

1 **CHAPTER 809. CHILD CARE SERVICES**

2
3 **ADOPTED RULES WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS**
4 **REGISTER. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS**
5 **SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE TEXAS REGISTER.**
6

7 The Texas Workforce Commission (Commission) adopts amendments, *with changes*, to the
8 following section of Chapter 809 relating to Child Care Services, as published in the February
9 16, 2007, issue of the *Texas Register* (32 TexReg 608):

10
11 Subchapter E. Requirements to Provide Child Care, §809.91

12
13 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

14 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

15
16 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

17
18 The Commission is entrusted by the citizens of the state of Texas to be a responsible steward of
19 public funds. The Commission takes this responsibility seriously, particularly concerning the
20 health and safety of children. The receipt of public child care funds includes the responsibility to
21 ensure that child care is provided in a safe environment. With the exception of the requirements
22 specifically applicable to relative child care providers, Commission rules ensure that the health
23 and safety of children receiving Commission-funded child care services are protected by
24 requiring that child care providers that care for children in Commission-funded child care--i.e.,
25 licensed child care centers, licensed child care homes, and registered child care homes--be
26 subject to state-mandated and federally required health and safety standards under the
27 supervision of the Texas Department of Family and Protective Services (DFPS). These
28 standards include requiring immunizations for children, conducting periodic health and safety
29 inspections, as well as conducting background checks for criminal history, and checking the
30 Child Protective Services' (CPS) child abuse registry (Texas Human Resources Code, Chapter
31 42).

32
33 Child Care and Development Fund (CCDF) regulations, however, allow states to exempt
34 children who are cared for by relatives from federally mandated minimum health and safety
35 standards (45 C.F.R. §98.41(e)). In the preamble to the CCDF regulations, the Administration
36 for Children and Families (ACF) expressly states that the "intent of the statute was to give
37 grantees (states) the option to exempt certain relatives from the health and safety requirements
38 that all other CCDF child care providers must meet" (*Federal Register*, Vol. 63, No. 142, July
39 24, 1998, at 39957, or CCDF preamble). The Commission is firmly committed to the principle
40 of parent choice and believes that parents have the right to choose the type of child care provider
41 that best meets their needs, including relative providers. However, the principle of parent choice
42 does not override the principle of ensuring the health and safety of children receiving publicly
43 funded child care services.

44
45 Federal regulations also allow states to impose more stringent requirements on child care service
46 providers that receive assistance under CCDF than those requirements imposed on other child

1 care providers, as long as those additional requirements are consistent with the safeguards for
2 parental choice (45 C.F.R. §98.40). Other than prohibiting an individual who appears on the
3 Texas Department of Public Safety's (DPS) Sex Offender Registry from being an eligible relative
4 child care provider, the Commission has not established more stringent requirements for relative
5 child care providers, and as such, these providers are not subject to criminal background checks
6 or child abuse registry checks, as other regulated and listed providers are. Further, the CCDF
7 preamble provides that "with respect to criminal background checks...(ACF agrees) that it is
8 appropriate to encourage States to adopt criminal background checks as part of their effort to
9 meet CCDF health and safety standards" (CCDF preamble at 39956). In light of the flexibility
10 afforded states under the CCDF regulations, the Commission has determined that additional
11 requirements for unregulated relative child care providers can be incorporated into existing rules
12 to the extent allowed under state law.

13
14 In Texas, family homes listed with DFPS are subject to background checks. A family home is
15 defined in §42.002(9) of the Texas Human Resources Code as:

16
17 "a home that provides regular care in the *caretaker's own residence* for not more than six
18 children under 14 years of age, excluding children who are related to the caretaker, and that
19 provides care after school hours for not more than six additional elementary school children,
20 but the total number of children, including children who are related to the caretaker, does not
21 exceed 12 at any given time. *The term does not include a home that provides care*
22 *exclusively for any number of children who are related to the caretaker.*" (emphasis added)
23

24 While §42.002(9) of the Texas Human Resources Code appears to exempt providers that care
25 exclusively for children who are related to the provider from the definition of "family home,"
26 and Texas Human Resources Code §42.052(d) states that a family home that provides care
27 exclusively for any number of children related to the caretaker is not required to be listed or
28 registered with DFPS, neither provision prohibits a relative care provider from being listed with
29 DFPS.

30
31 Furthermore, DFPS rule at 40 TAC §745.141 states that a child care operation that is considered
32 exempt from DFPS regulations may still apply for a permit from DFPS if the operator is required
33 to have a permit to receive public funding. Therefore, if the Commission requires relative child
34 care providers to list with DFPS as a prerequisite to receiving Commission funds, relative child
35 care providers--based on DFPS rules--will be required to have a criminal background check
36 conducted by DFPS. DFPS agreed that, under the DFPS rule mentioned above, relatives
37 providing Commission-funded child care services may apply for a permit to be a listed family
38 home in order to receive the public funds. However, DFPS clarified that the relative applying for
39 a listed family home permit still must meet the requirement in the definition of a family home
40 that the listed home be *the caretaker's own residence*.

41
42 Thus, if the relative child care provider is providing care exclusively in the child's own home (in-
43 home care) and not in the relative's own home, then the relative provider does not meet the
44 definition of a family home (i.e., the care is not in the caretaker's own residence) and cannot
45 apply for a permit to be a listed family home. Therefore, the Commission cannot require a
46 relative be listed with DFPS if the relative is providing care outside his or her home.

1
2 Based on this information, the Commission has modified the rule language to specify that
3 relatives caring for children in the relative's residence must be listed with DFPS. The rule
4 language also states that if the care is not in the relative's residence, but in the child's own home,
5 then the relative will not be required to list with DFPS. However, the Commission retains the
6 provision in the current rule stating that the relative caring for a child in the child's residence (but
7 not in the relative's residence) must not appear on the DPS Sex Offender Registry.

8
9 Because CCDF regulations at 45 C.F.R. §98.30(e) require states to allow in-home care, the
10 Commission, at this time, does not require all relative care to take place in the relative's residence
11 and be listed with DFPS. However, CCDF regulations do allow states to place limitations on in-
12 home care. The Commission will monitor the use of care provided in the child's residence.
13 Based on that information, future rule amendments may be considered, consistent with state and
14 federal regulations.

15
16 The Commission has fully examined both state and federal regulations regarding criminal and
17 child abuse background checks and analyzed the feasibility of requiring background checks of
18 relative providers before authorizing Commission-funded child care. Commission rules allow
19 parents the right to choose a relative provider (eligible under 45 C.F.R. §98.2 and §809.91 of this
20 chapter), but the Commission has concluded that a parent's right to choose a relative provider
21 cannot come at the expense of placing that child in a home with someone whose criminal history
22 or appearance in the CPS central registry of child abuse and neglect may indicate the individual
23 could potentially endanger the child, particularly when this placement is government funded.

24
25 Therefore, the Commission adopts rules to require that relative child care providers caring for a
26 child in the relative's residence be listed with DFPS, and in doing so, to make these relative
27 providers subject to criminal background checks, CPS central registry searches, and facility
28 inspection in the event of a complaint of suspected child abuse or neglect.

29
30 Approximately 10,000 relative providers care for children receiving Commission-funded child
31 care services during any given month, not accounting for the location of the care. Furthermore,
32 approximately 1,250 such relative providers come into the subsidized child care system each
33 month. By contrast, DFPS reports that there are approximately 3,895 listed family homes (DFPS
34 *2006 Data Book*) and 118 requests per month to be a listed family home. The Commission
35 recognizes that the adopted rules will lead to a substantial increase in the DFPS workload in
36 order to conduct the background checks for relative child care providers. The Commission also
37 recognizes that DFPS will need increased resources to assist in the implementation of the new
38 rules and the Commission is committed to working with DFPS to help that agency meet its
39 resource needs.

40 41 42 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

43 44 **SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE**

45 **The Commission adopts the following amendments:**
46

1 **809.91. Minimum Requirements for Providers**

2 Section 809.91(b) provides the requirements for child care providers listed with DFPS. Section
3 809.91(b)(1) states that Local Workforce Development Boards (Boards) shall not prohibit a
4 relative child care provider who is listed with DFPS and meets the eligibility requirements of
5 §809.91 from being an eligible relative child care provider. The Commission includes this
6 statement to clarify that although §809.91(b)(2) allows Boards the option to include listed family
7 homes as eligible child care providers if the Boards ensure that there are local requirements
8 designed to protect the health and safety of children, Boards do not have the option to exclude
9 relative providers listed with DFPS as eligible relative child care providers.

10
11 Section 809.91(b)(2) gives Boards the option to include listed family homes as eligible
12 providers, as long as the Boards ensure that there are local laws in effect that protect the health
13 and safety of children. The Commission adds language to clarify that this option applies only to
14 listed family homes, as defined in §809.2(12) of this chapter, that provide care for children
15 unrelated to the provider. This provision is consistent with 45 C.F.R. §98.41(e), which does not
16 allow states to exempt non-relative child care providers from health and safety standards.

17
18 Section 809.91(f), which prohibits an individual who appears on the DPS Sex Offender Registry
19 from being an eligible relative child care provider, is removed. This provision is removed
20 because for relative providers who are listed with DFPS this function effectively will be
21 implemented through the criminal background check conducted by DFPS. However, due to the
22 clarification received from DFPS regarding its regulatory authority for listed family homes, the
23 requirement prohibiting an individual appearing on the DPS Sex Offender Registry from being
24 an eligible relative provider is retained in new §809.91(f)(2) for relative care provided in the
25 child's own home.

26
27 New §809.91(f)(1) is a broader provision designed to ensure that prior to authorizing care with
28 the relative provider who will be caring for a child in the relative's own residence, a more
29 comprehensive background check on a relative child care provider is conducted by DFPS using
30 DFPS criteria for listed family homes. The new subsection requires that relative child care
31 providers caring for a child in the relative's own residence shall list with DFPS to ensure that a
32 criminal background check and a check of the CPS central registry is conducted prior to
33 authorizing care with that relative. Furthermore, the requirements for a listed family home
34 include a criminal history and background check for each person 14 years of age or older who
35 will regularly or frequently be staying or working at the home while children are being provided
36 care. Therefore, Commission rules requiring relative providers who are caring for a child in the
37 relative's residence to be listed with DFPS require that all adults residing in or regularly staying
38 or working at the home will be subject to a criminal history and background check.

39
40 The Commission emphasizes that the criminal background check and the check of individuals on
41 the CPS central registry of child abuse and neglect will be conducted by DFPS using its current
42 application and background check procedures for listed family homes. The Commission does
43 not intend for a Board or a Board's child care contractor to conduct any of the functions
44 associated with the listing process.

1 Prior to authorizing child care, the child care contractor must inform the parent that a prospective
2 relative caring for a child in the relative's home must be listed with DFPS and provide the
3 application--or notify the relative how to access the application--for listing with DFPS. The
4 relative must submit the application along with the \$20 annual fee to DFPS and DFPS will
5 conduct the necessary background checks. If there is no criminal history match or match on the
6 CPS central registry of child abuse and neglect, DFPS will inform the relative that no matches
7 occurred and will issue a listing to the relative. Once the listing is issued, the relative will be
8 eligible to provide Commission-funded child care services for the eligible child. DFPS has
9 informed the Commission that background checks usually are completed within 48 hours and the
10 listing issued to the relative within one week of receiving the application. The Board's sole
11 responsibility is to ensure that the child care contractor verifies that the relative is listed with
12 DFPS, which can be authenticated by viewing the listing permit that DFPS provides to the
13 relative. DFPS also has informed the Commission that once the listing is issued, the DFPS Web
14 site is updated the next day, and the child care contractor can verify the listing through the Web
15 site.

16
17 The Commission emphasizes that the child care contractor cannot authorize the relative to
18 receive Commission child care funds until DFPS issues the listing to the relative. Additionally,
19 the Commission does not intend that relative child care providers be reimbursed retroactively for
20 child care provided to the eligible child by the relative pending the results of the DFPS
21 background checks.

22
23 In addition, new §809.91(f)(1) states that in all other respects, relatives listed with DFPS are
24 exempt from the CCDF health and safety requirements at 45 C.F.R. §98.41(a). This provision is
25 consistent with 45 C.F.R. §98.41(e), which allows states to exempt relative child care providers
26 from health and safety standards. Specifically, other than the background checks required of
27 child care providers listing with DFPS, relative providers who care for children receiving
28 Commission-funded child care services are exempt from standards related to the prevention and
29 control of infectious disease; building and physical premises safety; and minimum health and
30 safety training.

31
32 New §809.91(f)(2) retains the provision that Boards must ensure that an individual appearing on
33 the DPS Sex Offender Registry is not an eligible relative child care provider. However, pursuant
34 to comments received from DFPS, new §809.91(f)(2) clarifies that this provision applies only to
35 relatives providing care in the child's own residence. Again, the Commission emphasizes that
36 for relatives providing care in the relative's residence, a broader criminal history and background
37 check, which includes a sex offender check, is performed by DFPS as part of the listing process
38 required by §809.91(f)(1).

39
40
41 **Comment:** Five commenters supported the rule change. Two of the commenters stated that
42 the rule would reduce the risk of abuse and neglect for children served through their
43 subsidized child care programs. Another commenter stated that this rule change is a
44 significant step toward protecting the health and safety of children receiving care through the
45 child care subsidy program.

46

1 **Response:** The Commission appreciates the support of the rules.
2

3 **Comment:** One commenter stated that the rule language will require a background check
4 only on the relative provider and requested that the Commission expand this to include all
5 adults residing in the home.
6

7 **Response:** The Commission appreciates the comment and clarifies that §42.056 of the Texas
8 Human Resources Code, and related DFPS regulations, require that the background check for
9 providers listing with DFPS must include "each person 14 years of age or older who will
10 regularly or frequently be staying or working at the facility or home while children are being
11 provided care." Therefore, Commission rules requiring relative providers to be listed with
12 DFPS require that all adults residing in or regularly staying or working at the home will be
13 subject to a background check.
14

15 **Comment:** One commenter noted that the preamble stated that the relative provider will pay
16 DFPS an annual \$20 fee but it was unclear whether a background check will be performed
17 each year or only initially.
18

19 **Response:** The Commission appreciates the comment and clarifies that §42.056 of the Texas
20 Human Resources Code, and related DFPS regulations, require that the background check for
21 providers listing with DFPS be conducted at least once every two years.
22

23 **Comment:** One commenter expressed concern about the costs to the relative provider
24 associated with being listed with DFPS. The commenter stated that while the \$20 yearly fee
25 and the cost of carbon monoxide detectors may seem minimal to some, many low-income
26 relative providers may not be able to absorb such costs and thus will reject a job opportunity.
27

28 **Response:** While the Commission recognizes the concerns, the Commission strongly
29 believes in protecting the health and safety of children cared for with public funds. Further,
30 Texas Human Resources Code §42.060, and related DFPS regulations, require the use of
31 carbon monoxide detectors in certain child care settings. The Commission points out that
32 reliable carbon monoxide detectors can be purchased for \$25 and believes that the long-term
33 safety benefits of a carbon monoxide detector in the home far outweigh the \$25 onetime cost.
34 Additionally, the Commission believes that the \$20 annual fee required by DFPS is a
35 reasonable cost and that the costs associated with listing with DFPS can be absorbed by the
36 relative through the child care subsidy paid to the relative by the Commission.
37

38 **Comment:** One commenter stated that as long as federal regulations permit relative care (as
39 provided in 45 C.F.R. §98.41), neither the Boards nor their child care contractors have any
40 control over which relatives may visit or live in a home (without registering with DPS) while
41 children are under the supervision of the *one* relative that was predetermined eligible by
42 DFPS.
43

44 **Response:** The Commission appreciates the comment and is aware of the reality of certain
45 family situations. The Commission acknowledges that children may regularly come into
46 contact or even reside with relatives who have a criminal background, including relatives

1 registered with DPS as sex offenders. However, as stated in the preamble, the Commission is
2 entrusted by the citizens of the state of Texas to be a responsible steward of public funds.
3 This is particularly important in the provision of publicly funded child care services, which
4 involve the health and safety of children. The receipt of public child care funds includes the
5 responsibility to ensure that child care is provided in a safe environment. As mentioned
6 previously, DFPS rules regarding listed family homes reflect state law requiring a
7 background check for each person 14 years of age or older who will regularly or frequently
8 be staying or working at the home while children are being provided care. Although the
9 adopted rules will not completely prevent children from coming into contact with relatives
10 with a criminal background, by requiring a background check for anyone who regularly
11 frequents the home, the rules are designed to minimize the risk of children who receive
12 publicly funded child care services being placed in potentially unsafe environments.
13

14 **Comment:** One commenter requested clarification regarding allegations of abuse and
15 neglect. The commenter stated that local licensing staff indicated that they do not typically
16 make visits of this type when relative care is involved. The commenter asked if this type of
17 situation will then be turned over to CPS for investigation.
18

19 **Response:** The Commission has consulted with DFPS on this matter and DFPS has
20 indicated that any reported allegation of abuse and neglect at a relative child care provider
21 site listed with DFPS will be investigated by both Child Care Licensing and CPS. Child Care
22 Licensing will investigate the report for possible abuse and neglect violations based on
23 licensing standards, while CPS will investigate the report based on child protective standards.
24

25 **Comment:** One commenter expressed concerns with the safety, feasibility, and practicality
26 if the child care contractor were required to monitor relative care providers in their homes.
27 The commenter believed that such a task would require additional labor costs because there
28 would need to be at least two child care contractor representatives to enter a private
29 residence. The commenter further stated that there is still a potential danger when two or
30 more child care representatives enter the residence to monitor the relative child care provider.
31

32 **Response:** The Commission emphasizes that the adopted rules do not require child care
33 contractors to monitor the care provided in a relative's home for compliance with DFPS
34 regulations. As stated previously, the criminal background check and the check of
35 individuals on the CPS central registry of child abuse and neglect will be conducted by DFPS
36 using its current application and background check procedures for listed family homes.
37 Additionally, any investigation of reported abuse or neglect will be conducted by DFPS. The
38 Commission does not intend for a Board or a Board's child care contractor to conduct any of
39 the functions associated with the listing process or with monitoring for compliance with
40 DFPS rules or regulations.
41

42 Although these rules do not place requirements on Boards for monitoring compliance with
43 DFPS rules or regulations, the Commission expects Boards to continue to implement their
44 policies and procedures for researching and fact-finding for possible improper payments or
45 suspected fraud as required by subchapter F of this chapter.
46

1 **Comment:** Three commenters supported the rules yet expressed concerns that the rules will
2 have an adverse impact on the availability of subsidized child care, especially in rural areas.
3 One of the commenters had discussions with another state that adopted a similar policy and
4 was informed that there was a decrease in relative care--either relatives did not want to
5 consent to a background check or they were not authorized because of their previous criminal
6 or CPS history. Another commenter stated that many families with relative providers may
7 cease to participate in the subsidy program--not as a result of the criminal background check,
8 but because they feel it may not be cost effective, given lower reimbursement rates and costs
9 to become a listed provider. If no viable child care is available, particularly in rural areas
10 where there is a shortage of day care facilities, the impact on the labor force, the economy,
11 and public assistance could become evident.

12
13 Two of the commenters were concerned that this impact on the availability of child care will
14 affect the Board's ability to meet the performance measure for the number of children served.
15 One of the commenters stated that the rule would increase a Board's average rate per child if
16 eligible children are transferred to a more expensive licensed facility or registered home.
17 One commenter stated that due to the lack of regulated child care facilities in the local
18 workforce development area, the Board has no choice but to rely heavily upon relative care
19 providers as a means to get individuals back to work and on track to self-sufficiency. A
20 decrease in the number of relative care providers could impede the Board's ability to spend
21 its child care dollars if such mandates are placed on relative care providers. The rules could
22 adversely affect the Board's ability to meet its performance measure.

23
24 **Response:** The Commission appreciates the comments and understands the concerns. The
25 Commission recognizes that the adopted rule may lead some current relative child care
26 providers to discontinue the provision of Commission-funded child care services. The
27 Commission also recognizes that the adopted rules may prevent some relatives who are
28 currently providing Commission-funded child care services from being eligible providers
29 because of the required background check. In these cases, some parents eligible for
30 Commission-funded child care may choose to enroll their children in a regulated child care
31 facility while others may choose to have their children remain with the relative, but not
32 receive Commission funds. The Commission emphasizes that these child care choices
33 remain solely with the parent.

34
35 The Commission is aware that there may be potential impact on Board performance as a
36 result of relative providers deciding not to list with DFPS or relative providers who may not
37 be eligible because of the results of the background check. However, the Commission
38 maintains that it is not possible at this time to quantify any anticipated impact on the cost of
39 care or Board performance resulting from this rule. The Commission will work with the
40 Boards to monitor and analyze any increased costs or adverse effects on Board performance.
41 Furthermore, the Commission will monitor very closely any adverse impact the rule may
42 have on the ability of parents in rural areas to secure adequate child care.

43
44 **Comment:** DFPS supported the intent of the rules to protect children through background
45 checks of child care providers. However, DFPS stated that the listed family home category is
46 designed for non-relative caregivers. The rules would result in DFPS regulating a category

1 of caregivers otherwise outside of its regulatory language. DFPS expressed concern about
2 the impact of a significant and unexpected workload. The estimated number of new
3 providers requesting to become listed family homes per month is a substantial increase over
4 the average number of requests to become a listed family home in Fiscal Year 2005. DFPS
5 will not be able to support this influx of listed family home applicants without additional
6 resources. DFPS stated that the new rules would require two background check workers and
7 four background check technicians to process the listed family home applications and
8 conduct the background checks. However, DFPS stated that the agency can absorb any
9 additional abuse and neglect investigations with existing resources.

10
11 DFPS stated that even though the state would see a revenue increase in collected fees from
12 the providers, it is important to note that §42.0521 of the Texas Human Resources Code
13 requires that all fees collected by Child Care Licensing be deposited into the General
14 Revenue fund. In order for the fee revenue to offset the costs of listing these relative care
15 providers, the Legislature would need to appropriate these funds to DFPS.

16
17 **Response:** The Commission appreciates the comment and the support and input DFPS staff
18 provided to the Commission in the development of these rules. The Commission believes
19 that both agencies shared the same goal during this process--to protect the safety of children
20 receiving publicly funded child care services. The Commission recognizes that the listed
21 family home category is not designed for relative caregivers and that DFPS will need
22 increased resources to assist the Commission in the implementation of the adopted rules.

23
24 The Commission is committed to working with DFPS to help it meet its resource needs. As
25 the Commission discussed with DFPS during the development of these rules, the
26 Commission intends to provide CCDF funds appropriated to the Commission to enable DFPS
27 to conduct the background checks. The Commission does not anticipate that additional state
28 resources will be needed. Again, the Commission appreciates the efforts of DFPS staff in
29 working with the Commission to ensure that the integrity of public child care funds is
30 maintained.

31
32 **Comment:** DFPS also submitted a verbal comment to explain that, pursuant to state law, the
33 listed family home definition requires the care to be provided in the caretaker's own
34 residence. DFPS stated that it does not list or otherwise regulate care provided outside the
35 caretaker's own home. Thus, unless the care is provided in the relative's home, DFPS will
36 not list the relative as a family home provider.

37
38 **Response:** The Commission appreciates the clarification and modifies the rule language in
39 §809.91(f) to specify that relatives caring for a child in the relative's residence must list with
40 DFPS, while relatives caring for a child in the child's residence, but outside of the relative's
41 residence, must be subject to a check against the DPS Sex Offender Registry.

42
43 **Comment:** Two commenters expressed concerns related to the workload the adopted rules
44 would have on DFPS. The commenters were concerned that DFPS will not be able to absorb
45 the increased workload and as a result will take longer than one week. Delays from DFPS

1 with these background checks will ultimately delay the Board's child care and workforce
2 contractors from performing their services as efficiently as possible.

3
4 One commenter recommended that the rules be implemented immediately for new relative
5 providers. For cases currently authorized with a relative provider, the commenter
6 recommended that implementation be applied at the next recertification. If all current
7 relative providers are given the same date to be listed, the commenter questioned whether
8 DFPS will be able to maintain the current one-week time frame for processing listing
9 applications and child care could be adversely affected by processing delays.

10
11 **Response:** The Commission appreciates the comments and recognizes that DFPS will
12 require additional resources to assist in the implementation of the new rules. As mentioned
13 previously, the Commission will continue to work with DFPS to help that agency meet its
14 resource needs in order for it to conduct the background checks in a timely manner. The
15 Commission will provide guidance to the Boards regarding the implementation timeline for
16 these rules. The implementation of the rules will be based on ensuring that DFPS has
17 acquired the necessary resources to conduct the required background checks.

18
19 **Comment:** One commenter requested that the Commission and DFPS develop a way to
20 report to the Boards when relative providers have lost their listed status. Another commenter
21 requested that the Commission modify the existing child care automated systems to include
22 the date the relative provider was listed with DFPS and the date the listing expired. The
23 commenter requested that the automated system include a report that will enable the Board to
24 see when the listing is scheduled to expire.

25
26 **Response:** The Commission agrees with the comment. The Commission will work closely
27 with DFPS to ensure that up-to-date information related to relative providers' listing status is
28 provided to the Boards and the Boards' child care contractors on a regular basis.
29 Additionally, the Commission will modify its child care automated systems to include the
30 requested information and report.

31
32 **Comment:** Two commenters suggested that the Commission revise the definition of a
33 relative in order to allow for relative providers in blended families, where two or more
34 children have different noncustodial parents. Although not specifically mentioned in the
35 rules, the definition of a relative provider in §809.2(18) defines a relative provider as an
36 individual who is related to the child by marriage, blood relationship, or court decree. The
37 commenters pointed out that many custodial parents frequently have children by more than
38 one noncustodial parent. An example is if an unmarried mother has two children by different
39 fathers, the rules would not allow the mother to place both children with one of the children's
40 grandmothers. In this instance, if the mother chose relative care, she would have to select
41 two relative providers.

42
43 The commenters requested that the Commission revise the definition of a relative so that an
44 eligible relative provider must meet the criteria for at least one child. If a provider is an
45 eligible relative for one child in the family, through blood relationship with his or her
46 noncustodial parent, the commenters recommended that the relative be able to provide care

1 for that child's sibling too, even if not technically an eligible relative to the sibling. One of
2 the commenters requested that the Commission add "in loco parentis" to the definition of
3 relative provider. The commenters stated that this would greatly simplify the child care
4 process for the single parent, if all children can be taken to the same provider, instead of
5 possibly a different provider for each child.
6

7 **Response:** The Commission appreciates the comment and the desire to simplify the child
8 care process as well as to keep half-siblings together in one care setting. However, as
9 indicated in the comment, §809.2(18)--the definition of a relative child care provider--is not
10 part of the rule amendments issued for public comment. Therefore, the Commission cannot
11 address changes to that section. The Commission will research the applicable CCDF
12 regulations and state law governing caregivers who are not related to the child by blood,
13 marriage, or court order. The Commission will report the findings and provide guidance to
14 the Boards on this issue.
15

16 **COMMENTS WERE RECEIVED FROM:**
17

18 Diana Spiser, Assistant Commissioner for Child Care Licensing, DFPS
19 Susan Ashmore, Director of Child Care Services, Alamo Workforce Development Board
20 Lizzy Bosell, Permian Basin Workforce Development Board
21 Joyce Sneed, Child Care Services Contractor Manager, Concho Valley Workforce Development
22 Board
23 Susan Thomas, Rural Child Care Coordinator, Alamo Area Council of Governments
24 Susan Hoff, President, Child Care Group
25

26 The Agency hereby certifies that the adoption has been reviewed by legal counsel and found to
27 be within the Agency's legal authority to adopt.
28

29 The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the
30 Commission the authority to adopt, amend, or repeal such rules as it deems necessary for the
31 effective administration of Agency services and activities, and the Texas Human Resources Code
32 §44.002, regarding Administrative Rules.
33

34 The adopted rules will affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as
35 well as Texas Government Code, Chapter 2308.
36

1 **CHAPTER 809. CHILD CARE SERVICES**

2
3 **SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE**

4 **§809.91. Minimum Requirements for Providers**

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

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