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XX.

TEXAS WORKFORCE COMMISSION

The rules are adopted under Texas Labor Code §§301.0015 and 302.002(d), 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.

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 Rules.
- (b) 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 Texas Workforce Commission (Commission), to include:
 - (1) the Child Care and Development Fund (CCDF), which includes:
 - (A) funds allocated to local workforce development areas (workforce areas) as provided in §800.58 of this title;
 - (B) private donated funds described in §809.17(b)(1);
 - (C) public transferred funds described in §809.17(b)(2);
 - (D) public certified expenditures described in §809.17(b)(3); and
 - (E) funds used for children receiving protective services described in §809.49.
 - (2) other funds that are used for child care services allocated to workforce areas under Chapter 800 of this title.
- (c) The rules contained in this chapter shall apply to the Commission, Local Workforce Development Boards (Boards), their child care contractors, child care providers, and parents applying for or eligible to receive child care services.

The provisions of this new §809.1 adopted to be effective January 29, 2007, as published in the Texas Register, January 26, 2007, 32 TexReg 336.

§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 considered to be 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 determined by the Board.
- (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 reimbursement process related to child care subsidies, as well as contractors involved in the funding of quality improvement activities as described in §809.16.

- (4) Child care services -- Child care subsidies and quality improvement activities funded by the Commission.
- (5) Child care subsidies -- Commission-funded child care reimbursements to an eligible child care provider for the direct care of an eligible child.
- (6) Child with disabilities -- A child who is mentally or physically incapable of performing routine activities of daily living within the child's typical chronological range of development. A child is considered mentally or physically incapable of performing routine activities of daily living if the child requires assistance in performing tasks (major life activity) that are within the typical chronological range of development, including but not limited to, caring for oneself; performing manual tasks; walking; hearing; seeing, speaking, breathing; learning; and working.
- (7) Educational program -- A program that leads to:
 - (A) a high school diploma;
 - (B) a General Educational Development (GED) credential; or
 - (C) a postsecondary degree from an institution of higher education.
- (8) Family -- The unit composed of a child eligible to receive child care services, the parents of that child, and household dependents.
- (9) Household dependent -- An individual living in the household who is one of the following:
 - (A) An adult considered as 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 the parent.
- (10) Improper payments -- Payments to a provider or Board's child care contractor for goods or services that are not in compliance with federal or state requirements or applicable contracts.
- (11) Job training program -- A program that provides training or instruction leading to:
 - (A) basic literacy;
 - (B) English proficiency;
 - (C) an occupational or professional certification or license; or
 - (D) the acquisition of technical skills, knowledge, and abilities specific to an occupation.
- (12) Listed family home -- A family home, other than the eligible child's own residence, that is listed, but not licensed or registered with, the Texas Department of Family and Protective Services (DFPS) pursuant to Texas Human Resources Code §42.052(c).
- (13) Military deployment -- The temporary duty assignment away from the permanent military installation or place of residence for reserve components of the single military parent or the dual military parents of a child enrolled in child care services. This includes deployed parents in the regular military, military reserves, or National Guard.
- (14) Parent -- An individual who is responsible for the care and supervision of a child and is identified as the child's natural parent, adoptive parent, stepparent, legal guardian, or person standing in loco parentis (as determined in accordance with Commission policies and procedures). Unless otherwise indicated, the term applies to a single parent or both parents.
- (15) Protective services -- Services provided when:

- (A) a child is at risk of abuse or neglect in the immediate or short-term future and the child's family cannot or will not protect the child without DFPS Child Protective Services (CPS) intervention;
 - (B) a child is in the managing conservatorship of DFPS and residing with a relative or a foster parent; or
 - (C) a child has been provided with protective services by DFPS within the prior six months and requires services to ensure the stability of the family.
- (16) Provider -- A provider is defined as:
- (A) a regulated child care provider as defined in §809.2(17);
 - (B) a relative child care provider as defined in §809.2(18); or
 - (C) a listed family home as defined in §809.2(12), subject to the requirements in §809.91(b).
- (17) Regulated child care provider -- A provider caring for an eligible child in a location other than the eligible child's own residence that is:
- (A) licensed by DFPS;
 - (B) registered with DFPS;
 - (C) licensed by the Texas Department of State Health Services as a youth day camp; or
 - (D) operated and monitored by the United States military services.
- (18) Relative child care provider -- An individual who is at least 18 years of age, and is, by marriage, blood relationship, or court decree, one of the following:
- (A) The child's grandparent;
 - (B) The child's great-grandparent;
 - (C) The child's aunt;
 - (D) The child's uncle; or
 - (E) The child's sibling (if the sibling does not reside in the same household as the eligible child).
- (19) Residing with -- A child is considered to be residing with the parent when the child's primary place of residence is the same as the parent's primary place of residence.
- (20) 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.
- (21) Working -- Working is defined as:
- (A) activities for which one receives monetary compensation such as a salary, wages, tips, and commissions;
 - (B) job search activities (subject to the requirements in §809.41(d)); or
 - (C) participation in Choices or Food Stamp Employment and Training (FSE&T) activities.

The provisions of this new §809.2 adopted to be effective January 29, 2007, as published in the Texas Register, January 26, 2007, 32 TexReg 336.

§809.3. Waiver Request

- (a) The Commission may waive child care rules upon request from a person directly affected by the rules, if it determines that the waiver benefits a parent, child care contractor, or provider, and the Commission determines that the waiver does not harm child care or violate state or federal statutes or regulations.
- (b) Prior to submitting a waiver request to the Commission, the child must have been determined by the Board's child care contractor to meet the minimum qualifications set forth in §809.41(a).

The provisions of this new §809.3 adopted to be effective January 29, 2007, as published in the Texas Register, January 26, 2007, 32 TexReg 336.

SUBCHAPTER B. GENERAL MANAGEMENT

§809.11. Board Responsibilities

- (a) A Board shall be 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) A Board shall ensure that access to child care services shall be available through all Texas Workforce Centers within a workforce area.
- (c) Child care services are support services for workforce employment, job training, and services under Texas Government Code, Chapter 2308 and Chapter 801 of this title.
- (d) Upon request, a Board shall provide the Commission with access to child care administration records and submit related information for review and monitoring, pursuant to Commission rules and policies.

The provisions of this new §809.11 adopted to be effective January 29, 2007, as published in the Texas Register, January 26, 2007, 32 TexReg 336.

§809.12. Board Plan for Child Care Services

- (a) A Board shall, as part of its Texas Workforce Development Board Plan (Board plan), develop, amend, and modify the Board plan to incorporate and coordinate the design and management of the delivery of child care services with the delivery of other workforce employment, job training, and educational services identified in Texas Government Code §2308.251 et seq., as well as other workforce training and services included in the One-Stop Service Delivery Network.
- (b) The goal of the Board plan is to coordinate workforce training and services, to leverage private and public funds at the local level, and to fully integrate child care services for low-income families with the network of workforce training and services under the administration of the Boards.
- (c) Boards shall design and manage the Board plan to maximize the delivery and availability of safe and stable child care services that assist families seeking to become independent from, or who are at risk of becoming dependent on, public assistance while parents are either working or attending a job training or educational program.

The provisions of this new §809.12 adopted to be effective January 29, 2007, as published in the Texas Register, January 26, 2007, 32 TexReg 336.

§809.13. Board Policies for Child Care Services

- (a) A Board shall develop, adopt, and modify its policies for the design and management of the delivery of child care services in a public process in accordance with Chapter 801 of this title.
- (b) A Board shall maintain written copies of the policies that are required by federal and state law, or as requested by the Commission, and make such policies available to the Commission and the public upon request.
- (c) A Board shall also submit any modifications, amendments, or new policies to the Commission no later than two weeks after adoption of the policy by the Board.
- (d) At a minimum, a Board shall develop policies related to:
 - (1) how the Board determines that the parent is making progress toward successful completion of a job training or educational program as described in §809.2(1);
 - (2) maintenance of a waiting list as described in §809.18(b);
 - (3) assessment of a parent share of cost as described in §809.19, including the reimbursement of providers when a parent fails to pay the parent share of cost;
 - (4) maximum reimbursement rates as provided in §809.20, including policies related to reimbursement of providers that offer transportation;
 - (5) family income limits as described in Subchapter C of this chapter (relating to Eligibility for Child Care Services);
 - (6) provision of child care services to a child with disabilities up to the age of 19 as described in §809.41(a)(1)(B);
 - (7) minimum activity requirements for parents as described in §809.48 and §809.50;
 - (8) time limits for the provision of child care while the parent is attending an educational program as described in §809.41(b);
 - (9) frequency of eligibility redetermination as described in §809.42(b)(2);
 - (10) Board priority groups as described in §809.43(a);
 - (11) transfer of a child from one provider to another as described in §809.71(3);
 - (12) provider eligibility for listed family homes as provided in §809.91(b), if the Board chooses to include listed family homes as eligible providers;
 - (13) attendance standards and procedures as provided in §809.92(b)(4), including provisions consistent with §809.54(f) (relating to Continuity of Care for custody and visitation arrangements);
 - (14) providers charging the difference between their published rate and the Board's reimbursement rate as provided in §809.92(d);
 - (15) procedures for fraud fact-finding as provided in §809.111; and
 - (16) procedures for imposing sanctions when a parent fails to comply with the provisions of the parent responsibility agreement (PRA) as described in §809.76(c).

The provisions of this new §809.13 adopted to be effective September 8, 2008, as published in the Texas Register, September 5, 2008, 33 TexReg 7568.

§809.14. Coordination of Child Care Services

- (a) A Board shall coordinate with federal, state, and local child care and early development programs and representatives of local governments in developing its Board plan and policies for the design and management of the delivery of child care services, and shall maintain written documentation of its coordination efforts.
- (b) Pursuant to Texas Education Code §29.158, and in a manner consistent with federal law and regulations, a Board shall coordinate with school districts, Head Start, and Early Head Start program providers to ensure, to the greatest extent practicable, that full-day, full-year child care is available to meet the needs of low-income parents who are working or attending a job training or educational program.

The provisions of this new §809.14 adopted to be effective January 29, 2007, as published in the Texas Register, January 26, 2007, 32 TexReg 336.

§809.15. Promoting Consumer Education

- (a) A Board shall promote informed child care choices by providing consumer education information to:
 - (1) parents who are eligible for child care services;
 - (2) parents who are placed on a Board's waiting list;
 - (3) parents who are no longer eligible for child care services; and
 - (4) applicants who are not eligible for child care services.
- (b) The consumer education information shall contain, at a minimum:
 - (1) information about the Texas Information and Referral Network/2-1-1 Texas (2-1-1 Texas) information and referral system;
 - (2) the Web site and telephone number of DFPS, so parents may obtain health and safety requirements including information on:
 - (A) the prevention and control of infectious diseases (including immunizations);
 - (B) building and physical premises safety;
 - (C) minimum health and safety training appropriate to the provider setting; and
 - (D) the regulatory compliance history of child care providers;
 - (3) a description of the full range of eligible child care providers set forth in §809.91; and
 - (4) a description of programs available in the workforce area relating to school readiness and quality rating systems, including:
 - (A) school readiness models developed by the State Center for Early Childhood Development at the University of Texas Health Science Center (State Center); and
 - (B) Texas Rising Star Provider criteria.
- (c) A Board shall cooperate with the Texas Health and Human Services Commission (HHSC) to provide 2-1-1 Texas with information, as determined by HHSC, for inclusion in the statewide information and referral network.

The provisions of this new §809.15 adopted to be effective January 29, 2007, as published in the Texas Register, January 26, 2007, 32 TexReg 336.

§809.16. Quality Improvement Activities

- (a) Child care funds allocated by the Commission pursuant to its allocation rules (generally, Chapter 800, General Administration, Subchapter B, Allocation and Funding, and specifically §800.58, Child Care), including local public transferred funds and local private donated funds, as provided in §809.17, to the extent they are used for nondirect care quality improvement activities, shall be used only for the following:
 - (1) Collaborative reading initiatives;
 - (2) School readiness, early learning, and literacy; or
 - (3) Local-level support to promote child care consumer education provided by 2-1-1 Texas.
- (b) Allowable activities to support the quality improvement activities described in subsection (a) of this section may include the following:
 - (1) Professional development and training for child care providers; or
 - (2) Purchase of curriculum and curriculum-related support resources for child care providers.
- (c) Activities in subsection (a) of this section may be designed to meet the needs of children in any age group eligible for Commission-funded child care, as well as children with disabilities.
- (d) In funding quality improvement activities allowable under this section, a Board may give priority to child care facilities:
 - (1) participating in the integrated school readiness models developed by the State Center;
 - (2) implementing components of school readiness curricula as approved by the State Center; or
 - (3) participating in or voluntarily pursuing participation in Texas Rising Star Provider Certification, pursuant to Texas Government Code §2308.316.
- (e) Expenditures certified by a public entity, as provided in §809.17(b)(3), may include expenditures for any quality improvement activity described in 45 C.F.R. §98.51.

The provisions of this new §809.16 adopted to be effective January 29, 2007, as published in the Texas Register, January 26, 2007, 32 TexReg 336.

§809.17. Leveraging Local Resources

- (a) Leveraging Local Funds.
 - (1) The Commission encourages Boards to secure local public and private funds for the purpose of matching federal funds in order to maximize resources for child care needs in the community.
 - (2) A Board is encouraged to secure additional local funds in excess of the amount required to match federal funds allocated to the Board in order to maximize its potential to receive additional federal funds should they become available.
 - (3) A Board's performance in securing and leveraging local funds for match may make the Board eligible for incentive awards.
- (b) The Commission accepts the following as local match:
 - (1) Funds from a private entity that:
 - (A) are donated without restrictions that require their use for:

- (i) a specific individual, organization, facility, or institution; or
 - (ii) an activity not included in the CCDF State Plan or allowed under this chapter;
 - (B) do not revert back to the donor's facility or use;
 - (C) are not used to match other federal funds; and
 - (D) are certified by both the donor and the Commission as meeting the requirements of subparagraphs (A)–(C) of this paragraph.
- (2) Funds from a public entity that:
- (A) are transferred without restrictions that would require their use for an activity not included in the CCDF State Plan or allowed under this chapter;
 - (B) are not used to match other federal funds; and
 - (C) are not federal funds, unless authorized by federal law to be used to match other federal funds.
- (3) Expenditures by a public entity certifying that the expenditures:
- (A) are for an activity included in the CCDF State Plan or allowed under this chapter;
 - (B) are not used to match other federal funds; and
 - (C) are not federal funds, unless authorized by federal law to be used to match other federal funds.
- (c) A Board shall submit private donations, public transfers, and public certifications to the Commission for acceptance, with sufficient information to determine that the funds meet the requirements of subsection (b) of this section.
- (d) Completing Private Donations, Public Transfers, and Public Certifications.
- (1) A Board shall ensure that:
- (A) private donations of cash and public transfers of funds are paid to the Commission; and
 - (B) public certifications are submitted to the Commission.
- (2) Private donations and public transfers are considered complete when the funds have been received by the Commission.
- (3) Public certifications are considered complete to the extent that a signed written instrument is delivered to the Commission that reflects that the public entity has expended a specific amount of funds on eligible activities described in subsection (b)(3) of this section.
- (e) A Board shall monitor the funds secured for match and the expenditure of any resulting funds to ensure that expenditures of federal matching funds available through the Commission do not exceed an amount that corresponds to the private donations, public transfers, and public certifications that are completed by the end of the program year.

The provisions of this new §809.17 adopted to be effective January 29, 2007, as published in the Texas Register, January 26, 2007, 32 TexReg 336.

§809.18. Maintenance of a Waiting List

- (a) A Board shall ensure that a list of parents waiting for child care services, because of the lack of funding or lack of providers, is maintained and available to the Commission upon request.
- (b) A Board shall establish a policy for the maintenance of a waiting list that includes, at a minimum:
 - (1) the process for determining that the parent is potentially eligible for child care services before placing the parent on the waiting list; and
 - (2) the frequency in which the parent information is updated and maintained on the waiting list.

The provisions of this new §809.18 adopted to be effective January 29, 2007, as published in the Texas Register, January 26, 2007, 32 TexReg 336.

§809.19. Assessing the Parent Share of Cost

- (a) For child care funds allocated by the Commission pursuant to its allocation rules (generally, Chapter 800, General Administration, Subchapter B, Allocation and Funding, and specifically, §800.58, Child Care), including local public transferred funds and local private donated funds, as provided in §809.17, the following shall apply.
 - (1) A Board shall set a parent share of cost policy that assesses the parent share of cost in a manner that results in the parent share of cost:
 - (A) being assessed to all parents, except in instances when an exemption under paragraph (2) of this subsection applies;
 - (B) being an amount determined by a sliding fee scale based on the family's size and gross monthly income, and also may consider the number of children in care; and
 - (C) not exceeding the cost of care.
 - (2) Parents who are one or more of the following are exempt from paying the parent share of cost:
 - (A) Parents who are participating in Choices;
 - (B) Parents who are participating in FSE&T services; or
 - (C) Parents who have children who are receiving protective services child care pursuant to §809.49 and §809.54(c)(1), unless DFPS assesses the parent share of cost.
 - (3) Teen parents who are not covered under exemptions listed in paragraph (2) of this subsection shall be assessed a parent share of cost. The teen parent's share of cost is based solely on the teen parent's income and size of the teen's family as defined in §809.2(8).
- (b) For child care services funded from sources other than those specified in subsection (a) of this section, a Board shall set a parent share of cost policy based on a sliding fee scale. The sliding fee scale may be the same as or different from the provisions contained in subsection (a) of this section.
- (c) A Board shall establish a policy regarding reimbursement of providers when parents fail to pay the parent share of cost.
- (d) The Board or its child care contractor may review the assessed parent share of cost for possible reduction if there are extenuating circumstances that jeopardize a family's self-sufficiency. The Board or its child care contractor may reduce the assessed parent share of cost if warranted by these circumstances.

- (e) If the parent is not covered by an exemption as specified in subsection (a)(2) of this section, then the Board or its child care contractor shall not waive the assessed parent share of cost under any circumstances.
- (f) If the parent share of cost, based on family income and family size, is calculated to be zero, then the Board or its child care contractor shall not charge the parent a minimum share of cost amount.

The provisions of this new §809.19 adopted to be effective September 8, 2008, as published in the Texas Register, September 5, 2008, 33 TexReg 7568.

§809.20. Maximum Provider Reimbursement Rates

- (a) Based on local factors, including a market rate survey provided by the Commission, a Board shall establish maximum reimbursement rates for child care subsidies to ensure that the rates provide equal access to child care in the local market and in a manner consistent with state and federal statutes and regulations governing child care.
- (b) A Board shall establish enhanced reimbursement rates for:
 - (1) child care providers participating in integrated school readiness models developed by the State Center;
 - (2) Texas Rising Star Providers pursuant to Texas Government Code §2308.315; and
 - (3) child care providers that obtain Texas School Ready!TM certification pursuant to Texas Education Code §29.161.
- (c) The minimum reimbursement rates established under subsection (b) of this section shall be at least 5% greater than the maximum rate established for providers not meeting the requirements of subsection (b) of this section for the same category of care up to, but not to exceed, the provider's published rate.
- (d) A Board or its child care contractor shall ensure that providers that are reimbursed for additional staff or equipment 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. The higher rate shall take into consideration the estimated cost of the additional staff needed by a child with disabilities. The Board shall ensure that a professional, who is familiar with assessing the needs of children with disabilities, certifies the need for the higher reimbursement rate described in subsection (b) of this section.
- (e) The Board shall determine whether to reimburse providers that offer transportation as long as the combined total of the provider's published rate, plus the transportation rate, is subject to the maximum reimbursement rate established in subsection (a) of this section.

The provisions of this new §809.20 adopted to be effective September 8, 2008, as published in the Texas Register, September 5, 2008, 33 TexReg 7568.

§809.21. Determining the Amount of the Provider Reimbursement

The actual reimbursement that the Board or the Board's child care contractor pays to the provider shall be the Board's maximum rate or the provider's published rate, whichever is lower, less the following amounts:

- (1) The parent share of cost assessed and adjusted when the parent share of cost is reduced; and
- (2) Any child care funds received by the parent from other public or private entities.

The provisions of this new §809.21 adopted to be effective January 29, 2007, as published in the Texas Register, January 26, 2007, 32 TexReg 336.

SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES

§809.41. A Child's General Eligibility for Child Care Services

- (a) Except for a child receiving or needing protective services as described in §809.49, for a child to be eligible to receive child care services, a Board shall ensure that the child:
 - (1) meets one of the following age requirements:
 - (A) be under 13 years of age; or
 - (B) at the option of the Board, be a child with disabilities under 19 years of age;
 - (2) is a U.S. citizen or legal immigrant as determined under applicable federal laws, regulations, and guidelines; and
 - (3) resides with:
 - (A) a family whose income does not exceed the income limit established by the Board, which income limit must not exceed 85% of the state median income for a family of the same size; and
 - (B) parents who require child care in order to work or attend a job training or educational program.
- (b) Notwithstanding the requirements set forth in subsection (c) of this section, a Board shall establish policies, including time limits, for the provision of child care services while the parent is attending an educational program.
- (c) Time limits pursuant to subsection (b) of this section shall ensure the provision of child care services for four years, if the eligible child's parent is enrolled in an associate's degree program that will prepare the parent for a job in a high-growth, high-demand occupation as determined by the Board.
- (d) Unless otherwise subject to job search limitations as stipulated in this title, the following shall apply:
 - (1) For child care funds allocated by the Commission pursuant to its allocation rules (generally, Chapter 800, General Administration, Subchapter B, Allocation and Funding, and specifically, §800.58 Child Care), an enrolled child may be eligible for child care services for four weeks within a federal fiscal year in order for the child's parent to search for work because of interruptions in the parent's employment.
 - (2) For child care services funded by the Commission from sources other than those specified in paragraph (1) of this subsection, child care services during job search activities are limited to four weeks within a federal fiscal year.

The provisions of this new §809.41 adopted to be effective June 22, 2009, as published in the Texas Register, June 19, 2009, 34 TexReg 4197.

§809.42. Eligibility Determination and Verification

- (a) A Board shall ensure that its child care contractor verifies eligibility for child care services prior to authorizing child care.

- (b) Eligibility for child care services shall be redetermined:
 - (1) any time there is a change in family income or other information that could affect eligibility to receive child care services; and
 - (2) on an established frequency at the Board's discretion.
- (c) A Board shall ensure that a public entity certifying expenditures for direct child care as described in §809.17(b)(3) determines and verifies that the expenditures are for child care provided to an eligible child. At a minimum, the public entity shall verify that the child:
 - (1) is under 13 years of age, or at the option of the Board, is a child with disabilities under 19 years of age; and
 - (2) resides with:
 - (A) a family whose income does not exceed 85% of the state median income for a family of the same size; and
 - (B) a parent who requires child care in order to work or attend a job training or educational program.

The provisions of this new §809.42 adopted to be effective January 29, 2007, as published in the Texas Register, January 26, 2007, 32 TexReg 336.

§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;
 - (B) Temporary Assistance for Needy Families (TANF) Applicant child care as referenced in §809.46;
 - (C) FSE&T child care as referenced in §809.47; and
 - (D) Transitional child care as referenced in §809.48.
 - (2) The second priority group is served subject to the availability of funds and includes, in the order of priority:
 - (A) children who need to receive protective services child care as referenced in §809.49;
 - (B) children of a qualified veteran or qualified spouse as defined in §801.23 of this title;
 - (C) children of a foster youth as defined in §801.23 of this title;
 - (D) children of teen parents as defined in §809.2; and
 - (E) children with disabilities as defined in §809.2.
 - (3) The third priority group includes any other priority adopted by the Board.
- (b) A Board shall not establish a priority group under subsection (a)(3) of this section based on the parent's choice of an individual provider or provider type.

The provisions of this new §809.43 adopted to be effective September 8, 2008, as published in the Texas Register, September 5, 2008, 33 TexReg 7568.

§809.44. Calculating Family Income

- (a) Unless otherwise required by federal or state law, the family income for purposes of determining eligibility and the parent share of cost means the monthly total of the following items for each member of the family (as defined in §809.2(8)):
- (1) Total gross earnings. These earnings include wages, salaries, commissions, tips, piece-rate payments, and cash bonuses earned.
 - (2) Net income from self-employment. Net income includes gross receipts minus business-related expenses from a person's own business, professional enterprise, or partnership, which result in the person's net income. Net income also includes gross receipts minus operating expenses from the operation of a farm.
 - (3) Pensions, annuities, life insurance, and retirement income. This includes Social Security pensions, veteran's pensions and survivor's benefits and any cash benefit paid to retirees or their survivors by a former employer, or by a union, either directly or through an insurance company. This also includes payments from annuities and life insurance.
 - (4) Taxable capital gains, dividends, and interest. These earnings include capital gains from the sale of property and earnings from dividends from stock holdings, and interest on savings or bonds.
 - (5) Rental income. This includes net income from rental of a house, homestead, store, or other property, or rental income from boarders or lodgers.
 - (6) Public assistance payments. These payments include TANF as authorized under Chapters 31 or 34 of the Texas Human Resources Code, refugee assistance, Social Security Disability Insurance, Supplemental Security Income, and general assistance (such as cash payments from a county or city).
 - (7) Income from estate and trust funds. These payments include income from estates, trust funds, inheritances, or royalties.
 - (8) Unemployment compensation. This includes unemployment payments from governmental unemployment insurance agencies or private companies and strike benefits while a person is unemployed or on strike.
 - (9) Workers' compensation income, death benefit payments and other disability payments. These payments include compensation received periodically from private or public sources for on-the-job injuries.
 - (10) Spousal maintenance or alimony. This includes any payment made to a spouse or former spouse under a separation or divorce agreement.
 - (11) Child support. These payments include court-ordered child support, any maintenance or allowance used for current living costs provided by parents to a minor child who is a student, or any informal child support cash payments made by an absent parent for the maintenance of a minor.
 - (12) Court settlements or judgments. This includes awards for exemplary or punitive damages, noneconomic damages, and compensation for lost wages or profits, if the court settlement or judgment clearly allocates damages among these categories.

- (b) Income to the family that is not included in subsection (a) of this section is excluded in determining the total family income. Specifically, family income does not include:
- (1) Food stamps;
 - (2) Monthly monetary allowances provided to or for children of Vietnam veterans born with certain birth defects;
 - (3) Educational scholarships, grants, and loans;
 - (4) Earned Income Tax Credit (EITC) and the Advanced EITC;
 - (5) Individual Development Account (IDA) withdrawals;
 - (6) Tax refunds;
 - (7) VISTA and AmeriCorps living allowances and stipends;
 - (8) Noncash or in-kind benefits received in lieu of wages;
 - (9) Foster care payments;
 - (10) Special military pay or allowances, which include subsistence allowances, housing allowances, family separation allowances, or special allowances for duty subject to hostile fire or imminent danger; and
 - (11) Any income sources specifically excluded by federal law or regulation.

The provisions of this new §809.44 adopted to be effective January 29, 2007, as published in the Texas Register, January 26, 2007, 32 TexReg 336.

§809.45. Choices Child Care

- (a) A parent is eligible for Choices child care if the parent is participating in the Choices program as stipulated in Chapter 811 of this title.
- (b) A parent who has been approved for Choices but is waiting to enter an approved initial component of the program may be eligible for up to two weeks of child care services if:
- (1) child care services will prevent loss of the Choices placement; and
 - (2) child care is available to meet the needs of the child and parent.

The provisions of this new §809.45 adopted to be effective January 29, 2007, as published in the Texas Register, January 26, 2007, 32 TexReg 336.

§809.46. Temporary Assistance for Needy Families Applicant Child Care

- (a) A parent is eligible for TANF Applicant child care if the parent:
- (1) receives a referral from the Health and Human Services Commission (HHSC) to attend a Workforce Orientation for Applicants (WOA);
 - (2) locates employment or has increased earnings prior to TANF certification; and
 - (3) needs child care to accept or retain employment.
- (b) To receive TANF Applicant child care, the parent shall be working and not have voluntarily terminated paid employment of at least 25 hours a week within 30 days prior to receiving the

referral from HHSC to attend a WOA, unless the voluntary termination was for good cause connected with the parent's work.

- (c) Subject to the availability of funds and the continued employment of the parent, TANF Applicant child care shall be provided for up to 12 months or until the family reaches the Board's income limit for eligibility under any provision contained in §809.50, whichever occurs first.
- (d) Parents who are employed fewer than 25 hours a week at the time they apply for temporary cash assistance are limited to 90 days of TANF Applicant child care. Applicant child care may be extended to a total of 12 months, inclusive of the 90 days, if before the end of the 90-day period, the applicant increases the hours of employment to a minimum of 25 hours a week.
- (e) Subject to the availability of funds, a parent whose time limit for TANF Applicant child care has expired may continue to be eligible for child care services provided the parent and child are otherwise eligible under any provision contained in §809.50.

The provisions of this new §809.46 adopted to be effective September 8, 2008, as published in the Texas Register, September 5, 2008, 33 TexReg 7568.

§809.47. Food Stamp Employment and Training Child Care

A parent is eligible to receive FSE&T child care services if the parent is participating in FSE&T services, in accordance with the provisions of 7 C.F.R. Part 273, as long as the case remains open.

The provisions of this new §809.47 adopted to be effective January 29, 2007, as published in the Texas Register, January 26, 2007, 32 TexReg 336.

§809.48. Transitional Child Care

- (a) A parent is eligible for Transitional child care services if the parent:
 - (1) has been denied TANF because of increased earnings; or
 - (2) has been denied temporary cash assistance within 30 days because of expiration of TANF time limits; and
 - (3) requires child care to work or attend a job training or educational program for a combination of at least 25 hours per week for a single-parent family or 50 hours per week for a two-parent family, or a higher number of hours per week as established by a Board.
- (b) Boards may establish an income eligibility limit for Transitional child care that is higher than the eligibility limit for At-Risk child care, pursuant to §809.50, provided that the higher income limit does not exceed 85% of the state median income for a family of the same size.
- (c) Transitional child care shall be available for:
 - (1) a period of up to 12 months from the effective date of the TANF denial; or
 - (2) a period of up to 18 months from the effective date of the TANF denial in the case of a former TANF recipient who was eligible for child caretaker exemptions pursuant to Texas Human Resources Code §31.012(c) and voluntarily participates in the Choices program.
- (d) Former TANF recipients who are not employed when TANF expires, including recipients who are engaged in a Choices activity except as provided under subsection (e) of this section, shall receive up to four weeks of Transitional child care in order to allow these individuals to search for work as needed.

- (e) Former TANF recipients who are engaged in a Choices activity, are meeting the requirements of Chapter 811 of this title, and are denied TANF because of receipt of child support shall be eligible to receive Transitional child care services until the date on which the individual completes the activity, as defined by the Board.
- (f) A Board may allow a reduction to the requirement in subsection (a)(3) of this section if a parent's documented medical disability or need to care for a physically or mentally disabled family member prevents the parent from participating in work, education, or job training activities for the required hours per week.
- (g) For purposes of meeting the education requirements stipulated in subsection (a)(3) of this section, the following shall apply:
 - (1) each credit hour of postsecondary education counts as three hours of education activity per week; and
 - (2) each credit hour of a condensed postsecondary education course counts as six education activity hours per week.

The provisions of this new §809.48 adopted to be effective September 8, 2008, as published in the Texas Register, September 5, 2008, 33 TexReg 7568. .

§809.49. Child Care for Children Receiving or Needing Protective Services

- (a) A Board shall ensure that determinations of eligibility for children needing protective services are performed by DFPS.
 - (1) Child care will continue as long as authorized and funded by DFPS.
 - (2) DFPS may authorize child care for a child under court supervision up to age 19.
- (b) A Board shall ensure that requests made by DFPS for specific eligible providers are enforced for children in protective services.

The provisions of this new §809.49 adopted to be effective January 29, 2007, as published in the Texas Register, January 26, 2007, 32 TexReg 336.

§809.50. At-Risk Child Care

- (a) A parent is eligible for child care services under this section if:
 - (1) the family income does not exceed the income limit established by the Board pursuant to §809.41(a)(2)(A); and
 - (2) child care is required for the parent to work or attend a job training or educational program for a minimum of 25 hours per week for a single-parent family or 50 hours per week for a two-parent family, or a higher number of hours per week as established by the Board.
- (b) A Board may allow a reduction to the work, education, or job training activity requirements in subsection (a)(2) of this section if a parent's documented medical disability or need to care for a physically or mentally disabled family member prevents the parent from participating in these activities for the required hours per week.
- (c) For purposes of meeting the education requirements stipulated in subsection (a)(2) of this section, the following shall apply:

- (1) each credit hour of postsecondary education counts as three hours of education activity per week;
- (2) each credit hour of a condensed postsecondary education course counts as six education activity hours per week; and
- (3) teen parents attending high school or the equivalent shall be considered as meeting the education requirements in subsection (a)(2) of this section.
- (d) When calculating income eligibility for a child with disabilities, a Board shall deduct the cost of the child's ongoing medical expenses from the family income.
- (e) Boards may establish a higher income eligibility limit for teen parents than the eligibility limit established pursuant to §809.41(a)(2)(A) provided that the higher income limit does not exceed 85% of the state median income for a family of the same size.
- (f) A teen parent's family income is based solely on the teen parent's income and size of the teen's family as defined in §809.2(8).
- (g) Boards may establish a higher income eligibility limit for families with a child who is enrolled in Head Start, Early Head Start, or public pre-K provided that the higher income limit does not exceed 85% of the state median income for a family of the same size.

The provisions of this new §809.50 adopted to be effective September 8, 2008, as published in the Texas Register, September 5, 2008, 33 TexReg 7568.

§809.51. Child Care during Temporary Interruptions in Work, Education, or Job Training

- (a) If a parent has a temporary cessation of work, education, or job training activities and is unable to meet the requirements described in §809.50(a)(2), child care may be suspended for no more than 90 calendar days from the documented effective date of the cessation of these activities.
- (b) If a parent has a documented temporary medical incapacitation and is unable to meet the work, education, or job training requirements described in §809.50(a)(2), the following shall apply:
 - (1) Child care may be allowed to continue for no more than 60 calendar days from the documented effective date of the temporary medical incapacitation; and
 - (2) Child care may be suspended for no more than 30 calendar days after the end of the 60-day calendar period following the documented temporary medical incapacitation, as described in subsection (b)(1) of this section.
- (c) Upon the parent's return to work, education, or job training activities, a Board is not required to resume child care at the same provider used prior to the documented temporary cessation of these activities or medical incapacitation.
- (d) Prior to any suspension of child care as described in this section, a parent must provide:
 - (1) documentation from the employer or training provider stating that the parent will be returning to work or job training activities following the temporary cessation of these activities or medical incapacitation; or
 - (2) written notification to the child care contractor of the parent's intent to enroll in an educational institution following the temporary cessation of educational activities.

The provisions of this new §809.51 adopted to be effective September 8, 2008, as published in the Texas Register, September 5, 2008, 33 TexReg 7568.

§809.52. Child Care for Children of Teen Parents - REPEALED

The provisions of this §809.52 repealed to be effective September 8, 2008, as published in the Texas Register, September 5, 2008, 33 TexReg 7568.

§809.53. Child Care for Children Served by Special Projects

- (a) Special projects developed in federal and state statutes or regulations may add groups of children eligible to receive child care.
- (b) The eligibility criteria as stated in the statutes or regulations shall control for the special project, unless otherwise indicated by the Commission.
- (c) The time limit for receiving child care for children served by special projects may be:
 - (1) specifically prescribed by federal or state statutes or regulations according to the particular project;
 - (2) otherwise set by the Commission depending on the purpose and goals of the special project; and
 - (3) limited to the availability of funds.

The provisions of this new §809.53 adopted to be effective January 29, 2007, as published in the Texas Register, January 26, 2007, 32 TexReg 336.

§809.54. Continuity of Care

- (a) Enrolled children, including children whose eligibility for Transitional child care has expired, shall receive child care as long as the family remains eligible for any available source of Commission-funded child care except as otherwise provided under subsection (b) of this section.
- (b) Except as provided by §809.76(b) relating to child care during appeal, 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 the first priority group as provided in §809.43.
- (c) In closed DFPS Child Protective Services cases (DFPS cases) where child care is no longer funded by DFPS, the following shall apply:
 - (1) Former DFPS Children Needing Protective Services Child Care. Regardless of whether the family meets the income eligibility requirements of the Board or is working or attending a job training or educational program, if DFPS determines on a case-by-case basis that the child continues to need protective services and child care is integral to that need, then the Board shall continue the child care by using other funds, including funds received through the Commission, for child care services for up to six months after DFPS case is closed.
 - (2) Former DFPS Children Not Needing Protective Services Child Care. If the family meets the income eligibility requirements of the Board and if DFPS does not state on a case-by-case basis that the child continues to need protective services or child care is not integral to that need, then the Board may provide care subject to the availability of funds. To receive care under this paragraph, the parents must be working or attending a job training or an educational program.
- (d) A Board shall ensure that no children of military parents in military deployment have a disruption of child care services or eligibility because of the military deployment.

- (e) A Board shall ensure that a child who is required by a court-ordered custody or visitation arrangement to leave a provider's care is permitted to continue receiving child care by the same provider, or another provider if agreed to by the parent in advance of the leave, upon return from the court-ordered custody or visitation arrangement.
- (f) A Board may encourage parents of other children to temporarily utilize the space the child under court-ordered custody or visitation arrangement has vacated until the child returns so he or she can return to the same provider.
- (g) A Board shall ensure that parents who choose to accept temporary child care to fill a position opened because of court-ordered custody or visitation shall not lose their place on the waiting list.
- (h) A Board shall ensure that parents who choose not to accept temporary child care to fill a position opened because of court-ordered custody or visitation shall not lose their place on the waiting list.

The provisions of this new §809.54 adopted to be effective January 29, 2007, as published in the Texas Register, January 26, 2007, 32 TexReg 336.

SUBCHAPTER D. PARENT RIGHTS AND RESPONSIBILITIES

§809.71. Parent Rights

A Board shall ensure that the Board's child care contractor informs the parent in writing that the parent has the right to:

- (1) choose the type of child care provider that best suits their needs and to be informed of all child care options available to them as included in the consumer education information described in §809.15;
- (2) visit available child care providers before making their choice of a child care option;
- (3) receive assistance in choosing initial or additional child care referrals including information about the Board's policies regarding transferring children from one provider to another;
- (4) be informed of the Commission rules and Board policies related to providers charging parents the difference between the Board's reimbursement and the provider's published rate as described in §809.92(c)-(d);
- (5) be represented when applying for child care services;
- (6) be notified of their eligibility to receive child care services within 20 days from the day the Board's child care contractor receives all necessary documentation required to determine eligibility for child care;
- (7) receive child care services regardless of race, color, national origin, age, sex, disability, political beliefs, or religion;
- (8) have the Board and the Board's child care contractor treat information used to determine eligibility for child care services as confidential;
- (9) receive written notification, except as provided by paragraph (10) of this section, from the Board's child care contractor at least 15 days before the denial, delay, reduction, or termination of child care services unless the following exceptions apply:
 - (A) Notification of denial, delay, reduction, or termination of child care services is not required when the services are authorized to cease immediately because either the parent is no longer participating in the Choices program or services are authorized to end immediately for children in protective services child care; or

- (B) The Choices program participants and children in protective services child care are notified of denial, delay, reduction, or termination of child care and the effective date of such actions by the Choices caseworker or DFPS;
- (10) receive 30-day written notification from the Board's child care contractor if child care is to be terminated in order to make room for a priority group described in §809.43(a)(1), as follows:
 - (A) Written notification of denial, delay, reduction or termination shall include information regarding other child care options for which the recipient may be eligible.
 - (B) If the notice on or before the 30th day before denial, delay, reduction, or termination in child care would interfere with the ability of the Board to comply with its duties regarding the number of children served or would require the expenditure of funds in excess of the amount allocated to the Board, notice may be provided on the earliest date on which it is practicable for the Board to provide notice;
- (11) reject an offer of child care services or voluntarily withdraw their child from child care unless the child is in protective services;
- (12) be informed of the possible consequences of rejecting or ending the child care that is offered;
- (13) be informed of the eligibility documentation and reporting requirements described in §809.72 and §809.73;
- (14) be informed of the parent appeal rights described in §809.74; and
- (15) be informed of the Board's attendance policy as required in §809.13(d)(13).

The provisions of this new §809.71 adopted to be effective January 29, 2007, as published in the Texas Register, January 26, 2007, 32 TexReg 336.

§809.72. Parent Eligibility Documentation Requirements

- (a) Parents shall provide the Board's child care contractor with all information necessary to determine eligibility according to the Board's administrative policies and procedures.
- (b) A parent's failure to submit eligibility documentation may result in denial or termination of child care services.

The provisions of this new §809.72 adopted to be effective January 29, 2007, as published in the Texas Register, January 26, 2007, 32 TexReg 336.

§809.73. Parent Reporting Requirements

- (a) Parents shall report to the child care contractor, within 10 days of the occurrence, the following:
 - (1) Changes in family income;
 - (2) Changes in family size;
 - (3) Changes in work or attendance in a job training or educational program;
 - (4) The receipt or the awarding of any child care funds from other public or private entities; or
 - (5) Any other changes that may affect the child's eligibility or parent share of cost for child care.
- (b) Failure to report changes may result in:

- (1) termination of child care;
 - (2) recovery of payments by the Board, the Board's child care contractor, or the Commission; or
 - (3) fact-finding for suspected fraud as described in Subchapter F of this chapter.
- (c) The receipt of child care services for which the parent is no longer eligible constitutes grounds on which to suspect fraud.

The provisions of this new §809.73 adopted to be effective January 29, 2007, as published in the Texas Register, January 26, 2007, 32 TexReg 336.

§809.74. Parent Appeal Rights

- (a) Unless otherwise stated in this section, a parent may request a hearing pursuant to Chapter 823 of this title, if the parent's eligibility or child's enrollment is denied, delayed, reduced, suspended, or terminated by the Board's child care contractor, Choices caseworker, or FSE&T caseworker.
- (b) A parent may have an individual represent him or her during this process.
- (c) A parent of a child in protective services may not appeal pursuant to Chapter 823 of this title, but shall follow the procedures established by DFPS.

The provisions of this new §809.74 adopted to be effective September 8, 2008, as published in the Texas Register, September 5, 2008, 33 TexReg 7568.

§809.75. Child Care during Appeal

- (a) For a child currently enrolled in child care, a Board shall ensure that child care services continue during the appeal process until a decision is reached, if the parent requests a hearing.
- (b) A Board shall ensure that child care does not continue during the appeal process if the parent's eligibility or child's enrollment is denied, delayed, reduced, suspended, or terminated because of:
 - (1) excessive absences;
 - (2) voluntary withdrawal from child care;
 - (3) change in federal or state laws or regulations that affect the parent's eligibility;
 - (4) lack of funding because of increases in the number of enrolled children in state and Board priority groups;
 - (5) a sanctions finding against the parent participating in the Choices program;
 - (6) voluntary withdrawal of a parent from the Choices program;
 - (7) nonpayment of parent share of cost;
 - (8) a parent's failure to report, within 10 days of occurrence, any change in the family's circumstances that would have rendered the family ineligible for subsidized child care; or
 - (9) a suspension of child care services pursuant to §809.51 (related to Child Care during Temporary Interruptions in Work, Education, or Training).
- (c) The cost of providing services during the appeal process is subject to recovery from the parent by the Board, if the appeal decision is rendered against the parent.

The provisions of this new §809.75 adopted to be effective September 8, 2008, as published in the Texas Register, September 5, 2008, 33 TexReg 7568.

§809.76. Parent Responsibility Agreement

- (a) The parent of a child receiving child care services is required to sign a parent responsibility agreement (PRA) as part of the child care enrollment process, unless covered by the provisions of Texas Human Resources Code §31.0031. The parent's compliance with the provisions of the agreement shall be reviewed at each eligibility redetermination.
- (b) The PRA requires that:
 - (1) for cases in which the child has a noncustodial parent, the custodial parent shall:
 - (A) cooperate with the Office of the Attorney General (OAG) to establish paternity of the parent's children and to enforce child support on an ongoing basis by:
 - (i) providing documentation to the Board's child care contractor that the parent has an open child support case with OAG and is cooperating with OAG; or
 - (ii) opening a child support case with OAG and providing documentation to the Board's child care contractor that the parent is cooperating with OAG; or
 - (B) provide documentation to the Board's child care contractor that the parent has an arrangement with the noncustodial parent for child support and is receiving child support on a regular basis. Such documentation must include evidence of child support history, including in-kind child support;
 - (2) each parent shall not use, sell, or possess marijuana or other controlled substances in violation of Texas Health and Safety Code, Chapter 481, and abstain from alcohol abuse; and
 - (3) each parent shall ensure that each family member younger than 18 years of age attends school regularly, unless the child has a high school diploma or a GED credential, or is specifically exempted from school attendance by Texas Education Code §25.086.
- (c) Failure by the parent to comply with any of the provisions of the PRA shall result in sanctions as determined by the Board, up to and including terminating the family's child care services.

The provisions of this new §809.76 adopted to be effective January 29, 2007, as published in the Texas Register, January 26, 2007, 32 TexReg 336.

§809.77. Exemptions from the Parent Responsibility Agreement

Notwithstanding the requirements set forth in §809.76(b)(1), the parent is not required to comply with those requirements if one or more of the following situations exist:

- (1) The paternity of the child cannot be established after a reasonable effort to do so;
- (2) The child was conceived as a result of incest or rape;
- (3) The parent of the child is a victim of domestic violence;
- (4) Adoption proceedings for the child are pending;
- (5) The parent of the child has been working with an agency for three months or less to decide whether to place the child for adoption;
- (6) The child may be physically or emotionally harmed by cooperation; or
- (7) The parent may be physically or emotionally harmed by cooperation, to the extent of impairing the parent's ability to care for the child.

The provisions of this new §809.77 adopted to be effective January 29, 2007, as published in the Texas Register, January 26, 2007, 32 TexReg 336.

SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE

§809.91. Minimum Requirements for Providers

- (a) A Board shall ensure that child care subsidies are paid only to:
 - (1) regulated child care providers as described in §809.2(17);
 - (2) relative child care providers as described in §809.2(18), subject to the requirements in subsections (e) and (f) of this section; or
 - (3) at the Board option, listed family homes as defined in §809.2(12), subject to the requirements in paragraph (b)(2) of this section.
- (b) For providers listed with DFPS, the following applies:
 - (1) A Board shall not prohibit a relative child care provider who is listed with DFPS and who meets the minimum requirements of this section from being an eligible relative child care provider.
 - (2) If a Board chooses to include listed family homes, as defined in §809.2(12), that provide care for children unrelated to the provider, a Board shall ensure that there are in effect, under local law, requirements applicable to the listed family homes designated to protect the health and safety of children. Pursuant to 45 C.F.R. §98.41, the requirements shall include:
 - (A) the prevention and control of infectious diseases (including immunizations);
 - (B) building and physical premises safety; and
 - (C) minimum health and safety training appropriate to the child care setting.
- (c) Except as provided by the criteria for Texas Rising Star Provider Certification, a Board or the Board's child care contractor shall not place requirements on regulated providers that:
 - (1) exceed the state licensing requirements stipulated in Texas Human Resources Code, Chapter 42; or
 - (2) have the effect of monitoring the provider for compliance with state licensing requirements stipulated in Texas Human Resources Code, Chapter 42.
- (d) When a Board or the Board's child care contractor, in the course of fulfilling its responsibilities, gains knowledge of any possible violation regarding regulatory standards, the Board or its child care contractor shall report the information to the appropriate regulatory agency.
- (e) Relative child care providers shall not reside in the same household as the eligible child unless:
 - (1) the eligible child is a child of a teen parent; or
 - (2) the Board's child care contractor determines and documents that other child care provider arrangements are not reasonably available. Factors used to determine the reasonable availability of child care may include, but are not limited to:
 - (A) the parent's work schedule;
 - (B) the availability of adequate transportation; or
 - (C) the age of the child.

- (f) For relative child care providers to be eligible for reimbursement for Commission-funded child care services, the following applies:
 - (1) Relative child care providers caring for a child in the relative's own residence shall list with DFPS; however, pursuant to 45 C.F.R. §98.41(e), relative child care providers listed with DFPS shall be exempt from the health and safety requirements of 45 C.F.R. §98.41(a);
 - (2) For relative child care providers caring for a child in the child's own residence, Boards shall ensure that the relative child care provider does not appear on the Texas Department of Public Safety's Sex Offender Registry, pursuant to Chapter 62 of the Texas Code of Criminal Procedure.

The provisions of this new §809.91 adopted to be effective June 24, 2007, as published in the Texas Register, June 15, 2007, 32 TexReg 3698.

§809.92. Provider Responsibilities and Reporting Requirements

- (a) A Board shall ensure that providers are given written notice of and agree to their responsibilities, reporting requirements, and requirements for reimbursement under this subchapter prior to enrolling a child.
- (b) Providers shall:
 - (1) be responsible for collecting the parent share of cost as assessed under §809.19 before child care services are delivered;
 - (2) be responsible for collecting other child care funds received by the parent as described in §809.21(2);
 - (3) report to the Board or the Board's child care contractor instances in which the parent fails to pay the parent share of cost; and
 - (4) follow attendance reporting and tracking procedures required by the Commission, Board, or, if applicable, the Board's child care contractor. At a minimum, the provider shall:
 - (A) document and maintain a record of each child's attendance and submit attendance records to the Board's child care contractor upon request;
 - (B) inform the Board's child care contractor when an enrolled child is absent; and
 - (C) inform the Board's child care contractor that the child has not attended the first three days of scheduled care. The provider has until the close of the third day of scheduled attendance to contact the Board's child care contractor regarding the child's absence.
- (c) Providers shall not charge the difference between the provider's published rate and the amount of the Board's reimbursement rate as determined under §809.21 to parents:
 - (1) who are exempt from the parent share of cost assessment under §809.19(a)(2); or
 - (2) whose parent share of cost is calculated to be zero pursuant to §809.19(f).
- (d) A Board may develop a policy that prohibits providers from charging the difference between the provider's published rate and the amount of the Board's reimbursement rate (including the assessed parent share of cost) to all parents eligible for child care services.

The provisions of this new §809.92 adopted to be effective January 29, 2007, as published in the Texas Register, January 26, 2007, 32 TexReg 336.

§809.93. Provider Reimbursement

- (a) A Board shall ensure that reimbursement for child care is paid:
 - (1) to the provider only; and
 - (2) after the Board or its child care contractor receives a complete Declaration of Services Statement from the provider verifying that services were rendered.
- (b) The Declaration of Services Statement shall contain:
 - (1) name, age, and identifying information of the child;
 - (2) amount of care provided in terms of units of care;
 - (3) rate of payment;
 - (4) dates services were provided;
 - (5) name and identifying information of the provider, including the location where care is provided;
 - (6) verification by the provider that the information submitted in the Declaration of Services Statement is correct; and
 - (7) additional information as may be required by the Boards.
- (c) A relative child care provider shall not be reimbursed for more children than permitted by the DFPS minimum regulatory standards for Registered Child Care Homes. A Board may permit more children to be cared for by a relative child care provider on a case-by-case basis as determined by the Board.
- (d) A Board shall not reimburse providers that are debarred from other state or federal programs unless and until the debarment is removed.
- (e) Unless otherwise determined by the Board and approved by the Commission for automated reporting purposes, reimbursement for child care is based on the unit of service delivered, as follows:
 - (1) A full-day unit of service is 6 to 12 hours of care provided within a 24-hour period; and
 - (2) A part-day unit of service is fewer than 6 hours of care provided within a 24-hour period.
- (f) A Board or its child care contractor shall ensure that providers are not paid for holding spaces open except as consistent with attendance policies as established by the Board.
- (g) A Board or the Board's child care contractor shall not pay providers:
 - (1) less, when a child enrolled full time occasionally attends for a part day; or
 - (2) more, when a child enrolled part time occasionally attends for a full day.
- (h) The Board or its child care contractor shall not reimburse a provider retroactively for new Board maximum reimbursement rates or new provider published rates.

The provisions of this new §809.93 adopted to be effective January 29, 2007, as published in the Texas Register, January 26, 2007, 32 TexReg 336.

§809.94. Providers Placed on Corrective or Adverse Action by the Texas Department of Family and Protective Services

- (a) For a provider placed on evaluation corrective action (evaluation status) by DFPS, Boards shall ensure that:
 - (1) parents with children enrolled in Commission-funded child care are notified in writing of the provider's evaluation status no later than five business days after receiving notification from the Agency of DFPS' decision to place the provider on evaluation status; and
 - (2) parents choosing to enroll children in Commission-funded child care with the provider are notified in writing of the provider's evaluation status prior to enrolling the children with the provider.
- (b) For a provider placed on probation corrective action (probationary status) by DFPS, Boards shall ensure that:
 - (1) parents with children in Commission-funded child care are notified in writing of the provider's probationary status no later than five business days after receiving notification from the Agency of DFPS' decision to place the provider on probationary status; and
 - (2) no new referrals are made to the provider while on probationary status.
- (c) A parent receiving notification of a provider's evaluation or probationary status with DFPS pursuant to subsections (a) and (b) of this section may choose to continue the enrollment of a child with the provider if the parent signs and returns to the Board's child care contractor within 10 business days of receiving such notification a written acknowledgment that the parent is aware of the provider's status with DFPS, but chooses to enroll the child with the provider.
- (d) For a provider placed on evaluation or probationary status by DFPS, Boards shall ensure that the provider is not reimbursed at the Boards' enhanced reimbursement rates described in §809.20 while on evaluation or probationary status.
- (e) For a provider against whom DFPS is taking adverse action, Boards shall ensure that:
 - (1) parents with children enrolled in Commission-funded child care are notified no later than two business days after receiving notification from the Agency that DFPS intends to take adverse action against the provider;
 - (2) children enrolled in Commission-funded child care with the provider are transferred to another eligible provider no later than five business days after receiving notification from the Agency that DFPS intends to take adverse action against the provider; and
 - (3) no new referrals for Commission-funded child care are made to the provider while DFPS is taking adverse action.
- (f) For adverse actions in which DFPS has determined that the provider poses an immediate risk to the health or safety of children and cannot operate pending appeal of the adverse action, but for which there is a valid court order that overturns DFPS' determination and allows the provider to operate pending administrative review or appeal, Boards shall take action consistent with subsection (e) of this section.

The provisions of this new §809.94 adopted to be effective June 22, 2009, as published in the Texas Register, June 19, 2009, 34 TexReg 4201.

SUBCHAPTER F. FRAUD FACT-FINDING AND IMPROPER PAYMENTS

§809.111. General Fraud Fact-Finding Procedures

- (a) This subchapter establishes authority for a Board to develop procedures for the prevention of fraud by a parent, provider, or any other person in a position to commit fraud consistent with fraud prevention provisions in the Agency-Board Agreement.
- (b) A Board shall ensure that procedures for researching and fact-finding for possible fraud are developed and implemented to deter and detect suspected fraud for child care services in the workforce area.
- (c) These procedures shall include provisions that suspected fraud is reported to the Commission in accordance with Commission policies and procedures.
- (d) Upon review of suspected fraud reports, the Commission may either accept the case for investigation and action at the state level, or return the case to the Board or its child care contractor for action including, but not limited to, the following:
 - (1) further fact-finding; or
 - (2) other corrective action as provided in this chapter or as may be appropriate.
- (e) The Board shall ensure that a final fact-finding report is submitted to the Commission after a case is returned to the Board or its child care contractor and all feasible avenues of fact-finding and corrective actions have been exhausted.

The provisions of this new §809.111 adopted to be effective January 29, 2007, as published in the Texas Register, January 26, 2007, 32 TexReg 336.

§809.112. Suspected Fraud

A parent, provider, or any other person in a position to commit fraud may be suspected of fraud if the person presents or causes to be presented to the Board or its child care contractor one or more of the following items:

- (1) A request for reimbursement in excess of the amount charged by the provider for the child care; or
- (2) A claim for child care services if evidence indicates that the person may have:
 - (A) known, or should have known, that child care services were not provided as claimed;
 - (B) known, or should have known, that information provided is false or fraudulent;
 - (C) received child care services during a period in which the parent or child was not eligible for services;
 - (D) known, or should have known, that child care subsidies were provided to a person not eligible to be a provider; or
 - (E) otherwise indicated that the person knew or should have known that the actions were in violation of this chapter or state or federal statute or regulations relating to child care services.

The provisions of this new §809.112 adopted to be effective January 29, 2007, as published in the Texas Register, January 26, 2007, 32 TexReg 336.

§809.113. Action to Prevent or Correct Suspected Fraud

- (a) The Commission, Board, or Board's child care contractor may take the following actions if the Commission finds that a provider has committed fraud:
 - (1) Temporary withholding of payments to the provider for child care services delivered;
 - (2) Nonpayment of child care services delivered;
 - (3) Recoupment of funds from the provider;
 - (4) Stop authorizing care at the provider's facility or location; or
 - (5) Any other action consistent with the intent of the governing statutes or regulations to investigate, prevent, or stop suspected fraud.
- (b) The Commission, Board, or Board's child care contractor may take the following actions if the Commission finds that a parent has committed fraud:
 - (1) recouping funds from the parent;
 - (2) prohibiting future child care eligibility, provided that the prohibition does not result in a Choices or FSE&T participant becoming ineligible for child care;
 - (3) limiting the enrollment of the parent's child to a regulated child care provider; or
 - (4) any other action consistent with the intent of the governing statutes or regulations to investigate, prevent, or stop suspected fraud.

The provisions of this new §809.113 adopted to be effective January 29, 2007, as published in the Texas Register, January 26, 2007, 32 TexReg 336.

§809.114. Failure to Comply with Commission Rules and Board Policies

- (a) The Board shall ensure that parents and providers comply with Commission rules.
- (b) The Commission, Board or Board's child care contractor may consider failure by a provider or parent to comply with this chapter as an act that may warrant corrective and adverse action as detailed in §809.115 (relating to Corrective Adverse Actions).
- (c) Failure by a provider or parent to comply with this chapter shall also be considered a breach of contract, which may also result in corrective action as detailed in this subchapter.

The provisions of this new §809.114 adopted to be effective January 29, 2007, as published in the Texas Register, January 26, 2007, 32 TexReg 336.

§809.115. Corrective Adverse Actions

- (a) When determining appropriate corrective actions, the Board or Board's child care contractor shall consider:
 - (1) the scope of the violation;
 - (2) the severity of the violation; and
 - (3) the compliance history of the person or entity.
- (b) Corrective actions may include, but are not limited to, the following:
 - (1) Closing intake;

- (2) Moving children to another provider selected by the parent;
 - (3) Withholding provider payments or reimbursement of costs incurred;
 - (4) Termination of child care services; and
 - (5) Recoupment of funds.
- (c) When a provider violates a provision of Subchapter E of this chapter, a written Service Improvement Agreement may be negotiated between the provider and the Board or the Board's child care contractor. At the least, the Service Improvement Agreement shall include the following:
- (1) The basis for the Service Improvement Agreement;
 - (2) The steps required to reach compliance including, if applicable, technical assistance;
 - (3) The time limits for implementing the improvements; and
 - (4) The consequences of noncompliance with the Service Improvement Agreement.

The provisions of this new §809.115 adopted to be effective January 29, 2007, as published in the Texas Register, January 26, 2007, 32 TexReg 336.

§809.116. Recovery of Improper Payments

- (a) A Board shall attempt recovery of all improper payments. The Commission shall not pay for improper payments.
- (b) Recovery of improper payments shall be managed in accordance with Commission policies and procedures.

The provisions of this new §809.116 adopted to be effective January 29, 2007, as published in the Texas Register, January 26, 2007, 32 TexReg 336.

§809.117. Recovery of Improper Payments to a Provider or Parent

- (a) The provider shall repay improper payments for child care services received in the following circumstances:
 - (1) Instances involving fraud;
 - (2) Instances in which the provider did not meet the provider eligibility requirements in this chapter;
 - (3) Instances in which the provider was paid for the child care services from another source;
 - (4) Instances in which the provider did not deliver the child care services;
 - (5) Instances in which referred children have been moved from one facility to another without authorization from the child care contractor; and
 - (6) Other instances when repayment is deemed an appropriate action.
- (b) A parent shall repay improper payments for child care in the following circumstances:
 - (1) Instances involving fraud as defined in this chapter;
 - (2) Instances in which the parent has received child care services while awaiting an appeal and the determination is affirmed by the hearing officer; or
 - (3) Other instances in which repayment is deemed an appropriate corrective action.

The provisions of this new §809.117 adopted to be effective January 29, 2007, as published in the Texas Register, January 26, 2007, 32 TexReg 336.

SUBCHAPTER G. APPEAL PROCEDURES – REPEALED

The provisions of this Subchapter G repealed to be effective November 26, as published in the Texas Register, November 23, 2007, 32 TexReg 8543.