

1 **CHAPTER 809. CHILD CARE SERVICES**

2
3 **PROPOSED RULES TO BE PUBLISHED IN THE *TEXAS REGISTER*. THIS**
4 **DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT TO**
5 **FORMATTING CHANGES AS REQUIRED BY THE OFFICE OF THE SECRETARY**
6 **OF STATE.**
7

8 The Texas Workforce Commission (TWC) proposes amendments to the following sections of
9 Chapter 809, relating to Child Care Services:

10
11 Subchapter A. General Provisions, §809.1 and §809.2

12 Subchapter C. Eligibility for Child Care Services, §809.43
13

14 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

15 The purpose of the proposed amendments to Chapter 809 is to improve the efficiency and
16 delivery of child care services and allow TWC's three-member Commission (Commission)
17 flexibility to implement new service delivery concepts or Commission-approved statewide
18 initiatives or special projects within Commission-defined parameters. The proposed amendments
19 also clarify that the provisions of Chapter 809 apply to any entity receiving Commission funds or
20 benefits related to child care services.
21

22 Additionally, the proposed amendments include child care waiting list priority for children of
23 child care workers. Senate Bill (SB) 462, passed by the 89th Legislature, Regular Session, 2025,
24 and signed by the governor, amended Texas Labor Code, Chapter 302 by adding §302.0064,
25 which requires the Commission to establish a waiting list priority group for children of child care
26 workers. The proposed amendments include the definition of a child care worker as provided in
27 Texas Labor Code, §302.0064(a).
28

29 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

30 (Note: Minor editorial changes are made that do not change the meaning of the rules and,
31 therefore, are not discussed in the Explanation of Individual Provisions.)
32

33 **SUBCHAPTER A. GENERAL PROVISIONS**

34 TWC proposes the following amendments to Subchapter A:
35

36 **§809.1. Short Title and Purpose**

37 Section 809.1(b) is amended to conform with TWC style practices.
38

39 Section 809.1(d) is amended to clarify that the provisions of Chapter 809 apply to all entities
40 receiving Commission funds related to child care services. This amendment will ensure that all
41 entities participating in and receiving benefits or funds from any Commission child care
42 initiative will be subject to applicable rules, including rules related to fraud and improper
43 payments, governing child care services and quality initiatives.
44

45 New §809.1(e) is added to allow the Commission to suspend a provision of Chapter 809 for a
46 specified time, on either a statewide or other basis, if the Commission determines that

1 suspending the provision does not violate federal or state statutes or regulations and will improve
2 the efficiency and delivery of child care services, or is necessary to implement new service
3 delivery concepts or Commission-approved statewide initiatives or special projects within
4 Commission-defined parameters.

5
6 This new subsection is designed to provide the Commission the flexibility to improve the
7 delivery of child care services on a timely basis and to implement statewide initiatives or other
8 special projects. In exercising this flexibility, the Commission intends to specify the provisions
9 to be suspended and any applicable time limits on the suspension during public Commission
10 meetings, and when the initiative or special project is approved by the Commission. The
11 amended rule requires that the Commission must determine that the suspension does not violate
12 federal or state statutes or regulations.

13 14 **§809.2. Definitions**

15 Section 809.2 is amended to add a definition of a child care worker for purposes of the waiting
16 list priority in §809.43. The definition is identical to the definition provided in Texas Labor
17 Code, §302.0064(a) and states that a child care worker is an individual employed by and working
18 in a child care facility licensed under Texas Human Resources Code, Chapter 42 for a minimum
19 of 25 hours per week. The term does not include the owner or director of a child care facility
20 unless the owner's or director's child is served in a program other than a program directly
21 supervised by the owner or director.

22 23 **SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES**

24 TWC proposes the following amendments to Subchapter C:

25 26 **§809.43. Priority for Child Care Services**

27 Section 809.43 is amended to add a waiting list priority group for children of child care workers
28 as required by Texas Labor Code, §302.0064.

29
30 The Commission notes that Texas Labor Code, §302.0064(c) states that a child care worker
31 whose child receives child care services under this priority group is subject to redetermination of
32 the individual's eligibility for services in accordance with Commission rule each year. Therefore,
33 once a child of a child care worker is initially authorized for child care under this priority, the
34 child and child's family will be subject to eligibility redetermination as described in §809.42.

35
36 Additionally, TWC is concurrently making necessary enhancements to the child care information
37 system to implement the new priority group. The enhancements are expected to be completed
38 when the rules are scheduled to be effective in late 2025.

39 40 **PART III. IMPACT STATEMENTS**

41 Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the
42 rules will be in effect, the following statements will apply:

43
44 There are no additional estimated costs to the state and to local governments expected as a result
45 of enforcing or administering the rules.
46

1 There are no estimated cost reductions to the state and to local governments as a result of
2 enforcing or administering the rules.

3
4 There are no estimated losses or increases in revenue to the state or to local governments as a
5 result of enforcing or administering the rules.

6
7 There are no foreseeable implications relating to costs or revenue of the state or local
8 governments as a result of enforcing or administering the rules.

9
10 There are no anticipated economic costs to individuals required to comply with the rules.

11
12 There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural
13 communities as a result of enforcing or administering the rules.

14
15 Based on the analyses required by Texas Government Code, §2001.024, TWC has determined
16 that the requirement to repeal or amend a rule, as required by Texas Government Code,
17 §2001.0045, does not apply to this rulemaking.

18 19 Takings Impact Assessment

20 Under Texas Government Code, §2007.002(5), "taking" means a governmental action that
21 affects private real property, in whole or in part or temporarily or permanently, in a manner that
22 requires the governmental entity to compensate the private real property owner as provided by
23 the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, §17 or
24 §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in
25 the absence of the governmental action, and is the producing cause of a reduction of at least 25
26 percent in the market value of the affected private real property, determined by comparing the
27 market value of the property as if the governmental action is not in effect and the market value of
28 the property determined as if the governmental action is in effect. TWC completed a Takings
29 Impact Assessment for the proposed rulemaking action under Texas Government Code,
30 §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in
31 this preamble, is to improve the efficiency and delivery of child care services and implement
32 state requirements regarding waiting list priority for children of child care workers.

33
34 The proposed rulemaking action will not create any additional burden on private real property or
35 affect private real property in a manner that would require compensation to private real property
36 owners under the US Constitution or the Texas Constitution. The proposal also will not affect
37 private real property in a manner that restricts or limits an owner's right to the property that
38 would otherwise exist in the absence of the governmental action. Therefore, the proposed
39 rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

40 41 Government Growth Impact Statement

42 TWC has determined that during the first five years the rules will be in effect, they:

- 43 --will not create or eliminate a government program;
- 44 --will not require the creation or elimination of employee positions;
- 45 --will not require an increase or decrease in future legislative appropriations to TWC;
- 46 --will not require an increase or decrease in fees paid to TWC;

--will not create a new regulation;
--will not expand, limit, or eliminate an existing regulation;
--will not change the number of individuals subject to the rules; and
--will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the rules will not have an adverse economic impact on small businesses or rural communities, as the proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market Information, has determined that there is not a significant negative impact upon employment conditions in the state as a result of the rules.

Reagan Miller, Director, Child Care & Early Learning, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to improve the efficiency and delivery of child care services, statewide initiatives, or special projects and implement state requirements regarding waiting list priority for children of child care workers.

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

PART IV. COORDINATION ACTIVITIES

The proposed amendments clarify the Commission's authority to suspend provisions of Chapter 809 rules for certain purposes as specified in the proposed rule language and implement child care waiting list priority requirements enacted by SB 462. Interested individuals may provide input by submitting comments to TWCPolicyComments@twc.texas.gov no later than October 6, 2025.

PART V. REQUEST FOR IMPACT INFORMATION

TWC requests, from any person required to comply with the proposed rules or any other interested person, information related to the cost, benefit, or effect of the proposed rules, including any applicable data, research, or analysis. Please submit the requested information to TWCPolicyComments@twc.texas.gov no later than October 6, 2025.

PART VI. PUBLIC COMMENTS

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov and must be received no later than October 6, 2025.

PART VII. STATUTORY AUTHORITY

The rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

CHAPTER 809. CHILD CARE SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

§809.1. Short Title and Purpose.

- (a) The rules contained in this chapter may be cited as the Child Care Services rules.
- (b) The purpose of the rules contained in this chapter is to interpret and implement the requirements of state and federal statutes and regulations governing child care and quality improvement activities funded through the ~~Texas Workforce Commission~~ (Commission), to include the Child Care and Development Fund (CCDF), which includes:
- (1) funds allocated to local workforce development areas (workforce areas) as provided in §800.58 of this title;
 - (2) private donated funds described in §809.17 of this chapter;
 - (3) public transferred funds described in §809.17 of this chapter;
 - (4) public certified expenditures described in §809.17 of this chapter; and
 - (5) funds used for children receiving protective services described in §809.49 of this chapter.
- (c) The rules contained in this chapter apply to other funds that are used for child care services allocated to workforce areas under Chapter 800 of this title, except for the following:
- (1) Funds used for quality improvement activities described in §809.16 of this chapter;
 - (2) Assessing the parent share of cost described in §809.19 of this chapter; and
 - (3) Subchapter C of this chapter ~~(relating to Eligibility for Child Care Services)~~.
- (d) The rules contained in this chapter shall apply to the ~~Agency Commission~~, Local Workforce Development Boards (Boards), their child care contractors, child care providers, ~~and~~ parents applying for or eligible to receive child care services, and other entities participating in any Agency child care program or initiative.
- (e) The Commission may suspend a provision in this chapter for a specified time, on either a statewide or other basis, if the Commission determines that suspending the provision does not violate federal or state statutes or regulations, and:

- (1) will improve the efficiency and delivery of child care services; or
- (2) is necessary to implement new service delivery concepts or Commission-approved statewide initiatives or special projects within Commission-defined parameters.

§809.2. Definitions.

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

- (1) Attending a job training or educational program--An individual is attending a job training or educational program if the individual:
 - (A) is considered by the program to be officially enrolled;
 - (B) meets all attendance requirements established by the program; and
 - (C) is making progress toward successful completion of the program as demonstrated through continued enrollment in the program upon eligibility redetermination as described in §809.42 of this chapter.
- (2) Child--An individual who meets the general eligibility requirements contained in this chapter for receiving child care services.
- (3) Child care contractor--The entity or entities under contract with the Board to manage child care services. This includes contractors involved in determining eligibility for child care services, contractors involved in the billing and provider payment process related to child care, as well as contractors involved in the funding of quality improvement activities as described in §809.16 of this chapter.
- (4) Child ~~Care~~ ~~desert~~ ~~Desert~~--An area described in Texas Labor Code, §302.0461 in which the number of children under age six with working parents is at least three times greater than the capacity of licensed child care providers in the area, based on data published annually by the Commission.
- (5) Child Care Regulation (CCR)--Division in the Texas Health and Human Services Commission responsible for protecting the health, safety, and well-being of children who attend or reside in regulated child care facilities and homes.
- (6) Child care services--Child care subsidies and quality improvement activities funded by the Commission.
- (7) Child care subsidies--Commission-funded child care payments to an eligible

child care provider for the direct care of an eligible child.

(8) Child care worker--for purposes of the waiting list priority described in §809.43 of this chapter, and pursuant to Texas Labor Code, §302.0064, a child care worker is an individual employed by and working in a child care facility licensed under Texas Human Resources Code, Chapter 42 for a minimum of 25 hours per week. The term does not include the owner or director of a child care facility unless the owner's or director's child is served in a program other than a program directly supervised by the owner or director.

(9)~~(8)~~ Child experiencing homelessness--A child who is homeless, as defined in the McKinney-Vento Act (42 USC 11434(a)), Subtitle VII-B, §725.

(10)~~(9)~~ Child with disabilities--A child who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. Major life activities include, but are not limited to, caring for oneself; performing manual tasks; walking; hearing; seeing, speaking, or breathing; learning; and working.

(11)~~(10)~~ Educational program--A program that leads to:

- (A) a high school diploma;
- (B) a Certificate of High School Equivalency; or
- (C) an undergraduate degree from an institution of higher education.

(12)~~(11)~~ Excessive unexplained absences--More than 40 unexplained absences within a 12-month eligibility period as described in §809.78 of this chapter.

(13)~~(12)~~ Family--Two or more individuals related by blood, marriage, or decree of court, who are living in a single residence and are included in one or more of the following categories:

- (A) Two individuals, married--including by common-law, and household dependents; or
- (B) A parent and household dependents.

(14)~~(13)~~ Household dependent--An individual living in the household who is:

- (A) an adult considered a dependent of the parent for income tax purposes;
- (B) a child of a teen parent; or
- (C) a child or other minor living in the household who is the responsibility of

1 the parent.

2
3 ~~(15)(14)~~ Improper payments--Any payment of Child Care Development Fund
4 (CCDF) funds that should not have been made or that was made in an incorrect
5 amount (including overpayments and underpayments) under statutory,
6 contractual, administrative, or other legally applicable requirements governing
7 the administration of CCDF grant funds and includes payments:

- 8
9 (A) to an ineligible recipient;
10
11 (B) for an ineligible service;
12
13 (C) for any duplicate payment; and
14
15 (D) for services not received.
16

17 ~~(16)(15)~~ Job training program--A program that provides training or instruction
18 leading to:

- 19
20 (A) basic literacy;
21
22 (B) English proficiency;
23
24 (C) an occupational or professional certification or license; or
25
26 (D) the acquisition of technical skills, knowledge, and abilities specific to an
27 occupation.
28

29 ~~(17)(16)~~ Listed family home--A family home, other than the eligible child's own
30 residence, that is listed, but not licensed or registered with, CCR pursuant to
31 Texas Human Resources Code, §42.052(c).
32

33 ~~(18)(17)~~ Military deployment--The temporary duty assignment away from the
34 permanent military installation or place of residence for reserve components of
35 the single military parent or the dual military parents. This includes deployed
36 parents in the regular military, military reserves, or National Guard.
37

38 ~~(19)(18)~~ Parent--An individual who is responsible for the care and supervision of a
39 child and is identified as the child's natural parent, adoptive parent, stepparent,
40 legal guardian, or person standing in loco parentis (as determined in
41 accordance with Commission policies and procedures). Unless otherwise
42 indicated, the term applies to a single parent or both parents.
43

44 ~~(20)(19)~~ Protective services--Services provided when a child:

- 45
46 (A) is at risk of abuse or neglect in the immediate or short-term future and

1 the child's family cannot or will not protect the child without Texas
2 Department of Family and Protective Services (DFPS) Child Protective
3 Services (CPS) intervention;

4
5 (B) is in the managing conservatorship of DFPS and residing with a relative
6 or a foster parent; or

7
8 (C) has been provided with protective services by DFPS within the prior six
9 months and requires services to ensure the stability of the family.

10
11 (21)~~(20)~~ Provider--A provider is defined as a:

12
13 (A) regulated child care provider;

14
15 (B) relative child care provider; or

16
17 (C) listed family home subject to the requirements in §809.91(e) of this
18 chapter.

19
20 (22)~~(21)~~ Regulated child care provider--A provider caring for an eligible child in a
21 location other than the eligible child's own residence that is:

22
23 (A) licensed by CCR;

24
25 (B) registered with CCR; or

26
27 (C) operated and monitored by the United States military services.

28
29 (23)~~(22)~~ Relative child care provider--An individual who is at least 18 years of age,
30 and is, by marriage, blood relationship, or court decree, the child's:

31
32 (A) grandparent;

33
34 (B) great-grandparent;

35
36 (C) aunt;

37
38 (D) uncle; or

39
40 (E) sibling (if the sibling does not reside in the same household as the
41 eligible child).

42
43 (24)~~(23)~~ Residing with--Unless otherwise stipulated in this chapter, a child is
44 considered to be residing with the parent when the child is living with, and
45 physically present with, the parent during the time period for which child care
46 services are being requested or received.

~~(25)~~(24) Teen parent--A teen parent (teen) is an individual 18 years of age or younger, or 19 years of age and attending high school or the equivalent, who has a child.

~~(26)~~(25) Texas Rising Star program--A quality-based rating system of child care providers participating in Commission-subsidized child care.

~~(27)~~(26) Texas Rising Star provider--A regulated child care provider meeting the Texas Rising Star program standards. Texas Rising Star providers are:

- (A) designated as an Entry Level Provider;
- (B) certified as a Two-Star Provider;
- (C) certified as a Three-Star Provider; or
- (D) certified as a Four-Star Provider.

~~(28)~~(27) Working--Working is defined as:

- (A) activities for which one receives monetary compensation such as a salary, wages, tips, and commissions;
- (B) participation in Choices or Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T) activities; or
- (C) engaging in job search at the time of eligibility determination or redetermination as described in §809.56 of this chapter.

SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES

§809.43. Priority for Child Care Services.

- (a) A Board shall ensure that child care services are prioritized among the following three priority groups:
 - (1) The first priority group is assured child care services and includes children of parents eligible for the following:
 - (A) Choices child care as referenced in §809.45 [of this subchapter](#);
 - (B) Temporary Assistance for Needy Families (TANF) Applicant child care as referenced in §809.46 [of this subchapter](#);
 - (C) SNAP E&T child care as referenced in §809.47 [of this subchapter](#); and

- 1
2 (D) Transitional child care as referenced in §809.48 [of this subchapter](#).
3
4 (2) The second priority group is served subject to the availability of funds and
5 includes, in the order of priority:
6
7 (A) children who need to receive protective services child care as referenced
8 in §809.49 [of this subchapter](#);
9
10 (B) children of a qualified veteran or qualified spouse as defined in §801.23
11 of this title;
12
13 (C) children of a foster youth as defined in §801.23 of this title;
14
15 (D) children experiencing homelessness as defined in §809.2 [of this chapter](#)
16 and described in §809.52 [of this subchapter](#);
17
18 (E) children of parents on military deployment as defined in §809.2 [of this](#)
19 [chapter](#) whose parents are unable to enroll in military-funded child care
20 assistance programs;
21
22 (F) children of teen parents as defined in §809.2 [of this chapter](#); ~~and~~
23
24 (G) children with disabilities as defined in §809.2 [of this chapter](#); and
25
26 [\(H\) children of a child care worker as defined in §809.2 of this chapter](#).
27
28 (3) The third priority group includes any other priority adopted by the Board.
29
30 (b) A Board shall not establish a priority group under subsection (a)(3) of this section
31 based on the parent's choice of an individual provider or provider type.