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**Part XX. Texas Workforce Commission****Chapter 800. General Administration**

## Subchapter B. Allocations and Funding

**40 TAC §800.56**

The Texas Workforce Commission (the Commission) proposes amendments to §800.56, concerning allocation of child care funds to local workforce development areas (workforce areas).

The purpose of the amendments is to allow local workforce development boards (Boards) to have more flexibility in the use of funds at the local level. It is the Commission's intent to allocate funds to workforce areas for the purpose of meeting and exceeding statewide performance measures as set forth in the state's General Appropriations Act.

The amendments set forth the provisions for budgeting and expending funds for the different types of child care clients to the extent permitted by statutory and regulatory provisions related to the funding sources.

The Commission is committed, when possible, to allocating an amount of funds available for workforce training and services greater than the minimum level set by law.

The specific amount of funds available for allocation to workforce areas will be determined during the Commission's budgetary process. The amendments are designed to be responsive to the needs of workforce areas, changes in state and federal laws and regulations, and issues that may arise in the further management of workforce training and services by the Commission through the Boards.

The proposed rule amendments specify the method the Commission will employ in carrying out the allocation of funds to the workforce areas and the use of those funds for certain child care.

The child care services are provided under Texas Human Resources Code Chapter 44.

Another purpose of the amendments is to utilize the federal poverty level indicators instead of the state median income levels as the mechanism for targeting At-Risk children for child care services in areas of desperate need.

The language in §800.56(c) and (f) is changed from "75% of the state median income" to "150% of the federal poverty guidelines."

The "federal poverty guidelines" are formally referenced as "the poverty guidelines updated annually in the *Federal Register* by the U.S. Department of Health and Human Services under authority of §673(2) of the Omnibus Budget Reconciliation Act of 1981."

The "state median income" is published in the 1990 US Census Data, which contains the 1989 median family income data.

The use of the 75% of the state median income level instead of 150% of the federal poverty guidelines to determine allocations to local workforce development areas results in a shifting of funds away from areas of the state that have substantial numbers of children living below or near the poverty level. Use of the state median income level instead of the federal poverty guidelines could result in parents leaving employment to care for children or having to leave their children in unsafe situations, such as unsupervised care, in order to maintain employment.

If a Board fails to comply with the provisions contained in the rule, the Board shall be subject to the sanctions as detailed in Texas Administrative Code, Title 40, Chapter 800, Subchapter E. Sanctions.

The Commission has scheduled a public hearing on the proposed rule for 1:30 PM. on November 20, 1998 in Room 644 of the TWC Building at 101 East 15th Street in Austin, Texas.

Randy Townsend, Director of Finance, has determined that for each year of the first five years the amendments will be in effect the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rule;

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule;

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule;

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rule; and

There are no anticipated economic costs to persons required to comply with the rule.

Sandra Smith, Acting Director of Child Care/Work and Family Clearinghouse, has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help ensure a more effective use of child care funds to assist Boards in supporting employment, training, and education.

Mr. Townsend has also determined that there is no anticipated adverse impact on small businesses as a result of enforcing or administering the rule because small businesses are not regulated by or required to do anything by this rule.

Comments on the proposal may be submitted to Sandra Smith, Acting Director of Child Care/Work and Family Clearinghouse, Texas Workforce Commission Building, 101 East 15th Street, Room 526BT, Austin, Texas 78778, (512) 463-2692. Comments may also be submitted via fax to (512) 463-2220 or e-mailed to: Sandra.Smith@twc.state.tx.us. Comments must be received by the Commission within 30 days from the date of the publication in the *Texas Register*.

The amendments are proposed under Texas Labor Code, Title 4, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission programs.

The amendments affect Texas Labor Code, Chapter 302, particularly §302.002, and Texas Human Resources Code, Chapters 31 and 44.

*§800.56. Child Care Services.*

(a)-(b)

(No change.)

(c)

For At-Risk child care, funds will be allocated among workforce areas on the basis of:

(1) the relative proportion of the total number of children aged 0-12 years in families at or below 150% of the federal poverty guidelines [~~75% of the state median income~~] residing within the workforce area to the statewide total number of children aged 0-12 years in families at or below 150% of the federal poverty guidelines [~~75% of the state median income~~], and

(2) an adjustment for average net unit rates for At-Risk child care.

(d) For Food Stamp Employment and Training child care, funds allocated for Food Stamps Employment and Training child care shall only be used for Food Stamp Employment & Training clients, and will be allocated among workforce areas on the basis of:

(1) the relative proportion of the total number of children aged 6-12 years in households of mandatory food stamp work registrants residing within the workforce area to the statewide total number of children aged 6-12 years in households of mandatory food stamp work registrants, and

(2) an adjustment for average net unit rates for Food Stamp Employment and Training child care.

(e) (No change.)

(f) For locally matched initiatives for child care and quality improvements, funds will be allocated among workforce areas on the basis of the relative proportion of children aged 0-12 years in families at or below 150% of the federal poverty guidelines [~~75% of the state median income~~] residing within the workforce area to the statewide total of children aged 0-12 years in families at or below 150% of the federal poverty guidelines [~~75% of the state median income~~].

(g)-(j) (No change.)

(k) The funds allocated in subsections (b), (c), (e), and (g)-(j) of this section may be budgeted for and expended on child care services and management expenses at the Board's discretion provided that the following requirements are met.

(1) The Boards shall use no more than 5% of the total expenditure of the funds referenced in subsection (k) of this section for administrative costs as defined in federal regulations contained in 45 Federal Register 39989, §98.52 and as may be amended.

(2) The Boards shall use at least 4% of the total expenditure of the funds referenced in subsection (k) of this section for activities to improve the quality of child care as defined in federal regulations contained in 45 Federal Register 39989 and as may be amended. At the Board's discretion, more than 4% of the expenditures may be for these activities.

(3) Transitional clients who are eligible for child care for their children and Choices clients who are eligible for child care for their children shall be served on a priority basis, to enable parents to participate in work, education, or training activities.

(4) The Board shall comply with all terms and additional requirements for specific expenditures that may be contained in the Board contract.

(5) The Boards shall use all funds allocated in subsections (b), (c), (e), and (g)-(h) of this section for direct care services, including quality improvements. If there is a desire to transfer funds from these allocations for operational or administrative costs, the Board may only make such a transfer if there is a proportionate increase of the number of children receiving child care services as a result of the transfer.

(6) The Board shall advise the Commission in writing within 30 days of any transfer of allocations of funds as a result of provisions in this section.

(l) Additional funds, as allocated in subsection (f) of this section, are available for use if they are matched by local funds. Both the state allocation of federal funds and the local funds are subject to the provisions in paragraphs (1)-(4) of subsection (k) of this section. The local match may be in the form of cash donations or, for donations from public entities, certification of the public entity's expenditures. The rate of required match changes annually through federal regulations and will be specified in the Board contract.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on October 9, 1998.

TRD-9815896

J. Ferris Duhon

Assistant General Counsel

Texas Workforce Commission

Earliest possible date of adoption: November 22, 1998

For further information, please call: (512) 463-8812

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