36 (3) Court appearance;
 - 37
 - 38 (4) Caring for a disabled family member who requires the Choices participant's presence in the
39 home. Boards shall ensure the need for such care is supported by medical documentation;
 - 40
 - 41 (5) A demonstration that there is:
 - 42
 - 43 (A) no available transportation and the distance prohibits walking; or
 - 44
 - 45 (B) no available job within reasonable commuting distance, as defined by the
46 Board;
 - 47

1 (6) An inability to obtain needed child care, as defined by the Board and based on the
2 following reasons:

3
4 (A) Informal child care by a relative or under other arrangements is unavailable or
5 unsuitable. Informal child care may also be determined unsuitable by the
6 parent;

7
8 (B) Eligible child care providers are unavailable, as defined in Chapter 809 of this
9 title;

10
11 (C) Affordable child care arrangements within maximum rates established by the
12 Board are unavailable; and

13
14 (D) Appropriate child care within a reasonable distance from home or the work site
15 is unavailable;

16
17 (7) An absence of other support services necessary for participation;

18
19 (8) Receipt of a job referral that results in an offer below the federal minimum wage,
20 except when a lower wage is permissible under federal minimum wage law;

21
22 (9) An individual or family crisis or a family circumstance that may preclude
23 participation, including substance abuse, mental health, and disability-related issues,
24 provided the Choices participant engages in problem resolution through appropriate
25 referrals for counseling and support services; or

26
27 (10) A Choices participant is a victim of family violence.

28
29 (d) A Board shall ensure that mandatory Choices participants in single-parent families caring
30 for children under age six are informed of:

31
32 (1) the penalty exception to the family work requirement, including the criteria and
33 applicable definitions for determining whether a mandatory Choices participant has
34 demonstrated an inability to obtain needed child care, as defined in subsection
35 (c)(6)(A) - (D) of this section.

36
37 (2) a Board's policy and procedures for determining a family's inability to obtain needed
38 child care, and any other requirements or procedures, such as fair hearings, associated
39 with this provision, as required by 45 C.F.R. §261.56.

40
41 (e) A Board shall ensure that good cause:

42
43 (1) is reevaluated at least on a monthly basis;

44
45 (2) is extended if the circumstances giving rise to the good cause exception are not
46 resolved after available resources to remedy the situation have been considered;

1
2 (3) that is based on the existence of family violence does not exceed a total of twelve
3 consecutive months per occurrence; and

4
5 (4) is determined separately from granting Choices participants short-term excused
6 absences from participation, as defined in §811.34(2).
7

8 **SUBCHAPTER C. CHOICES SERVICES**

9 10 **§811.21. General Provisions.**

11
12 (a) A Board shall ensure that services are available to assist Choices eligibles with obtaining
13 employment as quickly as possible and, if employed, with retaining employment. These
14 services may include:

15
16 (1) job readiness and job search-related services;

17
18 (2) work-based services;

19
20 (3) post-employment services;

21
22 (4) education and training services as described in this chapter; and

23
24 (5) support services.
25

26 (b) A Board shall ensure that employment and training activities are conducted in compliance
27 with the Fair Labor Standards Act (FLSA) as specified in §811.29.
28

29 (c) A Board shall ensure that placement in work-based services does not result in the
30 displacement of currently employed workers or impair existing contracts for services or
31 collective bargaining agreements.
32

33 (d) A Board shall ensure that job development services identify, at a minimum, job openings
34 for current mandatory Choices participants.
35

36 **§811.26. Special Provisions Regarding Community Service.**

37
38 (a) Choices participants, with the exception of those described in §811.30 and §811.33, who
39 are not in an employment activity, must be placed into community service after four
40 weeks of enrollment in Choices. Choices participants who are not in an employment
41 activity after reaching their hourly limit per 12-month period, as set forth in §811.27, in
42 job search and job readiness activities must be placed into community service. An
43 employment activity is defined as:

44
45 (1) unsubsidized employment, as described in §811.42;
46

1 (2) subsidized employment, as described in §811.43;

2
3 (3) on-the-job training, as described in §811.44; or

4
5 (4) work experience, as described in §811.45.

6
7 (b) Choices participants required to participate in a community service activity must be
8 scheduled to participate no less than the minimum weekly average hours calculated as
9 specified in §811.21(b).

10
11 (c) Exempt Choices participants are not subject to the requirements set forth in subsection (a)
12 of this section.

13
14 **§811.27. Special Provisions Regarding Job Search and Job Readiness.**

15
16 (a) Choices participants in unsubsidized employment as defined in §811.42, who lose that
17 employment, may participate in job search activities as defined in §811.41(c) and job
18 readiness activities as defined in §811.41(d) unless they have reached the 120- or 180-
19 hour limit per 12-month period set forth in subsection (b)(2) of this section.

20
21 (b) Job search and job readiness activities as defined in §811.41 are limited as follows:

22
23 (1) Choices participants may not be enrolled for more than four weeks of consecutive
24 activity;

25
26 (2) Choices participants may not be enrolled for more than:

27
28 (A) 120 hours per 12-month period for single parents with a child under age six; and

29
30 (B) 180 hours per 12-month period for all other Choices eligibles; and

31
32 (3) After four consecutive weeks of participation in job search and job readiness
33 activities, Choices participants are not eligible for additional participation in job
34 search and job readiness activities until they have complied with §811.26(a), which
35 requires that Choices participants be engaged in an employment activity or in
36 community service.

37
38 (c) A Board may count a partial week (i.e., three or four days) of participation in job search
39 and job readiness activities as a full week of participation only once for any Choices
40 participant in a 12-month period.

41
42 **§811.29. Special Provisions Regarding the Fair Labor Standards Act.**

43
44 (a) A Board shall ensure that employment and training activities are conducted in compliance
45 with FLSA as follows.

1 (1) The amount of time per week that a Choices participant may be required to
2 participate in activities that are not exempt from minimum wage and overtime under
3 FLSA shall be determined by the TANF cash assistance and Food Stamp benefits
4 amount being divided by the minimum wage, so that the amount paid to the Choices
5 participant is equal to or more than the amount required for payment of wages,
6 including minimum wage and overtime; or
7

8 (2) The amount of time per week that a sanctioned family or conditional applicant may
9 be required to participate in activities that are not exempt from minimum wage and
10 overtime under FLSA shall be determined by the Food Stamp benefits amount being
11 divided by the minimum wage, so that the amount paid to the sanctioned family is
12 equal to or more than the amount required for payment of wages, including minimum
13 wage and overtime; and
14

15 (3) If a Board provides activities that meet all of the following categories, the activity is
16 considered training under FLSA and minimum wage and overtime are not required:
17

18 (A) The training is similar to that given in a vocational school;
19

20 (B) The training is for the benefit of the trainees;
21

22 (C) The trainees do not displace regular employees;
23

24 (D) The employers derive no immediate advantage from trainees' activities;
25

26 (E) The trainees are not entitled to a job after training is completed; and
27

28 (F) The employers and trainees understand that trainees are not paid.
29

30 (b) The number of hours that a Choices participant is required to participate in community
31 service or another unpaid work activity shall be determined in compliance with FLSA as
32 described in subsection (a) of this section. If a Choices participant's hours of community
33 service or other unpaid work activity are not sufficient to meet the core work activity
34 requirement as set forth in §811.25(b) - (d), the Choices participant shall be enrolled in
35 additional non-FLSA-covered core activities.
36

37 **§811.34. Participation Provisions.** 38

39 A Board shall count only actual hours of participation in TANF core and non-core activities
40 as allowable work participation hours with the following exceptions, unless otherwise
41 specified in this chapter:
42

43 (1) For paid work activities set forth in §§811.42 - 811.44, Boards may count paid
44 holidays or other paid leave as actual participation hours.
45

1 (2) For unpaid work activities set forth in §811.41 and §§811.45 - 811.50, Boards may
2 count short-term excused absences as actual participation if they meet the following
3 conditions:

4
5 (A) A short-term excused absence:

6
7 (i) is because of a holiday; or

8
9 (ii) totals a maximum of 80 additional hours within a 12-month period and does
10 not exceed 16 hours of excused absences per month.

11
12 (B) The Choices participant must have been scheduled to participate in an unpaid
13 work activity during the time period in which the holiday or excused absence
14 falls. Boards shall ensure credited participation hours do not exceed the number
15 of hours the Choices participant was scheduled to participate.

16
17 (3) A Board may project participation hours in unsubsidized employment (except self-
18 employment), subsidized employment, and on-the-job training, up to six months at a
19 time, using an average of four weeks of current, verified, and documented actual
20 hours. For self-employment, a Board:

21
22 (A) may project participation hours in self-employment, up to six months at a time,
23 using an average of three months of current, verified, and documented actual
24 hours.

25
26 (B) may not count more hours toward the work participation rate for self-employed
27 Choices participants than the number derived by dividing the Choices
28 participant's net self-employment income (gross self-employment wages minus
29 business expenses) by the federal minimum wage.

30
31 **SUBCHAPTER D. CHOICES WORK ACTIVITIES**

32
33 **§811.41. Job Search and Job Readiness Assistance.**

34
35 (a) Job search and job readiness are core activities as defined in §811.25(a)(1).

36
37 (b) A Board shall ensure that job search and job readiness activities:

38
39 (1) incorporate the following:

40
41 (A) individual and group activities;

42
43 (B) staff-assisted services in which Texas Workforce Center staff provide direction
44 and guidance to Choices participants, including appropriate referrals based on
45 their skills and abilities to pre-scheduled job interviews; and preparatory
46 activities that are essential to obtaining and retaining employment; and

- 1
2 (C) customer-directed activities that do not require direct staff involvement, and
3 include activities in which Choices participants independently identify
4 employment opportunities based upon their employment strengths, and perform
5 preparatory activities that are essential to obtaining and retaining employment.
6
7 (2) are limited to activities necessary for Choices participants to secure immediate
8 employment.
9
10 (3) provide individual assistance or coordinated, planned, and supervised activities that
11 prepare Choices participants for seeking employment.
12
13 (c) Job search activities are defined as acts of seeking and obtaining employment, including:
14
15 (1) job referrals;
16
17 (2) information on available jobs;
18
19 (3) occupational exploration, including information on local emerging and demand
20 occupations;
21
22 (4) job fairs;
23
24 (5) applying or interviewing for job vacancies; and
25
26 (6) making contacts with potential employers.
27
28 (d) Job readiness activities are designed to assist Choices participants with addressing issues
29 that will aid them in seeking, obtaining, and retaining employment, including:
30
31 (1) life skills;
32
33 (2) guidance and motivation for development of positive work behaviors necessary for
34 the labor market;
35
36 (3) job skills assessment;
37
38 (4) substance abuse treatment, mental health treatment, and rehabilitation activities, if
39 the need for treatment and therapy activities is documented by a qualified medical,
40 substance abuse, or mental health professional;
41
42 (5) job counseling;
43
44 (6) interviewing skills and practice interviews; and
45
46 (7) assistance with applications and resumes.

1
2 (e) Job search and job readiness activities are time-limited as defined in §811.27.
3

4 **§811.43. Subsidized Employment.**
5

6 (a) Subsidized employment is a core activity as defined in §811.25(a)(1).
7

8 (b) Subsidized employment is full-time or part-time employment that is subsidized in full or
9 in part and complies with this section. Subsidized employment may occur in either the
10 private sector or public sector. A Board shall not be the employer of record for Choices
11 participants enrolled in a subsidized employment activity. Subsidized employment
12 includes but is not limited to the following:
13

14 (1) subsidized internship with a portion of the Choices participant's wages subsidized;

15 (2) subsidized employment with a staffing agency acting as the employer of record; and

16 (3) subsidized employment with the actual employer acting as the employer of record.
17

18 (c) Wages.
19

20 (1) Wages shall be at least federal or state minimum wage, whichever is higher.
21

22 (2) Employers must provide the same wages and benefits to subsidized employees as for
23 unsubsidized employees with similar skills, experience, and position.
24

25 (d) Boards shall ensure subsidized employment placements prepare and move Choices
26 participants into unsubsidized employment.
27

28 (e) Boards shall ensure subsidized employment placements are allotted to employers who
29 expect to retain Choices participants as regular unsubsidized employees once the
30 subsidized placement has ended, unless successful completion of the placement is
31 expected to result in unsubsidized employment with a different employer.
32
33
34

35 **§811.44. On-the-Job Training.**
36

37 (a) On-the-job training is a core activity as defined in §811.25(a)(1).
38

39 (b) A Board shall ensure that a determination is made on a case-by-case basis whether to
40 authorize, arrange, or refer a Choices participant for subsidized, time-limited training
41 activities, to assist the Choices participant with obtaining knowledge and skills that are
42 essential to the workplace while in a job setting. On-the-job training is training by an
43 employer that is provided to a Choices participant on or off the work site while engaged
44 in productive work in a job that:
45

- 1 (1) provides knowledge or skills essential to the full and adequate performance of the
2 job;
3
- 4 (2) provides reimbursement to the employer of a percent of the wage rate of the Choices
5 participant for the extraordinary costs of providing the training and additional
6 supervision related to the training;
7
- 8 (3) is limited in duration as appropriate to the occupation for which the Choices
9 participant is being trained, taking into account the content of the training, the prior
10 work experience of the Choices participant, and the service strategy of the Choices
11 participant, as appropriate; and
12
- 13 (4) includes training specified by the employer.
14
- 15 (c) Unsubsidized employment after satisfactory completion of the training is expected. A
16 Board shall not contract with employers who have previously exhibited a pattern of
17 failing to provide Choices participants in on-the-job training with continued long-term
18 employment, which provides wages, benefits, and working conditions that are equal to
19 those that are provided to regular employees who have worked a similar length of time
20 and are doing a similar type of work.
21
- 22 (d) Boards shall ensure on-the-job training placements are allotted to employers who expect
23 to retain Choices participants as regular unsubsidized employees once the on-the-job
24 training placement has ended, unless successful completion of the placement is expected
25 to result in unsubsidized employment with a different employer.
26

27 **§811.45. Work Experience.**
28

- 29 (a) Work experience is a core activity as defined in §811.25(a)(1).
30
- 31 (b) A Board shall ensure that a determination is made on a case-by-case basis whether to
32 authorize, arrange, or refer Choices participants for unsalaried, work-based training
33 positions to improve the employability of Choices participants who have been unable to
34 find unsubsidized employment.
35
- 36 (c) A Board shall ensure that all Choices participants who are unemployed after completing
37 job search services are evaluated on an individual basis to determine if enrollment in work
38 experience shall be required, based on available resources and the local labor market.
39
- 40 (d) A Board shall ensure that each work experience placement:
41
- 42 (1) is time-limited;
43
- 44 (2) is designed to move Choices participants quickly into regular employment; and
45
- 46 (3) has designated hours, tasks, skills attainment objectives, and daily supervision.

- 1
2 (e) A Board shall ensure that entities that enter into nonfinancial agreements with a Board,
3 identify work experience positions and provide job training and work experience within
4 their organization. These positions shall enable Choices participants to gain the skills
5 necessary to compete for positions within the entity as well as positions in the labor
6 market.
7

8 **§811.46. Community Service.**
9

- 10 (a) Community service is a core activity as defined in §811.25(a)(1).
11
12 (b) A Board shall ensure that a determination is made, on a case-by-case basis, whether to
13 authorize, arrange, or refer Choices participants to a community service program that
14 provides employment or training activities to Choices participants through unsalaried,
15 work-based positions in the public or private nonprofit sectors. A Board shall not allow
16 Choices participants to arrange their own community service placements. A Board shall
17 ensure community service programs contain structured, supervised activities that are a
18 direct benefit to the community and are designed to improve the employability of Choices
19 participants who have been unable to find employment.
20
21 (c) A Board shall ensure that all mandatory Choices participants subject to §811.26(a) are
22 referred to a community service program.
23
24 (d) Community service positions may include, but are not limited to, work performed in:
25
26 (1) a school or Head Start program;
27
28 (2) a church;
29
30 (3) a government or nonprofit agency; or
31
32 (4) Americorps, VISTA, or other volunteer organizations.
33
34 (e) A Board shall ensure community service placements are limited to positions that serve a
35 useful community purpose in fields such as health, social service, environmental
36 protection, education, urban and rural redevelopment, welfare, recreation, public facilities,
37 public safety, and child care.
38

39 **§811.48. Vocational Educational Training.**
40

- 41 (a) Vocational educational training is a core activity as defined in §811.25(a)(1).
42
43 (b) A Board shall ensure that a determination is made, on a case-by-case basis, whether to
44 authorize, arrange, or refer Choices participants for vocational educational training.
45
46 (c) The vocational educational training shall:

- 1
- 2 (1) prepare Choices participants for a specific trade, occupation, or vocation that requires
- 3 training other than a baccalaureate or advanced degree;
- 4
- 5 (2) include activities that provide Choices participants with the knowledge and skills to
- 6 perform a specific trade, occupation, or vocation;
- 7
- 8 (3) relate to current or emerging occupations;
- 9
- 10 (4) be consistent with employment goals identified in the family employment plan, when
- 11 possible;
- 12
- 13 (5) be provided only if there is an expectation that employment will be secured upon
- 14 completion of the training;
- 15
- 16 (6) be subject to the time limitations as detailed in this subchapter; and
- 17
- 18 (7) be provided by education or training organizations, including but not limited to,
- 19 vocational or technical schools, community colleges, postsecondary institutions,
- 20 career schools and colleges, nonprofit organizations, and secondary schools offering
- 21 vocational education.
- 22

23 **§811.49. Job Skills Training.**

- 24
- 25 (a) Job skills training is a non-core activity as defined in §811.25(a)(2).
- 26
- 27 (b) Job skills training services are designed to increase a Choices participant's employability.
- 28 Job skills training may also include activities ensuring that Choices participants become
- 29 familiar with workplace expectations and exhibit work behavior and attitudes necessary to
- 30 compete successfully in the labor market. Various types of activities, which are directly
- 31 related to employment, may qualify, such as personal development and preemployment
- 32 classes.
- 33
- 34 (c) A Board shall ensure that a determination is made on a case-by-case basis whether to
- 35 authorize, arrange, or refer Choices participants for job skills training as set forth in the
- 36 family employment plan.
- 37
- 38 (d) Job skills training shall be:
- 39
- 40 (1) directly related to employment; and
- 41
- 42 (2) consistent with employment goals identified in the family employment plan, when
- 43 possible.
- 44
- 45 (e) Job skills training includes:
- 46

- 1 (1) language instruction or literacy instruction;
- 2
- 3 (2) entrepreneurial training provided prior to business start up; and
- 4
- 5 (3) self-employment assistance:
- 6
- 7 (A) for Choices participants currently engaged in operating a small business;
- 8
- 9 (B) for Choices participants based upon an objective assessment process that
- 10 identifies Choices participants who are likely to succeed; and
- 11
- 12 (C) that may include microenterprise services such as:
- 13
- 14 (i) business counseling;
- 15
- 16 (ii) financial assistance; and
- 17
- 18 (iii) technical assistance.
- 19

20 **§811.50. Educational Services for Choices Participants Who Have Not Completed**
21 **Secondary School or Received a General Educational Development Credential.**

- 22
- 23 (a) Educational services, which are non-core activities as defined in §811.25(a)(2), are only
- 24 available for Choices participants who have not completed secondary school or who have
- 25 not received a GED credential.
- 26
- 27 (b) A Board shall ensure that a determination is made, on a case-by-case basis, whether to
- 28 authorize, arrange, or refer Choices participants who are age 20 and older for the
- 29 following educational or other training services:
- 30
- 31 (1) secondary school, as defined in §811.2(13), when required as a prerequisite for
- 32 employment;
- 33
- 34 (2) Adult Basic Education (ABE), language instruction, or literacy instruction; or
- 35
- 36 (3) other educational activities which are directly related to employment.
- 37
- 38 (c) A Board shall ensure educational services related to employment directly provide
- 39 education, knowledge, and skills for specific occupations, work settings, jobs, or job
- 40 offers.
- 41

42 **§811.51. Post-Employment Services.**

- 43
- 44 (a) A Board shall ensure that post-employment services, which include job retention, career
- 45 advancement, and reemployment services, are offered to Choices participants who are
- 46 employed, and to applicants, conditional applicants, and former recipients who have

1 obtained employment but require additional assistance in retaining employment and
2 achieving self-sufficiency.

3
4 (b) A Board shall ensure that post-employment services are monitored, and ensure that hours
5 of employment are required and reported by Choices participants for at least the length of
6 time the Choices participants receive TANF cash assistance.

7
8 (c) A Board shall ensure that ongoing contact is established with Choices eligibles receiving
9 post-employment services at least monthly.

10
11 (d) A Board may include mentoring techniques as part of a post-employment strategy.

12
13 (e) The post-employment services may include the following:

14
15 (1) assistance and support for the transition into employment through direct services or
16 referrals to resources available in the workforce area;

17
18 (2) child care, if needed, as specified in rules at Chapter 809 of this title;

19
20 (3) work-related expenses, including those identified in §811.64;

21
22 (4) transportation, if needed;

23
24 (5) job search, job placement, and job development services to help a former recipient
25 who loses a job to obtain employment;

26
27 (6) referrals to available education or training resources to increase an employed Choices
28 eligible's skills or to help the individual qualify for advancement and long-term
29 employment goals;

30
31 (7) additional career planning and counseling; or

32
33 (8) referral to support services available in the community.

34
35 (f) The maximum length of time a former recipient, conditional applicant, and sanctioned
36 family may receive services under this section is dependent upon:

37
38 (1) family circumstances;

39
40 (2) the risk of returning to public assistance. A person is considered at risk of returning
41 to TANF cash assistance if he or she is a food stamp recipient, or receives
42 Commission-funded child care;

43
44 (3) the ongoing need for these services; and

45
46 (4) the availability of funds for these services.

- 1
2 (g) Post-employment service providers may include employers, community colleges,
3 technical colleges, career schools and colleges, faith-based and community-based
4 organizations.
5

6 **SUBCHAPTER E. SUPPORT SERVICES AND OTHER INITIATIVES**
7

8 **§811.64. Work-Related Expenses.**
9

- 10 (a) If other resources are not available, work-related expenses necessary for Choices
11 individuals to accept or retain specific and verified job offers that pay at least the federal
12 minimum wage may be provided or reimbursed.
13

- 14 (b) Work-related expenses may include: tools, uniforms, equipment, transportation, car
15 repairs, housing or moving expenses, and the cost of vocationally required examinations
16 or certificates.
17