Local Workforce Development Board Membership

Frequently Asked Questions

The questions in **bold** are new.

# Definition of “Child Care Workforce Representative”

1. **Q:** What is the definition of “director”?

**A:** WD Letter 21-23, Change 1, titled “Local Workforce Development Board Membership—Update,” states that the representative must be “a current owner or director of a child care provider.…” Executive director, director, owner, president, and CEO are positions that are consistent with this definition. The intent of the definition is to ensure that the Local Workforce Development Board (Board) child care representative holds optimum policymaking authority within their organization, agency, or entity (as consistent with Workforce Innovation and Opportunity Act (WIOA) §107(b)(5)).

1. **Q:** Does the definition of “child care workforce representative” include experts in the development of the child care workforce?

**A:** The definition provided in WD Letter 21-23, Change 1, was based on state and federal statute, specifically WIOA §107(b)(5), which requires Board members to hold optimum policymaking authority within their organizations, agencies, and entities. Thus, the definition was limited to current owners and directors.

1. **Q:** Does the definition of “child care workforce representative” include individuals who operate in a directorship or owner capacity of a larger facility of which the child care program is a part, such as a YMCA or church?

**A:** No, Boards must appoint individuals who are owners and directors of child care programs. This does not include individuals who may manage operations of a larger facility of which the child care program is a part, such as a YMCA or church. The definition provided in WD Letter 21-23, Change 1, was based on state and federal statute, specifically WIOA §107(b)(5), which requires Board members to hold optimum policymaking authority within their organizations, agencies, or entities, which in this case would be the child care program itself.

1. **Q: Do owners or directors of multiple child care facilities qualify for the child care workforce representative position?**

**A:** Yes. An owner or director of multiple child care facilities meets the definition of a child care workforce representative.

1. **Q: When determining an appropriate nominee for the position of child care workforce representative, should an individual’s knowledge and policymaking authority be considered or their involvement in daily operations?**

**A:** The individual must be chosen based on their knowledge and policymaking authority. Per 20 Code of Federal Regulations §661.203(a), “A representative with ‘optimum policymaking authority’ is an individual who can reasonably be expected to speak affirmatively on behalf of the entity he or she represents and to commit that entity to a chosen course of action.” Thus, the selection of a current child care provider owner or director ensures that such Board members have the expertise and policymaking authority to fully represent the child care workforce and be active Board members.

# Filling the New Position

1. **Q:** How do the minimum Board membership requirements set forth in WD Letter 21-23, Change 1, take into account rounding?

**A:** Texas Workforce Commission (TWC) staff members are aware of the concerns regarding rounding Board membership requirements. In order to adhere to the intent of the legislative authors and recognize the concern about increasing Board membership, TWC staff determined the minimum Board membership requirements that allow for rounding up.

1. **Q:** How are conflicts of interest to be addressed if a Board member provides child care services within the Board area, are an owner, and Board funds are provided?

**A:** Conflicts of interest may occur among Board members. Please follow the guidelines provided in the Chief Elected Official’s Membership Guide and TWC Chapter 802 Integrity of the Texas Workforce System rules to address Board member conflicts of interest. In practice, such a member would be asked to abstain from voting on child care policy changes.

1. **Q:** What is considered an acceptable nominating entity?

**A:** The child care workforce representative must be selected from individuals recommended by interested organizations, as set forth in Texas Government Code §2308.256(e). Nominating entities outlined in the answer for #9.

1. **Q: May an individual self-nominate for the position of child care workforce representative?**

**A:** An individual may not self-nominate. Boards must use the following guidance when nominating entities:

* A Board of Directors may nominate an owner or director of a regulated child care program.
* An owner may nominate a director of a regulated child care program.
* A not-for-profit child care or human services organization may nominate an owner or director of a regulated child care program.
* Child care stakeholders may nominate an owner or director of a regulated child care program.
1. **Q:** May Boards use an existing member to fill the new child care workforce representative category?

**A:** Per WD Letter 21-23, Change 1, a current Board member who represents one of the other required categories may also serve as the child care workforce representative until the expiration date of their current term. Any new Board members needed to meet the requirements of the WD Letter must be appointed within 90 days of the expiration of the Board member’s current term.

1. **Q:** May Boards have more than one child care workforce representative?

**A:** Boards may have more than one member representing the child care workforce category. However, changes to further Board composition must be made to adhere to the requirements set forth in [TWC Chapter 801 Local Workforce Development Boards rule §801.1](https://twcpublicweb.prod.acquia-sites.com/sites/default/files/ogc/docs/rules-chapter-801-local-workforce-development-boards-twc.pdf), [Texas Government Code §2308.256](https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2308.htm), WD Letter 21-23, Change 1, and the [Chief Elected Official’s Membership Guide](https://www.twc.texas.gov/sites/default/files/wf/docs/ceo-guide-twc.pdf).

# Partnership Agreements

1. **Q:** What limits are placed on reopening a partnership agreement?

**A:** TWC does not have the authority to place limits on what changes may be made to Boards’ partnership agreements.

1. **Q:** Are Boards required to include a number or range of numbers of Board members in their partnership agreements?

**A:** TWC does not place restrictions on how such a requirement is represented in a Board’s partnership agreement. However, our interpretation is that as long as the new required number of Board members falls within the range listed in the existing partnership agreement, a change would not be required.

# House Bill 1615

1. **Q:** How will changes to the minimum number and composition of a Board impact existing flexibility, previously grandfathered activity, and the WIOA state plan?

**A:** TWC staff has determined that there will be no impact to the prior consistent state law provision found in WIOA §107(i), as the legislation does not affect the Board’s foundation or structure, only its membership composition. The addition of the child care representative will be added where necessary in Texas’ WIOA state plan but is not anticipated to significantly impact the plan.

1. **Q:** It is believed that TWC’s interpretation of House Bill (HB) 1615, 88th Texas Legislature, Regular Session (2023), is not consistent with the authors’ and stakeholders’ original intent. What if there are unintended consequences?

**A:** The definition of “child care workforce” that was approved by TWC’s three-member Commission on August 15, 2023, and the guidance provided in WD Letter 21-23, Change 1, were based on HB 1615. The bill indicates that there must be a separate representative for the child care workforce, and it repealed Texas Government Code §2308.256(g), which required that at least one member have expertise in child care or early childhood education. However, for the purpose of adhering to WD Letter 21-23, Change 1, and HB 1615, current Board members who represent another required category and meet the criteria of the child care workforce representative may serve under both roles until the expiration of their current term. A new Board member who meets the requirements of WD Letter 21-23, Change 1, must be appointed within 90 days of the expiration of the Board member’s current term. Per TWC Chapter 801 Local Workforce Development Boards rule §801.1(g)(2)(D), if a Board does not currently have a member that may serve as the child care workforce representative, the Board must meet the requirement that no member is allowed to represent more than one category.

# Temporary Dual Roles

1. **Q:** May a Board member who is temporarily serving in dual roles cast one vote or two (one for each role)?

**A:** An individual may cast only one vote. A Board member who is serving on the Board in a dual capacity under Texas Government Code 2308.256(a) is doing so under a temporary exception that TWC created to ease the transition required by the passage of HB 1615. Prior to the passage of HB 1615, this was the standard for individuals who filled statutory dual roles, one under Texas Government Code 2308.256(a) and a second under Texas Government Code 2308.256(g) or (h) (child care or early education, and veterans, respectively). There is no basis under which the agency may grant a Board member the ability to cast a vote for each role they are serving.

1. **Q:** May a Board member who is temporarily serving in dual roles, due to the recent passage of HB 1615, count as two members (one for each role) for the purposes of reaching a quorum?

**A:** For purposes of establishing whether a quorum is present, each member present is counted only once.