

## **Chapter 809. CHILD CARE AND DEVELOPMENT**

The Texas Workforce Commission (Commission) proposes amendments to Subchapter A. General Provisions, §§809.1-809.2; the repeal of Subchapter A. General Provisions, §809.5; amendments to Subchapter B. General Management Requirements, §§809.11, 809.14, 809.15 and 809.20; Subchapter C. Requirements to Provide Child Care, §§809.43, 809.46-809.48; Subchapter D. Self-Arranged Care, §809.61; Subchapter G. Child Care for People Transitioning off Public Assistance, §§809.101-809.105; the repeal of Subchapter I. Child Care Training Center Pilot Programs, §§809.171-809.174; and amendments to Subchapter K. Funds Management, §§809.221, 809.225, 809.231, and 809.233 relating to child care services.

The purpose of amending the rules is to offer clarification of priorities for service, adjust the parents' share of cost provision, incorporate the new Texas Rising Star provider identity for Designated Vendors, which includes higher reimbursement rates, and remove unnecessary provisions.

The rule amendments continue to require placing eligible Choices, Transitional or Texas Workforce Applicants' children into care. However, the rule amendments make clear that if necessary, due to the limitation of funds, a child's care may be discontinued to ensure that the statutory and regulatory priorities receive child care services. Therefore, a Board must ensure that policies are in place for discontinuing child care services for families that are other than Choices, Transitional, or Texas Workforce Applicants if funding is limited. The amendments ensure that funds are used for low-income families who are working or are in training or educational activities and who must receive child care services to assist them in becoming self-sufficient.

The exemption to the parent's share of cost provision relating to TANF is changed to an exemption for Choices participants. The purpose for the rule change is to provide for the exemption from paying a parent's share of cost for persons participating in the Choices services or activities who are working, in training or in an education activity. The intent of the rule change is to encourage parents to voluntarily participate in Choices if they are still receiving TANF, thus making them eligible for a broader range of services and further assisting them in becoming self-sufficient. TANF recipients who are not mandatory or voluntary participants in a Choices service or activity will be responsible for paying the parent's share of cost as determined by the Board.

The rule amendments also remove the parents' share of cost exemption for Supplemental Security Income (SSI) recipients to provide for the exemption from the parent's share of cost to apply only to Choices participants.

The rule amendments replace the Designated Vendor title with the new Texas Rising Star provider identity. This title has been established in coordination with local Boards and contractors and more accurately describes the higher quality of care that is found in these facilities. In addition, the rule amendments put into place a minimum five percent increase in the reimbursement rate for Texas Rising Star providers as long as the rate does not exceed the published rate.

The rule amendments remove certain portions of the rules that are obsolete or have expired, such as the child care training center pilot programs.

For purposes of this preamble, the term "Agency" refers to the daily operations of the Texas Workforce Commission under the direction of the executive director, and the term "Commission" refers to the three-member body of governance composed of Governor-appointed members.

In §809.1, section (b), the word "or" replaces the word "and". Also, in section (b), the phrase "continues to" is deleted, and the word "administer" is changed to plural form.

In §809.2, sections (1) and (2), the definitions regarding the Board and Child Care are redefined which are consistent with §800.2.

Section 809.5. Child Care State Advisory Committee is repealed in its entirety.

In §809.14, subsection (3) of section (a), the phrase "Designed Vendor standards of" is replaced by the phrase "Texas Rising Star criteria as established by." In addition, the phrase "(formerly known as the Designated Vendor criteria)" is appended to the end of section (b). In section (d), the phrase "Designated Vendor" is replaced by the phrase "Texas Rising Star Provider."

In §809.15, section (b), the phrase "Designated Vendor criteria" is replaced by the phrase "Texas Rising Star Provider criteria." In addition, the phrase "(formerly known as the Designated Vendor criteria)" is appended to the end of section (b). In section (d), the phrase "Designated Vendor" is replaced by the phrase "Texas Rising Star Provider."

In §809.46, subsection (B) of subsection (2) of section (a), the sentence was removed, and the subsequent subsections were renamed appropriately.

In §809.61, a new section (c) was inserted between section (b) and section (c). All sections following the new section (c) were renamed appropriately.

In §809.103, section (c), the phrase "one year" was replaced by the phrase "12 months or until the family reaches the Board's income limit for eligibility, whichever occurs first. Subject to the availability of funds, children who are

otherwise eligible for at-risk child care and whose time limit for Applicant child care has expired, may be continued in care subject to the Board's policies for at-risk child care. At-risk care includes eligibility under any provision contained in Subchapter H of this title relating to Children of Parents at Risk of Becoming Dependent on Public Assistance."

Subchapter I. Child Care Training Center Pilot Programs is repealed in its entirety.

In §809.221, sections (a) and (b) were replaced with new sections (a) and (b).

In §809.225, section (c), the phrase "if eligible to receive care based on other eligibility criteria or if the Texas Department of Protective and Regulatory Services or its caseworker indicates that the child is in need of protective services." was replaced by the phrase "if the children are otherwise eligible under the Board's child care policies and meet the minimum requirements for eligibility set forth in the federal regulations, and if it does not result in removing another child from care. Children Needing to Receive Protective Services referred by a Texas Department of Protective Services (CPS) worker that are no longer funded through PRS shall remain in care for the period of time determined appropriate by the CPS. The provision of care shall not exceed six months and shall not result in another child being removed from care. In addition, the entire section (d) was deleted.

In §809.231, a new section (b) was added, subsequent subsections were renamed appropriately, and a new section (e) was added.

In §809.233, section (1), each phrase stating "parent fees" was replaced by the phrase "parents' share of costs."

The Commission made non-substantive grammatical changes to improve readability and to incorporate state statutory requirements to §§809.11, 809.20, 809.43, 809.47, 809.48, 809.101, 809.102, 809.104, 809.105, 809.231 and 809.233.

Randy Townsend, Director of Finance, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules;

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules;

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

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules; and

There are no anticipated economic costs to persons required to comply with the rules; however, some persons that are receiving a child care subsidy may no longer be able to utilize the cost savings resulting from having the Child Care and Development Fund subsidize the child care of the family.

Mr. Townsend has also determined that there is no anticipated adverse impact on small businesses as a result of enforcing or administering the rules because small businesses are not regulated or required to do anything by the rules.

James Barnes, Director of Labor Market Information, has determined that there is no significant negative impact upon employment conditions in this state as a result of the proposed amendments and repeals.

Barbara Cigainero, Director of Workforce and Development, has determined that for each year of the first five years the rules will be in effect, the public benefit anticipated as a result of enforcing the rules will be to help ensure a more effective use of child care funds to assist Boards in supporting employment, training, and education.

Comments on the proposal may be submitted to John Moore, Texas Workforce Commission Building, 101 East 15th Street, Room , Austin, Texas 78778, (512) 463-3041. Comments may also be submitted via fax to (512) 463-1426 or e-mailed to: [John.Moore@twc.state.tx.us](mailto:John.Moore@twc.state.tx.us). Comments must be received by the Agency within thirty days from the date of the publication in the *Texas Register* .

For information about the Commission please visit our web page at [www.texasworkforce.org](http://www.texasworkforce.org).

#### Subchapter A. GENERAL PROVISIONS

#### **40 TAC §809.1, §809.2**

The rule amendments are proposed under Texas Labor Code §§301.061 and 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Chapter 302, and Texas Human Resources Code, Chapters 31 and 44.

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

(a) The rules contained in this chapter may be cited as the Child Care and Development Rules. The purpose of these rules is to interpret and implement the requirements of state and federal statutes and regulations governing child care

and quality improvement activities funded through the Commission, fully integrating child care services with other workforce training and services under the jurisdiction of local workforce development boards.

(b) For local workforce development areas where there is no certified local workforce development board with an approved plan or ~~and~~ the Commission ~~continues to~~ administers ~~administer~~ the delivery of child care services, the rules contained in this chapter shall apply to the Commission, its contractors, and its providers of services.

(c) The effective date of the rules in this Chapter 809 relating to Child Care and Development shall be twenty days after the date of filing the adoption in the Office of the Secretary of State; however, until September 1, 1999, the Boards shall continue to comply with the rules in effect on January 1, 1999 with the following exception. If a Board is unable to implement the provisions of §809.62(a)(1) by September 1, 1999, due to inability to complete automation or programmatic changes as needed, the Board shall implement the provisions of §809.62(a)(1) as soon thereafter as possible but not later than December 1, 1999. Pending implementation of §809.62(a)(1), not later than December 1, 1999, the Board may continue to make payments for child care services directly to eligible parents who choose to self-arrange child care.

*§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) Board--A Local Workforce Development Board created pursuant to Texas Government Code §2308.253 and certified by the Governor pursuant to Texas Government Code §2308.261. This includes such a Board when functioning as the Local Workforce Investment Board as described in the Workforce Investment Act §117 (29 U.S.C.A. §2832), including those functions required of a Youth Council, as provided for under the Workforce Investment Act §117(i). The definition of "Board" shall apply to all uses of the term in the rules contained in this Part 20, or unless otherwise defined, relating to the Texas Workforce Commission that are adopted after February 1, 2001.

~~[(1) Board--A certified local workforce development board with an approved plan pursuant to The Workforce and Economic Competitiveness Act, Texas Government Code, Chapter 2308, as amended.]~~

(2) Child Care--Child care services funded through the Agency, which may include services funded under the Child Care and Development Fund, Welfare-to-Work Formula Grants, WIA, and other funds available to the Agency or a Board to provide quality child care to assist families seeking to become independent from, or who are at risk of becoming dependent on, public assistance while parents are either working or participating in educational or training activities in accordance with state and federal statutes and regulations.

~~[(2) Child Care--Child Care services funded through the Commission.]~~

(3) Commission--The Texas Workforce Commission.

(4) Grant Recipient--The entity approved by the Commission under Texas Government Code §2308.263.

(5) Local workforce development area--The designated geographic area for which a Board provides services funded through the Commission, pursuant to Texas Government Code §2308.252.

(6) Parent--An individual responsible for the care and supervision of the child identified as the child's natural parent, adoptive parent, stepparent, or legal guardian.

(7) Provider--A person or entity that meets the minimum qualifications as set forth in this chapter for providing child care funded through the Commission. Unless specifically stated otherwise, the term "provider" does not refer to a self-arranged provider.

(8) Self-arranged provider--A person or entity that meets the minimum qualifications for providing self-arranged child care as set forth in this chapter.

(9) TANF--Temporary Assistance for Needy Families provided for under the federal Personal Responsibility and Work Opportunity Reconciliation Act and the Temporary Assistance for Needy Families block grant statutes and regulations, as amended.

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

Filed with the Office of the Secretary of State, on June 15, 2001.

TRD-200103377

John Moore

Assistant General Counsel

Texas Workforce Commission

Earliest possible date of adoption: July 29, 2001

For further information, please call: (512) 463-2573

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#### 40 TAC §809.5

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The rules are repealed under Texas Labor Code §§301.061 and 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Texas Labor Code, Chapter 302, and Texas Human Resources Code, Chapters 31 and 44. §809.5. *Child Care State Advisory Committee.*

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

Filed with the Office of the Secretary of State, on June 15, 2001.

TRD-200103378

John Moore

Assistant General Counsel

Texas Workforce Commission

Earliest possible date of adoption: July 29, 2001

For further information, please call: (512) 463-2573

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#### Subchapter B. GENERAL MANAGEMENT REQUIREMENTS

#### 40 TAC §§809.11, 809.14, 809.15, 809.20

The rule amendments are proposed under Texas Labor Code §§301.061 and 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Chapter 302, and Texas Human Resources Code, Chapters 31 and 44.

§809.11. *Board Responsibilities.*

(a) A certified Board with a local plan approved by the Governor is responsible for the administration of child care in a manner consistent with Texas Government Code, Chapter 2308, as amended, and related provisions under Chapter 801 of this title (relating to Local Workforce Development Boards).

(b) Access to child care shall be available through all one-stop [~~career development~~] centers within a local workforce development area where a Board has been certified and a local plan approved by the Governor.

(c) Child care services are part of workforce training and services under Texas Government Code, Chapter 2308 and Chapter 801 of this title.

(d) A Board shall provide the Commission with access to child care administration records and submit related information [~~related~~] for review and monitoring, pursuant to Commission rules and policies.

§809.14. *Promoting Consumer Education.*

(a) A Board shall make available to parents a consumer guide to child care providers who have Provider Agreements to provide Commission-funded child care in the local workforce development area and shall represent the name, address, and phone number of each provider and shall represent whether each provider:

(1) is licensed by or registered with the Texas Department of Protective and Regulatory Services;

~~{(2) is registered with the Texas Department of Protective and Regulatory Services;}~~

(2) [~~(3)~~] has met the Texas Rising Star criteria as established by [~~Designated Vendor standards of~~] the Commission (formerly known as the Designated Vendor criteria);

(3) [~~(4)~~] has submitted proof of general liability insurance; and

(4) [~~(5)~~] has submitted proof of appropriate commercial transportation insurance.

(b) The consumer guide shall set forth the requirements to be licensed and registered with the Texas Department of Protective and Regulatory Services as set forth in Texas Human Resources Code, Chapter 42 and applicable administrative rules and a description of the types of facilities or homes, which may be licensed or registered including, but not limited to, the following: day-care centers, group day-care homes, and family homes.

(c) A Board shall ensure that the consumer guide also includes the telephone number of the Texas Department of Protective and Regulatory Services or applicable regulating agency, so parents may obtain or verify the information regarding the providers and check compliance history.

(d) The consumer guide may include additional information including, but not limited to, the following:

(1) information the Board determines would assist parents in choosing a provider; and

(2) information as established by the Commission.

§809.15. *Quality Improvement Activities.*

(a) A Board shall ensure that providers receive orientation, technical assistance, and ongoing training to improve the quality of child care.

(b) A Board shall ensure that the quality of child care is improved by recognizing providers who voluntarily exceed the minimum regulatory standards [~~for qualification~~] set by the Texas Department of Protective and Regulatory Services by using the Texas Rising Star Provider criteria [~~Designated Vendor criteria~~] as established by the Commission (formerly known as the Designated Vendor criteria).

(c) A Board shall ensure that the quality of child care is improved by using quality improvement activities including, but not limited to, the activities described in 45 Code of Federal Regulations §98.51, except the Boards may not provide loans.

(d) In addition to the Texas Rising Star Provider [~~Designated Vendor~~] criteria, a Board may establish other voluntary criteria for improving quality and recognize providers that meet or exceed the voluntary standards for quality.

(1) The quality improvement criteria may include, but are not limited to one or more of the following activities:

- (A) reducing group sizes;
- (B) improving health and safety conditions;
- (C) improving linkage to parents and community services; or
- (D) improving teacher training.

(2) Boards may also choose to recognize professional [~~center~~] accreditation as a means to improve quality.  
*§809.20.Leveraging Local Resources.*

(a) Leveraging Local Funds. The Commission encourages Boards to secure [~~as much~~] local public and private funds for match to the extent [~~as~~] possible [~~in order~~] to leverage all available resources for [~~to address~~] child care needs in the community.

(1) A Board may secure local funds for match in the form of one or more of the methods in order to leverage (match) against federal funds available through the Commission:

- (A) donations of funds from a private entity;
- (B) transfers of funds from a public entity; or
- (C) certifications of expenditures by a public entity that represent [~~represents~~] expenditures eligible for federal match.

(2) A Board's performance in securing and leveraging local funds for match may make the Board eligible for incentive awards.

(b) Securing Local Funds to Access Federal Matching Funds from the Commission.

(1) A Board shall manage the securing of funds, including the selection of pledged and completed donations, transfers, and certifications that are used by the Board to receive federal matching funds through the Commission.

(2) A Board shall ensure that federal matching funds are maximized by securing local funds for match in an amount that may exceed the amount required to match available federal funds.

(c) Documenting Pledged Donations, Transfers and Certifications. A Board shall maintain written documentation of pledged donations, transfers and certifications that contain, at a minimum, the following:

- (1) the signature of the representative of the Board;
- (2) the signature of the potential contributor;
- (3) the potential contributor's commitment to fulfill the pledge of the donation, transfer or certification by paying or certifying the funds to the Commission for use in a specific workforce area on a set payment or certification schedule;
- (4) the Board's commitment to use the donated or transferred funds as requested by the contributor, as long as it is consistent with federal regulations at 45 CFR §98.53; and
- (5) sufficient information to determine that the funds will be used in a manner consistent with 45 CFR §98.53.

(d) Submitting Pledged Donations, Transfers and Certifications for Acceptance by the Commission. A Board shall submit pledged donations, transfers, and certifications to the Commission for acceptance.

(e) Completing Donations, Transfers and Certifications.

(1) A Board shall ensure that donations of cash and transfers of funds are paid to the Agency [~~Commission~~] and that certifications are also submitted to the Agency [~~Commission~~].

(2) Donations and transfers are considered complete to the extent that the funds have been paid to the Agency [~~Commission~~].

(3) Certifications are considered complete to the extent that a signed written instrument is delivered to the Agency [~~Commission~~] that reflects that the public entity has expended a specific amount of funds on eligible child care services.

(f) Reporting. A Board shall report information relating to pledged and completed donations, transfers and certifications as referenced in §800.20(d) and (e) above and §800.72. Reporting Requirements [ in the monthly expenditure and service level reports as referenced in §800.83 of this title relating to Funds Utilization and Service Level Plan and Reports ].

(g) Monitoring. A Board shall monitor the funds secured for match and the expenditure of any resulting funds to ensure that expenditures of unmatched federal funds available through the Commission do not exceed an amount that corresponds to the donations, transfers, and certifications that are completed by the end of the program year. This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on June 15, 2001.

TRD-200103379

John Moore

Assistant General Counsel

Texas Workforce Commission

Earliest possible date of adoption: July 29, 2001

For further information, please call: (512) 463-2573

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#### Subchapter C. REQUIREMENTS TO PROVIDE CHILD CARE

#### 40 TAC §§809.43, 809.46 - 809.48

The rule amendments are proposed under Texas Labor Code §§301.061 and 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Chapter 302, and Texas Human Resources Code, Chapters 31 and 44.

#### §809.43. Provider Agreements.

(a) Provider Agreements are agreements between the Board or the Board's designee and the providers of child care, which:

(1) are in writing and signed by the provider and the Board or the Board's designee before child care services are rendered, and

(2) specify the roles and responsibilities of the parties.

(b) A Board shall ensure that the Provider Agreements include notices, statements, and terms that detail provider obligations for complying with federal and state statutes and regulations relating to child care including, but not limited to, statements to ensure that discrimination is prohibited as referenced in 45 Code of Federal Regulations §§98.20, 98.46, and 98.47, as may be amended.

(c) Failure to maintain a Provider Agreement ~~may~~ shall result in disallowed costs by the Commission.

#### §809.46. Assessing and Collecting Parent's [ Parents'-] Share of Cost.

(a) For child care funds allocated by the Commission pursuant to its allocation rules (Chapter 800. General Administration, Subchapter B. Allocation and Funding §800.58), the following shall apply.

(1) A Board shall set a parent's [ ~~parents-~~ ] share of cost policy in accordance with the requirements set forth in §809.12 of this chapter (relating to Board Policies and Plans for Child Care Services) that shall assess parent's [ ~~parents-~~ ] share of cost in a manner that results in [ ~~the-~~ ] parent's [ ~~parents-~~ ] share of cost:

(A) being assessed to all parents or caretakers, except in instances when an exemption under paragraph (2) of this subsection applies;

(B) being based on the family's size and gross monthly income, and may also be based on the number of children in care; and

(C) not exceeding the cost of care.

(2) Parents that are one or more of the following are exempt from paying [ ~~a-~~ ] parent's [ ~~parents-~~ ] share of cost:

(A) parents who are participating in Choices [ ~~receive TANF~~ ];

[ ~~(B) parents who receive Supplemental Security Income (SSI);~~ ]

(B) [ ~~(C)-~~ ] parents who participate in the Food Stamp Employment and Training; or

(C) [ ~~(D)-~~ ] parents who have children that are receiving protective services unless the Texas Department of Protective and Regulatory Services assesses [ ~~a-~~ ] parent's [ ~~parents-~~ ] share of cost.

(3) Teen parents who live with their parents and who are not covered under exceptions outlined under paragraph (2) of this subsection shall be assessed [ ~~a-~~ ] parent's [ ~~parents-~~ ] share of cost. The parent's [ ~~parents-~~ ] share of cost is based solely on the teen parent's income.

(4) [ ~~A-~~ ] Parent's [ ~~parents-~~ ] share of cost shall be assessed to families in which the child is the only TANF or SSI recipient.

(b) For child care services funded from sources other than those sources for funds allocated by the Commission for Child Care Services pursuant to its allocation rules, a Board shall set a parent's [ ~~parents'~~ ] share of cost policy based on a sliding fee scale that may be the same as or different from the provisions contained in subsection (a) of this section.

(c) Providers shall collect assessed parent's [ ~~parents'~~ ] share of cost and subsidies before child care is delivered.

(d) It is the sole responsibility of the provider to collect assessed parent's [ ~~parents'~~ ] share of cost and subsidies.

(e) A Board shall establish a policy regarding reimbursement of providers to address consequences for providers in situations when parents fail to pay parent's [ ~~parents'~~ ] share of cost and subsidies.

*§809.47.Reduction of Assessed Parent's [ ~~Parents'~~ ] Share of Cost.*

(a) The Board or its contractor shall review the assessed parent's [ ~~parents'~~ ] share of cost for possible reduction if there are extenuating circumstances that jeopardize a family's self-sufficiency. The Board or its contractor may reduce the assessed parent's [ ~~parents'~~ ] share of cost if warranted by these circumstances.

(b) The Board or its contractor shall not waive parent's [ ~~parents'~~ ] share of cost under any circumstances.

*§809.48.Attendance [ ~~Tracking~~ ].*

(a) A Board shall set the attendance standards for eligible children in the local workforce development area, including provisions consistent with §809.224 of this Chapter (relating to Custody and Visitation Arrangements). Providers and self-arranged providers shall document and maintain a record of each child's attendance and submit such documents to the Board's designated contractor upon request.

(b) When an enrolled child is absent, providers shall inform the Board's designated contractor and shall follow attendance reporting and tracking procedures required by the Commission, Board, or, if applicable, the Board's contractor.

(c) Failure by the provider to keep required attendance records may result in withholding payment or in termination of the Provider Agreement.

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

Filed with the Office of the Secretary of State, on June 15, 2001.

TRD-200103380

John Moore

Assistant General Counsel

Texas Workforce Commission

Earliest possible date of adoption: July 29, 2001

For further information, please call: (512) 463-2573

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Subchapter D. SELF-ARRANGED CARE

**40 TAC §809.61**

The rule amendment is proposed under Texas Labor Code §§301.061 and 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rule affects Texas Labor Code, Chapter 302, and Texas Human Resources Code, Chapters 31 and 44.

*§809.61.Qualifications to Provide Self-Arranged Care.*

(a) A relative who is at least 18 years of age and is one of the following is eligible to provide self-arranged care:

- (1) the child's grandparent;
- (2) the child's great-grandparent;
- (3) the child's aunt;
- (4) the child's uncle; or
- (5) the child's sibling, if the sibling does not reside in the same household as the eligible child.

(b) If chosen by the parent, a person or entity who has not signed a Provider Agreement is eligible to provide self-arranged care if:

- (1) licensed by the Texas Department of Protective and Regulatory Services;
- (2) registered with the Texas Department of Protective and Regulatory Services;
- (3) listed with the Texas Department of Protective and Regulatory Services;
- (4) licensed by the Texas Department of Health as a youth day camp; or
- (5) operated and monitored by the United States military services.

(c) A relative providing self-arranged care under subsection (a) of this section shall not be paid for more children than permitted by the Texas Department of Protective and Regulatory Services' minimum regulatory standards for

Registered Family Homes. The Board may permit more children to be cared for in self-arranged care situations on a case-by-case basis as determined by the Board.

(d) [ ~~(e)~~] A Board shall ensure that requests made by the Texas Department of Protective and Regulatory Services, for specific providers or persons eligible to provide self-arranged care, are enforced for children in protective services.

(e) [ ~~(d)~~] Before authorizing a person or entity "listed" with the Texas Department of Protective and Regulatory Services to provide child care, a Board shall ensure that there are in effect, under local law, requirements designated to protect the health and safety of children that are applicable to the persons or entities "listed" with the Texas Department of Protective and Regulatory Services. Boards may choose to not allow "listed" providers as self-arranged providers. Pursuant to federal regulations at 45 Code of Federal Regulations § 98.41, the requirements shall include:

- (1) the prevention and control of infectious diseases (including, immunizations);
- (2) building and physical premises safety; and
- (3) minimum health and safety training appropriate to the child care setting.

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

Filed with the Office of the Secretary of State, on June 15, 2001.

TRD-200103381

John Moore

Assistant General Counsel

Texas Workforce Commission

Earliest possible date of adoption: July 29, 2001

For further information, please call: (512) 463-2573

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#### Subchapter G. CHILD CARE FOR PEOPLE TRANSITIONING OFF PUBLIC ASSISTANCE

#### **40 TAC §§809.101 - 809.105**

The rule amendments are proposed under Texas Labor Code §§301.061 and 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Chapter 302, and Texas Human Resources Code, Chapters 31 and 44.

#### *§809.101. Transitional Child Care.*

(a) A Board shall ensure that transitional child care services will be provided for children of parents who have been denied TANF because of:

- (1) employment and an increase in earnings which results in being ineligible for TANF payments, or
- (2) expiration of TANF time limits.

(b) Transitional child care shall be [ ~~is~~] available for a period of up to 12 months, depending on income eligibility and whether the person is working, except in the case of an exempt TANF client who voluntarily participates in the Choices program. For these individuals, transitional child care is available for a period up to 18 months.

(c) TANF clients who are not employed when TANF expires shall [ ~~may~~] receive up to 4 weeks of transitional child care in order to allow these individuals to search for work as needed.

(d) TANF clients who are engaged in an education or training component that extends beyond the date that TANF expires, may receive transitional child care in order to complete the component.

Choices Child Care [ ~~Children of Parents Participating in the Choices Program~~].

(a) Children eligible to receive Choices child care include children of TANF recipients participating in the Choices program, in accordance with the provisions of the Texas Human Resources Code, §§31.0035 and 31.012(c).

(b) Child care shall be provided to children of parents participating in the Choices program who need child care to accept employment and remain employed.

(c) Child care services for children of parents participating in the Choices program shall continue for parents to participate in on-the-job training unless the parent's [ ~~parents'~~] on-the-job training earnings cause the denial of a TANF grant.

(d) Persons approved for Choices but waiting to enter an approved initial component of the program may receive up to two weeks of child care:

- (1) when child care will prevent loss of the Choices placement, and
- (2) if child care is available to meet the needs of the child and parent.

*§809.103. [ ~~Texas~~] Workforce Orientation [ ~~Commission~~] Applicant Child Care.*



(a) Children are eligible for Applicant Child Care if their parents meet the criteria for eligibility of children living at low incomes, as detailed in §809.121 of this chapter, (relating to Children Living At Low Incomes), and meet all of the following criteria:

(1) need child care to accept employment;

(2) receive a referral from the Texas Department of Human Services to attend a Workforce Orientation for Applicants; and

(3) locate employment prior to TANF certification.

(b) To receive Applicant Child Care, parents shall not have voluntarily terminated paid employment of at least 30 hours a week within 30 days prior to receiving the referral from the Texas Department of Human Services to attend a Workforce Orientation for Applicants, unless the voluntary termination was for good cause connected with the parent's [ ~~parents'~~ ] work.

(c) Subject to the availability of funds, Applicant Child Care shall be provided for up to [ ~~one year~~ ] 12 months or until the family reaches the Board's income limit for eligibility, whichever occurs first. Subject to the availability of funds, children who are otherwise eligible for at-risk child care and whose time limit for Applicant child care has expired, may be continued in care subject to the Board's policies for at-risk child care. At-risk care includes eligibility under any provision contained in Subchapter H. of this title relating to Children of Parents at Risk of Becoming Dependent on Public Assistance.

Child Care [ ~~Children of Parents Participating in the~~ ] Food Stamp Employment and Training [ ~~Program~~ ].

Children are eligible to receive child care if their parents are participating in [ ~~the~~ ] Food Stamp Employment and Training services [ ~~program~~ ], in accordance with the provisions of 7 Federal Regulations, Part 273, and whose case plan remains open.

*§809.105.Children Receiving or Needing Protective Services.*

(a) A Board shall ensure that determinations of eligibility for children needing protective services are performed by the Texas Department of Protective and Regulatory Services.

(b) Child care continues as long as authorized and funded by the Texas Department of Protective and Regulatory Services.

(c) In cases where the Child Protective Services (CPS) case is closed and child care will no longer be funded by the Texas Department of Protective and Regulatory Services, the Board shall continue the child care by using other funding for the child care slot for up to six months after the child is [ ~~they are~~ ] no longer eligible for Texas Department of Protective and Regulatory Services funds if the CPS worker or other Texas Department of Protective and Regulatory Services staff states that the child needs to receive protective services and child care is an integral factor of those services.

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

Filed with the Office of the Secretary of State, on June 15, 2001.

TRD-200103382

John Moore

Assistant General Counsel

Texas Workforce Commission

Earliest possible date of adoption: July 29, 2001

For further information, please call: (512) 463-2573

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#### Subchapter I. CHILD CARE TRAINING CENTER PILOT PROGRAMS

#### **40 TAC §§809.171 - 809.174**

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The rules are repealed under Texas Labor Code §§301.061 and 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Texas Labor Code, Chapter 302, and Texas Human Resources Code, Chapters 31 and 44.

*§809.171.Purpose.*

*§809.172.Definitions.*

*§809.173.Training Center Selection Criteria.*

*§809.174.Implementation Requirements.*

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

Filed with the Office of the Secretary of State, on June 15, 2001.

TRD-200103383

John Moore

Assistant General Counsel

Texas Workforce Commission

Earliest possible date of adoption: July 29, 2001

For further information, please call: (512) 463-2573

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Subchapter K. FUNDS MANAGEMENT

**40 TAC §§809.221, 809.225, 809.231, 809.233**

The rule amendments are proposed under Texas Labor Code §§301.061 and 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Chapter 302, and Texas Human Resources Code, Chapters 31 and 44.

*§809.221. General Funds Management.*

Boards shall ensure that resources are proportionately allocated among the following priority groups so that child care services are assured for the first priority groups, and then subject to the availability of funds, the remaining priorities in descending order are served.

(1) The first priority group includes:

(A) Choices; and

(B) Transitional eligible parents.

(2) The second priority group includes:

(A) Workforce Orientation Applicant(s); and

(B) Children needing to receive protective services referred by a Texas Department of Protective and Regulatory Services worker that are no longer funded through the Texas Department of Protective and Regulatory Services shall remain in care for the period of time determined appropriate by the Texas Department of Protective and Regulatory Services. The provision of care shall not exceed six months and shall not result in another child being removed from care.

(3) The third priority group includes any other priority elected by the Boards, which may include but is not limited to:

(A) teen parents;

(B) children with disabilities; or

(C) other persons at risk of becoming dependent on public assistance that meet the income eligibility level as determined by the Board.

~~[(a) Boards shall ensure that resources are proportionately allocated among eligibility groups so that child care services are assured for Choices, Transitional and Texas Workforce Applicant eligible children.]~~

~~[(b) Children referred by Child Protective Services (CPS) workers, for which care shall be provided through Texas Department of Protective and Regulatory Services funds, shall also receive priority for available child care openings. When Texas Department of Protective and Regulatory Services funding stops and the CPS worker indicates that the child continues to need protective services, the Boards shall continue the child care using the Child Care and Development funds up to six months after they are no longer eligible for Texas Department of Protective and Regulatory Services funds, so long as the provision of care to the child does not result in another child being removed from care.]~~

*§809.225. Continuity of Care.*

(a) General Principle. Enrolled children shall receive child care as long as the parent remains eligible for any available source of Commission-funded child care except as otherwise provided under subsection (b) of this section.

(b) Exceptions. Nothing in this chapter shall be interpreted in a manner as to result in a child being removed from care, except when removal from care is required for child care to be provided to a child of parents eligible for one or more of the following types of priority child care:

(1) Choices Child Care under §809.102 of this Chapter,

(2) Transitional Child Care under §809.101 of this Chapter, or

(3) [Texas-] Workforce Orientation [Commission-] Applicant Child Care under §809.103 of this Chapter.

(c) Children who no longer receive Texas Department of Protective and Regulatory Services funded care and are not otherwise eligible for Child Care and Development Fund services shall also continue receiving child care funded

through the Commission, if the Texas Department of Protective and Regulatory Services or its caseworker indicates that the child is in need of protective services for the period chosen by the Child Protective Services (CPS) caseworker, which shall not exceed six months, so long as it does not result in another child being removed from care.

(d) [~~(e)~~] Children who no longer receive Texas Department of Protective and Regulatory Services funded care may [~~shall~~] also continue receiving child care funded through the Commission if the children are otherwise eligible under the Board's child care policies and meet the minimum requirements for eligibility set forth in the federal regulations, and if it does not result in removing another child from care. [~~if eligible to receive care based on other eligibility criteria or if the Texas Department of Protective and Regulatory Services or its caseworker indicates that the child is in need of protective services.~~]

~~[(d) Children currently enrolled in child care shall remain in care when the Board assumes management of the child care services contract and shall remain eligible as long as eligibility criteria are met unless otherwise required on a case by case basis to provide priority child care as referenced in subsection (b) of this section.]~~

*§809.231. Provider Reimbursement Rates.*

(a) Based on local factors, including a market rate survey provided by the Agency, a Board shall establish the reimbursement rates for purchased child care to ensure that the rates provide equal access to child care services in the local market and in a manner consistent with state and federal statutes and regulations governing child care.

(b) A Board shall establish a graduated reimbursement rate for Texas Rising Star Providers (formerly known as the Designated Vendors), pursuant to Texas Government Code §2308.315. The minimum reimbursement rate for Texas Rising Star Providers shall be at least five percent greater than the maximum rate established for non-Texas Rising Star Providers for the same category of care up to, but not to exceed, the provider's published rate. The Texas Rising Star Provider rate differential established in this section shall be funded with federal child care development funds dedicated to quality improvement activities.

(c) [~~(b)~~] The Board or its contractor shall not reimburse a provider retroactively for new reimbursement rates.

(d) [~~(e)~~] A Board or its contractor shall ensure that providers who are reimbursed for additional staff needed to assist in the care of a child with disabilities are paid a rate up to 190% of the provider's reimbursement rate for a child of that same age.

(1) The higher rate, which may be called an inclusion assistance rate, is an increased provider reimbursement rate to provide for additional staff to assist in the care of a child with disabilities, which shall take into consideration the estimated cost of the additional staff needed by a child with disabilities.

(2) The Board shall ensure that a professional, who is familiar with assessing the needs of children with disabilities, certifies the need for the inclusion assistance rate.

(e) A Board may provide incentives to providers and self-arranged child care providers to recognize quality in addition to the provisions set forth in subsection (b).

*§809.233. Reduction of Parent's Share of Costs [~~Parent Fees~~] and Child Care Subsidies.*

The reimbursement to the provider is reduced by an amount equal to:

(1) the parent's share of costs [~~parent fees~~] assessed and adjusted when the parent's share of costs [~~parent fees~~] are reduced; and

(2) any child care subsidy received by the parent from other state or federal programs. The provider reports the amount of the subsidies collected to the Board's contractor.

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

Filed with the Office of the Secretary of State, on June 15, 2001.

TRD-200103384

John Moore

Assistant General Counsel

Texas Workforce Commission

Earliest possible date of adoption: July 29, 2001

For further information, please call: (512) 463-2573