

Chapter 809. Child Care and Development

The Texas Workforce Commission (Commission) proposes repeal of §§809.1-809.4, 809.21-809.33, 809.41-809.48, 809.61-809.77, 809.81-809.93, 809.101-809.111, 809.121-809.124, and 809.141-809.155; regarding the Child Care and Development Program.

The purpose of the rules is to fully integrate child care for low-income families with the system of workforce training and services under the administration of the local workforce development boards (Boards). Child care services are subsidized for families seeking to become independent of or at risk of becoming eligible for public assistance, either while parents are working or participating in educational or training activities. The revisions to the rules incorporate changes necessitated by the recently adopted federal regulations set forth in 45 Federal Register Part 98 at page 39936 and provide flexibility for the Boards to fulfill their responsibilities in meeting the needs of parents and children residing in the local workforce development areas.

Program Goals: Child Care services are provided to low-income families to create and promote long-term self-sufficiency, by enabling parents to work, attend skills training for work, or increase educational levels by offering affordable, accessible, and quality child care that supports the physical, social, emotional, and intellectual development and safety of children. Recognizing that parents best understand the needs of their children, these services empower parents to make informed choices regarding child care that best suits the family's needs. The Commission also advocates improvements in the availability, affordability, and quality of child care while supporting health, safety, licensing, and regulatory standards for child care providers.

Board Responsibilities and Policy Development: As Boards have become operational, the need to integrate child care more fully with other workforce support services has become apparent. Boards are required, through state law, to designate a permanent child care representative with expertise in child care to address child care issues consistently. To assist Boards in adapting to the increased flexibility provided under state law and rules, the Commission offers continued training to Board members regarding child care services. In addition, a child care services manual will be available to assist Boards in implementing these rules and making informed local decisions. Boards must assess the need for child care in their individual local workforce development areas, tailor a unique plan for service delivery, and oversee the delivery of this vital support service to ensure families' steady transition to self-sufficiency. Further, Boards must evaluate services provided to help low-income families as they move toward self-sufficiency by providing child care subsidies to parents to support work, training, or education. Boards will manage the delivery of child care subject to the provisions of Texas Government Code, Chapter 2308 as implemented by the Commission through 40 TAC Chapter 801 relating to Local Workforce Development Boards. In designing their plans for service delivery, Boards must ensure access to child care services in their networks of one-stop centers. The Boards may choose to integrate intake and eligibility with the services handled by career center operators. Alternatively, they may choose to obtain separate contractors to perform the activities associated with eligibility determination. Similarly, child care training may be incorporated within other contractors' activities or separated to be performed by a different contracting entity.

These revisions to the rules are intended to provide Boards with maximum flexibility, in accordance with state and federal law and regulation, to design a service mechanism that will assist the greatest number of families in accessing the most affordable, quality child care in each local workforce development area. Boards must establish individual policies on several subjects ranging from absence policies to reimbursement rates. In their role as policy makers, Boards are subject to all the requirements of the Texas Open Meetings Act, thus ensuring that parents, providers, contractors and potential contractors, employers, and the public in general will have the opportunity to participate and comment on proposed child care administrative policies.

The enhanced flexibility afforded to Boards ensures that policies maximize the use of funds by tailoring the management of child care delivery to meet the specific needs of each local workforce development area. The Boards must incorporate into their service delivery plan, procedures for implementing policies for child care delivery. Areas that will need to be addressed include, but are not limited to: parent co-payments, absence policies, eligibility verification procedures, service priorities, provider reimbursement rates and other methods to utilize the funds in a manner to address the needs of the local workforce development area efficiently and effectively. Where applicable, the Boards must also develop the consequences and the procedures for reducing or ending care, should the parent fail to uphold the eligibility and participation requirements. Some methods of developing these policies involve examining the past practices of the Commission, examining recommended best practices, or independently tailoring policies to meet local needs.

On the issue of general liability and commercial transportation insurance policies required of providers, the Commission notes the following: state law already imposes the requirements of \$300,000 in general liability insurance on the state's licensed child care centers, and places no specific liability requirements on providers transporting children. The Commission believes that these additional regulatory burdens should fall upon the

appropriate regulatory bodies, the Texas Department of Protective and Regulatory Services as the state's child care regulatory agency, and the Texas Department of Transportation as the agency setting transportation requirements on commercial entities carrying certain numbers of passengers, and we strongly encourage those agencies to consider the need for imposing these requirements.

In developing these policies and plans for delivery of child care services, Boards will seek input from the local entities as indicated in 45 Federal Register Part 98 and also follow the procedures for making changes to the Board operational and strategic plans consistent with Texas Government Code, Chapter 2803, and 40 TAC Chapter 801 relating to Local Workforce Development Boards.

Information Management: To ensure compliance with state and federal reporting requirements, the Commission anticipates continued use of a statewide automated system to manage the functions of client services, vendor and provider management, and financial management until alternative methods of managing information are developed and approved by the Commission.

Effective Date: The anticipated effective date of the rules is projected as September 1, 1999, to give Boards time to design procedures for administering the services, procure contractors, as needed, and transition to their unique plan for delivery of child care services in each local workforce development area.

Public Hearing: The Commission has scheduled a public hearing on the proposed rules for 1:30 p.m. on November 20, 1998, in Room 644 of the Texas Workforce Commission Building at 101 East 15th Street in Austin, Texas.

Description of Changes: The majority of the changes can be described as modifications to incorporate more explicitly and specifically the Boards' role in the management of child care delivery. The changes allow Boards more flexibility in tailoring delivery to best meet the needs of the residents and employers in the local workforce development area. The Commission has previously set prescribed methods for compliance with federal and state statutes. The changes make it feasible for Boards to develop procedures for administering child care services that best fit the local needs.

The level of state median income for eligibility has been changed to match the criteria contained in the federal regulations at 45 Federal Register Part 98. The federal regulations set the income limits as that, which does not exceed 85% of the state median income for a family of the same size. The Commission encourages the Boards to use the funds in the most effective manner to assist persons transitioning off of public assistance or at risk of becoming dependent on public assistance.

Because of the number of amendments, these changes are being facilitated by repeal of the majority of the current rules and being proposed as new rules. Furthermore, reorganization of the eligibility rules makes them easier to read. The unchanged program rules listed below required no technical or substantive changes and remain applicable to the program:

809.5 Child Care State Advisory Committee;

809.78 Parent Responsibility Agreement;

809.79 Parent Responsibility Agreement, Sanctions and Exceptions;

809.171 - 809.174, regarding Subchapter I, Child Care Training Center Pilot Programs; and

809.201 - 809.205 regarding Subchapter J, School-Linked Child Care Program.

Subchapter A contains rules regarding the general provisions applicable to the chapter. The purposes of §§809.1-809.2 and 809.4 are, respectively, to set forth the provisions relating to the following: the short title and purpose of the chapter, definitions applicable to the chapter, and waiver request procedures.

Subchapter B contains the Board responsibilities regarding child care. The purposes of §§809.11-809.20 are, respectively, to set forth the provisions relating to the following: Board responsibilities, Board policies and plans for child care services, ensuring parent choice, promoting consumer education, quality improvement activities, procurement, management of finances, information management and reporting requirements, performance standards, and local donations.

Subchapter C contains the rules regarding the requirements to provide child care. The purposes of §§809.41-809.49 are, respectively, to set forth the provisions regarding the following: the general requirements applicable to providers of child care, the minimum requirements for providers, provider agreements, provider general liability insurance, collection of parent fees and subsidies, assessing parent fees, reduction of assessed parent fees, attendance tracking, and provider advisory groups.

Subchapter D contains the rules regarding the requirements for persons or entities providing self-arranged care. The purposes of §809.61 and §809.62 are, respectively, to set forth the provisions regarding the qualifications to provide self-arranged care and the provisions regarding reimbursement for self-arranged care.

Subchapter E contains the rules regarding the provisions on parent rights and responsibilities. The purposes of §§809.71-809.77 are, respectively, to set forth the provisions regarding the following: parental choice, general

parent rights, responsibilities regarding eligibility documentation, rights and responsibilities regarding enrollment agreements, parent reporting requirements, parent appeal rights, and parent's right to withdraw or refuse care. Subchapter F contains the rules regarding the general eligibility requirements for child care. The purposes of §§809.91-809.93 are, respectively, to set forth the provisions regarding applicable definitions, general eligibility requirements, and calculating income for determining eligibility.

Subchapter G contains the rules regarding the provisions for child care for children of people transitioning off public assistance. The purposes of §§809.101-809.105 are, respectively, to set forth the requirements relating to children of parents eligible for Transitional Child Care, children of parents participating in the Choices Program, Texas Workforce Commission Applicant Child Care, Children of Parents Participating in the Food Stamps Employment and Training Program.

Subchapter H contains the rules regarding the provision of child care to children of parents at risk of becoming dependent on public assistance. The purposes of §§809.121-809.124 are, respectively, to set forth the requirements relating to children living at very low incomes, children with disabilities, children who are teen parents, and children served by special projects.

Subchapter K contains the rules regarding funds management. The purposes of §§809.221-809.235 are, respectively, to set forth the provisions relating to the following: general funds management, effective utilization of funds, eligibility verification, custody and visitation arrangements, continuity of care, provider payments, provider billing requirements, units of services of child care, provider payment based on child care enrollment, inclusion assistance rates, provider reimbursement rates, provider reimbursements for transportation, reduction of parent fees and child care subsidies, payments for operation expenses and billing.

Subchapter L contains the rules regarding fraud investigation. The purposes of §§809.251-809.253 are, respectively, to set forth the provisions relating to the following: general fraud investigation procedures, suspected fraud, and action to prevent or correct suspected fraud.

Subchapter M contains the rules regarding the appeal procedure. The purposes of §§809.271-809.273 are, respectively, to set forth the provisions relating to the following: child care during appeal, Board review, and appeals to the Commission.

Subchapter N contains the rules regarding corrective and adverse actions. The purposes of §§809.281-809.288 are, respectively, to set forth the provisions relating to the following: contractor agreement violations, provider agreement violations, corrective and adverse actions, noncompliance with other state or federal programs, reapplication for provider status after termination or nonrenewal of the provider agreement, recovery of overpayment, recovery of overpayment to a provider or parent, and failure to meet performance standards.

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

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

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

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

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

The probable economic costs to persons required to comply with these rules are estimated to be only those required for effective use of child care funds consistent with the federal and state statutory and regulatory requirements.

There will be no fiscal impact to the state for each year of the first five years the rules will be in effect.

There will be no net cost to local governments for each year of the first five years the rules will be in effect. That is, if a Board is to be considered a unit of local government, in this context (as is referenced in §33 of Article IX, H.B. 1, General Appropriations Act, Seventy-fifth Legislature, Regular Session), and if there stands to be some cost of compliance, then such cost of compliance will be an allowable portion of relevant federal grant-in-aid or contract assistance (together with relevant state general revenue matching or maintenance of effort funds, or matching local certified or donated funds) within the child care and development program.

There will be no cost reductions to the state and to local governments, no net effect on revenues as a result of enforcing and administering the rules, and no foreseeable implications relating to costs or revenues to the state or to local governments.

There is anticipated economic cost to small businesses and individuals required to comply with these proposed rules.

Program staff have concluded that the proposed child care program rules may require costs of compliance by contractors to Boards and providers of child care. Contractors may be small businesses, and most-- or the predominant percentage of-- providers of child care are small businesses.

Our analysis concludes that there would be definite and possibly significant costs of compliance for small businesses. While Texas Government Code §2006.002 does not define "adverse economic effect," if the definition of "adverse economic effect" is presumed to be, or includes, significant costs of compliance, then there may be adverse economic effects. Our reasoning is based on the following estimated costs of compliance, prepared by program staff. The costs associated with complying with the rules are estimated as follows:

Preparing and executing provider agreements as referenced in §809.43 would cost approximately 2-8 hours at a rate of \$15 - \$18 per hour per agreement.

If required by the Boards, obtaining general liability insurance as referenced in §809.44 would cost approximately two hours at a rate of \$15-\$18 per hour and the cost of the policy. The policy cost depends on insurance rates ranging from between \$800 to \$1,200, depending on the number of children, history, and other applicable insurance rate factors.

Collecting and performing necessary bookkeeping of parent fees and subsidies as referenced in §809.45 would cost approximately .25 hours per month per enrolled child at a rate of approx. \$10-\$12 per hour.

Tracking attendance as referenced in §809.48 would cost approximately two hours per month at approximately \$10-\$12 per hour.

Organizing and conducting meetings for the provider advisory groups as referenced in §809.49 would cost approximately six hours at a rate of \$15-\$18 per hour per year. This time should cover at least two meetings.

Completing the declaration form applicable only to self-arranged providers as referenced in §809.62 would cost approximately one hour per month per child at a rate of \$10-\$12 per hour.

Preparing and executing an enrollment agreement as referenced in §809.74 would cost approximately one hour per child at a rate of \$15-\$18 per hour.

Preparing and submitting billing invoices as referenced in §809.227 would cost approximately two hours per month at \$10-\$12 per hour per child. Note the costs for billing are similar to costs of doing business for serving clients that are not receiving Commission-funded child care.

Reporting the amount of the parent fee to the contractor as referenced in §809.233 would cost approximately 0.5 hours per bill for each child. The costs of attendance tracking are largely incorporated here.

If a person commits fraud, is accused of fraud, or wishes to appeal a decision as referenced in §§809.251 and 809.272-809.273, the costs would be approximately 0.25 hours at a rate of \$15-\$18 per hour per instance to respond to an inquiry, or may be higher depending on the facts of the situation.

Responding to and complying with corrective action as referenced in §809.281 and §809.282 would cost approximately the amount equal to the costs of breaching the contract, which could range from no cost or higher depending on the action.

If applicable, performing the actions as required by the corrective or adverse action as referenced in §809.283 would cost approximately the amount necessary to come into compliance with the action, which could range from no cost or higher depending on the action.

If applicable, waiting to renew the agreement as referenced in §809.285 would cost approximately the amount equal to the costs of not doing business for up to six months.

If applicable, responding to a request for return of an overpayment and sending overpayment as referenced in §809.286 and §809.287 would cost approximately one hour at a rate of \$15-\$18 per hour. The amount of the overpayment would not be a new cost.

However, as noted above, it is important to take into consideration that any costs of compliance with such program requirements--for contractors that may be small businesses or providers of child care that probably are small businesses, among others-- will be an allowable portion of relevant federal grant-in-aid or contract assistance (together with relevant state general revenue matching or maintenance of effort funds, or matching local certified or donated funds) for the child care programs included under the scope of these proposed rules. Therefore, while there would be definite and possibly significant costs of compliance, these will not constitute net costs. And, while these costs may constitute adverse economic effects, it is unlikely that they will do so.

The schedule of estimated costs of compliance does not adhere exclusively to the distinction in §2006.002 of "small business" versus presumably a business that is not "small," and also with regard to "...the cost of compliance of the largest businesses affected by the rule...." Therefore, not being given any reason for another conclusion, the Commission has assumed that the costs of compliance for a small business would largely be the same as for any business that is not "small." In the schedule of estimated costs prepared by program staff, a distinction is drawn between a small business and a business that is not "small" only by inference, in the conclusion that some costs

would increase relative to the number of children in care. While §2006.002(a) requires that an agency reduce an adverse effect on small business caused by a rule it is considering adopting (if it is feasible to do so), it is a materially relevant factor that the requirement for such compliance activities is generally a federal requirement, a state licensing requirement, or a requirement of monitoring and reporting rules. In each of these instances, or in such rare cases as requirements that may be part of these proposed rules that are not pertinent to federal requirements or requirements of state licensing or monitoring and reporting rules, such compliance activities are nevertheless an allowable portion of the grant-in-aid or contract assistance within the child care and development program. Therefore, in sum, our analysis of fiscal impact on small businesses is that there would be gross costs of compliance, but not net costs of compliance, that it is unlikely that these costs would have adverse economic effects on small businesses, and that, all other things being equal, the costs of compliance for small businesses would be largely the same as for non-small businesses.

Sandra S. Smith, Acting Director of Child Care/Work & Family Clearinghouse, has determined that, for each year of the first five years that the rules will be in effect, the public benefit expected as a result of adoption of the proposed rules is an increased opportunity for the Boards to address the local needs of the local workforce development area regarding the delivery of child care pursuant to the goals of the program.

Mark Hughes, Labor Market Information Director, has determined that there is no basis to anticipate any significant overall impact upon employment levels or conditions within the state as a result of these proposed rules.

All official comments submitted to Sandra S. Smith will be considered before adoption of the final rules. Comments on the proposed rules may be submitted to Sandra S. Smith, Acting Director of Child Care/Work & Family Clearinghouse, Texas Workforce Commission Building, 101 East 15th Street, Room 526BT, Austin, Texas 78778, (512) 463-2692. Comments may also be submitted via fax to Ms. Smith at (512) 305-9182 or e-mailed to: Sandra.Smith@twc.state.tx.us. Comments must be received by the Commission within 30 days from the date this proposal is published in the *Texas Register*.

Subchapter A. General Provisions

40 TAC §§809.1-809.4

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

The repeals are proposed under Texas Labor Code §§301.061 and 302.002 which provides the Commission with the authority to adopt, amend or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs, and under Texas Human Resources Code §§31.010, 31.0035 and 44.002.

The proposed repeals affect Texas Labor Code, Chapters 301 and 302 and Texas Human Resources Code, Chapters 31 and 44, and Texas Government Code, Chapter 2308.

§809.1.Short Title and Purpose.

§809.2.Definitions.

§809.3.Board Planning, Oversight and Evaluation of Child Care Services.

§809.4.Board Procedures for Developing Additional Requirements for Child Care Services.

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

Filed with the Office of the Secretary of State, on November 2, 1998.

TRD-9816944

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: December 13, 1998

For further information, please call: (512) 463-8812

Subchapter B. Contractor Requirements

40 TAC §§809.21-809.33

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

The repeals are proposed under Texas Labor Code §301.061 and §302.002 which provides the Commission with the authority to adopt, amend or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs, and under Texas Human Resources Code §§31.010, 31.0035 and 44.002.

The proposed repeals affect Texas Labor Code, Chapters 301 and 302 and Texas Human Resources Code, Chapters 31 and 44, and Texas Government Code, Chapter 2308.

§809.21. Child Care Management Services (CCMS) Contractor.

§809.22. Child Care Management Services (CCMS) Staff Requirements.

§809.23. Administrative Requirements for Child Care Management Services (CCMS).

§809.24. Funding for Child Care Management Services (CCMS).

§809.25. Assessing Needs and Resources.

§809.26. Child Care Management Services (CCMS) Recruitment of Vendors.

§809.27. Child Care Management Services (CCMS) Contractor's Provision of Training and Technical Assistance to Vendors.

§809.28. Required Forms.

§809.29. Child Care Management Services (CCMS) Child Care Advisory Council.

§809.30. Special Projects.

§809.31. Requirements for Child Care Management Services (CCMS) Subcontracts

§809.32. Child Care Training.

§809.33. Waiver Requests.

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

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Subchapter C. Child Care Provider Requirements

40 TAC §§809.41-809.48

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

The repeals are proposed under Texas Labor Code §301.061 and §302.002 which provides the Commission with the authority to adopt, amend or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs, and under Texas Human Resources Code §§31.010, 31.0035 and 44.002.

The proposed repeals affect Texas Labor Code, Chapters 301 and 302 and Texas Human Resources Code, Chapters 31 and 44, and Texas Government Code, Chapter 2308.

§809.41. Self-Arranged Child Care.

§809.42. Vendor Requirements.

§809.43. Child Care Management Services (CCMS) Vendor Agreements and Vendor Manuals.

§809.44. Amendments and Renewal of Vendor Agreements.

§809.45. Vendor Collection of Assessed Parent Fees and Child Care Subsidies.

§809.46. Attendance Requirements.

§809.47. Parent Advisory Groups.

§809.48. Commission Voluntary Program Criteria for Child Care Providers.

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

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Subchapter D. Client Eligibility Requirements

40 TAC §§809.61-809.77

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

The repeals are proposed under Texas Labor Code §§301.061 and §302.002 which provides the Commission with the authority to adopt, amend or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs, and under Texas Human Resources Code §§31.010, 31.0035 and 44.002.

The proposed repeals affect Texas Labor Code, Chapters 301 and 302 and Texas Human Resources Code, Chapters 31 and 44, and Texas Government Code, Chapter 2308.

§809.61. Basic Requirements to Obtain Child Care Services from the Child Care Management Services (CCMS) System.

§809.62. Evaluation of a Parent's Need for Child Care.

§809.63. Citizenship and Residency Requirements To Receive Child Care Services.

§809.64. Child Care for Absued and Neglected Children.

§809.65. Eligibility Criteria for Commission Funded Child Care Services.

§809.66. Additional Transitional Child Care Eligibility Criteria.

§809.67. Income Limits for Child Care Services.

§809.68. Income Inclusions for Child Care Eligibility Determination.

§809.69. Exceptions to Eligibility.

§809.70. Temporary Assistance for Needy Families (TANF) Employment Services Related Child Care During On-the-Job Training (OJT).

§809.71. Temporary Assistance for Needy Families (TANF) Employment Services Related Child Care While Waiting To Enter an Approved Initial Component of the Commission's Employment Program for TANF Recipients.

§809.72. Child Care During Employment, Education or Training Interruptions.

§809.73. Time Limits for Education or Training-Related Child Care.

§809.74. Sanctions and Penalties.

§809.75. Rights Of People Applying For And Receiving Child Care Services Through The Child Care Management Services (CCMS) System.

§809.76. Responsibilities of People Applying for and Receiving Child Care Services Through the Child Care Management Services (CCMS) System.

§809.77. Return of Eligibility Documents From Parents or Caretakers.

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

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Texas Workforce Commission

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Subchapter E. Client Eligibility Process Requirements

40 TAC §§809.81-809.93

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

The repeals are proposed under Texas Labor Code §301.061 and §302.002 which provides the Commission with the authority to adopt, amend or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs, and under Texas Human Resources Code §§31.010, 31.0035 and 44.002.

The proposed repeals affect Texas Labor Code, Chapters 301 and 302 and Texas Human Resources Code, Chapters 31 and 44, and Texas Government Code, Chapter 2308.

§809.81. Intake.

§809.82. Priority for Intake Services.

§809.83. Waiting Lists.

§809.84. Verification and Determination of Client Eligibility for Child Care Services.

§809.85. Redetermination of Eligibility for Child Care Services.

§809.86. Termination of Enrollment Due to Excessive Absences.

§809.87. Authorization of Child Care Services.
§809.88. Client Registration.
§809.89. Assessing Required Parent Fees.
§809.90. Reduction of Assessed Parent Fees.
§809.91. Parent Payments of Assessed Parent Fees and Child Care Subsidies.
§809.92. Inclusion Plan Requirements for Children with Disabilities.
§809.93. Texas Workforce Commission Applicant Child Care.

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

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Subchapter F. Billing and Payment Requirements

40 TAC §§809.101-809.111

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

The repeals are proposed under Texas Labor Code §301.061 and §302.002 which provides the Commission with the authority to adopt, amend or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs, and under Texas Human Resources Code §§31.010, 31.0035 and 44.002.

The proposed repeals affect Texas Labor Code, Chapters 301 and 302 and Texas Human Resources Code, Chapters 31 and 44, and Texas Government Code, Chapter 2308.

§809.101. Child Care Management Services (CCMS) Vendor Payments.

§809.102. Vendor Billing Requirements.

§809.103. Units of Service in Child Care.

§809.104. Vendor Payment Based on Child Care Enrollment.

§809.105. Establishment of Maximum Reimbursement Rates.

§809.106. Establishment of Individual Child Care Management Services (CCMS) Vendor Reimbursement Rates.

§809.107. Vendor Reimbursement for Transportation.

§809.108. Deduction of Parent Fees and Child Care Subsidies from Child Care Management Services (CCMS) Vendor Reimbursements.

§809.109. Payment for Child Care Arranged by Parents.

§809.110. Basis of Payment for Child Care Management Services (CCMS) Contractor Operations Expense.

§809.111. Billing by a Child Care Management Services (CCMS) Contractor.

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

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J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

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Subchapter G. Program Monitoring and Compliance Requirements

40 TAC §§809.121-809.124

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

The repeals are proposed under Texas Labor Code §301.061 and §302.002 which provides the Commission with the authority to adopt, amend or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs, and under Texas Human Resources Code §§31.010, 31.0035 and 44.002. The proposed repeals affect Texas Labor Code, Chapters 301 and 302 and Texas Human Resources Code, Chapters 31 and 44, and Texas Government Code, Chapter 2308.

§809.121. Monitoring Program Compliance.

§809.122. Audits of Child Care Management Services (CCMS) Contractors

§809.123. Responsibility of the Commission for Establishing Procedures for Quality Assurance (QA) Monitoring of Child Care Management Services (CCMS) Contractors and Recoupment Based on Quality Assurance Monitoring Findings

§809.124. Quality Assurance (QA) Performance Indicators and Standards.

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

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J. Randel (Jerry) Hill

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Texas Workforce Commission

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For further information, please call: (512) 463-8812

Subchapter H. Corrective and Adverse Actions

40 TAC §§809.141-809.155

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

The repeals are proposed under Texas Labor Code §301.061 and §302.002 which provides the Commission with the authority to adopt, amend or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs, and under Texas Human Resources Code §§31.010, 31.0035 and 44.002.

The proposed repeals affect Texas Labor Code, Chapters 301 and 302 and Texas Human Resources Code, Chapters 31 and 44, and Texas Government Code, Chapter 2308.

§809.141. Contract Violations and Service Improvement Agreements.

§809.142. Vendor Agreement Violations and Service Improvement Agreements (SIA.)

§809.143. Non-Compliance with Other State or Federal Programs.

§809.144. Vendors Violating Minimum Licensing Standards.

§809.145. Attendance over Licensed Capacity.

§809.146. Reapplication for Vendor Status after Termination or Nonrenewal of the Vendor Agreement.

§809.147. Responsibilities of the Child Care Management Services (CCMS) Contractor for Recovery of Overpayment for Child Care Services.

§809.148. Recovery of Funds Paid to a Vendor or Parent.

§809.149. Recoupment Methodology for Administrative Costs Based on Quality Assurance (QA) Findings.

§809.150. Responsibilities of the Child Care Management Services (CCMS) Contractor for Handling Suspected Fraud.

§809.151. Parent or Caretaker Fraud.

§809.152. Provider or Vendor Fraud.

§809.153. Consequences of Parent, Caretaker, Provider, or Vendor Fraud.

§809.154. Provision of Child Care Services During an Appeal.

§809.155. Local Reviews and Hearings.

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

Filed with the Office of the Secretary of State, on November 2, 1998.

TRD-9816958

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: December 13, 1998

For further information, please call: (512) 463-8812

Subchapter A. General Provisions

40 TAC §§809.1, 809.2, 809.4

The Texas Workforce Commission (Commission) proposes new §§ 809.1, 809.2, 809.4, 809.11-809.20, 809.41-809.49, 809.61, 809.62, 809.71-809.77, 809.91-809.93, 809.101-809.105, 809.121-809.124, 809.221-809.235, 809.251-809.253, 809.271-809.273, and 809.281-809.288, regarding the Child Care and Development Program. The purpose of the rules is to fully integrate child care for low-income families with the system of workforce training and services under the administration of the local workforce development boards (Boards). Child care services are subsidized for families seeking to become independent of or at risk of becoming eligible for public assistance, either while parents are working or participating in educational or training activities. The revisions to the rules incorporate changes necessitated by the recently adopted federal regulations set forth in 45 Federal Register Part 98 at page 39936 and provide flexibility for the Boards to fulfill their responsibilities in meeting the needs of parents and children residing in the local workforce development areas.

Program Goals: Child Care services are provided to low-income families to create and promote long-term self-sufficiency, by enabling parents to work, attend skills training for work, or increase educational levels by offering affordable, accessible, and quality child care that supports the physical, social, emotional, and intellectual development and safety of children. Recognizing that parents best understand the needs of their children, these services empower parents to make informed choices regarding child care that best suits the family's needs. The Commission also advocates improvements in the availability, affordability, and quality of child care while supporting health, safety, licensing, and regulatory standards for child care providers.

Board Responsibilities and Policy Development: As Boards have become operational, the need to integrate child care more fully with other workforce support services has become apparent. Boards are required, through state law, to designate a permanent child care representative with expertise in child care to address child care issues consistently. To assist Boards in adapting to the increased flexibility provided under state law and rules, the Commission offers continued training to Board members regarding child care services. In addition, a child care services manual will be available to assist Boards in implementing these rules and making informed local decisions. Boards must assess the need for child care in their individual local workforce development areas, tailor a unique plan for service delivery, and oversee the delivery of this vital support service to ensure families' steady transition to self-sufficiency. Further, Boards must evaluate services provided to help low-income families as they move toward self-sufficiency by providing child care subsidies to parents to support work, training, or education. Boards will manage the delivery of child care subject to the provisions of Texas Government Code, Chapter 2308 as implemented by the Commission through 40 TAC Chapter 801 relating to Local Workforce Development Boards. In designing their plans for service delivery, Boards must ensure access to child care services in their networks of one-stop centers. The Boards may choose to integrate intake and eligibility with the services handled by career center operators. Alternatively, they may choose to obtain separate contractors to perform the activities associated with eligibility determination. Similarly, child care training may be incorporated within other contractors' activities or separated to be performed by a different contracting entity.

These revisions to the rules are intended to provide Boards with maximum flexibility, in accordance with state and federal law and regulation, to design a service mechanism that will assist the greatest number of families in accessing the most affordable, quality child care in each local workforce development area. Boards must establish individual policies on several subjects ranging from absence policies to reimbursement rates. In their role as policy makers, Boards are subject to all the requirements of the Texas Open Meetings Act, thus ensuring that parents, providers, contractors and potential contractors, employers, and the public in general will have the opportunity to participate and comment on proposed child care administrative policies.

The enhanced flexibility afforded to Boards ensures that policies maximize the use of funds by tailoring the management of child care delivery to meet the specific needs of each local workforce development area. The Boards must incorporate into their service delivery plan, procedures for implementing policies for child care delivery. Areas that will need to be addressed include, but are not limited to: parent co-payments, absence policies, eligibility verification procedures, service priorities, provider reimbursement rates and other methods to utilize the funds in a manner to address the needs of the local workforce development area efficiently and effectively. Where applicable, the Boards must also develop the consequences and the procedures for reducing or ending care, should the parent fail to uphold the eligibility and participation requirements. Some methods of developing these policies involve examining the past practices of the Commission, examining recommended best practices, or independently tailoring policies to meet local needs.

On the issue of general liability and commercial transportation insurance policies required of providers, the Commission notes the following: state law already imposes the requirements of \$300,000 in general liability insurance on the state's licensed child care centers, and places no specific liability requirements on providers transporting children. The Commission believes that these additional regulatory burdens should fall upon the appropriate regulatory bodies, the Texas Department of Protective and Regulatory Services as the state's child care regulatory agency, and the Texas Department of Transportation as the agency setting transportation requirements on commercial entities carrying certain numbers of passengers, and we strongly encourage those agencies to consider the need for imposing these requirements.

In developing these policies and plans for delivery of child care services, Boards will seek input from the local entities as indicated in 45 Federal Register Part 98 and also follow the procedures for making changes to the Board operational and strategic plans consistent with Texas Government Code, Chapter 2803 and 40 TAC Chapter 801 relating to Local Workforce Development Boards.

Information Management: To ensure compliance with state and federal reporting requirements, the Commission anticipates continued use of a statewide automated system to manage the functions of client services, vendor and provider management, and financial management until alternative methods of managing information are developed and approved by the Commission.

Effective Date: The anticipated effective date of the rules is projected as September 1, 1999, to give Boards time to design procedures for administering the services, procure contractors, as needed, and transition to their unique plan for delivery of child care services in each local workforce development area.

Public Hearing: The Commission has scheduled a public hearing on the proposed rules for 1:30 p.m. on November 20, 1998, in Room 644 of the Texas Workforce Commission Building at 101 East 15th Street in Austin, Texas.

Description of Changes: The majority of the changes can be described as modifications to incorporate more explicitly and specifically the Boards' role in the management of child care delivery. The changes allow Boards more flexibility in tailoring delivery to best meet the needs of the residents and employers in the local workforce development area. The Commission has previously set prescribed methods for compliance with federal and state statutes. The changes make it feasible for Boards to develop procedures for administering child care services that best fit the local needs.

The level of state median income for eligibility has been changed to match the criteria contained in the federal regulations at 45 Federal Register Part 98. The federal regulations set the income limits as that, which does not exceed 85% of the state median income for a family of the same size. The Commission encourages the Boards to use the funds in the most effective manner to assist persons transitioning off of public assistance or at risk of becoming dependent on public assistance.

Because of the number of amendments, these changes are being facilitated by repeal of the majority of the current rules and being proposed as new rules. Furthermore, reorganization of the eligibility rules makes them easier to read. The unchanged program rules listed below required no technical or substantive changes and remain applicable to the program:

809.5 Child Care State Advisory Committee;

809.78 Parent Responsibility Agreement;

809.79 Parent Responsibility Agreement, Sanctions and Exceptions;

809.171-809.174, regarding Subchapter I, Child Care Training Center Pilot Programs; and

809.201-809.205 regarding Subchapter J, School-Linked Child Care Program.

Subchapter A contains rules regarding the general provisions applicable to the chapter. The purposes of §§809.1-809.2 and 809.4 are, respectively, to set forth the provisions relating to the following: the short title and purpose of the chapter, definitions applicable to the chapter, and waiver request procedures.

Subchapter B contains the Board responsibilities regarding child care. The purposes of §§809.11-809.20 are, respectively, to set forth the provisions relating to the following: Board responsibilities, Board policies and plans for child care services, ensuring parent choice, promoting consumer education, quality improvement activities, procurement, management of finances, information management and reporting requirements, performance standards, and local donations.

Subchapter C contains the rules regarding the requirements to provide child care. The purposes of §§809.41-809.49 are, respectively, to set forth the provisions regarding the following: the general requirements applicable to providers of child care, the minimum requirements for providers, provider agreements, provider general liability insurance, collection of parent fees and subsidies, assessing parent fees, reduction of assessed parent fees, attendance tracking, and provider advisory groups.

Subchapter D contains the rules regarding the requirements for persons or entities providing self-arranged care. The purposes of §§809.61 and §809.62 are, respectively, to set forth the provisions regarding the qualifications to provide self-arranged care and the provisions regarding reimbursement for self-arranged care.

Subchapter E contains the rules regarding the provisions on parent rights and responsibilities. The purposes of §§809.71-809.77 are, respectively, to set forth the provisions regarding the following: parental choice, general parent rights, responsibilities regarding eligibility documentation, rights and responsibilities regarding enrollment agreements, parent reporting requirements, parent appeal rights, and parent's right to withdraw or refuse care.

Subchapter F contains the rules regarding the general eligibility requirements for child care. The purposes of §§809.91-809.93 are, respectively, to set forth the provisions regarding applicable definitions, general eligibility requirements, and calculating income for determining eligibility.

Subchapter G contains the rules regarding the provisions for child care for children of people transitioning off public assistance. The purposes of §§809.101-809.105 are, respectively, to set forth the requirements relating to children of parents eligible for Transitional Child Care, children of parents participating in the Choices Program, Texas Workforce Commission Applicant Child Care, Children of Parents Participating in the Food Stamps Employment and Training Program.

Subchapter H contains the rules regarding the provision of child care to children of parents at risk of becoming dependent on public assistance. The purposes of §§809.121-809.124 are, respectively, to set forth the requirements relating to children living at very low incomes, children with disabilities, children who are teen parents, and children served by special projects.

Subchapter K contains the rules regarding funds management. The purposes of §§809.221-809.235 are, respectively, to set forth the provisions relating to the following: general funds management, effective utilization of funds, eligibility verification, custody and visitation arrangements, continuity of care, provider payments, provider billing requirements, units of services of child care, provider payment based on child care enrollment, inclusion assistance rates, provider reimbursement rates, provider reimbursements for transportation, reduction of parent fees and child care subsidies, payments for operation expenses and billing.

Subchapter L contains the rules regarding fraud investigation. The purposes of §§809.251-809.253 are, respectively, to set forth the provisions relating to the following: general fraud investigation procedures, suspected fraud, and action to prevent or correct suspected fraud.

Subchapter M contains the rules regarding the appeal procedure. The purposes of §§809.271-809.273 are, respectively, to set forth the provisions relating to the following: child care during appeal, Board review, and appeals to the Commission.

Subchapter N contains the rules regarding corrective and adverse actions. The purposes of §§809.281-809.288 are, respectively, to set forth the provisions relating to the following: contractor agreement violations, provider agreement violations, corrective and adverse actions, noncompliance with other state or federal programs, reapplication for provider status after termination or nonrenewal of the provider agreement, recovery of overpayment, recovery of overpayment to a provider or parent, and failure to meet performance standards.

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

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

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

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

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

The probable economic costs to persons required to comply with these rules are estimated to be only those required for effective use of child care funds consistent with the federal and state statutory and regulatory requirements.

There will be no fiscal impact to the state for each year of the first five years the rules will be in effect.

There will be no net cost to local governments for each year of the first five years the rules will be in effect. That is, if a Board is to be considered a unit of local government, in this context (as is referenced in §33 of Article IX, H.B. 1, General Appropriations Act, 75th Legislature, Regular Session), and if there stands to be some cost of compliance, then such cost of compliance will be an allowable portion of relevant federal grant-in-aid or contract assistance (together with relevant state general revenue matching or maintenance of effort funds, or matching local certified or donated funds) within the child care and development program.

There will be no cost reductions to the state and to local governments, no net effect on revenues as a result of enforcing and administering the rules, and no foreseeable implications relating to costs or revenues to the state or to local governments.

There is anticipated economic cost to small businesses and individuals required to comply with these proposed rules. Program staff have concluded that the proposed child care program rules may require costs of compliance by contractors to Boards and providers of child care. Contractors may be small businesses, and most-- or the predominant percentage of-- providers of child care are small businesses.

Our analysis concludes that there would be definite and possibly significant costs of compliance for small businesses. While Texas Government Code §2006.002 does not define "adverse economic effect," if the definition of "adverse economic effect" is presumed to be, or includes, significant costs of compliance, then there may be adverse economic effects. Our reasoning is based on the following estimated costs of compliance, prepared by program staff. The costs associated with complying with the rules are estimated as follows:

Preparing and executing provider agreements as referenced in §809.43 would cost approximately 2-8 hours at a rate of \$15-\$18 per hour per agreement.

If required by the Boards, obtaining general liability insurance as referenced in §809.44 would cost approximately two hours at a rate of \$15-\$18 per hour and the cost of the policy. The policy cost depends on insurance rates ranging from between \$800 to \$1,200, depending on the number of children, history, and other applicable insurance rate factors.

Collecting and performing necessary bookkeeping of parent fees and subsidies as referenced in §809.45 would cost approximately 0.25 hours per month per enrolled child at a rate of approx. \$10-\$12 per hour.

Tracking attendance as referenced in §809.48 would cost approximately two hours per month at approximately \$10-\$12 per hour.

Organizing and conducting meetings for the provider advisory groups as referenced in §809.49 would cost approximately 6 hours at a rate of \$15-\$18 per hour per year. This time should cover at least two meetings.

Completing the declaration form applicable only to self-arranged providers as referenced in §809.62 would cost approximately one hour per month per child at a rate of \$10-\$12 per hour.

Preparing and executing an enrollment agreement as referenced in §809.74 would cost approximately one hour per child at a rate of \$15-\$18 per hour.

Preparing and submitting billing invoices as referenced in §809.227 would cost approximately two hours per month at \$10-\$12 per hour per child. Note the costs for billing are similar to costs of doing business for serving clients that are not receiving Commission-funded child care.

Reporting the amount of the parent fee to the contractor as referenced in §809.233 would cost approximately 0.5 hours per bill for each child. The costs of attendance tracking are largely incorporated here.

If a person commits fraud, is accused of fraud, or wishes to appeal a decision as referenced in §§809.251 and 809.272-809.273, the costs would be approximately 0.25 hours at a rate of \$15-\$18 per hour per instance to respond to an inquiry, or may be higher depending on the facts of the situation.

Responding to and complying with corrective action as referenced in §809.281 and §809.282 would cost approximately the amount equal to the costs of breaching the contract, which could range from no cost or higher depending on the action.

If applicable, performing the actions as required by the corrective or adverse action as referenced in §809.283 would cost approximately the amount necessary to come into compliance with the action, which could range from no cost or higher depending on the action.

If applicable, waiting to renew the agreement as referenced in §809.285 would cost approximately the amount equal to the costs of not doing business for up to six months.

If applicable, responding to a request for return of an overpayment and sending overpayment as referenced in §§809.286 and 809.287 would cost approximately 1 hour at a rate of \$15-\$18 per hour. The amount of the overpayment would not be a new cost.

However, as noted above, it is important to take into consideration that any costs of compliance with such program requirements--for contractors that may be small businesses or providers of child care that probably are small businesses, among others-- will be an allowable portion of relevant federal grant-in-aid or contract assistance (together with relevant state general revenue matching or maintenance of effort funds, or matching local certified or donated funds) for the child care programs included under the scope of these proposed rules. Therefore, while there would be definite and possibly significant costs of compliance, these will not constitute net costs. And, while these costs may constitute adverse economic effects, it is unlikely that they will do so.

The schedule of estimated costs of compliance does not adhere exclusively to the distinction in §2006.002 of "small business" versus presumably a business that is not "small," and also with regard to "...the cost of compliance of the

largest businesses affected by the rule...." Therefore, not being given any reason for another conclusion, the Commission has assumed that the costs of compliance for a small business would largely be the same as for any business that is not "small." In the schedule of estimated costs prepared by program staff, a distinction is drawn between a small business and a business that is not "small" only by inference, in the conclusion that some costs would increase relative to the number of children in care. While §2006.002(a) requires that an agency reduce an adverse effect on small business caused by a rule it is considering adopting (if it is feasible to do so), it is a materially relevant factor that the requirement for such compliance activities is generally a federal requirement, a state licensing requirement, or a requirement of monitoring and reporting rules. In each of these instances, or in such rare cases as requirements that may be part of these proposed rules that are not pertinent to federal requirements or requirements of state licensing or monitoring and reporting rules, such compliance activities are nevertheless an allowable portion of the grant-in-aid or contract assistance within the child care and development program. Therefore, in sum, our analysis of fiscal impact on small businesses is that there would be gross costs of compliance, but not net costs of compliance, that it is unlikely that these costs would have adverse economic effects on small businesses, and that, all other things being equal, the costs of compliance for small businesses would be largely the same as for non-small businesses.

Sandra S. Smith, Acting Director of Child Care/Work & Family Clearinghouse, has determined that, for each year of the first five years that the rules will be in effect, the public benefit expected as a result of adoption of the proposed rules is an increased opportunity for the Boards to address the local needs of the local workforce development area regarding the delivery of child care pursuant to the goals of the program.

Mark Hughes, Labor Market Information Director, has determined that there is no basis to anticipate any significant overall impact upon employment levels or conditions within the state as a result of these proposed rules.

All official comments submitted to Sandra S. Smith will be considered before adoption of the final rules. Comments on the proposed rules may be submitted to Sandra S. Smith, Acting Director of Child Care/Work & Family Clearinghouse, Texas Workforce Commission Building, 101 East 15th Street, Room 526BT, Austin, Texas 78778, (512) 463-2692. Comments may also be submitted via fax to Ms. Smith at (512) 305-9182 or e-mailed to: Sandra.Smith@twc.state.tx.us. Comments must be received by the Commission within 30 days from the date this proposal is published in the *Texas Register*.

The new rules are proposed under Texas Labor Code §301.061 and §302.002, which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs, and under Texas Human Resources Code §§31.010, 31.0035, and 44.002.

The proposed rules affect Texas Labor Code, Chapters 301 and 302, Texas Human Resources Code, Chapters 31 and 44, and Texas Government Code, Chapter 2308.

§809.1.Short Title and Purpose.

(a) The rules contained in this chapter may be cited as the Child Care and Development Rules. The purpose of these rules is to interpret and implement the requirements of state and federal statutes and regulations governing child care and quality improvement activities funded through the Commission, fully integrating child care services with other workforce training and services under the jurisdiction of local workforce development boards.

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

§809.2.Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

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

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

(3) Commission -- The Texas Workforce Commission.

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

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

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

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

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

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

§809.4. Waiver Request.

The Commission may waive child care rules upon request from a person directly affected by the rule, if it determines that the waiver benefits a parent, contractor, or provider, and the Commission determines that the waiver does not harm child care or violate other state or federal statutes or regulations.

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

Filed with the Office of the Secretary of State, on November 2, 1998.

TRD-9816943

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

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For further information, please call: (512) 463-8812

Subchapter B. General Management Requirements

40 TAC §§809.11-809.20

The new rules are proposed under Texas Labor Code §301.061 and §302.002, which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs, and under Texas Human Resources Code §§31.010, 31.0035, and 44.002.

The proposed rules affect Texas Labor Code, Chapters 301 and 302, Texas Human Resources Code, Chapters 31 and 44, and Texas Government Code, Chapter 2308.

§809.11. Board Responsibilities.

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

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

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

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

§809.12. Board Policies and Plans for Child Care Services.

(a) A Board shall develop policies and prepare, as part of its workforce training and services plan (plan) and budget, a plan for the delivery of child care in accordance with Commission rules and guidelines. The child care delivery plan shall include evidence of coordination with federal, state, and local child care and early childhood development programs and representatives of local governments.

(b) A Board shall develop policies for child care consistent with the procedures for board plan amendments contained in §801.3 of this title (relating to Requirements for Submission of Local Workforce Training and Services Plans, Modifications and Amendments) and state and federal statutes and regulations.

(c) A Board shall submit additional requirements, which would require amending the Board's plan, as amendments to the Board's plan.

§809.13. Ensuring Parent Choice.

A Board shall 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.

§809.14. Promoting Consumer Education.

(a) A Board shall make available to parents the list of child care providers who have agreements to provide Commission-funded child care in the local workforce development area and shall represent whether each provider:

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

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

(3) is listed with the Texas Department of Protective and Regulatory Services;

(4) has met the Designated Vendor standards of the Commission;

(5) has submitted proof of general liability insurance; and

(6) has submitted proof of appropriate commercial transportation insurance.

(b) The requirements to be licensed, registered, and listed by the Texas Department of Protective and Regulatory Services are set forth in Texas Human Resources Code, Chapter 42. The types of facilities or homes, which may be licensed, registered, or listed include, but are not limited to, the following: day-care centers, group day-care homes, and family homes.

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

(d) The list of providers may include additional information including, but not limited to, the following:

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

(2) information as established by the Commission.

§809.15. Quality Improvement Activities.

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

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

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

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

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

(A) reducing group sizes;

(B) improving health and safety conditions;

(C) improving linkage to parents and community services; or

(D) improving teacher training.

(2) Boards may also choose to recognize professional center accreditation as a means to improve quality.

§809.16. Procurement.

A Board shall comply with federal and state statutes, regulations, and policies for competitive procurement and contract management.

§809.17. Management of Finances.

A Board shall ensure that fiscal and statistical tracking is performed as required by federal and state statutes, regulations, and policies applicable to the funding sources for child care including, but not limited to, forms required by the Office of Management and Budget Circulars, the United States Department of Health and Human Services, the Commission, and the Uniform Grant Contract Management Standards of the Office of the Governor.

§809.18. Information Management and Reporting Requirements.

(a) A Board shall ensure that federal and state-required data is collected, updated, maintained, and provided to the Commission in accordance with federal and state reporting requirements.

(b) A Board shall provide additional data upon the request of the Commission.

§809.19. Performance Standards.

A Board shall ensure that all performance standards as developed by the Commission are met.

§809.20. Local Donations.

(a) Boards shall ensure that federal funds are maximized by pursuing reasonable efforts to obtain local donations to match federal funds as designated in the Board contract.

(b) In a three-party contract signed by the Board, the donor, and the Commission, the Board and the donor will obligate local donations to the state. The local donation may be designated by the donor for use in the local workforce development area or as otherwise permitted by state or federal statutes and regulations.

(c) The local donation may be a cash donation from a private entity.

(d) The local donation may be a transfer of funds from a public entity or a certification by a contributing public agency as representing expenditures eligible for federal match.

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

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J. Randel (Jerry) Hill

General Counsel
Texas Workforce Commission
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Subchapter C. Requirements to Provide Child Care

40 TAC §§809.41-809.49

The new rules are proposed under Texas Labor Code §301.061 and §302.002, which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs, and under Texas Human Resources Code §§31.010, 31.0035, and 44.002. The proposed rules affect Texas Labor Code, Chapters 301 and 302, Texas Human Resources Code, Chapters 31 and 44, and Texas Government Code, Chapter 2308.

§809.41. General Requirements.

(a) A Board shall ensure that child care is provided only by persons or entities chosen by the parents and who:

- (1) meet provider requirements set forth in this chapter, or
- (2) are eligible to provide self-arranged care.

(b)

A Board shall ensure that providers of child care comply with all appropriate health and safety provisions as required by federal regulations including, but not limited to, 45 Federal Register Part 98 as may be amended.

§809.42. Minimum Requirements for Providers.

(a) A Board shall ensure that providers are at a minimum:

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

(b) A Board shall ensure that the providers:

- (1) provide child care in compliance with a Provider Agreement as specified in this subchapter;
- (2) maintain satisfactory compliance with applicable regulatory standards; and
- (3) are not the subject of corrective or adverse action with the Texas Department of Protective and Regulatory Services, the Texas Department of Health, the United States military services, or any other state or federal agency.

(c) Before authorizing a person or entity that is listed with the Texas Department of Protective and Regulatory Services to provide child care, a Board shall ensure that there are in effect, under local law, requirements designated to protect the health and safety of children that are applicable to the persons or entities listed with the Texas Department of Protective and Regulatory Services. Pursuant to federal regulations at 45 Federal Register §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.

§809.43. Provider Agreements.

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

- (1) are in writing and signed by the provider and the Board or the Board's designee before child care services are rendered, and
- (2) specify the roles and responsibilities of the parties.

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

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

§809.44. Provider General Liability Insurance Requirements.

Boards shall determine whether general liability insurance will be required of providers in their areas and, if so, the amount.

§809.45. Collection of Parent Fees and Subsidies.

(a) For purposes of this chapter the following terms shall have the following meaning unless the context clearly indicates otherwise.

(1) Parent Fee -- The amount required to be paid to the provider by the parent of the child as a co-payment for child care services.

(2) Subsidy -- The amount required to be paid by the parent for costs of child care for the child.

(b) Providers shall collect assessed parent fees and subsidies before child care is delivered.

(c) It is the sole responsibility of the provider to collect assessed parent fees and subsidies.

(d) A Board shall establish a policy regarding reimbursement of providers to address consequences for providers in situations when parents fail to pay parent fees and subsidies.

§809.46. Assessing Parent Fees.

(a) A Board shall assess parent fees to all parents or caretakers based on the family's gross monthly income, with the following exceptions.

(1) Parents or caretakers who receive TANF are assessed no fee.

(2) Parents or caretakers who receive Supplemental Security Income (SSI) are assessed no fee.

(3) Parents who participate in the Food Stamp Employment and Training program are assessed no fee. Children of parents or caretakers who receive protective services are assessed no fee unless the Texas Department of Protective and Regulatory Services assesses a fee to a parent.

(b) In families where the child is the only TANF or SSI recipient, the parent fee is assessed according to subsection (d) of this section.

(c) Teen parents who live with their parents and who are not covered under exceptions outlined under subsection (a) of this section shall be assessed a parent fee. The parent fee is based solely on the teen parent's income.

(d) Parent fees for all parents not covered under exceptions outlined under subsection (a) of this section are assessed using the following formulas:

(1) In areas where the Commission manages child care service delivery contracts, the parent fee shall be 9.0% of the family's gross monthly income if there is one child receiving Commission paid child care and 11% of the family's gross monthly income if there are two or more children receiving Commission paid child care.

(2) In areas where the Board directly manages child care service delivery contracts, it is recommended that the parent fee should be no less than 9.0% and no more than 15% of the family's gross monthly income. The Board shall set the actual fee policy in accordance with the requirements set forth in §809.12 of this chapter (relating to Board Policies and Plans for Child Care Services).

(e) The Board's contractor is not permitted to assess a parent fee that exceeds the cost of care.

(f) Parents who receive a child care subsidy from other state or federal programs such as the Job Training Partnership Act shall pay that amount in addition to the assessed parent fee. The Board's contractor shall request documentation of child care subsidies from the parent.

§809.47. Reduction of Assessed Parent Fees.

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

(b) The Board or its contractor shall not waive parent fees under any circumstances.

§809.48. Attendance Tracking.

(a) A Board shall set the attendance standards for eligible children in the local workforce development area.

Providers shall document and maintain a record of each child's attendance and submit such documents to the Board's designated contractor upon request.

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

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

§809.49. Provider Advisory Groups.

Providers are required to establish a Parent Advisory Group consistent with Chapter 44 of the Texas Human Resources Code.

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

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Subchapter D. Self-Arranged Care

40 TAC §§809.61-809.62

The new rules are proposed under Texas Labor Code §301.061 and §302.002, which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs, and under Texas Human Resources Code §§31.010, 31.0035, and 44.002. The proposed rules affect Texas Labor Code, Chapters 301 and 302, Texas Human Resources Code, Chapters 31 and 44, and Texas Government Code, Chapter 2308.

§809.61. Qualifications to Provide Self-Arranged Care.

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

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

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

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

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

(d) Before authorizing a person or entity listed with the Texas Department of Protective and Regulatory Services to provide child care, a Board shall ensure that there are in effect, under local law, requirements designated to protect the health and safety of children that are applicable to the persons or entities listed with the Texas Department of Protective and Regulatory Services. Pursuant to federal regulations at 45 Federal Register §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.

§809.62. Reimbursement for Self-Arranged Care.

(a) A Board shall ensure that reimbursement for self-arranged care is paid:

- (1) to the parents of a child eligible to receive child care; and
- (2) after the Board or its contractor receives a complete Declaration of Services Statement (Declaration) verifying that services were rendered.

(b) The Declaration shall contain:

- (1) the name, age, and identifying information of the child;
- (2) the amount of care provided in terms of units of care;
- (3) the rate of payment;
- (4) the dates services were provided;
- (5) the name of the person providing self-arranged care; and
- (6) verification by the person providing self-arranged care that the information submitted in the Declaration is correct.

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Subchapter E. Parent Rights and Responsibilities

40 TAC §§809.71-809.77

The new rules are proposed under Texas Labor Code §301.061 and §302.002, which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs, and under Texas Human Resources Code §§31.010, 31.0035, and 44.002.

The proposed rules affect Texas Labor Code, Chapters 301 and 302, Texas Human Resources Code, Chapters 31 and 44, and Texas Government Code, Chapter 2308.

§809.71. Parental Choice.

(a) Parents have a right to choose the type of child care option that best suits their needs and to be informed of all child care options available to them including, the following:

- (1) the full range of categories of care and types of providers available; and
- (2) the various licensing, registration, and health and safety standards that providers shall follow.

(b) Included in parental choice is the right of parents to:

- (1) visit available child care facilities before making their choice of a child care option and visit the facility during child care services; and
- (2) receive assistance in choosing initial or additional child care referrals including information about the Board's policies regarding transferring children from one facility to another.

§809.72. General Parent Rights.

Parents have the right to:

- (1) have persons represent them when applying for child care;
- (2) notification of their eligibility to receive child care within 20 days from the day the Board's contractor receives all necessary documentation required to determine eligibility for child care;
- (3) receive child care regardless of race, color, national origin, age, sex, disability, political beliefs, or religion;
- (4) have the Board and the Board's contractor treat as confidential information that is used to determine eligibility for child care; and
- (5) written notification by the Board's contractor at least 15 days before the denial, delay, reduction, or termination of child care unless the following exceptions apply:
 - (A) Notification of denial, delay, reduction, or termination in child care is not required when 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 child care.
 - (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 case worker or the Texas Department of Protective and Regulatory Services.

§809.73. Eligibility Documentation.

(a) Parents shall provide the Board's contractor with all information necessary to determine eligibility according to the Board's administrative policies and procedures. Parents shall submit required documentation to the Board's contractor within the time limits required by the Board or the Board's contractor including, but not limited to, the following:

- (1) eligibility documentation;
- (2) Commission's forms; and
- (3) submission of self-arranged care claims, if applicable.

(b) Failure to submit documents may result in:

- (1) denial or termination of child care services, or
- (2) no payment for self-arranged care claims.

(c) If required eligibility documentation is received by the Board's contractor after the due date, but bears a postmark on or before the due date, the documentation shall be considered timely.

§809.74. Enrollment Agreements.

(a) The enrollment agreement is the agreement between the parents of the child and the provider of child care, which details the agreed upon terms of child care.

(b) A parent shall comply with the enrollment agreement terms as agreed upon in the enrollment agreement. Failure to comply will result in having child care denied or terminated.

§809.75. Parent Reporting Requirements.

(a) Parents shall report, within 10 days of the occurrence, the following:

- (1) changes in income;
- (2) changes in family size;

- (3) loss of TANF or Supplemental Security Income assistance grants;
 - (4) changes in work, education, or training; or
 - (5) any other changes that might affect the parents' eligibility for services.
 - (b) Failure to report changes may result in:
 - (1) termination of services;
 - (2) recovery of payments by the Board, the Board's contractor, or the Commission; and
 - (3) investigation for suspected fraud.
 - (c) The receipt of services for which the parent is no longer eligible constitutes grounds on which to suspect fraud.
- §809.76. Parent Appeal Rights.
- (a) A parent may request a hearing pursuant to Subchapter M of this Chapter (relating to Appeal Procedure), unless the parent has a child in in-home protective services and the parent did not request the child care. A parent of a child in in-home protective services may not appeal under this proceeding but shall follow the procedures established by the Texas Department of Protective and Regulatory Services.
 - (b) The Board's contractor shall inform parents of the procedures in requesting a hearing. A parent may have an individual represent them during this process. Provisions for child care to continue while awaiting a hearing are found in Subchapter M of this Chapter (relating to Appeal Procedure).

§809.77. Parent's Right to Withdraw.

- (a) A parent has a right to reject an offer of child care or voluntarily withdraw their child from child care unless the child is in in-home protective services.
- (b) A parent has a right to be informed by the Board's contractor of the possible consequences of rejecting or ending child care that is offered.

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

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Subchapter F. General Eligibility for Child Care

40 TAC §§809.91-809.93

The new rules are proposed under Texas Labor Code §301.061 and §302.002, which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs, and under Texas Human Resources Code §§31.010, 31.0035, and 44.002.

The proposed rules affect Texas Labor Code, Chapters 301 and 302, Texas Human Resources Code, Chapters 31 and 44, and Texas Government Code, Chapter 2308.

§809.91. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

- (1) Child -- An individual who meets the general eligibility requirements contained in this subchapter for receiving child care, who resides in the household, and who is the child of either or both parents. A child shall include persons born to the parents, persons adopted by either or both parents, the person for whom the parents have legal responsibility granted by the court, or persons provided supervision and care by the parents.
- (2) Family -- The unit comprised of a child eligible to receive child care services, the parents of that child, and household dependents.
- (3) Household Dependent -- An individual living in the household who is one of the following:
 - (A) an adult considered as a dependent 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 parents.

§809.92. General Eligibility Requirements.

(a) The eligibility criteria set forth in this chapter are based primarily on the federal and statute funding limitations. Nothing in this chapter shall be applied in a manner that conflicts with those limitations and the limitations contained in the use-of-funds provisions in the Commission's child care allocation rule contained in Subchapter B of Chapter 800 of this title (relating to Allocations and Funding).

(b) For a child to be eligible for child care services, the child's parents shall:

(1) have a total gross income that does not exceed 85% of the state median income for a family of the same size;

(2) require child care to participate in training, education, or employment activities; and

(3) need the child care for a child under thirteen years of age, unless a different age requirement is indicated in the applicable eligibility rule contained in this chapter.

(c) For purposes of this chapter, child care is needed to support participation in education for the limited time to complete one of the following:

(1) an associate's degree or no more than 65 semester hours of college credit; or

(2) a maximum of two years of post high school technical training.

§809.93. Calculating Income.

(a) Unless otherwise required by federal or state law, the "total gross income" of the family for purposes of determining eligibility means the monthly total of the following items listed.

(1) Total gross earnings before deductions are made for taxes. These earnings include money, earnings of a child between 14 and 18 years old who is not in school, wages, or salary the family member receives for work performed as an employee. Wages or salaries include armed forces pay (including allotments from any armed forces received by a family group from a person not living in the household), commissions, tips, piece-rate payments, and cash bonuses earned. Overtime pay is estimated based on the person's history of receiving this pay.

(2) Net income from non-farm self-employment. These earnings include gross receipts minus business-related expenses from a person's own business, professional enterprise, or partnership, which result in the person's net income. Gross receipts include the value of all goods sold and services given. Expenses include costs of purchased goods, rent, heat, light, power, depreciation charges, wages and salaries paid, business taxes (not personal income taxes or self-employment Social Security tax), and similar costs. The value of salable merchandise used by the owners of retail stores is not included as part of net income.

(3) Net income from farm self-employment. These earnings include gross receipts minus operating expenses from operation of a farm by the client or the parent and his partners. Gross receipts include the value of products sold; governmental crop loans; and incidental receipts from the sale of wood, sand, mineral royalties, gravel, and similar items. Operating expenses include the cost of feed, fertilizer, seed and other farming supplies, cash wages paid to farm workers, depreciation, cash rent, interest on farm mortgages, repairs of farm buildings, farm-related taxes (not personal income taxes or self-employment Social Security tax), and similar expenses. The value of fuel, food, or other farm-related products used for the family's living expenses is not included as part of net income.

(4) Social security and railroad retirement benefits. These benefits include Social Security pensions and survivor's benefits, permanent disability insurance payments made by the Social Security Administration (before deductions for medical insurance), and railroad retirement insurance checks from the federal government. Gross benefits from these sources are the amounts before deductions for Medicare insurance.

(5) Dividends and interest. These earnings include dividends from stock holdings or membership in associations, interest on savings or bonds, periodic receipts from estates or trust funds, and net royalties. Such earnings are averaged for a 12-month period.

(6) Income from rental of a house, homestead, store, or other property, or rental income from boarders or lodgers. These earnings include net income from rental property, which is calculated by prorating and subtracting the following from gross receipts:

(A) prorated property taxes;

(B) insurance payments;

(C) bills for repair and upkeep of property; and

(D) interest on mortgage payments on the property. Capital expenditures and depreciation are not deductible.

(7) Interest income from mortgages or contracts. These payments include interest income the buyer promises to pay in fixed amounts over a period of time until the principal of the note is paid.

(8) Public assistance payments. These payments include Temporary Assistance for Needy Families (TANF), refugee assistance, Social Security Insurance, and general assistance (such as cash payments from a county or city).

(9) Pensions, annuities, and irrevocable trust funds. These payments include pensions or retirement benefits paid to a retired person or his survivors by a former employer or by a union, either directly or through an insurance company. Also included are periodic payments from annuities, insurance, or irrevocable trust funds. Gross benefits from civil service pensions are benefits before deductions for health insurance.

(10) Veteran's pensions, compensation checks, and G.I. benefits. These benefits include money paid periodically by the Veteran's Administration to disabled veterans of the armed forces or to survivors of deceased veterans, subsistence allowances paid to veterans for education and on-the-job training and refunds paid to ex-servicemen as

G.I. insurance premiums. The Commission or the contracted provider includes only that part of the educational allowance that is used for current living costs.

(11) Educational loans and grants. These payments include money received by students as scholarships for educational purposes. The Commission includes only that portion of the money actually used for current living costs.

(12) Unemployment compensation. This includes unemployment payments from governmental unemployment insurance agencies or private companies and strike benefits from union funds paid to people while they are unemployed or on strike.

(13) Workers' compensation and disability payments. These payments include compensation received periodically from private or public insurance companies for on-the-job injuries.

(14) Spousal maintenance or alimony.

(15) 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 payments made by an absent parent for the maintenance of a minor.

(16) Cash support payments. These payments are regular cash support payments from friends or relatives received on a periodic basis more than three times a year.

(17) Inheritance. This is net income from the parent's share of an inheritance.

(18) Foster care payments. The total payment made to a parent on behalf of a legally assigned foster child or foster adult is counted as income.

(19) Sale of property. This includes capital gains from sale of property.

(b) Income to the family that is not included in subsection (a) of this section is excluded in determining the total gross income. Income does not include food stamps.

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

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Subchapter G. Child Care for People Transitioning Off Public Assistance

40 TAC §§809.101-809.105

The new rules are proposed under Texas Labor Code §301.061 and §302.002, which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs, and under Texas Human Resources Code §§31.010, 31.0035, and 44.002.

The proposed rules affect Texas Labor Code, Chapters 301 and 302, Texas Human Resources Code, Chapters 31 and 44, and Texas Government Code, Chapter 2308.

§809.101. Children of Parents Eligible for Transitional Child Care.

(a) Transitional Child Care shall be provided for children of parents who have been denied TANF due to:

(1) an increase in earnings, which results in income higher than the income level permitted for TANF eligibility; or
(2) expiration of TANF time limits.

(b) Eligibility for Transitional Child Care begins on the date determined by the Texas Department of Human Services and continues for a period of up to 12 months. Transitional Child Care may continue for an additional six months for an exempted (or not mandatory) TANF client with a child either under age four or with a disability when the parent volunteers for the Choices program. This client will be eligible for up to 18 months of Transitional Child Care.

(c) Employment of the parents is required for their children to receive child care pursuant to this section unless the TANF time limits expire, as determined by the Texas Department of Human Services, and the parent is either not employed or is participating in an education or training program.

(1) If the parents are not employed at the time TANF expires, child care shall extend for up to the first four weeks of the Transitional Child Care eligibility period, as needed, to enable parents to seek employment.

(2) If the parents are in an education or training program at the time TANF expires, child care may extend for up to the first eight weeks of the Transitional Child Care eligibility period, as needed, to assist the parents in continued participation in the education or training program. After completion of the eight weeks or the end of the education or

training program, whichever comes earlier, child care may extend for the next four weeks of the Transitional Child Care eligibility period, as needed, to seek employment.

§809.102.Children of Parents Participating in the Choices Program.

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

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

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

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

(1) when child care will prevent loss of the Choices placement, and

(2) if child care is available to meet the needs of the child and parent.

(e) The Commission shall limit the time a parent shall receive Choices child care to the period of time in which their Choices program case plan remains open.

§809.103.Texas Workforce Commission Applicant Child Care.

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

(1) need child care to accept employment;

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

(3) locate employment prior to TANF certification.

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

(c) Subject to the availability of funds, Applicant Child Care shall be provided for up to one year.

§809.104.Children of Parents Participating in the Food Stamp Employment and Training Program.

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

§809.105.Children Receiving Protective Services.

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

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

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

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Subchapter H. Children of Parents at Risk of Becoming Dependent on Public Assistance

40 TAC §§809.121-809.124

The new rules are proposed under Texas Labor Code §301.061 and §302.002, which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs, and under Texas Human Resources Code §§31.010, 31.0035, and 44.002.

The proposed rules affect Texas Labor Code, Chapters 301 and 302, Texas Human Resources Code, Chapters 31 and 44, and Texas Government Code, Chapter 2308.

§809.121.Children Living At Very Low Incomes.

Children living at very low incomes are eligible for child care if:

(1) the family income does not exceed 85% of the state median income for a family of the same size; or

(2) the parents of the children are receiving TANF or Supplemental Security Income.

§809.122.Children with Disabilities.

(a) The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. Children with disabilities -- Individuals who meet the age requirements set forth in this subchapter and who are mentally or physically incapable of caring for themselves and meet the criteria set forth in this section.

(b) Children with disabilities are eligible for child care if residing with parents:

(1) whose income, after deducting the cost of the child's ongoing medical expenses, does not exceed 85% of the state median income for a family of the same size; and

(2) who are working, participating in training, or attending school.

(c) A Board may elect to provide extended child care to children with disabilities between the ages of 13 and 19, provided that the other provisions in this section are also met.

§809.123.Children Who Are Teen Parents.

(a) A teen parent (teen) is an individual 18 years of age or younger who has a child.

(b) A child of a teen may be eligible for child care if:

(1) the teen needs child care services to complete high school or the equivalent; and

(2) the family's total gross income does not exceed 85% of the state median income for a family of the same size.

(c) For purposes of determining whether the family's total gross income does not exceed 85% of the state median income for a family of the same size, the following applies.

(1) If residing with the teen's parent (the child's grandparent), the teen shall include in the family's total gross income, the income of the child's grandparent.

(2) The teen is not required to include the grandparent's income in the family's total gross income if the teen:

(A) does not reside with the child's grandparent; or

(B) is, or has been, married.

§809.124.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 in the Board Planning Guidelines.

(c) Special projects may include child care provided through match initiatives as described in 45 Federal Register Part 98.

(d) 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.

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Subchapter K. Funds Management

40 TAC §§809.221-809.235

The new rules are proposed under Texas Labor Code §301.061 and §302.002, which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs, and under Texas Human Resources Code §§31.010, 31.0035, and 44.002.

The proposed rules affect Texas Labor Code, Chapters 301 and 302, Texas Human Resources Code, Chapters 31 and 44, and Texas Government Code, Chapter 2308.

§809.221.General Funds Management.

Boards shall ensure that resources are proportionately allocated among eligibility groups so that priority for intake services is assured for Transitional and Choices eligible children.

§809.222.Effective Utilization of Funds.

A Board shall ensure that a list of parents waiting for child care due to lack of funding or lack of providers and self-arranged providers, is maintained and available to the Commission upon request. The list should indicate whether the reason for waiting is due to lack of funding or lack of providers and self-arranged providers.

§809.223. Eligibility Verification.

(a) A Board shall ensure that its contractor confirms eligibility before the contractor authorizes child care.

(b) Eligibility for child care shall be redetermined:

(1) at least every six months; or

(2) earlier if there is a change in family income or other information that could affect eligibility to receive child care.

§809.224. Custody and Visitation Arrangements.

(a) 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 upon return from the court-ordered custody or visitation arrangement.

(b) A Board shall strive to encourage that other children temporarily utilize the space until the child returns from the court-arranged custody or visitation.

(c) A Board shall ensure that parents who choose to accept temporary child care to fill a position opened due to court-ordered custody or visitation shall not lose their place on the waiting list.

(d) A Board shall ensure that parents who choose not to accept temporary child care to fill a position opened due to court-ordered custody or visitation shall not lose their place on the waiting list.

§809.225. Continuity of Care.

(a) Enrolled children shall receive child care as long as the parent remains eligible for any available source of Commission-funded child care. Nothing in this chapter shall be interpreted in a manner as to result in a child being removed from care.

(b) Children currently enrolled in child care shall remain in care when the Board assumes management of the child care services contract and shall remain eligible as long as eligibility criteria are met.

§809.226. Provider Payments.

A Board shall ensure that providers are reimbursed for child care according to the procedures and time frames specified in the master contract, the Provider Agreements, and as may be specified in the Commission's Grants and Contracts Manual.

§809.227. Provider Billing Requirements.

(a) After child care services are rendered, providers shall submit bills with required documentation to the Board's contractor in a timely and efficient manner as determined by the Board or the Board's contractor.

(b) The Board, or the Board's designated Grant Recipient, is not liable for and shall not pay bills submitted by the Board's contractor later than 45 days after child care has been delivered.

§809.228. Units of Service of Child Care.

The funding of child care is based on the unit of service delivered, as follows:

(1) a full day unit of service is six to 12 hours of care provided within a 24-hour period; and

(2) a part-day unit of service is less than six hours of care provided within a 24-hour period.

§809.229. Provider Payment Based on Child Care Enrollment.

(a) Enrollment in child care begins the first day the child is scheduled to attend child care.

(b) A Board or its contractor shall ensure that providers are not paid for holding spaces open.

(c) If the child does not attend the first three days of scheduled care, the provider has until the close of the third day of scheduled attendance to contact the Board or the Board's contractor regarding the child's absence.

(d) A Board or the Board's contractor shall not pay providers:

(1) less when a child enrolled full time attends occasionally for a part day; or

(2) more when a child enrolled part time attends occasionally for a full day.

§809.230. Inclusion Assistance Rates.

(a) An inclusion assistance rate is an increased child care rate to compensate a provider for the provision of additional staff to assist in the care of a child with disabilities.

(b) A Board or its contractor shall ensure that providers who provide additional staff for a child with disabilities are paid an inclusion assistance rate up to 190% of the provider's reimbursement rate for a child of that same age.

(c) Before a provider is paid an inclusion assistance rate, a Board or its contractor shall ensure that the authorized inclusion assistance rate considers the estimated cost of the additional staff needed by a child with disabilities.

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

§809.231. Provider Reimbursement Rates.

(a) Based on a market rate survey provided by the Commission, a Board shall establish the reimbursement rates for purchased child care to ensure that the rates provide access to at least three-fourths of all child care services in the local market and in a manner consistent with state and federal statutes and regulations governing child care.

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

§809.232.Provider Reimbursement for Transportation.

(a) The Board shall determine whether to reimburse providers who offer transportation.

(b) The combined total of the provider's published rate, plus the transportation rate, is subject to the limitations set forth in §809.231 of this chapter (relating to Provider Reimbursement Rates).

§809.233.Reduction of Parent Fees and Child Care Subsidies.

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

(1) the parent fees assessed and adjusted when the parent fees are reduced; and

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

§809.234.Payment for Operating Expenses.

(a) The Boards shall develop a budget to form the basis of paying operating expenses.

(b) The maximum reimbursement amount for a contract period is the lesser of the Commission's share of the following:

(1) the total budget operations cost; or

(2) the actual, reasonable, allowable, properly allocated cost.

(c) Costs are determined to be reasonable, allowable, and properly allocated in accordance with Office of Management and Budget Circulars A-21, A-87, and A-122, and other applicable federal and state statutes and regulations. There is no provision for profit in budgeting, payment, or reimbursement of operations expense.

(d) All categories of operating expenses are subject to billing on a cost reimbursement basis when the Commission determines that the Board or its contractor has over-billed or failed to document expenses.

(e) The Commission may establish additional requirements and limits for budgeted costs and reimbursements to comply with federal limits on costs of specified staff, activities, and functions.

§809.235.Billing.

(a) A Board is responsible for ensuring that bills are processed and submitted to the Commission in a timely and efficient manner. A Board, or the Board's designated Grant Recipient, shall submit bills to the Commission no later than 30 days after receiving bills with required documentation from the Board's contractor. To exceed 30 days, there must be extenuating circumstances and written approval from the Commission.

(b) The Commission is not liable for and shall not pay bills submitted by the Board, or the Board's designated Grant Recipient, later than 45 days after the Board, or the Board's designated Grant Recipient, receives bills with required documentation from the Board's contractor.

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

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Subchapter L. Fraud Investigations

40 TAC §§809.251-809.253

The new rules are proposed under Texas Labor Code §301.061 and §302.002, which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs, and under Texas Human Resources Code §§31.010, 31.0035, and 44.002.

The proposed rules affect Texas Labor Code, Chapters 301 and 302, Texas Human Resources Code, Chapters 31 and 44, and Texas Government Code, Chapter 2308.

§809.251.General Fraud Investigation Procedures.

(a) A Board shall ensure that procedures for investigating fraud are developed and implemented to deter, detect, and refer for prosecution to the proper authorities suspected fraud for child care in the local workforce development area.

(b) A Board shall ensure that fraud investigation procedures are developed. These procedures shall include provisions that ensure that each case of suspected fraud is reported to the Commission in writing, including documentation of relevant facts.

(c) 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 contractor for action including, but not limited to, the following:

(1) further investigation;

(2) referral for prosecution under the Texas Penal Code or other state or federal laws; or

(3) other corrective action as provided in this chapter or as may be appropriate.

(d) The Board shall ensure that a final investigation closing report is submitted to the Commission after a case is returned to the Board or its contractor and all feasible avenues of investigation and corrective actions have been exhausted.

§809.252.Suspected Fraud.

A parent, provider, person providing self-arranged care, person applying to provide child care, 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 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 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 during a period in which the child was not eligible for services;

(D) known, or should have known, that child care services were provided by a person not eligible to be a provider or not eligible to provide self-arranged care; 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.

§809.253.Action to Prevent or Correct Suspected Fraud.

The Commission, Board, or Board's contractor may take the following actions if a person is found to have committed fraud:

(1) suspension, nonrenewal, or termination of child care or a Provider Agreement;

(2) temporary withholding of payments to the parent or provider for child care delivered;

(3) nonpayment of child care delivered;

(4) recoupment of funds from the parent or provider; or

(5) any other action consistent with the intent of the governing statutes or regulations to investigate, prevent, or stop suspected fraud.

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

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Subchapter M. Appeal Procedure

40 TAC §§809.271-809.273

The new rules are proposed under Texas Labor Code §301.061 and §302.002, which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs, and under Texas Human Resources Code §§31.010, 31.0035, and 44.002.

The proposed rules affect Texas Labor Code, Chapters 301 and 302, Texas Human Resources Code, Chapters 31 and 44, and Texas Government Code, Chapter 2308.

§809.271.Child Care During Appeal.

(a) A Board shall ensure that child care continues 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 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;
 - (4) lack of funding;
 - (5) a sanctions recommendation against the parent participating in the Choices program; or
 - (6) voluntary withdrawal of a parent from the Choices program.
- (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.

§809.272. Board Review.

(a) A parent, provider, or a Board's 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 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 contractor, provider, or parent written notification of the results of the review.

§809.273. Appeals to the Commission.

(a) After results of a review have been issued, the Board's 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 the 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 (relating to General Hearings), or as otherwise provided by the Commission.

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

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Subchapter N. Corrective and Adverse Actions

40 TAC §§809.281-809.288

The new rules are proposed under Texas Labor Code §301.061 and §302.002, which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs, and under Texas Human Resources Code §§31.010, 31.0035, and 44.002.

The proposed rules affect Texas Labor Code, Chapters 301 and 302, Texas Human Resources Code, Chapters 31 and 44, and Texas Government Code, Chapter 2308.

§809.281. Contractor Agreement Violations.

(a) The Board shall ensure that contractors and providers comply with all terms of applicable contracts and with Commission rules.

(b) The Commission may consider failure by a Board, Board's contractor, provider, provider of self-arranged care, or parent to comply with this chapter as an act which may warrant corrective and adverse action as detailed in §809.283 of this subchapter (relating to Corrective and Adverse Action). Failure by a Board, Board's contractor,

provider, or parent to comply with this chapter shall also be considered as a breach of contract, which may also result in corrective action as detailed in this subchapter.

§809.282.Provider Agreement Violations.

(a) The provider shall comply with all terms of the Provider Agreement and Commission rules.

(b) A Board shall ensure that corrective actions and resolutions of agreement violations are pursued to cure any violations.

(c) A Board may consider acts of noncompliance with other federal or state regulatory provisions to be violations of the Provider Agreement.

(d) A Board shall ensure that corrective action is taken when a provider fails to comply with applicable licensing standards.

(e) The Board shall ensure that payments for child care are not made for any care on a day in which the attendance at the facility exceeds the state licensed capacity and that other appropriate corrective action is taken.

(f) The Board may take corrective action as a response to agreement violations including, but not limited to, those indicated in this subchapter (relating to Corrective and Adverse Action).

§809.283.Corrective and Adverse Action.

(a) Corrective and adverse action (corrective action) may include sanctions set forth in Chapter 800, Subchapter E of this title (relating to Sanctions) and may include, but not be limited to, the following:

(1) requirement that the Board's contractor enter into a Service Improvement Agreement (SIA);

(2) suspension, nonrenewal, or termination of the enrollment agreement, Provider Agreement, contract for service delivery, other Board subcontracts, or the Board contract;

(3) temporarily withholding of payments ;

(4) nonpayment of costs incurred; and

(5) recoupment of funds.

(b) When determining which corrective actions are appropriate, the following shall be considered:

(1) the scope of the violation;

(2) the severity of the violation;

(3) the compliance history of the person or entity; and

(4) in the case of contractors, the contractor's failure to meet Commission performance standards.

(c) Corrective action may include, but is not limited to, the following:

(1) closing intake;

(2) moving children to another provider facility selected by the parent;

(3) holding provider payments; and

(4) terminating, suspending, or not renewing a Provider Agreement if the Texas Department of Protective and Regulatory Services has cited a provider for serious or continued noncompliance with the minimum licensing standards or placed the provider on some form of corrective or adverse action.

(d) When a Board's contractor or provider violates a contract or agreement, a written SIA may be negotiated between the Commission, Board, Board's contractor, or provider. At the least, the SIA shall include, the following:

(1) the basis for the 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 agreement.

(e) Failure to fully comply with the terms of the SIA may result in the imposition of one or more of the sanctions set forth in subsection (b) of this section and Chapter 800, Subchapter E of this title (relating to Sanctions).

§809.284.Noncompliance with Other State or Federal Programs.

(a) A Board shall ensure that the Board's contractors and providers have not been found to be in noncompliance with state or federal law. Noncompliance includes the following actions as defined by federal or state statutes or regulations:

(1) serious noncompliance with,

(2) seriously deficient by, or

(3) debarment from other state or federal programs.

(b) A Board shall ensure that no agreements are initiated with persons who have been found to be in noncompliance. A Board shall ensure that any agreements with such persons or entities shall terminate within 30 days of the finding.

(c) A Board or its contractors shall not enter into a contract with an entity if that entity or staff have been found to be in serious noncompliance with, seriously deficient by, or debarred from other state or federal programs.

(d) A Board shall notify the Commission of instances of noncompliance as described in subsection (a) of this section and take appropriate corrective action.

§809.285.Reapplication for Provider Status after Termination or Nonrenewal of the Provider Agreement.

(a) If a Provider Agreement has not been renewed or has been terminated for violations of terms of the Provider Agreement, the provider shall wait for up to six months after the termination date of the Provider Agreement before reapplying unless the Board or its contractor determines that the reapplication period should be changed based on the reason for the termination or nonrenewal of the Provider Agreement.

(b) The provider shall be informed at the time of the termination or nonrenewal of the Provider Agreement when they may reapply for provider status.

§809.286.Recovery of Overpayment.

(a) A Board shall attempt recovery of all overpayments. The Commission shall not pay for overpayments.

(b) Recovery of overpayment shall be managed in accordance with the Commission policies and procedures in the Commission guidelines.

§809.287.Recovery of Overpayment to a Provider or Parent.

(a) The provider shall repay overpayments for child care received in the following circumstances:

(1) instances involving fraud;

(2) instances when the provider did not have a Provider Agreement in compliance with this chapter;

(3) instances when the provider exceeded the licensed capacity;

(4) instances when the provider was paid for the child care from another source;

(5) instances when the provider did not deliver the child care;

(6) instances when referred children have been moved from one facility to another without authorization from the contractor;

(7) instances when the provider transferred the Provider Agreement to any other entity, facility, or location without notifying the contractor, or as otherwise required by the Board's contractor; or

(8) other instances when repayment is deemed an appropriate action.

(b) A parent shall repay overpayments for child care in the following circumstances:

(1) instances involving fraud as defined in this chapter;

(2) instances when the parent has received child care while awaiting an appeal and the determination is affirmed by the hearing officer; or

(3) other instances when repayment is deemed an appropriate corrective action.

§809.288.Failure to Meet Performance Standards.

(a) A Board and its contractors are subject to recoupment of costs and other applicable corrective action as detailed in this chapter, and as set forth in Subchapter E of Chapter 800 of this title (relating to Sanctions), when they fail to meet performance standards specified by the Commission.

(b) The Commission may recoup administrative costs when the contractor's annual compliance rate is less than the 95% standard. The Commission uses the following methodology to determine the amount to be recouped for a compliance rate that is less than the 95% standard for accurate and timely determinations and redeterminations of client eligibility.

(1) The Commission determines the average cost per client for client services.

(2) The Commission determines the administrative costs of client services for clients in a contractor's monitoring sample, based on the number of clients in the contractor's monitoring sample and the average cost per client for client services.

(3) Based on the results of Commission monitoring of client eligibility determination and redetermination, if a contractor's compliance is:

(A) below the 95% standard but at or above 85%, the Commission recoups administrative costs in an amount equal to 1.5 times the percentage of noncompliance below 95% applied to the administrative costs of client services for clients in the monitoring sample; and

(B) below 85% of the standard, the Commission recoups administrative costs in an amount equal to the percentage of noncompliance below 100% applied to the administrative costs of client services for clients in the monitoring sample.

(c) The Commission uses the following methodology to determine the amount to be recouped for a compliance rate that is less than the 95% standard for maintenance of valid Provider Agreements.

(1) The Commission determines the average cost per client for provider services.

(2) The Commission determines the costs of provider services for providers in a contractor's monitoring sample, based on the number of providers in the contractor's sample and the average costs per provider for provider services.

(3) Based on the results of the Commission's monitoring of maintenance of valid Provider Agreements, if a contractor's compliance is:

(A) below the 95% standard but at or above 85%, the Commission recoups administrative costs in an amount equal to 1.5 times the percentage of noncompliance below 95% applied to the administrative costs of provider services for providers in the monitoring sample; and

(B) below 85% of the standard, the Commission recoups administrative costs in an amount equal to the percentage of noncompliance below 100% applied to the administrative costs of provider services for providers in the monitoring sample.

(d) If a contractor's compliance for accurate and timely determinations and re-determinations of client eligibility or maintenance of valid Provider Agreements is below 85%, the Commission may recoup child care costs related to the errors in the sample in addition to recouping administrative costs. The Commission may also base recoupment on findings projected to the contractor's administrative and/or child care costs for all client services or all provider services during the period of the monitoring sample.

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