

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART XX. Texas Workforce Commission

CHAPTER 809. Child Care and Development

The Texas Workforce Commission (TWC) proposes the repeal of §§809.1-809.20, 809.22-809.39, 809.41-809.53, 809.55, 809.57-809.58, 809.60-809.65, 809.67-809.88, and new §§809.1-809.4, 809.21-809.33, 809.41-809.48, 809.61-809.78, 809.81-809.92, 809.101-809.111, 809.121-809.124, and 809.141-809.155, concerning Child Care and Development Preamble.

The repeal and new rules will include the permanent repeal of some sections; the renumbering of the remaining sections into new subchapters; technical changes to some sections; changes to other sections; and new sections not previously in existence. Note: Several of the proposed new rules contain only minor changes from the existing language. However, due to the re-numbering of some of these rules, the Texas Register requires the TWC to repeal and replace as new these existing rules. Specifically, the Texas Workforce Commission (Commission) proposes the following:

Rules to be Repealed: The repeal of §§809.1, 809.10, 809.57, 809.63, 809.64, 809.79, and 809.80 reflects a reduction in the number of eligibility rules and significant changes in the federal law, §418(a) of the Social Security Act, 42 USC 9858 (The Child Care and Development Block Grant Act of 1990), as amended, and proposed changes to 45 CFR Parts 98 and 99. The eligibility criteria for child care services funded by Child Care and Development Block Grant, Food Stamp Employment and Training and Title XX has been combined into one rule which deals with all child care funding sources, §809.13; the allowable services during interruptions to education or training activities has been combined with another section, §809.73, that addresses interruptions to employment activities; the determination of family members for child care services has been added to definitions, §809.2. The repeal of §809.1 concerns the documentation of client eligibility required by a contractor in order to receive payment for services. This requirement is covered in §§809.28, 809.84 and §809.111. The repeal of §809.10 concerns the requirements for insurance coverage for Child Care Management System (CCMS) contractors. The requirement for insurance will be added to the language of the CCMS contracts, eliminating the necessity of a rule.

Renumbering of the Remaining Rules. See Figure 1: 40 TAC §§809.1-809.155 Preamble.

New Subchapters--The new sections will regroup rules and incorporate new rules into the following subchapters: A. General Provisions, B. Contractor Requirements, C. Child Care Provider Requirements, D. Client Eligibility Requirements, E. Client Eligibility Process Requirements, F. Billing and Payment Requirements, G. Program Monitoring and Compliance Requirements, H. Corrective/Adverse Actions.

Rules Containing Technical Changes: The renumbered rule will incorporate proposed technical changes to §§809.22-809.31, 809.33, 809.43-809.47, 809.61-809.63, 809.66, 809.69-809.71, 809.81-809.83, 809.85-809.86, 809.88, 809.90-809.92, 809.101-809.109, 809.111, 809.121-809.124, 809.141-809.142, 809.144-809.147, 809.149-809.150, and 809.154. The technical changes include changing references from the Texas Department of Human Services (DHS) to the Commission; from Aid to Families with Dependent Children (AFDC) to Temporary Assistance to Needy Families (TANF); from JOBS funded child care to Temporary Assistance to Needy Families (TANF); Employment Services and from the JOBS program to the Commission's Employment Program for Temporary Assistance to Needy Families (TANF) Recipients. The change incorporated into new §809.109 uses less confusing language to discuss payments to parents who arrange child care outside of the CCMS system of vendors. The renumbering also incorporates cross-references to section numbers and section titles and the use of the term title in place of title where appropriate.

Rules Containing changes: The renumbered rules will incorporate proposed changes to §§809.21, 809.41, 809.42, 809.48, 809.64, 809.65, 809.67, 809.68, 809.72, 809.73, 809.74, 809.75, 809.76, 809.84, 809.87, 809.89, 809.110, 809.151, 809.152, and 809.155. These changes reflect changes in the federal law (the "Personal Responsibility and Work Opportunity Act of 1996", P.L. 104-193) regarding funding sources, changes in eligibility criteria, and the consolidation of former eligibility rules into fewer sections (§809.65). The eligibility changes also include new income limits (§809.67); clarification of income inclusions (§809.68); eligibility of children in care when a local workforce development board assumes management responsibilities of child care services (§809.87); and time limits for education or training-related child care. The change to § 809.73 distinguishes between education and training time limits and allows clients the option of obtaining the limit for education hours over a longer period of time. Education entities allow individuals to enroll part time in pursuing an education. Training entities only offer full time programs. CCMS contractors are now able to find part time care. The changes to §809.72 concerns child care allowed during interruptions to employment, education, or training activities. The change reflects changes in federal law, the "Personal Responsibility and Work Opportunity Act of 1996." Section 809.89 puts current policy into the rule base concerning the assessment of parent fees for pre-kindergarten extended day child care programs. A change at §809.42 adds military-operated facilities as eligible providers of care and clarifies current policies about transportation insurance. A change at §809.48 emphasizes that the criteria used in the Designated Vendor Program are voluntary. Changes at §§809.41, 809.151 and §809.152 add other relatives now allowed by the federal government as care providers. A change at §809.75 adjusts the time limit for appealing decisions to reflect the new hearing rules proposed for TWC. The change at §809.76 notes changes in education that must be reported. A change at §809.106 allows TWC to adjust local market rates to reflect the actual cost of care in a geographic area in which a substantial number of child care providers charge a rate that is less than the actual cost of providing care. A change at §809.155 introduces new language concerning the hearing process at TWC.

New Rules: The renumbered rules will incorporate new subsections in §§809.1, 809.2, 809.3, 809.4, 809.32, 809.77, 809.78, 809.143, 809.148, and §809.153. New §809.2 incorporates TWC rule policies and defines terms used in the sections in Title 809. New §809.3 and §809.4 specify the role that Local Workforce Development Boards have in providing planning, oversight and evaluation of the child care program based on the child care recommendations approved by the Commissioners and the process Boards must use in establishing new child care eligibility criteria. New §809.32 addresses the child care training program and the Commission's commitment to incorporate in that program materials developed as part of the proposed career development system. New §809.77 establishes what is meant by "receipt" of a document. New §809.143 better enables TWC to prevent entities cited in serious non-compliance with other programs from doing business with TWC, TWC contractors or TWC subcontractors. New §809.148 defines those situations that warrant recovery of overpayment of funds. New §809.153 establishes the consequences to parents, caretakers, vendors and providers considered to have committed fraud as defined in current §809.151 and §809.152. New §809.78 requires that parents sign a parent responsibility agreement, if they have not signed one as a requirement to receive TANF benefits, as part of the child care enrollment process. This agreement references cooperation with child support enforcement, and consequences of parental substance or alcohol abuse and non-regular school attendance of the parents' children under 18 years of age. The TWC also seeks comments concerning appropriate sanctions for parents who do not comply with the parent responsibility agreement.

The TWC is also contemplating future changes to child care parent fee policies and welcomes comments about alternative ways to structure sliding fee scales. In addition, the TWC seeks comments about involvement of Local Workforce Development Boards in establishing policies for parent fees and provider payment rates.

Mark Hughes, Labor Market Information Department, has determined that §809.3 could result in a shift of some employment from the public sector to the private sector but that the Labor Market Information Department has no basis to believe that this proposed section change would have any significant overall impact upon employment conditions in the state.

Randy Townsend, Director of Finance, has determined that for the first five-year period the sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal or the new rules of these sections.

Charlotte Brantley, Director of the Child Care/Work & Family Clearinghouse Department, has determined that for each year of the first five years these sections are in effect, the public benefit anticipated as a result of enforcing the sections will be greater ease in finding specific rules by grouping them under subchapter titles; elimination of rule content duplication; consolidation of eligibility funding rules; clarification regarding how the changes in federal law affect the child care program; and consistency between rules and current policy.

Randy Townsend, Director of Finance, has also determined there will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed or costs associated with implementing these sections.

Comments on the proposed sections may be submitted to Shelley Bjorkman, Child Care Specialist, Child Care/Work & Family Clearinghouse Department, 101 East 15th Street, Room 416T, Austin, Texas 78778. A 30-day comment period and public hearings will be held to receive and discuss comments from the public and to facilitate the exchange of information with interested parties regarding the proposed rules. Locations for the hearings are as follows: Child Care Public Hearings will be held on June 20, 1997 in Fort Worth, Texas 6:30 p.m. - 8:30 p.m., Radisson Plaza Hotel, 815 Main Street, (817) 870-2100; June 23, 1997 in El Paso, Texas, 12:00 noon - 2:00 p.m., Ysleta I.S.D., 9600 Sims, (915) 595-5511; June 24, 1997 in Lockhart, Texas, 4:00 p.m. - 7:00 p.m., Lockhart City Hall, Glosserman Room, 308 W. San Antonio, (512) 398-2461 x 221; and June 23, 1997 in Beaumont, Texas, 10:30 a.m. - 12:30 p.m., Beaumont Hilton, 2355 IH 10 South, (409) 842-3600.

For a breakdown of the new rules which incorporate the changes, requests should be sent to Ms. Bjorkman at the address previously listed, or may be submitted by telephone to (512) 936-3210.

40 TAC §§809.1-809.20, 809.22-809.39, 809.41-809.53, 809.55, 809.57-809.58, 809.60-809.65, 809.67-809.88

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Texas Labor Code, §301.061 and §302.021, which provides that the Texas Workforce Commission shall administer child care services provided in the Human Resources Code, Chapter 44 and will authorize the Commission to adopt, amend or rescind such rules as it deems necessary for the effective administration of the Act.

The repeals affect Texas Human Resources Code, Chapter 44, Texas Labor Code, Chapter 302, and Texas Government Code, Chapter 2308.

§809.1. Authorized Payment Documentation.

§809.2.Child Care Management Services (CCMS) Contractor.
§809.3.Child Care Management Services (CCMS) Child Care Advisory Council.
§809.4.Funding for Child Care Management Services (CCMS).
§809.5.Assessing Needs and Resources.
§809.6.Requirements for Child Care Management Services (CCMS) Subcontracts.
§809.7.Vendor Recruitment.
§809.8.Child Care Management Services (CCMS) Contractor's Provision of Training and Technical Assistance to Vendors.
§809.9.Child Care Management Services (CCMS) Staff Requirements.
§809.10.Child Care Management Services (CCMS) Insurance Requirements.
§809.11.Intake.
§809.12.Basic Eligibility Requirements To Obtain Child Care Services from the Child Care Management Services (CCMS) System.
§809.13.Eligibility for Title IV-A Funded Child Care Services.
§809.14.Exceptions to Eligibility.
§809.15.Waiting Lists.
§809.16.Child Care for Abused and Neglected Children.
§809.17.Evaluation of a Parent's Need for Child Care.
§809.18.Child Care During Employment Interruption.
§809.19.Job Opportunities and Basic Skills Training (JOBS) Child Care While Waiting To Enter an Approved Initial JOBS Component.
§809.20.Job Opportunities Basic Skills (JOBS) Child Care During On-the-Job Training (OJT).
§809.22.Sanctions.
§809.23.Time Limits for Education or Training-Related Child Care.
§809.24.Assessing Required Parent Fees.
§809.25.Reduction of Assessed Parent Fees.
§809.26.Vendor Payment Based on Child Care Enrollment.
§809.27.Inclusion Plan Requirements for Children with Disabilities.
§809.28.Attendance Requirements.
§809.29.Termination of Enrollment Due to Excessive Absences.
§809.30.Monitoring Program Compliance.
§809.31.Contract Violations and Service Improvement Agreements.
§809.32.Audits of Child Care Management Services (CCMS) Contractors.
§809.33.Basis of Payment for Child Care Management Services (CCMS) Contractor Operations Expense.
§809.34.Billing by a Child Care Management Services (CCMS) Contractor.
§809.35.Client Registration.
§809.36.Required Forms.
§809.37.Units of Service in Child Care.
§809.38.Establishment of Maximum Reimbursement Rates.
§809.39.Establishment of Individual Child Care Management Services (CCMS) Vendor Reimbursement Rates.
§809.41.Vendor Reimbursement for Transportation.
§809.42.Vendor Billing Requirements.
§809.43.Vendor Collection of Assessed Parent Fees and Child Care Subsidies.
§809.44.Parent Payments of Assessed Parent Fees and Child Care Subsidies.
§809.45.Vendor Requirements.
§809.46.Designated Vendors.
§809.47.Child Care Management Services (CCMS) Vendor Agreements and Vendor Manuals.
§809.48.Attendance over Licensed Capacity.
§809.49.Vendor Agreement Violations and Service Improvement Agreements.
§809.50.Vendors Violating Minimum Licensing Standards.
§809.51.Amendments and Renewal of Vendor Agreements.
§809.52.Parent Advisory Groups.
§809.53.Parent Payments for Self-Arranged Care.

§809.55.Waiver Requests.
§809.57.Eligibility for Food Stamp Employment and Training Related Child Care.
§809.58.Child Care Management Services (CCMS) Vendor Payments.
§809.60.Verification and Determination of Client Eligibility for Purchased Child Care Services.
§809.61.Authorization of Child Care Services.
§809.62.Priority for Intake Services.
§809.63.Eligibility for Title XX-Funded Child Care.
§809.64.Eligibility for Child Care and Development Block Grant (CCDBG) Funded Child Care.
§809.65.Self-Arranged Child Care.
§809.67.Rights of People Applying for and Receiving Child Care Services Through the Child Care Management Services (CCMS) System.
§809.68.Responsibilities of People Applying for and Receiving Child Care Services Through the Child Care Management Services (CCMS) System.
§809.69.Eligibility for Child Care Services Based on Income.
§809.70.Redetermination of Eligibility for Child Care Services.
§809.71.Provision of Child Care Services During an Appeal.
§809.72.Parent or Caretaker Fraud.
§809.73.Provider or Vendor Fraud.
§809.74.Reapplication for Vendor Status after Termination or Nonrenewal of the Vendor Agreement.
§809.75.Responsibility of the Texas Department of Human Services (DHS) for Establishing Procedures for Quality Assurance (QA) Monitoring of Child Care Management Services (CCMS) Contractors and Recoupment Based on Quality Assurance Monitoring Findings.
§809.76.Special Projects.
§809.77.Responsibilities of the Child Care Management Services (CCMS) Contractor for Recovery of Overpayment for Child Care Services.
§809.78.Responsibilities of the Child Care Management Services (CCMS) Contractor for Handling Suspected Fraud.
§809.79.Determination of Family Members in the Child Care Program.
§809.80.Child Care During Interruptions to Education or Training Activities.
§809.81.Deduction of Parent Fees and Child Care Subsidies from Child Care Management Services (CCMS) Vendor Reimbursements.
§809.82.Administrative Requirements for Child Care Management Services (CCMS).
§809.83.Citizenship and Residency Requirements To Receive Child Care Services.
§809.84.Income Inclusions for Child Care Eligibility Determination.
§809.85.Quality Assurance (QA) Performance Indicators and Standards.
§809.86.Recoupment Methodology for Administrative Costs Based on Quality Assurance (QA) Findings.
§809.87.Informal Reviews and Formal Appeals.
§809.88.Additional Transitional Child Care Eligibility Criteria.
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.
Issued in Austin, Texas, on June 11, 1997.

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Esther Hajdar

Deputy Director of Legal Services

Texas Workforce Commission

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

SUBCHAPTER A.General Provisions

40 TAC §§809.1-809.4

The new sections are proposed under Texas Labor Code, §301.061 and §302.021, which provides that the Texas Workforce Commission shall administer child care services provided in the Human Resources Code, Chapter 44 and will authorize the Commission to adopt, amend or rescind such rules as it deems necessary for the effective administration of the Act. The proposed new sections affect Texas Human Resources Code, Chapter 44, Texas Labor Code, Chapter 302, and Texas Government Code, Chapter 2308.

§809.1.Short Title and Purpose.

These rules may be cited as the Texas Child Care and Development Rules. The purpose of these rules is to interpret and implement the provisions of state and federal funding sources for child care services and child care quality improvement activities.

§809.2.Definitions.

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

Board -- Board refers to the Local Workforce Development Board as detailed in §801.1(b) of this title (relating to Requirements for Formation of Local Workforce Development Boards).

CCMS -- CCMS refers to Child Care Management Services.

CCT -- CCT refers to Child Care Training.

Child Care Management Services (CCMS) system -- The CCMS is a service delivery system used by the Commission to manage purchased child care services for eligible clients. The primary functions of a CCMS contractor are to provide client services, vendor management and financial management in a local workforce development area as defined by the Commission. The CCMS contractor also manages specific Commission quality improvement initiatives and coordinates with the Commission's Child Care Training contractor to provide training needed by CCMS vendors.

Commission -- Commission refers to the Texas Workforce Commission.

Debarment -- In accordance with Federal Executive Order 12549, an action taken by a debaring official in accordance with 45 CFR Part 76 (or comparable federal regulations) to exclude a person from participating in a covered contract. A person so excluded is "debarred."

Family Members-- Family Members include one or more of the individuals as indicated in subparagraphs (A)-(E) of this definition when determining family membership for child care services.

(A) Parent or caretaker--an adult responsible for the care and supervision of the child identified as the child's natural parent, adoptive parent, or stepparent or legal guardian.

(B) Second parent or caretaker--a second adult responsible for the care and supervision of the child identified as the child's natural parent, adoptive parent, or stepparent, or parent's spouse including common-law spouse or legal guardian.

(C) Children--children must be under 18 years of age or age 18, regularly attend high school or its equivalent full time and expect to graduate before or during the month of their 19th birthday. Children include:

(i) natural children of either or both parents or caretakers;

(ii) adopted children of either or both parents or caretakers;

(iii) children for whom either or both parents or caretakers have legal responsibility granted by the court;

(iv) children for whom either or both parents or caretakers physically provide supervision and care;

(v) children of a teen parent for whom either or both of the teen's parent are the legal guardian, or caretaker; and

(vi) children who are the siblings of either parent or caretaker and for whom either or both are legal guardian or caretaker.

(D) Teen parents or caretakers are considered as a separate family unit in the following situations:

(i) the teen is under 18 years of age and has children or siblings and as a group they live alone or with people who are not their parents, legal guardians, or caretakers;

(ii) the teen lives with her parent but is 18 years of age and has children; or

(iii) the teen lives with her parent but is under 18 years of age, is or has been married and has children.

(E) Other adults in the household are included in the household only if considered as a dependent for income tax purposes. Local workforce development area--The geographic area for which a Board, CCMS or CCT contractor provides services funded through the Commission.

Seriously deficient -- See 7 Code of Federal Regulations, Title II, Food and Consumer Service, USDA, §226.6(c).

Serious non-compliance -- Serious non-compliance used in this chapter may include but not limited to one or more of the items indicated in subparagraphs (A)-(E) of this definition.

(A) Children in care -- Children exposed to serious physical harm or injury or to substantial risk of exposure to harm or injury or children who sustained physical harm or injury.

(B) Financial -- The failure to return any advance payment owed to the contracting entity, state or federal program which exceeded the amount earned for allowable activities; overpayments owed to the state or federal program/failure to return disallowed payments; claims for services not rendered; misuse of appropriated funds; or, history of administrative or financial mismanagement. These may be found during an audit or a monitoring visit by a regulatory agency.

(C) Record keeping -- The submission of false information to any state or federal program or contracting entity; failure to keep or maintain required documentation or records; irregular or false billing statements or financial records. See §809.151 of this title (relating to Parent or Caretaker Fraud) and §809.152 of this title (relating to Provider or Vendor Fraud).

(D) Regulations -- The failure to maintain compliance with or to be in corrective or adverse action with the registration, licensing, regulatory or approval criteria and standards regarding Child Care as set forth by the following agencies: The Texas Department of Protective and Regulatory Services (TDPRS) Child Care Licensing's "Minimum Licensing Standards for Child Care Centers," "Minimum Licensing Standards for Group Day Homes," and "Minimum Registration Standards;" the Texas Department of Health's standards for youth (day) camps; and, the United States Military's standards for operating a military child care center or family day home.

(E) Other -- Such other wrongdoing or improper acts that are a violation of the laws, regulations, policies or procedures governing the conduct of a CCMS contractor, a child care provider or other party subject to this chapter.

TANF -- Temporary Assistance to Needy Families (formerly referred to as AFDC). Texas Early Care and Education Professional (Career) Development System -- This is a proposed system sponsored by the Head Start Collaboration Project (a federally funded initiative) to create a professional training and certification program for all early care and education staff in the State of Texas. Early care and education includes Head Start, public school and child care programs. The key components of the proposed system include professional standards for career roles and training; coordinated and articulated training across educational and instructional systems; and, a personnel registry and credentialing system for practitioners and trainers.

Vendor -- Vendor refers to child care providers who sign an agreement with the CCMS contractor to care for CCMS referred children.

§809.3. Board Planning, Oversight and Evaluation of Child Care Services.

(a) In implementing the provisions of House Bill 1863, 74th Legislature, 1995, the Commission has given Boards specific options regarding the planning, oversight and evaluation of the child care services program. In partnership with the Commission, the options allow the Boards to procure, renew and/or manage both the Child Care Management Services (CCMS) contracts and Child Care Training (CCT) contracts in their local workforce development area.

(b) The parameters of these options are spelled out in the Commission Board Planning Guidelines and the Commission contract with each individual Board.

(c) The Boards must have qualified staff as defined by the Commission in the Commission Board Planning Guidelines and Commission contract to conduct these activities and to ensure that the CCMS and CCT contractors are complying with the terms of their contracts, Commission rules, policies and procedures.

(d) The Board may be:

(1) substituted for the Commission in sections contained in this chapter that address activities for which the Board has assumed full responsibility; and/or

(2) included with the Commission in this title that address activities for which the Board has assumed partial and/or joint responsibility with the Commission.

(e) The Board may not be substituted for or included with the Commission in this chapter that address activities for which the Commission has sole responsibility.

§809.4. Board Procedures for Developing Additional Requirements for Child Care Services.

(a) The Boards may only develop additional requirements for child care services in those areas specified in the Board's contract with the Commission. The Board must ensure that those individuals and/or entities who will be affected by the proposed changes are notified of and given an opportunity to comment about those changes. The procedures shall, at a minimum, include:

(1) publishing the proposed changes in at least two local newspapers to ensure coverage throughout the local workforce development area;

(2) making written copies of the requirements available;

(3) having a public comment period for at least 30 days; and,

(4) holding a public hearing regarding the proposed requirements, before their adoption.

(b) The Board must demonstrate to the satisfaction of the Commission how concerns expressed as part of the procedures outlined in subsection (a) (1)-(4) of this section have been addressed prior to the Board finalizing the proposed requirements.

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.

Issued in Austin, Texas, on June 11, 1997.

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Esther Hajdar

Deputy Director of Legal Services

Texas Workforce Commission

Earliest possible date of adoption: July 21, 1997

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

SUBCHAPTER B. Contractor Requirements

40 TAC §§809.21-809.33

The new sections are proposed under Texas Labor Code, §301.061 and §302.021, which provides that the Texas Workforce Commission shall administer child care services provided in the Human Resources Code, Chapter 44 and will

authorize the Commission to adopt, amend or rescind such rules as it deems necessary for the effective administration of the Act.
The proposed new sections affect Texas Human Resources Code, Chapter 44, Texas Labor Code, Chapter 302, and Texas Government Code, Chapter 2308.

§809.21. Child Care Management Services (CCMS) Contractor.

(a) CCMS contractors must be stable, efficient, financially sound entities whose staff exhibit an understanding of child care including its purchase from other vendors.

(b) Criteria for these requirements are stated in the competitive procurement packages provided by the Commission.

(c) Policy for competitive procurement is as specified in Title 15, Procurement, in the Texas Workforce Commission Financial Manual for Contracts and Grants.

§809.22. Child Care Management Services (CCMS) Staff Requirements.

The CCMS contractor must hire staff who meet the qualifications and perform the job functions as defined by the Commission in the CCMS contract and the CCMS Contractor Manual.

§809.23. Administrative Requirements for Child Care Management Services (CCMS).

The Commission and the CCMS contractor must comply with Office of Management and Budget Circular A-102 or A-110 as clarified by federal regulations and Commission guidelines. These circulars contain administrative requirements, applicable to entities receiving federal funds, such as property management and procurement.

§809.24. Funding for Child Care Management Services (CCMS).

The CCMS contractor manages budgets of multiple funds and conducts fiscal and statistical tracking and reporting as required by the Commission.

§809.25. Assessing Needs and Resources.

The Child Care Management Services (CCMS) contractor must document information on the child care needs and resources for the geographic area served and must update the information at least annually. The CCMS contractor must collect, update, and maintain the required data according to Commission policies and procedures in the CCMS Contractor Manual. The data must be available for Commission staff to review on monitoring visits to the CCMS contractor.

§809.26. Child Care Management Services (CCMS) Recruitment of Vendors.

(a) The CCMS contractor contracts with vendors to meet the child care needs for persons eligible to receive services listed in §809.61 of this title (relating to Basic Eligibility Requirements To Obtain Child Care Services from the Child Care Management Services (CCMS) System).

(b) CCMS contractors recruit vendors, when necessary, to establish or maintain a vendor base to meet the needs of eligible families according to Commission policies and procedures in the CCMS Contractor Manual.

§809.27. Child Care Management Services (CCMS) Contractor's Provision of Training and Technical Assistance to Vendors.

(a) The CCMS contractor must provide orientation, technical assistance, and ongoing training to vendors regarding:

(1) vendor requirements which are specified in the CCMS Vendor Agreement and Vendor Manual; and

(2) the Commission's Voluntary Program Criteria for child care providers which is specified in the CCMS Contractor Manual.

(b) The CCMS contractor must also provide orientation, technical assistance or training on other topics or special projects as required by the Commission.

(c) The CCMS contractor must ensure that orientation, training, and technical assistance required in subsections (a) and (b) of this section are accessible to all vendors in the local workforce development area covered by the CCMS contractor.

§809.28.Required Forms.

The Child Care Management Services contractor must submit and maintain information on forms as specified in his or her contract with the Commission.

§809.29.Child Care Management Services (CCMS) Child Care Advisory Council.

(a) The CCMS contractor must organize and maintain a Child Care Advisory Council.

(b) The CCMS Child Care Advisory Council provides recommendations to the CCMS contractor on services provided by the CCMS contractor.

(c) The CCMS Child Care Advisory Council must represent the area served by the CCMS contractor and must be balanced geographically, ethnically, economically, and by provider type.

(d) The CCMS Child Care Advisory Council must include parents and child care providers. The advisory council must also include representatives of the following groups, if the group exists in the local workforce development area covered by the CCMS contractor:

- (1) resource and referral agencies;
- (2) Early Childhood Intervention (ECI) programs;
- (3) public school education programs;
- (4) Head Start programs;
- (5) employment and training programs;
- (6) child care associations;
- (7) child care staff training providers; and
- (8) other agencies that provide services or funding for child care.

(e) The Commission will verify the composition of the membership.

(f) A Commission regional staff person must attend meetings of the advisory council as an ex-officio member.

(g) The CCMS Child Care Advisory Council must meet at least three times per year; and as deemed necessary by the advisory council chair in order to address advisory council business.

(h) Notice of all Child Care Advisory Council meetings must be posted in a public place at least 72 hours in advance of the scheduled meeting.

(i) The CCMS Child Care Advisory Council may be reimbursed for travel and related expenses.

§809.30.Special Projects.

The Child Care Management Services (CCMS) contractors may be required by the Commission to oversee, disperse funds for, or implement special projects that involve services to parents, children, or child care providers. The CCMS contractor must follow Commission policies and procedures in the CCMS contract and the CCMS Contractor Manual for each project.

§809.31.Requirements for Child Care Management Services (CCMS) Subcontracts.

(a) CCMS contractors are not permitted to subcontract with other entities for complete provision of a primary CCMS function of client services, vendor management, or financial management.

(b) A written subcontract that describes the services performed by the subcontractor must be signed by the subcontractor and the CCMS contractor.

(c) The CCMS contractor must receive Commission approval before procuring and documenting subcontracts.

§809.32.Child Care Training.

Child care training purchased with Commission funds must improve the skill level of early care and education staff in the state of Texas. All child care training offered through Commission contractors and Commission subcontractors will adhere to Commission guidelines which incorporate components of the proposed Texas Early Care and Education statewide Professional (Career) Development System.

§809.33.Waiver Requests.

The Commission may waive child care rules if the waiver benefits a client, contractor, or a vendor and does not harm Commission child care services or violate state or federal laws or regulations.

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.

Issued in Austin, Texas, on June 11, 1997.

TRD-9707578

Esther Hajdar

Deputy Director of Legal Services

Texas Workforce Commission

Earliest possible date of adoption: July 21, 1997

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

SUBCHAPTER C.Child Care Provider Requirements

40 TAC §§809.41-809.48

The new sections are proposed under Texas Labor Code, §301.061 and §302.021, which provides that the Texas Workforce Commission shall administer child care services provided in the Human Resources Code, Chapter 44 and will authorize the Commission to adopt, amend or rescind such rules as it deems necessary for the effective administration of the Act.

The proposed new sections affect Texas Human Resources Code, Chapter 44, Texas Labor Code, Chapter 302, and Texas Government Code, Chapter 2308.

§809.41.Self-Arranged Child Care.

(a) The Commission uses all available funding sources, except those used for Texas Department of Protective and Regulatory Services (TDPRS) in-home Child Protective Services (CPS) cases, to reimburse eligible parents for payments made to an eligible provider for self-arranged child care.

(b) Eligibility for self-arranged child care (SACC) must be determined and authorized according to §809.84 of this title (relating to Verification and Determination of Client Eligibility for Child Care Services) and §809.87 of this title (relating to Authorization of Child Care Services) and with the exception of clients in open in-home CPS cases, who are not eligible for SACC, and are managed by the TDPRS CPS caseworkers.

(c) Clients who use foster care child care are only eligible for SACC with providers who are licensed or registered by TDPRS child care licensing or another state regulating body that conducts routine monitoring and has been approved by CPS.

(d) All other clients are eligible for care with a provider of self-arranged child care who is at least 18 years of age and satisfies either of the requirements stated in paragraphs (1) or (2) of this subsection.

(1) A provider qualifies who complies with §809.42 of this title (relating to Vendor Requirements) or another Commission approved federal, state or local governmental entity.

(2) A provider qualifies who is one of the following relatives of the eligible child:

(A) grandparent;

(B) great-grandparent;

- (C) aunt;
- (D) uncle; or
- (E) sibling who is not living in the same household as the eligible child.

§809.42. Vendor Requirements.

To become a vendor under a Child Care Management Services (CCMS) contractor, the child care provider must:

- (1) be licensed or registered by the Texas Department of Protective and Regulatory Services (TDPRS) Child Care Licensing Division unless licensed by the Texas Department of Health (TDH) as a youth (day) camp or unless operated and monitored by the United States Military Services;
- (2) not be currently in corrective or adverse action with the TDPRS, the TDH, or the United States Military;
- (3) carry \$300,000 or more per occurrence of liability insurance depending upon licensed capacity for the facility; and
- (4) carry commercial transportation insurance if transporting children and if a child care center.

§809.43. Child Care Management Services (CCMS) Vendor Agreements and Vendor Manuals.

- (a) Vendors must have a written and signed vendor agreement with a CCMS contractor in order to be paid for providing child care services to CCMS-referred children.
- (b) To be a valid vendor agreement, both the vendor and the CCMS contractor must sign and date the CCMS vendor agreement on or before the effective date of the agreement.
- (c) The vendor will not be paid for providing child care services to CCMS-referred children on any day before the effective date or after the termination date of a valid CCMS Vendor Agreement.
- (d) The CCMS contractors must use the vendor agreement required by the Commission.
- (e) The CCMS contractor must also ensure that every vendor receives a copy of the most current CCMS Vendor Manual as part of the agreement with the CCMS vendor and sends revised copies to the vendor upon receiving the revision from the Commission.

§809.44. Amendments and Renewal of Vendor Agreements.

- (a) Vendor agreements are limited to one year and end on the date shown on the vendor agreement form.
- (b) The Child Care Management Services (CCMS) contractor must renew vendor agreements if the vendor:
 - (1) continues to meet all requirements as stated in §809.42 of this title (relating to Vendor Requirements);
 - (2) has satisfied the requirements of the Vendor Agreement;
 - (3) has no unresolved service improvement agreements with the CCMS contractor;
 - (4) is willing to renew the Vendor Agreement; and
 - (5) has maintained a satisfactory compliance record with minimum licensing standards as defined by the Texas Department of Protective and Regulatory Services (TDPRS).
- (c) The vendor must inform the CCMS contractor immediately upon knowledge of and prior to:
 - (1) moving the facility;
 - (2) selling the facility;
 - (3) changing the governing body; or
 - (4) making any other changes in the child care services delivered which could modify either the license or the Vendor Agreement.
- (d) The vendor must also inform the CCMS contractor whenever the TDPRS Child

Care Licensing Division (CCL) has issued a new license for the facility or placed any conditions on the license.

(e) The requirement to inform the CCMS contractors of changes set forth in subsection (c) of this section does not release the vendor from liability to inform TDPRS CCL of these changes.

(f) Failure to inform the CCMS contractor of changes could result in sanctions against the vendor as set forth in §809.142 of this title (relating to Vendor Agreement Violations and Service Improvement Agreements (SIA)).

(g) The CCMS contractor must amend or complete a new Vendor Agreement based on the type of change reported by the vendor.

(h) Failure to amend or complete a new Vendor Agreement could result in sanctions against the CCMS contractor as set forth in §809.141 of this title (relating to Contract Violations and Service Improvement Agreements).

§809.45.Vendor Collection of Assessed Parent Fees and Child Care Subsidies.

(a) Vendors must collect assessed parent fees before child care services are delivered. Fees must be collected at least monthly but may be prorated for payment on a more frequent basis. Vendors keep the fees collected.

(b) Vendors must also collect the child care subsidies parents receive from other state or federal programs.

(c) Vendors must notify the Child Care Management Services (CCMS) contractor when parents have not paid the parent fee and/or the child care subsidy.

(d) Vendors' collection of parent fees and child care subsidies will be monitored by the CCMS contractor.

(e) Failure on the part of vendors to collect parent fees or child care subsidies or to notify the CCMS when parent fees have not been paid may result in corrective or adverse action being taken against the vendor.

§809.46.Attendance Requirements.

Vendors must document and maintain a record of each child's attendance. When an enrolled child is absent, vendors must inform the Child Care Management Services (CCMS) contractor and must follow procedures required by the Commission and the CCMS contractor. The CCMS contractor must follow up on each child's absences, as required by the Commission. Failure by the CCMS contractor to follow up each child's absences as required by Commission may result in withholding payment from the CCMS contractor. Failure by the vendor to keep attendance records as required by the Commission may result in withholding payment from the vendor or in termination of the Vendor Agreement.

§809.47.Parent Advisory Groups.

(a) If the Commission funds are used to purchase more than 30% of a vendor's licensed capacity, the vendor must establish and maintain a Parent Advisory Group.

(b) Vendors required to set up a parent advisory group must develop and implement written policies that describe the membership and functions of the Parent Advisory Groups. The Commission must approve the policies.

(c) The vendor must ensure that the Parent Advisory Group meets at least twice a year to address the concerns of the parents of enrolled children.

§809.48.Commission Voluntary Program Criteria for Child Care Providers.

Child Care Management Services (CCMS) vendors may volunteer to become certified vendors by agreeing to meet the Commission's Voluntary Program Criteria that are published by the Commission in excess of licensing minimum standards. The vendor must complete an application for assessment and must document that prerequisite criteria are met. The CCMS contractor must provide the vendor with the Voluntary Program Criteria to review prior to assessment.

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.
Issued in Austin, Texas, on June 11, 1997.

TRD-9707579

Esther Hajdar

Deputy Director of Legal Services

Texas Workforce Commission

Earliest possible date of adoption: July 21, 1997

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

SUBCHAPTER D.Client Eligibility Requirements

40 TAC §§809.61 - 809.78

The new sections are proposed under Texas Labor Code, §301.061 and §302.021, which provides that the Texas Workforce Commission shall administer child care services provided in the Human Resources Code, Chapter 44 and will authorize the Commission to adopt, amend or rescind such rules as it deems necessary for the effective administration of the Act.

The proposed new sections affect Texas Human Resources Code, Chapter 44, Texas Labor Code, Chapter 302, and Texas Government Code, Chapter 2308.

§809.61.Basic Eligibility Requirements To Obtain Child Care Services from the Child Care Management Services (CCMS) System.

(a) CCMS contractors purchase child care services for individuals described in this subsection.

(1) Purchased child care applies to parents or caretakers who need child care for children under age 13 in order to participate in training, education, or employment activities.

(2) Purchased child care also applies to children under age 13 referred by the Texas Department of Protective and Regulatory Services (TDPRS) Child Protective Services (CPS) program.

(3) Purchased child care also applies to older children who are mentally or physically incapable of caring for themselves if they are:

(A) under age 18; or

(B) age 18, regularly attending high school or its equivalent, and are expected to graduate before or during the month of their 19th birthday.

(b) Parents or caretakers who are recipients of Temporary Assistance to Needy Families (TANF), Supplemental Security Income (SSI), or Transitional Child Care benefits or who are participating in the Commission funded pre-kindergarten program as stated in §809.65(3) of this title (relating to Eligibility Criteria for Commission Funded Child Care Services) or who have been referred by the Food Stamp Employment and Training (FS E & T) Program or the TDPRS CPS program are served without regard to income.

(c) Families whose children are recipients of TANF or SSI benefits must meet the income requirements listed in §809.67 of this title (relating to Income Limits for Child Care Services).

(d) Parents or caretakers who receive food stamps but are not participating in the FS E & T program must meet the income requirements listed in §809.67 of this title.

(e) All other parents or families must meet the income requirements listed in §809.67 of this title.

§809.62.Evaluation of a Parent's Need for Child Care.

(a) When evaluating the need for child care for parents who meet the requirements stated in §809.84(c) of this title (relating to Verification and Determination of Client Eligibility for Child Care Services), the Child Care Management Services (CCMS) contractor must consider if:

(1) there are other sources of child care available; and

(2) the parent needs the child care in order to participate in training,

education, or employment activities.

(b) The CCMS contractor authorizes child care for the number of hours needed to support the parent's participation in employment, education, or training activities.

(c) In order for a two-parent family to be eligible to receive child care, both parents must be employed or in training unless one parent is permanently incapacitated.

§809.63.Citizenship and Residency Requirements To Receive Child Care Services.

The Commission and contracted provider staff do not deny services based on citizenship or duration of residency.

§809.64.Child Care for Abused and Neglected Children.

(a) The Texas Department of Protective and Regulatory Services (TDPRS) purchases child care from the Commission for abused and neglected children or children determined to be at risk of abuse or neglect by a TDPRS caseworker who are in either:

(1) protective cases managed by a TDPRS Child Protective Services (CPS) caseworker; or

(2) CPS cases managed by a CPS Family Preservation contract provider.

(b) TDPRS CPS caseworkers or CPS Family Preservation contract providers must authorize child care for these clients. They must use the forms and procedures required by the TDPRS and the Commission.

(c) Child protective services clients receive child care for the following reasons:

(1) to enable the child to remain in the home while the parent pursues rehabilitation;

(2) to reduce the detrimental effects of abuse and neglect by providing the child with developmentally appropriate experiences in the areas of physical, social, emotional, cognitive, and language development;

(3) to allow foster parents to work; or

(4) to prevent disruption or relocation of a foster care or adoption placement.

(d) In-home CPS clients must be enrolled with a CCMS vendor who meets the Voluntary Program Criteria; CPS clients in foster care may be enrolled in vendor facilities or may self-arrange child care in regulated facilities.

§809.65.Eligibility Criteria for Commission Funded Child Care Services.

The Commission uses the Child Care and Development Fund, Social Services Block Grant, Child Care and Development Block Grant, Food Stamp Employment and Training (FS E & T) funds and General Revenue funds to purchase child care for clients who meet the requirements stated in paragraphs (1)-(5) of this section and who meet basic eligibility requirements in §809.2 of this title (relating to Definitions), §809.61 of this title (relating to Basic Requirements To Obtain Child Care Services from the Child Care Management Services (CCMS) System), §809.66 of this title (relating to Additional Transitional Child Care Eligibility Criteria), §809.67 of this title (relating to Income Limits For Child Care Services) and §809.68 of this title (relation to Income Inclusions For Child Care Eligibility Determination).

(1) Child care is purchased for families who meet the eligibility requirements stated in of the Texas Human Resources Code, Chapter 31 for clients participating in the Commission's Employment Program for Temporary Assistance to Needy Families Recipients and the Transitional Child Care Program.

(2) Child care is also purchased for children in families who are at risk of becoming dependent upon government assistance are indicated in subparagraphs (A)-(D) of this paragraph.

(A) Children in families who are at risk of becoming dependent upon government

assistance include children in families who meet the income requirements in §809.67(a)(1) and whose parents are either working, or in training, or school. These children will continue to receive child care according to the criteria specified in §809.67(b).

(B) Children in families who are at risk of becoming dependent upon government assistance also include children whose teen parents need child care in order to complete high school or the equivalent and whose family income meets the criteria specified in §809.67(a)(2) and whose family members are determined by §809.2.

(C) Children in families who are at risk of becoming dependent upon government assistance also include children with disabilities in families whose income meets the criteria specified in subsection §809.67(a)(1) and whose parents are working, or are in training, or school. The cost of children's ongoing medical expenses must be deducted from the family's income before determining the family's eligibility status.

(D) Children in families who are at risk of becoming dependent upon government assistance also include children receiving child care as specified in §809.64 of this title (relating to Child Care for Abused and Neglected Children). This group may receive Commission funded child care services without regard to income on a case by case basis for up to six months after they are no longer eligible to receive child care purchased by the Texas Department of Protective and Regulatory Services (TDPRS) Child Protective Services (CPS). TDPRS CPS caseworkers or CPS Family Preservation contract providers required by TDPRS must authorize child care services for these clients. They must use the forms and procedures required by the TDPRS and the Commission's child care program.

(3) Child care is also purchased for parents who are working, or in training, or school, and have children enrolled in a state pre-kindergarten program offered by a school district participating in at-risk child care certification. This eligibility category is served without regard to income according to §809.61(b) of this title.

(4) Child care is also purchased for children in families whose parents are either working, or are in training, or school, and whose families meet additional eligibility criteria established and presented in the Commission Board Planning Guidelines. These families must also meet the income criteria specified in §809.67(c) of this title.

(5) Child care is also purchased for children in families participating in the FS E & T program according to 7 Code of Federal Regulations, Part 273, and according to §809.61(a) and (b) of this title.

§809.66. Additional Transitional Child Care Eligibility Criteria.

(a) In addition to clients guaranteed child care under §809.65(1) of this title (relating to Eligibility Criteria for Commission Funded Child Care Services), clients who meet the requirements specified in, Human Resources Code, Subchapter A, Chapter 31, §31.0035(a)(2) and §31.012(c) are also guaranteed child care to accept employment or remain employed.

(b) Except as described in paragraphs (1) and (2) of this subsection, the client must be employed to receive these benefits.

(1) If the client is not employed at the time the client loses Temporary Assistance to Needy Families (TANF) benefits, the client can receive child care for up to the first four weeks of the Transitional Child Care eligibility period, as needed, to seek employment.

(2) If the client is enrolled in and attending an education or training program that is not yet completed at the time the client loses TANF benefits, the client can receive child care for up to the first eight weeks of the Transitional Child Care eligibility period, as needed, to continue attending the education or training program. At the end of the eight weeks or when the client completes the education or training program, whichever occurs earlier, the client can receive

up to the next four weeks of the Transitional Child Care eligibility period to seek employment.

(c) Clients receiving child care benefits according to subsections (a) and (b) of this section, must comply with parent fee requirements as specified in §809.89 and §809.91 of this title (relating to Assessing Required Parent Fees and Parent Payments of Assessed Parent Fees and Child Care Subsidies).

(d) Clients receiving child care benefits according to subsections (a) and (b) of this section must also comply with all rules that apply to clients receiving child care benefits under §809.65 of this title.

§809.67. Income Limits for Child Care Services.

(a) To determine eligibility for child care services based on income for families described in §809.65(2)(A), (B), (C) and (4) of this title (relating to Eligibility Criteria for Commission Funded Child Care Services), the Child Care Management Services (CCMS) contractor must determine:

(1) that the family's total gross income is at or below either 150% of the Federal Poverty Income Limits (FPIL) or 75% of the State Median Income (SMI) whichever is lower for the family size; or

(2) for teen parents who need child care in order to complete high school or the equivalent, that the family's total gross income is at or below 75% of the SMI.

(b) Child care services may continue for one year for families described in subsection (a)(1) of this section after the family income exceeds 150% of the FPIL provided that the family income remains at or below 75% of the SMI.

(c) To determine eligibility for child care services for families described in §809.65(4) of this title the CCMS contractor must determine that the family's total gross income remains at or below 85% of the SMI.

§809.68. Income Inclusions for Child Care Eligibility Determination.

(a) The family's monthly gross income is the total of the items listed in paragraphs (1)-(19) of this subsection.

(1) The family's monthly gross income includes the family's total gross earnings before deductions are made for taxes. These earnings include money, earnings of a child between 14 and 18 years old who is not in school, wages, or salary the family member receives for work performed as an employee. Wages or salary include armed forces pay (including allotments from any armed forces received by a family group from a person not living in the household), commissions, tips, piece-rate payments, and cash bonuses earned. Overtime pay is estimated based on the person's history of receiving this pay.

(2) The family's monthly gross income also includes net income from non-farm self-employment. These earnings include gross receipts minus business-related expenses from a person's own business, professional enterprise, or partnership, which result in the person's net income. Gross receipts include the value of all goods sold and services given. Expenses include costs of purchased goods, rent, heat, light, power, depreciation charges, wages and salaries paid, business taxes (not personal income taxes or self-employment Social Security tax), and similar costs. The value of salable merchandise used by the owners of retail stores is not included as part of net income.

(3) The family's monthly gross income also includes net income from farm self-employment. These earnings include gross receipts minus operating expenses from operation of a farm by the client or the client and his partners. Gross receipts include the value of products sold; governmental crop loans; and incidental receipts from the sale of wood, sand, mineral royalties, gravel, and similar items. Operating expenses include the cost of feed, fertilizer, seed and other farming supplies, cash wages paid to farm workers, depreciation, cash rent, interest on farm mortgages, repairs of farm buildings, farm-related taxes (not personal income taxes or self-employment Social Security tax), and similar expenses. The value of fuel, food, or other farm-related products used for the

family's living expenses is not included as part of net income.

(4) The family's monthly gross income also includes social security and railroad retirement benefits. These benefits include Social Security pensions and survivor's benefits, permanent disability insurance payments made by the Social Security Administration (before deductions for medical insurance), and railroad retirement insurance checks from the federal government. Gross benefits from these sources are the amounts before deductions for Medicare insurance.

(5) The family's monthly gross income also includes dividends and interest. These earnings include dividends from stock holdings or membership in associations, interest on savings or bonds, and periodic receipts from estates or trust funds, and net royalties. These earnings are averaged for a 12-month period.

(6) The family's monthly gross income also includes net income from rental of a house, homestead, store, or other property, or rental income from boarders or lodgers. These earnings include net income from rental property which is calculated by prorating and subtracting the following from gross receipts:

(A) prorated property taxes;

(B) insurance payments;

(C) bills for repair and upkeep of property; and

(D) interest on mortgage payments on the property. Capital expenditures and depreciation are not deductible.

(7) The family's monthly gross income also includes interest income from mortgages or contracts. These payments include interest income the buyer promises to pay in fixed amounts over a period of time until the principal of the note is paid.

(8) The family's monthly gross income also includes public assistance payments. These payments include Temporary Assistance to Needy Families (TANF), refugee assistance, SSI, and general assistance (cash payments from a county or city).

(9) The family's monthly gross income also includes pensions, annuities, and irrevocable trust funds. These payments include pensions or retirement benefits paid to a retired person or his survivors by a former employer or by a union, either directly or through an insurance company. Also included are periodic payments from annuities, insurance, or irrevocable trust funds. Gross benefits from civil service pensions are benefits before deductions for health insurance.

(10) The family's monthly gross income also includes veterans' pensions, compensation checks, and G.I. benefits. These benefits include money paid periodically by the Veterans Administration to disabled veterans of the armed forces or to survivors of deceased veterans, subsistence allowances paid to veterans for education and on-the-job training and refunds paid to ex-servicemen as G.I. insurance premiums. The Commission or the contracted provider includes only that part of the educational allowance that is used for current living costs.

(11) The family's monthly gross income also includes educational loans and grants. These payments include money received by students as scholarships for educational purposes. The Commission includes only that portion of the money actually used for current living costs.

(12) The family's monthly gross income also includes unemployment compensation. This includes unemployment payments from governmental unemployment insurance agencies or private companies and strike benefits from union funds paid to people while they are unemployed or on strike.

(13) The family's monthly gross income also includes worker's compensation and disability payments. These payments include compensation received periodically from private or public insurance companies for on-the-job injuries.

(14) The family's monthly gross income also includes alimony. These payments are support paid to a divorced person by a former spouse.

(15) The family's monthly gross income also includes child support. These payments include court-ordered child support, any maintenance or allowance used

for current living costs provided by parents to a minor child who is a student, or any informal child support payments made by an absent parent for the maintenance of a minor.

(16) The family's monthly gross income also includes cash support payments. These payments are regular cash support payments from friends or relatives received on a periodic basis more than three times a year.

(17) The family's monthly gross income also includes inheritance. This is net income from the client's share of an inheritance.

(18) The family's monthly gross income also includes foster care payments. The total payment made to a client on behalf of a legally assigned foster child or foster adult is counted as income.

(19) The family's monthly gross income also includes sale of property. This includes capital gains from sale of property.

(b) Income to the family that is not included in subsection (a)(1)-(19) of this section is excluded in determining monthly gross income. Do not include monthly Food Stamp benefits as income.

§809.69.Exceptions to Eligibility.

The Child Care Management Services contractor grants eligibility exceptions to allow eligible families to access services funded by Commission funds if funds are available in the following situations:

(1) a child has a sibling living in the same household who is currently enrolled in child care paid for by the Commission; or

(2) an eligible teen parent needs child care in order to complete high school or the equivalent and her parent (the grandparent) is not employed or in training and refuses to care for the child. A waiver must be submitted to allow the teen parent to receive child care.

§809.70.Temporary Assistance to Needy Families (TANF) Employment Services Related Child Care During On-the-Job Training (OJT).

The Commission allows eligible parents to receive TANF Employment Services related child care during OJT unless the parent's OJT earnings cause the denial of a TANF grant.

§809.71.Temporary Assistance to Needy Families (TANF) Employment Services Related Child Care While Waiting To Enter an Approved Initial Component of the Commission's Employment Program for TANF Recipients.

The Commission provides TANF Employment Services related child care for up to two weeks for children whose parent is waiting to enter an approved initial component of the Commission's Employment Program for TANF Recipients. The two weeks of child care is allowed when:

(1) child care is available that meets the needs of the child and the parent; and

(2) enrollment will prevent loss of the placement.

§809.72.Child Care During Employment, Education or Training Interruptions.

(a) If the employment, education or training of a parent receiving Commission funded child care is interrupted, the Commission allows child care to continue beginning on the first day of the interruption for up to:

(1) four weeks while the parent seeks or awaits employment or is waiting to begin an education or training activity; or

(2) two months if the parent becomes temporarily incapacitated.

(b) For Food Stamp Employment and Training clients and clients participating in the Commission's Employment Services Program for Temporary Assistance to Needy Families Recipients, the Child Care Management Services contractor must have authorization from the caseworker to continue care during interruptions in employment, education, and training.

§809.73. Time Limits for Education or Training-Related Child Care.

The Commission limits the time a parent is permitted to receive child care related to education or training as indicated in this section.

(1) Parents whose eligibility is determined by the Commission or employment services contractor as stated in §809.84(a) of this title (relating to Verification and Determination of Client Eligibility for Purchased Child Care Services) and who are participating in the Commission's Employment Program for Temporary Assistance to Needy Families Recipients case plan receive education and training-related child care until their case plan is closed; or

(2) Parents whose eligibility is determined by the Child Care Management Services contractor according to §809.84(c) of this title may receive education and training-related child care until they have completed one of the following:

- (A) an associate degree or no more than 65 semester hours of college credit; or
- (B) a maximum of two years of post high school technical training.

§809.74. Sanctions and Penalties.

Participants in the Commission's Employment Program for Temporary Assistance to Needy Families Recipients who have been penalized for non-participation are only eligible to receive child care supportive services during the penalty if they re-enter the program and participate satisfactorily in program services.

§809.75. Rights Of People Applying For And Receiving Child Care Services Through The Child Care Management Services (CCMS) System.

Parents or caretakers have the right to:

- (1) have persons represent them when applying for child care services;
- (2) receive notification of their eligibility to receive child care services within 20 calendar days from the day the CCMS contractor receives all necessary documentation required to determine eligibility for child care services;
- (3) be notified in writing by the CCMS contractor at least 12 calendar days before the denial, delay, reduction, or termination of services, except in cases where the child care has been authorized to end immediately because the client is no longer participating in Commission's Employment Program for Temporary Assistance to Needy Families Recipients education or training services and in cases where the child care has been authorized to end immediately for Texas Department of Protective and Regulatory Services (TDPRS) Child Protective Services (CPS) clients. Commission's Employment Program for Temporary Assistance to Needy Families Recipients and CPS clients are notified of denial, delay, reduction, or termination of services and the effective date of such actions by their respective Commission and TDPRS CPS case workers;
- (4) request a hearing within 60 days of the receipt of the notice of denied, delayed, reduced, or terminated child care services. The exception is a parent who has a child in a TDPRS CPS in-home case and has not requested the child care services. The CCMS contractor must inform parents how to request a hearing. The parent or caretaker may have someone represent them during this process. Provisions for child care to continue while awaiting a hearing are found in §809.154 of this title (relating to Provision of Child Care Services During an Appeal);
- (5) receive child care services regardless of race, color, national origin, age, sex, disability, political beliefs, or religion;
- (6) have the CCMS contractor treat information that is used to determine eligibility for child care services as confidential;
- (7) reject an offer of child care services or voluntarily withdraw their child from child care services unless the child is in a CPS in-home protective case;
- (8) be informed by the CCMS contractor of the possible consequences of rejecting or ending child care that is offered;

- (9) be informed of all child care options available to them and choose the arrangement they desire from these options including information about the various standards that facilities may or must follow;
- (10) visit available child care facilities before making their choice of a child care option and visit the facility during the time their child is enrolled; and
- (11) receive assistance in choosing initial or additional child care referrals, including information about the Commission's policies regarding transferring children from one facility to another.

§809.76. Responsibilities of People Applying for and Receiving Child Care Services Through the Child Care Management Services (CCMS) System.

Parents or caretakers must meet the requirements contained in this section.

(1) Parents or caretakers are responsible for providing the CCMS contractor with all information considered necessary to establish eligibility according to the Commission's policies and procedures.

(2) Parents or caretakers must submit required documentation to the CCMS contractor within the time limits required by the Commission including, but not limited to:

- (A) eligibility documentation;
- (B) CCMS forms; and
- (C) submission of Self-arranged Child Care (SACC) claims for services.

(3) Parents or caretakers must meet the time limits required by the Commission or:

- (A) have child care services denied or terminated; or
- (B) not receive payment for SACC claims.

(4) Parents or caretakers must comply with the Commission and vendor enrollment requirements or have child services denied or terminated.

(5) Parents or caretakers must report changes in income, family size, loss of Temporary Assistance to Needy Families or Supplemental Security Income assistance grants, change in work, education, or training, or any other change that might affect the parent's eligibility for services.

(6) Parents or caretakers must report a change to the CCMS contractor within 12 calendar days of the occurrence of the change. Failure to report changes may result in termination of services or recovery of payments made for services provided during a period of ineligibility caused by the changes listed in paragraph (5) of this section. The receipt of services for which the parent is no longer eligible may constitute fraud.

§809.77. Return of Eligibility Documents From Parents or Caretakers.

If an eligible parent's or caretaker's required documentation is received at the Child Care Management Services (CCMS) contractor after the due date, but the envelope is postmarked on or before the due date, eligibility for child care services must continue.

§809.78. Parent Responsibility Agreement.

(a) The parent or caretaker of a child receiving Commission-funded child care services is required to sign a parent responsibility agreement as part of the child care enrollment process, unless covered by the provisions of Human Resources Code, §31.0031. The parent's compliance with the provisions of the agreement shall be reviewed at each eligibility re-determination.

(b) The parent responsibility agreement requires that:

- (1) each parent shall cooperate with the Title IV-D agency if necessary to establish paternity of the parent's children or enforce child support;
- (2) each parent shall not use, sell, or possess marijuana or a controlled substance in violation of Health and Safety Code, Title 481, or abuse alcohol;
- (3) each child in the family younger than 18 years of age attend school regularly, unless the child has a high school diploma or a high school

equivalency certificate or is specifically exempted from school attendance by Education Code, §21.033.

(c) Failure to comply with the provisions of the parent responsibility agreement may result in sanctions.

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.

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Esther Hajdar

Deputy Director of Legal Services

Texas Workforce Commission

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SUBCHAPTER E. Client Process Requirements

40 TAC §§809.81-809.92

The new sections are proposed under Texas Labor Code, §301.061 and §302.021, which provides that the Texas Workforce Commission shall administer child care services provided in the Human Resources Code, Chapter 44 and will authorize the Commission to adopt, amend or rescind such rules as it deems necessary for the effective administration of the Act.

The proposed new sections affect Texas Human Resources Code, Chapter 44, Texas Labor Code, Chapter 302, and Texas Government Code, Chapter 2308.

§809.81. Intake.

The Child Care Management Services (CCMS) contractor provides intake according to the Commission policies and procedures in the CCMS Contractor Manual for clients requesting child care services that includes:

- (1) informing parents about all types of child care available to them;
- (2) helping parents locate child care that meets the needs of both the parents and the children; and
- (3) ensuring that parents are allowed to choose child care arrangements.

§809.82. Priority for Intake Services.

The Child Care Management Services contractor must allocate intake staff resources proportionately among all client groups so that priority for intake services is assured for the following clients: Texas Department of Protective and Regulatory Services (TDPRS) Child Protective Services cases, Temporary Assistance to Needy Families (TANF) Employment Services and other TANF cases, Food Stamp Employment and Training cases, and Transitional Child Care cases.

§809.83. Waiting Lists.

(a) The Child Care Management Services (CCMS) contractor must maintain the following waiting lists for eligible children:

- (1) a short term funding list for children who have been funded and are waiting for care to be arranged;
- (2) a long term funding list for children waiting for care and funding due to lack of space or lack of funds;
- (3) a short term vendor list for clients in care who have requested transfer to a specific vendor with space that has just become available; and
- (4) a long term vendor list for clients in care who have requested transfer to a specific vendor with no space available.

(b) The CCMS contractor must use the CCMS automated system to maintain waiting lists.

§809.84. Verification and Determination of Client Eligibility for Child Care Services.

(a) The Commission or an employment services contractor determines client eligibility for clients who meet the requirements stated in §809.65 of this title (relating to Eligibility Criteria for Commission Funded Child Care Services).

(b) The Texas Department of Protective and Regulatory Services (TDPRS) determines client eligibility for clients who meet the requirements stated in §809.64 of this title (relating to Child Care for Abused and Neglected Children) and §809.65(2)(D) of this title (relating Eligibility Criteria for Commission Funded Child Care Services).

(c) The Child Care Management Services (CCMS) contractor determines and documents client eligibility for clients who meet the requirements stated in §809.2 of this title (relating to Definitions), §§809.65, 809.67, and 809.68 of this title (relating to Eligibility Criteria for Commission Funded Child Care Services, Income Limits for Child Care Services, and Income Inclusions for Child Care Eligibility Determination).

(d) The contractor must verify and document the client's eligibility status before authorizing services for clients whose eligibility was determined by the Commission or employment services contractors and TDPRS as specified in subsections (a) and (b) of this section.

(e) The CCMS contractor must determine, verify, and document client eligibility as specified in subsections (c) and (d) of this section using the forms and procedures required by the Commission in the CCMS Contractor Manual.

§809.85.Redetermination of Eligibility for Child Care Services.

All parents must reapply for child care services at least every six months or earlier if there is a change in their status that could affect their eligibility to receive child care services.

§809.86.Termination of Enrollment Due to Excessive Absences.

(a) The Child Care Management Services (CCMS) contractor must terminate a child's enrollment for excessive absences.

(b) During enrollment for child care, the CCMS contractor must give the parent a written notice of the Commission's excessive absences procedures. The parent must sign the notice indicating that she has received these procedures and understands them. The signed notice must be kept in the child's file. (c) Termination of enrollment based on excessive absences may result from the following.

(1) An absence of five consecutive days without parental notice to the vendor or CCMS contractor. This is considered a voluntary withdrawal from child care services and constitutes grounds for immediate termination of the absent child's enrollment. The parent may appeal the determination of absence without notice, but the effective date of the termination is not delayed by the appeal. The termination is effective at the end of the fifth consecutive day of absence.

(2) An absence of 30 days in a one-year period. The CCMS contractor must notify the parent in writing that the child's enrollment will be terminated. The parent may appeal the determination of excessive absences, but the effective date of the termination is not delayed by the appeal.

§809.87.Authorization of Child Care Services.

(a) The Child Care Management Services (CCMS) contractor authorizes child care services according to the client's eligibility status, the need for child care, and the availability of funds based on Commission policies and procedures in the CCMS Contractor Manual.

(b) Once enrolled, children receive child care services as long as the parent remains eligible for any available source of funding used by the Commission to purchase child care.

(c) Children currently enrolled in child care through the CCMS system will

remain in care when the Board assumes management of the CCMS contract and will remain eligible as long as their families meet the eligibility criteria and funding is available.

§809.88.Client Registration.

(a) The Child Care Management Services (CCMS) contractors must register all children receiving child care services purchased by the Commission on the Texas Department of Human Services' Social Services Management System.

(b) CCMS contractors must keep documentation of the registration.

§809.89.Assessing Required Parent Fees.

(a) The Child Care Management Services (CCMS) contractor must assess parent fees to all parents or caretakers based on the family's gross monthly income, with the following exceptions:

(1) parents or caretakers who receive Temporary Assistance to Needy Families (TANF). In families where the child is the only TANF recipient, a parent fee is assessed;

(2) parents or caretakers who receive Supplemental Security Income (SSI). In families where the child, rather than the parent or caretaker, is the SSI recipient, a parent fee is assessed;

(3) parents or caretakers who participate in the Food Stamp Employment and Training program; and

(4) parents or caretakers who receive Child Protective Services (CPS) unless the Texas Department of Protective and Regulatory Services (TDPRS) CPS caseworker or the CPS Family Preservation contract provider authorizes the CCMS contractor to assess fees to a parent.

(b) Teen parents who live with their parents and who are not covered under exceptions outlined in subsection (a) of this section must be assessed a parent fee. The parent fee is based solely on the teen parent's income.

(c) Parent fees are assessed using the following formulas:

(1) the parent fee must be 9.0% of the family's gross monthly income (the amount recorded on the most recent eligibility certification); if there is one child receiving Commission paid child care;

(2) if there are two or more children receiving Commission paid child care, the parent fee is 11% of the family's gross monthly income (the amount recorded on the most recent eligibility certification);

(d) Parent fees for children enrolled in Independent School District pre-kindergarten extended day programs are reduced to reflect no charge to the parent for the portion of the day that is core pre-kindergarten. The parent fee is assessed at 65% of the usual fee if the core pre-kindergarten program is three hours per day. The fee is assessed at 33% of the usual fee if the core pre-kindergarten program is more than three hours per day.

(e) The CCMS contractor is not permitted to assess a parent fee that exceeds the cost of care.

(f) Parents who receive a child care subsidy from other state or federal programs such as the Job Training Partnership Act must pay that amount in addition to the assessed parent fee. The CCMS contractor must request documentation of child care subsidies from the parent.

§809.90.Reduction of Assessed Parent Fees.

(a) The Child Care Management Services (CCMS) contractor must review the assessed parent fee for possible reduction if there are extenuating circumstances that jeopardize a family's self-sufficiency. The CCMS contractor must reduce the assessed parent fee if warranted by these circumstances.

(b) The CCMS contractor must not waive parent fees under any circumstances.

§809.91.Parent Payments of Assessed Parent Fees and Child Care Subsidies.

(a) Parents or caretakers must pay Child Care Management Services (CCMS) vendors parent fees which have been assessed by the CCMS contractor according to §809.89 of this title (relating to Assessing Required Parent Fees). Failure on the part of the parent to pay the assessed parent fee may result in termination of child care services, unless the parent has:

(1) notified the CCMS contractor; and
(2) requested a reduction in the parent fee within three days beginning the day the fees were due.

(b) Parents and caretakers must also pay CCMS vendors any child care subsidies they have received according to §809.89(e) of this title.

§809.92. Inclusion Plan Requirements for Children with Disabilities.

(a) The Child Care Management Services (CCMS) contractor must keep on file an inclusion plan for all CCMS vendor enrolled children:

(1) who meet the eligibility criteria listed in §809.65 of this title (relating to Eligibility for Commission-funded Child Care Services);
(2) whose vendor receives an inclusion assistance rate, as in §809.105(b) of this title (relating to Establishment of Maximum Reimbursement Rates);
(3) who have been identified by an early childhood intervention program or by a school district as having a disability; or
(4) for whom a CCMS vendor, CCMS vendor management specialist, or parent has requested a plan due to concerns about the child's development.

(b) An inclusion plan is based on recommendations made by a Commission approved professional who has assessed the child's developmental needs. The CCMS contractor must ensure that the child's care is consistent with the inclusion plan for that child.

(c) An inclusion plan will be developed and implemented according to Commission child care policies.

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.

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SUBCHAPTER F. Billing and Payment Requirements

40 TAC §§809.101-809.111

The new sections are proposed under Texas Labor Code, §301.061 and §302.021, which provides that the Texas Workforce Commission shall administer child care services provided in the Human Resources Code, Chapter 44 and will authorize the Commission to adopt, amend or rescind such rules as it deems necessary for the effective administration of the Act.

The proposed new sections affect Texas Human Resources Code, Chapter 44, Texas Labor Code, Chapter 302, and Texas Government Code, Chapter 2308.

§809.101. Child Care Management Services (CCMS) Vendor Payments.

The CCMS contractor must reimburse child care vendors for services provided according to the procedures and time frames specified by the Commission in the CCMS contract and the CCMS Contractor Manual.

§809.102. Vendor Billing Requirements.

(a) Vendors must submit bills after the child care services are provided.

(b) Vendors must submit bills and required documentation to the Child Care Management Services (CCMS) contractor in a timely and efficient manner.

(c) The CCMS contractor is not liable for and will not pay for vendor bills submitted later than 90 days after child care services have been delivered.

§809.103.Units of Service in Child Care.

(a) The Commission purchases child care based on the unit of service delivered, as specified in the following.

(1) a unit of service may be a full day or a part day;

(2) a full day unit of service is six to 12 hours of care within a 24-hour period; and

(3) a part day unit of service is less than six hours of care within a 24-hour period.

(b) Time in care begins when the facility assumes responsibility for the child and includes no more than two hours of transportation a day, excluding field trips.

§809.104.Vendor Payment Based on Child Care Enrollment.

(a) Enrollment with a vendor and payment for the enrollment begin the first day the child is scheduled to attend.

(b) The Child Care Management Services (CCMS) contractor will not pay a vendor for holding a space. If the child does not attend the first three days of scheduled attendance, the vendor has until the close of the third day of scheduled attendance to contact the CCMS contractor regarding the child's absence. Requirements concerning absences and termination of enrollment are specified in §809.46 and §809.86 of this title (relating to Attendance Requirements and Termination of Enrollment Due to Excessive Absences).

(c) The CCMS contractor must not pay the vendor less when a child enrolled full time attends occasionally for a part day. The CCMS contractor must not pay the vendor more when a child enrolled part time attends occasionally for a full day.

§809.105.Establishment of Maximum Reimbursement Rates.

(a) The Commission establishes maximum reimbursement rates for purchased child care in accordance with federal and state laws and regulations and program state plans. Maximum rates are based on the following:

(1) type of child care;

(2) age of the child;

(3) part or full-time care; and

(4) identified need for adult assistance.

(b) Vendors that provide additional adult assistance for a child with disabilities may be paid an inclusion assistance rate up to 190% of their Child Care Management Services (CCMS) reimbursement rate for that child. Before the vendor is paid an inclusion assistance rate, the CCMS contractor must ensure that:

(1) a Commission approved professional has assessed the child using Commission approved forms; and

(2) the authorized inclusion assistance rate considers the estimated cost of the adult assistance needed by a child with disabilities. The level of adult assistance needed has been determined by a Commission approved professional as referenced in paragraph (1) of this subsection.

(c) The maximum rates may be obtained from the Commission or the CCMS contractor.

§809.106.Establishment of Individual Child Care Management Services (CCMS) Vendor Reimbursement Rates.

(a) The CCMS contractor pays vendors, providing child care to CCMS referred children, a reimbursement rate based on the vendor's published rates and vendor fees approved by the Commission.

(b) The vendor's CCMS reimbursement rate is a daily rate. The rate is the lesser

of the following:

- (1) the vendor's published rate; or
 - (2) the 75th percentile of the local market rate.
- (c) Local market rates in a geographic area in which a substantial number of child care providers charge a rate that is less than the actual cost of providing care in that area may be adjusted to reflect the actual cost of providing care.
- (d) The vendors' published rates are subject to verification by the CCMS contractor or the Commission that these rates are not greater than:
- (1) actual rates paid by parents who do not receive a child care subsidy; or
 - (2) the vendor's budgeted cost divided by the expected enrollment days.
- (e) When the vendor publishes a new rate, a new CCMS reimbursement rate becomes effective the first full month after all the following steps have been completed by the vendor and the CCMS contractor:
- (1) the vendor has informed the CCMS contractor of the new published rate;
 - (2) the CCMS contractor has determined the new CCMS reimbursement rate; and
 - (3) the CCMS contractor and vendor have signed a CCMS Vendor Agreement to reflect the new CCMS reimbursement rate.
- (f) The CCMS contractor must not reimburse a vendor retroactively for new rates.

§809.107. Vendor Reimbursement for Transportation.

- (a) The Child Care Management Services (CCMS) contractor reimburses vendors who offer transportation as provided in this subsection.
- (1) If the CCMS vendor includes transportation in its published rate, the CCMS contractor pays the vendor that rate.
 - (2) If the CCMS vendor charges a separate rate for transportation, the CCMS contractor pays the transportation rate only for those CCMS-referred children receiving transportation services.
- (b) The combined total of the vendor's published rate plus their transportation rate is subject to the 75th percentile as referenced in §809.106(b) (2) of this title (relating to Establishment of Individual CCMS Vendor Reimbursement Rates).

§809.108. Deduction of Parent Fees and Child Care Subsidies from Child Care Management Services (CCMS) Vendor Reimbursements.

The CCMS reimbursement to the vendor is adjusted as provided in this section.

- (1) The CCMS reimbursement to the vendor is reduced by an amount equal to the parent fees assessed by the CCMS contractor according to §809.89 of this title (relating to Assessing Required Parent Fees).
- (2) The CCMS reimbursement to the vendor is reduced by an amount equal to any child care subsidy received by the parent from other state or federal programs according to §809.89 of this title. The vendor reports the amount of the subsidies collected to the CCMS contractor.
- (3) The CCMS reimbursement to the vendor is adjusted when parent fees are reduced.
- (4) The CCMS reimbursement to the vendor is paid in full, if the vendor notifies the CCMS contractor:
 - (A) that a parent has not paid a parent fee as required by §809.45(d) of this title (relating to Collection of Assessed Parent Fees and Child Care Subsidies); and
 - (B) makes the notification within three days beginning the day the fees were due.

§809.109. Payment for Child Care Arranged by Parents.

- (a) The Child Care Management Services (CCMS) contractor must authorize and issue payments as specified by the Commission to eligible parents who choose to arrange child care outside the CCMS system of vendors.

(b) The CCMS contractor must not pay parents for child care arranged outside of the CCMS system of vendors if the CCMS contractor discovers that the provider chosen is not eligible according to requirements listed in §809.41(d) of this title (relating to Self-Arranged Child Care).

§809.110. Basis of Payment for Child Care Management Services (CCMS) Contractor Operations Expense.

(a) The Commission uses a cost-based methodology as the basis of payment for the operating expenses of CCMS contractors. Under this method, there is a different budget and treatment for each major category of expense. The major expense categories for operations are direct staffing, direct staff fringe benefits, and other operating expense.

(b) The CCMS contractor and the Commission negotiate budgets for each of the major cost categories to form the basis of payment for the operating expenses of the CCMS contractor.

(c) The maximum reimbursed for a contract period is the lesser of the Commission's share of the total budgeted operations cost or actual, reasonable, allowable, properly allocated cost. Shifts between budget categories and line items are allowed subject to the terms of the contract and the Contractor Manual. At the end of each contract period, the CCMS contractor must reconcile payments from the Commission to actual, reasonable, allowable, properly allocated cost, subject to the overall limitation of the total amount budgeted for CCMS operations.

(d) Costs are determined to be reasonable, allowable, and properly allocated in accordance with Office of Management and Budget Circular A-21, A-87, and A-122, and other applicable federal and state statutes and regulations. There is no provision for profit in budgeting, payment, or reimbursement of CCMS operations expense.

(e) For direct staffing, the Commission pays the CCMS contractor on a budget-based cost reimbursement basis. Each month, the CCMS contractor bills the Commission for the actual, reasonable, allowable, properly allocated expense for direct staff performing CCMS operations functions. The cumulative amount paid for the contract period must not exceed the Commission's share of the direct staffing budgeted amount.

(f) For direct staff fringe benefits, the Commission pays the CCMS contractor on a budget-based rate basis. Each month, the CCMS contractor bills the Commission a set rate based on the actual CCMS salary and wage expense and/or the number of CCMS full-time equivalent positions. At the end of the contract period, the CCMS contractor reconciles actual, reasonable, allowable, properly allocated fringe benefit expense to billed fringe benefit expense. If the amount paid by the Commission was less than the actual, reasonable, allowable, properly allocated fringe benefits expense, the CCMS contractor is entitled to payment for the difference, up to the budget limit. If the actual, reasonable, allowable, properly allocated fringe benefits expense is less than the amount paid by the Commission, the CCMS contractor must refund the difference.

(g) For other CCMS operations expenses, such as occupancy, telephone, equipment, indirect, and miscellaneous, the Commission pays the CCMS contractor on a budget-based fixed-fee basis. The budget for these expenses is divided by the number of months in the contract period to determine a monthly fee to be billed by the CCMS contractor to the Commission each month during the contract period. At the end of the contract period, the CCMS contractor reconciles billed amounts to the actual, reasonable, allowable, properly allocated cost for the contract period. If the amount paid by the Commission is less than the actual, reasonable, allowable, properly allocated other CCMS operations expense, the CCMS contractor is entitled to payment for the difference, up to the budget limit. If the actual, reasonable, allowable, properly allocated other expense is less than the amount paid by the Commission, the CCMS contractor must refund the

difference.

(h) All categories of CCMS operating expense are subject to billing on a cost reimbursement basis when the Commission determines that the CCMS contractor has over billed or failed to document expenses, or it would be in the best interest of the CCMS contractor or the Commission.

(i) The Commission may use cost reimbursement or a modified cost-based fixed fee basis of payment for the expense associated with special projects.

(j) The Commission may establish additional requirements and limits for budgeted costs and reimbursements to comply with federal limits on costs of specified staff, activities and/or functions.

§809.111. Billing by a Child Care Management Services (CCMS) Contractor.

(a) The CCMS contractor bills the Commission after child care services are provided and the contractor has received the required documentation from the vendors.

(b) The CCMS contractor must process and submit bills to the Commission in a timely and efficient manner but no later than 30 days after receiving the required documentation from the vendor. To exceed 30 days, the CCMS contractor must have extenuating circumstances and written approval from the Commission. The Commission is not liable and will not pay for bills submitted later than 90 days after the required documentation has been received from CCMS vendors. Non-payment by the Commission for late submittal does not relieve the CCMS contractor's liability to reimburse the CCMS vendor.

(c) The CCMS contractors must also submit statistical reports as required by federal or state regulations or by the Commission.

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.

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SUBCHAPTER G. Program Monitoring and Compliance Requirements

40 TAC §§809.121-809.124

The new sections are proposed under Texas Labor Code, §301.061 and §302.021, which provides that the Texas Workforce Commission shall administer child care services provided in the Human Resources Code, Chapter 44 and will authorize the Commission to adopt, amend or rescind such rules as it deems necessary for the effective administration of the Act.

The proposed new sections affect Texas Human Resources Code, Chapter 44, Texas Labor Code, Chapter 302, and Texas Government Code, Chapter 2308.

§809.121. Monitoring Program Compliance.

The Child Care Management Services contractors and vendors must participate in evaluation and monitoring activities as specified by the Commission and federal funding sources.

§809.122. Audits of Child Care Management Services (CCMS) Contractors.

(a) All CCMS contractors are subject to audit or review by the Commission. The Commission may audit or review all relevant records or statistically sample records and project findings, including overpayments, based on that sample. The Commission may also audit cost or rate study data submitted by the CCMS contractor.

(b) CCMS contractors subject to the Single Audit Act must have an independent

audit performed in compliance with either the Office of Management and Budget Circular A-128 or A-133. The audit must be approved by the cognizant agency for the CCMS contractor, with a copy provided by the CCMS contractor to the Commission for review by the Commission. The CCMS contractor may be reimbursed by the Commission for the CCMS share of audit expenses if funding is available, the audit is found to be acceptable upon review by Commission, and the audit and reimbursement request follow Commission policies and procedures specified in the CCMS Contractor Manual.

(c) Operations expense is subject to additional review as part of the CCMS contractor's organization-wide single audit or audit by the Commission or other authorized agencies, as determined and approved by the Commission.

§809.123.Responsibility of the Commission for Establishing Procedures for Quality Assurance (QA) Monitoring of Child Care Management Services (CCMS) Contractors and Recoupment Based on Quality Assurance Monitoring Findings.

(a) QA Monitoring. The Commission establishes procedures to monitor CCMS contractors. The Commission:

- (1) establishes QA monitoring procedures using statistically valid sampling and extrapolation methodologies;
- (2) selects a statistically valid random sample of the cases or claims for which the CCMS contractor received payment for the time under review and examines records for those cases or claims;
- (3) establishes indicators of contractor performance; and
- (4) establishes reasonable standards for performance indicators.

(b) Recoupment based on QA monitoring findings. The Commission establishes procedures to recoup administrative costs of CCMS contractors who fail to meet standards for selected performance indicators.

(1) The Commission establishes procedures to recoup administrative costs of CCMS contractors based on statistically valid sampling and extrapolation methodologies.

(2) The scope of the recoupment is limited to errors in the sample and the determination of amounts to be recouped are based on the CCMS contractors' administrative costs associated with the staff functions related to the QA monitoring findings as determined by statistically valid time studies. However, the Commission's recoupment of administrative costs related to QA monitoring findings is not the limit of CCMS contractor's liability. The errors in the sample may be extrapolated to the entire population in order to recover child care costs and/or additional costs of administration when:

- (A) The Commission is found liable for QA monitoring findings by other regulatory agencies; or
- (B) the scope and severity of the contractor's failure to perform warrants greater liability.

§809.124.Quality Assurance (QA) Performance Indicators and Standards.

(a) The Commission establishes the following QA performance indicators and standards for Child Care Management Services (CCMS) contractors.

(1) Accurate and timely determinations or re-determinations of client eligibility. The CCMS contractor must comply with a 95% standard for the performance indicator of accurate and timely determinations or re-determinations of client eligibility.

(2) Correct assessment of parent fees. The CCMS contractor must comply with a 95% standard for the performance indicator of correct assessment of parent fees.

(3) Appropriate documentation of client enrollment activities. The CCMS contractor must comply with a 95% standard for the performance indicator of appropriate documentation of client enrollment activities.

(4) Maintenance of valid vendor agreements. The CCMS contractor must comply with a 95% standard for the performance indicator of maintaining valid vendor

agreements.

(5) Appropriate monitoring of vendors. The CCMS contractor must comply with a 95% standard for the performance indicator of appropriate monitoring of vendors.

(6) Appropriate documentation of vendor rates. The CCMS contractor must comply with a 95% standard for the performance indicator of appropriate documentation of vendor rates.

(b) The CCMS contractor's failure to perform within the standards specified in subsection (a)(1)-(6) of this section will result in the implementation of corrective action and/or recoupment.

(1) Corrective action. The CCMS contractor is required to implement corrective action for failure to perform within the standard for each performance indicator in subsection (a)(1)-(6) of this section. Additional corrective actions that may be imposed are specified in §809.141 of this title (relating to Contract Violations and Service Improvement Agreements).

(2) Recoupment. In addition to corrective action, the CCMS contractor may be subject to recoupment for failure to perform within the standard for accurate and timely determinations or re-determinations of client eligibility as specified in subsection (a)(1) of this section; and for failure to perform within the standard for maintenance of valid vendor agreements as specified in subsection (a)(4) of this section. Guidelines regarding recoupment methodology are specified in §809.149 of this title (relating to Recoupment Methodology for Administrative Costs Based on Quality Assurance (QA) Findings).

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.

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SUBCHAPTER H. Corrective and Adverse Actions

40 TAC §§809.141-809.155

The new sections are proposed under Texas Labor Code, §301.061 and §302.021, which provides that the Texas Workforce Commission shall administer child care services provided in the Human Resources Code, Chapter 44 and will authorize the Commission to adopt, amend or rescind such rules as it deems necessary for the effective administration of the Act.

The proposed new sections affect Texas Human Resources Code, Chapter 44, Texas Labor Code, Chapter 302, and Texas Government Code, Chapter 2308.

§809.141. Contract Violations and Service Improvement Agreements.

(a) The Child Care Management Services (CCMS) contractor must comply with all terms of the contract, Commission rules, and the policies and procedures in the CCMS Contractor Manual.

(b) The Commission pursues resolution of contract violations in accordance with the terms of the contract and the CCMS Contractor Manual.

(c) The Commission may consider a non-compliance as a breach of the contract. Sanctions the Commission may take as a response to a contract breach include, but are not limited to:

(1) requiring the CCMS contractor to enter into a Service Improvement Agreement (SIA) as set forth in subsection (e) of this section;

(2) suspension, nonrenewal, or termination of the CCMS contract;

(3) temporarily withholding payments to the CCMS contractor;

(4) nonpayment of costs incurred; and/or

(5) recoupment of funds from the CCMS contractor.

(d) The determination of which sanction or sanctions is appropriate is based upon:

- (1) the scope of the violation;
- (2) the severity of the violation;
- (3) the contractor's history of compliance; or
- (4) the contractor's failure to meet performance standards referenced in §809.123 of this title (relating to Responsibility of the Commission for Establishing Procedures for Quality Assurance Monitoring of CCMS Contractors and Recoupment Based on Quality Assurance Monitoring Findings).

(e) When contract violations are documented, a written SIA may be negotiated. The SIA establishes at a minimum:

- (1) the basis for the agreement;
 - (2) the steps required to reach compliance including technical assistance to be provided by the Commission;
 - (3) the time limits for implementing the improvements; and
 - (4) the consequences of not complying with the agreement.
- (f) A failure to fully comply with the terms of the SIA may result in the application of one or more of the sanctions set forth in subsection (c) of this section.

§809.142. Vendor Agreement Violations and Service Improvement Agreements (SIA).

(a) The vendor must comply with all terms of the Child Care Management Services (CCMS) Vendor Agreement, Commission rules, and the policies and procedures required in the CCMS Vendor Manual.

(b) The CCMS contractor must pursue resolution of agreement violations in accordance with the terms of the CCMS Contractor Manual, the CCMS Vendor Agreement, and the CCMS Vendor Manual.

(c) The CCMS contractor may consider acts of non-compliance as violations of the CCMS Vendor Agreement and the CCMS Vendor Manual. Sanctions the CCMS contractor may take as a response to violations of the agreement or manual include, but are not limited to:

- (1) suspension, nonrenewal, or termination of the vendor agreement;
- (2) temporary withholding of payments to the vendor for child care services delivered;
- (3) nonpayment of child care services delivered; and/or
- (4) recoupment of funds from the vendor.

(d) The determination of which sanction or sanctions is appropriate is based upon the number of non-compliances or the severity of the noncompliance or the vendor's compliance history.

(e) When vendor agreement violations are documented, a written SIA may be negotiated. The SIA establishes at a minimum:

- (1) the basis for the agreement;
- (2) the steps required to reach compliance including technical assistance to be provided by the CCMS contractor;
- (3) the time limit for implementing the improvements; and
- (4) the consequences of not complying with the agreement.

(f) A failure to fully comply with the terms of the SIA may result in the application of one or more of the sanctions set forth in subsection (c) of this section.

§809.143. Non-Compliance with Other State or Federal Programs.

(a) The Child Care Management Services (CCMS) contractor shall not enter into a vendor agreement with any child care provider if the provider or staff have been found to be in serious non-compliance with, seriously deficient by, or debarred from other State or Federal programs. The CCMS contractor shall terminate within 30 days a Vendor Agreement with any CCMS vendor whose facility or staff are

found to be in serious non-compliance with, seriously deficient by, or debarred from other State or Federal programs. See §809.2 of this title (relating to Definitions).

(b) The Child Care Training contractor shall not enter into a contract with any trainer or training entity if the trainer, training entity, or staff have been found to be in serious non-compliance with, seriously deficient by, or debarred from other State or Federal programs.

(c) The Commission or its contractors shall not enter into a contract with an entity if that entity or staff have been found to be in serious non-compliance with, seriously deficient by, or debarred from other State or Federal programs.

(d) Commission contractors or subcontractors must obtain Commission concurrence regarding such actions as described in subsections (a)-(c) of this section.

§809.144.Vendors Violating Minimum Licensing Standards.

(a) Vendors must comply with applicable licensing standards.

(b) The Child Care Management Services (CCMS) contractor must follow Commission policies and procedures in the CCMS Contractor Manual to determine whether to:

(1) close intake;

(2) move CCMS-referred children to another vendor facility selected by the parent;

(3) put vendor payments on hold; and/or

(4) terminate, suspend, or not renew a Vendor Agreement if the Texas Department of Protective and Regulatory Services Child Care Licensing Division has cited a vendor for serious or continued noncompliance with the minimum licensing standards or placed the vendor on some form of corrective or adverse action.

§809.145.Attendance over Licensed Capacity. The Commission will not pay for any child's enrollment on a day in which the attendance at the facility exceeds the state licensed capacity.

§809.146.Reapplication for Vendor Status after Termination or Nonrenewal of the Vendor Agreement.

(a) If a Vendor Agreement has not been renewed or has been terminated for violations with the Vendor Agreement, the Child Care Management Services (CCMS) Vendor Manual or minimum licensing standards, the child care provider will have to wait for up to six months after the termination date of the Vendor Agreement before reapplying.

(b) The reapplication period depends upon the reason for the termination or nonrenewal of the CCMS Vendor Agreement.

(c) The CCMS contractor must determine the reapplication period in accordance with Commission policies and procedures in the CCMS Contractor Manual.

(d) The child care provider must be informed at the time of the termination or nonrenewal of the Vendor Agreement when they may reapply for vendor status.

§809.147.Responsibilities of the Child Care Management Services (CCMS) Contractor for Recovery of Overpayment for Child Care Services.

(a) The CCMS contractor must attempt recovery of overpayment in cases involving parents, caretakers, vendors, or providers who have received or requested child care reimbursements.

(b) With Commission concurrence, the CCMS contractor will also attempt recovery of overpayment in cases involving fraud.

(c) Recovery of overpayment will be attempted for all overpayments. Further attempts for recovery of overpayments will occur when the overpayment amount equals or exceeds the costs of recovery.

(d) Recovery of overpayment must be managed in accordance with the Commission policies and procedures in the CCMS Contractor Manual.

§809.148.Recovery of Funds Paid to a Vendor or Parent.

(a) The vendor is subject to repayment of overpayments for child care services received in the following circumstances:

- (1) cases involving fraud as defined in §809.152 of this title (relating to Provider or Vendor Fraud);
- (2) instances when the vendor did not have a valid Vendor Agreement as defined in the terms of the Vendor Agreement;
- (3) instances when the vendor was over the licensed capacity;
- (4) instances when the vendor was paid for the child care services from another source;
- (5) cases when the vendor did not deliver the child care services;
- (6) cases when Child Care Management Services (CCMS) referred children have been moved from one facility to another without authorization from the CCMS contractor;
- (7) cases when the vendor transferred the Vendor Agreement to any other entity, facility, or location without notifying the CCMS contractor and following other requirements in the CCMS Vendor Manual; or
- (8) other cases when repayment is deemed an appropriate action.

(b) A parent is subject to repayment of overpayments for child care services in the following circumstances:

- (1) cases involving fraud as defined in §809.151 of this title (relating to Parent or Caretaker Fraud);
- (2) instances when the parent has received child care services while awaiting an appeal and the determination of the CCMS contractor is affirmed by the hearing officer;
- (3) instances when the parent was not eligible to receive child care services; or
- (4) other cases when repayment is deemed an appropriate action.

§809.149.Recoupment Methodology for Administrative Costs Based on Quality Assurance (QA) Findings.

(a) Child Care Management Services (CCMS) contractors are subject to recoupment when they fail to meet standards for the performance indicators specified in §809.124(a) (1) and (4) of this title (relating to Quality Assurance (QA) Performance Indicators and Standards). The Commission may recoup for administrative costs when the CCMS contractor's annual compliance rate is less than the 95% standard.

(b) The Commission uses the following methodology to determine the amount to be recouped for a compliance rate that is less than the 95% standard for accurate and timely determinations and re-determinations of client eligibility.

(1) The Commission determines the average cost per client for client services.

(2) The Commission determines the administrative costs of client services for clients in a CCMS contractor's QA monitoring sample, based on the number of clients in the CCMS contractor's QA monitoring sample and the average costs per client for client services.

(3) Based on the results of Commission monitoring of client eligibility determination and re-determination, if a CCMS contractor's compliance is:

(A) below the 95% standard but at or above 85%, the Commission recoups administrative costs in an amount equal to 1.5 times the percentage of noncompliance below 95% applied to the administrative costs of client services for clients in the QA monitoring sample; and

(B) below 85% of the standard, the Commission recoups administrative costs in an amount equal to the percentage of noncompliance below 100% applied to the administrative costs of client services for clients in the QA monitoring sample.

(c) The Commission uses the following methodology to determine the amount to be recouped for a compliance rate that is less than the 95% standard for maintenance of valid vendor agreements:

(1) the Commission determines the average cost per client for vendor services;

(2) the Commission determines the costs of vendor services for vendors in a CCMS contractor's QA monitoring sample, based on the number of vendors in the CCMS contractor's sample and the average costs per vendor for vendor services; and

(3) based on the results of Commission monitoring of maintenance of valid vendor agreements, if a CCMS contractor's compliance is:

(A) below the 95% standard but at or above 85%, Commission recoups administrative costs in an amount equal to 1.5 times the percentage of noncompliance below 95% applied to the administrative costs of vendor services for vendors in the monitoring sample; and

(B) below 85% of the standard, Commission recoups administrative costs in an amount equal to the percentage of noncompliance below 100% applied to the administrative costs of vendor services for vendors in the monitoring sample.

(d) If a CCMS contractor's compliance for accurate and timely determinations and re-determinations of client eligibility or maintenance of valid vendor agreements is below 85%, the Commission may recoup child care costs related to the errors in the sample in addition to recouping administrative costs. The Commission may also base recoupment on QA findings projected to the CCMS contractor's administrative and/or child care costs for all client services or all vendor services during the period of the QA monitoring sample.

§809.150.Responsibilities of the Child Care Management Services (CCMS) Contractor for Handling Suspected Fraud.

When a fraud case is suspected, the CCMS contractor must:

- (1) document in writing the reason for suspecting fraud;
- (2) refer the information to the Commission; and
- (3) with Commission concurrence, put a hold on further payments to the vendor, provider, parent, or caretaker.

§809.151.Parent or Caretaker Fraud.

The Commission considers a parent or caretaker may have committed fraud if the parent or caretaker presents or causes to be presented to the Child Care Management Services (CCMS) contractor either of the items indicated in this subsection.

(1) A parent or caretaker may have committed fraud if the parent or caretaker presents or causes to be presented to the CCMS contractor a claim for child care under the conditions indicated in this paragraph.

(A) Parent or caretaker fraud may occur when the client knows, or should know, that child care services were not provided as claimed.

(B) Parent or caretaker fraud may also occur when the client knows, or should know, that information is false or fraudulent.

(C) Parent or caretaker fraud may also occur when the client received child care services provided by a provider who the client knows, or should know; is not a regulated provider; is not 18 years of age; and is not one of the following relatives of the eligible child:

(i) aunt,

(ii) uncle,

(iii) grandparent,

(iv) great-grandparent, or

(v) sibling who is not living in the same household as the eligible child.

(D) Parent or caretaker fraud may also occur when the client received child care services during a period in which the client was not eligible for child care.

(2) A parent or caretaker may have committed fraud if the parent or caretaker presents or causes to be presented to the CCMS contractor a request for reimbursement that is in excess of the amount charged by the provider for the child care services.

§809.152.Provider or Vendor Fraud.

The Commission considers a provider or vendor may have committed fraud if the provider or vendor presents or causes to be presented to the Child Care Management Services (CCMS) contractor either of the items as described in paragraphs (1) or (2) of this subsection.

(1) A provider or vender may commit fraud if the provider or vender presents or causes to be presented to the CCMS contractor a claim for child care under the conditions in subparagraphs (A)-(C) of this paragraph.

(A) Provider or vendor fraud may occur when the provider or vender knows, or should know, that child care services were not provided as claimed.

(B) Provider or vendor fraud may also occur when the provider or vendor knows, or should know, that information is false or fraudulent.

(C) Provider or vendor fraud may also occur when the provider or vendor knows, or should know, that child care services were provided by a person who is not a regulated provider; is not 18 years of age; and is not one of the following relatives of the eligible child:

(i) aunt;

(ii) uncle;

(iii) grandparent;

(iv) great grandparent; or

(v) sibling who is not living in the same household as the eligible child.

(2) A provider or vendor may commit fraud if the provider or vendor presents or causes to be presented to the CCMS contractor a request for reimbursement that is in excess of the amount charged by the provider to other parents for the child care services.

§809.153.Consequences of Parent, Caretaker, Provider, or Vendor Fraud.

(a) The Child Care Management Services (CCMS) contractor may take the following actions if a parent, caretaker, child care provider, or vendor are found to have committed fraud as described in §809.151 and §809.152 of this title (relating to Parent or Caretaker Fraud and Provider or Vendor Fraud):

(1) suspension, nonrenewal, or termination of child care services or a CCMS vendor agreement;

(2) temporary withholding of payments to the parent or vendor for child care services delivered;

(3) nonpayment of child care services delivered; and/or

(4) recoupment of funds from the parent or vendor.

(b) The CCMS contractor must obtain concurrence from the Commission before taking the actions outlined in subsection (a) (1)-(4) of this section.

§809.154.Provision of Child Care Services During an Appeal.

(a) Child care services continue during the appeal process until a decision is reached if the parent requests a hearing within the 12-day notification period, as noted in §809.75(3) of this title (relating to Rights of People Applying for Child Care Services Through the Child Care Management Services (CCMS) System). Child care services will not continue during the appeal process if the child's enrollment is denied, delayed, reduced, or terminated because of:

(1) excessive absences;

(2) voluntary withdrawal from child care services as stated in §809.86 of this title (relating to Termination of Enrollment Due to Excessive Absences);

(3) change in federal or state laws or regulations;

(4) lack of funding;

(5) Clients participating in the Commission's Employment Program for Temporary Assistance to Needy Families (TANF) Recipients who are recommended for sanctioning; or

(6) voluntary withdrawal of a client from the Commission's Employment Program for TANF Recipients.

(b) The cost of providing services during the appeal process is subject to recovery from the parent by the CCMS contractor, if the appeal decision is against the client.

§809.155. Local Reviews and Hearings.

(a) A Child Care Management Services (CCMS) contractor or vendor against whom an adverse action, as defined in §§809.2, 809.141, 809.142, 809.144, or 809.146 of this title (relating to Definitions, Contract Violations and Service Improvement Agreements, Vendor Agreement Violations and Service Improvement Agreements, Vendors Violating Minimum Licensing Standards, and Reapplication for Vendor Status After Termination or Non-renewal of the Vendor Agreement), is taken, may request a local review of the adverse action. A CCMS contractor or vendor who is dissatisfied with the outcome of a local review may request a hearing appealing the results of the local review.

(b) A CCMS contractor or vendor must request a local review in writing and deliver the request to the Commission Contract Management or Board staff. A request for a local review must be filed within 15 calendar days of the date of the Commission, Board, or CCMS contractor staff's written notification of the adverse action and must contain a concise statement of the disputed adverse action, a recommended resolution, and any supporting documentation the CCMS contractor or vendor deems relevant to the dispute.

(1) On receipt of a request for local review, the Commission Contract Manager or Board coordinates a review by appropriate Commission or Board staff. Additional information may be requested from the CCMS contractor or vendor and must be provided within 15 calendar days of the request for additional information.

(2) Within 30 calendar days of the date the request for local review is received or the date additional requested information is received by the Commission or the Board, the Commission or the Board staff member conducting the local review must send the CCMS contractor or vendor written notification of the results of the review.

(c) A CCMS contractor or vendor who disagrees with the results of a local review conducted under subsection (b) of this section may file an appeal of the review and request a hearing. The CCMS vendor or contractor must file a written request for a hearing with the Appeals Department, Texas Workforce Commission, 101 East 15th Street, Room 410; Austin, Texas 78778-0001, within 15 calendar days after receiving written notification of the results of the local review. The hearing is limited to the issues and the information submitted by the provider that were considered in the local review process. The Commission conducts formal appeals in accordance with the provisions of Chapter 823 of this title (relating to Hearings).

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.

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Esther Hajdar

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Texas Workforce Commission

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