

Chapter 811. CHOICES

The Texas Workforce Commission proposes the repeal of Chapter 811 Choices, Subchapter A General Provisions §§811.1-811.2, Subchapter B Eligibility and Participation §§811.11, 811.20, Subchapter C Job Search-Related Activities §§811.31-811.34, Subchapter D Work-Based Programs §§811.41-811.45, Subchapter E Education and Other Training Activities §§811.61-811.65, Subchapter F Support Services §§811.81-811.87, Subchapter G Appeals §811.101; and new Chapter 811 Choices Subchapter A General Provisions §§811.1-811.4, Subchapter B Access to Choices Services §§811.11-811.14, Subchapter C Choices Services §§811.21-811.37, Subchapter D Restrictions on Choices Services §811.51, Subchapter E Support Services and Other Initiatives §§811.61-811.67, Subchapter F Appeals §§811.71-811.72, relating to Choices services and the participation requirements for persons receiving temporary cash assistance from the Texas Department of Human Services.

The four principles of Texas' vision are: limited and efficient state government, local control, personal responsibility, and support for strong families (House Bill 1863, 74th Texas Legislature, 1995, as amended and codified in selected statutes including the Texas Labor Code, Chapters 301 and 302). The One-Stop Service Delivery Network rules, which are based on the four principles of Texas' vision, set forth the role of a Board in the oversight and management of Choices services as part of the maintenance and continuous improvement of the One-Stop Service Delivery Network as established in Texas Government Code, Chapter 2308, and Texas Labor Code, Chapters 301 and 302, and 40 TAC Chapter 801, Subchapter B. The One-Stop Service Delivery Network rules are also designed to address the four purposes of TANF and the following key principles underlying The Personal Responsibility and Work Opportunity Reconciliation Act, as stated in the April 12, 1999 final TANF regulations at 64 Fed. Reg. 17721:

- (1) Welfare reform should help people transition from welfare to work;
- (2) Welfare should be a short-term transitional experience, not a way of life;
- (3) Parents should receive the assistance necessary to help their families in the transition from welfare to work;
- (4) Solutions to poverty and welfare dependency should not be "one-size fits all;" and
- (5) Federal and state government should focus less attention on eligibility determinations and place more emphasis on program results.

The four purposes of TANF (42 U.S.C.A. §601(a)), are:

- (1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
- (2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;
- (3) prevent and reduce the incidence of out-of-wedlock pregnancies; and
- (4) encourage the formation and maintenance of two-parent families.

The goal of Choices services is to end the dependence of needy families on public assistance by promoting job preparation, work and marriage. The Commission intends, to the extent possible, that a Board be provided the flexibility afforded in the final federal TANF regulations and that a Board may engage in strategies that promote the prevention and reduction of out-of-wedlock pregnancies and encourage the formation and maintenance of two-parent families if those strategies support the primary goal of Choices services which is employment and job retention.

In light of these principles and goals, it is the intent of the Commission that TANF recipients, who are required to participate in Choices services, as well as those individuals at risk of becoming dependent on public assistance or who have transitioned off of public assistance be provided Choices and other services available through the One-Stop Service Delivery Network. More specifically, the changes to the Choices rules are proposed to meet the overarching philosophies and goals of Choices services that include the following:

providing Boards with maximum flexibility to address all purposes of TANF, while ensuring that services provided under purposes 3 and 4, as set forth in proposed §811.1, support the primary goal of promoting employment and job retention/career advancement;

clearly stating the responsibilities of Boards in planning for and managing services including setting forth the Boards' responsibilities related to assessment, development of employability plans, and the delivery of services to individuals;

linking individuals with comprehensive services available through the One-Stop Service Delivery Network;

clearly stating client responsibilities;

describing allowable component activities;

improving linkages between employer needs and individuals who participate in Choices services;

continuing the focus on Work First;

addressing the removal of barriers that limit the individual's ability to work or participate;

clarifying the application of good cause; and

emphasizing post-employment services aimed at job retention and career advancement.

Because of the number of format and organizational changes to the Choices rules, these changes are better facilitated by the repeal of the current rules and adoption of new rules. Following is a more detailed explanation of the changes to the rules.

In §811.1, Purpose and Goal, the new language clarifies the Commission's support of the four purposes of TANF and language concerning expenditure of funds to meet and exceed participation rates and sets forth the goals of Choices services.

In §811.2, Definitions, the new language adds definitions for "Applicant" and "former recipient," and defines the terms "temporary assistance" and "temporary cash assistance" and related terms for purposes of consistency and clarity.

In §811.3, General Board Responsibilities, the new language adds a section to distinguish Board responsibilities from participant responsibilities.

In §811.4, Choices Service Strategy, the new language, which was previously addressed in language contained in former §811.17, is changed to incorporate job retention and career advancement services.

In §811.11, Board Responsibilities Regarding Access, the provisions clarify the responsibilities of the Boards relating to Choices services. Many of the provisions relating to existing requirements are merely reorganized in this section.

In §811.12, Applicant Responsibilities, the language references the provisions relating to attendance regarding Workforce Orientation for Applicants.

In §811.13, Recipient Responsibilities, the language references the provisions relating to recipients' requirements.

In §811.14, Good Cause for Recipients, the new language is added to clarify the application of good cause.

New Subchapter C. is added as the location for provisions relating to Choices Services.

In §811.21, General Provisions, language is added to set forth the Choices services and the Boards' responsibility regarding those services.

In §811.22, Assessment, the provisions set forth the general requirements relating to the assessment.

In §811.23, Employability Plan, the new language, which was previously addressed in language contained in former §811.12, adds a section to strengthen the focus on developing an employability plan based on employers' needs in the local labor market. New language is also included to emphasize the identification and removal of circumstances or barriers that limit an individual's ability to work or participate.

In §§811.24 - 811.36, the language sets forth provisions relating to additional Choices services.

New Subchapter D. is added to set forth Restrictions on Choices Services, which includes §811.51.

Subchapter E. is added as the location for rules relating to support services and other initiatives, §§811.61 - 811.67.

In §811.61, Board Review, new language is added to require Board review in the appeal process.

Subchapter F. is added as the location for rules relating to Appeals, which includes §§811.71-811.72.

Additional Background regarding Choices services. Rules of the Texas Department of Human Services relating to employment services, contained in part in 40 TAC Chapter 3, include the following: requirements of applicants of temporary cash assistance to attend workforce orientation sessions and for recipients to participate in employment services; the exemptions from participation requirements; and financial penalties applied to benefits resulting from noncompliance. Recipients of temporary cash assistance benefits, pursuant to the Personal Responsibility Agreement, are required to work or participate in Choices, the state's TANF employment services program. The Commission, where applicable, cross references those rules for the purposes of continuity or clarity.

Although these rules govern services available through the TANF block grant funds, participants are eligible for and may receive services funded through other resources, including services available under the Welfare-to-Work Formula Grant. Boards have the jurisdiction and the authority to set local policy and determine Choices service delivery strategies and procedures, other One-Stop Service Delivery Network services and activities available in each workforce area, and the locations where services are available and delivered consistent with federal and state regulations, rules, and policies. One such federal requirement is that the funding for WIA services should be utilized only after other funding sources, including Choices funds, are exhausted.

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

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

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

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

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

there are anticipated economic costs to persons required to comply with the rules.

Mr. Townsend has also determined that there is no anticipated adverse impact on small businesses as a result of enforcing or administering the rule because small businesses are not regulated or required to do anything by the rule. Mark Hughes, Director of Labor Market Information, has determined that there is no foreseeable negative impact upon employment conditions in this state as a result of the proposed amendment. The result of the rules should be improved education and employment opportunities throughout Texas for persons at risk of becoming dependent on public assistance as well as improved resources of skilled workers from which employers may benefit.

Barbara Cigainero, Director of Workforce Development, has determined that the public benefit anticipated as a result of the rules as proposed will be the clarify and improve the state and local partnership in policy making and service delivery that will ensure that recipients of temporary cash assistance receive services to aid them in assuming their responsibility to move quickly into work or work activities leading to self-sufficiency.

Comments on the proposed rules may be submitted to Barbara Cigainero, Director of Workforce Development, Texas Workforce Commission, 101 East 15th Street, Room 504-T, Austin, Texas 78778; Fax Number (512) 463-2209; E-mail to Barbara.Cigainero@twc.state.tx.us.

Comments must be received by the Commission no later than thirty days from the date this proposal is published in the *Texas Register*.

Subchapter A. GENERAL PROVISIONS

40 TAC §811.1, §811.2

(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 rules are repealed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Titles 4 as well as Texas Government Code Chapter 2308.

§811.1.Goal and Purpose.

§811.2.Definitions.

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

Filed with the Office of the Secretary of State, on December 4, 2000.

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J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

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40 TAC §§811.1-811.4

The rules are proposed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Titles 4 as well as Texas Government Code Chapter 2308.

§811.1.Purpose and Goal.

(a) The purposes of Temporary Assistance to Needy Families (TANF), as outlined in Title IV, Social Security Act, §401 (42 U.S.C.A. §601) are:

(1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;

(2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;

(3) prevent and reduce the incidence of out-of-wedlock pregnancies; and

(4) encourage the formation and maintenance of two-parent families.

(b) The goal of Choices services is to end the dependence of needy parents on public assistance by promoting job preparation, work, and marriage. Boards are also provided the flexibility and may engage in strategies that promote the prevention and reduction of out-of-wedlock pregnancies and encourage the formation and maintenance of two-

parent families if those strategies support the primary goal of Choices services, which is employment and job retention.

§811.2. Definitions.

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

(1) Applicant -- A person who applies for temporary cash assistance.

(2) Earned Income Deduction (EID) -- For purposes of this chapter, Earned Income Deduction is defined as a standard work-related and income deduction that is available through the Texas Department of Human Services (DHS) for four months to all recipients who obtain employment.

(A) Recipients who are employed less than 30 hours a week and earn less than \$700 a month, and are not otherwise exempt, shall be required to participate in Choices services.

(B) Recipients who elect the Earned Income Deduction and are employed at least 30 hours a week and earn at least \$700 per month shall be required to report hours of work.

(C) Two-Parent recipients who elect the Earned Income Deduction and are employed at least 30 but less than 35 hours a week shall be required to participate in additional Choices services to meet the federal 35-hour requirement.

(3) Former recipient -- A person who is an adult or teen head of household who no longer receives temporary cash assistance.

(4) Individual -- A person who is an applicant, recipient, or former recipient as defined in this section.

(5) Recipient -- A person who is an adult or teen head of household who receives temporary cash assistance.

(6) Temporary assistance -- As defined in 45 C.F.R. §260.31, includes cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs for items such as food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses. Temporary assistance, which is funded through TANF:

(A) includes support services such as transportation and child care that are provided to families for up to four months if the family is not employed;

(B) includes other types of benefits and services in support of the TANF purpose one goal at 45 C.F.R. 260.20(a) that provides assistance to needy families so that children may be cared for in their own homes or in the homes of relatives; and

(C) does not include those items listed in 45 C.F.R. 260.31(b) such as non-recurrent, short-term benefits that are designed to deal with a specific crisis situation or episode of need, and are not intended to meet recurrent or ongoing needs.

(7) Temporary cash assistance -- The cash grant provided through DHS to individuals who meet certain residency, income, and resource criteria as provided for under state and federal statutes and regulations, including the Personal Responsibility and Work Opportunity Reconciliation Act, the TANF block grant statutes, the TANF State Plan, and other related regulations.

(8) Work-Based Services -- Includes those services defined in Human Resources Code 31.0126.

§811.3. General Board Responsibilities.

(a) Role of Boards. A Board shall, as authorized by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105, as amended, the applicable federal regulations at 45 C.F.R. Part 260 - 265, the TANF State Plan, this chapter, and consistent with the Board's Choices service strategy and the Board's approved integrated workforce training and services plan as referenced in §801.17 of this title, identify employers' workforce needs and design Choices services to ensure that applicants, recipients, and former recipients participate in work-related activities that meet the needs of the local employers and are consistent with the goals and purposes of Choices services as referenced in §811.1 of this title.

(b) Board Flexibility. Subject to the authorization referenced in subsection (a) of this section, a Board may exercise flexibility in the use of TANF funds for services to applicants, recipients, and former recipients to end the dependence of needy persons on government benefits by promoting job preparation, work, and marriage to fulfill TANF purpose two as referenced in §811.1 of this title.

(c) Board planning. A Board shall develop, amend and modify its integrated workforce training and services plan to incorporate and coordinate the design and management of the delivery of Choices services with the delivery of other workforce employment, training and educational services identified in Texas Government Code §2308.251 et seq., as well as other training and services included in the One-Stop Service Delivery Network as set forth in Chapter 801 of this title.

(d) Board management. Pursuant to the rules contained in Chapter 801 and this chapter, a Board shall coordinate workforce training and services for the Board's workforce area and shall incorporate and coordinate the management

and strategy for Choices services as provided in §811.4 of this title, into the comprehensive One-Stop Service Delivery Network provided to help low-income families as they move toward self-sufficiency.
§811.4.Choices Service Strategy.

(a) A Board shall conduct a strategic planning process that includes an analysis of the local labor market to determine employers' needs, emerging occupations, and demand occupations; and identify employers who will support employment with a goal of career advancement for individuals.

(b) A Board shall set local policies for a Choices service strategy that coordinates various service delivery approaches to:

(1) assist applicants in gaining employment as an alternative to public assistance;

(2) utilize a Work First strategy to provide recipients access to the labor market; and

(3) assist former recipients in job retention and career advancement to remain independent of temporary cash assistance.

(c) The Choices service strategy shall include:

(1) Workforce Orientation for Applicants (WOA). As a condition of eligibility, applicants are required to attend a workforce orientation that includes information on options available to allow them to enter the Texas workforce. As part of the orientation, a Board must provide applicants with an appointment for the employment planning session that the individual is required to attend if the individual is subsequently certified as eligible for temporary cash assistance. A Board shall ensure that the applicants are informed of:

(A) the impact of time-limited benefits, the advantages of working, individual and parental responsibilities;

(B) the services available through Choices;

(C) other services and activities available through the One-Stop Service Delivery Network; and

(D) the consequences for noncompliance.

(2) Work First.

(A) Work First provides individuals with access to the labor market before or immediately after certification for temporary cash assistance.

(B) A Board must establish written policy guidelines that provide a period of assisted job search and job readiness activities that are consistent with state-established guidelines. Individuals who do not obtain employment during this timeframe are placed in work-based services and education or training activities as identified in the individual's employability plan.

(C) Boards shall ensure that the individual assessment and the individual's time limits for temporary cash assistance are considered when planning services.

(3) Job Retention, Career Advancement, and Re-Employment Services.

(A) A Board shall ensure that the Choices service strategy provides services for current recipients who are employed or former recipients to support job retention, independence from temporary cash assistance, and progress towards self-sufficiency with a goal of career advancement.

(B) Post-employment services include skills upgrade, work-related incentives, education and training, transportation, child care, and other supportive services. Post-employment service providers may include, among others, community colleges, technical colleges, proprietary schools, faith-based organizations, and community based organizations.

(4) Adult Services. Services for adults focus on activities individually designed to lead to employment and self-sufficiency as quickly as possible.

(5) Teen Services. Services for teenaged individuals focus on completion of school, graduating or obtaining a high school equivalency certificate, and making the transition from school to work.

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

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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40 TAC §§811.11-811.20

(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 rules are repealed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Titles 4 as well as Texas Government Code Chapter 2308.

§811.11. Eligibility.

§811.12. Participation Requirements.

§811.13. Good Cause.

§811.14. Penalties for Failure to Participate.

§811.15. Access to Choices Services.

§811.16. Assessment.

§811.17. Choices Service Strategies.

§811.18. Monitoring of Participation.

§811.19. Individual Development Accounts.

§811.20. Employment Retention and Re-employment Services.

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 B. ACCESS TO CHOICES SERVICES

40 TAC §§811.11-811.14

The rules are proposed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Titles 4 as well as Texas Government Code Chapter 2308.

§ 811.11. Board Responsibilities Regarding Access.

(a) A Board shall ensure that Choices services are provided to applicants for temporary cash assistance who attend Workforce Orientation for Applicants.

(b) A Board shall ensure that recipient status is verified monthly and recipients either:

(1) comply with Choices services requirements as outlined in the employability plan unless the individual is exempted by DHS; or

(2) have good cause as described in §811.14 of this title (relating to Good Cause for Recipients).

(c) A Board shall ensure that post-employment services, including job retention and career advancement services, are available to recipients, including those receiving EID, and former recipients.

(d) A Board shall ensure that the monitoring of program requirements and participant activity is ongoing and frequent, as determined appropriate by the Board, and consists of the following:

(1) tracking and reporting hours of participation;

(2) tracking and reporting of supportive services;

(3) determining and arranging for any intervention needed to assist the individual in complying with Choices service requirements;

(4) ensuring that the individual is progressing toward achieving the goals and objectives in the employability plan;
and

(5) monitoring all other participation requirements.

(e) A Board shall:

(1) verify that an applicant attends Workforce Orientation for Applicants, in accordance with DHS rule, 40 T.A.C. §3.7301 ; or

(2) notify DHS if a recipient fails to comply with Choices services requirements.

§811.12.Applicant Responsibilities.

Applicants are required to attend a scheduled Workforce Orientation for Applicants, in accordance with DHS rule 40 T.A.C. §3.7301.

§811.13.Recipient Responsibilities.

Recipients are required to:

- (1) attend scheduled appointments;
- (2) participate in or receive ancillary services necessary to enable the individual to participate in employment or in employment-related activities, including counseling, treatment, vocational or physical rehabilitation, and medical or health services;
- (3) accept a job offer;
- (4) participate in assessment and employment planning appointments and assigned employment and training activities for the required number of hours per week as required by 42 U.S.C.A. §607 or as designated in an individual's employability plan in which compliance is based on the assigned number of hours designated in the employability plan, even if greater than the federal minimum expectation; and
- (5) report component activity hours, including hours of employment.

§811.14.Good Cause for Recipients.

(a) Good cause. Good cause only applies to recipients. A Board shall ensure whether the recipient has good cause as provided in this chapter.

(b) Determinations of good cause. A Board shall ensure that a good cause determination:

- (1) is based on the individual circumstances of the recipient;
- (2) is based on face-to-face or telephone contact with the recipient;
- (3) covers a temporary period when an individual may be unable to attend scheduled appointments or participate in ongoing work activities;
- (4) is made at the time of occurrence; and
- (5) is conditional upon efforts to enable the individual to address circumstances that limit the ability to participate in Choices services as required in the Personal Responsibility Agreement.

(6) shall not extend beyond three months unless a re-evaluation of the situation shows that the circumstance precluding participation is not resolved after all available resources to remedy the situation have been explored.

(c) Reasons for good cause. One or more of the following may constitute good cause for purposes of this chapter if the recipient:

- (1) is temporarily ill or incapacitated;
- (2) is incarcerated or has a court appearance;
- (3) is the caretaker of a physically or mentally disabled child who requires the caretaker's presence in the home;
- (4) demonstrates that there is no available transportation or there is a breakdown in transportation arrangements;
- (5) demonstrates that there is no available child care or there is a breakdown in child care arrangements;
- (6) is without other support services necessary for participation;
- (7) receives a job referral that results in an offer below the federal minimum wage, except for certain work-related, on-the-job training activities such as work skills training;
- (8) demonstrates that there are no available jobs within reasonable commuting distance, which means that travel from home to the job or training would require commuting time of more than two hours round trip, or the distance prohibits walking and transportation is not available; or
- (9) is in a family crisis or family circumstance that precludes participation, including being a victim of domestic violence, and the recipient engages in problem resolution through appropriate referrals for counseling and supportive services.

(d) Good cause based on domestic violence. A Board shall ensure that good cause based on domestic violence:

- (1) is reevaluated at least every three months; and
- (2) does not extend beyond a total of twelve months from the first determination of good cause.

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 C. CHOICES SERVICES

40 TAC §§811.21 - 811.37

The rules are proposed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Titles 4 as well as Texas Government Code Chapter 2308.

§811.21.General Provisions.

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

- (1) job readiness and job search-related services;
- (2) work-based services;
- (3) job retention and career advancement services;
- (4) education and training services as described in this subchapter; and
- (5) support services.

(b) A Board shall ensure that employment and training activities are conducted in compliance with the Fair Labor Standards Act.

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

(d) A Board may utilize the Training Provider Certification System (TPCS) and Individual Training Account (ITA) systems as described in 40 T.A.C. Chapter 841 to purchase or pay for training services for individuals participating in Choices activities.

(e) A Board may provide Job Development Services. These services may include outreach activities performed to solicit an employer's acceptance of an individual into an unsubsidized job opening, subsidized employment, on-the-job training position, or other work-site activity.

(f) A Board may provide Job Placement Services. Job Placement services include identification of employers' workforce needs and identification of individuals who have sufficient education and training to be successfully linked with employment.

§811.22.Assessment.

General Requirements. A Board shall ensure that the following minimum initial assessments are performed to determine the employability and retention needs of individuals as set forth in this section.

(1) For applicants, recipients, and former recipients, the assessment shall include evaluation of the individual's strengths and barriers to obtain and retain employment including:

- (A) skills and abilities, employment, and educational history in relation to employers' workforce needs in the local labor market;
- (B) support services needs; and
- (C) family circumstances that may affect participation, including the existence of family violence as one of the factors considered in evaluating an individual's employability.

(2) For recipients, the assessment shall also include evaluation of the individual's:

- (A) vocational and educational skills, experiences, and needs; and
- (B) literacy level by using a statewide standard literacy assessment instrument. Recipients receiving the EID are excluded from the literacy assessment. A Board shall ensure that the grade-level results are provided to DHS for use in determining the appropriateness of the initial State time limit designation for temporary cash assistance as described in the Texas Human Resources Code Section 31.0065, relating to State time-limited benefits.

§811.23.Employability Plan.

(a) The Board shall ensure that an employability plan, which is developed during the assessment:

- (1) is based on an individual and family assessment;
- (2) delineates the goal of self-sufficiency through employment based on the needs of the local labor market;
- (3) sets out the steps and services set forth in this chapter necessary to achieve the goal, including:
 - (A) testing the individual's immediate employability in the local labor market;
 - (B) removing the barriers that limit the individual's ability to work or participate in activities to enable the individual to address their barriers;
 - (C) arranging support services; and
 - (D) providing post-employment skill enhancement and career advancement;
- (4) is signed by the individual and the Board's designated representative;

(5) assigns required hours and is the participation agreement for compliance with Choices services requirements; and

(6) includes counseling and other support services that address domestic violence, including the removal of circumstances that limit the ability to work or participate for recipients who receive a good cause determination for domestic violence.

(b) A designated representative of the Board shall ensure that an assessment is ongoing, progress towards meeting the goals of the employability plan is evaluated, and the employability plan is modified as appropriate to meet employer needs in the local labor market.

§811.24. Job Readiness Services.

Job readiness services shall provide individual assistance or coordinated, planned, and supervised classes to prepare individuals for seeking employment, and may include the following:

(1) occupational exploration, including information on local emerging and demand occupations;

(2) job skills assessment;

(3) assistance with applications and resumes;

(4) job fairs;

(5) interviewing skills and practice interviews;

(6) life skills; or

(7) guidance and motivation for development of positive work behaviors necessary for the labor market.

§811.25. Job Search Services.

Job search services shall provide individual and group activities in which individuals actively seek employment, and may include the following:

(1) counseling;

(2) job search skills training;

(3) information on available jobs; or

(4) provision of information on the local labor market, including information on emerging and demand occupations.

§811.26. Unsubsidized Employment.

Full or part-time employment, with wages paid in full by the employer.

§811.27. Subsidized Employment.

(a) Enrollment.

(1) Individuals who, after an objective assessment of their skills, are determined to have the basic skills and behaviors necessary to succeed in the workplace may be placed in subsidized employment positions.

(2) Individuals who are unemployed after completing an initial job readiness and job search period may be required to enter into a subsidized employment position based on available resources and the individual's skills, interests, and employability plan.

(b) Wages.

(1) Wages shall be at least minimum wage. All of the wages, or a portion of the wages, may be subsidized, based on local Board policy.

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

§811.28. Internship.

Individuals engaged in internships are in short-term training. A Board may set local policy regarding whether internships are unpaid or paid, and whether the internships are subsidized or unsubsidized.

§811.29. Self-Employment Assistance.

(a) Subject to available resources, the Agency shall, or a Board may, provide for self-employment assistance services for appropriate Choices individuals to enable them to begin or continue a small business. For purposes of this subsection, a small business has ten or fewer employees.

(b) Self-employment assistance may include a microenterprise development program.

(c) Individuals shall be selected for self-employment assistance through an objective assessment process that shall identify individuals who are likely to succeed as business owners.

(d) Self-employment assistance services available to all individuals in Choices shall include:

(1) entrepreneurial training, a required activity for each individual in Choices;

(2) business counseling;

(3) financial assistance; or

(4) technical assistance.

§811.30. On-the-Job Training.

A Board shall ensure that a determination is made on a case-by-case basis whether to authorize, arrange, or refer individuals for subsidized, time-limited training activities, to assist the individual with obtaining knowledge and skills that are essential to the workplace while in a job setting.

§811.31. Job Skills Training.

(a) A Board shall ensure that a determination is made on a case-by-case basis whether to authorize, arrange, or refer individuals for job skills training.

(b) The job skills training shall be:

(1) directly related to employment; and

(2) be consistent with employment goals identified in the individual's employability plan, when possible.

§811.32. Work Skills Training.

(a) A Board shall ensure that a determination is made on a case-by-case basis whether to authorize, arrange, or refer individuals for unsalaried, work-based training positions in either the private, for-profit, or nonprofit sector or the public sector to improve the employability of an individual who has been unable to find employment.

(b) A Board shall ensure that all individuals who are not exempt from participating in Choices services who are unemployed after completing job search services are evaluated on an individual basis to determine if enrollment in work skills training shall be required, based on available resources and the local labor market.

(c) The Board shall ensure that each work skills training placement:

(1) is time-limited;

(2) is designed to move the individual quickly into regular employment; and

(3) has designated hours, tasks, skill attainment objectives, and staff supervision.

(d) A Board shall ensure that all entities that enter into non-financial agreements with the Board identify training positions and provide job training and work skills training within their organization. These positions shall enable individuals to gain the skills necessary to compete for positions within the entity as well as positions in the labor market.

§811.33. Community Service.

A Board shall ensure that a determination is made on a case-by-case basis whether to authorize, arrange, or refer individuals for a community service program that provides quality employment activities to individuals through unsalaried, work-based positions in either the private nonprofit sector or the public sector to improve the employability of individuals who have been unable to find employment. A Board is encouraged to use community service programs only in those cases where an individual's need warrants it. These placements are time-limited, and individual positions must be designed to move individuals quickly into regular employment.

§811.34. Vocational Educational Training.

(a) A Board shall determine, on a case-by-case basis, whether to authorize, arrange, or refer individuals for training in vocational job skills or knowledge in specific occupational areas.

(b) The vocational educational training shall:

(1) relate to the types of jobs available in the labor market;

(2) be consistent with employment goals identified in the individual's employability plan, when possible; and

(3) be subject to the time limitations as detailed in §811.41.

§811.35. Parenting Skills Training.

A Board shall determine, on a case-by-case basis, whether to authorize, arrange, or refer individuals for parenting skills training including one or more of the following: nutrition education, budgeting and life skills, and instruction on the necessity of physical and emotional safety for children.

§811.36. Educational Services.

A Board shall determine, on a case-by-case basis, whether to authorize, arrange, or refer individuals for the following educational or other training services:

(1) secondary school leading to a high school diploma, satisfactory attendance at a secondary school, or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate;

(2) basic skills and literacy;

(3) English proficiency; or

(4) postsecondary education, intended to lead to a degree or certificate awarded by a training facility, proprietary school, or other educational institution that prepares individuals for employment in current and emerging occupations that do not require a baccalaureate or advanced degree. On an individual basis, completion of self-initiated education currently in progress at the associates, baccalaureate, or advanced degree level may be approved within the twelve-month time frame, subject to the time limitations as detailed in §811.41.

§811.37. Job Retention, Career Advancement, and Re-employment Services.

(a) A Board shall ensure that job retention, career advancement, and re-employment services are offered to current recipients who are employed and applicant and former recipients who have obtained employment but require additional assistance in retaining employment and achieving self-sufficiency.

(b) A Board shall monitor job retention, and ensure that hours of employment are required and reported by individuals for at least the length of time the individual receives temporary cash assistance.

(c) Recipients who elect to receive the Earned Income Deduction through DHS and are required to participate in employment services must report hours of work for a four-month period to the Board.

(d) A Board shall, through local policy and procedures, establish follow-up methods and time frames that shall occur no less often than monthly.

(e) A Board may provide job retention, career advancement, and re-employment services to individuals who are denied temporary cash assistance due to earnings. The job retention, career advancement, and re-employment services for former recipients may include the following:

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

(2) child care, if needed, as specified in rules at 40 T.A.C. Chapter 809;

(3) work-related expenses, including those identified in §811.52 of this title (relating to Work-Related Expenses);

(4) transportation, if needed;

(5) job search, job placement, and job development services to help an individual who loses employment find another job; or

(6) referrals to available education and training resources to increase an employed individual's skills or to help the individual qualify for advancement and longer-term employment goals.

(f) The length of time a former recipient may receive services is dependent upon the individual's circumstances and whether the individual is at risk of returning to temporary cash assistance.

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 C. JOB SEARCH-RELATED ACTIVITIES

40 TAC §§811.31-811.34

(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 rules are repealed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Titles 4 as well as Texas Government Code Chapter 2308.

§811.31. Job Search-Related Activities.

§811.32. Job Readiness.

§811.33. Job Search.

§811.34. Job Development and Job Placement Services.

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 D. WORK-BASED PROGRAMS

40 TAC §§811.41-811.45

(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 rules are repealed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Titles 4 as well as Texas Government Code Chapter 2308.

§811.41.Work-Based Programs.

§811.42.Subsidized Employment.

§811.43.Work Skills Training.

§811.44.Texans Work Program.

§811.45.Self-Employment Assistance.

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 D. RESTRICTIONS ON CHOICES SERVICES

40 TAC §811.51

The rules are proposed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Titles 4 as well as Texas Government Code Chapter 2308.

§811.51.Restrictions on Lengths of Education and Training.

A Board shall ensure that education and training, for each individual, does not exceed a cumulative total of 12 months. The Board shall also ensure that the education and training is:

(1) either postsecondary or vocational, and

(2) leads to a degree or certificate.

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 E. EDUCATION AND OTHER TRAINING ACTIVITIES

40 TAC §§811.61-811.65

(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 rules are repealed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Titles 4 as well as Texas Government Code Chapter 2308.

§811.61.Education and Training Activities.

§811.62.Educational Activities.

§811.63. Vocational and Job Skills Training.

§811.64. On-the-Job Training.

§811.65. Parenting Skills Training.

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 E. SUPPORT SERVICES AND OTHER INITIATIVES

40 TAC §§811.61-811.67

The rules are proposed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Titles 4 as well as Texas Government Code Chapter 2308.

§811.61. Support Services.

A Board shall ensure that support services as specified in this subchapter shall, if needed, be provided to applicants, recipients, and former recipients to remove barriers to employment or participation in Choices services, subject to availability of resources and funding. A Board shall ensure that support services provided to applicants, recipients, and former recipients are coordinated with the employer, when appropriate.

§811.62. Child Care for Applicants and Recipients.

(a) A Board shall ensure that child care is provided if needed, as specified in Chapter 809 of this title, including parents' share of child care costs.

(b) Transitional child care is provided as needed, as specified in §809.101 of this title.

(c) Choices child care is provided as needed, as specified in §809.102 of this title.

(d) Applicant child care is provided as needed, as specified in §809.104 of this title.

§811.63. Transportation.

A Board shall ensure that transportation assistance shall:

(1) be provided if needed to enable an applicant, a recipient, and a former recipient to work, attend, and participate in required Choices services, or access necessary support services if alternative transportation resources are not available;

(2) not extend beyond four months for applicants or former recipients who are unemployed and not receiving temporary cash assistance; and

(3) use the most economical means of transportation that meets the individual's needs.

§811.64. Work-Related Expenses.

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

(b) A Board shall develop written policies related to the methods and limitations for provision of work-related expenses.

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

§811.65. Wheels to Work.

(a) The Agency may develop a Wheels to Work initiative in which local nonprofit organizations provide automobiles for Choices individuals who have obtained employment but are unable to accept or retain the employment solely because of a lack of transportation.

(b) A Board may assist individuals who verify the need for an automobile to accept or retain employment by referring them to available providers.

(c) Persons or organizations donating automobiles under a Wheels to Work initiative shall receive a charitable donation receipt for federal income tax purposes.

§811.66. General Equivalency Diploma (GED) Testing Payments.

A Board shall ensure that the cost of General Equivalency Diploma (GED) testing and issuance of the certificate are paid through direct payments to the GED test centers and the Texas Education Agency for individuals referred for testing by the Board's provider of Choices services.

§811.67. Individual Development Accounts.

(a) A Board may administer an individual development account (IDA) program under this section using TANF funds in accordance with 45 C.F.R. §§263.20-263.23. An individual development account means an account established by, or for, an eligible individual to allow the individual to accumulate funds for specific purposes.

(b) A Board shall ensure that any individual development accounts created and matched with TANF funds are established and administered through a contract with a private nonprofit entity or through a state or local government entity acting in cooperation with a private nonprofit entity. The private nonprofit entity, or cooperating state or local entity, must coordinate with a financial institution in administering the accounts.

(c) Individuals eligible under this section for individual development accounts are applicants, recipients, and former recipients.

(d) Individual development accounts may be established for an eligible individual, and may be contributed to with the individual's earned income and up to fifty percent of the individual's federal Earned Income Tax Credit refund. Federal Earned Income Tax Credit refunds shall not be matched with TANF funds.

(e) Federal TANF, as well as public or private funds may be used to provide matching funds for qualified expenses and to administer individual development accounts and shall be expended in a manner consistent with applicable federal and state statutes and regulations, with the exception of federal Earned Income Tax Credit refunds.

(f) Use of funds in an individual's IDA, shall be in accordance with the Social Security Act §404(h) (42 U.S.C.A. §604(h)) and 45 C.F.R. §263.20 - 263.23 and limited to expenses related to:

(1) postsecondary educational expenses;

(2) first home purchase; or

(3) business capitalization.

(g) A Board must ensure that only qualified withdrawals are made by eligible individuals, and must develop policies and procedures to address unauthorized withdrawals, to include notification:

(1) to the individual that unauthorized withdrawals may impact the individual's eligibility for public assistance programs;

(2) to the individual of forfeiture of the entitlement to the matching funds for an unauthorized withdrawal; and

(3) to DHS within seven working days of the unauthorized withdrawal.

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. APPEALS

40 TAC §811.71, §811.72

The rules are proposed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Titles 4 as well as Texas Government Code Chapter 2308.

§811.71. Board Review.

(a) Individuals against whom an adverse action is taken by a Texas Workforce Center Partner may request a review by the respective Board.

(b) A request for review shall be submitted in writing and delivered to a Board within 15 calendar days of the date of the adverse action. The request shall also contain:

(1) a concise statement of the disputed adverse action;

(2) a recommended resolution; and

(3) any supporting documentation the individual deems relevant to the dispute.

(c) On receipt of a request for review, a Board shall coordinate a review by appropriate Board staff.

(d)

The parties to the request for review are the aggrieved applicant or individual and the Texas Workforce Center Partner.

(e) Additional information may be requested from the parties. Such information shall be provided within 15 days of the request.

(f) Within 30 calendar days of the date the request for review is received or of the date that additional requested information is received by the reviewing Board staff member, a Board shall send the parties written notification of the results of the review.

§811.72.Appeals to the Agency.

(a) After results of a review have been issued, the party that disagrees with the outcome of the review may request an Agency hearing to appeal the results of the review.

(b) The request for appeal to the Agency from a Board's review shall be filed in writing with the Appeals Department, Texas Workforce Commission, 101 East 15th Street, Room 410, Austin, Texas 78778-0001, within 15 days after receiving written notification of the results of the review.

(c) The appeal to the Agency shall include a hearing, which is limited to the issues and the information considered in a Board review.

(d) The Agency hearing shall be held in accordance with the procedures applicable to an appeal as contained in Chapter 823 of this title (relating to General 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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Subchapter F. SUPPORT SERVICES

40 TAC §§811.81-811.87

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The rules are repealed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Titles 4 as well as Texas Government Code Chapter 2308.

§811.81.Support Services.

§811.82.Child Care.

§811.83.Transitional Child Care.

§811.84.Transportation.

§811.85.Work-related Expenses.

§811.86.Wheels for Work.

§811.87.GED Testing Payments.

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. APPEALS

40 TAC §811.101

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The rules are repealed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Titles 4 as well as Texas Government Code Chapter 2308.

§811.101.Fair Hearings or Appeals.

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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