

TEXAS WORKFORCE COMMISSION
Workforce Development Letter

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To: Local Workforce Development Board Executive Directors
Commission Executive Offices
Integrated Service Area Managers

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From: Courtney Arbour, Director, Workforce Development Division

Subject: **Requirements for Reporting and Fact-Finding for Suspected Fraud, Waste, Theft, Program Abuse Cases, and Recovery of Improper Payments—Update**

PURPOSE:

The purpose of this updated Workforce Development (WD) Letter is to address changes resulting from the Child Care and Development Block Grant Act (CCDBG Act) of 2014 and the Texas Workforce Commission (TWC) Child Care Services Rules Chapter 809. Major changes in law and rules require Local Workforce Development Boards (Boards) to conduct fact-finding before child care services are terminated or improper payments are recouped.

This WD Letter provides Boards with the following:

- Definitions
- Overview of suspected fraud
- Requirements for reporting and conducting fact-finding for suspected fraud, waste, theft, program abuse, or violation of state or federal law or TWC policy, including the following:
 - Reporting
 - Fact-Finding
 - Determination
 - Determination letter
 - Requirements for collecting improper payments

RESCISSION:

WD Letter 21-16, Change 1

BACKGROUND:

The CCDBG Act authorizes TWC as the lead agency of the federal Child Care and Development Fund program (CCDF) for Texas. Boards administer the CCDF program.

In accordance with the Agency-Board Agreement (ABA), Boards are required to establish and implement procedures for preventing, reporting, investigating, and taking administrative action concerning any fraud, program abuse, possible illegal expenditures, unlawful activity, and violations of law or TWC rules, policies, and procedures occurring under grants awarded by TWC to the Board.

TWC-contracted funds for services can be spent only for individuals who meet eligibility requirements. Boards have a legal and contractual duty to ensure that funds are spent in this manner. TWC rules dictate that funds not spent in accordance with this requirement create improper payments, and a Board shall attempt recovery of all improper payments, as applicable. TWC, through its monitoring authority in rule, ensures that resources are efficiently and effectively used for authorized purposes and are protected from fraud, waste, and abuse.

In executing its authority, TWC assesses such things as compliance with applicable laws, regulations, contract provisions, and official directives, including such documents as WD Letters.

This WD Letter details the requirements necessary to allow TWC and Boards to work in partnership in reporting and conducting fact-finding for fraud, waste, and abuse.

PROCEDURES:

No Local Flexibility (NLF): This rating indicates that Boards must comply with the federal and state laws, rules, policies, and required procedures set forth in this WD Letter and have no local flexibility in determining whether and/or how to comply. All information with an NLF rating is indicated by “must” or “shall.”

Local Flexibility (LF): This rating indicates that Boards have local flexibility in determining whether and/or how to implement guidance or recommended practices set forth in this WD Letter. All information with an LF rating is indicated by “may” or “recommend.”

Definitions

NLF: Boards must be aware of the following definitions:

Abuse—The intentional, wrongful, or improper use or destruction of state resources, or a seriously improper practice that does not involve prosecutable fraud. Abuse may include misapplication or misuse of public resources.

Beyond a reasonable doubt evidence standard—The highest standard used for the burden of proof in American jurisprudence and typically one that only applies in criminal proceedings. In negative terms, the standard is met if there is no plausible reason to believe otherwise. If there is a real doubt, based upon reason and common sense after careful and impartial consideration of all the evidence, or lack of evidence, in a case, then this standard has not been met.

Clear and convincing evidence standard—A higher standard carrying a greater burden of persuasion than the preponderance of the evidence standard. Clear and convincing proof means that the evidence presented by a party must be highly and substantially more probable to be true than not and the fact-finder must have a firm conviction of its factuality.

Fraud—An individual commits fraud if, to obtain or increase a benefit or other payment, either for the individual or another individual, the individual:

- makes a false statement or representation, knowing it to be false; or
- knowingly fails to disclose a material fact.

Predication—The justification for opening a case.

Preponderance of the evidence standard—A standard that is met if the proposition is more likely to be true than not true; that is, an allegation is found to be “more probable than not.”

Program Integrity Reporting Tracking System (PIRTS)—A tool for Board use in reporting and tracking child care fact-finding, fraud determinations, and recoupments.

Theft—The unlawful appropriation of property with the intent to deprive the owner of that property.

Waste—Any practice that a reasonably prudent individual would deem careless or that allows for inefficient use of resources, items, or services. Waste includes incurring unnecessary costs because of inefficient or ineffective practices, systems, or controls.

Suspected Fraud

NLF: Predication for Suspected Fraud Reporting and Fact-Finding in TWC Programs
Boards must ensure that suspected fraud in all programs other than child care—regardless of the dollar amount involved—is reported to TWC and that fact-finding is conducted in accordance with this WD Letter.

NLF: Predication for Suspected Fraud Reporting and Fact-Finding in Child Care Services
Boards must use the fraud detection reports described in [Technical Assistance Bulletin 276](#), issued December 22, 2016, and entitled “Child Care Fraud Detection Report Tools—*Update*,” to detect potential fraud.

Regardless of the dollar amount involved, the guidance on when to report and conduct fact-finding in this WD Letter applies.

NLF: Boards must be aware of the following:
Pursuant to TWC rule §809.112(a), a parent, provider, or any other individual in a position to commit fraud may be suspected of fraud if the individual presents or causes to be presented to the Board or its child care contractor one or more of the following items:

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

Pursuant to §809.112(b), the following parental actions may be grounds for suspected fraud and cause for Boards to conduct fraud fact-finding or TWC to initiate a fraud investigation:

- Not reporting or falsely reporting at initial eligibility or at eligibility redetermination:
 - household composition, or income sources or amounts that would have resulted in ineligibility or a higher parent share of cost; or
 - work, training, or education hours that would have resulted in ineligibility;
- Not reporting during the 12-month eligibility period:
 - changes in income or household composition that would cause the family income to exceed 85 percent of state median income (SMI) (taking into consideration fluctuations of income);
 - a permanent loss of job or cessation of training or education that exceeds three months; or
 - improper or inaccurate reporting of attendance.

Requirements When Fraud Is Suspected

NLF: Boards must be aware of the following:

I. Reporting

Emergency Reporting

Anyone who discovers or suspects what in his or her assessment is a high-profile incident related to TWC operations or the programs it administers must immediately contact the TWC Office of Investigations (OI) at (512) 463-2393.

Nonemergency Reporting

NLF: Boards must require any member of the Board, Board staff, or contractor staff having knowledge of suspected fraud, waste, abuse, possible illegal expenditures, unlawful activity, or violations of law or TWC rules, policies, and procedures occurring under any grant awarded by TWC to the Board, to report such information to OI no later than five business days from the date of discovery of such an act.

NLF: Boards must not conduct fact-finding on fraud, waste, or abuse involving TWC, Board, or contractor employees, unless specifically directed to do so by OI. TWC maintains full jurisdiction over TWC, Board, or contractor employee investigations.

Employee-related incidents: “Employee” includes TWC staff, Board members, Board staff, and Board subcontractor staff. If the incident involves an employee, report the incident to OI on [Incident Report Form RID-32](#).

Boards must submit RID-32 and any associated documentation relating to the incident by one of the following methods:

- US mail:
TWC Office of Investigations
101 East 15th Street, Room 508
Austin, Texas 78778
- Email: RID.OfficeofInvestigations@twc.state.tx.us
To maintain confidentiality of any sensitive information contained in RID-32, Boards must ensure that all e-mails are encrypted.
- Fax: (512) 936-3280

Reporting **nonemployee** incidents of suspected program fraud: Boards must report suspected nonemployee program fraud in PIRTS before fact-finding. PIRTS will produce a case number for the incident.

To gain access to PIRTS, Boards must complete [PIRTS User Agreement \(RID-67\)](#).

II. Fraud Fact-Finding

NLF: Boards must ensure that fact-finding is concluded within 90 days of case entry into PIRTS. For child care cases involving parents, Boards must ensure that customers receive timely notice of the determination and notification of their appeal rights. The fact-finding completion requirement may be waived due to extenuating circumstances such as awaiting subpoena responses and case complexity. Boards must ensure that all case activity that supports waiving the requirement is documented in journal notes.

NLF: Boards must ensure that administrative fact-finding determines the facts, including the following:

- Ineligibility periods
- Costs of services provided during the period(s) of ineligibility
- Improper payments
- Whether services will be terminated for the parent or provider

The [Fact-Finder’s Desk Aid \(RID-55\)](#) contains useful information for the fact-finding process, forms, and sample letters, including question sets to assist in determining the facts of the situation.

OI staff is available to consult with Boards. Fact-finding training is available on request by calling OI at (512) 463-2393.

III. Fraud Determination

NLF: Boards must be aware of the following:

Fraud Elements

Material—A material fact, one important to the outcome of an eligibility decision, was misrepresented or not disclosed. The result includes the possibility of an individual receiving something to which that individual would not otherwise be entitled. Responsibility for making the misrepresentation or nondisclosure was by the individual, or for another by the individual.

Willful—It is clear and convincing that there was an intentional misrepresentation. The individual would reasonably have known that the information submitted was incorrect, or it is clear that the individual intentionally failed to provide required information.

Fraud Components

Using the fact-finding results, determine if fraud was committed by answering the following questions:

- (1) Is there a misrepresentation or omission of information?
 - Does the misrepresented information impact materiality?
- (2) Is it material?
 - Is there a possibility of, or was there actual receipt of, services when not eligible?
 - Was the parent share of cost increased?
- (3) Is it willful?
 - Did the individual have knowledge of the misrepresentation?
 - Was there an admission?
 - Did the individual know or reasonably be expected to have known?

Consider the following:

 - First-time customer?
 - Level of education
 - Previous issue/fraud
 - Information provided during eligibility determination or redetermination
 - Was Child Care parent responsibilities and reporting information provided?
 - Were efforts made to seek clarification?
 - Reasonableness

NLF: Once the Board is clearly convinced either that fraud has been committed or that there was no fraud, the Board must ensure that the fact-finding results, fraud determination results, and any resulting improper payment amount, as applicable, are reported to TWC through PIRTS.

IV. Determination Letter

NLF: Boards must ensure that for fact-finding resulting in an adverse action—any recoupment or denial or reduction in benefits or services to a party, including denying, delaying, reducing, suspending, or terminating a parent’s eligibility or child’s enrollment—against a customer, parent, or provider, a Determination Letter is sent.

An individual has the right to appeal a determination affecting the type and level of services provided. A determination is defined as a written statement issued to a TWC customer by a Board, its designee, or TWC relating to an adverse action, or to a provider or contractor relating to denial or termination of eligibility under programs administered by TWC or the Board.

A determination must include the following:

- A brief statement of the adverse action
- The mailing date of the determination
- An explanation of the individual’s right to an appeal
- The procedures for filing an appeal to the Board, including applicable time frames as required in §823.3
- Notification of the individual’s right to have a hearing representative, including legal counsel
- The address or fax number to which the appeal must be sent

An adverse action is any denial or reduction in benefits or services to a party, including displacement from current employment by a TWC customer. Adverse actions must be documented in TWIST Counselor Notes.

V. Recovery of Improper Payments

NLF: Boards must attempt recovery of the following improper payments:

- To an ineligible recipient
- For an ineligible service
- For any duplicate payment
- For services not received

NLF: After a debt is final (no appeal/appeals exhausted), the Board must take the following actions:

- Send Collection Letter.
- If full repayment is not made or if a repayment schedule is not in place, wait 30 days and send a Demand Letter.
- If a repayment plan is in place, and a payment is missed with a current amount due of \$100 or more, wait 30 days and send the final debt to TWC Collections.

NLF: Boards must notify TWC Collections of child care debt and provide the following so staff can place a Warrant Hold on the debtor’s account with the State of Texas Comptroller:

- Name of debtor

- Social Security number (SSN) of debtor
- Amount of debt
- Date debt was incurred/determined

NLF: Once a debt is paid in full, the Board must notify TWC Collections and provide the following to remove the Warrant Hold:

- Name of debtor
- SSN of debtor
- Date debt was paid in full

Bankruptcy

NLF: When a Board learns that an individual from whom it is seeking collection of an improper payment has filed for bankruptcy, the Board must cease all collection activities immediately to avoid violation of the federal bankruptcy court’s automatic stay against collection activities against the debtor. Penalties for violation of this automatic stay are severe. If the Board wishes to safeguard its claim to payment in the bankruptcy proceeding, the Board must first determine if the bankruptcy was filed under the Federal Bankruptcy Code as a:

- Chapter 7 bankruptcy (“liquidation”); or
- Chapter 13 bankruptcy (“wage earner”—an employed individual pays back pre-petition debts with post-petition earnings pursuant to a plan).

Training for the collections process is available by request from RID’s Collections and Civil Actions department at (512) 463-1893.

VI. Future Eligibility for Child Care

NLF: Pursuant to §809.117(d)–(e), Boards must ensure that parents with any of the following will be prohibited from future child care eligibility until improper payment is paid in full (provided this does not result in a Choices or Supplemental Nutrition Assistance Program Employment and Training participant becoming ineligible for child care):

- Improper payment as a result of fraud
- Child care services provided while awaiting appeal
- Failure to pay the parent share of cost when the Board’s policy is to pay the provider for the parent’s failure to pay the parent share of cost

VII. Records Retention

NLF: Boards must retain all associated documentation to support the administrative determination resulting from fact-finding of the incident reported to TWC in PIRTS. Do not purge associated records until the debt is final and paid in full.

RID forms and letters referenced in this WD Letter are available at http://intra.twc.state.tx.us/intranet/pi/html/oi_letters_forms.html and https://intra.twc.texas.gov/intranet/pi/html/oi_more_resources.html.¹

¹ The intranet is not available to the public.

INQUIRIES:

Send inquiries regarding investigation to RID.OfficeofInvestigations@twc.state.tx.us.

Send inquiries regarding collection to ProgramCollections@twc.state.tx.us.

Send inquiries regarding this WD Letter to wfpolicy.clarifications@twc.state.tx.us.

ATTACHMENTS:

Attachment 1: Child Care Fact-Finder's Desk Aid (RID-55)

Attachment 2: Revisions to WD Letter 21-16, Change 1, Shown in Track Changes

Attachment 3: Revisions to WD Letter 21-16, Change 1, Attachment 1, Shown in Track Changes

REFERENCES:

Office of the Governor, Executive Order RP36, issued July 12, 2004, and titled "Relating to Preventing, Detecting, and Eliminating Fraud, Waste, and Abuse"

Texas Workforce Commission Child Care Services Rules: 40 TAC, Chapter 809

Texas Workforce Commission Integrated Complaints, Hearings, and Appeals Rules: 40 TAC, Chapter 823

Texas Workforce Commission Integrity of the Texas Workforce System Rules: 40 TAC, Chapter 802

Title 4, Employment Services and Unemployment, Subtitle B, Texas Workforce Commission; Workforce Development; Employment Services, Chapter 301, Subchapter K, Detection and Prevention of Child-Care Fraud, Waste, and Abuse

Texas Workforce Commission Agency-Board Agreement

WD Letter 05-04, Change 1, issued May 26, 2004, and titled "Change and Clarification on Overpayment Recovery of Child Care Related Funds"

TA Bulletin 276, issued December 22, 2016, and titled "Child Care Fraud Detection Report Tools—*Update*"