

1 **Amendments to Chapter 809**
2 **Child Care Providers on Evaluation and Provider Reimbursement Rates**
3 **Policy Concept**

4 ***Child Care Providers Placed on Evaluation Status by Child Care Licensing***

5 **Background**

6 Senate Bill (SB) 781, 86th Texas Legislature, Regular Session (2019), amended §42.071 of the
7 Human Resources Code to discontinue evaluation as a corrective action for the Texas Health and
8 Human Services Commission’s (HHSC) Child Care Licensing (CCL) staff to impose on a
9 licensed child care facility or family home. Effective September 1, 2019, CCL will either
10 recommend a voluntary plan of action or place a facility on probation as corrective action when
11 needed.

12 **Issue: CCL Corrective Actions**

13 Texas Workforce Commission (TWC) Chapter 809 Child Care Services rule §809.94, Providers
14 Placed on Corrective or Adverse Action by the Texas Department of Family and Protective
15 Services (DFPS), refers to evaluation as a corrective action imposed by CCL.
16 To align with HHSC’s policy and comply with new requirements set by SB 781, §809.94 must
17 be amended to remove references to evaluation as a corrective action.

18 **Decision Points**

19 Staff seeks direction on amending Chapter 809 to remove references to evaluation as an HHSC
20 corrective action.

21 ***Provider Reimbursement Rates—Minimum Thresholds to Ensure Equal Access***

22 **Background**

23 Section 658E(c)(4) of the Child Care and Development Block Grant Act (2014) requires state
24 Child Care and Development Fund (CCDF) lead agencies to conduct a market rate survey (MRS)
25 of child care rates and to use market rate data to set direct care reimbursement rates. States must
26 ensure equal access to child care services for children participating in child care subsidies by
27 setting direct care reimbursement rates that are sufficient to provide comparable services to those
28 received by families that do not receive assistance. The Administration for Children and Families
29 (ACF) Office of Child Care (OCC) recommends a benchmark of the 75th percentile of rates
30 reported in the MRS for subsidy reimbursement rates.

31 As the CCDF lead agency for Texas, TWC conducts an annual MRS to analyze and summarize
32 child care market rate data for the state and the 28 Boards. Section 809.20, Maximum Provider
33 Reimbursement Rates, authorizes Boards to set reimbursement rates for their local workforce
34 development areas (workforce areas) based on local factors, including the MRS, and to ensure
35 that the rates provide equal access to child care.

36 The US Department of Health and Human Services Office of Inspector General (OIG) recently
37 released a report—*States’ Payment Rates Under the Child Care and Development Fund*
38 *Program Could Limit Access to Child Care Providers*—in which OIG found that many states
39 were not setting their child care reimbursement rates at a level sufficient to ensure that eligible
40 children have equal access to child care services that are comparable to services available to
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1 children whose parents are not eligible to receive child care assistance. OIG recommended that
2 OCC evaluate whether states are ensuring equal access for families in the CCDF program, as
3 required by statute.

4 OCC concurred with OIG’s recommendation and prioritized review of equal access requirements
5 in its review of CCDF State Plans. Based on the review, OCC placed 33 states on Corrective
6 Action Plans (CAPs) for not achieving equal access requirements, with 21 of those based
7 specifically on inadequate rates.

8 OCC notified states at the 2019 State and Territories Administrators Meeting that CAPs were
9 implemented for states whose rates were at or below the 25th percentile of the market rate, as
10 determined by a statistically valid MRS. OCC also notified states that it would be reevaluating
11 the 25th percentile “floor” on an ongoing basis, and states can expect OCC to raise the floor over
12 time to improve equal access to child care services.

13 **Issue: Establishing a Minimum Threshold for a Board’s Maximum Reimbursement Rates**
14 Section 809.20 authorizes Boards to establish maximum provider reimbursement rates and to
15 ensure that the rates provide equal access to child care. Based on OCC’s actions to place states
16 on CAPs for equal access if they fail to meet a minimum “floor” for their rates, the rules should
17 be amended to note that TWC may further define equal access in accordance with OCC actions.

18 **Decision Point**

19 To remain in compliance with OCC’s definition of equal access based on a minimum threshold
20 for reimbursement rates, staff seeks direction on amending §809.20 to allow TWC’s three-
21 member Commission (Commission) to establish a minimum threshold for reimbursement rates
22 based on the MRS and to require that Boards set maximum reimbursement rates at or above this
23 minimum threshold.

24 ***Texas Rising Star Reimbursement Rates***

25 **Background**

26 On July 23, 2019, TWC assembled a Texas Rising Star (TRS) workgroup composed of
27 workforce system and community stakeholders to discuss the rules and guidelines governing the
28 quality rating system. This workgroup was established in accordance with Texas Government
29 Code §2308.3155(b)(2), which requires the Commission to regularly review and update the
30 quality standards used to determine the TRS rating system. The statute mandates that the
31 Commission consider input from interested parties regarding the quality standards. To meet this
32 requirement, the Commission adopted §809.130(e)(1), which requires review of the TRS
33 guidelines every four years in conjunction with a rule review of Chapter 809. The current review
34 will be completed in 2020.

35 During the meeting, the workgroup discussed:

- 36 • input received from focus groups conducted by eight Boards in June 2019;
- 37 • data received from the Children’s Learning Institute (CLI) study on the implementation of
38 the TRS program and the validity and reliability of TRS criteria; and
- 39 • input from workgroup members.

1 One of the topics pertained to §809.21(a), which requires Boards to pay the provider the **lower** of
2 the Board’s maximum daily rate or the provider’s published daily rate.

3 **Issue: TRS Reimbursement Rates**

4 Input from the workgroup revealed that some TRS child care providers in economically
5 disadvantaged areas set their published rates lower than similar TRS providers in non-
6 economically disadvantaged areas to ensure that rates are affordable for families that are not
7 participating in the child care subsidy program. Because Boards are required to pay the lower of
8 the Board maximum rate or the provider’s published rate, some TRS providers in low-income
9 areas receive a lower reimbursement rate for providing the same high-quality child care and early
10 learning experiences as other providers in the same Board’s workforce area that have customers
11 who can afford higher published rates.

12 The TRS workgroup recommended amending Chapter 809 to allow Boards to pay TRS providers
13 at the Board’s maximum daily rate, even if the provider’s published daily rate is lower. This
14 change would affect only providers participating in the TRS quality rating system. Providers that
15 are not recognized by TRS will still receive the Board’s maximum daily rate or the provider’s
16 published daily rate, whichever is lower.

17 The preamble to the CCDF final regulations (*Federal Register*, Vol. 81, September 30, 2016, p.
18 67514) recognizes that private pay rates are often not sufficient to support high-quality child care
19 and states that “payments may exceed private pay rates if they are designed to pay providers for
20 additional costs associated with offering higher-quality care or types of care that are not
21 produced in sufficient amounts by the market.”

22 **Decision Point**

23 Staff seeks direction on amending Chapter 809 Child Care Services rules to allow Boards to pay
24 the maximum daily rate for all TRS providers.

25 **Technical Corrections**

26 **Background**

27 House Bill (HB) 5, 85th Texas Legislature, Regular Session (2017), reorganized several
28 functions within the HHSC umbrella. Included in this reorganization was the transfer of CCL
29 from DFPS to HHSC.

30 **Issue: Updates to Child Care Licensing**

31 Chapter 809 contains references to CCL throughout. These references reflect the structure before
32 the enactment of HB 5, which transferred CCL from DFPS to HHSC.

33 **Decision Point**

34 Staff seeks direction on updating terminology throughout Chapter 809 to reflect the transition of
35 CCL from DFPS to HHSC.