

WORKFORCE DEVELOPMENT DIVISION
Workforce Service Delivery
Child Care Services

Revised: Technical Assistance Bulletin #62

Program: Child Care Services

Topic: Unemployment Insurance Claims by Unregulated Relative Self-Arranged Child Care Providers

Date: February 10, 2005

This Technical Assistance Bulletin provides information to Local Workforce Development Boards (Boards) about Unemployment Insurance (UI) claims filed by unregulated relative self-arranged child care (SACC) providers.

Background

The Texas Workforce Commission's (TWC) Office of the General Counsel is aware of instances in which unregulated relative SACC providers (i.e., individuals who provide self-arranged care for the child of a relative) have filed UI claims, citing the Board or its contractor as their last employer.

Neither the Board nor its contractor is the unregulated relative SACC provider's employer. TWC's Unemployment Insurance and Regulation Division issued Benefits Letter 18-03 to all UI staff on December 4, 2003, to assist claim adjudicators with issuing appropriate claim determinations. Boards may access Benefits Letter 18-03 on the TWC Intranet at http://intra.twc.state.tx.us/intranet/uir_dir/html/bl2003-18.html.

Parental Choice

42 USC §9858(c)(2)(A) requires that, to the maximum extent practicable, a child be enrolled with an eligible provider that is selected by the parent. 45 CFR §98.30 and Commission rule §809.71 also give parents the right to choose the type of child care that best suits their needs.

Under these regulations and rules, parents eligible for child care services may choose to self-arrange child care with a provider who has not signed a Provider Agreement with a contractor.

There are two types of self-arranged child care:

- Regulated child care without a Provider Agreement
- Child care provided by an eligible relative, which is the only type of unregulated child care for which Child Care and Development funds may be used

45 CFR §98.2 defines an eligible relative provider as “a child care provider who is 18 years of age or older who provides child care services only to eligible children who are, by marriage, blood relationship, or court decree, the grandchild, great grandchild, sibling (if such provider lives in a separate residence), niece, or nephew of such provider, and complies with any applicable requirements that govern child care provided by the relative involved.”

Commission rule §809.61 defines an eligible relative provider as a relative who is at least 18 years of age and is the grandparent, great grandparent, aunt, uncle, or sibling (if the sibling does not live in the same household as the child).

Questions and Answers

Why aren't unregulated relative SACC providers employees of the Board or its contractor?

- Parents choose the unregulated relative SACC provider. Boards and their contractors do not select SACC providers.
- Parents determine the conditions of care for their child. Boards and their contractors do not dictate terms of care for the unregulated relative SACC provider or control the provider's daily operations.
- Based on parental choice, Boards and their contractors work with SACC providers, including unregulated relative SACC providers, for the provision of child care services; however, SACC providers do not have a contractual relationship with Boards or their contractors.

The U.S. Department of Labor (DOL) has issued guidance to its field workers regarding individuals who provide child care services in their homes. DOL determined that the relationship between a provider and a government social service agency depends on the total fact situation involved in the arrangement. DOL's Field Operations Handbook, 10b-32, states that an employer-employee relationship exists if:

- the parent is free to select, and does select, an individual from a list of child care providers supplied by the agency; and
- the agency reimburses the selected child care “operator” provider.

How do Boards and contractors defend themselves against UI claims by unregulated relative self-arranged child care providers?

Boards have implemented procedures and developed forms that exclude them from being the employer. For example, most Boards include language on documents signed by the parent and unregulated relative SACC provider that states neither the Board nor its contractor is the provider's employer. Boards also may stamp the back of checks to unregulated relative SACC providers with the same disclaimer.

In order to assist both Boards and UI investigators and hearing officers, Boards may include in their agreements with unregulated relative SACC providers the following provisions:

- Unregulated relative SACC providers must sign a disclaimer stating that they understand they do not have an employee-employer relationship with the Board or its contractor.
- Unregulated relative SACC providers must list the child's parent as their last employer if they file a UI claim.

NOTE: A parent listed as the last employer in a UI claim is not necessarily a “covered employer” subject to paying UI payroll taxes. Under the Texas Unemployment Compensation Act, the last employing unit listed for UI purposes is the person who last employed the claimant. This person is often referred to as the last employer.

Use of Internal Revenue Service Form 1099-MISC, Box 7. Non-employee Compensation.

Boards may use IRS Form 1099-MISC to report non-employee compensation of \$600 or more. The compensation reported should include all fees paid or other forms of compensation for services performed for the Board by an individual who is not a Board employee.

IRS recognizes that fees or compensation paid to a non-employee, and listed in box 7 of Form 1099-MISC will indicate that the payer has determined that an employer-employee relationship does not exist in this case. It is evidence that the payee is being treated as a self-employed worker, also referred to as an independent contractor.

If you have questions, please contact the assigned workforce contract manager for your local workforce development area.