

Chapter 809. CHILD CARE SERVICES

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

ON JANUARY 9, 2007, THE TEXAS WORKFORCE COMMISSION ADOPTED THE BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated date of publication in the *Texas Register*: **January 26, 2007**

The rules will take effect: **January 29, 2007**

The Texas Workforce Commission (Commission) adopts the repeal of Chapter 809, relating to Texas Workforce Commission Child Care and Development Rules, in its entirety, as published in the October 20, 2006, issue of the *Texas Register* (31 TexReg 8625).

The Commission adopts the following new sections of Chapter 809 relating to Child Care Services *without* changes, as published in the October 20, 2006, issue of the *Texas Register* (31 TexReg 8625):

Subchapter A. General Provisions, §809.1

Subchapter B. General Management, §§809.13–809.14, §§809.17–809.18 and §809.21

Subchapter C. Eligibility for Child Care Services, §§809.42–809.43, §§809.45–49, and §§809.52–809.54

Subchapter D. Parent Rights and Responsibilities, §§809.72–809.73, and §809.75

Subchapter F. Fraud Fact-Finding and Improper Payments, §809.114, and §§809.16–809.117

Subchapter G. Appeal Procedures, §809.131 and §809.132

The Commission adopts the following new sections of Chapter 809 relating to Child Care Services *with* changes, as published in the October 20, 2006, issue of the *Texas Register* (31 TexReg 8625):

Subchapter A. General Provisions, §809.2 and §809.3

Subchapter B. General Management, §§809.11–809.12, §§809.15–809.16, §809.19, and §809.20

Subchapter C. Eligibility for Child Care Services, §809.41, §809.44, §809.50, and §809.51

Subchapter D. Parent Rights and Responsibilities, §809.71, §809.74, and §§809.76–809.77

Subchapter E. Requirements to Provide Child Care, §§809.91–809.93

Subchapter F. Fraud Fact-Finding and Improper Payments, §§809.111–809.113, and §809.15

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

Texas Government Code §2001.039 requires that each state agency review and consider for readoption each rule adopted by that agency every four years. The Commission's Child Care and Development Rules, Chapter 809, were reviewed in 2005 with the goals of:

- removing administrative and operational procedures that have become unnecessary or are contained in other rules;
- updating terminology and definitions;
- including recent statutory requirements;
- removing obsolete provisions;
- streamlining and simplifying rule language; and
- promoting integrated support services for workforce services.

Some provisions in Chapter 809 were established when the Texas Department of Human Services—now consolidated within the Texas Health and Human Services Commission (HHSC)—administered child care services. Other provisions were written when child care operated as a separate department within the Agency. As a result, Chapter 809 contains administrative procedures that subsequently have been included in other chapters of this title.

The purpose of the repeal of Chapter 809 and adopted new Chapter 809 is to:

- simplify and clarify rule language and definitions;
- remove obsolete provisions;
- promote operational efficiencies;
- include new policy initiatives; and
- include new statutory language.

Where possible, the rules remove administrative or procedural language that may be duplicated in:

- other chapters of this title;
- the Agency-Local Workforce Development Board (Board) Agreements;
- the Financial Manual for Grants and Contracts; and
- other procedural or administrative documents.

Repealed Chapter 809 contains 13 subchapters and 75 sections. New Chapter 809 reorganizes, consolidates, and streamlines the child care rules to 7 subchapters and 46 sections. The consolidation and reorganization of the child care rules is designed to create subchapters based on the five primary parties involved in the subsidized child care system:

1. The Commission, as the lead agency for the federal Child Care and Development Fund (CCDF)
2. The Boards and child care contractors that administer and manage the system
3. The children who are receiving child care services
4. The parents who are eligible for child care services
5. The child care providers who receive the child care subsidies

The Commission has retained many of the provisions in the repealed rules. However, in many cases, the provisions have been consolidated into different subchapters. For example, the repealed rules have three separate subchapters relating to the eligibility requirements for child care services. The new rules retain many of these provisions, however, they are consolidated into one subchapter related to the eligibility for child care. Similarly, the repealed rules have two separate subchapters relating to the requirements for child care providers; the new rules consolidate the requirements into a single subchapter.

Because of the reorganization of the child care rules, these changes are better accomplished by the repeal of the current rules and adoption of new rules.

The chart on the following pages provides a summary of the adopted rule changes.

Repealed Section	Description	Action	Adopted Section	Description
809.1(a)	Short title & purpose	Redesignated & Revised	809.1(a-b)	Short title & purpose
		Added	809.1(c)	Rules apply to Commission, Boards, parents, providers
809.1(b-c)	No certified Board; TOT	Removed		
809.2(1)	Definition: Board	Removed		
809.2(2)	Definition: Child Care	Redesignated & Revised	809.2(4)	Definition: Child Care Services
809.2(3)	Definition: Commission	Removed		
809.2(4)	Definition: Grant Recipient	Removed		
809.2(5)	Definition: LWDB	Removed		
809.2(6)	Definition: Parent	Redesignated & Revised	809.2(14)	Definition: Parent
809.2(7)	Definition: Provider	Redesignated & Revised	809.2(16)	Definition: Provider
809.2(8)	Definition: SACC Provider	Removed		
809.2(9)	Definition: TANF	Removed		
		Added	809.2(1)	Definition: Attending job training/education
		Added	809.2(3)	Definition: Child Care Contractor
		Added	809.2(5)	Definition: Child Care Subsidies
		Added	809.2(7)	Definition: Educational program
		Added	809.2(10)	Definition: Improper payments
		Added	809.2(11)	Definition: Job training
		Added	809.2(12)	Definition: Listed family home
		Added	809.2(15)	Definition: Protective services
		Added	809.2(19)	Definition: Residing with
		Added	809.2(21)	Definition: Working
809.4	Waiver request	Redesignated & Revised	809.3	Waiver request
809.5(a)	Definition: combat deployment	Redesignated & Revised	809.2(13)	Definition: Military deployment
809.5(b)	Continued care for combat deployment	Redesignated & Revised	809.54(d)	Continuity of care: military deployment
809.5(c)	Combat deployment; Board actions to continue care	Removed		
809.11(a)-(d)	Board responsibilities (general)	Revised	809.11(a)-(d)	Board responsibilities (general)
809.12(a)	Board plan	Redesignated & Revised	809.12(a)-(c)	Board plan
809.12(b)	Board policies	Redesignated	809.13(a)-(c)	Board policies
		Added	809.13(d)	Required Board policies
809.12(c)	Board coordination of policies	Redesignated	809.14(a)	Board coordination of policies
		Added	809.14(b)	Board coordination of svcs
809.13	Ensuring parent choice by training providers	Removed		
809.14(a)-(c)	Consumer education	Redesignated & Revised	809.15(a)-(c)	Consumer education

Repealed Section	Description	Action	Adopted Section	Description
809.15(a)-(e)	Quality improvement activities	Redesignated	809.16(a)-(e)	Quality improvement activities
809.16	Procurement	Removed		
809.17	Management of finances	Removed		
809.18	Information mgmt & reporting	Removed		
809.19	Performance standards	Removed		
809.20(a)	Leveraging local funds	Redesignated	809.17(a)(1)	Leveraging local funds
809.20(b)	Local funds accepted	Redesignated & Revised	809.17(b)	Local funds accepted
809.20(c)(1)	Boards shall secure local funds	Removed		
809.20(c)(2)	Securing additional excess funds	Redesignated	809.17(a)(2)	Securing additional excess funds
809.20(c)(3)	Local match eligible for incentive awards	Redesignated	809.17(a)(3)	Local match eligible for incentive awards
809.20(d)	Submitting local funds	Redesignated	809.17(c)	Submitting local funds
809.20(e)	Completing local funds	Redesignated & Revised	809.17(d)	Completing local funds
809.20(f)	Monitoring local funds	Redesignated	809.17(e)	Monitoring local funds
809.41(a)	General provider requirements	Redesignated & Revised	809.91(a)	Minimum provider requirements
		Added	809.91(c)	Boards shall not place requirements on providers above the licensing requirement or have the effect of monitoring for licensing compliance
		Added	809.91(e)	Relative providers shall not reside in the same household as the eligible child
		Added	809.91(f)	Sex offender registry check for relative providers
		Added	809.92(a)	Provide written notice of and agree to provider requirements
		Added	809.92(b)(3)	Provider notifies contractor when parent does not pay the parent share of cost
		Added	809.92(c)	Providers shall not charge the difference to parents (for parents exempt from parent share of cost)
		Added	809.92(d)	Boards may develop policies related to charging the difference to all parents
809.41(b)	Boards ensure that providers comply with health & safety requirements	Removed		
809.42(a)	Minimum provider requirements	Redesignated & Revised	809.2(17)	Definition: Provider
809.42(b)(1)	Provider compliance with agreement	Removed		
809.42(b)(2)	Provider not on corrective action	Removed		
809.42(c)	Reporting violations	Redesignated	809.91(d)	Reporting violations
809.43	Provider agreements	Removed		

Repealed Section	Description	Action	Adopted Section	Description
809.44	Provider general liability	Removed		
809.46(a)	Assessing share of cost (CCDF)	Redesignated & Revised	809.19(a)	Assessing share of cost (CCDF)
809.46(b)	Assessing share of cost (non-CCDF)	Redesignated	809.19(b)	Assessing share of cost (non-CCDF)
809.46(c)	Provider collecting share of cost prior to svcs	Redesignated & Revised	809.92(b)(1)	Provider collecting share of cost prior to svcs
809.46(d)	Provider collecting share of cost	Redesignated & Revised	809.92(b)(1)	Provider collecting share of cost
809.46(e)	Remedies for non-payment of share of cost	Redesignated & Revised	809.19(c)	Remedies for non-payment of share of cost
809.47(a)-(b)	Reduction & waiving share of cost	Redesignated & Revised	809.19(d)-(e)	Reduction & waiving share of cost
		Added	809.19(f)	Parent share of cost assessed at \$0
809.48(a)	Board policy on attendance	Redesignated & Revised	809.13(d)(13)	Board policy on attendance
809.48(a)	Provider documenting attendance	Redesignated & Revised	809.92(b)(4)(A)	Provider documenting attendance
809.48(b)	Provider informing of absences	Redesignated & Revised	809.92(b)(4)(B)	Provider informing of absences
809.48(c)	Provider failure to keep attendance	Redesignated & Revised	809.114 & 809.115	Compliance with Commission rules and Board policies.
809.61(a)	Qualifications for relative providers	Redesignated & Revised	809.2(18)	Definition: Relative child care provider
809.61(b)	Number of children in relative care	Redesignated & Revised	809.93(c)	Number of children in relative care
809.62(a)	Qualifications for regulated self-arranged child care (SACC)	Removed		
809.62(b)	CPS request for regulated SACC	Redesignated & Revised	809.49(b)	CPS request for specific provider
809.62(c)	Requirements for listed homes	Redesignated & Revised	809.91(b)	Requirements for listed homes
809.63(a)	Reimbursements for SACC	Redesignated & Revised	809.93(a)	Provider reimbursements
809.63(b)	SACC Declaration of Services	Redesignated & Revised	809.93(b)	Provider Declaration of Services
809.71(a)	Parent choice of range of providers	Revised	809.71(1)	Parent right: choice of providers
809.71(b)(1)-(2)	Parent right to visit provider; assistance in choosing	Revised	809.71(2)-(3)	Parent right: visit provider; assistance in choosing
		Added	809.71(4)	Parent right: informed of policy regarding providers charging parents
809.72(1)-(6)	General parent rights	Redesignated & Revised	809.71(5)-(10)	Parent rights
		Added	809.71(15)	Parent rights: informed of Board attendance policy
809.73	Eligibility documentation	Redesignated & Revised	809.72	Eligibility documentation
809.74	Enrollment agreements	Removed		
809.75(a)(1), (2),(4),(5)	Parent report income, family size, work/training, other	Redesignated & Revised	809.73(a)(1), (2),(3),(5)	Parent report income, family size, work/training, other
809.75(a)(3)	Parent report loss of TANF, SSI	Removed		
		Added	809.73(a)(4)	Parent report other subsidies
809.75(b)	Failure to report changes	Redesignated & Revised	809.73(b)	Failure to report changes
809.75(c)	Grounds for suspected fraud	Redesignated	809.73(c)	Grounds for suspected fraud

Repealed Section	Description	Action	Adopted Section	Description
809.76(a)-(b)	Parent appeal rights	Redesignated & Revised	809.74(a)-(b)	Parent appeal rights
809.76(a)	Appeal for child in-home protective services	Redesignated & Revised	809.74(c)	Appeals for child in-home protective services
809.76(b)	Inform parents of hearing procedures	Redesignated & Revised	809.71(14)	Parent right: hearing procedures
		Added	809.74(d)	Appeals for Choices participants
		Added		Appeals for FSE&T participants
809.77	Parent's right to withdraw	Redesignated & Revised	809.71(11)-(12)	Parent right: to withdraw
		Added	809.71(13)	Parent right: to be informed of reporting reqs.
809.78(a)	Parent responsibility agreement (PRA)	Redesignated & Revised	809.76(a)	parent responsibility agreement (PRA)
809.78(b)(1)	PRA: paternity, child support	Redesignated & Revised	809.76(b)(1)A	PRA: child support/paternity, cooperating with the OAG
		Added	809.76(b)(1)B	PRA: documenting non-OAG managed cases
809.78(b)(2)-(3)	PRA: controlled substances/school attendance	Redesignated & Revised	809.76(b)(2)-(3)	PRA: controlled substances/school attendance
809.78(c)	PRA: failure to comply may result in sanctions	Removed		
809.79(a)(1)	PRA: sanctions, exceptions: Definitions	Removed		
809.79(a)(2)	PRA: failure to comply shall result in sanctions	Redesignated & Revised	809.76(c)	PRA: failure to comply shall result in sanctions
809.79(b)(1)	PRA: exceptions, Definitions	Removed		
809.79(b)(2) (A)-(C)	PRA: exceptions (reasonable effort, incest, domestic violence)	Redesignated & Revised	809.77(1)-(3)	PRA: exemptions (reasonable effort, incest/rape, domestic violence)
		Added	809.77(4)-(5)	PRA: exemption, adoption
		Added	809.77(6)	PRA: exemption, harm to the child
		Added	809.77(7)	PRA: exemption, harm to the parent
809.91(1)	Definition: Child Care	Redesignated & Revised	809.2(2)	Definition: Child
809.91(2)	Definition: Family	Redesignated & Revised	809.2(8)	Definition: Family
809.91(3)	Definition: Household dependent	Redesignated & Revised	809.2(9)	Definition: Household dependent
809.92(a)	General eligibility: funding limitations	Removed		
809.92(b)(1)	General eligibility: income	Redesignated & Revised	809.41(a)(2)(A)	General eligibility: income
809.92(b)(2)	General eligibility: work, training, education	Redesignated & Revised	809.41(a)(2)(B)	General eligibility: work, training, education
809.92(b)(3)	General eligibility: child's age	Redesignated & Revised	809.41(a)(1)(A)-(B)	General eligibility: child's age
809.92(c)	Time limits for education	Redesignated & Revised	809.41(b)	Time limits for education
		Added	809.41(c)	Time limits for associate's degree (high-demand)
		Added	809.41(d)	Time limits for job search
809.93(a)1	Income include: gross earnings	Redesignated & Revised	809.44(a)(1)	Income include: gross earnings
809.93(a)(2)-(3)	Income include: net income from self-employment	Redesignated & Revised	809.44(a)(2)	Income include: net income from self-employment
809.93(a)(4),	Income include: Social security, retirement, pensions	Redesignated & Revised	809.44(a)(3)	Income include: pensions, annuities, retirement

Repealed Section	Description	Action	Adopted Section	Description
(9), (10)				
809.93(a)(5), (19)	Income include: dividends, interest, sale of property	Redesignated & Revised	809.44(a)(4), (9)	Income include: taxable gains, dividends, interest, sale of property
809.93(a)(6)	Income include: rental income	Redesignated & Revised	809.44(a)(5)	Income include: rental income
809.93(a)(7)	Income include: interest in mortgages, contracts	Removed		
809.93(a)(8)	Income include: public assistance payments	Redesignated & Revised	809.44(a)(6)	Income include: public assistance payments
809.93(a)(11)	Income include: educational loans	Removed		
809.93(a)(12)	Income include: UI	Redesignated	809.44(a)(8)	Income include: UI
809.93(a)(13)	Income include: worker's compensation, disability	Redesignated & Revised	809.44(a)(9)	Income include: worker's compensation, disability
809.93(a)(14)	Income include: spousal maintenance/alimony	Redesignated & Revised	809.44(a)(10)	Income include: spousal maintenance/alimony
809.93(a)(15)	Income include: child support	Redesignated & Revised	809.44(a)(11)	Income include: child support
809.93(a)(16)	Income include: cash support payments	Removed		
809.93(a)(17)	Income include: inheritances	Redesignated & Revised	809.44(a)(7)	Income include: inheritances
809.93(a)(18)	Income include: foster care payments	Redesignated & Revised	809.44(b)(9)	Income exclude: foster care payments
		Added	809.44(a)(12)	Income include: court settlements or judgments
809.93(b)(1)	Income exclude: food stamps	Redesignated	809.44(b)(1)	Income exclude: food stamps
809.93(b)(2)	Income exclude: monthly allowance for certain children of veterans	Redesignated	809.44(b)(2)	Income exclude: monthly allowance for certain children of veterans
809.93(b)(3)	Income exclude: federal educational loans	Redesignated & Revised	809.44(b)(3)	Income exclude: educational loans
		Added	809.44(b)(4)	Income exclude: IDA
		Added	809.44(b)(5)	Income exclude: EITC
		Added	809.44(b)(6)	Income exclude: tax refunds
		Added	809.44(b)(7)	Income exclude: VISTA, AmeriCorps
		Added	809.44(b)(8)	Income exclude: noncash or in-kind benefits in lieu of wages
		Added	809.44(b)(10)	Income exclude: special military pay
809.101(a)(1)-(2)	Transitional: general eligibility	Redesignated & Revised	809.48(a)(1)-(2)	Transitional: general eligibility
		Added	809.48(a)(3)	Transitional: work/training/education reqs.
809.101(b)	Transitional: income limits	Redesignated & Revised	809.48(b)	Transitional: income limits
809.101(c)	Transitional: availability	Redesignated & Revised	809.48(c)	Transitional: availability
809.101(d)	Transitional: unemployed, 4 weeks	Redesignated	809.48(d)	Transitional: unemployed, 4 weeks
809.101(e)	Transitional: denied due to child support	Redesignated	809.48(e)	Transitional: denied due to child support
809.102(a)(1)	Choices: eligibility	Redesignated & Revised	809.45(a)	Choices: eligibility
809.102(a)(2)	Choices: eligibility for sanctioned/conditional	Removed		

Repealed Section	Description	Action	Adopted Section	Description
809.102(b)	Choices: to Choices participants	Removed		
809.102(c)	Choices: waiting to enter approved component	Redesignated & Revised	809.45(b)	Choices: waiting to enter approved component
809.103	Workforce Orientation Applicant Child Care	Redesignated & Revised	809.46	TANF Applicant Child Care
809.104	FSE&T Child Care	Redesignated & Revised	809.47	FSE&T Child Care
809.105(a)	CPS Child Care: determinations by FPS	Redesignated & Revised	809.49(a)(1)	CPS Child Care: determinations by FPS
		Added	809.49(a)(2)	CPS Child Care: FPS may authorize up to age 19
809.105(b)	CPS closed cases	Redesignated & Revised	809.54(c)	Continuity of care: former CPS children
809.121(a)(1)-(2)	Low Income: eligibility	Redesignated & Revised	809.50(a)	Low Income: eligibility
809.121(a)(3)-(4)	Low Income: eligibility, TANF, Choices	Removed		
809.121(a)(5)	Low Income: reduction in work/training/ed.	Redesignated	809.50(b)	Low Income: reduction in work/training/ed.
809.121(b)	Low Income: education hours	Redesignated & Revised	809.50(c)	Low Income: education hours
809.122(a)	Children with disabilities: Definition	Redesignated & Revised	809.2(6)	Definition: Child with Disabilities
809.122(b)(1)-(2)	Children with disabilities: eligibility	Redesignated	809.51(a)	Children with disabilities: eligibility
809.122(b)(3)	Children with disabilities: reduction in hours	Redesignated & Revised	809.51(b)	Children with disabilities: reduction in hours
809.122(c)	Children with disabilities: education hours	Redesignated & Revised	809.51(c)	Children with disabilities: education hours
809.122(d)	Children with disabilities: age to 19	Redesignated & Revised	809.41(a)(1)(B)	Children with disabilities: age to 19
809.123(a)	Teen parent: Definitions	Redesignated & Revised	809.2(20)	Definition: Teen parent
809.123(b)(1)	Teen parent: general eligibility	Redesignated	809.52(a)(1)	Teen parent: general eligibility
809.123(b)(2)	Teen parent: income eligibility	Redesignated & Revised	809.52(a)(2)	Teen parent: income eligibility
809.123(c)	Teen parent: determining income eligibility	Redesignated & Revised	809.52(b)	Teen parent: determining income eligibility
809.124(a)-(b)	Special projects	Redesignated	809.53(a)-(b)	Special projects
809.124(c)	Special projects through match	Removed		
809.124(d)	Special projects' time limits	Redesignated	809.53(c)	Special projects' time limits
809.201-205	School-Linked Child Care Program	Removed		
809.221(1) (A)	1st priority group: Choices	Redesignated	809.43(a)(1)(A)	1st priority group: Choices
809.221(1)(B)	1st priority group: Transitional	Redesignated	809.43(a)(1)(D)	1st priority group: Transitional
809.221(2) (A)	2nd priority group: WOA	Redesignated & Revised	809.43(a)(1)(B)	1st priority group: TANF Applicant
		Added	809.43(a)(1)(C)	1st priority group: FSE&T
809.221(2)(B)	2nd priority group: CPS	Redesignated	809.43(a)(2)(A)	2nd priority group: CPS
		Added	809.43(a)(2)(B)	2nd priority group: qualified vet
		Added	809.43(a)(2)(C)	2nd priority group: foster youth
809.221(3) (A)	Board priorities, may include teen parents	Redesignated & Revised	809.43(a)(2)(D)	2nd priority group: teen parents

Repealed Section	Description	Action	Adopted Section	Description
809.221(3)(B)	Board priorities, may include children with disabilities	Redesignated & Revised	809.43(a)(2)(E)	2nd priority group: children with disabilities
809.221(3)(C)	Board priorities, may include others	Redesignated & Revised	809.43(b)	3rd priority group: Board priorities
809.222	Effective utilization of funds (waiting list)	Redesignated & Revised	809.18(a)	Maintenance of a waiting list
809.222	Reason for being placed on waiting list	Removed		
		Added	809.18(b)	Board policy for waiting list
809.223(a)	Eligibility determination prior to authorizing care	Redesignated	809.42(a)	Eligibility determination prior to authorizing care
809.223(b)	Frequency of eligibility determination	Redesignated	809.42(b)	Frequency of eligibility determination
		Added	809.42(c)	Eligibility determination for public certified expenditures
809.224(a)-(d)	Custody and visitation arrangements	Redesignated	809.54(d)-(h)	Custody and visitation arrangements
809.225(a)	Continuity of care: general principle	Redesignated	809.54(a)	Continuity of care: general principle
809.225(b)	Continuity of care: exceptions to make room for Choices, Transitional, WOA	Redesignated & Revised	809.54(b)	Continuity of care: exceptions to make room for 1st priority group
809.225(c)	Continuity of care: six months for former CPS	Redesignated & Revised	809.54(c)(1)	Continuity of care: six months for former CPS
809.225(d)	Continuity of care: for former CPS	Redesignated & Revised	809.54(c)(2)	Continuity of care: for former CPS
809.226	Provider payments in accordance with provider agreement, Agency-Board Agreement	Removed		
809.228	Units of service (full-day /part-day)	Redesignated & Revised	809.93(e)	Reimbursement based on full-day /part-day units
809.229(a)	Enrollment begins on first scheduled day	Removed		
809.229(b)	No payment for holding spaces	Redesignated	809.93(f)	No payment for holding spaces
809.229(c)	Provider attendance reporting: 1st three days of scheduled care	Redesignated & Revised	809.92(b)(4)(C)	Provider attendance reporting: 1st three days of scheduled care
809.229(d)	Payment for occasional part-day/full-day	Redesignated	809.93(g)	Payment for occasional part-day/full-day
809.231(a)	Board establishes reimbursement rates	Redesignated & Revised	809.20(a)	Board establishes reimbursement rates
809.231(b)	Reimburse at lower of max rate or published rate	Redesignated & Revised	809.21	Reimburse at lower of max rate or published rate
809.231(c)	Same maximum rate for providers without agreements	Removed		
809.231(d)-(e)	Graduated rates for TRS/TEEM	Redesignated	809.20(b)-(c)	Graduated rates for TRS/TEEM
809.231(f)	No retroactive payments for new max. rates	Redesignated & Revised	809.93(h)	No retroactive payments for new max. rates
809.231(g)	Reimbursement for care for children with disabilities	Redesignated & Revised	809.20(d)	Reimbursement for care for children with disabilities
809.232	Provider reimbursement for transportation	Redesignated & Revised	809.20(e)	Provider reimbursement for transportation
809.233	Reduction of reimbursement based on parent share of cost & other subsidies	Redesignated & Revised	809.21(1)-(2)	Reduction of reimbursement based on parent share of cost & other subsidies
809.233(2)	Provider reporting amounts of other subsidies collected	Redesignated & Revised	809.92(b)(2)	Provider responsible for collecting other child care funds

Repealed Section	Description	Action	Adopted Section	Description
809.235	Timely billings submitted to the Commission	Removed		
		Added	809.111(a)	Authority for Boards to establish fraud-prevention procedures
809.251(a)-(b)	Board procedures for fraud prevention	Redesignated & Revised	809.111(b)-(c)	Board procedures for fraud prevention
809.251(c)(1), (3)	Commission review of investigation report	Redesignated & Revised	809.111(d)	Commission review of fact-finding report
809.251(c)(2)	Board referral for prosecution	Removed		
809.251(d)	Submitting final fraud investigation report	Redesignated & Revised	809.111(e)	Submitting final fraud investigation report
809.252	Suspected fraud	Redesignated & Revised	809.112	Suspected fraud
809.253(1)	Actions if fraud is found: termination of provider agreement	Removed		
809.253(2)-(5)	Actions if fraud is found	Redesignated & Revised	809.113	Actions if the Commission finds fraud
809.271	Child care during appeal	Redesignated & Revised	809.75	Child care during appeal
809.272(a)-(e)	Board review of appeal	Redesignated	809.131(a)-(e)	Board review of appeal
		Added	809.131(f)	Board must conduct review prior to submission to Commission
809.273	Appeals to the Commission	Redesignated & Revised	809.132	Appeals to the Commission
809.281(a)	Compliance with rules and policies	Redesignated & Revised	809.114(a)	Compliance with rules and policies
809.281(b)	Failure to comply may warrant corrective actions and breach of contract	Redesignated & Revised	809.114(b)-(c)	Failure to comply may warrant corrective actions and breach of contract
809.282	Provider agreement violations	Removed		
809.283(a)	Corrective actions for a child care contractor	Removed		
809.283(b)	Determining corrective actions	Redesignated & Revised	809.115(a)	Determining corrective actions
809.283(c)	Corrective actions may include	Redesignated & Revised	809.115(b)	Corrective actions may include
809.283(d)	Service Improvement Agreement (SIA)	Redesignated & Revised	809.115(c)	Service Improvement Agreement (SIA)
809.284(a)(1)-(2) and 809.284(b)-(d)	Contractors, providers in non-compliance with federal or state programs	Removed		
809.284(a)(3)	Providers debarred from other federal or state programs	Redesignated & Revised	809.93(d)	No reimbursements for providers debarred from other federal or state programs
809.285	Reapplication of provider agreements	Removed		
809.286	Recovery of overpayments	Redesignated & Revised	809.116	Recovery of improper payments
809.287(a)(1), (4)-(5)	Recovery of overpayments to a provider	Redesignated & Revised	809.117(a)(1)-(6)	Recovery of overpayments to a provider
809.287(a)(2)	Recovery of overpayments when provider did not have an agreement	Removed		
809.287(a)(3)	Recovery of overpayments when provider exceeded licensed capacity	Removed		

Repealed Section	Description	Action	Adopted Section	Description
809.287(b)	Recovery of overpayments to a parent	Redesignated	809.117(b)	Recovery of overpayments to a parent
809.288	Failure to meet performance standards	Removed		

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

SUBCHAPTER A. GENERAL PROVISIONS

The Commission adopts new Subchapter A, General Provisions, as follows:

Subchapter A contains the general provisions of the Child Care Services rules, which include the short title and purpose; definitions of terms used throughout Chapter 809; and the provisions related to requesting a waiver of the child care rules.

§809.1. Short Title and Purpose

Section 809.1(a) states that the short title of this chapter may be cited as the "Child Care Rules." Repealed Chapter 809 provides the short title as the "Child Care and Development Rules." The Commission removes the words "and Development" from the title of the rules to emphasize that these rules govern the use of any Commission funds used for child care, not simply the child care funds from CCDF.

Section 809.1(b) states that the purpose of the rules is to interpret and implement the requirements of state and federal statutes and regulations governing Commission-funded child care services, including quality improvement activities. This purpose remains the same as the purpose stated in repealed Chapter 809.

Section 809.1(b) also states that the Commission funds governed by the rules include CCDF funds allocated to local workforce development areas (workforce areas) through the allocation formula described in §800.58 of this title. Additionally, the child care rules govern the use of private donated funds; public transferred funds; and public certified expenditures that are used as state match for CCDF federal matching funds. The rules also govern the use of CCDF funds used for child care for children receiving protective services. In addition, these rules govern the use of other funds that are used for child care services allocated to workforce areas under Chapter 800 of this title.

Section 809.1(b) specifically lists the funds governed by this chapter to emphasize that the intent of the child care rules is to govern the use of any Commission-funded child care, including donated funds and certified expenditures used as state match for federal CCDF matching funds, as well as funds allocated by the Commission, such as WIA funds or other funds that may become available to the Commission and allocated to the workforce areas.

Finally, §809.1(c) provides that the rules contained in this chapter shall apply to the Commission, Boards, their child care contractors, child care providers, and parents applying for or eligible to receive child care services.

The new rules do not include provisions contained in repealed Subchapter A relating to the application of the rules in a workforce area in which there is no certified Board. These provisions were included in the rules when child care services were transferred from the Texas Department of Human Services (now the Texas Health and Human Services Commission) and

are no longer necessary because each workforce area currently has, and is expected to maintain, a certified Board.

Additionally, the provisions in repealed Subchapter A relating to the Train Our Teachers (TOT) Award are not retained as the program is no longer funded by the Commission.

Texas Labor Code §302.006 directs that the TOT program is a permissible rather than a required program of the Commission. The Commission no longer funds TOT in order to maximize the amount of funds available for direct child care services.

Comment: One commenter supported the effort to clarify that the intent of the rules is to cover all aspects of Commission-funded child care. The commenter stated that this will be of great benefit in Boards' efforts to further integrate services.

Response: The Commission appreciates the comment and agrees that the rule language will facilitate the integration of workforce services.

§809.2. Definitions

Section 809.2 sets forth the definitions for terms used throughout new Chapter 809. It incorporates certain definitions found in other subchapters of repealed Chapter 809; certain definitions found in the CCDF State Plan; and new terms and definitions that are used throughout Chapter 809.

Attending a job training or educational program

The CCDF regulations at 45 C.F.R. §98.16(f)(3) require that the CCDF State Plan set forth how the state defines "attending" in regard to an individual's attendance in a job training or educational program. The CCDF State Plan states that an individual is "attending a job training or educational program" if the individual:

- is considered by the program to be officially enrolled in the job training or educational program;
- meets all attendance requirements established by the program; and
- is making progress toward successful completion of the program as determined by the Board.

Section 809.2(1) includes the definition of "attending a job training or educational program," that is consistent with the CCDF State Plan.

Comment: One commenter noted that a customer must be making progress toward successful completion of the program as determined by the Board. The commenter sought clarification on the Commission's expectation to fulfill this requirement and asked if a written statement from an official of the training or education program would suffice or if the Commission expected staff to complete degree plans and measure the parent's progress toward completion. The commenter expressed desire for Boards to have the flexibility to obtain a written statement from the training or education program similar to statements currently received to verify the parent is meeting attendance requirements rather than requiring staff to track the degree or training plans to measure the parent's progress.

Response: The Commission appreciates the commenter's request for clarification. As noted in §809.13(d)(1), a Board must develop policies related to how it determines that the parent is making progress toward successful completion of a job training or educational program as described in §809.2(1). Each Board has the discretion to make that determination. However, it is recommended that Boards design policies and procedures to ensure that the documentation is verified by the education or training program.

Child

Section 809.2(2) defines a "child" as an individual who meets the general eligibility requirements in this subchapter for receiving child care. This definition is not changed from the repealed definition, except that the repealed definition contains the requirement that the child must reside with the parents. This requirement is set forth in new Subchapter C related to the General Eligibility for Child Care.

Child care contractor

Section 809.2(3) defines "child care contractor" as an entity or entities under contract with the Board to manage child care services. The term is retained from repealed Chapter 809, however, it is now defined. By defining "child care contractor," the Commission intends to include one or more entities that may be contracted by the Board to manage one or more functions related to the delivery of 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.

Child care services

Section 809.2(4) defines "child care services" as child care subsidies and quality improvement activities funded by the Commission. This definition is designed to incorporate child care subsidies and reimbursements paid to providers on behalf of eligible parents for direct child care for eligible children, as well as eligible child care quality improvement activities funded by the Commission. The intent is to provide in rule a general term that may be applied to both direct child care subsidies and quality activities that a parent or provider may receive.

Child care subsidies

Section 809.2(5) defines "child care subsidies" as Commission-funded child care reimbursements to an eligible child care provider for the direct care of an eligible child. The Commission's intent is to distinguish in rule language, when necessary, the difference between Commission-funded child care services for direct child care and Commission-funded child care services for quality improvement activities.

Child with disabilities

Section 809.2(6) defines a "child with disabilities" as 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 to be incapable of performing the routine activities of daily living if the child requires assistance in performing tasks (major life activities) that are within the typical chronological range of development, including but not limited to, caring for

oneself; performing manual tasks; walking, learning, talking, seeing, hearing, breathing; and working.

The new definition, especially as it relates to activities of daily living is based on the definition of "major life activities" found in the U.S. Department of Education regulations at 34 C.F.R. §104.3(j).

Educational program

CCDF regulations at 45 C.F.R. §98.16(f)(4) require the state to provide in the CCDF State Plan how the state defines a "job training and educational program" for the purposes of determining eligibility for a parent who is attending a job training or educational program. The Commission defines the term "educational program" separately from the term "job training program" in order to allow for the provision of time limits for parents participating in educational programs as set forth in §809.41, A Child's General Eligibility for Child Care Services, which will not be applied to parents attending job training programs.

The definition of an "educational program" is based on the definition provided in the CCDF State Plan. Section 809.2(7) defines "educational program" as a program that leads to:

- a high school diploma;
- a General Educational Development (GED) credential; or
- a postsecondary degree from an institution of higher education.

Family

For purposes of determining family size and family income in order to determine a parent's eligibility for child care services and to assess the parent share of cost, §809.2(8) defines the term "family" as the unit composed of a child eligible to receive child care services, the parents of that child, and household dependents. This definition of a "family" is identical to the definition in the repealed rules.

Household dependent

Section 809.2(9) defines the term "household dependent" as an individual living in the household who is one of the following:

- an adult considered as a dependent of the parent for income tax purposes;
- a child of a teen parent; or
- a child or other minor living in the household who is the responsibility of the parents.

Although similar to the repealed definition, the new definition clarifies that the adult must be a dependent of the parent.

Comment: One commenter suggested the term should be changed from "household dependents" to "household members" to include family structures where an adult resides in the same home as part of a family and contributes to the family income but is not considered a "dependent" of the parent, thereby making a person eligible for child care who would not otherwise be if the other adult's income was to be included. The commenter stated that it would not be unfair to expand the eligibility calculation to include the incomes of individuals who are household members but not considered "family."

Response: The Commission welcomes suggestions that attempt to ensure CCDF funds are given only to those who are actually in need. Although the Commission understands the commenter's concerns, the Commission believes that this change would necessitate further clarification of how to determine if the other adult is "part of the family" and "contributes to the family income." For example, the suggested change could mean that the income of a college student who temporarily resides with a relative for the summer and is earning income for school during the summer may be counted as family income, even though the student's income probably does not contribute to the family income.

Improper payments

Section 809.2(10) defines "improper payments" as 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. This definition is consistent with the definition provided in the CCDF State Plan. The Commission notes that child care reimbursement payments are made to providers, not to parents (as stipulated in §809.93(a)); therefore, the definition of improper payments does not include parents as recipients of improper payments. However, a parent shall be responsible for repayment of any improper payment made on behalf of the parent if the parent has been found to have committed fraud or other actions, as set forth in §809.117(b).

Job training program

CCDF regulations at 45 C.F.R. §98.16(f)(4) require the state to provide in the CCDF State Plan how the state defines a "job training program." Therefore, the Commission bases the definition of a "job training program" on the definition provided in the current CCDF State Plan. Section 809.2(11) defines a "job training program" as a program that provides training or instruction leading to:

- basic literacy;
- English proficiency;
- an occupational or professional certification or license; or
- the acquisition of technical skills, knowledge, and abilities specific to an occupation.

Comment: One commenter stated clarifying the type of programs that would qualify as "job training programs" is helpful.

Response: The Commission agrees with the comment and appreciates the support of the rules.

Comment: One commenter requested clarification on whether parents will now be allowed to participate in these activities alone and still receive at-risk child care because the activities listed in this section had not been allowable activities under current rules.

Response: The Commission disagrees that the activities have not been allowable. Even though the activities were not specifically delineated in the repealed rules, the activities listed have been in the CCDF State Plan as allowable job training activities.

Comment: One commenter asked if the Boards will be allowed the flexibility to further define these training programs and time limits for participation.

Response: There are no time limits on participation in job training activities. It is not necessary to set time limits for job training programs, as these programs are typically of finite duration. As long as the parent is meeting the minimum hourly activity requirement established by the Board and is making successful progress toward completion of the program, then the parent is eligible for subsidized child care services.

Concerning the flexibility to further define job training activities, Boards have the flexibility to specify which training programs in the workforce area meet the definition of a job training program and may list activities that constitute "instruction leading to" one of the identified areas. However, the Commission believes that the definition of a job training program should remain as broad as possible to allow parents to participate in job training that best suits their needs.

Listed family home

Section 809.2(12) defines a "listed family home" as a family home, other than the 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). This term is used, but not specifically defined, in repealed Chapter 809. The Commission includes the definition of such homes because the new rules contain the provision that Boards may choose to include a listed family home as an eligible provider (as long as the Board ensures health and safety requirements are met). The Commission removes the word "unregulated" from the definition to align with §42.052 of the Texas Human Resources Code. Although listed family homes are not licensed or registered with DFPS and are not inspected by DFPS, listed family homes are governed by statutory requirements in Chapter 42 of the Texas Human Resources Code and are required to have background checks performed by DFPS. Therefore, listed family homes should not be considered "unregulated" family homes.

Comment: One commenter stated that the Board does not want to include listed family homes as eligible providers.

Response: The Commission appreciates the comment and points out that §809.91(b) allows Boards the discretion to include or exclude listed homes as eligible providers.

Military deployment

Section 809.2(13) defines "military deployment," as it relates to the continuity of care for children with parents in the military, as 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. This includes deployed parent(s) in the regular military, military reserves, or National Guard.

This definition is modified from the repealed rules to include any military deployment away from the parent's military installation or place of residence, not just combat deployment as provided in the repealed rules. The intent is to encompass parents in the military who have been

assigned combat deployment as well as to parents who have military assignments to assist in national emergencies.

Parent

Section 809.2(14) defines a "parent" as 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* (in place of the parent). Unless otherwise indicated, the term applies to a single parent or both parents, and the term parent and parents are used interchangeably.

The definition is similar to the repealed definition of a parent except for the addition of the phrase "or person standing *in loco parentis*." The repealed definition of a parent requires legal guardianship, which is determined through a court order and may involve the termination of parental rights of the natural parent. The Commission recognizes that situations exist in which the child's natural parent (or adoptive parent or stepparent) may be unavailable to care for the child, making it necessary for the child to be cared for by an individual who is not the legal guardian. For example, the parent may be in the active duty military stationed away from the home and have placed the child under the temporary care of a relative. The parent also may be incarcerated and have placed the child under the temporary care of a relative. In these cases, the individuals caring for the child may require child care in order to work. The Commission also recognizes that there may be other situations that would require an individual who is not the child's legal guardian to become the child's primary caretaker.

Therefore, the Commission includes the phrase "or person standing *in loco parentis*" in order to allow individuals who are caring for a child while the child's parent is absent to meet the definition of a parent for child care eligibility purposes. CCDF regulations at 45 C.F.R. §98.16(f)(9) require states to define "*in loco parentis*" in the CCDF State Plan and the Commission intends to amend the CCDF State Plan to do so. This will provide the Commission with flexibility in modifying and expanding the specific cases in which a person who is standing in for the parent may meet the definition of a parent and be eligible for child care services. Additionally, the Commission will provide guidance to the Boards regarding the types of documentation necessary to determine that the individual meets the definition of "*in loco parentis*."

Comment: Six commenters supported the proposed change to the definition of "parent" to include a person standing *in loco parentis* and appreciated the flexibility to determine when a caretaker is acting *in loco parentis* so child care may be authorized in these situations. The commenters shared the view that it will greatly benefit many relatives who are not the legal guardians, but who are responsible for the care and supervision of children needing child care assistance. The commenters stated that this simple definition change streamlines the process from that which these individuals currently are experiencing.

Response: The Commission agrees with the comment and appreciates the support of the rules.

Comment: Three commenters requested clarification on the minimum documentation required to determine what qualifies as *in loco parentis*, and whether self-declaration is enough.

Response: The Commission agrees that clarification on the documentation required to determine *in loco parentis* is needed. Since September 2006, the Commission has accepted requests to waive the legal guardianship requirement in the now-repealed rules. Reviewing and acting on these requests has enabled the Commission to compile a list of the main categories of reasons for *in loco parentis* status and the minimum acceptable documentation and verification required to approve the requests. This information and guidance will be forwarded to the Boards as soon as possible after the rules become effective. Therefore, the Commission modifies the rule language to include that determinations of *in loco parentis* status shall be in accordance with Commission policies and procedures.

The Commission does not anticipate that self-declaration from the caretaker will be sufficient to determine *in loco parentis*. The Commission intends for the documentation to be independently verified by a third party such as another local, state, or federal government or other duly authorized individual to verify the status of the parent and the child.

Comment: One commenter agreed with adding a person standing *in loco parentis* to the definition of parent and asked that the Commission adopt a broad definition for this term to encompass "power of attorney" or a notarized written statement that is accepted by other state and federal agencies.

Response: The Commission appreciates the comment and is fully aware of the struggles and realities of family life when parents leave their child without leaving documentation that makes it easy for those who step in to care for the child to obtain needed child care assistance. However, the Commission also has a responsibility to balance this awareness with the need to ensure that waiver requests are not being used to circumvent the eligibility requirements or to abuse the system. To this end, the documentation requested helps to prove the caregiver is indeed the primary caregiver of the child and that the natural parent is absent and, in fact, is not available to care for the child. A power of attorney or a notarized written statement alone will not suffice to establish that the person claiming to be the caretaker indeed is the child's primary caregiver or serve as an independent verification of the reason for care and the parents' inability to care for their own child.

Protective services

CCDF regulations at 45 C.F.R. §98.16(f)(7) require the state to provide in the CCDF State Plan how the state defines the term "protective services" as it relates to the provision of child care.

The CCDF State Plan defines "protective services" as services provided when:

- the 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 the intervention of Child Protective Services (CPS);
- the child is in the managing conservatorship of DFPS and residing with a relative or a foster parent; or

—the child has been provided with protective services by DFPS within the prior six months and requires services to ensure the stability of the family.

Therefore, §809.2(15) defines "protective services" as set forth in the CCDF State Plan.

Provider

Section 809.2(16) defines the term "provider" as a:

- regulated child care provider;
- relative child care provider; or
- at the Board's option, a listed family home subject to health and safety requirements.

The general term "provider" is used in the new rules to signify the provisions that will apply to every eligible child care provider type. The repealed rules stipulate that a "provider" must have a "Provider Agreement" with the Board (or the Board's child care contractor). The repealed rules also include a definition of a "self-arranged provider." Self-arranged child care (SACC) providers do not require a Provider Agreement. Therefore, the Commission has removed from the rules the distinction between providers with an agreement and SACC providers.

However, the new rules retain the distinction between regulated child care providers and unregulated relative child care providers. The Commission retains this distinction in order to emphasize that parents have the choice of provider types allowed under the CCDF regulations at 45 C.F.R. §98.30, including eligible relatives.

Comment: Three commenters supported the change in the definition of the term "provider" and believe removing the distinction between a "provider" and a "SACC provider" will simplify the child care system.

Response: The Commission agrees with the comment and appreciates the support of the rules.

Regulated child care provider

Section 809.2(17) defines a "regulated child care provider" as a provider caring for an eligible child in a location other than the eligible child's own residence that is:

- licensed by DFPS;
- registered with DFPS;
- licensed by the Texas Department of State Health Services as a youth day camp; or
- operated and monitored by the United States military services.

This definition sets forth the same minimum requirements for providers as in repealed Chapter 809, with the added requirement—resulting from public comment—that the child care provider must be caring for the eligible child in a location other than the child's own residence. The requirement is consistent with the federal definitions of "center-based care," a "family child care provider," and a "group home child care provider" as stipulated in 45 C.F.R. §98.2.

Comment: One commenter stated that prohibiting relatives from receiving subsidies for caring for a child who resides with the relative (as provided in §809.91(e) of the adopted

rules) seems to conflict with what regulated providers are allowed to do. For example, the Board had a situation in which a parent who owned and operated a licensed child care facility was also eligible to receive child care services for her three children and the parent enrolled the children at her facility. The Board attempted to disallow this, however, Agency monitors stated that it was allowable and the Board was required to reimburse the parent for caring for her own child.

Response: The Commission appreciates the comment and modifies the rules to address the issue of providing care in a residence in which both the child and the child care provider resides. The intent of prohibiting subsidies to relatives who reside with the child is to ensure that public child care funds be used to assist parents who do not have access to child care in the home. The Commission believes that child care is available to the parent if the relative currently resides with the child. This prohibition does not extend to care provided at locations other than the child's and the provider's own residence. The Commission assumes that the child care facility referenced in the comment is a licensed child care center, which is, by DFPS requirements, not the child's own residence. The Commission assumes that, in the situation described, the parent does not have access to child care in the child's or the parent's residence; therefore, enrolling the child in the parent's child care facility is an appropriate use of Commission funds.

The Commission agrees with the premise of the comment that the prohibition against a relative provider and eligible child living in the same residence should be consistent in all home-based child care settings and not only in relative care settings. The prohibition against using Commission child care funds for care in locations that serve as both the provider's and the child's residence is consistent with CCDF regulations. CCDF regulations at 45 C.F.R. §98.2 define both "family child care provider" and "group home child care provider" as care "in a private residence other than the child's residence." Additionally, a "center-based child care provider" is defined in federal CCDF regulations as care provided "in a nonresidential setting."

Therefore, in order to address the commenter's concerns about providing a consistent standard for subsidizing care in the child's own residence for all eligible providers, including relative and regulated providers, the Commission modifies the definition of a regulated provider in §809.2(17) to include the requirement that the regulated provider must provide care in a location other than the child's own residence. This is consistent with the CCDF definition of family child care providers and group home child care providers, as well as the requirement that center-based care be in a nonresidential setting. Additionally, the Commission modifies the definition of a listed family home in §809.2(12) to state that the home must be a residence other than the child's own residence.

Relative child care provider

Section 809.2(18) defines a "relative child care provider" as an individual who is at least 18 years of age, and is, by marriage, blood relationship, or court decree, one of the following:

- the child's grandparent;
- the child's great-grandparent;
- the child's aunt;

- the child's uncle; or
- the child's sibling (if the sibling does not reside in the same household as the eligible child).

The list of eligible relative child care providers is based on the list of eligible providers in federal regulations at 45 C.F.R. §98.2. Federal regulations require that the child's sibling, who is also the relative child care provider, shall not reside in the same household as the eligible child. The Commission extends this restriction, with certain stated exemptions, for all relative child care providers, as discussed in the explanation of §809.91 (regarding the minimum requirements for providers).

Residing with

The CCDF regulations at 45 C.F.R. §98.16(f)(5) require the state to provide in the CCDF State Plan how the state defines "residing with" as it relates to the federal requirement that the child is residing with an eligible parent. The CCDF State Plan states that the child is "residing with" the parent if the child's primary place of residence is the same as the parent's primary place of residence. Section 809.2(19) defines the term "residing with" as set forth in the CCDF State Plan.

Teen parent

Section 809.2(20) defines a "teen parent" as an individual 18 years of age or younger, or 19 years of age and attending high school or the equivalent, who has a child. This definition is the same as in the repealed rules.

Working

The CCDF regulations at 45 C.F.R. §98.16(f)(6) require the state to provide in the CCDF State Plan how the state defines "working" as it relates to the federal requirement that the parent of the child is "working" (or attending a job training or educational program). The CCDF State Plan defines "working" as:

- an activity for which one receives monetary compensation such as a salary, wages, tips, and commissions; or
- an activity to assist individuals in obtaining employment including on-the-job training, job creation through wage subsidies, work experience, and community service programs.

Section 809.2(21) modifies this definition slightly and defines "working" as:

- activities for which one receives monetary compensation such as salary, wages, tips, or commissions;
- job search activities (subject to the requirements in §809.41(d)); or
- participation in Choices or Food Stamp Employment and Training (FSE&T).

The new definition includes job search activities. Additionally, §809.41(d) establishes certain limitations on the provision of child care during job search activities.

Comment: One commenter asked if the rule would apply to at-risk families or only those participating in other Commission-funded programs. If this new definition does apply to at-risk families, the commenter asked whether there was a time limit for parents to participate in

these work activities. Another commenter requested that additional clarification be provided regarding the term "community service programs."

Response: The Commission appreciates the comments and has modified the rule language to clarify the work activities. The rule language had included the definition of "working" as described in the CCDF State Plan. However, this definition included activities allowed for Choices participants, such as community service and subsidized employment. It is not the Commission's intent that these activities be considered "working" for non-Choices parents. The Commission modifies the language to state that participation in Choices or FSE&T meets the definition of "working."

Comment: Two commenters requested clarification on job search as a work activity. One of the commenters specifically asked whether parents would be allowed to come into at-risk child care only on a two- or four-week job search since job search is now clearly defined as a work activity or if they will be required to meet one of the other defined work or training activities when they initially come into child care.

Response: The job search provisions in §809.41(d)(1) state that CCDF child care (i.e., funds allocated to Boards pursuant to §800.58 of this title) for job search activities may be available for currently enrolled children in order for parents to search for work because of interruptions in the parents' employment.

Finally, the definitions of "Board" and "TANF" (Temporary Assistance for Needy Families) are not included in the new rules because each is defined in Chapter 800.2 of this title; therefore, it is duplicative to redefine the terms in this chapter.

§809.3. Waiver Request

Section 809.3 retains the provision in repealed Chapter 809 allowing the Commission to waive child care rules upon request from a person directly affected by the rule. The criteria for granting the waiver request also remain the same. The Commission may grant the waiver if the Commission 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.

Comment: Four commenters asked for the waiver request rule to be clarified to state that a parent must be determined ineligible before requesting a waiver.

Response: The Commission disagrees that the parent should be determined ineligible prior to submitting a waiver. Such a change would imply that parents may submit the waiver as part of or in conjunction with the appeal of the determination of ineligibility. The waiver provision should not be used for parents to appeal a determination of ineligibility.

However, the Commission assumes the concern is that after an individual submits a request to waive a certain rule to the Commission and the Commission approves it, the child care contractor determines that the individual is ineligible due to not meeting the income limits or

is not working or in training or education. Therefore, the Commission has modified the rule language to require that prior to a parent submitting a waiver request, the parent must have been determined to meet the minimum eligibility requirements in §809.41(a). Specifically, the parent's child must be under 13 years of age (or at the option of the Board be a child with disabilities under the age of 19); the parent's income must be below the Board's income limit; and the parent must be working or attending a job training or educational program.

SUBCHAPTER B. GENERAL MANAGEMENT

The Commission adopts new Subchapter B, General Management, as follows:

Subchapter B contains the general management provisions required for a Board to plan, manage, and administer child care services. Similar to repealed Subchapter B, new Subchapter B contains rule provisions related to Texas Workforce Development Board Plans (Board plans), policies, coordination of services, consumer education, quality improvement activities, and the rules for securing local match for CCDF. Subchapter B also combines many of the provisions related to Board management of child care services found throughout repealed Chapter 809. These provisions include the maintenance of a waiting list for child care services, assessing the parent share of cost, and provider reimbursements.

§809.11. Board Responsibilities

Section 809.11 identifies the specific responsibilities of a Board in administering child care services.

Section 809.11(a) states that a Board is responsible for the administration of child care. The Commission retains this provision from repealed Chapter 809, but removes the identification of a Board as "certified" and the phrase "with a local plan approved by the Governor" as this language is included in the definition of a Board in Chapter 800 of this title.

Section 809.11(b) requires a Board to ensure that access to child care services is available through all Texas Workforce Centers within a workforce area. This provision and purpose is retained from repealed Chapter 809 with an additional clarification that a Board shall ensure access to child care services through Texas Workforce Centers.

Section 809.11(c) identifies child care services as support services for workforce employment, job training, and services under Texas Government Code, Chapter 2308 and Chapter 801 of this title. This provision and purpose is retained from repealed Chapter 809, however, the Commission adds language stating that child care is a "support service" for employment and workforce services. The Commission's intent is to emphasize that child care is not a workforce and job training service in itself, but is an important support for individuals participating in those services.

Section 809.11(d) requires a Board to give the Commission, upon request, access to child care administration records and submit any related information for review and monitoring pursuant to Commission rules and policies. This provision and purpose is retained from repealed Chapter 809 without change.

Comment: Three commenters questioned the rule language in §809.11(c) stating that a Board shall provide child care services as a support service for workforce employment, job training, and services under Texas Government Code, Chapter 2308 and Chapter 801 of Commission rules. One commenter stated that most parents receiving the subsidy are not participating in any other workforce program. Two other commenters stated that the language implies that workforce clients, such as those participating in WIA, are a priority; however, they are not included as a priority in §809.43.

Response: The Commission appreciates the comments and acknowledges that the language could have been interpreted to mean that participants in workforce services receive first priority. That is not the Commission's intent. The repealed language stated that child care services are "part of" workforce training services. The Commission's intent was to modify this language slightly by stating that child care services are "a support service to" workforce training services. The Commission has clarified this language in the adopted rules.

Comment: Two commenters requested clarification on whether funding of activities for quality improvement or support to Texas Rising Star (TRS) or State Center for Early Childhood Development (State Center) providers is considered supportive services.

Response: The primary purpose of CCDF funds is to serve as a support service that allows parents who do not have child care to become and remain employed and enhance their ability to participate in training or education activities leading to employment. The fact that some CCDF funds are used to encourage and increase the quality of care provided does not change the overall function of child care as a support service for working parents or parents participating in education or training activities.

§809.12. Board Plan for Child Care Services

Section 809.12 identifies the requirements and goals of a Board's plan for child care services. In repealed Chapter 809, this section is titled "Board Planning and Policies for Child Care Services" and includes subsections related to Board planning, Board policies, and Board coordination activities with other child care and early development programs. The new rules maintain the same purpose but delineate these provisions into three sections.

Section 809.12(a) states that a Board shall 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. These provisions are the same as in the repealed rules.

Section 809.12(b) provides the goal of the Board plan. The goal, as in the repealed rule, 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.

Section 809.12(c) requires Boards to design and manage the Board plan to maximize the delivery and availability of safe and stable child care services to assist families who are seeking to become independent from, or who are at risk of becoming dependent on, public assistance while

parents are either working or attending job training or educational programs. This provision is unchanged from the repealed rules.

Comment: Five commenters asked to have the term "quality" removed from §809.12(c) since Boards are not funded for quality improvement activities.

Two of the commenters added that placing children into any licensed child care center does nothing to improve the quality of child care. The availability of child care is a separate issue from quality child care.

Response: The Commission disagrees with the comment that the Boards are not funded for quality improvement activities. While it is true that the Texas Legislature has emphasized that Commission-funded child care be focused on providing direct child care, as long as performance targets for direct care are met, §809.16 allows for the funding of nondirect care quality improvement activities designed to improve school readiness, early learning, early literacy, and Texas Information and Referral Network/2-1-1 Texas (2-1-1 Texas) child care referral efforts.

However, the Commission understands that the term "quality child care" can have many different interpretations. To some, a quality child care facility is one in which strict standards regarding child-to-adult ratios are met. To others, especially parents who currently have informal and sporadic child care arrangements, a quality child care facility could be any regulated provider.

With these various interpretations of the term "quality," the Commission agrees that including the term may be misleading and has removed the term from the adopted rules. The intent of the provision is to state that Boards shall design and manage their Board plans to maximize the delivery of safe and stable child care services while the parents work or attend job training or education activities. The rule language has been modified to reflect this intent.

Comment: One commenter stated that the word "quality" should be removed because Boards have been discouraged from sanctioning providers who are not in compliance with the minimum standards of TDFPS Child Care Licensing.

Response: Boards are required to ensure that the program and fiscal integrity of the system is maintained so the state can make the most efficient and effective use of its resources. However, sanctioning providers who are in noncompliance with certain minimum DFPS standards is not within the Boards' purview. Furthermore, to help them make informed choices, parents have access to the compliance history of providers through consumer education. If parents choose to place their child in a facility, they should be given that option. The Commission points out, however, that §809.91(d) provides if a Board or the Board's child care contractor, in the course of fulfilling its responsibilities, gains knowledge of any possible regulatory violations, the Board or its child care contractor shall report the information to the appropriate regulatory authority.

§809.13. Board Policies for Child Care Services

Section 809.13 relates to a Board's policies for child care services.

Section 809.13(a) requires Boards to develop, adopt, and modify policies for the design and management of the delivery of child care services in accordance with the provisions in Chapter 801 of this title. Section 801.51 requires that Boards adopt policies in a public process in accordance with the requirements of the Open Meetings Act (Texas Government Code, Chapter 551). This requirement is retained from repealed Chapter 809. The Commission emphasizes the importance of public input and access to Board policies, especially as they relate to the Board's eligibility requirements, parent reporting and documentation requirements, and the requirements for child care providers.

Section 809.13(b) requires a Board to 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. The purpose of this provision is unchanged from the repealed rules.

Section 809.13(c) requires a Board to submit any modifications, amendments, or new policies to the Commission no later than two weeks after adoption of the policy by the Board. This language is identical to the language in the repealed rules. The intent of this provision is to allow the Commission to maintain a complete record of Board child care policies in order to research current practices of the Boards and to include current Board policies, as necessary, in applicable federal or state reports. It is not the intent of the Commission to approve Board policies.

Section 809.13(d) lists required Board policies and the specific child care rule requiring the policy. The policies relate 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) the maintenance of a waiting list as described in §809.18(b);
- (3) assessing a parent share of cost as described in §809.19, including the reimbursement of providers when a parent fails to pay parent's share of cost;
- (4) the maximum reimbursement rates as provided in §809.20, including policies related to reimbursement of providers who offer transportation;
- (5) family income limits as described in Subchapter C (related to Eligibility for Child Care Services);
- (6) the 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, §809.50, and §809.51;
- (8) time limits for the provision of child care while the parent is attending an educational program as described in §809.41(b);
- (9) the frequency of eligibility redetermination as described in §809.42(b)(2);
- (10) Board priority groups as described in §809.43(a);
- (11) the transfer of a child from one provider to another as described in §809.71(b)(2);
- (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)(3), 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 rates and the Board's reimbursement rate as provided in §809.92(d); and
- (15) procedures for investigating fraud as provided in §809.111.

Required Board policies are found throughout the repealed rules with no single place in rule that itemizes the required policies. New §809.13(d) provides a complete list of required child care policies cited throughout the chapter.

Comment: Two commenters supported the clarification and consolidation of the required Board policies in §809.13(d) and considered it helpful to the Boards.

Response: The Commission agrees with the comment and appreciates the support of the rules.

Comment: Three commenters recommended the word "develop" be stricken from §809.13(a) because staff develops the policies based on federal and state regulations then makes recommendations to Boards.

Response: The Commission disagrees that the word "develop" should be stricken. The reference to "Board" includes the staff members on whom the Board members rely to prepare the research and make policy recommendations.

Comment: One commenter stated that it also would be beneficial for each Board area to have the flexibility to modify its policies.

Response: Boards do have the flexibility to modify policies. Such flexibility is expressly provided in §809.13(a), which states that "A Board shall develop, adopt, and *modify its policies...*"

§809.14. Coordination of Child Care Services

Section 809.14 relates to the coordination of child care services in order to identify entities that a Board must coordinate with when developing its Board plan and policies to design and manage child care services.

Section 809.14(a) requires a Board to 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 to maintain written documentation of coordination efforts. This provision is unchanged from the repealed rules.

Section 809.14(b) requires that a Board shall coordinate with school districts and Head Start and Early Head Start program providers to ensure, to the greatest extent practicable, that full-day,

full-year child care services are available to meet the needs of low-income parents who are working or attending a job training or educational program.

The Commission includes this provision in order to implement the intent of the 78th Texas Legislature, Regular Session (2003) enacted in Senate Bill (SB) 76 and by the 79th Texas Legislature, Regular Session (2005) in SB 23. These two actions of the Legislature created, then subsequently amended, §29.158 of the Texas Education Code to require coordination of services among the Commission's subsidized child care system and school districts and local Head Start or Early Head Start programs.

Although it is a new provision in rule, it is not a new requirement placed on Boards. In December 2003, the Commission issued a Workforce Development (WD) Letter requiring Boards to coordinate with school districts and local Head Start or Early Head Start programs, to the greatest extent practicable, to provide full-day and full-year child care services to meet the needs of low-income working parents.

The Commission received no comments on this section.

§809.15. Promoting Consumer Education

Section 809.15 relates to Promoting Consumer Education and provides the consumer education information that Boards are required to provide parents pursuant to federal CCDF regulations at 45 C.F.R. §98.33. This section retains the provisions from the repealed rules without substantive changes.

Section 809.15(a) requires a Board to promote informed child care choices by providing consumer education information to parents who are eligible for child care services; parents who are placed on a Board's waiting list; parents who are no longer eligible for child care services; and applicants who are not eligible for child care services.

Section 809.15(b) requires that the consumer education information include—at a minimum—information about 2-1-1 Texas; the Web site and telephone number of DFPS to allow parents to obtain information on health and safety requirements; a description of the full range of eligible child care providers; and a description of programs available in the workforce area relating to school readiness and quality rating systems.

Section 809.15(c) requires Boards to cooperate with HHSC to provide 2-1-1 Texas with information on child care services.

Comment: Six commenters asked that the rule be amended to specify that Boards need only provide a parent a copy of the consumer education guide once per year and upon request thereafter due to the number of clients who revolve in the system and the operational costs of providing brochures.

Response: The Commission disagrees that the rule should specify the distribution frequency of the consumer education information. Each Board has the flexibility to determine the

frequency of the distribution. There is nothing in rule language to imply that the information must be provided each and every time a parent's eligibility is redetermined. The Board has the discretion to provide the information during the parent's initial eligibility and once a year thereafter. However, the Commission does not intend that the information be provided only on request.

§809.16. Quality Improvement Activities

Section 809.16 relates to allowable quality improvement activities. The provisions in this section are retained from the repealed rules without substantive changes.

Section 809.16(a) provides that nondirect care quality improvement activities shall be used only for collaborative reading initiatives; school readiness, early learning, and literacy; or local-level support to promote child care consumer education provided by 2-1-1 Texas. The language also stipulates that this section applies to CCDF funds allocated by the Commission pursuant to §800.58 of this title, and includes local public transferred funds and local private donated funds.

Section 809.16(b) states that allowable quality activities may include professional development and training for child care providers, or the purchase of curriculum and curriculum-related support resources for child care providers.

Section 809.16(c) states that allowable quality activities may be designed to meet the needs of children in any age group eligible for child care services, including children with disabilities.

Section 809.16(d) states that in funding quality improvement activities, a Board may give priority to child care facilities that are participating in the integrated school readiness models developed by the State Center; implementing components of school readiness curricula as approved by the State Center; or participating in or voluntarily pursuing participation in TRS Provider Certification.

Section 809.16(e) states that expenditures certified by a public entity as provided may include expenditures for any quality improvement activity described in 45 C.F.R. §98.51.

The Commission received no comments on this section.

§809.17. Leveraging Local Resources

Section 809.17 relates to leveraging local resources to match federal funds. The section identifies the types of funds that are acceptable as match and provides instructions on certifying, monitoring, and submitting matching funds to the Commission. The provisions in this section—with the following exception—have not changed substantially from the repealed rules.

The Commission does not include language from the repealed rules that requires a Board to secure private and public funds. The Commission encourages rather than requires Boards to secure local match in order for Boards to receive all available federal matching funds. Boards are not required to secure local funds in order to receive certain child care funds. However, a certain amount of federal matching funds allocated to a Board is available to the Board only if it

secures the necessary local matching funds; otherwise, the funds will be deobligated from the Board and reallocated to Boards that are able to secure the necessary matching funds.

Section 809.17(a) encourages Boards to secure local public and private funds for the purpose of receiving matching federal funds. Subsection (a) also encourages Boards to secure additional local funds in excess of the amount required to match federal funds allocated to the Boards in order to maximize their potential to receive additional federal funds should they become available. Finally, this subsection states that a Board's performance in securing and leveraging local funds for match may make the Board eligible for incentive awards.

Section 809.17(b) relates to the types of funds the Commission accepts as local match. Section 809.17(b)(1) states that the Commission accepts as local match funds from a private entity that are donated without restrictions that require their use for a specific individual, organization, facility, or institution; or an activity not included in the CCDF State Plan or allowed under this new chapter. Additionally, the funds cannot revert back to the donor's facility or use; cannot be used to match other federal funds; and must be certified by both the donor and the Commission as meeting these adopted requirements. These provisions mirror the federal match requirements for CCDF in 45 C.F.R. §98.53(e)(2).

Section 809.17(b)(2) relates to the Commission's acceptance of funds from a public entity that are transferred without restrictions requiring their use for an activity not included in the CCDF State Plan or allowed under this chapter. Additionally, the funds cannot be used to match other federal funds, and cannot be federal funds unless the funds are authorized by federal law to be used to match other federal funds. These provisions mirror the federal match requirements for CCDF in 45 C.F.R. §98.53.

Section 809.17(b)(3) relates to the Commission's acceptance of funds by a public entity that certifies that the expenditures are for an activity included in the CCDF State Plan or allowed under this chapter; are not used to match other federal funds; and are not federal funds unless the funds are authorized by federal law to be used to match other federal funds. These provisions mirror the federal match requirements for CCDF in 45 C.F.R. §98.53(e)(1).

Section 809.17(c) states that a Board must 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.

Section 809.17(d) relates to completing the local match process. This subsection requires a Board to ensure that private donations and public transfers of funds are submitted and paid to the Commission and that public certifications are considered to be complete when a signed written instrument is delivered to the Commission that reflects that the public entity has expended a specific amount of funds on eligible child care services.

Section 809.17(e) states that a Board shall monitor the funds secured for match.

Comment: Six commenters noted that §809.17(a) provides that a Board's performance in securing local match may make the Board eligible for incentive awards. However, they also

noted that they were not aware of the Commission having awarded any Boards with incentive funds.

Response: The Commission recognizes and appreciates the Boards' efforts to secure local match. Although an incentive award always may not be possible due to budget constraints, the ability of the Boards to secure the local match also draws down federal money, which in turn enables the Boards to provide a broad range of quality services to their respective areas.

§809.18. Maintenance of a Waiting List

Section 809.18 relates to the maintenance of a waiting list to provide child care services, and the requirement that policies be established to maintain the list.

Section 809.18(a) states that a Board shall ensure that a list of parents waiting for child care services, because of lack of funding or lack of providers, is maintained and available to the Commission upon request. This provision is retained from the repealed rules except for the removal of "self-arranged providers" as a category of providers. In addition, the requirement to specify the reason for being on the waiting list is not included because the Commission believes that it is unnecessary.

Section 809.18(b) requires that Boards establish a policy for the maintenance of a waiting list. Section 809.18(b)(1) states that a Board shall establish a policy for the maintenance of a waiting list that includes the process for determining that the parent is potentially eligible for child care services before placing the parents on the waiting list. The Commission believes that it is important to ensure that parents have a reasonable expectation that they could be eligible for child care services if funding becomes available. Placing parents on the Board's waiting list without conducting a basic, but informal, review of the potential eligibility of the parent may lead to a false expectation that if the parent is placed on the waiting list, then the parent is eligible for child care services.

The process for reviewing the potential eligibility of a parent prior to placing the parent on the waiting list is to be determined by the Board. The Commission does not require that the eligibility screening include verifying or documenting eligibility. The Board's screening process may simply require the parent to provide an estimate of family income and family size, the age of the child needing care, and the parent's work, training, or educational situation. Additionally, the Commission encourages Boards to partner with their local 2-1-1 Texas provider to coordinate the screening of potential eligibility for child care services.

Section 809.18(b)(2) requires that a Board establish a policy for the maintenance of a waiting list to identify the frequency with which the parent information is updated and maintained on the waiting list. Boards should develop such a policy in order to inform parents that information regarding their interest in child care and assessing for basic eligibility may be required to be updated on a regular basis.

Comment: One commenter stated his Board does not have a waiting list at this time and has always conducted a preliminary screening for eligibility before placing someone on the waiting list.

Response: The Commission commends the initiative and proactive measures to efficiently manage the number of children on a waiting list for child care.

§809.19. Assessing the Parent Share of Cost

Section 809.19 relates to assessing the parent share of cost to identify the criteria that a Board must use when assessing, reducing, and providing exemptions from the parent share of cost. These provisions are largely retained from the repealed rules.

Section 809.19(a)(1) states that for CCDF funds allocated by the Commission pursuant to its allocation rules in §800.58 of this title, including local public transferred funds and local private donated funds, a Board shall set a parent share of cost policy that results in a parent share of cost being assessed to all parents, except for the exemptions set out in paragraph (2) of this subsection. Additionally, the rules state that the parent share of cost should be a sliding fee scale based on the family's size and gross monthly income, and it may also consider the number of children in care. However, the parent share of cost cannot exceed the cost of care.

These provisions are largely retained from the repealed rules. However, the Commission has inserted the words "sliding fee scale," which were omitted from the repealed rules. The Commission adds this provision in the parent share of cost in order to align Commission rules with federal Child Care and Development Block Grant (CCDBG) law and federal CCDF regulations at 45 C.F.R. §98.42.

Federal child care law at 42 U.S.C. 9858c(c)(5) requires states to "establish and periodically revise, by rule, a sliding fee scale that provides for cost sharing by the families that receive child care services" under CCDBG. The CCDBG law, 42 U.S.C. 9858n(12), defines a sliding fee scale as "a system of cost sharing by a family based on income and size of the family." This requirement is implemented in CCDF regulations at 45 C.F.R. §98.42(b), which states that the "sliding fee scale(s) shall be based on income and the size of the family and may be based on other factors as appropriate."

The repealed Commission rules include the federal requirement that a Board's parent share of cost policies be based on family income and family size as well as allow consideration for the number of children in care. The rules, however, do not specify a sliding fee scale as stipulated in the federal CCDBG law and CCDF regulations. Most Boards use a relatively flat percentage of family income—typically nine percent—to determine the parent share of cost for one child. Most Boards increase this percentage to 11% of the family income when two or more children are in care. Furthermore, most Boards do not include family size as a factor unless the family size is seven members or more.

The Commission acknowledges that the Boards' parent share of cost policies have been in the approved CCDF State Plan for several years. Therefore, the Commission is not requiring Boards to change their parent share of cost policies as a result of this rule change. The rule change is designed to align the language in Commission rules with the federal regulatory language.

However, the Commission is concerned that improvements be made to the parent share of cost policies. The intent of requiring a sliding fee scale is to ensure that families at very low incomes pay a lower percentage of their income than families at the higher end of the income eligibility limit. Additionally, increasing the share of cost for families at the higher income levels will better prepare these families to pay for child care if they experience wage increases that would make them ineligible for child care services.

Basing the parent share of cost on a relatively flat percentage of income, and starting that percentage at 11% for two children in care, may be particularly burdensome for families transitioning off Choices. For example, because Commission rules exempt Choices families from paying a parent share of cost, a former Choices family will transition from paying nothing for child care while participating in Choices to paying up to 11% of the family income once the family is no longer eligible for Choices child care. As a result, many former Choices parents may forego Transitional child care services and may become more at risk of returning to TANF.

However, the Commission understands that requiring Boards to adopt more gradual sliding fee schedules could affect the Commission's performance measures related to the average cost per child by potentially decreasing the total amount of parent share of cost that a family at low income would pay. Additionally, the change would require substantial changes to the child care automation systems. Therefore, the Commission has determined that further analysis of the impact of such a change in rule should be conducted before Boards are required to modify their parent share of cost policies to align more closely with the sliding fee scale based on family income and family size requirements.

The Commission will work closely with Boards to determine and analyze the potential impact of using a gradual sliding fee schedule, specifically as it affects:

- family resources and self-sufficiency;
- the Commission's legislative cost per child performance measures; and
- the Commission's child care automation systems.

The Commission notes, however, that new §809.19(b) retains the provision in the repealed rules that child care funded through non-CCDF sources shall include a sliding fee scale that may be the same or different from the scale in §809.19(a).

Section 809.19(a)(2) states that parents who are participating in Choices, in FSE&T services, or parents who have children who are receiving protective services are exempt from paying a parent share of cost.

Section 809.19(a)(3) provides that teen parents (who are not in a group that is specifically exempted from a parent share of cost) are assessed a parent share of cost. The rule also contains the provision in the repealed rules that the teen parent's share of cost is based solely on the teen parent's income. However, the adopted rules add language to state that the parent share of cost also be based on the teen's family size as defined in §809.2(8). This provision is also added to clarify that the income and family size of the parents of the teen parent are not included in assessing the teen parent's share of cost.

Section 809.19(b) provides that for child care services funded from sources other than CCDF, a Board shall set a parent share of cost policy based on a sliding fee scale. The fee may be the same as or different from the provisions contained in §809.19(a). This provision is retained from the repealed rules.

Section 809.19(c) states that a Board shall establish a policy regarding reimbursement of providers when parents fail to pay the parent share of cost. This provision is retained from the repealed rules.

Section 809.19(d) states that a 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.

Section 809.19(e) states that the Board or its child care contractor cannot waive the assessed parent share of cost under any circumstances. The rule also clarifies that this provision does not apply to parents who are exempt from being assessed a parent share of cost as described in §809.19(a)(2).

Section 809.19(f) states that if the parent share of cost based on family income and family size is calculated to be zero, the Board or its child care contractor must not charge the parent a minimum share of cost. This is a new provision in rule. However, it is not a new requirement. The policy is based on previous Commission guidance provided to the Boards through Technical Assistance (TA) Bulletin #60, issued April 7, 2004. This language is added to clarify that although all parents should be assessed a parent share of cost based on income and family size, if that assessment is calculated to be zero because the family has no allowable documented income, then the parent should not be required to pay a minimum parent share of cost. Parents, especially teen parents and students who have no documented income, are not receiving TANF or participating in Choices and, therefore, are not exempt from the parent share of cost, are most at risk of going on public assistance. The Commission believes that charging these parents a parent share of cost will place an undue hardship on the family and make the family more vulnerable to going on public assistance.

Comment: Six commenters supported the Commission's efforts in ensuring full compliance with federal law and in conducting a thorough analysis of the potential impact before modifying the parent share of cost policies.

Response: The Commission appreciates the support of the rules.

Comment: Five commenters asked the Commission to consider automation support changes to the local application for the Boards to assist in analyzing the impact of changes to their parent fee policy. One commenter believed that a change to the parent share of cost would be acceptable as long as there is a way to pick the appropriate wages and percentages in the automated local application for the workforce area and to make this change to existing clients at recertification would make it more manageable.

Response: The Commission intends to conduct a thorough analysis of the potential impact of using a gradual sliding fee schedule on areas such as family resources and self-sufficiency, the legislative cost per child performance measures, and the child care automation systems. Naturally, this will include discussion with Boards and their staff to look at the affected areas. This analysis will be done before the Boards are asked to modify their policies.

Comment: One commenter believed the current parent share of cost scale used by the Board's contractor to assess eligibility is a "sliding fee scale" since it varies depending on the income level and number of children and takes into account other factors such as participation in certain programs or those who have just entered the workforce or have large families. The commenter stated that changing the fee structure would result in much confusion and cost to reassess parents' fees, and likely result in fewer children being served.

Response: The Commission's intent is to align its rules with the federal law and regulatory language. Although this Board may have a more gradual scale based on the family income and adjust the scale based on the number of children in care, the Board policy does not base the scale on the family size, which is a requirement of the CCDF regulations. The Commission appreciates the commenter's concerns about the problems that would result from the change and reiterates that it will conduct a thorough analysis of the issue to assess the potential impact to the Board, parents, system application, and others.

Comment: One commenter suggested that §809.19(a)(1)(B) should be reworded to state that the Board's parent share of cost policy should result in the parent share of cost: "(B) Being an amount based on a sliding fee scale which takes into account the family's size and gross monthly income (as defined in §809.44) . . ."

Response: The Commission disagrees that the rule language should be changed to include that the parent share of cost *takes into account* the family size and gross monthly income. As mentioned previously, the federal regulations at 45 C.F.R. §98.42 are clear and state that the parent share of cost shall be *based on* the income and size of the family. The federal regulations do not state that these criteria should simply be taken into account. The Commission rule language should, at a minimum, follow the federal requirements.

However, the Commission agrees with the suggestion that the rule language should state that the parent share of cost should result in "an amount" determined by a sliding fee scale rather than result in a sliding fee scale. The intent of the rule is that the share of cost results in an "amount." Therefore, the Commission modifies the rule language to clarify this point.

Comment: Three commenters requested clarification on when and how DFPS would assess a parent's share of cost as provided in §809.19(a)(2)(C). One commenter added that if the Commission is now requiring Boards to assess a parent's share of cost for DFPS children then the Commission must increase the amount of administrative and operational funding given to Boards.

Response: The Commission emphasizes that this language has not changed from the repealed rules. It is entirely up to DFPS to include an assessment of parent cost when it

makes a referral. Additionally, the language is clear that the assessment is to be done by DFPS and not the Board's child care contractor.

Comment: Four commenters requested that the Commission remove the language in §809.19(c) stating that a Board shall have a policy regarding reimbursement of providers when parents fail to pay the parent share of cost. One commenter stated that, at the direction of the Commission, some Boards have changed their operations so that providers are not reimbursed if parents fail to pay their share of cost.

Response: The Commission appreciates the comments; however, the Commission does not agree that the language should be removed. The rule language requires Boards to have a policy regarding reimbursement of providers when parents fail to pay the parent share of cost. This rule does not prescribe what that policy should be. Additionally, the Commission is not aware of providing direction to the Boards regarding this issue. The Board policy could state that providers are not reimbursed if a parent fails to pay the parent share of cost. However, a Board could decide to reimburse providers if the parent fails to pay the parent share of cost.

Comment: Four commenters recommended that the language in the repealed §809.46(d)—that providers are solely responsible for collecting the parent's share of cost—be reinstated.

Response: The Commission agrees that providers should be responsible for collecting the parent share of cost. The language in repealed §809.46(d) is included in adopted §809.92(a)(1). Even though the statement that the provider has the "sole" responsibility has been removed from rule language, the intent and effect of the language in §809.92(a)(1) remain the same. Providers have the responsibility in Commission rules to collect the parent share of cost. The repealed rules placed this provider responsibility in the subchapter related to general Board responsibilities. Thus, it was necessary to indicate clearly in the repealed rules that the providers had the "sole" responsibility for collecting the parent share of cost in order to clarify that this was not the responsibility of the Board or the child care contractor. The new rules place this responsibility in Subchapter E (Requirements to Provide Child Care), thereby clearly indicating that this is the responsibility of the provider.

§809.20. Maximum Provider Reimbursement Rates

Section 809.20, relating to maximum provider reimbursement rates, specifies the criteria to be used in establishing maximum reimbursement rates for child care providers. The provisions in this section are retained from the repealed rules.

Section 809.20(a) requires that Boards establish maximum reimbursement rates based on local factors, including a market rate survey provided by the Agency. The Commission retains the provision that maximum reimbursement rates should be set at a level 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.

Section 809.20(b) provides that Boards shall establish graduated reimbursement rates for child care providers participating in integrated school readiness models developed by the State Center and Texas Rising Star Providers.

Section 809.20(c) provides that the minimum reimbursement rates established under §809.20(b) must be at least five percent greater than the maximum rate established for providers not meeting the requirements of §809.20(b) for the same category of care up to, but not to exceed, the provider's published rate.

Section 809.20(d) states that a Board or its child care contractor must ensure that providers who 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. In addition, a Board is required to ensure that a professional, who is familiar with assessing the needs of children with disabilities, certifies the need for the additional rate. The Commission further adds that the higher rate also may be paid in order that a provider may obtain equipment necessary for the care of a child with disabilities.

Section 809.20(e) allows a Board to determine whether to reimburse providers who offer transportation as long as the combined total of the provider's published rate, plus the transportation rate, does not exceed the maximum reimbursement rate established in subsection (a) of this section.

Comment: One commenter suggested that §809.20(e) and §809.20(f) be combined to state that a Board may determine whether to reimburse providers who offer transportation, as long as the combined total of the provider's published rate, plus the transportation rate, does not exceed the maximum reimbursement rate established in subsection (a) of this section.

Response: The Commission agrees that this suggestion streamlines the rule language and has modified it accordingly.

Comment: One commenter stated the market rate survey for the commenter's workforce area has some toddler rates and preschool rates that are higher than infant rates. The commenter stated that those rates were not correct. The commenter also stated that the methodology used for the market rate survey "lacks a lot."

Response: The Commission understands the concerns expressed. Although the comment did not elaborate on what is lacking in the survey methodology, the Commission reviews the market rate survey methodology prior to the survey and often makes adjustments. However, the Commission disagrees that the survey does not reflect the child care market in the workforce area. Although the commenter's workforce area did have a few rates slightly higher for toddlers and preschool than for infants—primarily part-time rates at the 65th to 75th percentile—the Commission points out that all of the average rates for toddlers and preschool children in the workforce area are lower than the average rates for infants for each child care facility type in the workforce area.

Comment: Seven Boards commented on the "equal access" language in §809.20(a). Some of the commenters asked for clarification on the definition of "equal access" in the local market. The commenters stated that the Boards are unable to comply with the equal access requirement or performance measures if they have no control over the number of units that are assigned to them, nor is it possible to establish accurate maximum rates based on local factors or the market rate survey because of the limitations placed on the Boards in increasing provider rates. The Boards pointed to the comment in the preamble of the federal regulations that states if rates are set at the 75th percentile then the Administration for Children and Families (ACF) would consider this equal access. Using the Commission-funded market rate survey as a guide, the Boards are significantly below the 75th percentile that ACF considers necessary to allow for equal access.

Response: The Commission appreciates the request for clarification on "equal access" as it relates to provider reimbursement rates. CCDF regulations at §98.43(b) require a Lead Agency to provide a "summary of facts relied on to determine that its payment rates ensure equal access" to subsidized child care services comparable to services provided to families not receiving child care subsidies. The regulations continue that, at a minimum, the Lead Agency shall include the following when making this determination:

- (1) How a choice of the full range of providers (e.g., center, group, family, and in-home care) is made available;
- (2) How payment rates are adequate based on a local market rate survey; and
- (3) How copayments based on a sliding fee scale are affordable.

Therefore, according to the CCDF regulations, reimbursement rates alone are not the deciding factor in determining equal access—but are only one factor in determining equal access. Providing parents with the full range of providers as well as having affordable copayments based on a sliding fee scale must also be considered in determining equal access.

Regarding the third criterion for determining equal access—how copayments based on a sliding fee scale are affordable—the Commission points to the previous discussion in §809.19 of the rules related to Boards establishing a sliding fee scale.

Regarding the first criterion for determining equal access—the choice of the full range of providers—the Commission is committed to providing parents with the full range of provider categories (defined in CCDF regulations at 45 C.F.R. §98.2 as center-based child care, group home child care, family child care, and in-home care), and to demonstrating that parents have access to the full range of providers. In the 2005–2006 CCDF State Plan, the Commission noted that 50% of all regulated facilities in the state provided care for Commission-subsidized children. In FY'06, this percentage increased slightly to 51%. The Commission also demonstrates that parents, in fact, have been accessing all types of providers. In FY'06, 73% of licensed child care centers, 58% of all licensed child care homes, and 15% of all registered child care homes cared for Commission-subsidized children. (The Commission believes that the relatively low percentage of registered child care homes is a function of the overall number of these providers, and not related to lack of access to these facilities. In fact, the data show that parents seem to be choosing licensed centers over registered homes.)

When evaluating equal access, the Commission encourages Boards to analyze and monitor these percentages for their workforce areas to determine that parents have access to each provider type.

Regarding the second criterion for determining equal access—adequate payment rates based on a market rate survey—the Commission also points to the lengthy discussion of this issue in the preamble to the CCDF Final Rule, 45 C.F.R. Parts 98 and 99 (*Federal Register*, Vol. 63., No. 142, July 24, 1998, pages 39957–39960). The discussion in the preamble addresses three topics:

- (1) Reimbursement rates should take into account variations in the cost of providing care in different child care settings, different age groups, and to children with special needs;
- (2) Prohibiting reimbursement rates based on a family's eligibility or financial status; and
- (3) Suggesting a "benchmark for states to consider" that rates set at the 75th percentile of the market rate would be considered as providing equal access.

The Board reimbursement rates clearly take into account variations in the cost of providing care in different settings and to different age groups. Further, Commission rules at §809.20(d) provide for increased rates for providers caring for children with special needs. Additionally, Boards do not have reimbursement rate policies that establish different rates based on a family's income or eligibility status (e.g., Choices or FSE&T). As a result, the Commission believes that equal access is provided using these criteria.

The Commission believes that the "suggested benchmark" of the 75th percentile is provided only to indicate that payment rates set at this level would be considered as providing equal access. It should not, however, be interpreted to mean that the 75th percentile should be the sole standard in determining equal access.

Therefore, in the context of the entire discussion related to equal access in the preamble to the CCDF regulations, the "suggested benchmark" of the 75th percentile is only one part of how a state may determine how its reimbursement rates provide equal access to child care services.

§809.21. Determining the Amount of the Provider Reimbursement

Section 809.21 states 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 parent share of cost assessed and adjusted when the parent share of cost is reduced; and any child care funds received by the parent from other public or private entities. These provisions are retained from the repealed rules.

The Commission received no comments on this section.

Repealed Provisions Related to General Management and Board Responsibilities The Commission removes the requirement that a Board must ensure parental choice by recruiting, training, and maintaining a sufficient number of providers to offer parents a full range of categories of care and types of providers of child care. The Commission further removes the requirement that Boards must recruit and train providers. The Commission believes that recruitment and training does not ensure parent choice. It is the Commission's intent that making consumer education information available to parents, as required in §809.15, ensures that parents have available to them the full range of provider types and child care options.

The Commission also removes the requirements related to procurement, management of finances, information management and reporting, performance standards, and timely billings as these provisions are included generally in Chapter 800, specifically in Subchapter C. Performance and Contract Management, and in the Agency-Board Agreement; therefore they are unnecessary in this chapter.

Comment: One commenter stated that there are many other references to other chapters of rules, but there are no references within Chapter 809 to the child care match obligation and deobligation language in Chapter 800.

Response: The Commission believes that its rule provisions related to child care match obligation and deobligation are complete in and of themselves and do not require citing in Chapter 809.

SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES

The Commission adopts new Subchapter C, Eligibility for Child Care Services, as follows:

Subchapter C of the child care rules contains the provisions related to determining initial and continued eligibility for child care services; provisions related to general eligibility requirements, priority of services, and calculating income; and the eligibility requirements for Choices child care, TANF Applicant child care, FSE&T child care, and Transitional child care. Additionally, Subchapter C contains the child care eligibility requirements for children living at low incomes, including child care for children with disabilities and teen parents, as well as provisions related to child care for children served by special projects. Finally, the subchapter contains the continuity of care provisions related to continued eligibility for child care services.

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

Section 809.41 relates to a child's general eligibility for child care services.

Section 809.41(a)(1) states that, except for a child receiving or needing protective services, a child may be eligible for child care services if the child is under 13 years of age or, at the option of the Board, a child with disabilities under 19 years of age.

Additionally, §809.41(a)(2) states that the child must reside with a family whose income does not exceed the income limit established by the Board, not to exceed 85% of the state median income for a family of the same size. The child must also reside with a parent who requires child care in order to work or attend a job training or educational program.

The general eligibility requirements in §809.41(a) are similar to the repealed provisions with additional language to clarify that the age and residency requirements for a child needing or receiving protective services are provided in §809.49. The provisions related to a child's general eligibility mirror the CCDF requirements in 45 C.F.R. §98.20.

Section 809.41(b) retains the provision from the repealed rule requiring a Board to establish policies, including time limits, for the provision of child care while the parent is attending an educational program.

Additionally, §809.41(c) provides the requirement that child care must be available to a parent for four years, if the 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.

Section 809.41(c) reflects the language contained in the Commission's general appropriations requiring that child care service recipients 17 years of age or older with a high school diploma or GED who wish to acquire an Associate's Degree must continue to be eligible for child care benefits for a period "not to exceed four years for an educational program" if that program will prepare the recipient for a job in a high demand occupation with an upward career path as determined by a local workforce Board. Because the legislative language could be read to allow Boards to limit child care under these circumstances to less than four years, the proposed rule was intended to clarify the original intent—to ensure that child care remains available for parents who are enrolled in these types of educational programs for a sufficient amount of time in which to complete the program. These programs typically require two years of full-time attendance, which may not be possible for some parents. However, as noted by two commenters, in order to care for a family, attend school, and work, some parents may require additional time to complete the program. The Commission agreed that it did not wish to place constraints on Boards' ability to address the needs of parents who are working diligently toward a degree, yet may be forced to take a smaller course load because of work and family. The Commission has, therefore, modified the language of §809.41(c) to make it clear that parents are ensured four years of child care services, consistent with the appropriations language. However, the rule does not require Boards to cap services at four years under the circumstances described, so long as the parent meets all other eligibility requirements and is making progress toward a degree. The Commission will revise the currently effective WD Letter 22-06 to ensure that all boards are aware of this provision.

The Commission notes that the adopted definition of a parent's attendance in an educational program at §809.2(1)(C) includes the stipulation that the individual is making progress toward successful completion of the program as determined by the Board. Therefore, although §809.41(c) provides that child care services shall continue for four years for parents enrolled in certain associate degree programs, a parent's continued receipt of child care services is contingent upon the parent's successful progress toward completion of the degree.

Finally, §809.41(d) sets forth the requirements for the provision of child care in order for the parent to conduct job search activities. As in §809.2(21), the definition of "working," job search is included as an allowable work activity. The Commission's Choices rules at §811.27(b) limit

job search for Choices participants to four consecutive weeks and a total of six weeks in a federal fiscal year. The Commission's FSE&T rules §813.31 have a similar provision. Additionally, the adopted child care rules limit Transitional child care during job search to four weeks for former TANF recipients who are not employed at the time their temporary cash assistance expires. However, other Commission rules do not address job search time limits for other Commission-funded child care.

Therefore, §809.41(d) states that unless otherwise subject to job search limitations as stipulated in other Commission rules (specifically, §811.27(b) for Choices participants and §813.31 for FSE&T participants), for child care funds allocated by the Commission pursuant to its child care allocation rules in §800.58 of this title (i.e., CCDF), a child currently receiving child care services may be eligible for continued 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. The rules also stipulate that for child care services funded by the Commission from sources other than those specified in §800.58 of this title (i.e., non-CCDF sources), child care services during job search activities are limited to four weeks within a federal fiscal year. Establishing a job search limitation on a federal fiscal year basis is consistent with the Commission's current Choices and FSE&T rules.

Comment: Four commenters supported limiting job search to four weeks within a federal fiscal year. One of the commenters suggested using 28 days instead of four weeks given that it is easier to calculate. One of the commenters stated that four weeks is consistent with the Board's policy. However, the commenter asked if the four weeks could be split into two, two-week time frames.

Response: The Commission appreciates the comments. It is the Commission's intent to allow Board discretion in calculating a four-week period within a federal fiscal year. Therefore, Boards may use 28 days instead of four weeks and split the four-week period into two, two-week periods.

Comment: Four commenters requested clarification regarding the proposed rule limiting job search to four weeks within a federal fiscal year as it applies to two-parent families. The commenters asked if this rule applied to a two-parent family or to an individual. One of the commenters suggested that this limit be on an individual rather than a family to eliminate an adverse impact for two-parent families.

Response: The Commission understands that there may be breaks in each parent's employment and it is the intent of the Commission that each parent in the family be allowed up to four weeks of job search if the parent becomes unemployed while the child is enrolled in child care. However, the Commission emphasizes that the other parent must be participating in work, education, or job training activities for the required minimum number of hours for a single-parent family.

Comment: One commenter asked for clarification regarding how the four-week time period is applied when multiple child care funding sources are used for an individual within a federal fiscal year. For instance, the commenter asked whether a parent who received four

weeks of job search while enrolled in WIA-funded child care would also be eligible for an additional four weeks of job search if he or she started receiving CCDF-funded care within the same federal fiscal year.

Response: The intent of §809.41(d) is to establish rules for all Commission-funded child care during job search activities and, to the greatest extent practicable, make the provisions consistent with child care for job search activities for parents participating in Choices and FSE&T. Both Choices and FSE&T allow job search for a specified length of time in order to assist unemployed participants with finding employment. For both of these workforce services, once the parent finds employment and no longer is eligible for the service, the parent may be eligible for at-risk child care. If the former Choices or FSE&T parent is enrolled in at-risk child care, but becomes unemployed during the same fiscal year, then the parent will be eligible for up to four weeks of child care in order to search for work under the newly adopted §809.41(d)(1). The same principle will be applied for former participants of workforce services using other Commission-funded child care. If a former WIA participant who has used four weeks of WIA-funded child care in order to search for work under §809.41(d)(2) locates employment, the parent then may be enrolled in at-risk child care. If the parent receiving at-risk child care becomes unemployed, then the parent is eligible for four weeks of child care under the provisions of §809.41(d)(1).

Comment: Seven commenters supported the proposed rule to limit job search. However, the commenters disagreed with limiting job search to four weeks per fiscal year. Clients eligible for the program typically have low-paying, entry-level jobs that lay off when times are slow, reduce hours irregularly, or the clients have transportation problems. The commenters suggested limiting the number of job searches to two, four-week periods per year. This will also help reduce caseload work and provide continuity of care for their children by not having to drop the children and put them on the waitlist. The commenters identified a list of typical reasons for job searches. One of the seven commenters stated that the Board limits its clients to two job searches every six months. At the most, limiting job searches to two a year or one every six months would be a more prudent action that would be giving parents a chance to stay in our programs and continue in the workforce, which is our first and foremost goal. One of the commenters stated that the Board policy is 40 business days within the client's eligibility year, which is more reasonable and easier to track.

Response: The Commission disagrees with extending the amount of time for job search activities. However, these rules allow Boards the discretion to make this population—i.e., individuals searching for jobs—a priority on the waitlist.

The Commission points out that, under the repealed rules, job search was allowed only for four weeks and only for parents eligible for Transitional child care who were not employed when their TANF time limits expired. The repealed rules did not have provisions for child care during job search for at-risk parents with children currently enrolled in child care. Rather than limiting job search as the comment implies, the adopted rules now allow job search for these parents.

Comment: One commenter stated that the Board policy allows parents to "bank" days allotted for job search if they are not used during that year.

Response: The Commission disagrees with carrying over to the next fiscal year unused days allotted for job search during that year. The Commission believes that this policy would allow a parent to remain eligible for child care for several months even though the parent is not employed. The intent of providing child care during job search activities is to allow a child to remain in the child care setting while the parent is temporarily unemployed. The Commission does not intend that child care continue to be provided for long-term periods of unemployment.

Comment: One commenter suggested that the job search provision be effective in Fiscal Year 2008 since the job search time frame is linked to a federal fiscal year. The commenter expressed concern that the Board may lose appeals since clients were not notified of the requirement during their intake or recertification appointment during the fiscal year in which the rules become adopted.

Response: The Commission understands the commenter's concern, and notes that for parents with children currently enrolled in child care, Boards may make this provision effective at the parent's next recertification. However, for new clients, the rule is effective immediately.

Comment: Regarding the time limits for education programs, two commenters stated that there is no provision in the rule for parents attending an associate's degree program on a part-time basis while working to have additional time to complete the degree program. The commenters asked if the Commission would allow Boards the flexibility for parents attending school and also working to be given additional time, as needed, to complete an associate's degree program.

Response: The proposed language was intended to clarify that child care remains available for parents who are enrolled in associate degree programs designed to prepare the parent for a job in a high demand occupation with an upward career path. These programs typically require two years of full-time attendance; however, as the commenters point out, many parents must combine school with work which—when coupled with the demands of raising small children—may extend the time necessary to complete a degree program. The Commission shares the commenters' concerns that the rule not constrain Boards from addressing the needs of parents who are working diligently toward a degree, yet may be forced to take a smaller course load because of work and family. Therefore, the Commission modifies the language of §809.41(c) to make it clear that parents are ensured four years of child care services; however, the rule does not require Boards to cap services at four years under the circumstances described, so long as the parent meets all other eligibility requirements and is making progress toward a degree.

Comment: One commenter asked if the time limits in §809.41(c) related to child care during education refers to time limits for education or time limits for child care. Specifically,

the commenter asked whether a parent who had already been in school for four years is entitled to child care.

Response: The time limits refer to the provision of child care while the parent is attending an education program. If the parent previously had been in school for four years, but did not receive child care during those four years, then the parent may be eligible for child care services. However, the Commission points out that §809.41(b) allows Boards to establish policies for the provision of child care while the parent is attending an education program. The only specific requirement for a Board's policy is that a parent enrolled in an associate's degree, as described in §809.41(c), shall be given four years of child care in order to complete the degree program, as long as the parent is making progress toward successful completion of the program as determined by the Board.

§809.42. Eligibility Determination and Verification

Section 809.42 relates to eligibility determination and verification for child care services.

Section 809.42(a) states that a Board shall ensure that its child care contractor verifies eligibility for child care services prior to authorizing child care.

Section 809.42(b) requires that eligibility for child care be redetermined:

- anytime there is a change in family income or other information that could affect eligibility to receive child care; and
- with established frequency, at the Board's discretion.

Section 809.42(a) and 809.42(b), regarding the verification of eligibility prior to authorizing child care and provisions of eligibility redetermination, are similar to the repealed sections.

Section 809.42(c) requires Boards to ensure that a public entity certifying expenditures for direct child care 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 is under 13 years of age, or—at the option of the Board—be a child with disabilities under 19 years of age. The public entity should also verify that the child resides with:

- a family whose income does not exceed 85% of the state median income for a family of the same size; and
- a parent who requires child care in order to work or attend a job training or educational program.

CCDF matching fund regulations at 45 C.F.R. §98.53(c)(2) require that state expenditures used to match CCDF funds, including public certified expenditures, be for allowable services or activities that meet the goals and purposes of CCDF. Section 809.42(c) is a new requirement designed to clarify that public child care expenses that are certified as CCDF match represent expenses for child care services that meet the minimum CCDF eligibility requirements in 45 C.F.R. §98.2.

The Commission notes that public certified expenditures that represent expenditures for quality improvement activities may be for any quality improvement activity allowed by CCDF regulations in 45 C.F.R. §98.51. This provision also is included in §809.16(e) relating to Quality Improvement Activities.

Comment: One commenter disagreed with the requirement that Boards must ensure that a public entity certifying expenditures verify that direct care expenditures are for eligible children. The commenter stated that institutions of higher education and community colleges do not have the expertise to determine if someone is eligible for child care based on the Board's income and participation requirements. This is the responsibility of the Board's contractor.

Response: The Commission disagrees that public entities do not have the capacity or expertise to certify direct care expenditures of children who meet federal child care eligibility criteria. The Commission previously issued guidance to the Boards on this matter. WD Letters 45-06, Change 1 and 45-06, Change 2, state that contributors must agree to certify that the expenditures of public funds used as local match are eligible for federal match. The intent of including this in rule is to establish that public certified funds must meet the federal CCDF eligibility guidelines as they relate to the child's age, family income and participation in work, and education or training. The public certified expenditures do not have to be limited to families that meet the more stringent Board requirements.

Child care services provided by public entities such as municipal governments and public education institutions typically have their own income requirements. Thus, the entities are equipped to determine income eligibility for the children they serve. Additionally, these entities, especially education institutions, can also verify the education or employment status of the parents of the children they serve. Because the federal CCDF regulations do not require a minimum number of work, education, or job training hours, it is not necessary that the public entities verify the parents' hours in these activities. Rather, they need to verify only that the parents are participating in these activities.

§809.43. Priority for Child Care Services

Section 809.43 relates to priority for child care services. CCDF regulations at 45 C.F.R. §98.44 require states to give priority to:

- children in families with very low income; and
- children with special needs.

The priority in §809.43 reflects the above CCDF priority groups.

Section 809.43(a) states that a Board shall ensure that child care services are prioritized among three priority groups. The first priority group provided in §809.43(1) reflects the federal priority for children in families with very low incomes. Child care services are assured for children in the first priority group, which includes parents eligible for:

- Choices child care;
- TANF Applicant child care;

- FSE&T child care; and
- Transitional child care.

The first priority group in §809.43(1) is similar to the first priority group in the repealed rules. The Commission specifically includes TANF Applicant child care as a first priority group to align with the continuity of care provisions. The Commission retains this continuity of care provision and, therefore, includes TANF Applicant child care as a first priority group.

Additionally, child care for parents participating in FSE&T is listed as a priority for service in Board contracts. If child care is not provided, Boards may not sanction FSE&T participants who require child care to participate in services. Therefore, the Commission includes parents participating in FSE&T as a first priority group for child care services.

Section 809.43(2) sets forth the second priority group, which reflects the federal priority group related to serving children with special needs. The second priority group is served subject to the availability of funds and includes, in order of priority:

- children who need to receive protective services child care;
- children of a qualified veteran;
- children of a foster youth;
- children of teen parents; and
- children with disabilities.

Children who need to receive protective services are included in the second priority group under the repealed rules. The Commission adds children of teen parents and children with disabilities to the second priority group as these groups are defined in the CCDF State Plan as children with special needs. Therefore, inclusion of these children as a priority reflects the federal priorities in CCDF regulations 45 C.F.R. §98.44.

Additionally, the 79th Texas Legislature, Regular Session (2005), enacted House Bill (HB) 2604, which added §302.014 to the Texas Labor Code. The new section of the Texas Labor Code requires that veterans receive priority of service for training or assistance under a job training or employment assistance program or service, and applies to services funded in whole or in part by state funds. Additionally, the 79th Texas Legislature, Regular Session (2005), enacted SB 6, which added, among other actions, §264.121 to the Texas Family Code, which directs the Commission and Boards to prioritize and target services to meet the needs of foster youth and former foster youth.

Therefore, in order to implement HB 2604 and SB 6, the Commission adds veterans and foster youth to the second priority group for child care services.

Section 809.43(3) states that the third priority group includes any other priority adopted by the Board. This provision is the same as in the repealed rules.

Further, §809.43(b) states that a Board shall not establish a priority group based on the parent's choice of individual provider or provider type. This new provision prohibits a Board from establishing a priority group based on a provider or a type of provider. Allowing Boards to

establish priority for parents based on parent choice of a particular provider or provider type influences a parent's choice of providers and may unduly limit parent choice in direct opposition to the federal regulations at 45 C.F.R. §98.20, regarding parental choice.

Comment: Four commenters stated that §809.11 implies that workforce clients, such as WIA, are a priority group, but are not included as a priority in §809.43.

Response: The Commission's intent in §809.11 is to identify child care services as support services for workforce employment, job training, and services under Texas Government Code, Chapter 2308 and Chapter 801 of this title. Child care is not a workforce and job training service in itself, but is an important support for individuals participating in those services. As mentioned previously, the Commission has modified language in §809.11 to clarify this intent. Therefore, parents participating in workforce services, such as WIA, are not a first or second priority group. However, the Board has the discretion to include WIA as a priority in the third priority group.

Comment: Four commenters expressed the opinion that teen parents should be a higher priority than children of veterans or foster youth. The commenters stated that the Board has more teen parents in its population, and this change could result in more high school dropouts since teens may not be able to attend high school or GED programs. One of the two commenters believed that the Boards should locally identify target groups and their priority of services.

Response: The Commission's intent is to implement the legislative direction in HB 2604 and SB 6 as enacted by the 79th Texas Legislature, which established children of veterans and children of foster youth as state priorities. Because of the legislative charge, the Commission has placed these populations in the second priority group, above children of teen parents and children with disabilities.

The Commission disagrees that this lowers the priority of teen parents and children with disabilities. In fact, the opposite is true. Under the repealed rules, these populations were listed as examples of groups that may be included in the third priority group—the Board-determined priority group. The adopted rule elevates these populations to the second priority group and makes them a statewide priority.

§809.44. Calculating Family Income

Section 809.44 relates to calculating family income for determining eligibility. The adopted list of income inclusions is intended to be income sources that are verifiable and easily documented.

Comment: Two commenters expressed appreciation regarding the changes required in calculating family income to that which is verifiable and easily documented.

Response: The Commission appreciates the comment.

Section 809.44(a) states that, unless otherwise required by federal or state law, family income for purposes of determining eligibility includes the monthly total of the following items for each member of the family (as defined in §809.2(8)):

Total gross earnings

Section 809.44(a)(1) includes as income gross earnings including wages, salaries, commissions, tips, piece-rate payments, and cash bonuses earned. This provision is similar to that in the repealed rules.

Comment: One commenter suggested clarifying the phrase "total gross earnings before deductions are made for taxes." The commenter assumed that this means federal (or state) income taxes withheld from wages by the employer. However, the commenter stated that the word "deductions" is a term of art in the tax world, and it might be interpreted by some to mean the Schedule A itemized deductions for certain taxes.

Response: The Commission agrees and has modified the rule to remove the phrase "before deductions are made for taxes" from the rule language.

Comment: One commenter asked if the definition of income was the same as adjusted gross income for federal income tax purposes.

Response: As mentioned previously, the Commission has followed the federal income tax guidelines, specifically using Form 1040, as closely as possible. In particular, the Commission has followed the itemized "Income" section of Form 1040 and not the "Adjusted Gross Income" section. In keeping with the intent to include verifiable income, the Commission believes that expense deductions used to determine the Adjusted Gross Income may be difficult to document and verify.

The Commission recognizes that an income tax form may not be the best instrument for determining and verifying income. The tax form reflects income that may be up to one year old. The parent's actual income at the time of enrollment or recertification actually may be lower than what was reported on the individual's previous tax return. As a result, using the income tax as a guide, the Commission has determined that the list of income inclusions should include verifiable wages and other income, with as few exemptions for expenditures as possible.

Comment: Two commenters requested clarification on whether severance packages are considered income for the purpose of child care eligibility.

Response: The Commission intends that such income be included as gross wages income. According to the Internal Revenue Service (Publication 525: Taxable and Nontaxable Income), income from severance packages is included in taxable gross wages. Therefore, this income should be included when determining child care eligibility.

Net income from self-employment

Section 809.44(a)(2) includes as family income the 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. Including net income from self-employment is retained from the repealed rules.

The Commission simplified the language from the repealed rules by including net income from both farm and non-farm self-employment into one provision related to self-employment. Furthermore, the Commission simplified the language by removing examples of business-related expenses that are deducted from the gross receipts from self-employment. The Commission determined that these deductions should not be specified in the rule language and may be determined by the Board. The Commission notes, however, that a Board should consider deducting business-related expenses that are allowable under tax deductions as provided by U.S. Department of Treasury Internal Revenue Service and itemized in Schedule C related to Profit or Loss From Business and Schedule F related to Profit or Loss From Farm.

Pensions, annuities, life insurance, and retirement income

Section 809.44(a)(3) includes pensions, annuities, and retirement income (including Social Security retirement benefits and veteran's pensions) in the income calculation. Payments include 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. This provision is comparable to that in the repealed rules.

Comment: One commenter suggested inserting the word "life" before "insurance" under the "pensions, annuities, insurance, and retirement" income category. Otherwise, it might be interpreted to mean that all manner of insurance payments, such as automobile and health, are to be included.

Response: The Commission agrees with the suggestion and has incorporated it in the adopted rules.

Taxable capital gains, dividends, and interest

Section 809.44(a)(4) includes taxable capital gains, interest, and dividends including capital gains from the sale of property and earnings from dividends of stock holdings, and interest on savings or bonds. This is a slight modification to the repealed rules, which describe capital gains only in relation to the sale of property.

Comment: In the "Taxable capital gains, dividends, and interest" category, one commenter asked whether the adjective "taxable" modifies only capital gains, or whether it also modifies "dividends and interest." This might be important if, for example, a family member receives tax-exempt interest from municipal bonds.

Response: The Commission clarifies that the term "taxable" refers to capital gains, dividends, and interest.

Rental income

Section 809.44(a)(5) includes rental income consisting of net income from boarders or lodgers, rental of a house, homestead, store, or other property. This provision is retained from the repealed rules.

Comment: One commenter stated that §809.44(a)(5) related to rental income does not provide for deduction of any of the expenses associated with the rental property, such as property taxes, utilities, repairs, and maintenance, which suggests that the gross, and not the net, rental income amount is to be included in the calculation. The commenter contrasted this with §809.44(a)(2), which makes clear that business and farm expenses are to be deducted. The commenter asked whether this was intentional.

Response: The Commission appreciates the comment. The rule language did not include the specific reference to "net" rental income. However, the preamble to the rules states that net income from rental property would be included. The Commission has modified the rule language to clarify the intent, as stated in the preamble, that rental income should be net income. The repealed rules allowed for deductions for property taxes, insurance payments, maintenance, and interest on mortgage payments. The intent of the adopted rules is to allow deductions for these expenses, as well as other expenses that may be allowed under the federal income tax guidelines.

Comment: One commenter suggested substituting "income from rental of a house, homestead, store, or other property" with "income for the rental of any real or personal property" as this would simplify the language.

Response: The Commission appreciates the suggestion. However, the Commission believes that the language is sufficient.

Public assistance payments

Section 809.44(a)(6) includes public assistance payments including TANF cash assistance, refugee assistance, Social Security Disability Insurance, Supplemental Security Income, and general cash assistance (such as from a county or city). Although similar to language in the repealed rules, the Commission adds language in order to specify that Social Security Disability Insurance and Supplemental Security Income are included in the income calculation.

Income from estate and trust funds

Section 809.44(a)(7), as in the repealed rules, includes income from estates, trust funds, inheritances, or royalties.

Unemployment compensation

Section 809.44(a)(8), as in the repealed rules, includes unemployment compensation payments from private or governmental unemployment insurance and strike benefits while a person is unemployed or on strike.

Workers' compensation income, death benefit payments or other disability payments

Section 809.44(a)(9), as in the repealed rules, includes income from workers' compensation payments. These payments include compensation received periodically from private or public sources for on-the-job injuries. The adopted language clarifies that worker's compensation death benefit payments are included as income.

Spousal maintenance or alimony

Section 809.44(a)(10) includes spousal maintenance or alimony including any payments made to a spouse or former spouse under a separation or divorce agreement. This provision mirrors content in the repealed rules, however, the Commission adds a brief description of the income included.

Child support

Section 809.44(a)(11), similar in content to the repealed rules, includes court-ordered or informal child support cash payments, maintenance, or allowance used for current living costs provided by a parent for a minor child. The Commission clarifies that this does not include the value of noncash or in-kind support such as diapers, baby formula, or other items for the child. The Commission believes that determining the value of these items would place an undue burden on the child care contractor and the parent.

Court settlements or judgments

Section 809.44(a)(12) includes a new provision to count court settlements or judgments as income, including awards for exemplary or punitive damages, noneconomic damages, and compensation for lost wages or profits. The Commission believes that this income source meets its goal of including documented and verifiable income sources. The Commission also proposes that family income not include compensatory damages that are awarded to reimburse individuals for personal physical injury or physical sickness because these awards are typically awarded to pay for medical bills or ongoing medical expenses and are not retained by the individual as income.

Comment: Two commenters disagreed with including income from court settlements or judgments. One of the commenters stated that it would be difficult to ascertain if the income was a result of compensatory damages. Another commenter expressed concern regarding the funds from awards that may be necessary to pay for ongoing medical costs or other costs that may be unusual in various circumstances.

Response: The Commission appreciates the comment and modifies the rule language to clarify that income resulting from punitive, noneconomic damages or compensation for lost wages shall be included if the court settlement or judgment clearly awards damages among these categories. The Commission believes that it is reasonable to request that the parent provide the terms of the court settlement to verify this information. The Commission also emphasizes that this rule includes noneconomic damages and does not include compensation for economic damages that may be necessary to pay for ongoing expenses, such as medical costs.

As provided in the repealed rules, the Commission states in §809.44(b) that income to the family that is not included in §809.44(a) is excluded in determining the total family income.

Section 809.44(b) specifically excludes the following income sources:

Food stamps

Section 809.44(b)(1), consistent with the repealed rules, excludes food stamps from the income calculation.

Certain monetary allowances for children of Vietnam veterans

Section 809.44(b)(2), consistent with the repealed rules and federal guidelines, also excludes monthly monetary allowances for children of Vietnam veterans born with certain birth defects.

Educational scholarships, grants, and loans

Section 809.44(b)(3) excludes from the income calculation all educational scholarships, grants, and loans. The repealed rules specifically named only federal scholarships, grants, and loans (e.g., Pell Grants, Perkins Loans) as excluded.

Comment: Two commenters agreed with the Commission's proposed rule to exclude income from all educational scholarships, grants, and loans. This rule will add uniformity with the current rule of excluding federal financial assistance. This will aid students applying for child care services.

Response: The Commission appreciates the comment.

Earned Income Tax Credit (EITC)

Section 809.44(b)(4) excludes the Earned Income Tax Credit (EITC) and the Advanced EITC. While EITC may be a large amount of income, including it as income may discourage working families from applying for the tax credit. EITC and Advanced EITC are not a required inclusion in the repealed rules, thus this provision is consistent with those rules.

Individual Development Account (IDA) withdrawals

Section 809.44(b)(5) excludes IDA withdrawals as income. IDAs are not a required inclusion in the repealed rules and excluding these payments encourages the use of IDAs, which supports asset-building for low-income families.

Tax refunds

Section 809.44(b)(6) excludes tax refunds from the income calculation as this is simply a refund of a parent's income that was overpaid in taxes. This is not a change from the repealed rules, as tax refunds are not a required inclusion.

VISTA and AmeriCorps stipends

Section 809.44(b)(7) excludes VISTA and AmeriCorps living allowances and stipends. This is consistent with Food Stamp benefits eligibility, which also excludes these allowances and stipends. The repealed rules do not require these payments to be included in the income calculation.

Noncash or in-kind benefits in lieu of wages

Section 809.44(b)(8) excludes noncash or in-kind benefits received in lieu of wages, such as reduced rent if a parent works as a part-time maintenance person for an apartment complex. Verifying and placing a value on noncash benefits increases the administrative burden on Board contractors. The repealed rules do not require this provision to be counted as income.

Foster care payments

Section 809.44(b)(9) excludes foster care payments as income. These are payments from DFPS to foster parents to reimburse the individuals for caring for foster children. DFPS disregards the income of foster parents when authorizing care for foster children. However, foster parents also may need child care for their own children. Foster care payments intended to support the foster child should not be counted as income when determining eligibility for the foster parents' own children. This is a change from the repealed rules, which include foster care payments.

Comment: Three commenters agreed with the Commission's proposed rule to exclude foster care payments and noncash or in-kind benefits.

Response: The Commission appreciates the comments.

Comment: One commenter disagreed with excluding income from foster payments. The commenter stated that these payments are to be used for child care or other needs of the foster parent and should not be excluded in determining eligibility for child care.

Response: The Commission disagrees with the comment and believes that foster care payments are intended to support the foster child and should not be counted as income.

Special military pay or allowances

Section 809.44(b)(10) excludes from income 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. While the repealed rules include "armed forces pay," it is not clear if this includes special military pay and allowances such as housing allowances and combat pay. This change allows for the inclusion of basic pay, but specifically excludes the special military pay and allowances.

§809.45. Choices Child Care

Section 809.45 sets forth provisions for a parent to be eligible to receive Choices child care.

Section 809.45(a) states that 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. The proposed eligibility for Choices child care is similar to the provisions in the repealed rule. However, the new language is intended to simplify the eligibility requirements. The repealed language includes references to the parent receiving TANF and participating in Choices. Because Choices is the employment and training program for TANF recipients, the reference to the receipt of TANF is extraneous language and has been removed.

Additionally, the repealed rules include a provision for child care for children of conditional and sanctioned families who must demonstrate cooperation prior to the resumption of TANF assistance. Because these families must continue to participate in Choices as part of their effort to demonstrate cooperation, the reference to conditional and sanctioned families is not necessary. As long as the parent is participating in Choices—regardless of the parent's TANF status—the child is eligible for Choices child care.

Section 809.45(b) states that a parent who has been approved for Choices, but is waiting to enter an approved initial component of the program, may receive up to two weeks of child care services when child care services will prevent loss of the Choices placement, and if child care is available to meet the needs of the child and parent. This provision is retained from the repealed rules.

The Commission received no comments on this section.

§809.46. Temporary Assistance for Needy Families Applicant Child Care

Section 809.46 relates to a parent's eligibility for TANF Applicant child care. The provisions in this section are largely unchanged from the repealed rules. However, these provisions are located in the section entitled "Workforce Orientation Applicant Child Care" of the repealed rules. The name change is intended to clarify that this type of child care is provided to TANF applicants who, prior to TANF certification, become employed or have increased earning that would make them ineligible for TANF. The reference to Workforce Orientation for Applicants (WOA) in the repealed rules implies that the child care is for parents while they are attending the required WOA activities. However, this is not the case. TANF Applicant child care is intended to provide child care in order to enable TANF applicants to accept employment or increased wages and thus, avoid having to go on public assistance.

Section 809.46(a) states that a parent is eligible for TANF Applicant child care if the parent receives a referral from HHSC to attend a WOA but locates employment or has increased earnings prior to TANF certification and needs child care to accept or retain employment. Although similar to the repealed rules, new §809.46(a) removes extraneous language regarding criteria for eligibility. Subsection (a) also adds language to include individuals who not only become employed prior to TANF certification, but also have increased earnings prior to TANF certification, which would make them ineligible for TANF.

Section 809.46(b) provides that 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. This provision is retained from the repealed rules, but modified from 30 hours to 25 hours in order to align the language with the 25 hour minimum activity requirement for Transitional and at-risk eligibility.

Section 809.46(c) states that subject to the availability of funds and the continued employment of the parent, TANF Applicant child care must be provided for up to 12 months or until the family

reaches the Board's income limit for eligibility under any provision contained in the provisions related to at-risk child care, §§809.50–809.52, whichever occurs first. This provision is the same as in the repealed rules.

Section 809.46(d) states that parents who are employed less than 25 hours a week at the time they apply for temporary cash assistance are limited to 90 days of TANF Applicant child care. TANF 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. This provision is modified from the repealed rules, which require a minimum of 30 hours a week. This provision is changed to align with the minimum activity hours required for at-risk child care.

Section 809.46(e) provides that, 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 provided the parent is otherwise eligible under any provision contained in §§809.50–809.52 (related to at-risk child care). This provision is retained from the repealed rule.

The Commission received no comments on this section.

§809.47. Food Stamp Employment and Training Child Care

Section 809.47, relating to a parent's eligibility for FSE&T child care, states that a parent is eligible to receive child care services if the parent is participating in FSE&T in accordance with the provisions of 7 C.F.R. Part 273, and whose case plan remains open. This provision is unchanged from the repealed rule.

The Commission received no comments on this section.

§809.48. Transitional Child Care

Section 809.48 relates to a parent's eligibility for Transitional child care.

Section 809.48(a) states that a parent is eligible for Transitional child care services if the parent has been denied TANF because of increased earnings, or has been denied temporary cash assistance within 30 days because of the expiration of TANF time limits. Additionally, the parent must need child care to work or attend a job training or educational activity 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.

Section 809.48(a) includes a new provision that requires parents receiving Transitional child care to be engaged in work, education, or training activities for at least 25 hours per week (50 hours per week for two parents). The intent of this provision is to align the activity requirements for Transitional child care with the requirements for at-risk child care.

Section 809.48(b) allows Boards to establish an income eligibility limit for Transitional child care that is higher than the eligibility limit for children in families at risk of becoming dependent

on public assistance, provided that the higher income limit does not exceed 85% of the state median income for a family of the same size. This provision is retained from the repealed rules.

Section 809.48(c) states that Transitional child care shall be available for a period of up to 12 months from the effective date of the TANF denial; or 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. This provision is contained in the repealed rules; however, the Commission includes language related to the caretaker exemptions in order to reference the Texas Human Resources Code. This reference to the Texas Human Resources Code clarifies that the caretaker exemption refers to parents caring for a physically or mentally disabled child or parents caring for a child under the age of one.

Section 809.48(d) states that former TANF recipients who are not employed when TANF expires, including recipients who are engaged in a Choices activity except as provided under §809.48(e), shall receive up to four weeks of Transitional child care in order to allow these individuals to search for work as needed. This provision is retained from the repealed rules.

Section 809.48(e) states that former TANF recipients who are engaged in a Choices activity 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. This provision mirrors the repealed rules and reflects the requirements in Texas Human Resources Code §31.012(e).

Comment: Two commenters thanked the Commission for the proposed rule requiring Boards to apply the 25-hour work requirement to parents receiving Transitional child care. This will allow job training or educational programs to align with at-risk child care requirements. Additionally, the proposed rule will allow for more continuity between Choices, Transitional, and income-eligible child care assistance. It will also decrease the likelihood of families going back on TANF when their Transitional benefits end and they are not eligible for income-eligible child care because they have fallen below the 25-hour work requirement.

Response: The Commission agrees and appreciates the comments.

Comment: One commenter stated that Transitional child care currently has an hourly participation requirement that is subjective to the case manager, as long as the client is gainfully employed. However, regular self-referred clients have a minimum participation requirement of 25 hours per week. Therefore, the Transitional requirement in the new rules is not the same as for other low-income parents.

Response: The Commission is concerned with the statement that parents receiving Transitional child care currently have a "subjective" hourly participation requirement determined by the case manager as long as the parent is "gainfully employed." Placing a minimum hourly participation requirement on Transitional child care was not allowed in the repealed rules. Furthermore, any requirement placed on a parent should not be "subjective to

the case manager." Additionally, the Commission language in §809.48(a)(3) related to the minimum activity requirement for Transitional child care is identical to the language in §809.50(a)(2) and §809.51(a)(2), which sets forth the minimum activity requirement for children living at low incomes and children with disabilities. Therefore, the Commission disagrees that the Transitional minimum activity requirement is not the same as the requirement for low-income parents.

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

Section 809.49 relates to eligibility for children needing protective services. Boards are required to ensure that determinations of eligibility for children needing protective services are performed by DFPS. Boards also must ensure that child care continues as long as authorized and funded by DFPS. These provisions are retained from the repealed rules.

Section 809.49(a) states that DFPS may authorize child care for a child under court supervision up to age 19. The provision allowing DFPS to authorize child care for a child under court supervision up to age 19 is a new provision included to align with the CCDF State Plan. Additionally, this language mirrors the language in CCDF regulations at 45 C.F.R. §98.20 regarding a child's eligibility for CCDF child care.

Section 809.49(b) ensures that requests made by DFPS for specific eligible providers are enforced for children in protective services. This provision is retained from the repealed rules.

The Commission received no comments on this section.

§809.50. Child Care for Children Living at Low Incomes

Section 809.50 relates to child care services for children living at low incomes. The provisions in this section are retained from the repealed rules without substantive changes.

Section 809.50(a) states that a parent is eligible for child care services under this section if the family income does not exceed the income limit established by the Board, provided that the income limit does not exceed 85% of the state median income for a family of the same size. Further, child care must be required in order for the child's parents 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.

Section 809.50(b) allows a Board to reduce the requirement in §809.50(a) 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 the activities for the required hours per week.

Section 809.50(c) states that for purposes of meeting the activity requirements in §809.50(a), each credit hour of postsecondary education will count as three hours of education activity per week. The language also states that each credit hour of a postsecondary education condensed

course counts as six education activity hours per week. This language is consistent with previous Commission guidance and aligns with current practice.

Comment: Four commenters suggested including the provisions of WD Letter 30-04, issued July 23, 2004, on calculating postsecondary condensed course credit hours for child care eligibility.

Response: The Commission agrees with the suggestion and adds language in §809.50(c) and §809.51(c) stating that each credit hour of a postsecondary education condensed course counts as six education activity hours per week

Comment: One commenter stated that the rule equating one semester hour to three hours of weekly education activity would mean that 10 credit hours would meet the minimum activity requirement. However, the commenter stated that most schools consider twelve semester hours as a full-time student.

Response: The Commission appreciates the comment. However, the Commission recognizes that low-income parents pursuing an education cannot afford to be enrolled in education on a full-time basis. It is not the intent of the Commission to require low-income parents to be enrolled the equivalent of a full-time student, as many of these low-income parents also must work. The intent of the provision related to calculating education hours is to provide a reasonable amount of activity hours for each semester hour, thus allowing these parents to work and attend school.

§809.51. Child Care for Children with Disabilities

Section 809.51 relates to eligibility for child care services for a child with disabilities. The provisions in this section are retained from the repealed rules without substantive changes.

Section 809.51(a) provides that a child with disabilities is eligible for child care services if:
—the child resides with a family whose income, after deducting the cost of the child's ongoing medical expenses, does not exceed the income limit established by the Board; and
—child care is required in order for the child's parents 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 a Board.

Section 809.51(b) states that a Board may allow a reduction to the requirement regarding minimum hours in §809.51(a)(2) if the need to care for a child with disabilities prevents the parent from participating in the activities for the required hours per week.

Section 809.51(c) states that for the purposes of meeting the educational requirements stipulated in §809.51(a)(2), each credit hour of postsecondary education will count as three hours of education activity per week. The language also states that each credit hour of a postsecondary education condensed course counts as six education activity hours per week. This language is consistent with previous Commission guidance and aligns with current practice.

The Commission received no comments on this section.

§809.52. Child Care for Children of Teen Parents

Section 809.52 addresses the eligibility for child care services for children of teen parents. This section is similar to provisions for children of teen parents in the repealed rules.

Section 809.52(a) notes that a child of a teen parent may be eligible for child care if the teen parent needs child care services to complete high school or the equivalent, and the teen's family income does not exceed the income eligibility limit established by the Board. Boards may establish a higher income eligibility limit for teen parents provided that the higher income limit does not exceed 85% of the state median income for a family of the same size.

Section 809.52(b) states that the 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). The repealed rules require that the teen parent include the income of the teen's parents, if the teen parent is residing with the teen's parents. However, the adopted rules in §809.19(a)(3) retain the provision in the repealed rules that the parent share of cost shall be based solely on the teen's family income and family size. The provisions in §809.52(b) align the income methodology used to determine eligibility for teen parents with the methodology for determining the parent share of cost for teen parents by removing the provision that the teen include the income of the teen's parents when determining income eligibility.

Comment: Nine commenters agreed with the proposed rule that excludes the income of a teen's parents. The commenters stated that it is burdensome to collect income documentation from the grandparents of eligible children.

Response: The Commission appreciates the comments.

§809.53. Child Care for Children Served by Special Projects

Section 809.53 relates to eligibility for child care services for children served by special projects. The provisions in this section are similar to the repealed rules.

Section 809.53(a) states that special projects developed under federal and state statutes or regulations may add groups of children eligible to receive child care.

Section 809.53(b) provides that the eligibility criteria as stated in the statutes or regulations shall control for the special project, unless otherwise indicated by the Commission.

Section 809.53(c) states that the time limit for receiving child care for children served by special projects may be specifically prescribed by federal or state statutes or regulations according to the particular project; otherwise, the Commission may set the time limit depending on the purpose and goals of the special project and the availability of funds.

The Commission received no comments on this section.

§809.54. Continuity of Care

Section 809.54 concerns continuity of care for children enrolled in child care services. The provisions in this section were modified slightly from the repealed rules.

Section 809.54(a) provides that 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 §809.54(b).

Section 809.54(b) states that except as provided by §809.76(b), relating to child care not continuing during appeal, a child should not be 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 in §809.43. This provision specifies that if child care is not to continue during the appeal process, then the continuity of care provisions in this subsection shall not apply.

Section 809.54(c) retains the current provisions related to continuity of care for children formerly receiving child protective services. The adopted rules state that in closed DFPS Child Protective Services cases (DFPS cases) in which child care is no longer funded by DFPS, the following shall apply for 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 the child care services for up to six months after the DFPS case is closed.

Section 809.54(c)(1), regarding Former DFPS Children Not Needing Protective Services Child Care, states that if the family meets 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 child care subject to the availability of funds. To receive care under §809.54(c)(2), Former DFPS Children Not Needing Protective Services Child Care, the parent must be working or attending a job training or educational program.

Section 809.54(d) provides that 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.

Section 809.54(e) states that 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.

Section 809.54(f) allows Boards to 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.

Section 809.54(g) states that a Board must ensure that parents who choose to accept temporary child care to fill a position opened because of court-ordered custody or visitation do not lose their place on the waiting list.

Finally, §809.54(h) states that a Board must ensure that parents who do not choose to accept temporary child care to fill a position do not lose their place on the waiting list.

Comment: Two commenters requested clarification on assessing parent's share of cost to Former DFPS Children Needing Protective Services. The commenters stated that the rules are clear that families do not have to meet income or work eligibility requirements but the rules do not address parent's share of cost.

Response: The Commission's intent is to ensure continuity of care for children formerly receiving child protective services, 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. The Commission agrees that the rule is clear that the parent or caregiver of the child is not required to meet the income eligibility requirements or work requirements. The Commission intends that the Boards follow the provision in §809.19(a)(2) and continue to exempt these families from the parent share of cost, unless DFPS assesses a parent share of cost.

Comment: Two commenters disagreed with the Commission allowing Boards to 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. The commenter stated that this is not cost effective for case managers to determine eligibility since the parents may only be offered child care for one month. Shortly after parents are enrolled, they will be terminated and offered the opportunity to appeal the decision. This is a burden on providers who might turn away other children who would be enrolled for a longer period of time.

Response: The Commission understands the commenter's concern regarding utilizing the space temporarily during a period in which a child under court-ordered custody or visitation arrangements is absent. However, the rule language is clear that it is the Board's option to make the best use of the space and serve other children if desired.

SUBCHAPTER D. PARENT RIGHTS AND RESPONSIBILITIES

The Commission adopts new Subchapter D, Parent Rights and Responsibilities, as follows:

Subchapter D contains the provisions related to parent rights and responsibilities. Specifically, the subchapter contains the rules related to parental choice, general parent rights, parent eligibility documentation and reporting requirements, parent appeal rights, and the parent responsibility agreement (PRA).

§809.71. Parent Rights

Section 809.71 provides the list of parent rights. The adopted rules require that a Board's child care contractor must provide the list of parent rights in writing. The Commission emphasizes that by providing the list of rights in writing, especially the parent's right to be informed of the reporting requirements and appeal rights, the parent is better able to meet the requirements to determine eligibility, thus avoiding the termination of child care. Other than adding the requirement that the parent be informed of parental rights in writing, the list of parental rights is similar to the list in the repealed rules.

Section 809.71 states that a Board shall ensure that the Board's child care contractor informs parents of their rights in writing.

Section 809.71(1) states that parents have the right to choose the type of child care provider that best suits their needs and to be informed of all child care options available to them including consumer education information described in the §809.15.

Section 809.71(2) states that parents have the right to visit available child care providers before making their choice of a child care option.

Section 809.71(3) states that parents have the right to 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.

Section 809.71(4) states that parents have the right to be informed that a provider may charge the parents the difference between the Board's reimbursement and the provider's published rate.

Sections 809.71(1)–809.71(3) have not changed substantially from repealed Chapter 809. However, the Commission provides new language in §809.71(a)(4) to include a parent's right to be informed of the Commission rules and Board policy related to providers charging the parent the difference between the Board's reimbursement rate and the provider's reimbursement rate as stipulated in §809.92. Section 809.92(c) prohibits providers who accept Commission-funded child care subsidies from charging parents who are exempt from being assessed a parent share of cost that is the difference between the child care subsidy and the provider's published rate. For parents who are assessed a parent share of cost, the Commission rules do not prohibit providers from charging parents the difference between the child care subsidy and the provider's published rate. However, §809.92(d) allows Boards to have a policy that extends this prohibition for all parents eligible for child care services. Informing a parent of the Commission rules and Board policy will allow the parent to ask the provider about the provider's particular policy. Thus, the parent will be in a better position to make child care placement decisions for their children.

Sections 809.71(5)–809.71(8) state that a child care contractor shall inform parents of their right to:

—have representation when applying for child care services;

- receive notification of their eligibility for child care services within 20 days from the day the Board's child care contractor receives all necessary documentation required to determine eligibility;
- receive child care services regardless of race, color, national origin, age, sex, disability, political beliefs, or religion;
- have the Board and the Board's child care contractor treat information used to determine eligibility for child care services as confidential.

Section 809.71(9) retains the provisions in the repealed rules related to notifying the parent that child care services will be denied, delayed, reduced, or terminated. The rules retain the provision that a parent has the right to receive written notification at least 15 days before the denial, delay, reduction, or termination of child care services.

Additionally, §809.71(9) retains the provision in the repealed rules that notification of denial, delay, reduction, or termination of child care services is not required if child care is authorized to cease immediately because either the parent is no longer participating in the Choices program; or child care is authorized to end immediately for children in protective services. The notification and effective date of such action is provided by the Choices caseworker or DFPS.

Section 809.71(10) retains the following provisions from the repealed rules:

- the parent has the right to receive 30-day written notification if child care services are to be terminated to make room for a first priority group described in §809.43(a)(1) (specifically, Choice child care; TANF Applicant child care; FSE&T child care; and Transitional child care);
- written notification of denial, delay, reduction, or termination of child care services shall include information regarding other child care options for which the recipient may be eligible; and
- the notice may be provided on the earliest date on which it is practicable if the 30-day notification interferes with the ability of the Board to comply with its duties regarding the number of children served or requires the expenditure of funds in excess of the amount allocated to the Board.

Additionally, §809.71(11) and §809.71(12) retain the language in the repealed rules that the parent has the right to:

- reject an offer of child care services or voluntarily withdraw the child from child care unless the child is in protective services; and
- be informed by the Board's child care contractor of the possible consequences of rejecting or ending child care that is offered.

Section 809.71(13) adds a new requirement that parents be informed of the eligibility documentation and reporting requirements described in §809.72 and §809.73. The Commission proposes to add this requirement in order to ensure that parents are aware of the eligibility documentation and reporting requirements. By ensuring that a parent is aware of these documentation and reporting requirements, the parent will be in a better position to avoid possible adverse actions due to the failure to provide necessary documentation or the failure to report required information to the child care contractor.

Section 809.71(14) provides that the child care contractor inform the parent of the appeal rights as described in §809.74. This provision is retained from the repealed rules.

Section 809.71(15) adds a new requirement, based on public comment, that parents be informed of the Board's attendance policies. The Commission believes that informing each parent of the requirements for child care, including attendance requirements, will reduce the risk of a parent's termination from care because of a child's excessive absences.

Comment: One commenter requested clarification on how the rule change requiring the list of parent rights in writing would be imposed for Choices clients.

Response: The list of parent rights could be provided to the parent by the Choices caseworker.

Comment: One commenter asked whether the "five-day no show/no contact" should be included in §809.71(9)(A) related to a parent's notification of termination rights. The commenter stated that this has always been considered a voluntary withdrawal.

Response: The Commission assumes that the "five-day no show/no contact" statement is part of the Board's attendance policy. The Commission agrees and modifies the rule language by adding §809.71(15) stating that parents have the right to be informed of the Board's attendance policy described in §809.13(d)(13).

§809.72. Parent Eligibility Documentation Requirements

Section 809.72 relates to parent documentation requirements for determining eligibility for child care services. Section 809.72(a) retains the requirement from the repealed rules that parents provide the Board's child care contractor with all information necessary to determine eligibility according to the Board's administrative policies and procedures. Also retained is the stipulation in 809.72(b) that a parent's failure to submit eligibility documentation may result in denial or termination of child care services.

Section 809.72 has not changed from the repealed rules, except that the new section removes the reference to nonpayment for SACC claims. The reference to self-arranged providers is unnecessary because the Commission no longer distinguishes between providers with an agreement and self-arranged providers.

The Commission received no comments on this section.

§809.73. Parent Reporting Requirements

Section 809.73 provides the parent reporting requirements for child care services.

Section 809.73(a) retains the repealed provisions that a parent must report to the Board's child care contractor, within 10 days of the occurrence, the following:
—changes in family income;

- changes in family size;
- changes in work, or attendance in a job training or educational program; or
- any other changes that may affect the child's eligibility or parent's share of cost for child care.

The Commission adds to the parent reporting requirements that the parent must report the receipt or the awarding of any child care funds from other public or private entities. Under the repealed rules and retained in new §809.21, child care providers are required to report the amount of other funds received by the parent for child care. Section 809.73(a)(4) also requires parents to report the receipt of such subsidies to the child care contractor. It is the intent of the Commission that the responsibility for reporting the receipt of other funds used for child care be shared by the parent and the child care provider.

Finally, the Commission removes the parent's requirement to report the loss of TANF or Supplemental Security Income assistance grants. This provision is unnecessary because a parent's public assistance payments, including TANF and Supplemental Security Income, are included as family income and a parent is already required by §809.73(a) to report changes in family income.

Section 809.73(b) retains the repealed provision that failure to report changes may result in:
—termination of child care;
—recovery of payments by the Board, the Board's child care contractor, or the Commission; or
—fact-finding for suspected fraud.

Section 809.73(c) also retains the repealed provision that the receipt of child care services for which the parent is no longer eligible constitutes grounds on which to suspect fraud.

The Commission received no comments on this section.

§809.74. Parent Appeal Rights

Section 809.74, related to parent appeals, contains many of the same provisions in the repealed rules. However, the section includes new language to clarify when a parent may appeal under Chapter 809 and when a parent may appeal under other chapters of Commission rules.

Section 809.74(a) states that a parent may request a hearing pursuant to Subchapter G of this chapter (relating to Appeal Procedure) if the parent's eligibility or child's enrollment is denied, delayed, reduced, or terminated by the Board's child care contractor. The Commission clarifies that if a decision of ineligibility is made by the child care contractor, then the parent may appeal pursuant to the procedures set forth in this chapter. The Commission's intent is to ensure that child care appeals related to nonparticipation or noncompliance with other workforce services—services in which the child care contractor does not determine eligibility—are conducted pursuant to the appeals process of the particular workforce service.

Section 809.74(b) states that a parent may have an individual represent them during this process. This provision has not changed from the repealed rules.

Section 809.74(c) states that a parent of a child in protective services may not appeal pursuant to Subchapter G of this chapter, but shall follow the procedures established by DFPS. The adopted section has not changed from the repealed rules.

Section 809.74(d) states that if the parent's eligibility or child's enrollment is denied, delayed, reduced, or terminated by a Choices caseworker, the parent may not appeal pursuant to Subchapter G of this chapter, but may appeal following the procedures in Chapter 811 of this title. Similarly, §809.74(e) states that if the parent's eligibility or child's enrollment is denied, delayed, reduced, or terminated by the FSE&T caseworker, the parent may not appeal pursuant to Subchapter G of this chapter, but may appeal following the procedures in Chapter 813 of this title. As mentioned previously, the Commission's intent is to ensure that child care appeals related to nonparticipation or noncompliance with other workforce services—such as Choices or FSE&T—are conducted pursuant to the appeals process of the particular workforce service.

The Commission received no comments on this section.

§809.75. Child Care during Appeal

Section 809.75 provides the requirements for the provision of child care during appeal. The provisions in this section are not substantively changed from the repealed provisions.

Section 809.75(a) states that 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.

Section 809.75(b) provides that child care does not continue during the appeal process if the parent's eligibility or child's enrollment is denied, delayed, reduced or terminated because of:

- excessive absences;
- voluntary withdrawal from child care;
- change in federal or state laws or regulations that affect the parent's eligibility;
- lack of funding because of increases in the number of enrolled children in state and Board priority groups;
- a sanctions finding against the parent participating in the Choices program;
- voluntary withdrawal of a parent from the Choices program;
- nonpayment of parent fees; or
- 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.

Section 809.75(c) states that 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.

Comment: Eight commenters suggested amending the reasons when child care does not continue during an appeal process to include late payments of parent fees or amounts owed on repayment plans, and instances when clients fail to submit documentation to redetermine their eligibility prior to their end date. One of the commenters stated that allowing child care to continue during the appeal process when parents fail to submit redetermination documentation ultimately causes a hardship for parents. The denial is virtually always

upheld under these circumstances, and parents are left owing a large amount of money for child care that was provided during the appeal. The Board does not allow parents back into care if they have outstanding fees, so this effectively prevents them from ever getting back into care.

Response: The Commission disagrees with adding these actions to the list of reasons when a client does not receive child care during appeal. The Commission believes that there may be legitimate reasons why the parent could not submit redetermination documents in a timely manner. There may be documents needed for redetermination, such as grades from colleges or schools or work hour documentation from employers, that the parent relies on other individuals to provide. The Commission believes that the parents must be given the opportunity to provide an explanation of why the documents were not provided on time, as well as a reasonable amount of time for the documents to arrive.

The Commission understands the hardship on parents who ultimately do not submit the documents, and whose appeal is denied. However, weighing the potential impact on a parent whose appeal is denied against the impact of losing child care on a parent who ultimately submits the required documents, the Commission believes the decision should be in favor of allowing the appeal process to continue—with child care—in order to allow parents the opportunity to complete the eligibility process.

The Commission also disagrees that child care should not continue during an appeal due to the parent's late payment of parent fees or other amounts owed. The Commission notes that §809.75(b)(7) states that child care shall not continue during appeal due to the parent's nonpayment of parent fees. However, if the parent pays the required share of cost or other amounts owed—although the payment is late—the parent should be allowed to continue in care.

Comment: One commenter suggested amending the reasons when child care does not continue during an appeal process to include instances when a parent does not meet the 25-hour participation rule.

Response: The Commission disagrees with adding this to the list of reasons when a parent does not receive child care during an appeal. The Commission believes that one of the reasons for continuing child care during appeal is to allow the parent to appeal a decision that the parent believes was made in error. The child care contractor may have based the decision that the parent was not meeting the hourly requirement on incorrect assumptions, or the child care contractor may have made a mistake in calculating the required number of hours. For these reasons, the Commission believes that child care should continue during the appeal, if the reason for denial was the contractor making a determination that the parent is not meeting the minimum hourly activity requirements.

§809.76. Parent Responsibility Agreement

Section 809.76 contains the requirements for the PRA.

Section 809.76(a) retains the provision from the repealed rules that the parent of a child receiving child care services is required to sign a 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 PRA must be reviewed at each eligibility redetermination.

Section 809.76(b)(1)(A) retains the repealed stipulation that the PRA require that each parent shall cooperate with the Office of the Attorney General of Texas (OAG) to establish paternity and enforce child support. However, the adopted rules clarify that this is required only for cases in which the child has a noncustodial parent. The Commission emphasizes that this provision of the PRA is not necessary if both parents of the child reside with the child and paternity and child support is not an issue. Additionally, the Commission includes language that allows a certain amount of flexibility in how a parent can demonstrate compliance with the paternity and child support provisions of the PRA.

The repealed rules related to the PRA do not specify when it is or is not necessary to cooperate with OAG. Some Boards interpreted the rule to require parents to open a child support case with OAG, even though paternity is acknowledged and the custodial parent is receiving child support, although the child support is not in the OAG child support system. Other Boards interpreted the rule to mean that if the custodial parent can demonstrate that a non-OAG-managed arrangement exists with the noncustodial parent for child support, then it would not be necessary for the parent to cooperate with OAG to establish or enforce that arrangement.

Additionally, parents with non-OAG-managed child support arrangements may decide that requiring the noncustodial parent to enter into a child support arrangement through OAG would jeopardize the receipt of any child support and jeopardize the current custodial arrangements. The custodial parent may forego receiving subsidized child care in order to retain child support and custody arrangements.

Section §809.76(b) clarifies that if a parent cannot produce documentation of receipt of child support, the parent will be required to open a child support case with OAG. The rule language specifically allows a parent to maintain an existing non-OAG-managed child support arrangement with the noncustodial parent, thus making it unnecessary to cooperate with OAG to enforce child support. The rule also specifies the documentation the custodial parent must produce in order to verify that paternity has been acknowledged and child support is being provided by the noncustodial parent.

Therefore, §809.76(b)(1)(A) stipulates that the PRA must require each parent to cooperate with OAG to establish paternity of the parent's children and to enforce child support. Additionally, the rules state that parents can demonstrate cooperation with the OAG by:

- 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
- opening a child support case with OAG and providing documentation that the parent is cooperating with the OAG.

Additionally, §809.76(b)(1)(B) states that the parent may also provide documentation to the Board's child care contractor showing 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.

Although the Commission is not requiring parents to open a child support case with the OAG if the parent has an arrangement for child support with the noncustodial parent, the Commission intends that the Board require custodial parents to provide documented evidence that child support is being provided by the noncustodial parent.

Section §809.76(b)(2) retains the repealed provision of the PRA that each parent must 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.

Section §809.76(b)(3) also retains the repealed provision of the PRA related to school attendance. The new language clarifies that each parent must 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.

Section 809.76(c) states that 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 new section has not changed from the repealed rules.

Comment: One commenter stated that the proposed rule to allow a parent receiving child support through a non-OAG-managed arrangement benefits parents in these situations. The commenter also pointed out the difficulty of sanctioning a parent for noncooperation. The commenter stated that if there was not a sanction, a parent may have more of an incentive, and, therefore, be more likely to report and provide verification of child support received through an informal agreement with the noncustodial parent. However, the commenter pointed out that if the sanctions were removed for these cases, there could be the possibility for abuse of the system.

Response: The Commission appreciates the comment and understands the concern about the sanctions. However, the Commission believes that without the possibility of a sanction, the parent will not actively attempt to comply with the PRA.

Comment: Two commenters requested clarification about being able to count in-kind support to meet the child support requirements of the PRA. The commenters suggested that in-kind support should count as compliance with the child support requirements of the PRA, as the noncustodial parent is supporting the child.

Response: The Commission agrees with the comment that in-kind support may be counted as complying with the child support requirements of the PRA. The Commission intends to allow Boards a certain amount of flexibility in how a parent can demonstrate compliance with the paternity and child support provisions of the PRA. As stated previously, the Commission is concerned that parents with non-OAG-managed child support arrangements may decide that requiring the noncustodial parent to enter into a child support arrangement through OAG could jeopardize the receipt of any child support or current custodial arrangements. The Commission is sensitive to the fragile nature of low-income families and does not intend to prohibit a child support arrangement that is working and providing needed support, even noncash support, to children. It is the Commission's belief that the provision of any child support, including in-kind support, benefits the child and demonstrates parent responsibility for the child.

Therefore, the Commission modifies language in §809.76(b)(1)(B) to clarify that the documentation verifying the non-OAG-managed arrangement may include evidence of in-kind child support.

Comment: One commenter requested clarification of what is acceptable documentation for evidence of child support payment history. The commenter stated that this is an overly burdensome requirement for an informal child support agreement.

Response: Each Board may decide what type of documentation is acceptable. The Commission disagrees that this is an overly burdensome requirement. The Board is allowed to develop simple and cost-effective documentation requirements, as long as the requirements include verification that the noncustodial parent provides child support and that the custodial parent confirms the receipt of child support either through cash payments or in-kind support.

Comment: One of the commenters asked if Boards could make a determination that the parent is cooperating for child support enforcement and accept a self-attestation document.

Response: The Commission believes that a statement from the noncustodial parent alone does not confirm that the custodial parent received the child support. The documentation provided must be confirmed by the custodial parent. The Commission believes that verifiable documentation of the child support (e.g., bank statements from both parents showing both the payment from the noncustodial parent's account and the deposit into the custodial parent's account; or canceled checks to the custodial parent from the noncustodial parent) may be available in most cases. However, the Commission understands that some informal arrangements involve in-kind support or cash transactions that may not include checks or bank deposits. In these cases, the Commission intends that both parents verify that child support is provided.

Comment: One commenter requested clarification whether the school attendance requirement of the PRA applies to all children in school or only those receiving child care services.

Response: The Commission believes that the statement in §809.76(b)(2) that "each family member younger than 18 years of age attends school regularly" is clear. The rule applies to each family member, not only to the children receiving child care services.

Comment: One commenter requested guidance regarding parameters for school attendance policies for parents receiving child care services. The commenter stated that the Board requires school attendance documentation, but the Board does not know what to do about school absences. The commenter stated that the Commission has not provided guidance on the number of absences that are acceptable and whether Boards should terminate child care services because of absences from school.

Response: The Commission allows Boards the flexibility to establish guidelines for school attendance. Moreover, the Commission disagrees that guidance has not been provided related to termination of child care due to noncompliance with PRA school attendance provisions. Section 809.76(c) clearly provides Boards with the ability to terminate child care due to noncompliance with school attendance.

Comment: Ten commenters requested that the Commission repeal all sections of the PRA except for the sections related to cooperation with the OAG for paternity and child support. The commenters stated that the Commission has clearly stated that Boards should not duplicate the statutory authority of DFPS as it relates to child care regulation. However, the commenters stated that requiring Boards to verify compliance with the other provisions of the PRA, particularly school attendance, duplicates the responsibilities of other state agencies since Boards do not have statutory authority. One of the commenters stated that older children in a family who do not receive child care services should not be under the jurisdiction of the child care rules. Another of the commenters stated that HHSC reviews school attendance at every certification for all clients, and it has been a nightmare. Verifying school attendance is double work for both HHSC and the Commission. The commenters stated that these requirements increase operational costs and are solely complied with because they are in the rules and because of compliance monitoring. The commenters also stated that the PRA is not a federal requirement and should be repealed.

Response: The Commission appreciates the commenters' acknowledgement of the importance of the PRA child support provisions. However, the Commission disagrees that all sections of the PRA except for the sections related to child support should be repealed. Even though the provisions of the PRA are not specifically required by federal law or federal regulations, the Commission notes that one of the actions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 involved consolidating federal child care funds and amending the Child Care and Development Block Grant Act. Therefore, personal responsibility is a fundamental tenet of federal child care funding. The Commission places a strong emphasis on the tenets of personal responsibility and believes that to assist parents in obtaining and maintaining employment by subsidizing child care services for the parents, the parents should refrain from activities that may ultimately put them at risk of either losing the employment or of being unable to advance toward self-sufficiency. The Commission believes that refraining from alcohol and drug abuse, as well as maintaining school

attendance, assists parents in ensuring a lifestyle that will ultimately break the cycle of poverty and lead to sustained self-sufficiency.

The Commission also disagrees that the school attendance provisions of the PRA duplicate the work of school districts. The provisions also are not designed to require Boards or child care contractors to enforce school attendance, which is performed by local school districts. Boards can establish simple procedures that require parents to obtain documentation from school districts verifying that school attendance requirements are being met. Additionally, the Commission disagrees with the statement that the child care PRA duplicates the work of HHSC's PRA for TANF parents. The PRA requirements in §809.76(b) apply only to parents who are not required to sign a PRA for TANF under §31.0031 of the Texas Human Resources Code.

Comment: One commenter requested that the Commission research and estimate the Boards' costs in complying with the PRA, specifically the school attendance requirements for all school-age children.

Response: The Commission understands the Boards' challenges in verifying that the customer is complying with the PRA. However, the Commission points out that the PRA requirements have been in Commission rules since 1997 and that the Boards are in a better position to document the actual costs associated with complying with the PRA.

§809.77. Exemptions from the Parent Responsibility Agreement

Section §809.77 states that 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:

- the paternity of the child cannot be established after a reasonable effort to do so;
- the child was conceived as a result of incest or rape;
- the parent of the child is a victim of domestic violence;
- adoption proceedings for the child are pending;
- 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;
- the child may be physically or emotionally harmed by cooperation; or
- the parent may be physically or emotionally harmed by cooperation, to the extent of impairing the parent's ability to care for the child.

Section 809.77 includes additional exemptions from the repealed rules in order to align the child care PRA exemptions with TANF PRA exemptions in HHSC rules, 15 TAC §372.1154(a)(4). These exemptions address situations relating to a child involved in a pending adoption proceeding, a parent working with an adoption agency to decide whether to place the child for adoption, or a child or parent who may be physically or emotionally harmed by cooperation.

The Commission received no comments on this section.

Repealed Provisions Related to Parent Rights and Responsibilities Not Retained in the New Rules

The Commission removes the repealed provisions related to parent rights that involve "enrollment agreements." Enrollment agreements are between the parents of the child and the child care provider. The purpose of the enrollment agreements is to detail the agreed-upon terms between both parties. The repealed rules require parents to comply with the enrollment agreement. Under the repealed rules, a parent's failure to comply with the enrollment agreement results in having child care denied or terminated.

The Commission believes that the child care rules should be silent on enrollment agreements because these agreements are between the parents of a child and the individual child care provider. The child care provider, including a provider caring for nonsubsidized children, has the discretion to deny or terminate care in that child care facility in situations in which the parent does not comply with the agreed-upon terms.

SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE

The Commission adopts new Subchapter E, Requirements to Provide Child Care, as follows:

The repealed rules have two subchapters devoted to requirements for child care providers, one subchapter for providers with agreements and one subchapter for SACC providers.

The new chapter removes the distinction between providers with agreements and SACC providers. The Commission's intent is that the rules related to child care providers be applied to every eligible provider type and to not have one set of rules for providers with agreements and another set for SACC providers. Therefore, Subchapter E contains the requirements for child care providers receiving child care subsidies. This subchapter provides the minimum requirements for providers, provider responsibilities and reporting requirements, and the provisions for reimbursing providers.

Comment: Two commenters stated that removing the distinction between a provider and a SACC provider would simplify the child care system.

Response: The Commission appreciates the comment.

§809.91. Minimum Requirements for Providers

Section 809.91(a) requires the Boards to ensure that child care subsidies are paid only to providers listed in §809.2(16). The eligible providers include:

- regulated child care providers;
- relative child care providers; and
- at the Board option, listed family homes.

As defined in §809.2(17), regulated child care providers are the same as the eligible providers with agreements and SACC providers as set forth in the repealed rules and include entities that are:

- licensed by DFPS;

- registered with DFPS;
- licensed by the Texas Department of State Health Services; or
- operated and monitored by the U.S. military services.

As defined in §809.2(18), a relative child care provider is an individual who is at least 18 years of age and is, by marriage, blood relationship, or court decree, one of the following:

- the child's grandparent;
- the child's great-grandparent;
- the child's aunt;
- the child's uncle; or
- the child's sibling (who does not reside in the same household as the eligible child).

Finally, the Commission includes listed family homes, as defined in §809.2(12), as eligible providers.

A listed family home is a family home that is listed with, but not licensed or registered by, DFPS. Listed family homes are, under the repealed rules and at the Board's option, eligible providers.

Other than prohibiting relative providers who reside with the eligible child from being eligible relative providers (as discussed below), the Commission emphasizes that the eligible provider types have not changed under the new rules. Licensed centers and homes, registered and listed homes, as well as eligible relatives, continue to be eligible child care providers. The rules designate each of these provider types as eligible providers and the requirements in Subchapter E apply to each provider type equally.

Section 809.91(b) states that if a Board chooses to include a listed family home as an eligible provider, the Board must ensure that there are local health and safety laws or regulations in effect designed to protect the health and safety of the children being cared for in listed family homes.

The Commission retains listed family homes as an eligible provider in order to provide parents with a full range of provider types. However, CCDF regulations at 45 C.F.R. §98.41 require that providers, with the exception of eligible relative providers, meet certain health and safety requirements under state or local law. At a minimum, the local or state health and safety laws or regulations must include the prevention and control of infectious diseases (including immunizations); building and physical premises safety; and minimum health and safety training appropriate to the provider setting.

Because listed family homes are not required by DFPS to meet health and safety requirements (pursuant to CCDF regulations at 45 C.F.R. §98.41 listed above), these providers are eligible only if the Board ensures that there are local laws or regulations that meet the requirements of 45 C.F.R. §98.41 in place.

Section 809.91(c) states that a Board shall not place requirements on regulated providers that are higher than state licensing requirements, except as provided for in the TRS Provider Certification. The subsection also prohibits Boards and child care contractors from placing

requirements on regulated child care providers that have the effect of monitoring the providers for compliance with state child care licensing requirements.

The intent of this prohibition is to emphasize that DFPS has the statutory authority under Texas Human Resources Code, Chapter 42 to regulate and monitor child care providers for health and safety requirements, which include the health and safety requirements of the CCDF regulations at 45 C.F.R. §98.41. As long as the provider is licensed or registered by DFPS, then the provider is assumed to be meeting the health and safety requirements of state law and to be an eligible provider.

Also, the Commission removes the provisions contained in the repealed rules related to general liability insurance requirements because liability insurance requirements for the provider are the responsibility of DFPS and new §809.91(c) prohibits Boards from placing any additional requirements on providers that are related to the authority of DFPS to regulate child care providers. The Commission emphasizes that having liability insurance is an important requirement for all licensed child care providers, not just providers receiving child care subsidies. As a child care industry-wide licensing requirement, it is under the jurisdiction of DFPS and it is not the Commission's or the Boards' role to monitor for compliance or require additional insurance above the state licensing requirements.

However, §809.91(d) provides that if a Board or a Board child care contractor, in the course of fulfilling its responsibilities, gains knowledge of any possible violation regarding regulatory standards, the Board or Board contractor must report such violations to the appropriate regulatory agency. This provision is retained from the repealed rules.

The adopted rules at §809.91(e) limit child care services provided in the child's own home to relatives who do not reside with the eligible child. This is consistent with federal regulations at 45 C.F.R. §98.30(e)(1)(iv), which allow states to establish limitations on child care services provided in the child's own home. The Commission notes that the preamble to the CCDF Final Rule, 45 C.F.R. Parts 98 and 99 (*Federal Register*, Vol. 63., No. 142, July 24, 1998, page 39949) states: "Child care administrators have faced a number of special challenges in monitoring the quality of care and the appropriateness of payments to in-home providers. For that reason, we give Lead Agencies complete latitude to impose conditions and restrictions on in-home care." The preamble continues: "The Lead Agency must continue to allow parents to choose in-home child care. However, since this care is provided in the child's own home it has unique characteristics that deserve special attention." Lead Agencies are also required to state the reasons for any limitations on in-home care in the CCDF State Plan.

The Commission specifically acknowledges the challenge related to determining the appropriateness of payments to in-home providers, particularly relative providers residing in the same house as the eligible child. The Commission intends that child care funds be maximized to the greatest extent possible in order to serve parents who require child care in order to work or attend a job training or educational program. The Commission believes that, as a general principle, a relative who resides with the child should not be eligible to receive a subsidy in order to care for the child, because the relative is available in the child's home to care for the child while the parent is working or attending a job training or educational program. At the end of

State Fiscal Year 2006 (August 31, 2006), there were 27,174 children on the Boards' waiting lists. The Commission believes that with so many children currently waiting to receive child care services, the limited resources to fund child care must not be used to subsidize individuals who are in the child's household and are available to care for the child. Rather, the funds should be used to provide child care services to parents who require child care and do not have access to care.

The Commission also points to the challenge of monitoring in-home child care providers, particularly unregulated relative providers who are residing in the same house as the eligible child. Child care contractors face many challenges in monitoring and verifying attendance for relative providers. Limiting in-home care to relatives who do not reside with the eligible child reduces the risk of fraud or improper payments. When a relative provider is required to go to the child's home in order to care for the child and, conversely, when a parent is required to take the child to the relative's residence, there is a greater certainty that the care is actually being provided to the child. Although this will not eliminate the possibility of fraud or improper payments, the Commission believes that this rule may help reduce the risk of such actions.

Comment: Three commenters requested clarification of whether this rule to not allow relative providers to reside in the same household as the child includes children of teen parents. Another commenter, a grandmother who was currently caring for her grandchild while the child's mother was attending high school, expressed concerns that this would place an undue burden on the child and family.

Additionally, seven commenters disagreed with the proposed change and stated that it will have an adverse effect on Boards' area performance, those who live in rural areas, or those who have irregular work hours. The commenters contend that transportation barriers and shortages of available day cares to accommodate irregular work or school hours will deter parents from getting child care.

Response: The Commission appreciates the comments and has made several changes to the rule language to address the concerns raised by the commenters. The Commission has removed from the definition of a relative child care provider the stipulation that the relative reside in a separate household than the eligible child. However, while the Commission continues to believe that, in principle, the child and the child care provider should, in most cases, not reside in the same residence, it recognizes that certain situations may exist in which relative in-home care may be the best option available to the parent.

The Commission understands and appreciates the unique family situation of teen parents. Teen parents are attending high school or working toward a GED and, in most cases, continue to reside with their parents. The Commission considers it a goal of subsidized child care to assist teen parents in obtaining a high school diploma or GED. In order to assist these parents in reaching this goal, Commission rules contain several provisions unique to teen parents. For example, even if the teen is residing with the teen's parents, Commission rules require that only the teen's income be used to calculate the teen parent's eligibility and parent share of cost. Additionally, children of teen parents are typically infants and the availability of infant care may be limited.

The Commission recognizes this unique home situation of teen parents as well as the challenges that teen parents—and the parents of teen parents—face. Therefore, the Commission has modified the rule language to allow an exception for children of teen parents to the prohibition against the relative provider and the child residing in the same house.

Although the Commission disagrees that the requirement that the relative not reside with the child will have an adverse impact on performance, the Commission appreciates the comment concerning the potential impact on working parents in rural areas or those who have nontraditional (e.g., nights and weekends) or irregular work hours. The Commission also appreciates the concerns related to transportation barriers and the potential lack of available child care for infants, especially in rural areas.

Again, the Commission points to guidance in the preamble to the CCDF Final Rule, 45 C.F.R. Parts 98 and 99 (*Federal Register*, Vol. 63., No. 142, July 24, 1998, page 39949), which acknowledges that "There are a number of situations in which in-home care may be the most practical solution to a family's child care needs. For example, the child's own home may be the only practical setting in rural areas or in areas where transportation is particularly difficult. Employees who work nights, swing shifts, rotating shifts, weekends or other non-standard hours may experience considerable difficulty in locating and maintaining satisfactory center-based or family day care arrangements....Similarly, families with more than one child or children of very different ages might be faced with multiple child care arrangements if in-home care were unavailable. Many families also believe that very young children are often best served in their own homes."

In establishing limits for in-home care, the CCDF preamble urges "child care administrators to consider the capacity of local child care markets to meet existing demand and the role that in-home care may place in the ability of parents to manage work and family life."

The Commission agrees with the commenters and the guidance in the CCDF preamble. Therefore, the Commission adds language in §809.92(e) stating that the eligible child and the relative child care provider must not reside in the same household 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 providers are not reasonably available to the parent. The rules also provide that 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.

Comment: Six commenters supported the change to not allow relative providers to reside in the same household as the child. One noted that this change will help reduce the possibility of relative provider fraud and help the Boards use their funds more effectively. The commenter also stated that in most cases the eligible relative lives in the home and is already

caring for the children without receiving compensation prior to enrolling in the child care program. The parent will insist that the relative could not care for the children without receiving payment and Boards have no mechanism to prove otherwise. This will prevent those situations and allow us to use our child care funds more effectively.

Response: The Commission agrees with the comment and appreciates the support of the general principle that relative child care providers not reside in the same house as the child. However, as stated previously, the Commission has modified the rule language to allow a child of teen parents to be cared for by relatives in the child's own home. Rule language is also modified to allow flexibility for situations in which other child care providers are not available due to reasons such as the parent's work schedule, the lack of adequate transportation, or the age of the child.

Comment: Six commenters requested flexibility in implementing the rule to not allow relative providers to reside in the same household as the child. One commenter requested that the rule be implemented immediately for new clients but for existing ones to gradually phase it in over an extended period to give them time to make alternate child care arrangements. One commenter suggested that current clients be notified of this new rule when they recertify and be allowed at least 30 days to make alternate arrangements and if the client cannot find alternate child care to allow exemptions from the rule. One commenter recommended existing clients be given until their next recertification to find alternate child care. Another expressed concern that this rule could become an issue with the teen parents but saw it as a manageable issue if Boards had time to implement the rule and work with the teen parents.

Response: The Commission appreciates the comments and understands the issues related to implementation. In addition to the exceptions described above, the Commission's intent is that Boards must implement this rule immediately for new clients, but may wait until the next recertification period to implement this rule for existing clients.

Comment: Two commenters expressed concern about the documentation and monitoring that will be required to prove that the residences are different and asked if self-attestation would be acceptable.

Response: The Commission appreciates the commenter's concerns about the possibility of increased staff time to process the documentation and monitor as needed. However, self-attestation will not suffice. The Commission maintains that Boards can develop procedures that require valid documentation from both the relative and the parent that establishes separate residency (such as utility bills, property tax statements, or rental agreements).

Comment: Five commenters disagreed with the rule to not allow relative providers to reside in the same household as the child and expressed the hardship this rule change would have on families. One commenter was a grandmother who wrote that aside from the money she gets from child care, her only other source of income is from Social Security. The children's mother goes to school, works, and receives food stamps. The children are on WIC, Medicaid, and child care assistance. She stated they depend on the income being paid to her

for their existence. Another commenter stated that if the relative's only source of income is from the child care subsidy and it stops, then that person would have to find another job, which would leave no one in the home available to care for the children.

Three additional commenters disagreed with the rule to not allow relative providers to reside in the same household as the child by stating that the rule would create an inconvenience to the parent and child. Two commenters were grandmothers caring for grandchildren whose parents work irregular hours. The commenters shared examples of the various schedules that the parents work and described the hardship it would create and the impact it would have on the child to wake her up in the late hours or take her out in inclement weather. Another grandmother stated that her grandchild does not respond well to other child care settings and that relative care in the relative and child's home is the best option for the family.

Response: The Commission understands the commenters' concerns and is aware of the personal impact this rule may have on them and others similarly situated. However, CCDF funds are limited and difficult choices must be made to ensure that as many eligible customers as possible receive child care. The primary purpose of CCDF funds is to serve as a support service that allows the parents who do not have child care to become and remain employed and to enhance their ability to participate in training or education activities leading to employment. It is not intended to supplement the income of those who reside in the same household and who are able and otherwise available to care for the child. Currently, there are thousands of children on waiting lists for child care. Each child is equally important and deserving. Many of these children do not have an adult at home to care for them while their parent is at work or school, and their families may be struggling as well. The intent of this rule is to provide funds for families who do not have a reliable, available adult in the household who can care for the child.

However, as stated previously, the Commission has modified the rule language to allow children of teen parents to be cared for by relatives in the children's own home. The rule language is also modified to allow flexibility for situations in which other child care providers are not reasonably available to the parent.

Comment: One Board requested the Commission to clarify whether the rules allow Boards to deny a relative care arrangement when the relative provider is a sex offender, child abuser, or has been convicted of a serious crime. The commenter also asked if a Board can perform background checks on prospective relative providers and use CCDF funds to pay for these background checks.

Response: The Commission appreciates the comment. The Commission understands the Board's—and the general public's—concern that government-funded child care services be used to care for children in safe and stable settings, including in relative care settings. The Commission also is aware of the recent reports of parents having their children cared for by relatives who are registered sex offenders. Although parent choice is a firm principle of the Commission, child care funds should not be used to reimburse relatives who are registered sex offenders—even if that is the parent's choice. The Commission strongly believes that this would place the child in a potentially unsafe care situation. The Commission is entrusted

by the citizens of Texas to be a responsible steward of public funds. The Commission believes that it is reasonable and right to require that Commission funds for child care not be used to subsidize child care provided by registered sex offenders. Therefore, the Commission has included in §809.91(f) of the adopted rules the requirement that an individual appearing on the Texas Department of Public Safety's (DPS) Sex Offender Registry (pursuant to Chapter 62 of the Texas Code of Criminal Procedure) is not eligible to be a relative child care provider. The DPS Sex Offender Registry is available to the general public. Therefore, child care contractors will be required to verify that the relative child care provider chosen by the parent is not listed in the registry prior to authorizing care.

The Commission also directs the Boards' child care contractors to implement this rule as soon as practicable, and for new relative child care providers, no later than the effective date of these adopted rules. Additionally, child care contractors shall ensure that relative providers currently caring for Commission-subsidized children do not appear on the DPS Sex Offender Registry. Care should be immediately terminated if a relative provider appears on the registry and the child should be immediately placed with a different child care provider.

The Commission also understands and shares the commenter's concern related to individuals convicted of serious crimes who may also be chosen by the parent as a relative child care provider and whether a Board can require a criminal background check prior to authorizing care. While the DPS Sex Offender Registry is a public database accessible to all Texans, access to criminal records is limited to certain entities designated by the Texas Legislature for specific purposes. For example, the Agency has been given legislative authority to perform background checks on potential employees, while DFPS has been given statutory authority to perform background checks on individuals operating and working at regulated child care operations (including listed family homes). However, the Legislature has not granted the Agency or the Boards the authority to perform criminal background checks on relative child care providers.

Therefore, because the Agency and Boards currently lack the statutory authority to conduct criminal background checks on relative providers, the Commission has determined that it cannot modify its rules to require background checks for relative providers. However, the Commission will continue to review the legal and statutory issues surrounding criminal background checks for relative child care providers to identify options for the provision of those background checks for this population.

§809.92. Provider Responsibilities and Reporting Requirements

Section 809.92 contains provisions related to provider responsibilities and reporting requirements.

Section 809.92(a) states that a Board shall ensure that providers are given written notice of and agree to their responsibilities and requirements as stated in this subchapter before enrolling a child.

Though references to provider agreements have been removed in rule, the Commission emphasizes that it is important to require providers to agree in writing to the requirements in this subchapter prior to enrolling children. The Commission does not suggest that the written instrument referenced in §809.92(a) be named anything in particular. Boards may refer to the instrument as a "provider agreement," a "contract," a "terms and condition of service," or other name as they see fit. However, as Boards develop the written instrument for the providers, the Commission emphasizes the requirements in §809.91(c) that Boards must not place requirements on a regulated provider that exceed state licensing requirements or have the effect of monitoring the provider for compliance with state licensing requirements.

Section 809.92(b) consolidates the responsibilities and reporting requirements for providers into one section. The provisions in the subsection are retained from other sections of the repealed rules. The Commission's intent is to simplify provider responsibilities and reporting requirements and also to clarify that these requirements apply to each provider type.

Section 809.92(b)(1) states that providers are responsible for collecting the parent share of cost as assessed under §809.19 prior to the delivery of child care services. This provision is unchanged from the requirement in the repealed rules. Section 809.92(b)(2) requires providers to collect other child care funds received by the parents described in §809.21(2). This provision is also retained from the repealed rules. Section 809.92(b)(3) requires providers to report to the Board or the Board's contractor instances in which the parent fails to pay the assessed parent share of cost. This provision is added to the final rules based on public comment. Although not specifically stated in the repealed rules, providers had assumed the responsibility for reporting unpaid parent share of cost fees to the Boards. The adopted rules now incorporate this responsibility on the part of the provider. Finally, §809.92(b)(4) provides the minimum attendance reporting and tracking procedures required of providers. These provisions are also retained from the repealed rules.

Under §809.92(c), providers are prohibited from charging the difference between the provider's published rate and the amount of the Board's reimbursement rate, as determined in §809.21, to parents who are exempt from the parent share of cost assessment under §809.19(a)(2). Specifically, a provider shall not charge the difference between the provider's published rate and the amount of the Board's reimbursement rate to parents who are participating in Choices and FSE&T, as well as parents who have children that are receiving protective services.

There is nothing in federal law, federal regulation, state law, or in repealed Chapter 809 that prohibits providers from charging parents the difference between the Board's reimbursement rate and the provider's published rate (if the published rate is higher than the Board's reimbursement rate). Under the repealed rules, Boards could have a policy that prohibited providers from charging parents the difference between what the general public pays and the subsidy paid by the Board to the provider. In fact, 25 of the 28 Boards currently prohibit this practice for providers who have an agreement with the Board.

The practice of providers charging parents the difference allows those child care providers whose published rates are higher than the Board's reimbursement rate to recover the cost of services provided to subsidized children. On the other hand, it also allows child care providers—

including providers caring for children of parents participating in Choices or FSE&T, who are exempt from the parent share of cost—to charge parents for the unsubsidized portion of the parents' child care costs. This increases the cost of child care for low-income working families and may jeopardize the ability of working families to access affordable child care. Furthermore, the practice also limits the choice of providers that a parent may be able to afford. Additionally, there is a possibility that a Choices individual who cannot find a provider that will not charge the parent for any unsubsidized portion of the provider's rate may be eligible for a "good cause" exemption from the work requirements.

During the rule development process, the Commission considered prohibiting providers from charging *all* families the difference between the Board's reimbursement rate and the provider's published rate. However, the Commission determined that this prohibition for all families may discourage providers from accepting subsidized children, thus potentially limiting the number of providers from which a parent may choose. Therefore, to ensure that families who are exempt from a parent share of cost assessment (parents participating in Choices or FSE&T, and parents with children receiving protective services) have access to affordable child care, the rule prohibits providers that accept children in Commission-funded child care from charging these families an additional amount to make up the difference between their rates for the general public and the subsidy they receive from the Board for families who do not pay a share of the child care cost.

Additionally, §809.92(d) allows Boards to adopt a more strict policy if they so choose. Boards may adopt a policy prohibiting providers from charging all parents receiving subsidized child care services the difference between the subsidy and the provider's published rate. Even though several Boards already have a policy on what can be charged for the balance of the child care cost, Boards will need to reconsider and adopt or readopt their policies with these changes.

The Commission will monitor and evaluate the impact of this provision to determine if it causes an undue burden to be placed on child care providers or limits the choice of providers for parents.

Comment: Six commenters stated that the proposed language should include a requirement that providers must inform the Board or the contractor if a parent does not pay the provider his or her share of cost.

Response: The Commission agrees with the commenters and has added the requirement in §809.92(b)(3).

Comment: Two commenters agreed with the rules to prohibit providers from charging the difference between the Board reimbursement rate and the provider's published rate for parents who are exempt from the parent share of cost.

Response: The Commission appreciates the comments.

Comment: One commenter requested that this group be expanded to include individuals whose assessed parent fee is zero because the parent does not have any countable income (as

allowed under §809.19(f)). This would extend the prohibition to many teen parents and other students who have no countable income.

Response: The Commission agrees and modifies §809.92(c) to include parents whose assessed parent share of cost is calculated to be zero. The Commission agrees that if the parent does not have any countable income, then the provider should not charge the parent the difference between the reimbursement rate and the provider's published rate, as this would create an undue financial burden on the parent, particularly on teen parents.

Comment: The Commission received four comments from Boards that currently allow regulated providers to charge low-income parents the difference in their published rates and the Boards' maximum reimbursement rates. While two Boards supported this rule, the Boards were cognizant of the fact that it has created a hardship for some parents receiving child care services. However, the two Boards stated that had the Boards not adopted this policy, many regulated providers in their workforce areas stated that they would no longer be able to accept subsidized children because of the low reimbursement rates.

Two other Boards also stated that providers in their workforce areas may decide that it will not be financially possible to continue to accept subsidized children if they cannot collect from the parents any unsubsidized portion of their published rates. One of the Boards stated that most providers in the workforce area are aware when they accept a subsidized child instead of a private-pay child, they will lose approximately \$1,000 per year or more. The Board also stated that regardless of whether the Board chooses to forbid or allow providers to charge the difference for all parents, there is the potential to negatively impact either parents or providers.

Response: The Commission appreciates the comments. The comments summarize the issues faced by the Commission during the rule development process. The Commission is aware of the possibility that providers may choose to not accept subsidized children unless the provider can charge the parent the difference between the reimbursement rate and the provider's published rate. The Commission, however, is concerned that charging parents the difference creates a hardship for low-income families receiving child care subsidies. This is especially true of families at very low incomes, such as those participating in Choices and FSE&T. Families participating in these programs, as well as parents with children receiving protective services, have the most fragile economic situations. For that reason, the Commission has always exempted these families from being assessed a parent share of cost. With this rule change, the Commission also prohibits these families from having to pay the provider the difference between the reimbursement rate and the provider's published rate, as this creates an additional hardship on these families.

The Commission also understands the financial pressures of child care providers and the concern expressed by providers that this prohibition may create additional financial burdens on providers. However, the Commission points out that this prohibition does not apply to all families receiving the subsidy. Unless a Board adopts a more strict policy, a provider may charge non-Choices, non-FSE&T, and non-CPS families and families with no countable income, the difference between the reimbursement rate and the provider's published rate.

The Commission points out that in Fiscal Year 2006 (FY'06) approximately 88% of children receiving subsidized child care services—104,400 average children per day in FY'06—were not exempt from the parent share of cost, and, therefore, providers may charge these families the difference between the reimbursement rate and the providers' published rates. Providers would be prohibited from charging the parents the difference between the reimbursement rate and the providers' published rate for only 12% of the subsidized children population—approximately 14,000 average children per day in FY'06.

Comment: One commenter requested that the rules prohibiting providers from charging parents the difference between the Board reimbursement rate and the provider's published rate be extended to include all categories of care, not just parents exempt from the parent share of cost.

Response: The Commission appreciates the comment. However, the Commission disagrees that the prohibition should extend to all parents receiving subsidized child care. As stated previously, the Commission has determined that extending this prohibition to all families may cause financial hardships for providers accepting subsidized children. However, §809.92(d) allows Boards to adopt a more strict policy if they so choose.

Comment: One commenter asked how the child care contractor would inform a provider about an individual parent's status as a Choices or FSE&T participant and whether a provider may charge the difference between the provider's published rates and the rate allowed by the Board.

Response: How this information is provided to the child care provider is determined by the Board or child care contractor. The Commission suggests providing the information to the child care provider through the same mechanism that the contractor currently uses to inform the provider that the parent is exempt from having a parent share of cost.

Comment: One Board commented that it is very difficult for parents to understand what they must pay the provider. Parents and providers must add amounts together to determine the total cost of their child care. Parents and providers get confused in figuring and determining what was paid as the parent share of cost and what was paid as the provider's difference.

Response: The Commission understands that it may be confusing for parents to have to pay the provider the assessed parent share of cost as well as the difference between the provider's rate and the reimbursement rate. The Commission hopes to minimize this confusion for parents who are exempt from the parent share of cost by prohibiting providers from charging those parents the difference between the reimbursement rate and the provider's rate. Additionally, for parents who are not exempt from the parent share of cost and may have to pay the provider the difference, the Board is allowed to prohibit providers from charging nonexempt parents the difference as well.

If the Board decides to allow providers to charge nonexempt parents the difference, the Board should minimize any confusion by providing both the parent and the provider a clear statement of the amount of the parent share of cost.

Comment: One Board stated that the only way the Board would find out whether a provider is charging a parent the difference is if a parent reports it.

Response: The Commission agrees that parents informing the child care contractor is the most efficient method for finding out whether the provider is charging exempt parents the difference. For this reason, the Commission emphasizes that parents have the right to be informed of the prohibition as stipulated in §809.71(4).

Comment: The two Boards that currently allow providers to charge the difference also stated that many parents have been forced to move their children from their familiar child care setting to a center that is not charging the rate difference. The commenters stated that this effectively denies parents access to the center of their choice, in accordance with the federal regulations. The commenters also stated that if the providers choose not to accept subsidized children due to this rule change, then that also would effectively deny parents access to a child care provider of their choice.

Response: The Commission does not agree that this rule would effectively deny parent choice as defined by the CCDF regulations. Parental choice, as defined in 45 C.F.R. §98.30(e), states that parents must have a choice of a range of provider types that includes:
—center-based child care;
—group home child care;
—family home child care; and
—in-home child care (with limitations imposed by the Lead Agency).

Additionally, 45 C.F.R. §98.30(f) states that Lead Agencies may not promulgate rules that expressly or effectively exclude any of the above types of care or exclude a significant number of providers in any type of care.

Parent choice, as stipulated in the CCDF regulations, does not imply that parents must be allowed to enroll their children with specific child care providers. Parent choice is available if the parent has the full range of provider types listed above available to them. The rule prohibiting a provider from charging parents the difference between the reimbursement rate and the provider's published rate will not effectively exclude any type of care from being available to the parent. The rule is not aimed at any provider type and is applied equally to each provider type.

However, as mentioned previously, the Commission will monitor and evaluate the impact of this rule to determine if it causes an undue burden to be placed on child care providers or limits the choice of providers for parents.

Comment: One Board commented that it is a possibility that the TRS providers will begin to charge parents the difference once they are allowed.

Response: Section 809.92(d) allows Boards to develop a policy that prohibits providers from charging the difference to parents who are not exempt from the parent share of cost. The Commission intends that this provision allows Boards to have a policy that prohibits providers that receive graduated reimbursement rates under §809.20(b) (i.e., TRS and providers participating in school readiness models) from charging any parent the difference between the reimbursement rate and the parent share of cost.

The Commission also notes that the TRS guidelines still require TRS providers to have an agreement with the Board. The adopted rules, while removing the distinction between providers with agreements and those without agreements, do not remove this requirement from the TRS guidelines. Because TRS providers are required to meet certain standards that are above licensing standards, these providers must have an agreement with the contractor stipulating these requirements. Additionally, if a Board adopts a policy prohibiting TRS providers from charging any parent the difference, that stipulation may be included in the TRS provider agreement.

Comment: One Board stated that some Choices parents would pay the difference to be able to use a particular facility.

Response: The Commission recognizes that some Choices parents may wish to pay the provider the difference in order to have that particular provider care for their child. However, the Commission is concerned about the financial burden that this decision places on the parent. In FY'05, the average TANF cash benefit was approximately \$220 a month for a single parent with two children. For families at very low incomes, any additional cash expenditure for child care would place even greater financial stress on the family. For this reason, the Commission always has—and will continue—to prohibit these families from being assessed a parent share of cost. The Commission believes that any additional costs placed on these families would possibly negate the benefit associated with not being assessed a parent share of cost.

Comment: One child care provider stated that, as of the time of the comment, the provider was not caring for any children whose parents are exempt from the parent share of cost. Therefore, the prohibition against charging parents the difference for these parents only would have a minimal, if any, effect on our program at this time. However, if the Board decides to develop a policy prohibiting providers from charging the difference between our rate and the Board's reimbursement rate for all families, then it could result in the center being unable to accept subsidized children. With a significant waiting list of private-pay parents, the provider is unsure if the center would be able to continue participating in the subsidized system.

Response: The Commission understands the concern. However, applying the prohibition against charging parents the difference between the Board's reimbursement rate and the provider's published rate to nonexempt parents is a Board decision. The Commission recommends contacting the Board with this concern.

Comment: The Commission received twelve comments from child care providers disagreeing with the prohibition against charging parents the difference between the Board's reimbursement rate and the provider's published rate. The commenters stated that they may decide to not accept subsidized children if this rule goes into effect.

Some of the providers stated that the parent has the choice and is informed of the additional cost when services are requested and before a placement is made. One provider has always charged the difference and had no problem in doing so with the parents. The provider stated that the parents completely understand the financial reasoning and know that the provider can give that spot away to a private-pay parent on the provider's waiting list, if this was a problem for them. One commenter, an assistant director of a day care, is currently on subsidized child care. The commenter pays the difference and does not have a problem with doing so. The commenter stated that paying the difference is better than paying the full price.

Some of the providers previously had agreements with the Board that prohibited them from charging parents the difference and the providers stated that this prohibition would cost them from \$2,100 to \$3,000 per year in revenue.

One provider stated that because she is the only day care in the area, it would be unfortunate to stop accepting subsidized parents in the community, but the commenter indicated that the state would leave the provider no choice. The provider stated that the parents now are paying, on average, a difference of \$15–\$20 per month per child. Although this is not a lot for the parent, it equates to \$2,100 per year, which is a major loss for a child care center.

Response: It is not apparent from the comments that the child care providers understand that the prohibition in §809.92(c) against a provider charging parents the difference between the provider's published rate and the Board's reimbursement rate applies only to parents who are exempt from the parent share of cost. The Commission again emphasizes that, unless a Board adopts a more strict policy, a provider may charge non-Choices, non-FSE&T, and non-CPS families, and families with no countable income, the difference. The Commission reiterates that in FY'06 approximately 88% of children receiving subsidized child care services were not exempt from the parent share of cost and, therefore, providers may charge these families the difference between the reimbursement rate and the provider's published rate.

Further, the Commission assumes that the assistant director of the day care center who is also currently receiving subsidized child care is not participating in Choices or FSE&T. If that assumption is correct, then—as previously explained—this rule does not affect the commenter's situation.

The Commission understands the financial pressure that a child care business, or any business, faces. However, the Commission reiterates its concern about the financial pressure that families receiving TANF and Food Stamp benefits face. By participating in Choices and FSE&T, these parents are attempting to move off of public assistance and work toward self-sufficiency. As noted, with an average TANF cash benefit of approximately \$220 per month,

any additional cash expenditure for child care places an even greater financial stress on the family. In order to assist the family in working toward self-sufficiency, the Commission prohibits these families from being assessed a parent share of cost and the Commission believes that providers charging these parents a fee will negate the benefit of not being assessed a parent share of cost.

A provider may believe that \$20 per month per child may not be a lot of money for the parent. However, for a single parent with two children who is participating in Choices and whose largest source of income may be the \$220 TANF payment, the \$40 dollars a month the provider charges represents 18% of the family income—higher than any Board's parent share of cost policy.

The Commission agrees that it would be unfortunate if a provider decides to stop accepting subsidized children because the provider cannot charge parents participating in Choices, FSE&T, or the parents of children in protective services the difference between the Board's reimbursement rate and the provider's published rate. However, the Commission believes that a significant number of providers will remain and will be available to provide needed child care services to parents on public assistance.

Comment: Two Boards expressed concerns that the current rates have a negative impact on economic development in the child care industry, which is the 11th largest industry in the state. Another Board stated that the financial needs of the providers cannot be overlooked and expect the industry to continue to be a viable system for providing support services for workforce parents in the years to come.

Response: The Commission understands the financial needs of providers. However, the Commission is also concerned about the financial needs of families at very low incomes. The Commission reiterates two points: 1) the rule applies to only 12% of the children receiving subsidized care; and 2) the parents who are prohibited from being charged the difference live at very low incomes. The Commission fails to see how the inability to charge this relatively small percentage of families, who live at such low incomes, would have a significant negative impact on the child care industry. Again, it would be unfortunate if a provider decides not to accept these children; however, the Commission believes that a significant number of providers will remain and will be available to provide needed child care services to parents on public assistance.

Comment: Five Boards commented that providers would not charge parents the difference if the Commission would allow Boards to set maximum rates at the market rate. One of the commenters stated that if the Board could set the maximum rate at the 75th percentile based on the market rate survey, then providers would not charge parents the difference in the reimbursement rate and the provider's published rate. This Board also requested that the Commission change the method of calculating each year's performance measure by calculating the number of children that can be served by dividing by the new average rate for the coming year instead of the previous year's rate. This method would allow Boards to raise their maximum reimbursement rates each year to the 75th percentile.

Response: The Commission disagrees that providers would not charge the difference if Boards had higher reimbursement rates. It may be true that fewer providers would charge the difference, but some may continue the practice. As a matter of public policy, the Commission believes that parents participating in Choices or FSE&T or parents with children in protective services should not be assessed a parent share of cost and should not be charged the difference between the Board's reimbursement rate and the provider's published rate. This would place an undue financial burden on families who are attempting to move off of public assistance.

The Commission disagrees that rates should be set at the 75th percentile. As pointed out in the discussion related to "equal access" in §809.20, the 75th percentile is a "suggested benchmark" that the federal CCDF preamble suggested that the states consider when determining equal access; it is not a requirement.

The Commission understands the pressures on Boards to increase rates. The Commission is also concerned with the relatively low maximum reimbursement rates and is studying the issue, including the possibility of incremental rate increases. However, the Commission is also concerned that legislative performance targets relating to the average cost per child per day, as well as the targets relating to the average number of children served per day continue to be met.

Finally, the Commission also points out that the current methodology of establishing performance targets was developed with significant Board input. However, the Commission is open to working with the Boards in further refining the methodology.

Comment: Four commenters located along the Arkansas and Oklahoma border expressed concerns that the reimbursement rates in these two states are higher than the Board's reimbursement rate. Some of the Texas providers, especially in Texarkana, also serve Arkansas children and the discrepancy in rates is particularly glaring for those providers. Additionally, one of the providers stated that Arkansas allows providers to charge parents the difference.

Response: The Commission understands the concerns expressed. However, the Commission points out that this phenomenon also may be seen in Texas between contiguous workforce areas. For example, urban workforce areas may have higher reimbursement rates than the bordering rural workforce areas. Boards establish maximum rates based on market conditions, income eligibility limits, allocations, and performance targets. Adjoining workforce areas may share child care providers, but have different reimbursement rates based on these factors. The same is true of Oklahoma and Arkansas. These states establish their own rate policies based on their own income eligibility limits, federal child care allotment, and other factors the states believe are important to meet the needs of their citizens.

§809.93. Provider Reimbursement

Section §809.93 sets forth the requirements for reimbursing providers. The provisions in this section are retained largely from various sections of the repealed rules.

Section §809.93(a) states that a Board must ensure that reimbursement for child care is paid to the provider only, and must occur after the Board or its child care contractor receives a complete Declaration of Services Statement from the provider verifying that services were rendered. Provisions related to the Declaration of Services Statement are contained in the repealed rules in the provisions related to SACC providers. Under new Chapter 809, this provision applies to all providers.

Section 809.93(b) provides that the Declaration of Services Statement must contain:

- name, age, and identifying information of the child;
- amount of care;
- amount of care provided in terms of units of care;
- rate of payment;
- dates services were provided;
- name and identifying information of the provider, including the location where care is provided;
- verification by the provider that the information submitted is correct; and
- additional information as required by the Boards.

Section 809.93(c) provides that an unregulated relative child care provider must not be reimbursed for more children than permitted by the minimum regulatory standards of DFPS 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. This provision is retained from the repealed rules.

Section 809.93(d) states that a Board must not reimburse providers that are debarred from other state or federal programs unless and until the debarment is removed. This provision is retained largely from the repealed rules relating to noncompliance with other federal or state programs. The repealed rules do not specify that this provision applies to SACC providers. The Commission retains this provision in the requirements for child care providers and clarifies that it applies to all eligible providers, including those formerly referred to as SACC providers.

Section 809.93(e) retains the provisions from the repealed rules that unless otherwise determined by the Board and approved by the Commission for automated reporting purposes, reimbursements for child care are based on the unit of service delivered, as follows:

- a full-day unit of service is 6 to 12 hours of care provided within a 24-hour period; and
- a part-day unit of service is fewer than 6 hours of care provided within a 24-hour period.

Section 809.93(f) provides that a Board or its child care contractor must ensure that providers are not paid for holding spaces open except as consistent with attendance policies established by the Boards. This provision is retained from the repealed rules.

Section 809.93(g) states that a Board or the Board's child care contractor must not pay providers:

- less, when a child enrolled full time occasionally attends for a part day; or
- more, when a child enrolled part-time occasionally attends for a full day.

This provision and purpose is retained from the repealed rules.

Lastly, §809.93(h) stipulates that providers shall not be reimbursed retroactively for new maximum reimbursement rates established by the Board or new provider published rates. This provision is retained from the repealed rules, however, the language is modified to clarify that the "new rates" refer to either new maximum reimbursement rates established by the Board or new published rates of providers.

Comment: One commenter stated that a Declaration of Services Statement is already required for billing purposes before a provider can be reimbursed for child care services and this is a duplication of current requirements.

Response: The Commission disagrees that this is a duplication of current requirements. In fact, this requirement for a Declaration of Services Statement is establishing the existing practice in the rule language.

Repealed Provisions Related to the Requirements to Provide Child Care Not Retained in the New Rules

Along with the removal of references to provider agreements and SACC providers, also removed are the provisions related to noncompliance with other state or federal programs, with the exception of the provision related to debarment from other state or federal programs in §809.93(d).

The provisions related to noncompliance in the repealed rules have been interpreted by some Boards to mean that they may bar a provider whose license has not been revoked by DFPS—but has been found to be in noncompliance with a particular licensing requirement—from accepting subsidized children. This is not the intent of the Commission. As long as the provider is a duly licensed and regulated facility that meets the definition of a regulated provider in §809.2, the provider is eligible to care for subsidized children.

The Commission believes that parent access to the compliance history of providers, as required in §809.15, allows parents to become aware of any noncompliance issues. The decision to enroll the child with a licensed or regulated provider who has been found to be in noncompliance with certain DFPS standards should be made by the parent and the parent should be encouraged to review the compliance history of the provider.

Comment: One commenter stated that the Board no longer does a DFPS report and requested additional clarification regarding this rule change.

Response: The Commission assumes the DFPS report mentioned is the DFPS Monitoring Report. This report is provided by DFPS and is posted on the Commission's Intranet site every month. The report lists the child care facilities that have had a change of licensing status during the previous month. Boards and Board child care contractors have access to this report in order to determine if a child care facility is currently licensed and eligible to be a provider.

Comment: Six Boards disagreed with removing the provisions related to noncompliance with federal or state programs. Four of the commenters agreed that the wording in the old rule "subject of corrective or adverse action" resulted in different interpretations by each Board and, therefore, a lack of consistency across the state. However, the commenters stated that a corrective remedy could be established with DFPS. Boards would follow the instructions from DFPS when a serious condition that involves children's safety is identified and would warrant action to be taken. Leaving children in care in a facility that is on probation for serious neglect issues about which the Board is aware puts unacceptable risk and liability on all parties if another incident should happen and action was not taken. Another commenter stated that a provider can have several noncompliance issues with DFPS or even be placed on corrective action and the parent not be aware of it. Two of the commenters stated that if a child care provider has violations in the areas of health and safety of children, the Board should maintain the right and has a responsibility to no longer do business with this provider whether or not this provider is regulated by DFPS.

Four of the commenters suggested adding language to §809.91(c) that would require each Board to develop a memorandum of understanding with the local DFPS-Child Care Licensing Division to receive regular and routine communication about any regulated provider on a corrective remedy. The commenters suggested that rule language allow Boards to stop new enrollments to the facility or remove the children based on the severity of the adverse or corrective remedy or as directed by DFPS.

Finally, the four commenters suggested adding language to §809.15 relating to consumer education, that would require all parents be informed when a regulated provider is placed on a corrective or adverse remedy by DFPS, the reason for the remedy, and be allowed to make a decision as to their child's continued placement in the regulated operation.

Response: The Commission understands the concerns, however, disagrees with the suggested changes to the rule language. Texas Human Resources Code, Chapter 42, Subchapter D, Remedies (§§42.0705–42.078) authorizes DFPS to take a wide range of remedies for violations of any child care licensing or regulatory requirement. The Commission believes that it is not a Board's role to augment the enforcement of remedies for violations to licensing standards. These remedies are under the purview of DFPS and DFPS has developed policies and procedures that are carefully designed to protect the health and safety of children as well as protect the due process of child care providers.

The Commission is concerned about the suggested language that a Board may remove children from a licensed child care facility if a provider is on a "corrective remedy." The Commission points out that according to Texas Human Resources Code §42.071, DFPS rules (40 TAC §745.8511), and the DFPS Child Care Licensing Handbook (Section 7100, Overview of Actions and Remedies), corrective action remedies involve placing a facility either on probation or on evaluation and are specifically for violations of licensing standards that "do not endanger the health and safety of children if the conditions imposed are followed."

Therefore, the Commission disagrees that the Board should have the option of removing children or stopping the enrollment of children with a provider that has been placed on corrective action, since the violation does not endanger the health and safety of the children. The Commission is concerned that this action would deprive the child care facility of due process.

DFPS has developed rules and guidelines related to "adverse actions" that are designed to protect all children and inform all parents—not just parents of subsidized children—if the health and safety of children are at risk due to serious violations of licensing standards. DFPS rules (40 TAC §745.8651) and the DFPS Child Care Licensing Handbook (Section 7600, Adverse Actions) clearly define adverse action as "action is taken when deficiencies pose a risk that endangers the health and safety of children, or there are indications of a continued failure to comply with the rules or law."

Depending on the severity of the violation, an adverse action could result in the suspension or revocation of the child care license. The DFPS Child Care Licensing Handbook states that DFPS must notify the parents as well as the Board's child care contractor when a provider's license is suspended or revoked. Additionally, the DFPS Child Care Licensing Handbook requires that licensing staff should consult with a licensing attorney prior to notifying the permit holder of an adverse action. Clearly, DFPS has rules and procedures in place to protect children, inform parents, and protect the rights of child care providers.

DFPS not only has the statutory authority to take actions to protect the health and safety of children, but also has the expertise to decide when a particular violation places children at risk.

SUBCHAPTER F. FRAUD FACT-FINDING AND IMPROPER PAYMENTS

The Commission adopts new Subchapter F, Fraud Fact-Finding and Improper Payments, as follows:

Subchapter F contains the general fraud fact-finding provisions required for a Board to prevent fraud and to attempt to recover improper payments. The phrase "fact-finding" rather than "investigations" is used to emphasize that it is not the Commission's intent that Boards have investigative authority. The Boards' role is to research facts related to possible fraud and, if necessary, report the facts to the Commission for further investigation by the Commission. The provisions in this subchapter are retained largely from the repealed rules related to fraud investigations and corrective and adverse actions.

Additionally, Subchapter F contains the provisions related to corrective actions for parents or providers who fail to comply with Commission rules or Board policy. In general, the provisions for corrective actions are retained from the repealed rules. However, the Commission removes the language that applies these provisions to child care contractors as these provisions are included in Subchapter I, Subrecipient and Contract Service Provider Monitoring Activities. Additionally, corrective actions a Board may take against a child care contractor are included in the Agency-Board Agreement as well as the Agency's Financial Manual for Grants and Contracts.

Comment: Five commenters recommended that relative providers be specifically referenced in this rule.

Response: The Commission disagrees that the term "relative providers" needs to be specifically cited. The Commission emphasizes that the rules apply to all providers, including relatives. The Commission disagrees that language should be added to specify that relative providers are included in fraud fact-finding and improper payments. The definition of a provider in §809.2(16) includes regulated and relative providers.

§809.111. General Fraud Fact-Finding Procedures

Section 809.111 contains the general fraud fact-finding procedures required for a Board to prevent fraud.

Section 809.111(a) establishes authority for the 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.

Section 809.111(b) requires a Board to 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. This provision and purpose is retained from the repealed rules with the change of removing the term "investigating" and replacing it with the term "researching and fact-finding." Additionally, the reference in the repealed rules related to the referral for prosecution is removed. As mentioned previously, the Boards' role is to research facts, not to investigate and refer for prosecution.

Section 809.111(c) requires Board procedures to include provisions that suspected fraud is reported in writing to the Commission in accordance with Commission policies and procedures. This provision is retained from the repealed rules but removes the requirement—based on public comment—that each case of suspected fraud be reported to the Commission. The adopted rules require that suspected fraud be reported to the Commission in accordance with Commission policies and procedures.

Section 809.111(d) states that 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:

- further fact-finding; or
- other corrective action as provided in this chapter or as appropriate.

This provision is largely retained from the repealed rules. However, the repealed rules allow Boards to refer the case for prosecution under the Texas Penal Code or other state or federal laws. The adopted rule removes this provision. As stated previously, the role of the Board is to research and conduct fact-finding involving suspected fraud. It is not the role of the Boards to refer suspected fraud cases for prosecution. The Boards' role is to research potential fraud and

report the results of the research to the Commission; the Commission's role is to determine if the case should be referred to the proper authorities for prosecution.

Section 809.111(e) requires a Board to 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. This provision and purpose is retained from the repealed rules with the minor change of removing the term "investigation" and replacing it with the term "fact-finding."

Comment: Five commenters stated there was apparent conflict between the rule, which states the Commission determines fraud and refers cases for prosecution, and the recently issued WD Letter 59-06, which suggests that these are Board responsibilities rather than Commission responsibilities. One commenter noted the WD Letter requires that only those cases in excess of \$500 be reported rather than "each case of suspected fraud" as the rule states.

Response: The Commission agrees that there is a conflict between the rules and WD Letter 59-06 related to reporting suspected fraud. The Commission modifies the rule language to remove the requirement that each case be reported to the Commission. The Commission includes language stating that suspected fraud cases should be reported in accordance with Commission policies and procedures, which include the procedures provided in WD Letter 59-06 or subsequent WD letters. .

Comment: Eight commenters supported the rules and clarification that it is the Commission's responsibility, not the Boards' responsibility, to determine if a person has committed fraud, and it is the Boards' role to research facts, not to investigate or refer for prosecution.

Response: The Commission appreciates the support of the rules.

Comment: Three commenters asked for clarification of the term "further fact-finding" and whether it may result in Boards incurring costs for an attorney or investigator.

Response: The term "further fact-finding" relates to additional research needed to refer the case to the Commission for further investigation. This may require calls to individuals to verify addresses, calls to employers to further verify work hours, or research on other information. The need to hire an attorney or a licensed investigator to do this is not required or encouraged, as this would add to the Board's administrative costs. A staff member should be able to perform the necessary fact-finding to help establish whether the circumstances and facts of a case warrant being labeled "suspected fraud." The Agency's Office of Investigations offers training on fact-finding methods and Boards are encouraged to attend these training sessions.

Comment: One commenter stated that her Board has no funds to hire an investigator nor did they intend to put their caseworkers in danger by asking them to go to "bad areas of town" or by "doing door-to-door investigations." The commenter also believed it was more logical to

wait until after an investigation is completed before reporting a case of suspected fraud to the Commission rather than to submit a report to the Commission, await a response or approval to investigate, and then investigate it, which may not get done within the required five days.

Response: The Commission disagrees that an investigation should be completed before a case of suspected fraud is reported to the Commission, as this implies that the Board will be conducting the investigation. The rules clearly state that Boards are not to conduct fraud investigations. Furthermore, the five-day requirement is in the Agency-Board Agreement and concerns the length of time a Board or contractor has to report suspected fraud or program abuse to the Commission. As pointed out in the comment, investigations may sometimes take longer than five days so it is not prudent for the Board to delay notifying the Commission of a case of suspected fraud. The Commission is charged with the oversight of CCDF funds and requests to be informed as soon as possible of situations in which there is suspected fraud, even if the outcome of the investigation may reveal mitigating circumstances that obviate further action. Again, the Office of Investigations offers training on fact-finding methods, which includes a discussion on safety.

Comment: Four commenters asked that WD Letter 59-06 be rescinded in its entirety, including the "Customer Awareness Form" that was attached and to allow Boards to develop their own documents.

Response: The Commission disagrees that the WD Letter needs to be rescinded. However, as discussed in Board conference calls, staff will be modifying the form based on input from the Boards. Boards are given the flexibility to modify the "Customer Awareness Form" as long as it contains: 1) a place for the staff member to print his or her name and to date the form; 2) a paragraph that covers basic eligibility related to work, training, education, income, and family size; and 3) a statement of possible criminal prosecution. These elements help ensure that the Commission is in the strongest possible legal position for prosecution of a fraud case. Therefore, before using alternate forms, Boards must have them reviewed and approved by the Commission's Regulatory Enforcement Division.

§809.112. Suspected Fraud

Section 809.112 states that 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:

- a request for reimbursement in excess of the amount charged by the provider for the child care; or
- a claim for child care services if evidence indicates that the person may have:
 - known, or should have known, that child care services were not provided as claimed;
 - known, or should have known, that information provided is false or fraudulent;
 - received child care services during a period in which the parent or child was not eligible for child care services;
 - known, or should have known, that child care subsidies were provided to a person not eligible to be a provider; or

—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.

These provisions are retained from the repealed rules with minor clarifications.

Comment: One commenter asked whether it could be considered fraud for parents who, after having their child care services terminated for failure to pay the parent fees, come back in the system through the Choices program but now with an exemption from paying this fee.

Response: Parents should not be suspected of having committed fraud because they did not pay parent fees as required and then became eligible for Choices.

§809.113. Action to Prevent or Correct Suspected Fraud

Section 809.113 provides the Commission, Boards, or Boards' child care contractors the ability to take certain actions if the Commission finds that a person has committed fraud. The actions include:

- temporary withholding of payments to the provider for child care services delivered;
- nonpayment of child care services delivered;
- recoupment of funds from the parent or provider; or
- any other action consistent with the intent of the governing statutes or regulations to investigate, prevent, or stop suspected fraud.

This provision is largely retained from the repealed rules. However, the Commission clarifies that it is the Commission's responsibility, not the Board's, to determine if a person has committed fraud.

Comment: Seven commenters requested clarification regarding the circumstances under which services with a provider may be terminated, and asked if a client or provider who has committed fraud is entitled to services in the future. The commenters stated that the rules currently do not allow Boards to terminate services with a provider for any reason other than when they are debarred or have lost their license or registration. One of the five commenters stated that Boards should have greater flexibility to determine when to terminate a relationship with a provider. They also sought clarification on whether they would have to continue doing business with a provider who committed fraud but remained licensed. They asked if parents or providers who have committed fraud must repay the amount owed in full before receiving services and, if so, whether this would apply to those who were served under Choices and needed child care. One commenter believed that providers and parents should not be allowed to participate in child care services until any outstanding fees are repaid to the Board.

Response: The Commission appreciates the comments and modifies the rule language in §809.113 to further clarify the actions that may be taken if the Commission finds that a parent or provider has committed fraud. The Commission intends that the actions to correct

fraud could include stopping enrollments with the provider as well as prohibiting future child care eligibility for the parent.

The Commission emphasizes, however, that parents who have been found to have committed child care fraud in the past, but who are currently participating in Choices or FSE&T, should not be prohibited from receiving child care. The Commission believes that the provision of child care for these parents is critical to supporting their ability to move off of public assistance. For these parents, the Commission includes in §809.113(b)(3) that the Board or child care contractor may limit the enrollment of the parent's child to a regulated child care provider if the parent has been found to have committed fraud. Limiting the choice to a regulated provider for a parent who has committed child care fraud in the past may minimize the risk of fraud.

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

Section 809.114 establishes compliance with Commission rules and Board policies. The provisions in this section are retained from the repealed rules. However, as stated earlier, the Commission removes the language that applies these provisions to child care contractors as these provisions are included in Subchapter I, Subrecipient and Contract Service Provider Monitoring Activities. Additionally, corrective actions a Board may take against a child care contractor are included in the Agency-Board Agreement as well as the Agency's Financial Manual for Grants and Contracts.

Section 809.114(a) requires the Board to ensure that parents and providers comply with Commission rules. This provision is retained from the repealed rules; however, the reference to contracts has been removed as previously explained.

Section 809.114(b) provides that 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 Action). This provision and purpose is retained from the repealed rules with no substantive changes.

Section 809.114(c) provides that failure by a provider or parent to comply with this chapter will also be considered a breach of contract, which also may result in corrective action. This provision and purpose is retained from the repealed rules without changes.

Comment: Four commenters stated that they consider a provider or parent to be in noncompliance rather than having "breached a contract" as the proposed rule indicates, because there are no contracts per se as many Boards no longer have Provider Agreements that clearly define these rules and policies.

Response: The Commission disagrees that the actions or failure to act by a parent or provider cannot be considered a "breach of contract," if warranted. Notwithstanding the fact that these same actions also can be categorized as "noncompliance," the legal implications are such that parents are made aware of the conditions and requirements for subsidized child care. By signing the documents and then placing their child into care, the parents attest to

their understanding and consent to the terms. Thus, while none of the documents may contain the word "contract" in the title, the parents have nonetheless entered into a valid, binding contract. Once the parents fail to abide by the conditions (e.g., fail to pay the parent share of cost), they have breached the contract.

§809.115. Corrective Adverse Actions

Section 809.115 identifies the corrective actions available if compliance with Commission rules and Board policies are not followed.

Section 809.115(a) provides that when determining appropriate corrective actions, the Board or child care contractor shall consider the following:

- The scope of the violation;
- The severity of the violations; and
- The compliance history of the person or entity.

This provision is retained from the repealed rules with minor editorial changes for clarity.

Section 809.115(b) identifies some allowable corrective actions a Board or child care contractor may take, including:

- closing intake;
- moving children to another provider selected by the parent;
- withholding provider payments or reimbursement of costs incurred;
- termination of child care services; and
- recoupment of funds.

This provision is retained from the repealed rules.

Section 809.115(c) states that when a provider violates a provision of Subchapter E of this chapter, a written Service Improvement Agreement (SIA) may be negotiated between the provider and the Board or the Board's child care contractor. The SIA must contain, at a minimum, the following specific items:

- The basis for the SIA;
- The steps required to reach compliance including, if applicable, technical assistance;
- The time limits for implementing the improvements; and
- The consequences of noncompliance with the SIA.

This provision is retained from the repealed rules without change.

The Commission does not include the requirement from the repealed rules that failure to comply with the terms in the SIA could result in one or more sanctions listed in Chapter 800, Subchapter E. The rules apply to SIAs between the child care contractor and a child care provider. This provision in the repealed rules applies to an SIA that a Board may have with a child care contractor. Thus, this repealed provision is duplicative of Chapter 800, Subchapter E.

Comment: One commenter requested clarification on who will do SIAs. The commenter stated that the Board currently has procedures for those who cannot follow financial guidelines.

Response: The Commission intends for the Board or its contractor to implement SIAs.

Comment: Five commenters stated that issuing SIAs only will increase operational costs and no longer be meaningful if the Boards cannot terminate provider services, especially with relative providers. One of the five commenters asked what the purpose of issuing SIAs would be.

Response: The Commission disagrees that Boards will have an increase in operational costs for implementing SIAs. The Commission emphasizes that the rule language makes the negotiation of SIAs an allowable, but not a required, activity. The Commission also disagrees that the Boards cannot terminate provider services, including relative providers. As mentioned above, §809.115(b) allows this activity as a corrective action. Additionally, if an SIA is negotiated with a provider, §809.115(c)(4) requires that the SIA include consequences for noncompliance with the SIA. These consequences may include moving children to another provider or withholding provider payments, or other corrective actions set forth in §809.115(b).

The Commission emphasizes that the intent of allowing—but not requiring—a Board to negotiate SIAs with a provider is to provide the Board a method for working with providers in order for them to come into compliance with Commission rules. Again, SIAs are not required. If a Board or contractor determines that the severity of the violation warrants immediate corrective action, then it is within the Board or contractor's discretion to do so.

Comment: Four commenters requested clarification on whether this section applies only in the case of noncompliance, fraud, or both.

Response: Section 809.115 on corrective adverse actions applies in cases of noncompliance or fraud. The Commission notes that §809.114(c) states that noncompliance with Commission rules, including fraud, may warrant corrective and adverse action as stipulated in §809.115.

§809.116. Recovery of Improper Payments

Section 809.116 states that efforts will be made to recover improper payments and that all improper payments recovered will be managed in accordance with Commission guidelines and policies.

Section 809.116(a) requires Boards to make attempts to recover all improper payments. In addition, this provision states that the Commission will not pay for improper payments. This provision and purpose is retained from the repealed rules without change.

Section 809.116(b) states that the recovery of improper payments will be managed in accordance with Commission policies, procedures, and guidelines. This provision and purpose is retained from the repealed rules without change.

Comment: Two commenters suggested the phrase "or their contractors" be added to reflect that both Boards and contractors can attempt to collect improper payments.

Response: The Commission disagrees that the phrase should be added. A Board may choose to use the contractor as its agent to attempt collection. However, the responsibility lies with the Board to accomplish this.

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

Section 809.117 identifies circumstances when providers and parents must repay improper payments for child care and child care services received.

Section 809.117(a) states that a provider must repay improper payments for child care services received in the following circumstances:

- instances involving fraud;
- instances when the provider did not meet the provider eligibility requirements in this chapter;
- instances when the provider was paid for the child care services from another source;
- instances when the provider did not deliver the child care services;
- instances when referred children have been moved from one facility to another without authorization from the child care contractor; and
- other instances when repayment is deemed an appropriate action.

This provision and purpose is retained from the repealed rules without change.

Section 809.117(b) states that a parent must repay improper payments for child care in the following circumstances:

- instances involving fraud as defined in this chapter;
- instances when the parent has received child care services while awaiting an appeal and the determination is affirmed by the hearing officer; or
- other instances when repayment is deemed an appropriate corrective action.

SUBCHAPTER G. APPEAL PROCEDURES

The Commission adopts new Subchapter G, Appeal Procedures, as follows:

Subchapter G contains the general appeal procedures and requirements that a parent, provider, or a Board's child care contractor must follow to seek a review by a Board or the Commission of any adverse actions taken against them. The Commission retains the provisions in the repealed rules related to the Board review of an appeal as well as the provisions related to appeals to the Commission. As mentioned previously, the Commission has moved the provisions in the

repealed rules related to the parent appeal rights to Subsection D (Parent Rights and Responsibilities).

The Commission is considering amendments to Chapter 823 related to General Hearings that may incorporate the appeal procedures for child care services as described in the adopted Subchapter G. Therefore, the appeal procedures outlined in Subchapter G may be subject to repeal and republishing in Chapter 823 at a later date.

§809.131. Board Review

Section 809.131 retains the repealed provisions concerning the Board review of appeals.

Section 809.131(a) retains the repealed rule provisions that a parent, provider, or a Board's child care contractor against whom an adverse action is taken may request a review by the Board.

Section 809.131(b) retains the repealed rule provision that the request for review shall be submitted in writing and delivered to the Board within 15 days of the date of written notification of the adverse action and shall contain:

- a concise statement of the disputed adverse action;
- a recommended resolution; and
- any supporting documentation the requester deems relevant to the dispute.

Section 809.131(c) retains the repealed rule provisions stating that upon receipt of a request for review, the Board shall coordinate a review by appropriate Board staff.

Section §809.131(d) retains the repealed rule provisions that additional information may be requested from the Board's child care contractor, provider, and parents and that such information shall be provided within 15 days of the request.

Section 809.131(e) retains the repealed rule provisions that within 30 days of the date the request for review is received or of the date that additional requested information is received by the Board, the Board shall send the Board's child care contractor, provider, or parent written notification of the results of the review.

Section 809.131(f) contains a new provision that a Board must conduct a review prior to an appeal being submitted to the Commission for a hearing. With this provision the Commission clarifies that if an individual requests a review from the Board, the Board must conduct a review of the facts of the appeal and provide notification of the results of the review to the parties involved. It is not the Commission's intent that individuals bypass the Board review and appeal directly to the Commission.

Comment: One commenter suggested the word "appellant" be used to refer to the party appealing an adverse action, which could be a parent, provider, or a Board's child care contractor and then substitute that word as appropriate.

Response: The Commission disagrees that the language should be changed. The phrase "parent, provider, or a Board's child care contractor" is used only one other time in the rules.

Therefore, the Commission believes that it is unnecessary to replace that phrase with a term that would require the reader to reference the term used earlier in the section.

§809.132. Appeals to the Commission

Section 809.132 contains the provisions related to an individual presenting an appeal to the Commission. The provisions in this adopted section are unchanged from the repealed rules.

Section 809.132(a) states that after the results of a Board review have been issued, the Board's child care contractor, provider, or parent who disagrees with the outcome of the review may request a Commission hearing to appeal the results.

Section 809.132(b) states that the request for an appeal to the Commission from a Board's review shall be filed in writing with the Commission's Appeals Department within 15 days after receiving written notification of the results of the Board review.

Section 809.132(c) states that the appeal to the Commission will include a hearing.

Section 809.132(d) states that the Commission hearing will be held in accordance with Commission policies and procedures applicable to the appeal as contained in Chapter 823 of this title, or as otherwise provided by the Commission.

Comment: One commenter stated the rule does not specify whether it is the parent's or Board's responsibility to file the appeal request with the Commission's Appeals Department. The commenter stated that it should be the sole responsibility of parents.

Response: The party seeking an appeal is responsible for requesting one in a timely manner. Although it is likely that the appeal will come from a parent, there may be occasions in which the Board or a contractor will appeal a decision. For that reason, the Commission believes the rule should not specify that it is only the parent who can file an appeal request.

Comment: Four commenters suggested that Boards be allowed to submit appeals via e-mail and facsimile rather than mailed to the address provided to reduce costs and ensure timely submittal.

Response: The Commission agrees that the appeal may be submitted via fax or electronic format as long as the request is received within 15 days after receiving written notification of the results of the Board review as required by §809.132(c).

COMMENTS WERE RECEIVED FROM:

Janie Bates, Executive Director, Texoma Workforce Development Board
Linda Davis, Executive Director, North Central Workforce Development Board
Mary Ann Rojas, Executive Director, Coastal Bend Workforce Development Board
Board Staff, Concho Valley Workforce Development Board
Child Care Services Contractor Staff, Concho Valley Workforce Development Board

Finance and Oversight Committee, Concho Valley Workforce Development Board
 Susan Ashmore, Director of Child Care Services, Alamo Workforce Development Board
 Lynne Bauereiss, Child Care Program Manager, Deep East Texas Workforce Development Board
 Barbara Brown, Program Specialist, Permian Basin Workforce Development Board
 Shawna Chambers, Brazos Valley Workforce Development Board
 Nita Keck, Child Care Contract Specialist and EO Officer, North Texas Workforce Development Board
 Clay Lewis, Client Service Specialist, West Central Texas Workforce Development Board
 Ann L. McCain, Central Texas Workforce Development Board
 Rachel Mitchell, Child Care Program Manager, Texoma Workforce Development Board
 Randy Reed, Deputy Executive Director, North East Texas Workforce Development Board
 Joyce Sneed, Child Care Contract Manager, Concho Valley Workforce Development Board
 Julie Talbert, Heart of Texas Workforce Development Board
 Sherry Trebus, Child Care Program Specialist, Capital Area Workforce Development Board
 Beejay Williams, Director of Workforce Programs, Coastal Bend Workforce Development Board
 Lisa Witkowski, Future Workforce Unit Director, Tarrant County Workforce Development Board
 Pati Cates, Department Chair, Child Development and Education, Tarrant County College Northeast Campus
 Kim M. Cullins, Child Care Services, Wadley Health System
 Nina M. Jackson, Ft. Worth Independent School District
 Natalie M. Johnson, Senior Workforce Development Planner, North Central Texas Council of Governments
 Frankie McMurrey, M.Ed., Executive Director, Clayton Youth Enrichment Services, Ft. Worth, Texas
 Samantha Morgan, Owner/Director, Little Rascals, Malta, Texas
 Nancy Parker, Director, Little Pals Playschool, Texarkana, Texas
 Shawn Reeves, ABC Learning Center, Paris, Texas
 Anne Tarr, Child Care Services Coordinator, Alamo CCDS, City of San Antonio
 Susan Thomas, Rural Alamo Child Care Coordinator, Alamo Area Development Corporation
 Nancy J. Webb, Owner/Director, Red Lick Christian Preschool & Red Lick Christian & Preschool Too!
 John A. Whitcamp, President and CEO, Child Care Associates, Ft. Worth, Texas
 M. Berry
 Janie Cockrehan, New Braunfels, Texas
 Kelli Fannin, DeKalb, Texas
 Mary Heard Gullatt, Texarkana, Texas
 Eboni Gullatt-Carter, Texarkana, Texas
 Darla May, Avery, Texas
 May Beth Propsma
 Susie Rainer, DeKalb, Texas
 Patricia Roach
 Christina Widemore, DeKalb, Texas
 No Name Given

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

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

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

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.

§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~~ **An unregulated** family home, **other than the eligible child's own residence,** that is listed ~~with~~, but not **licensed or registered** ~~with~~ **regulated by**, 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** ~~An entity~~ 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 ~~does not reside in the same household as an eligible child,~~ 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~~~~an activity~~ for which one receives monetary compensation such as a salary, wages, tips, and commissions; ~~or~~
 - (B) ~~an activity to assist individuals in obtaining employment including on-the-job training, job creation through wage subsidies, work experience, community service programs, and~~ 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.

§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).

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) ~~A Board shall provide child~~ Child care services ~~are as~~ 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.

§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 quality** 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.

§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 who 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, 809.50, and 809.51;
 - (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(b)(2);

- (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)(3), 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); and
- (15) procedures for investigating fraud as provided in §809.111.

§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.

§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~~~~the Texas Information and Referral Network~~~~2-1-1 Texas~~ with information, as determined by HHSC, for inclusion in the statewide information and referral network.

§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**~~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.

§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.

§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.

§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 Food Stamp Employment and Training (FSE&T)** services; or

- (C) Parents who have children who are receiving protective services, 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.

§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 graduated reimbursement rates for:
 - (1) child care providers participating in integrated school readiness models developed by the State Center; and
 - (2) Texas Rising Star Providers pursuant to Texas Government Code §2308.315.
- (c) The minimum reimbursement rates established under subsection (b) of this section shall be at least five **percent%** 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 who 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 who 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.**
- ~~(f) 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.~~

§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.

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, the child shall:
 - (1) meet 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; **and**
 - (2) reside 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** ~~be~~ 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.

§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.

§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 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.

§809.44. Calculating Family Income

- (a) Unless otherwise required by federal or state law, the family income for purposes of determining eligibility means the monthly total of the following items for each member of the family (as defined in §809.2(8)):
 - (1) Total gross earnings ~~before deductions are made for taxes~~. 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; and
 - (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.

§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.

§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 §§809.50–809.52, 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 §§809.50–809.52.

§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.

§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 children in families at risk of becoming dependent on public assistance, 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.

§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.

§809.50. Child Care for Children Living at Low Incomes

- (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 provided that the income limit does not exceed 85% of the state median income for a family of the same size; 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 a Board.
- (b) A Board may allow a reduction to the requirement 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 the activities for the required hours per week.
- (c) For purposes of meeting the education requirements stipulated in subsection (a)(2) of this section, each credit hour of postsecondary education will count as three hours of education activity per week **and each credit hour of a postsecondary education condensed course will count as six education activity hours per week.**

§809.51. Child Care for Children with Disabilities

- (a) A child with disabilities is eligible for child care services if:
 - (1) the child resides with a family whose income, after deducting the cost of the child's ongoing medical expenses, does not exceed the income limit established by the Board; and
 - (2) child care is required for the child's parents 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 a Board.
- (b) A Board may allow a reduction to the requirements in subsection (a)(2) of this section if the need to care for a child with disabilities prevents the parent from participating in the activities for the required hours per week.
- (c) For purposes of meeting the education requirements stipulated in subsection (b)(2) of this section, each credit hour of postsecondary education will count as three hours of education activity per week **and each credit hour of a postsecondary education condensed course will count as six education activity hours per week.**

§809.52. Child Care for Children of Teen Parents

- (a) A child of a teen parent may be eligible for child care if:
 - (1) the teen parent needs child care services to complete high school or the equivalent; and
 - (2) the teen parent's family income does not exceed the income eligibility limit established by the Board. Boards may establish a higher income eligibility limit for teen parents provided that the higher income limit does not exceed 85% of the state median income for a family of the same size.
- (b) The 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).

§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.

§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.

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; ~~and~~
- (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~~ ~~case worker~~ 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; ~~and~~
- (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).**

§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.

§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.

§809.74. Parent Appeal Rights

- (a) Unless otherwise stated in this section, a parent may request a hearing pursuant to Subchapter G of this chapter (relating to Appeal Procedure) if the parent's eligibility or child's enrollment is denied, delayed, reduced, or terminated by the Board's child care contractor.
- (b) A parent may have an individual represent them during this process.
- (c) A parent of a child in protective services may not appeal pursuant to Subchapter G of this chapter, but shall follow the procedures established by DFPS.
- (d) If the parent's eligibility or child's enrollment is denied, delayed, reduced, or terminated by a Choices ~~caseworker~~~~case worker~~, the parent may not appeal pursuant to Subchapter G of this chapter, but may appeal following the procedures in Chapter 811 of this title.
- (e) If the parent's eligibility or child's enrollment is denied, delayed, reduced, or terminated by an FSE&T ~~caseworker~~~~case worker~~, the parent may not appeal pursuant to Subchapter G of this chapter, but may appeal following the procedures in Chapter 813 of this title.

§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, 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 fees; or
 - (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.
- (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.

§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 ~~payment~~ 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** ~~General Educational Development~~ 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.

§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~~ **The** paternity of the child cannot be established after a reasonable effort to do so;

(2) ~~The~~ **The** child was conceived as a result of incest or rape;

(3) ~~The~~ **The** parent of the child is a victim of domestic violence;

(4) ~~Adoption~~ **Adoption** proceedings for the child are pending;

(5) ~~The~~ **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~~ **The** child may be physically or emotionally harmed by cooperation; or

(7) ~~The~~ **The** parent may be physically or emotionally harmed by cooperation, to the extent of impairing the parent's ability to care for the child.

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 subsection (b) of this section.
- (b) If a Board chooses to include listed family homes, 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:
 - (1) the prevention and control of infectious diseases (including immunizations);
 - (2) building and physical premises safety; and
 - (3) minimum health and safety training appropriate to the child care setting.
- (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) An individual appearing on the Texas Department of Public Safety's Sex Offender Registry, pursuant to Chapter 62 of the Texas Code of Criminal Procedure, shall not be eligible to be a relative child care provider.**

§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); ~~and~~
 - (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)~~**(3)** 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.

§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.

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 ~~ensure each case of~~ suspected fraud is reported to the Commission **in writing, including documentation of relevant facts, 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.

§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.

§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 person** has committed fraud:

- (1) ~~Temporary temporary~~ withholding of payments to the provider for child care services delivered;
- (2) ~~Nonpayment nonpayment~~ of child care services delivered;
- (3) ~~Recoupment recoupment~~ of funds from the ~~parent or~~ provider; ~~or~~
- (4) Stop authorizing care at the provider's facility or location; or
- ~~(5)~~(4) ~~Anyany~~ 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.**

§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.

§809.115. Corrective Adverse Actions

- (a) When determining appropriate corrective actions, the Board or Board's child care contractor shall consider:
 - (1) ~~the~~**The** scope of the violation;
 - (2) ~~the~~**The** severity of the violation; and
 - (3) ~~the~~**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.

§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.

§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.

SUBCHAPTER G. APPEAL PROCEDURES

§809.131.Board Review

- (a) A parent, provider, or a Board's child care contractor against whom an adverse action is taken may request a review by the Board.
- (b) A request for review shall be submitted in writing and delivered to the Board within 15 days of the date of written notification of the adverse action. The request shall also contain:
 - (1) a concise statement of the disputed adverse action;
 - (2) a recommended resolution; and
 - (3) any supporting documentation the requester deems relevant to the dispute.
- (c) On receipt of a request for review, the Board shall coordinate a review by appropriate Board staff.

- (d) Additional information may be requested from the Board's child care contractor, provider, and parents. Such information shall be provided within 15 days of the request.
- (e) Within 30 days of the date the request for review is received, or of the date that additional requested information is received by the reviewing Board staff member, the Board shall send the Board's child care contractor, provider, or parent written notification of the results of the review.
- (f) A Board must have conducted a review prior to an appeal being submitted to the Commission for a hearing.

§809.132. Appeals to the Commission

- (a) After results of a review have been issued, the Board's child care contractor, provider, or parent who disagrees with the outcome of the review may request a Commission hearing to appeal the results of the review.
- (b) The request for appeal to the Commission from a Board's review shall be filed in writing with the Appeals Department, Texas Workforce Commission, 101 East 15th Street, Room 410, Austin, Texas 78778-0001, within 15 days after receiving written notification of the results of the review.
- (c) The appeal to the Commission will include a hearing, which is limited to the issues and information considered in the Board review.
- (d) The Commission hearing will be held in accordance with Commission policies and procedures applicable to the appeal as contained in Chapter 823 of this title, or as otherwise provided by the Commission.