

1 **CHAPTER 809. CHILD CARE SERVICES**

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

6
7 **ON JULY 31, 2018, THE TEXAS WORKFORCE COMMISSION PROPOSED THE RULES**
8 **BELOW WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS REGISTER.**

9
10 Estimated Publication Date of the Proposal in the *Texas Register*: **August 17, 2018**
11 Estimated End of Comment Period: **September 17, 2018**

12
13 The Texas Workforce Commission (TWC) proposes amendments to the following sections of
14 Chapter 809, relating to Child Care Services:

- 15 Subchapter A. General Provisions, §809.2
- 16 Subchapter G. Texas Rising Star Program, §§809.131, 809.132, and 809.134

- 17
- 18
- 19 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**
- 20 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**
- 21 **PART III. IMPACT STATEMENTS**
- 22 **PART IV. COORDINATION ACTIVITIES**

23
24 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

25 The purpose of the proposed Chapter 809 amendments is to clarify the consequences of certain
26 deficiencies cited by Child Care Licensing (CCL) and adjust the time frame for which
27 consequences are applied to a provider's Texas Rising Star (TRS) certification rating. The
28 amendments also will align the professional development and continuing education requirements
29 of TRS assessors and mentors with the minimum annual professional development and
30 continuing education requirements of the child care center directors they assess and mentor.

31
32 Texas Government Code §2308.3155(b)(2), regarding the TRS program, requires TWC's three-
33 member Commission (Commission) to adopt a timeline and process for regularly reviewing and
34 updating the quality standards used to determine the TRS rating system. The statute requires
35 Commission consideration of input from interested parties regarding the quality standards. To
36 meet this requirement, a workgroup composed of workforce system and community stakeholders
37 was convened on February 20, 2018, to discuss TWC's quality initiatives, including a review of
38 the standards and rules of the TRS program.

39
40 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

41 (Note: Minor editorial changes are made that do not change the meaning of the rules and,
42 therefore, are not discussed in the Explanation of Individual Provisions.)

43
44 **SUBCHAPTER A. GENERAL PROVISIONS**

45 **TWC proposes the following amendments to Subchapter A:**

1 **§809.2. Definitions**

2 Terminology is added to define "Child Care Licensing (CCL)" and reflect its transition from the
3 Texas Department of Family and Protective Services (DFPS) to the Texas Health and Human
4 Services Commission. "DFPS" is replaced by "CCL" as appropriate, and the paragraphs are
5 renumbered as necessary.
6

7 Additionally, renumbered §809.2(9)(B) is amended to use the term "Certificate of High School
8 Equivalency" rather than "General Education Development (GED) credential."
9

10 **SUBCHAPTER G. TEXAS RISING STAR PROGRAM**

11 **TWC proposes the following amendments to Subchapter G:**

12
13 **§809.131. Eligibility for the TRS Program**

14 Terminology is updated to replace "DFPS" with "CCL" as appropriate.
15

16 **§809.132. Impact of Certain Deficiencies on TRS Certification**

17 Workgroup feedback expressed concern regarding the TRS certification rating loss incurred by
18 certain CCL deficiencies cited. In response, TWC proposes to amend §809.132(b) so that 4-star
19 TRS providers lose only one star level, rather than the currently required two, if a critical
20 deficiency is identified during the provider's most recent CCL 12-month licensing history.
21 Section 809.132(e) is amended to state that providers losing a star level due to licensing
22 deficiencies shall be reinstated at the former star level if no citations described in §809.132(b) -
23 (d) occur within the six-month reduction time frame.
24

25 Additionally, when a provider loses TRS certification due to the number of deficiencies cited, the
26 provider is currently disqualified from eligibility for TRS recertification assessment for at least
27 12 months following the loss of certification. TWC proposes to amend §809.132(f) to align with
28 the six-month disqualification period incurred by a star-level reduction, as outlined in amended
29 §809.132(e), as long as no current deficiencies are re-cited and no additional licensing
30 deficiencies are cited during the disqualification period.
31

32 Furthermore, "DFPS" is replaced by "CCL" as appropriate.
33

34 **§809.134. Minimum Qualifications for TRS Assessors and Mentors**

35 TRS assessors and mentors require specific skill sets to assess child care centers for quality in all
36 aspects of operations, as well as to mentor child care directors to achieve a quality designation.
37 Assessors and mentors must stay abreast of professional standards and emerging trends that will
38 benefit child care providers. Currently, the minimum amount of professional development and
39 continuing education required for assessors and mentors is 30 hours annually. However, directors
40 of TRS-certified centers have a requirement of 36 hours of continuing education and professional
41 development annually to maintain TRS certification.
42

43 Amended §809.134(e) aligns the professional development and continuing education hours for
44 assessors and mentors with that required of TRS-certified child care center directors.
45

46 **PART III. IMPACT STATEMENTS**

1 Randy Townsend, Chief Financial Officer, has determined that for each year of the first five
2 years the rules will be in effect, the following statements will apply:

3
4 There are no additional estimated costs to the state and to local governments expected as a result
5 of enforcing or administering the rules.

6
7 There are no estimated cost reductions to the state and to local governments as a result of
8 enforcing or administering the rules.

9
10 There are no estimated losses or increases in revenue to the state or to local governments as a
11 result of enforcing or administering the rules.

12
13 There are no foreseeable implications relating to costs or revenue of the state or local
14 governments as a result of enforcing or administering the rules.

15
16 There are no anticipated economic costs to individuals required to comply with the rules.

17
18 There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural
19 communities as a result of enforcing or administering the rules.

20
21 Based on the analyses required by Texas Government Code §2001.024, TWC has determined
22 that the requirement to repeal or amend a rule, as set forth in Texas Government Code
23 §2001.0045, does not apply to this rulemaking.

24
25 Takings Impact Assessment

26
27 Under Texas Government Code, §2007.002(5), “taking” means a governmental action that
28 affects private real property, in whole or in part or temporarily or permanently, in a
29 manner that requires the governmental entity to compensate the private real property
30 owner as provided by the Fifth and Fourteenth Amendments to the United States
31 Constitution or the Texas Constitution, §17 or §19, Article I or restricts or limits the
32 owner's right to the property that would otherwise exist in the absence of the
33 governmental action; and is the producing cause of a reduction of at least 25 percent in the
34 market value of the affected private real property, determined by comparing the
35 market value of the property as if the governmental action is not in effect and the
36 market value of the property determined as if the governmental action is in effect.
37 The Commission completed a takings impact analysis for the proposed rulemaking
38 action under Texas Government Code, §2007.043. The primary purpose of this
39 proposed rulemaking action, as discussed elsewhere in this preamble, is to amend existing
40 §809.131, §809.132, and §809.134 based on the results of workgroup feedback and review. The
41 amendments include clarifying the consequences of certain deficiencies cited by Child Care
42 Licensing (CCL), adjusting the time frame for which consequences are applied to a provider's
43 Texas Rising Star (TRS) certification rating, and aligning the professional development and
44 continuing education requirements of TRS assessors and mentors with the minimum annual
45 professional development and continuing education requirements of the child care center
46 directors they assess and mentor.

1
2 The proposed rulemaking action will not create any additional burden
3 on private real property. The proposed rulemaking action will not affect private real
4 property in a manner that would require compensation to private real property owners
5 under the United States Constitution or the Texas Constitution. The proposal also will
6 not affect private real property in a manner that restricts or limits an owner's right to
7 the property that would otherwise exist in the absence of the governmental action.
8 Therefore, the proposed rulemaking will not cause a taking under Texas Government
9 Code, Chapter 2007.

10
11 Government Growth Impact Statement

12 TWC has determined that during the first five years the amendments will be in effect:
13 --the amendments will not create or eliminate a government program;
14 --implementation of the amendments will not require the creation or elimination of employee
15 positions;
16 --implementation of the amendments will not require an increase or decrease in future legislative
17 appropriations to TWC;
18 --the amendments will not require an increase or decrease in fees paid to TWC;
19 --the amendments will not create a new regulation;
20 --the amendments will not expand, limit, or eliminate an existing regulation;
21 --the amendments will not change the number of individuals subject to the rules; and
22 --the amendments will not positively or adversely affect the state's economy.

23
24 Economic Impact Statement and Regulatory Flexibility Analysis

25 TWC has determined that the rules will not have an adverse economic impact on small
26 businesses or rural communities, as these rules place no requirements on small businesses or
27 rural communities.

28
29 Mariana Vega, Director of Labor Market and Career Information, has determined that there is no
30 significant negative impact upon employment conditions in the state as a result of the rules.

31
32 Courtney Arbour, Director, Workforce Development Division, has determined that for each year
33 of the first five years the rules are in effect, the public benefit anticipated because of the rules
34 will be to improve access to, and continued participation in, TRS programming by child care
35 providers, and improve the quality of assessments and mentoring activities for child care and
36 early learning centers already participating as TRS providers.

37
38 TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be
39 within TWC's legal authority to adopt.

40
41 **PART IV. COORDINATION ACTIVITIES**

42 In the development of these rules for publication and public comment, TWC sought the
43 involvement of Texas' 28 Local Workforce Development Boards (Boards). TWC provided the
44 concept paper regarding these rule amendments to the Boards for consideration and review on
45 May 8, 2018. TWC also conducted a conference call with Board executive directors and Board
46 staff on May 11, 2018, to discuss the concept paper. During the rulemaking process, TWC

1 considered all information gathered in order to develop rules that provide clear and concise
2 direction to all parties involved.

3
4 Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce
5 Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 459T, Austin,
6 Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us.
7 Comments must be received or postmarked no later than 30 days from the date this proposal is
8 published in the *Texas Register*.

9
10 The rules are proposed under Texas Government Code §2308.3155(b)(2), relating to the process
11 for regular review and update of the quality standards within the Texas Rising Star Program, and
12 Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt,
13 amend, or repeal such rules as it deems necessary for the effective administration of TWC
14 services and activities.

15
16 The proposed rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well
17 as Texas Government Code, Chapter 2308.

18
19

1 (8)(7) Child with disabilities--A child who has a physical or mental impairment
2 that substantially limits one or more major life activities, has a record of such
3 an impairment, or is regarded as having such an impairment. Major life
4 activities include, but are not limited to, caring for oneself; performing manual
5 tasks; walking; hearing; seeing, speaking, or breathing; learning; and working.
6

7 (9)(8) Educational program--A program that leads to:

- 8 (A) a high school diploma;
- 9 (B) a Certificate of High School Equivalency; ~~General Educational~~
10 ~~Development (GED) credential~~; or
- 11 (C) a postsecondary degree from an institution of higher education.

12 (10)(9) Family--Two or more individuals related by blood, marriage, or decree of
13 court, who are living in a single residence and are included in one or more of
14 the following categories:
15

- 16 (A) Two individuals, married--including by common-law, and household
17 dependents; or
- 18 (B) A parent and household dependents.

19 (11)(10) Household dependent--An individual living in the household who is one of
20 the following:

- 21 (A) An adult considered ~~as~~-a dependent of the parent for income tax
22 purposes;
- 23 (B) A child of a teen parent; or
- 24 (C) A child or other minor living in the household who is the responsibility
25 of the parent.

26 (12)(11) Improper payments--Any payment of CCDF grant funds that should not
27 have been made or that was made in an incorrect amount (including
28 overpayments and underpayments) under statutory, contractual, administrative,
29 or other legally applicable requirements governing the administration of CCDF
30 grant funds and includes payments:

- 31 (A) to an ineligible recipient;
- 32 (B) for an ineligible service;
- 33 (C) for any duplicate payment; and

1
2 (D) for services not received.
3

4 ~~(13)(12)~~ Job training program--A program that provides training or instruction
5 leading to:

6
7 (A) basic literacy;

8
9 (B) English proficiency;

10
11 (C) an occupational or professional certification or license; or

12
13 (D) the acquisition of technical skills, knowledge, and abilities specific to an
14 occupation.
15

16 ~~(14)(13)~~ Listed family home--A family home, other than the eligible child's own
17 residence, that is listed, but not licensed or registered with, ~~CCL~~~~the Texas~~
18 ~~Department of Family and Protective Services (DFPS)~~~~CCL~~ pursuant to Texas
19 Human Resources Code §42.052(c).
20

21 ~~(15)(14)~~ Military deployment--The temporary duty assignment away from the
22 permanent military installation or place of residence for reserve components of
23 the single military parent or the dual military parents. This includes deployed
24 parents in the regular military, military reserves, or National Guard.
25

26 ~~(16)(15)~~ Parent--An individual who is responsible for the care and supervision of a
27 child and is identified as the child's natural parent, adoptive parent, stepparent,
28 legal guardian, or person standing in loco parentis (as determined in
29 accordance with Commission policies and procedures). Unless otherwise
30 indicated, the term applies to a single parent or both parents.
31

32 ~~(17)(16)~~ Protective services--Services provided when:

33
34 (A) a child is at risk of abuse or neglect in the immediate or short-term future
35 and the child's family cannot or will not protect the child without DFPS
36 Child Protective Services (CPS) intervention;

37
38 (B) a child is in the managing conservatorship of DFPS and residing with a
39 relative or a foster parent; or

40
41 (C) a child has been provided with protective services by DFPS within the
42 prior six months and requires services to ensure the stability of the
43 family.
44

45 ~~(18)(17)~~ Provider--A provider is defined as:
46

1 (A) a regulated child care provider as defined in §809.2(19)~~§809.2(18)~~;

2
3 (B) a relative child care provider as defined in §809.2(20)~~§809.2(19)~~; or

4
5 (C) a listed family home as defined in §809.2(14)~~§809.2(13)~~, subject to the
6 requirements in §809.91(b).

7
8 (19)~~(18)~~ Regulated child care provider--A provider caring for an eligible child in a
9 location other than the eligible child's own residence that is:

10
11 (A) licensed by CCLDFPS;

12
13 (B) registered with CCLDFPS; or

14
15 (C) operated and monitored by the United States military services.

16
17 (20)~~(19)~~ Relative child care provider--An individual who is at least 18 years of age,
18 and is, by marriage, blood relationship, or court decree, one of the following:

19
20 (A) The child's grandparent;

21
22 (B) The child's great-grandparent;

23
24 (C) The child's aunt;

25
26 (D) The child's uncle; or

27
28 (E) The child's sibling (if the sibling does not reside in the same household as
29 the eligible child).

30
31 (21)~~(20)~~ Residing with--Unless otherwise stipulated in this chapter, a child is
32 considered to be residing with the parent when the child is living with and
33 physically present with the parent during the time period for which child care
34 services are being requested or received.

35
36 (22)~~(21)~~ Teen parent--A teen parent (teen) is an individual 18 years of age or
37 younger, or 19 years of age and attending high school or the equivalent, who
38 has a child.

39
40 (23)~~(22)~~ Texas Rising Star program--A voluntary, quality-based rating system of
41 child care providers participating in Commission-subsidized child care.

42
43 (24)~~(23)~~ Texas Rising Star Provider--A provider certified as meeting the TRS
44 program standards. TRS providers are certified as one of the following:

45
46 (A) 2-Star Program Provider;

1
2 (B) 3-Star Program Provider; or

3
4 (C) 4-Star Program Provider.

5
6 ~~(25)~~(24) Working--Working is defined as:

7
8 (A) activities for which one receives monetary compensation such as a
9 salary, wages, tips, and commissions; or

10
11 (B) participation in Choices or Supplemental Nutrition Assistance Program
12 Employment and Training (SNAP E&T) activities.

13
14 **SUBCHAPTER G. TEXAS RISING STAR PROGRAM**

15
16 **§809.131. Eligibility for the TRS Program.**

17
18 (a) A child care provider is eligible to apply for the TRS program if the provider has a
19 current agreement to serve Commission-subsidized children and:

20
21 (1) has a permanent (nonexpiring) license or registration from CCLDFPS;

22
23 (2) has at least 12 months of licensing history with CCLDFPS, and is not on:

24
25 (A) corrective action with a Board pursuant to Subchapter F of this chapter;

26
27 (B) a "Notice of Freeze" with the Commission pursuant to Chapter 213 of the
28 Texas Labor Code (Enforcement of the Texas Unemployment
29 Compensation Act) or Chapter 61 of the Texas Labor Code (Payment of
30 Wages); or

31
32 (C) corrective or adverse action with CCLDFPS; or

33
34 (3) is regulated by and in good standing with the US Military.

35
36 (b) A child care facility is not eligible to apply for the TRS program if, during the most
37 recent 12-month CCLDFPS licensing history, the provider had:

38
39 (1) any of the critical licensing deficiencies listed in the TRS guidelines;

40
41 (2) five or more of the high or medium-high licensing deficiencies listed in the
42 TRS guidelines; or

43
44 (3) 10 or more total licensing deficiencies of any type.
45
46

1 **§809.132. Impact of Certain Deficiencies on TRS Certification.**
2

- 3 (a) A TRS provider shall lose TRS certification if the provider:
4
5 (1) is placed on corrective action with a Board pursuant to Subchapter F of this
6 chapter;
7
8 (2) is under a "Notice of Freeze" with the Commission pursuant to Chapter 213 of
9 the Texas Labor Code (Enforcement of the Texas Unemployment
10 Compensation Act) or Chapter 61 of the Texas Labor Code(Payment of
11 Wages);
12
13 (3) is placed on corrective or adverse action by CCLDFPS; or
14
15 (4) had 15 or more total licensing deficiencies of any type during the most recent
16 12-month licensing history.
17
18 (b) TRS providers with any of the critical licensing deficiencies listed in the TRS
19 guidelines during the most recent 12-month CCLDFPS licensing history shall have
20 the following consequences:
21
22 (1) reduction of one- star level, so a 4-Star Program Provider is reduced to a ~~or~~ 3-
23 Star Program Provider, a 3-Star Program Provider is reduced to a 2-Star
24 Program Provider; or
25
26 (2) a 2-Star Program Provider ~~shall lose~~ certification.
27
28 (c) TRS providers with five or more of the high or medium-high deficiencies listed in
29 the TRS guidelines during the most recent 12-month CCLDFPS licensing history
30 shall lose a star level with a 2-Star Program Provider losing certification.
31
32 (d) TRS providers with 10 to 14 total licensing deficiencies of any type during the most
33 recent 12-month CCLDFPS licensing history shall be placed on a six-month TRS
34 program probationary period. Further:
35
36 (1) TRS providers on a six-month probationary period that are re-cited by
37 CCLDFPS within the probationary period for any of the same deficiencies
38 shall lose a star level with a 2-Star Program Provider losing certification;
39
40 (2) if any new deficiencies--not to exceed 14 total deficiencies--are cited by
41 CCLDFPS during the first probationary period, a second six-month
42 probationary period shall be established effective upon the date of final DFPS
43 determination of the deficiencies; and
44

1 (3) if any new deficiencies--not to exceed 14 total deficiencies--are cited by CCL
2 DFPS during the second six-month probationary period, a provider shall lose
3 TRS certification.

4
5 (e) Providers losing a star level due to licensing deficiencies shall be reinstated at the
6 former star level if no citations described in §809.132(b) - (d) occur within the six-
7 month reduction time frame.~~the deficiency is not re-cited by DFPS within the next~~
8 ~~six months.~~

9
10 (f) Providers losing TRS certification shall ~~not~~ be eligible to reapply for
11 certification after six ~~sooner than 12~~ months following the loss of the
12 certification, as long as no current deficiencies are re-cited and no additional
13 licensing deficiencies are cited during the disqualification period.

14
15 **§809.134. Minimum Qualifications for TRS Assessors and Mentors.**

16
17 (a) Boards shall ensure that TRS assessors and mentors meet the minimum education
18 requirements as follows:

19
20 (1) Bachelor's degree from an accredited four-year college or university in early
21 childhood education, child development, special education, child psychology,
22 educational psychology, elementary education, or family consumer science;

23
24 (2) Bachelor's degree from an accredited four-year college or university with at
25 least 18 credit hours in early childhood education, child development, special
26 education, child psychology, educational psychology, elementary education, or
27 family consumer science with at least 12 credit hours in child development; or

28
29 (3) Associate's degree in early childhood education, child development, special
30 education, child psychology, educational psychology, elementary education, or
31 family consumer science with two years of experience as a director in an early
32 childhood program, with preference given to experience with a provider that is
33 accredited or TRS certified.

34
35 (b) The Commission may grant a waiver of no more than two years of the minimum
36 education requirements in subsection (a) of this section if a Board can demonstrate
37 that no applicants in its local workforce development area meet the minimum
38 education requirements.

39
40 (c) Boards shall ensure that TRS assessors and mentors meet the minimum work
41 experience requirements of one year of full-time early childhood classroom
42 experience in a child care, Early Head Start, Head Start, or prekindergarten through
43 third-grade school program.

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- (d) Boards shall ensure that if an individual performs the duties of both an assessor and a mentor, the individual providing TRS mentoring services to a provider does not act as the assessor of that same provider when determining TRS certification.
- (e) Boards shall ensure that TRS assessors and mentors are required to complete annual professional development and continuing education consistent with [the TRS annual ~~child care licensing~~ minimum training hours requirement](#)~~requirements~~ for a [TRS-certified child care](#) center director.
- (f) Boards shall ensure that TRS assessors and mentors meet the background check requirement consistent with ~~40 TAC~~, Chapter 745 [of this title](#).
- (g) Boards shall ensure that TRS assessors and mentors demonstrate:
 - (1) knowledge of best practices in early childhood education; and
 - (2) understanding of early childhood evaluations, observations, and assessment tools for both teachers and children.