

Amendments to Chapter 809
House Bill 680
Policy Concept

House Bill 680 (HB 680), passed by the 86th Texas Legislature, Regular Session (2019), amended the Texas Government Code and Texas Labor Code regarding the Texas Workforce Commission's (TWC) child care program. To fully implement HB 680 requirements, TWC Chapter 809 Child Care Services rules require amendments to clarify allowable uses of Local Workforce Development Boards' (Boards) child care quality funds, to allow Boards to engage in child care provider contract agreements for reserved slots, and to allow direct referrals for eligible children participating in recognized public/private partnerships.

Issue 1: Allowable Uses of Boards' Child Care Quality Funds

Background

Section 1 of HB 680 amends Texas Government Code §2308.317 by adding a new subsection requiring each Board, to the extent practicable, to ensure that any professional development for child care providers, directors, and employees using the Board's allocated quality improvement funds:

- be used toward the requirements for a credential, certification, or degree program; and
- meet professional development requirements of the Texas Rising Star program.

Issue

Subchapter B, §809.16, Quality Improvement Activities, outlines rules related to quality improvement activities that are allowable for Boards. Section 809.16 currently allows Boards to expend quality funds on any quality improvement activity described in 45 Code of Federal Regulations (CFR) Part 98.

Decision Point

Staff seeks direction on amending §809.16 to require that Board quality improvement activities also align with applicable state laws and the Child Care and Development Fund (CCDF) State Plan.

Issue 2: Child Care Provider Contract Agreements

Background

Section 5 of HB 680 adds §302.0461, Child Care Provider Contract Agreements, to the Texas Labor Code, which allows Boards to contract with child care providers to provide subsidized child care. This is congruent with §658E(c)(2)(A) of the Child Care and Development Block Grant Act (CCDBG), which authorizes states to offer financial assistance for child care services through grants and contracts. Specific guidance from the Office of Child Care confirms:

States can award grants and contracts to providers in order to provide financial incentives to offer care for special populations, require higher quality standards, and guarantee certain numbers of slots to be available for low-income children eligible for Child Care and Development Fund (CCDF) financial assistance. Grants and contracts can provide financial stability for child care providers by paying in regular installments, paying based on maintenance of enrollment, or paying prospectively rather than on a reimbursement basis.¹

¹ <https://www.acf.hhs.gov/occ/resource/ccdf-reauthorization-faq-archived>

1 HB 680 requires any such contract to include the number of slots reserved by a provider for children
2 who participate in the subsidized child care program.

3 To be eligible for a contract, HB 680 requires that a child care provider must be a Texas Rising Star
4 three- or four-star provider and meet one of the following priorities:

- 5 • Be located in an area:
 - 6 ➤ where the number of children under six years of age with working parents is at least three
 - 7 times greater than capacity of licensed child care providers in the area; or
 - 8 ➤ determined by TWC to be underserved with respect to child care providers
- 9 • Have a partnership with local school districts to provide prekindergarten (pre-K)
- 10 • Have a partnership with Early Head Start (EHS) or Head Start (HS)
- 11 • Increase the number of places reserved for infants and toddlers by high-quality child care
- 12 providers
- 13 • Satisfy a priority identified in the Board’s plan

14 HB 680 also requires that Boards choosing to contract with providers must submit a report to TWC no
15 later than six months after entering into a contract and every six months thereafter, determining the
16 contract’s effect on the following:

- 17 • Financial stability of providers participating in the contract
- 18 • Availability of high-quality child care options for participants in TWC’s subsidy program
- 19 • Number of high-quality providers in any part of the local workforce development area
- 20 (workforce area) with a high concentration of families with a need for child care
- 21 • Percentage of children participating in TWC’s subsidized child care program at each Texas
- 22 Rising Star provider in the Board’s workforce area

23 In December 2019, the Child Care & Early Learning Division assembled a workgroup consisting of
24 TWC staff, Board staff, and Board child care services contractor staff to discuss implementation
25 recommendations related to contracted slots. Recommendations from the contracted slots workgroup
26 informed the issues described.

27 *Issue 2.1—Reserved Slots*

28 Currently, §809.93(g) prohibits a Board or its child care contractor from paying providers for holding
29 spaces (slots) open. However, if a Board chooses to contract with child care providers for a specific
30 number of spaces, also known as a Contracted Slots model, the Board would continue payment for
31 reserved slots during times of transition between the time that one child leaves and another child is
32 placed in the slot. The workgroup recommended that these transition times to hold slots open for another
33 child participating in the subsidy program be available for two months following the month of the
34 vacancy. However, TWC Child Care & Early Learning (CCEL) staff have an alternate consideration for
35 the Commission to require a slot to be filled in one month. The workgroup also recommended that at
36 Board option, the transition period may be shorter. Adding a new section within Chapter 809 to define
37 the child care provider contract agreement rules and requirements will clarify the policy and require that
38 Boards choosing to use contracted slots include the program in the Board plan.

39 *Decision Point*

40 Staff seeks direction on:

- 1 • allowing Boards to pay for reserved slots that are not occupied for one month following the
- 2 month of vacancy;
- 3 • amending the following sections of Chapter 809 to describe policies and procedures for
- 4 contracted slots agreements:
- 5 ➤ §809.13—Board Policies for Child Care Services;
- 6 ➤ §809.93—Provider Reimbursement; and
- 7 • adding a new section, §809.96, Contracted Slot Agreements.

8 *Issue 2.2—Waiting Lists and Priorities*

9 TWC prioritizes services for veterans and foster youth/former foster children in accordance with Texas
10 Labor Code §302.152 and Texas Family Code §264.121(a)(3). When providing child care subsidies,
11 Boards are required to prioritize these groups, subject to the availability of funds. Furthermore, §809.18
12 requires Boards to maintain waiting lists for families waiting for child care services. With HB 680
13 authorizing Boards to contract with child care providers to reserve a set number of child care slots, the
14 contracted slots workgroup has identified complications with continuing to use the same waiting list
15 system currently in use for filling open slots for providers with contracts.

16 Currently, the Board’s waiting list for the subsidy “voucher” system is for the entire workforce area.
17 Families are contacted in order of priority to select any participating provider in the Board’s workforce
18 area. Section 809.43 details the priority groups as follows:

- 19 • The first priority group is assured child care services and includes children of parents eligible for
20 the following:
 - 21 1. Choices child care
 - 22 2. Temporary Assistance for Needy Families (TANF) Applicant child care
 - 23 3. Supplemental Nutrition Assistance Program Employment & Training (SNAP E&T) child
24 care
 - 25 4. Transitional child care
- 26 • The second priority group is served subject to the availability of funds and includes the
27 following, in the order of priority:
 - 28 1. Children requiring protective services child care
 - 29 2. Children of a qualified veteran or qualified spouse
 - 30 3. Children of a foster youth
 - 31 4. Children experiencing homelessness
 - 32 5. Children of parents on military deployment whose parents are unable to enroll in
33 military-funded child care assistance programs
 - 34 6. Children of teen parents
 - 35 7. Children with disabilities
- 36 • The third priority group includes any other priority adopted by the Board.

37 With a Contracted Slots model, the slots need to be filled quickly to avoid Boards paying for vacant
38 reserved slots. If Boards followed the current waiting list policy, they would need to go through the list
39 in order of priority group for the open reserved slot, even if the families are not seeking child care in the
40 same county or ZIP code where the provider with an open reserved slot is located.

41 *Decision Point*

1 Staff seeks direction on amending §809.18, Maintenance of a Waiting List, to address child care
2 provider contracted slots agreements. When a contracted slot becomes open, the Board will first contact
3 families on the waiting list that requested care in that ZIP code and in order of priority. As Boards fill
4 reserved slots, they will follow the same rules for priority groups as they normally do, but the pool of
5 eligible families will be restricted to those seeking services within the ZIP code where the funded slot is
6 available.

7 **Issue 3: Eligible Geographic Locations**

8 *Background*

9 One of the qualifying priorities identified in HB 680 to allow contracted slots is that the child care
10 provider be located in an area of high need and low capacity, that is, an area:

- 11 • where the number of children under six years of age with working parents is at least three times
12 greater than the capacity of licensed child care providers in the area; or
- 13 • that TWC has determined to be “underserved with respect to child care providers.”

14 *Issue*

15 With data from the state demographer, TWC can analyze and publish annual information about
16 geographic areas of the state that meet the requirements described in HB 680.

17 *Decision Point*

18 Staff seeks direction on including language in the proposed new §809.96, Contracted Slot Agreements,
19 to specify that TWC will publish data annually about geographic areas with inadequate child care
20 capacity for working families of young children and that TWC will further define targeted underserved
21 populations in the CCDF State Plan.

22 **Issue 4: Direct Referrals from Public Prekindergarten and Head Start/Early Head Start** 23 **Partnerships**

24 *Background*

25 HB 680 explicitly authorizes contracts for Texas Rising Star providers engaged in partnerships with
26 public pre-K or HS/EHS. Additionally, House Bill 3 (HB 3), 86th Texas Legislature, Regular Session
27 (2019), supported expansion of these partnerships.

28 Children served through these partnerships are dually enrolled in both early childhood programs. When
29 a child is dually enrolled in child care services and either public pre-K or HS/EHS, part of the cost to
30 CCDF is offset. Through these partnerships, eligible children can receive the full-day, full-year care that
31 working parents require at a lower cost to the Child Care Services program.

32 *Issue*

33 Eligible children served through these partnerships receive early care and education from multiple
34 funding sources. However, each funding source prioritizes certain populations slightly differently (such
35 as a low-income individual, a foster child/child of foster youth, a veteran/active duty service member, a
36 child with a disability, or a child experiencing homelessness). These variations can lead to mismatches
37 of when a child is able to access services despite being simultaneously eligible for both programs in a
38 partnership. Operationally, not being able to combine funding for dually eligible children can impact the
39 enrollment efficiency and financial stability of the partnership and limits TWC’s ability to implement

1 the contracted slots agreements provisions of HB 680 and to support pre-K partnership provisions of HB
2 3.

3 Chapter 809 does not currently allow for a separate path for enrolling eligible children who are directly
4 referred from a partnering program. Because of this structure, eligible children from partnering
5 programs must be placed on a Board’s waiting list despite the federal, state, and local policies that
6 support partnerships and dual enrollment.

7 Creating a separate path for enrollment would support more stable partnerships, maximize available
8 funding to serve more children, and provide improved customer service to participating families.

9 With a separate enrollment path for partnership direct referrals, services for eligible children who are in
10 TWC’s second or third priority groups, as defined in §809.43, Priority for Child Care Services, would
11 still be served subject to the availability of funding. Additionally, if the number of referrals from a
12 partnership exceeds the subsidized spots available at a single partnership site, §809.43 would be applied,
13 and any children who did not receive subsidized care through the referring partnership would be placed
14 on the Board’s waiting list.

15 *Decision Point*

16 Staff seeks direction on the following:

- 17 • Adding a subsection to §809.13 to require Boards to establish policies and procedures to enroll
18 eligible children who are directly referred by recognized pre-K or HS/EHS partnerships; and
- 19 • Amending §809.18 to exempt children directly referred from recognized pre-K or HS/EHS
20 partnerships from the Board’s waiting list, subject to the availability of funding and the
21 availability of subsidized slots at the partnership site.

22 **Issue 5: Parent Share of Cost for Part-Time Referrals**

23 *Background*

24 In addition to the HB 680 changes, CCEL staff identified a technical change related to how the parent
25 co-payment, known in Texas as the parent share of cost, is calculated. Families participating in child
26 care subsidies are responsible for the parent share of cost, that covers a portion of their child’s care and
27 education. Boards assess the parent share of cost on a sliding-fee scale based on income, family size, and
28 other factors as appropriate to ensure that the cost is affordable and is not a barrier to families receiving
29 services.²

30 *Issue*

31 CCDBG led to significant changes in the administration of child care services in Texas. In September
32 2016, TWC adopted amendments to Chapter 809 to align with the new federal requirements. Section
33 809.19, Assessing the Parent Share of Cost, was affected. In compliance with federal requirements and
34 guidance, TWC amended §809.19 to limit the basis of the sliding-fee scale to family size and income,
35 including the number of children in care. With this rule change, Boards were no longer able to offer
36 “discounts” for part-time care, as doing so could have been perceived as using the cost of care or amount
37 of subsidy payment to determine parent share of cost.

² [45 CFR 98 \(§98.16\)](#)

1 The newly released CCDF State Plan template for Federal Fiscal Years 2019–2021 allows the number of
2 hours the child is in care, in addition to the family’s income and size, to be considered when determining
3 parent share of cost.

4 When Boards assess a family’s parent share of cost based on family size and income only, that family
5 pays the same amount for part-time care as it does for full-time care. TWC can reduce the financial
6 burden on families that need part-time child care by authorizing Boards to assess the parent share of cost
7 at the full-time rate and allow reductions for families with part-time referrals. If a child’s referral
8 changes from part-time to full-time care, the family will no longer qualify for the reduction and must
9 revert to the original parent share of cost assessment amount.

10 *Decision Point*

11 Staff seeks direction on amending §809.19 to authorize Boards to allow reductions in parent share of
12 cost for children with referrals for part-time care.