

CHAPTER 809. CHILD CARE SERVICES

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

ON DECEMBER 18, 2012, THE TEXAS WORKFORCE COMMISSION ADOPTED THE BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated date of publication in the *Texas Register*: **January 4, 2013**

The rules will take effect: **January 8, 2013**

The Texas Workforce Commission (Commission) adopts the following new sections to Chapter 809, relating to Child Care Services, *with* changes, as published in the September 7, 2012, issue of the *Texas Register* (37 TexReg 7059):

- Subchapter C. Eligibility for Child Care Services, §809.55
- Subchapter D. Parent Rights and Responsibilities, §809.78
- Subchapter E. Requirements to Provide Child Care, §809.95

The Commission adopts amendments to the following sections of Chapter 809, relating to Child Care Services, *without* changes, as published in the September 7, 2012, issue of the *Texas Register* (37 TexReg 7059):

- Subchapter A. General Provisions, §809.2
- Subchapter B. General Management, §§809.13, 809.15, 809.16, 809.19, and 809.21
- Subchapter C. Eligibility for Child Care Services, §§809.43, 809.46, 809.47, 809.50, and 809.54
- Subchapter D. Parent Rights and Responsibilities, §§809.74 - 809.77
- Subchapter E. Requirements to Provide Child Care, §809.92 and §809.93
- Subchapter F. Fraud Fact-Finding and Improper Payments, §809.113 and §809.115

The Commission adopts amendments to the following sections of Chapter 809, relating to Child Care Services, *with* changes, as published in the September 7, 2012, issue of the *Texas Register* (37 TexReg 7059):

- Subchapter B. General Management, §809.20
- Subchapter C. Eligibility for Child Care Services, §§809.41, 809.44, and 809.48
- Subchapter D. Parent Rights and Responsibilities, §809.71
- Subchapter E. Requirements to Provide Child Care, §809.91

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of this Chapter 809 amendment is to:

- (1) provide Local Workforce Development Boards (Boards) greater flexibility in funding child care quality improvement activities;
- (2) ensure that the Board's child care contractor:
 - conducts an assessment for any eligible child care provider requesting Texas Rising Star (TRS) Provider certification; and
 - grants TRS Provider certification for providers that meet the certification criteria;
- (3) incorporate the requirements of Senate Bill 264 (SB 264), 82nd Texas Legislature, Regular Session (2011), which added §2308.3171 to the Texas Government Code, requiring Boards to provide information to parents and the public on quality child care indicators for each licensed or registered child care provider in a local workforce development area (workforce area);
- (4) enhance access to Commission-funded child care services for parents in military deployment;
- (5) promote greater accountability in reimbursements for direct child care services by ensuring that:
 - relatives are not reimbursed for days on which a child is absent; and
 - enhanced reimbursement rates for programs preparing preschool-age children for school are applied only to preschool-age children;
- (6) expand the list of income sources used to determine eligibility to ensure that child care services are limited to low-income families;
- (7) clarify eligibility for Transitional child care;
- (8) strengthen efforts to prevent fraud, waste, and abuse of public child care funds by:
 - ensuring that providers and caregivers are not reimbursed for caring for their own children;
 - ensuring greater parent and provider compliance with attendance and reporting requirements; and
 - requiring Boards to take corrective action against parents and providers that violate attendance reporting requirements;
- (9) reinforce parent choice by:
 - prohibiting child care providers from refusing to enroll children based on the family's income status or receipt of public benefits;
 - including the parent's travel time to and from the child care facility when authorizing child care services; and
 - allowing Boards the option to authorize care at a licensed child care provider of the parent's choice in a neighboring state;
- (10) strengthen efforts to ensure parent compliance with the child support provisions of the parent responsibility agreement (PRA);

(11) align this chapter with previously released Commission guidance (i.e., Workforce Development (WD) Letters, Technical Assistance Bulletins, policy clarifications); and

(12) incorporate technical changes for clarification and consistency throughout the chapter.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

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

SUBCHAPTER A. GENERAL PROVISIONS

The Commission adopts the following amendments to Subchapter A:

§809.2. Definitions

Section 809.2(13) amends the definition of "military deployment" to remove references to the parents "of a child enrolled in child care services." This change allows parents on military deployment whose children are not currently enrolled in child care services to meet the definition of a parent on military deployment.

Section 809.2(19) amends the definition of "residing with" by:

--adding that the child must be living with and be physically present with the parent during the time for which child care services are requested or being received. To meet the definition of residing with for eligibility purposes, this language applies to a child who is temporarily living with a parent on court-ordered visitation;

--removing language requiring that the child's primary place of residence be the same as the parent's primary place of residence. As a legal matter, the primary place of residence can be considered the individual's legal address. Because the parent's legal address may not be the address where the parent is actually living with the child, there may be instances in which a parent and child are actually living together, but have different legal addresses; and

--allowing for other provisions in this chapter to specify situations in which the parent and child may not be actually living together, but still are considered as residing with for eligibility purposes. The language allows Boards, at their option as described in §809.41, to approve child care services for a parent attending college if the child is living with a caretaker while the student is attending college, as long as the parent meets other program requirements.

Section 809.2(21)(C) removes the outdated term "Food Stamp Employment and Training" and updates it with "Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T)."

Comment: One commenter expressed support for the amended language in §809.2(13) regarding the definition of "military deployment."

Response: The Commission appreciates the comment.

Comment: Two commenters expressed support for the amended language in §809.2(19) regarding the definition of "residing with."

Response: The Commission appreciates the comments.

Comment: One commenter expressed concern that the change to the definition of "residing with" will have consequences when a client is a joint custodial parent. As it is written, since the child would not be physically present with the parent on a continuous basis, the child would not be eligible to receive care during the period of time not "physically present" with the parent. Another commenter requested clarification regarding shared custody situations where the child resides with the custodial and noncustodial parent based on court order.

Response: The Board's policies regarding child care during court-ordered custody and visitation arrangements are addressed in §809.54(e) and Board policies regarding absences due to court-ordered visitation arrangements are addressed in §809.13(d)(13). Section 809.54 requires continuity of care for children upon return from the visitation arrangements and §809.13 requires Boards to address absences due to custody arrangements. These sections of the rules are not changed and Boards can continue their current policies and practices. The Commission understands that custody and visitation arrangements vary greatly and some arrangements require the child to live with another parent for relatively short periods of time (e.g., two weeks during the summer, one week a month). Boards can continue their current policies of allowing care to continue or be suspended, depending on the particular family and child care arrangements, for these short durations.

Comment: One commenter declared it would be beneficial to also include a definition of noncustodial parent (NCP) to assist with further defining "residing with" because many Boards encounter situations in which parents were never married and courts may not designate an NCP. In these cases, it is difficult to determine where the child actually lives. As a result, the referrals and tracking become extremely difficult for child care staff and providers.

Response: The Commission believes that creating a definition of NCP in Commission rules may lead to potential contradictions with established legal definitions. As observed in the comment, NCP is a legally defined term as established by a court order. Many parents do not have such a court order and may have informal arrangements for child support and visitation. The Commission declines to create a definition of NCP that could conflict with the legal definition established by a court.

As discussed in §809.76, Parent Responsibility Agreement, the Commission has removed the term "noncustodial parent" from the rules, particularly §809.76, and replaced it with the more general term "absent parent" in order to refer to situations in which one parent may not have custody of the child, but there is not a court-ordered custodial arrangement.

Regarding the difficulty of determining where the child actually lives, Boards can continue their current documentation requirements for establishing residency. In the majority of cases,

the documentation (such as school records, doctor records, social service records, etc.) demonstrates where the child lives.

Comment: One commenter requested that the Commission reconsider the definition of teen parent to align with Texas Education Code §25.001(a), which allows individuals under the age of 21 on September 1 of each school year, or who are at least 21 years of age and under 26 years of age, to enroll in public school. Alternatively, the commenter requested that the Commission define a teen parent as a parent returning to high school up to the age of 26.

Response: This change is outside the scope of the proposed rule changes and cannot be addressed in this rule making. However, the Commission points out that its definition of a teen parent under the Commission's child care program is provided in statute at Texas Labor Code §313.001(3).

SUBCHAPTER B. GENERAL MANAGEMENT

The Commission adopts the following amendments to Subchapter B:

§809.13. Board Policies for Child Care Services

Section 809.13(a) updates the reference from Chapter 801 to Chapter 802. Information on the design and management of the delivery of child care services is now located in Chapter 802, Integrity of the Texas Workforce System.

New §809.13(d)(17) requires Boards to establish a policy for mandatory waiting periods for reapplying for child care services and for being placed on the waiting list for child care services as required by §809.55. Boards must specify the length of the mandatory waiting period, with a minimum of 30 days and a maximum of 90 days.

New §809.13(d)(18) requires Boards to establish policies and procedures to ensure that appropriate corrective actions are taken against a provider or parent for violations of the automated attendance requirements specified in §809.115(d) - (e).

Comment: Two commenters expressed support for the amendments in §809.13(d)(17).

Response: The Commission appreciates the comment.

Comment: One commenter questioned if the requirements for Board policies related to corrective actions for violations of the automated attendance requirements in §809.13(d)(18) were already addressed by current WD Letters concerning automated attendance.

Response: The WD Letters concerning automated attendance do not specifically require Boards to develop policies and procedures regarding corrective actions for violations. The new §809.13(d)(18) rule language requires Boards to establish policies, in an open meeting, for parent or provider violations of the rules regarding automated attendance.

Comment: One commenter explained that the Board currently terminates for six consecutive days of a parent's failure to report attendance. The commenter stated there are not many other "corrective actions" that do not involve terminating care.

Response: Board policies for a parent's failure to report attendance are addressed in the Board's attendance standards as currently required in §809.13(d)(13). The corrective action policies referenced in the new rule involve instances in which the provider has possession of attendance cards or records attendance using a parent's card, as well as instances in which the parent gives his or her card to the provider.

The Commission points out that the §809.115 rules do allow corrective actions that do not involve termination of care. These corrective actions for providers include, but are not limited to, closing intake and withholding provider payments, while corrective actions for parents that do not involve termination of care may include recoupment of funds.

§809.15. Promoting Consumer Education

Section 809.15(b)(4)(A) is removed to eliminate references in rule to the names of school-ready programs.

New §809.15(b)(4)(A) adds a reference to Texas Government Code §2308.315, the statutory citation for the Texas Rising Star (TRS) Provider criteria.

New §809.15(b)(4)(B) requires that Boards include a description of the school readiness certification system, pursuant to Texas Education Code §29.161, as part of the Board's consumer education information. The school readiness certification system is administered by the Texas Education Agency (TEA) under the Kindergarten Readiness System (KRS).

New §809.15(b)(4)(C) requires that Boards include a description of the integrated school readiness models, pursuant to Texas Education Code §29.160, for the integrated school readiness models currently developed by the State Center for Early Childhood Development. By including the statutory citation instead of the name of the certification system, the rule provides flexibility for future name changes as determined by TEA.

New §809.15(5) requires Boards, as part of their consumer education information, to provide a list of child care providers that meet quality indicators pursuant to Texas Government Code §2308.3171.

SB 264, enacted by the 82nd Texas Legislature, Regular Session (2011), added §2308.3171 to the Texas Government Code, requiring Boards to provide information to parents and the public on quality child care indicators for each licensed or registered child care provider in the workforce area. Section 2308.3171 defines a "quality child care indicator" as any appropriate indicator of quality services, including if the provider:

- is a TRS-certified provider;
- is accredited by a nationally recognized accrediting organization approved by the Commission;
- is certified through the school readiness certification system pursuant to Texas Education Code §29.161; or
- meets standards developed under Texas Education Code §29.155(g).

Additionally, Texas Government Code §2308.3171 provides Boards with the flexibility to identify local child care programs that have achieved any other measurable target relevant to improving the quality of child care in Texas and that are approved by the Commission.

Comment: One commenter expressed agreement with eliminating references in rule to the names of school-ready programs in §809.15(b)(4).

Response: The Commission appreciates the comment.

Comment: One commenter stated that providing information regarding school-ready certification and school readiness models as described in §809.15(b)(4) may be more information than parents want.

Response: The Commission disagrees. Parents' choice of a child care provider for their children is a very important decision for the family. It is the Commission's intent that parents receive as much information as possible regarding the availability of quality child care providers.

Comment: Two commenters requested that the changes to the consumer education information in §809.15(4) become effective the next time that the Board's consumer education information is printed to avoid incurring additional operational costs.

Response: Boards do not need to remove the names of the school readiness programs from current or future printed material. The names are replaced in Commission rule with the statutory citations to avoid requiring a rule change if the names of the programs are changed at a future date. If a program name does change, Boards should make those changes in any printed material in a cost-effective manner.

Comment: One commenter questioned the necessity of providing the list of quality providers in §809.15(5) in printed form if it is also available on the website. This could possibly change often and would require more funds for keeping the printed copy updated.

Response: There is no provision in rule that the quality provider list be in printed form. The list can be made available to the parent on a Board's website.

§809.16. Quality Improvement Activities

Section 809.16 is amended to describe allowable quality improvement activities and to specify requirements for conducting assessments for TRS Provider certification.

Section 809.16(a)(1) - (3) is removed. Funds are no longer restricted to these three quality improvement activities: collaborative reading initiatives; school readiness, early learning, and literacy; and local-level support to promote child care consumer education provided by 2-1-1 Texas.

New §809.16(a)(1) - (3) allows Boards to use child care allocated funds for any nondirect care quality improvement activities permitted by Child Care and Development Fund (CCDF) regulations at 45 CFR §98.51, which may include, but are not limited to:

- (1) activities designed to provide comprehensive consumer education to parents and the public;
- (2) activities that increase parental choice; and
- (3) activities designed to improve the quality and availability of child care.

New §809.16(b)(1)(A) - (B) sets forth provisions of 45 CFR §98.54(b) regarding construction expenditures:

- (1) State and local agencies and nonsectarian agencies or organizations.
 - (A) No funds shall be expended for the purchase or improvement of land, or for the purchase, construction, or permanent improvement of any building.
 - (B) Funds may be expended by state and local agencies and nonsectarian agencies or organizations for minor remodeling, and for upgrading child care facilities to ensure that providers meet state and local child care standards, including applicable health and safety requirements.
- (2) Sectarian agencies or organizations.
 - (A) The prohibitions in subsection (b)(1) of this section apply.
 - (B) Funds may be expended for minor remodeling only if necessary to bring the facility into compliance with the health and safety requirements established pursuant to §98.41.

Section 809.16(b) - (d) are removed as these restrictions no longer apply. As set forth in new §809.16(a), quality activities, as described under 45 CFR §98.51, have been expanded to provide greater flexibility.

Although not specifically delineated in the rule, as described in 45 CFR §98.51, activities designed to improve the quality and availability of child care include, but are not limited to:

- operating directly or providing financial assistance to organizations (including private nonprofit organizations, public organizations, and units of general purpose local government) for the development, establishment, expansion, operation, and coordination of resource and referral programs specifically related to child care;
- making grants or providing loans to child care providers to assist such providers in meeting applicable state, local, and tribal child care standards, including applicable health and safety requirements, pursuant to §98.40 and §98.41;
- improving the monitoring of compliance with, and enforcement of, applicable state, local, and tribal requirements pursuant to §98.40 and §98.41;
- providing training and technical assistance in areas appropriate to the provision of child care services, such as training in health and safety, nutrition, first aid, the recognition of communicable diseases, child abuse detection and prevention, and care of children with special needs;
- improving salaries and other compensation (such as fringe benefits) for full- and part-time staff who provide child care services for which assistance is provided under this part; and
- any other activities that are consistent with the intent of §98.51.

New §809.16(d) requires that Boards must ensure that an assessment for TRS Provider certification is conducted for any provider requesting to become a certified TRS Provider,

pursuant to Texas Government Code §2308.316. Boards must ensure that, before the assessment, the provider has a current agreement to serve Commission-funded children, and:

- (1) has the appropriate permanent license or registration from, and is not on corrective or adverse action with, the Texas Department of Family and Protective services (DFPS); or
- (2) is regulated by the military.

New §809.16(e) requires Boards to ensure that TRS Provider certification is granted for providers that have been assessed and verified as meeting the TRS Provider certification criteria.

The "Texas Rising Star Provider Certification Guidelines" (TRS Guidelines) at <http://www.twc.state.tx.us/svcs/childcare/provcert.html> set forth the Agency's TRS Provider certification criteria and assessment process. The TRS Guidelines state:

Any child care provider that has a current agreement with a Board's child care contractor to serve subsidized children and that meets either of the following criteria, may apply for TRS Provider certification:

- Has the appropriate permanent license or registration from, and is in good standing with, DFPS; or
- Is regulated by the military.

Any provider that is on Adverse Action, Corrective Action with DFPS due to noncompliance with the Minimum Child Care Licensing Standards, is not eligible to apply for TRS Provider certification.

Certain subsections and paragraphs in this section are relettered and renumbered to accommodate additions and deletions.

Comment: Seven commenters expressed appreciation for the increased flexibility for designing quality improvement activities to meet the needs of providers. The commenters specifically appreciate the additional flexibility to include activities identified by the Administration for Children and Families.

Response: The Commission appreciates the comments.

Comment: One commenter expressed agreement with the TRS Provider certification requirements in §809.16(d) - (e).

Response: The Commission appreciates the comment.

Comment: Two commenters suggested that the prohibition against a provider on adverse or corrective action with DFPS from being eligible to apply for TRS Provider certification be expanded to include a minimum amount of time to pass once a provider is removed from adverse or corrective action before the provider can reapply or be eligible for TRS provider certification.

Response: The Commission believes that the current rule language requiring the provider to have a permanent license and not be on corrective or adverse action is sufficient for minimum TRS eligibility requirements in rule. Requiring a specified time period to pass after the provider has been removed from the corrective or adverse action would be best addressed in the TRS Provider Certification Guidelines.

§809.19. Assessing the Parent Share of Cost

Section 809.19(C) replaces the language "cost of care" with "Board's maximum reimbursement rate or the provider's published rate, whichever is lower." The change clarifies the cost of care as it relates to assessing the parent share of cost. Boards have requested clarification regarding the meaning of the cost of care because they do not know the provider's actual costs.

Section 809.19(a)(2)(B) removes the former acronym "FSE&T" and replaces it with the appropriate acronym "SNAP E&T."

Comment: One commenter observed that this change provides a better clarification for the "cost of care."

Response: The Commission appreciates the comment.

Comment: Two commenters requested that modifications be made to The Workforce Information System of Texas (TWIST) to ensure that contractor staff is alerted when the parent's share of cost exceeds the lower of the Board's maximum reimbursement rate or the provider's published rate.

Response: The Commission clarifies that this rule language change does not alter how the parent share of cost is calculated in TWIST and should not result in changes at the contractor level. Therefore, an alert to contractor staff is not necessary. The current system takes these factors into consideration when calculating the parent share of cost. The Commission's intent is to describe what was previously considered the "cost of care." However, TWIST will be analyzed to ensure compliance with the rule language and the feasibility of including such an alert will be considered.

§809.20. Maximum Provider Reimbursement Rates

Section 809.20(a)(1) adds the maximum reimbursement rates that Boards must establish for full-day and part-day units of service as described in §809.93(e) for certain provider types.

New §809.20(a)(1) specifies the provider types as:

- (A) Licensed child care centers, including before- or after-school programs and school-age programs, as defined by DFPS;
- (B) Licensed child care homes as defined by DFPS;
- (C) Registered child care homes as defined by DFPS; and
- (D) Relative child care providers as defined in §809.2.

Section 809.20(a)(2) explains that Boards must also establish maximum reimbursement rates for the following age groups within each provider type:

- (A) Infants age 0 to 17 months;
- (B) Toddlers age 18 to 35 months;
- (C) Preschool-age children from 36 to 71 months; and
- (D) School-age children 72 months and over.

The amended rule language is based on the longstanding practice for establishing maximum reimbursement rates. The intent behind incorporating this practice in rule language is to ensure consistency across the state regarding the types of providers and age ranges that must be included when establishing maximum reimbursement rates.

Section 809.20(b)(1) - (3) is removed. Eliminating references in rule to the names of school-ready programs and including only the statutory citation allows flexibility for future name changes as determined by TEA.

New §809.20(b)(1) - (3) requires Boards to establish enhanced reimbursement rates:

- (1) for all age groups at child care providers that obtain TRS Provider criteria pursuant to Texas Government Code §2308.315;
- (2) only for preschool-age children at child care providers that obtain school readiness certification pursuant to Texas Education Code §29.161. Certification pursuant to §29.161 is awarded to early childhood programs across the state that demonstrate effective kindergarten preparation of their preschool students; and
- (3) only for preschool-age children at child care providers that participate in integrated school readiness models pursuant to Texas Education Code §29.160. Certification is determined through child-level data collected from the provider's preschool classroom. The integrated school readiness models under §29.160 serve preschool-age children through shared resources between public and private early childhood education programs.

Because these two programs target preschool-age children, and in order to maximize the use of child care funds, the amended §809.20(b)(2) - (3) states that the enhanced rates for these providers only apply to preschool-age children at the facility.

The changes to provider's rates under this new provision take effect upon renewal of each provider's agreement. Boards must ensure that all agreements are renewed with the new rates no later than 12 months from the effective date of this provision.

Section 809.20(d) clarifies that the inclusion rate takes into consideration the estimated cost of equipment, as well as the cost of additional staff, needed for a child with disabilities. Additionally, an incorrect reference to subsection (b) has been corrected.

Comment: One commenter agreed with the amendments to §809.20(a) describing the provider types and age groups for which Boards are required to establish maximum reimbursement rates.

Response: The Commission appreciates the comment.

Comment: One commenter noted that "before and after-school programs" and "school-age programs" are excluded in proposed §809.20(a)(1). These two types of licensed child care operations are regulated by DFPS under Chapter 42 of the Human Resources Code as required by Senate Bill (SB) 68, 82nd Texas Legislature (Regular Session). The commenter noted that prior to passage of SB 68, many before- or after-school programs and school-age programs were licensed child care centers regulated under 40 Texas Administrative Code, Chapter 746. The purpose of SB 68 was to authorize DFPS to develop a more narrowly tailored set of minimum standards for these types of operations.

Response: The Commission points out that a separate chapter regulates these programs. However, as noted in the comment, because these programs were formerly regulated as licensed child care centers and continue to follow most of the standards for licensed child care centers, the Commission does not plan to treat these programs differently than licensed child care centers in regard to subsidy system policies for providers, particularly in regard to Boards' maximum reimbursement rates.

However, to clarify this distinction among the types of licensed child care centers, the Commission modifies the language in §809.20(a)(1)(A) (as well as in §809.91(f)) to state "Licensed child care centers, including before- or after-school programs and school-age programs."

Comment: Four commenters expressed support for the change in §809.20(b)(2) - (3) to ensure enhanced reimbursement rates are only applicable to preschool children served by facilities implementing school readiness programs, thus maximizing the use of Board child care funds.

Response: The Commission appreciates the comments.

Comment: One commenter stated that providers participating in the Texas School Ready! (TSR!) Grant (integrated school readiness models pursuant to Texas Education Code §29.160) may have more than one prekindergarten (pre-k) classroom; however only one classroom is participating in the TSR! Grant. The commenter stated there is no way of knowing whether the child receiving a subsidy will be enrolled in this classroom.

Response: The Commission clarifies that the enhanced rate is for all subsidized preschool-age children at the facilities described in §809.20(b)(2) - (3), regardless of the classroom in which the child enrolled.

Comment: One commenter supported this change in §809.20(b)(2) - (3), but questioned if TWIST would allow these changes.

Response: The Commission clarifies that TWIST will be modified to comply with the rule.

Comment: Four commenters conveyed that they appreciate including the estimated cost of equipment when figuring the inclusion rate for children with disabilities as described in §809.20(d).

Response: The Commission appreciates the comments.

§809.21. Determining the Amount of the Provider Reimbursement

Section 809.21(a) adds the term "daily" to further clarify that the actual reimbursement amount paid is the Board's maximum daily rate or the provider's published daily rate.

New §809.21(b) requires a Board or its child care contractor to ensure that the provider's published daily rates are calculated according to Commission guidance and include the provider's enrollment fees, supply fees, and activity fees. The Commission's intent is to ensure that providers' published daily rates are consistently calculated across the state.

Chapter 809 requires that the provider be reimbursed the Board's maximum rate or the provider's published rate, whichever is lower. Provider tuition rates are usually expressed as weekly or monthly amounts. However, Boards have varying methods for prorating these rates into a single full-time or part-time daily rate.

Further, some providers charge other fees in addition to the weekly or monthly tuition. Currently, Board policies vary as to how these fees are used to calculate the provider's published daily rate. Some Boards include the additional fees in the provider's daily rate, while other Boards exclude the fees. Different methodologies create inconsistencies in calculating a provider's published daily rate if the provider is serving two children in two workforce areas with different methodologies. The same provider can have two calculated published rates depending on how each Board determines the daily rate.

The rule creates a consistent methodology for calculating provider's daily rates and specifically requires that the calculation must include the provider's enrollment fees, supply fees, and activity fees. Agency staff is consolidating Boards' current approaches for determining providers' published rates and developing a unified methodology to provide as much consistency as possible with current methodologies that include enrollment, activity, and supply fees. The guidance will be issued through a WD Letter.

Comment: Two commenters support this change to establish consistency in calculating a provider's published daily rate.

Response: The Commission appreciates the comments.

Comment: One commenter strongly disagreed with this requirement to include supply fees in calculating the provider's published rate. The commenter stated that providers are reimbursed under their private-pay rate and the rule change will make the disparity worse. The commenter stated that providers should be allowed to charge for items the private pay customer has to pay as well. The more costs the Board has to include in the calculated daily rate, the less the provider is being paid to care for the child as the Board's hands are tied from increasing their maximum reimbursement rates by the performance target.

Response: The Commission clarifies that this rule change will impact the providers whose published rates are below the Board's maximum rates, particularly for providers serving children whose Boards do not currently include supply fees and other fees in the calculation of the provider's published rate. This rule change will have the effect of increasing the provider's calculated published daily rate, thus bringing the provider's published rate closer to the Board's maximum reimbursement rate. This will allow providers whose published rates are below the Board's maximum rates to receive reimbursement on a higher published rate.

For providers whose calculated published rate is above the Board's maximum rate, Commission rules allow Boards to have a policy that allows these providers to charge the parents the difference between the Board's maximum rate and the provider's published rate, thus allowing the provider to charge for items for which the private-pay customer has to pay.

Comment: One commenter stated that in cases where two providers are in different areas and have established different unit rates, it would be helpful to providers to know what is allowable when determining a published rate; however, the commenter did not agree that it is appropriate for Board or contractor staff to determine a provider's published rate. Published rates should be determined by providers. The commenter's understanding is the provider's published rate is the rate that the provider charges to everyone. Since published rates may be determined by local markets, it seems acceptable that a provider with businesses in two different workforce areas may have different rates for each area. The commenter recommended providing a technical assistance guide for providers to use.

Response: The Commission clarifies that the rule does not establish the rate the provider charges the public (i.e., the provider's published rate). Rather, the rule standardizes how the provider's published rate, including supply and activity fees, is calculated into a daily rate because the Board pays on a daily rate basis.

Further, the rule does not apply to providers with separate facilities in multiple workforce areas. The rule applies to the published rates of a single facility that may serve children in multiple workforce areas and, therefore, is being reimbursed at multiple Board rates.

The Commission will provide guidance on the standard elements and calculation to be included in the provider's published rate calculation.

Comment: Two commenters requested clarification regarding the reference to activity fees. The commenters asked for the definition of an activity fee. The commenters stated that activity fees should include education/curriculum fees that everyone in a specific class would be required to purchase; however, the definition should not include field trips or physical activities such as karate or swimming, which could substantially increase a Board's average unit rate and ability to meet performance.

Response: The Commission agrees that activity fees should include fees that all parents are required to pay and should not include fees for optional activities such as field trips or other optional physical activities or classes. Following the adoption of these rules, this issue will be clarified in a WD Letter.

Comment: Two commenters suggested that the Commission allow registration, enrollment, and supply fees to be reimbursed separately and not prorated as part of the daily rate. The commenters cited that providers have expressed their displeasure with prorating these fees. Providers complained that they lose money by prorating the fees because so many subsidized families do not stay in care for an entire year (the period of time the fees are prorated). Providers stated that their private-pay parents must pay these required fees at enrollment and this practice should be replicated by the subsidy system.

One of the commenters stated that some providers have chosen to charge subsidized parents these fees at enrollment without including them in their daily prorated amount. The new rule would prohibit this practice, which would place an additional financial burden on the providers. The commenter acknowledged that charging the fees at enrollment can be difficult for parents, but a parent can choose to use a provider that prorates fees. The commenter recommended allowing Boards the option of either prorating fees into the daily rate or charging them separately and not including them in the daily rate.

One of the commenters suggested having a field in TWIST that would accommodate the entire amount of mandatory enrollment, supply, and activity fees and would automatically reimburse this full amount when the provider receives its first reimbursement for those children.

Response: The Commission understands that the standard practice for private-pay parents is to pay the fees at enrollment. By requiring Boards to include standard fees in the published rate calculation, the Commission is attempting to further align the published rates with the subsidy system. However, as the commenters imply, there is much less turnover with private-pay parents than there is with subsidized care. Paying the provider for the enrollment fees up front each and every time a new subsidized child enrolls is not a cost-effective practice for public funds. In fact, precisely because so many of the subsidized parents do not stay in care for an entire year, if the fees are paid at each new enrollment, providers could actually be overpaid during the course of a year--particularly if an exiting child is immediately replaced by a new enrollment, which happens frequently.

A review of the proration practices of the Boards has found that there are discrepancies with the proration and the length of the program, resulting in a lower calculated published rate for some providers. For example, some Boards prorate supply fees over a 12-month period for all providers, including providers that are only open during the school year. The Commission believes that the enrollment/supply/activities fees must be prorated over the actual length of the particular program. For school-year-only facilities, the enrollment fees would be prorated over nine months, thus increasing the daily published rate calculation for those facilities.

Finally, as stated previously, Commission rules allow Boards to have a policy that allows providers to charge the parents the difference between the Board's maximum rate and the provider's published rate, thus allowing providers to charge for items for which the private-pay customer must pay.

SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES

The Commission adopts the following amendments to Subchapter C:

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

Section 809.41 is amended to clarify a child's residency standards for child care services and to set forth new provisions regarding eligibility for children of deployed military parents.

Section 809.41(a)(3)(A) clarifies that the child must reside with a family within the Board's workforce area. This provision aligns with practice regarding the general eligibility for child care. Because Boards have the flexibility to develop local policies that affect child care services provided for a family--including family income and minimum work, education, and job training activity requirements, as well as the amount of the assessed parent share of cost--it is important that these local policies only affect families residing within the Board's workforce area. This section also reinstates the "and" between §809.41(a)(3)(A) and §809.41(a)(3)(B) to state that both the family income and parent activity requirements must be met in order for the child to be eligible for child care services. The "and" was inadvertently removed in the proposed rules.

New §809.41(a)(3)(C) allows children of deployed military parents who are not currently enrolled in subsidized child care services to be eligible for subsidized care. The child meets the eligibility requirement if the child resides with a person standing in loco parentis for the child while the child's parent or parents are on military deployment and if the deployed military parent's income does not exceed the Board's income limits.

Currently under §809.41(a)(3), for a child with a parent or parents on military deployment, child care eligibility is determined based on the income and work, education, and job training activities of the person standing in loco parentis for the child. With the addition of new subparagraph (C), eligibility for a child residing with a person standing in loco parentis for the child while the parent is on military deployment also can be based on the income of the parent on military deployment. Additionally, it is assumed that military deployment automatically allows the parent to meet the minimum work requirements; however, child care eligibility can be based on either the deployed military parent's income or the income and work activities of the person standing in loco parentis for the child.

The deployed military parent or parents must ensure that the information necessary to determine eligibility is made available to the Board's child care contractor. However, the Board also must work with deployed military parents in situations in which their deployment does not allow the parent to provide information in the required time frames.

New §809.41(e) gives Boards the option to establish a policy that allows parents attending a program that leads to a postsecondary degree from an institution of higher education to be exempt from residing with the child. The Commission's intent is to allow Boards the flexibility to approve child care services for a parent attending college if the child is living with a caretaker while the parent attends college.

Comment: Two commenters agreed with the amended language in §809.41(a)(3)(C) regarding eligibility for children of deployed military parents.

Response: The Commission appreciates the comments.

Comment: One commenter supported this amended language in §809.41(a)(3)(C). However, the commenter requested that the Commission allow Boards to use a generic military pay scale to accommodate ease of getting income information. Alternatively, the commenter suggested that the Commission direct Boards to where standard military pay could be found. Another commenter stated the language in §809.41(a)(3)(C) is too vague and it would be difficult to document.

Response: The Commission does not believe a generic pay scale should be used to determine income eligibility. The Board must work with the deployed military parent or the person standing in loco parentis to document the military income.

Comment: One commenter asked if Boards would be required to pursue paternity and child support on a deployed military parent if the income and work, job training, or education information for a person standing in loco parentis is used to determine eligibility.

Response: The Commission points out that new §809.77(8) clarifies that the person standing in loco parentis for a deployed military parent is not required to pursue child support.

Comment: Two commenters agreed with the new language in §809.41(e) allowing Boards to establish a policy to allow parents attending an educational program to be exempt from the requirements to reside with the child as defined in §809.2(19).

Response: The Commission appreciates the comments.

Comment: Two commenters requested clarification on how care should be authorized in situations in which the student does not reside with the child. One commenter asked if care would be necessary if the grandparents do not work. The other commenter asked if this provision would apply to parents attending college in the same city in which the child resides. The commenter expressed concern regarding the potential for fraud in these cases.

Response: The Commission clarifies that this provision is at Board option and subject to Board policies. The need for care and level of the care authorized should be addressed in the Board policy.

§809.43. Priority for Child Care Services

Section 809.43(a)(1)(C) removes the outdated acronym "FSE&T" and replaces it with the appropriate acronym "SNAP E&T."

Section 809.43(a)(2)(D) adds children of deployed military parents who are not eligible for other child care assistance through the military to the second priority group. Because veterans and

children of foster youth are entitled under statute to receive priority, children of deployed military parents will be served after these mandatory groups.

Families and legal guardians of children of deployed active duty military, who are unable to access child care on military installations, are eligible to receive reduced child care fees through the U.S. Department of Defense's Operation Military Child Care (OMCC) program. They are eligible to participate during the service member's deployment and for 60 days after the service member's return. OMCC also provides a subsidy for 60 days while a nonmilitary spouse looks for work. Only military-certified child care providers--those that meet quality standards established by the military--are eligible to care for children through OMCC. Not all eligible deployed military parents, particularly National Guard and Reserve, live in an area with a military-certified child care provider.

Establishing a Commission priority group in this chapter for children of deployed military parents with no access to the OMCC program, or any other military-funded child care assistance program, due to the unavailability of military-certified providers, helps ensure that eligible children of deployed military parents receive child care during the parent's deployment. Boards must develop documentation requirements for the parent to demonstrate that other military child care resources are either not available or have been denied.

Certain subparagraphs in this section have been relettered to accommodate additions.

Comment: Two commenters agreed with amended §809.43(a)(2) to add deployed military parents as a priority group subject to the availability of funds.

Response: The Commission appreciates the comments.

Comment: Three commenters requested guidance for documenting that the parent is unable to enroll their child(ren) in military-funded child care assistance programs as a condition of receiving priority placement. One commenter asked if self-attestation can be used. One commenter stated that in areas in which there are no OMCC programs available for military families, it seems to be an unnecessary burden to put the responsibility on the parent for documentation that states there are no such programs available.

Response: It is the Commission's intent that Boards work within the local community to determine the availability of other military-funded programs. If the Board verifies that no programs exist in the workforce area, then the Board does not need to require parents to document that no programs are available. However, if such programs exist in the community or workforce area, the Board must require parents to demonstrate that there is no space available to them in the program or they were denied such care. Such documentation may include a statement from the military program, but self-attestation must not be used unless no other options are available to the parent.

Comment: One commenter pointed out that the discussion regarding eligibility for deployed military parents in §809.41 stated that Boards must work with the deployed military parents in situations in which their deployment does not allow the parent to provide information in

the required time frames. The commenter asked if the same requirement needed to be added to the discussion regarding priority for deployed military parents.

Response: The Commission agrees, as stated in the preamble discussion of §809.41, that the Board should work closely with the deployed military parent and make reasonable accommodations regarding time frames for eligibility documentation that take into consideration the special nature of military deployment.

Comment: One commenter asked if TWIST will allow the establishment of Board priority groups.

Response: TWIST will be modified to allow for the management of priority groups described in §809.43(a)(2). The possibility of modifying TWIST to allow for other Board-established priorities as described in §809.43(a)(3) is being explored.

§809.44. Calculating Family Income

Section 809.44(a)(3) adds "early withdrawals from a 401(k) plan not rolled over within 60 days of withdrawal" to the calculation of family income for determining eligibility. If the withdrawal is not rolled over into an eligible account within 60 days of leaving a job, Boards must count the amount toward determining family eligibility and assessing the parent share of cost.

New §809.44(a)(13) adds individual lottery payments greater than \$600 as income to be counted for eligibility determinations. The \$600 minimum threshold was selected as a standard amount that must be reported to the Internal Revenue Service (IRS) as income. According to the Texas Lottery Commission, all retailers are authorized to pay cash payouts for prizes of \$599 or less. Because these cash winnings are not required to be reported as income and may be paid in cash by the retailer, verifying these winnings would create a burden for the child care contractor. Aligning the income threshold of lottery winnings with existing IRS requirements minimizes the potential burden upon Boards and contractors of including and documenting smaller cash payouts.

The term "lottery payment" does not include other forms of gambling, such as poker, slot machines, horse races, or bingo as these winnings are difficult to document and verify. The Commission will provide additional guidance in a WD Letter regarding what types of lottery payments Boards must include.

Including 401(k) income and lottery winnings above a certain threshold in the calculation of family income is not intended to require the Board's child care contractor to conduct additional initial verification of income. Parents are responsible for reporting income and Boards must rely on parents' self-report of income with these added income sources, just as with similar sources. However, Boards must ensure that child care contractors have a process to inform the parent of all income sources that the parent is required to report and the consequences for not reporting income that a Board's contractor could discover at a later date.

For example, a contractor could require parents to sign the eligibility application indicating that they understand all the income sources used to determine eligibility (including early withdrawals

not rolled over within 60 days and lottery payments of \$600 or greater) and that they are responsible for reporting the income to the Board. Contractors also could establish a procedure that requires parents to submit the most recent year's tax return to check income sources reported to the (IRS) that should have been included in the determination of eligibility.

Boards have the authority to treat early withdrawals and lottery payments as lump sum payments to be prorated over multiple months as determined by Board-established procedure.

Section 809.44(b)(1) removes the term "food stamps" and replaces it with the current term "SNAP benefits."

New §809.44(b)(11) expands the list of items excluded from the calculation of family income for purposes of eligibility and assessing a parent share of cost to include income from children in the household between the ages of 14 and 19 who are attending school.

New §809.44(b)(12) excludes early 401(k) hardship withdrawals as a category of income to be exempted from the calculation of family income for purposes of eligibility and assessing a parent share of cost.

Certain paragraphs in this section have been renumbered to accommodate additions.

Comment: One commenter expressed concern that §809.44(a) allows for the inclusion of income earned by a minor. The commenter stated other agencies do not consider a minor's income toward determining a family's eligibility.

Response: The Commission points out that the new §809.44(b)(11) specifically excludes income earned by a child between the ages of 14 and 19 who is in school.

Comment: One commenter stated that the inclusion in §809.44(a) of 401(k) withdrawals and lottery winnings will be difficult to document and calculate into income.

Response: The Commission recognizes that many of the income sources, particularly lottery and 401(k) income, are not easily verifiable and the contractors rely on self-reporting by the parents. For that reason, all income sources used to determine eligibility must be listed on Form 2050 or any Board-developed application or verification form that is signed by the parent. This is important in order to notify the parent and to obtain the parent's written acknowledgment that the income reported is correct and includes all required income sources. Boards must ensure that child care contractors have a process to inform the parent of all income sources that the parent is required to report and the consequences for not reporting income that is discovered later.

Comment: Two commenters expressed concern with the suggestion in the preamble that contractors establish a procedure that requires parents to submit the most recent year's tax return to check income sources that should have been included in the determination of eligibility. The commenters were concerned that this would add an additional burden on the

contractor and will increase eligibility costs. These sources of income will most likely go unreported unless it becomes a requirement to do so.

Response: The Commission points out that the suggestion in the preamble regarding requesting the most recent tax return is not a requirement. It was suggested in order to assist in the documentation of income sources. Some Boards may want to consider it as an option to facilitate the detection of unreported income.

Comment: One commenter inquired if these additional sources of income in §809.44(a) would be added to Form 2050 within the TWIST database.

Response: The Commission agrees and withdrawals from 401(k) plans will be included in the "Retirement" income source in TWIST. Also, TWIST will be modified to include lottery winnings as a source of income and TWIST will be modified to include lottery income in the TWIST-generated Form 2050.

Comment: Four commenters expressed support for the amended language in §809.44(b)(11) excluding income from teens attending school.

Response: The Commission appreciates the comments.

Comment: Four commenters supported excluding income from a child in the household, who is between the ages of 14 and 18 and attending school, for purposes of calculating family income to determine eligibility and assessing parent share of cost, and also recommended this age range be expanded to age 19 to be consistent with the definition of a teen parent as described in §809.2(20). One of the commenters requested that the age of children living in the household for exclusion be increased to 21 years of age to align with Texas Education Code §25.001(a).

Response: The Commission agrees with extending the exception to age 19 and has modified the rule language in §809.44(b)(11) to include children between 14 and 19. However, the Commission clarifies that this exemption is only for a child in the household as defined in §809.2(9). The income exemption does not apply to teen parents. The income of a teen parent applying for subsidized child care must be included when determining eligibility.

The Commission does not agree that the income exemption for a household member should be extended to the age of 21.

Comment: One commenter supported the amended language in §809.44(b)(12) excluding 401(k) hardship withdrawals from the income calculation.

Response: The Commission appreciates the comment.

§809.46. Temporary Assistance for Needy Families Applicant Child Care

Section 809.46(c) removes the statement that TANF Applicant child care is based on "the availability of funds."

Section 809.46(e) removes the statement that TANF Applicant child care is "subject to the availability of funds."

TANF Applicant child care is under the first priority group in §809.43 and child care is assured for parents who are eligible for TANF Applicant child care.

Comment: One commenter agreed with the changes in §809.46.

Response: The Commission appreciates the comment.

§809.47. Supplemental Nutrition Assistance Program Employment and Training Child Care

Section 809.47 removes:

--the title "Food Stamp Employment and Training Child Care" and replaces it with "Supplemental Nutrition Assistance Program Employment and Training Child Care" to reflect current terminology; and

--the outdated acronym "FSE&T" and replaces it with the correct acronym "SNAP E&T."

Comment: One commenter agreed with the changes in §809.47.

Response: The Commission appreciates the comment.

§809.48. Transitional Child Care

Section 809.48 is amended to clarify the eligibility requirements for Transitional child care.

Section 809.48(a)(1) removes the language stating that Transitional child care is available to a parent who has been denied TANF "because of increased earnings" and replaces it with "within 30 days and was employed at the time of TANF denial."

The amendment also clarifies that the parent must have been employed when TANF benefits were denied. The Commission makes this change to clarify that eligibility for Transitional child care is related to the parent's employment status rather than the specific reason for TANF denial. It is the Commission's expectation that Boards ensure that their designated contractors are responsible for eligibility determination for Transitional child care. Once the Texas Health and Human Services Commission denies TANF, the Board must ensure that its contractor determines eligibility for Transitional child care based on the parent's work status and income.

Section 809.48(a)(2) removes the term "temporary cash assistance" and replaces it with the more precise term "TANF."

Section 809.48(a)(3) clarifies that the minimum activity hours for Transitional child care may be a combination of work, education, and job training hours per week; therefore, the weekly hours can be calculated by "an average of" weekly hours over an amount of time as determined under Board procedures.

Section 809.48(c) specifies that Transitional child care must be available "for former TANF recipients who are employed when TANF is denied." The time limits set forth in §809.48(c) apply only to former TANF recipients who were employed at the time of TANF denial.

Section 809.48(e) adds that for former TANF recipients who are "not employed when TANF is denied," Transitional child care must be available for up to four weeks in order to allow the parents to search for work. Further, if a parent is participating in Choices and TANF is denied due to the receipt of child support, Texas Human Resources Code §31.012(e) requires Transitional child care until the parent completes the Choices activity.

Comment: One commenter agreed with the changes in §809.48.

Response: The Commission appreciates the comment.

Comment: One commenter asked if these wording changes indicated that a parent is eligible for Transitional child care if the parent has been denied TANF within 30 days of application for child care services.

Response: The Commission reviewed the rule language and has removed the requirement that former TANF recipients who were employed at the time of TANF denial must apply for Transitional child care within 30 days of the TANF denial. The Commission recognizes that there are instances in which a former TANF recipient who was employed at the time of denial may have chosen an unsubsidized child care arrangement following the TANF denial and does not require care within 30 days of the denial. However, the former TANF recipient may require subsidized care to maintain employment at any time within the 12 months of the Transitional child care eligibility period (or 18 months for individuals who voluntarily participated in Choices). Transitional child care must be available to these individuals on a priority basis described in §809.43(a)(1)(D) as long as they meet the income and activity requirements in §809.48.

§809.50. At-Risk Child Care

Section 809.50(a)(2) specifies that the minimum activity hours for At-Risk child care may be "a combination of at least an average of" the work, education, and job training hours per week.

Comment: Two commenters supported the change in §809.50.

Response: The Commission appreciates the comments.

§809.54. Continuity of Care

Section 809.54 corrects the reference to §809.76(b) with §809.75(b) relating to child care during appeal.

New §809.55. Mandatory Waiting Period for Reapplication

New §809.55(a)(1) - (5) stipulates that a parent is ineligible to reapply for child care services or to be placed on the waiting list for services for at least 30 days, but no more than 90 days, as

determined by Board policy, if the parent's eligibility or child's enrollment is denied, delayed, reduced, suspended, or terminated for any of the following reasons:

- (1) Excessive absences;
- (2) Nonpayment of parent share of cost;
- (3) Five consecutive absences on authorized days of care with no parent contact with the child care provider or child care contractor; or
- (4) A parent's failure to report, within 10 days of occurrence, any change in the family's circumstances that would have rendered the family ineligible for subsidized care.

New §809.55(b) allows Boards to extend the waiting period beyond the maximum 90 days if the parent is on a repayment schedule and the Board has a policy that requires parents to fully repay the obligation prior to reapplying for child care services.

The Commission's intent is to enable Boards to more effectively enforce program requirements--specifically, parent compliance with child care reporting and parent share of cost requirements. Boards with open enrollment and no waiting list have reported that parents whose services are denied for the reasons set forth in this section often reapply for services the next day. Without a clear prohibition against a noncompliant parent's immediate reapplying for subsidized child care services, enforcement efforts and financial accountability may be compromised. Therefore, to reinforce Boards' efforts to enforce their policies for parent share of cost, excessive and consecutive absences, or their policies for reporting changes, the Commission is instituting a mandatory waiting period for reapplication if care is terminated pursuant to Board policies and procedures for those reasons.

Comment: Three commenters agreed with establishing a mandatory waiting period for parents who do not comply with rules of the program. The commenters requested a statement be provided in rule that those customers who are in a recoupment status and are no longer receiving care must pay their debt in full before being placed on the waiting list.

Response: The Commission agrees with the comments and has added new §809.55(b) allowing Boards to exceed the 90-day waiting period if the Board has a policy that requires parents on a recoupment plan to repay the obligation in full prior to being placed on the waiting list or being enrolled in care.

Comment: One commenter supported the new mandatory waiting period for reapplication. However, the commenter requested clarification if it is the Commission's intent that child care should be terminated for a past period of noncompliance when the parent is currently eligible. The commenter provided a scenario of a parent deemed eligible for assistance, but the parent stops working soon afterward, and does not work again for a month or more, which makes the family ineligible for care. This is not usually reported until the recertification period, when the parent has to show proof of the last day of employment at the former job along with the start date of the current job. When there is a gap, the Board recoups the cost of care during the period the parent was not eligible. However, child care is allowed to continue as long as the parent is eligible at the recertification period.

Response: The Commission is not requiring Boards to create new policies related to terminating care due to one of the reasons listed in §809.55(a). Boards must follow their existing policies and procedures for determining termination of care. If a Board's policies and procedures do not require termination of care for a parent's past failure to report a change that would have rendered the parent ineligible for services, then the Board would continue that practice. In order to clarify this point, rule language has been modified to state that if care is terminated pursuant to Board policy and procedures for the reasons listed in §809.55(a), then the parent must wait at least 30 days to reapply or be placed on the waiting list for services.

Comment: Two commenters expressed concern that it may be difficult to track the reasons for the terminations and the time periods involved. Two commenters asked if TWIST will be modified to assist Boards in tracking the waiting periods.

Response: The Commission will analyze the feasibility of providing tools to assist Boards in tracking the waiting periods based on their particular Board policies.

Comment: One commenter disagreed that the waiting period should be mandatory for all Boards. The commenter suggested that Boards have the local flexibility to determine if a mandatory waiting period for reapplication is necessary. The commenter stated that the mandatory waiting period may limit a Board's ability to meet performance.

Response: The Commission's intent in establishing a mandatory waiting period for all Boards is to increase compliance with program rules and requirements; thus, the Commission believes the requirement must apply to all workforce areas.

Comment: Four commenters recommended that voluntary withdrawals be removed from the list of reasons that require a mandatory waiting period prior to reenrollment. Parents frequently have a valid reason for withdrawing for a period of time when they do not need child care, then reenrolling when they do. Stipulating a mandatory waiting time detrimentally affects the parent, the provider, and the program's ability to service eligible parents. A mandatory waiting period for reapplication for voluntary withdrawals also inhibits parental choice.

Response: The Commission agrees with the comments and has removed voluntary withdrawals from the list of reasons requiring a mandatory waiting period for reapplication.

Comment: One commenter disagreed that terminations for nonpayment of parent share of cost should be included as a reason for the mandatory waiting period. The commenter stated the parent typically rectifies parent fee nonpayments with a payment plan over a short period of time. If the family has trouble paying the parent fee for a week and then is placed on a mandatory waiting period for 30 days, they are going to be in a worse financial situation and most likely unable to stay employed.

Response: The Commission clarifies that the rule is not requiring termination of care due to nonpayment of parent fees. The rule requires that if care is terminated pursuant to Board

policies and procedures for nonpayment of parent fees, then the parent must wait at least 30 days before reapplying.

Comment: One commenter disagreed that a parent's failure to report a change within 10 days of the occurrence should be included as a reason for the mandatory waiting period. The commenter expressed concern that this would cause the Board to lose approximately half of their children in care because more than 50 percent of families fail to report a change. The commenter stated the Board would more than likely fail to make performance.

Response: The Commission clarifies that the termination provided in the rule language is only for failure to report a change that would have rendered the parent ineligible for care. Commission rules do not require Boards to terminate care for any unreported change within the 10-day period. Boards may choose to have a policy to terminate care for any unreported change, but it is at the Board's option. It is not a Commission requirement. If the unreported change would not have resulted in the parent's ineligibility, then care does not need to be terminated.

Comment: One commenter noted changes not reported within 10 days of occurrence which render the family ineligible could be considered fraud. The commenter recommended that Boards be allowed to deem a family not eligible for the waiting list if they are terminated due to fraud.

Response: The Commission agrees and points out that currently §809.113 allows the Board to prohibit future child care enrollment if the Commission determines that the parent has committed fraud.

SUBCHAPTER D. PARENT RIGHTS AND RESPONSIBILITIES

The Commission adopts the following amendments to Subchapter D:

§809.71. Parent Rights

Section 809.71(6) clarifies that parents must be notified of eligibility within 20 calendar days of the Board's child care contractor receiving all required documentation necessary to determine eligibility. Previous rule language did not specify that these are "calendar days." The Commission also emphasizes that the 20-day requirement does not start from the date the parent initially submits the Board's application; rather, this notification deadline begins on the date the parent submits all required documentation used to determine eligibility.

Section 809.71(9)(A) adds that the 15-day notification of termination is not required if the services are authorized to cease immediately because either the parent is no longer participating in the Choices or the "SNAP E&T" program.

Section 809.71(9)(B) is removed because the notification process for terminating Choices and protective services child care services programs is determined by the specific program requirements.

New §809.71(9)(B) stipulates that the 15-day notification of termination is not required if child care services are terminated because the child has been absent for five consecutive authorized days and the parent has not contacted the child care provider or the child care contractor by the end of the fifth authorized day if required by Board policy.

Under the Agency's child care automated attendance system, parents are in control of reporting attendance and absences. If a child cannot attend for any particular day, the parent is able to report the absence through the Interactive Voice Response (IVR) system. If a parent does not report absences through the IVR system or does not contact the provider or the child care contractor, many Board policies terminate subsidized child care services. Under current rule, a 15-day termination notice must be provided to the parent pursuant to §809.71(9). Many Boards report that the 15-day termination often leads to 15 days of paid care in which the child continues to be absent with no contact from the parent. Boards have requested that if a child is absent for five consecutive days and the parent has not contacted the child care provider or the child care contractor and has not recorded the absences through IVR, the child care be terminated immediately without the 15-day termination notice.

The Commission developed new §809.71(9)(B) in Response to Boards' concerns, and to enhance accountability. The Commission clarifies, however, that this new subparagraph applies only to situations in which the child was actually absent and the parent failed to contact the provider or the child care contractor. Boards had the five-day, no-contact policy in place prior to the child care automated attendance system and Boards must continue their long-standing procedures for providers reporting absences by the end of the fifth day of no contact, including procedures for children in protective services.

New §809.71(9)(B) does not apply to cases in which the child was present, but the parent was unable to record attendance in the child care automated attendance system. Technical problems, as detailed in WD Letter 37-11, issued September 26, 2011, and entitled "Including Nonreported Attendance in Local Workforce Development Board Attendance Policies--*Update*," are addressed in required Board policies for consideration of Point of Service (POS) failures, cards not delivered, and other circumstances that are beyond the parent's control when counting absences. This is not a new requirement and Boards must already have a process for taking these circumstances into consideration.

Section 809.71(15) adds the requirement that parents be made aware of the five-day, no-contact policies in new §809.71(9)(B).

Comment: One commenter agreed with proposed §809.71(6) that parents receive notification of their eligibility within 10 days of receipt of all eligibility documentation.

Response: The Commission appreciates the comment.

Comment: Four commenters oppose reducing the 20-day notification to the proposed 10 days in §809.71(6). The commenters indicated reducing the turnaround time would cause hardship and the potential for noncompliance during mass placement efforts, such as peak

service times and during open enrollment. One commenter stated it is rare that it would take the contractor more than 10 days to make notification, but mandating that it be done would ensure rethinking any staffing cuts currently being considered in an effort to trim operations costs.

Response: The Commission has removed the proposed requirement and reinstated the requirement that the parent be notified within 20 days of receiving all the required eligibility documentation. The Commission also clarifies that the requirement is 20 "calendar" days, not 20 business days.

Comment: Two commenters agreed with amended §809.71(9)(A) clarifying that the 15-day notification is not required if services are authorized to terminate immediately because the parent is not participating in SNAP E&T services.

Response: The Commission appreciates the comments.

Comment: Two commenters agreed with amended §809.71(9)(B) stating that the 15-day notification is not required if services are authorized to terminate immediately as required by Board policy because the child has been absent for five consecutive authorized days and the parent has failed to contact the child care provider or the child care contractor.

Response: The Commission appreciates the comments.

Comment: One commenter requested clarification for situations in which the child is present, the parent has an attendance card, and there is not a technical problem with recording attendance. The commenter stated that the Board currently considers this as no contact and would terminate care after five consecutive days. The current Board policy states no contact or nonreported attendance.

Response: The Commission clarifies that the Board may continue the current policy of terminating care for five consecutive days of failure to record attendance. However, this is not a termination that is exempt from the 15-day termination notification described in §809.71(9)(B). The exemption from the 15-day notification of termination is only in instances in which the child was actually absent and the parent did not contact the contractor or the child care provider.

Comment: One commenter agreed with amended §809.71(15) requiring Boards to inform parents of the consequences for five consecutive absences without contact.

Response: The Commission appreciates the comment.

§809.74. Parent Appeal Rights

Section 809.74(a) removes the acronym "FSE&T" and replaces it with the correct acronym "SNAP E&T."

§809.75. Child Care during Appeal

New §809.75(b)(10) adds that an absence of five authorized consecutive days without contacting the child care provider or the child care contractor is just cause for child care to be discontinued during any appeal.

Comment: Two commenters expressed agreement with the §809.75 change.

Response: The Commission appreciates the comments.

Comment: One of the commenters stated the Board should be allowed to recover the cost of the hearing as well as the cost of child care if the appeal decision is rendered against the parent.

Response: Section 809.75(c) makes the cost of providing child care services during the appeal subject to recovery from the parent if the decision is rendered against the parent. The Commission believes that this provision is sufficient for the recovery of costs by the parent and does not believe that additional costs or fees should be charged to parents if the appeal is denied.

§809.76. Parent Responsibility Agreement

Section 809.76(b)(1) clarifies that the requirements of the parent responsibility agreement (PRA) are for all parents by removing the reference to "noncustodial parent."

New §809.76(b)(1)(B)(i) - (ii) allows Boards the option of requiring the following as evidence of child support history when determining compliance with the PRA:

- (i) Board-established minimum child support amounts to comply with the PRA's informal child care arrangements; and
- (ii) in-kind child support.

Establishing a minimum amount for informal child support is the Board's option. Boards that decide to implement this option have the flexibility to set the amount locally. Other Boards may choose to set no minimum and continue their current policy, unchanged. Similarly, accepting in-kind child support is also at Board option.

Section 809.76(c) requires that Boards ensure parents demonstrate compliance with the PRA within three months of initial eligibility or child care must be terminated. Boards may accept parent self-declaration of school attendance and the provision regarding drug abuse. However, if a child care contractor discovers that a parent is not in compliance with these provisions, the Board must enforce the requirements for noncompliance consistent with this subsection.

Boards have the option to mandate compliance with the child support requirements of the PRA at initial eligibility. However, under this rule, Boards may allow up to three months of initial eligibility to demonstrate compliance. During this time, the Board's child care contractor can work with the parent to determine if the parent's noncompliance is due to an allowable exemption under current Commission rules.

New §809.76(d) states that if a parent's child care services are terminated due to noncompliance with the requirements of the PRA, as set forth in this section, the parent is not eligible for child care services until the parent demonstrates compliance.

Comment: Three commenters supported the amendments to §809.76(b)(1)(B) allowing Boards the option to establish a minimum amount of child support and the option to include in-kind child support as part of an informal child support arrangement. One of the commenters stated that even though the Board requires signed statements or receipts--all of which can be falsified--by establishing a minimum amount of child support parents will take more of the responsibility for getting adequate child support for their children. If a parent refuses to pay the required minimum amount, the parent receiving child care assistance will need to file with the Office of the Attorney General (OAG).

Response: The Commission appreciates the comments.

Comment: Four commenters disagreed that the Board should set minimum amounts of support. One commenter stated that it would be difficult to establish a minimum amount without knowing the financial situation of the absent parent. The commenters viewed the establishment of a minimum amount for child support as the responsibility of the court or OAG.

Response: The Commission clarifies that §809.76(b)(1)(B) is strictly at the option of the Board and only for informal (non-OAG or non-court-ordered) child support arrangements. The Commission emphasizes that Boards must not establish a minimum amount for any OAG or court-ordered child support arrangement.

Comment: One commenter requested that the Commission allow Boards the option not to accept informal child support arrangements. Another commenter thanked the Commission for giving the Boards this option.

Response: The Commission clarifies that the rules do not give Boards the flexibility to reject informal child support arrangements. The Commission believes the provision of child support is vital to the stability of children and families. However, the Commission also acknowledges that many parents have established non-court-ordered child support arrangements that are working for the family and benefiting the child. Thus, the Commission believes it is necessary for these arrangements to remain intact.

Comment: One commenter requested that the Commission establish minimum child support amounts for parents who have an arrangement with a noncustodial parent for consistency across the state. Some parents may move to a neighboring workforce area if this policy is more favorable to them.

Response: The Commission emphasizes that establishing a minimum amount for informal child care arrangements is at Boards' option and Boards are not required to establish a minimum amount. If a Board decides to require a minimum amount, that amount must be determined by the Board.

Comment: One commenter stated that documenting a "history" of child support is difficult to obtain.

Response: The Commission notes that Agency staff is available to provide technical assistance on best practices for documenting a history of child support.

Comment: One commenter expressed support for the amendments in §809.76(c) clarifying the parents must comply with the provision of the Parent Responsibility Agreement (PRA) within three months of initial eligibility as well as the new §809.76(d) stating that a parent whose care was terminated due to noncompliance with the PRA shall not be eligible for services until the parent demonstrates compliance.

Response: The Commission appreciates the comment.

Comment: One commenter requested local flexibility to determine whether or not the Board can require parents to comply with the PRA at initial eligibility.

Response: The Commission clarifies that the rules require compliance within three months of initial eligibility. Board policy may require compliance with the PRA on a shorter time frame.

Comment: In response to the preamble language relating to self-declaration of school attendance, eleven commenters agreed that Boards should be allowed to accept parent self-declaration of school attendance, in keeping with the acceptance of self-declaration regarding drug abuse currently accepted to demonstrate compliance with the PRA.

Response: The Commission agrees that accepting self-attestation of these two requirements of the PRA reduces the administrative burden upon Boards and their contractors by streamlining contractor verification responsibilities.

§809.77. Exemptions from the Parent Responsibility Agreement

New §809.77(8) adds an exemption from compliance with the PRA provisions for persons standing in loco parentis for deployed military parents. Providing child care during the absence of deployed military parents allows the parents to successfully complete service to the country by ensuring the care of their children. Therefore, actions of the individual standing in loco parentis for their children should not affect the deployed military parent's ability to perform his or her duty.

Comment: One commenter expressed agreement that persons standing in loco parentis for deployed military parents should be exempt from the child support requirements of the PRA.

Response: The Commission appreciates the comment.

New §809.78. Parent Attendance Reporting Requirements

New §809.78 sets forth the requirements for parents regarding reporting attendance for the parent's child.

New §809.78(a)(1) - (8) requires that Boards inform parents of the following:

- (1) The requirement to use the attendance card to report daily attendance and absences.
- (2) Child care services may be terminated and parents may be held responsible for paying the provider for attendance and absences that are not reimbursed by the Board.
- (3) Parents shall not designate anyone under age 16 as a secondary cardholder, unless the individual is a child's parent.
- (4) Parents shall not designate the owner, assistant director, or director of the child care facility as a secondary cardholder.
- (5) Parents must:
 - (A) ensure the attendance card is not misused by secondary cardholders;
 - (B) inform secondary cardholders of the responsibilities for using the attendance card;
 - (C) ensure that secondary cardholders comply with these responsibilities; and
 - (D) ensure the protection of attendance cards issued to them or secondary cardholders.
- (6) Child care services may be terminated if the parent or secondary cardholders give the attendance card or the personal identification number (PIN) to another person, including the child care provider.
- (7) Parents must report to the child care contractor instances in which a parent's attempt to record attendance in the child care automated attendance system is denied or rejected and cannot be corrected at the provider site. Failure to report such instances may result in an absence counted toward the Board's maximum number of allowable absences or the parent being liable for the reimbursement to the provider.
- (8) Five consecutive absences on authorized days of care, with no contact from the parent with the child care provider or child care contractor, may result in termination of child care services. Additionally, the 15-day notice of termination is not required in this circumstance, and child care must not continue during any appeal.

New §809.78(b)(1) - (2) requires Boards to ensure that parents sign a written acknowledgment indicating their understanding of parent attendance card responsibilities at the following stages:

- (1) initial eligibility determination; and
- (2) each eligibility redetermination, which is held at frequencies determined by the Board.

This new section reflects current practices parents are required to follow regarding attendance reporting rules and procedures. The language adds the requirement that parents must inform the contractor within three days of a parent's attempt to record attendance that was denied or rejected. This provision is necessary to ensure attendance is recorded accurately and efficiently in order to correct authorization and attendance issues and reimburse providers on a timely basis.

Even though these provisions are currently in place by Commission policy, because the child care automated attendance system requirements--particularly the security requirements surrounding the use of attendance cards and proper attendance reporting--have significant implications on imposing penalties for misuse, the Commission believes it is important to delineate in rule the parent responsibilities for the child care automated attendance system.

Comment: One commenter expressed support for the provisions in the new §809.78.

Response: The Commission appreciates the comment.

Comment: One commenter requested confirmation that §809.78(a)(3) allows a secondary cardholder to be at least 16 years. The prior policy issued by the Commission required the secondary cardholder to be at least 18 years of age.

Response: The Commission clarifies that this is a change to the previous policy. The Commission recognizes that there are many instances in which 16- and 17-year-olds regularly pick up their younger siblings from day care. Further, DFPS allows parent-authorized 16-year-old siblings to drop off and pick up their younger siblings from child care.

Comment: One commenter sought clarification regarding a scenario with a 16-year-old mother. The commenter stated that the mother would benefit from having her own swipe card to swipe her daughter in and out of day care. This mom lives with her grandmother (great grandmother to the child) who is the only person over 18 in the home.

Response: The Commission clarifies that the age limit in §809.78(a)(3) is only for secondary cardholders. All parents of children receiving child care services are issued attendance cards regardless of a parent's age.

Comment: Four commenters disagreed with the provision in §809.78(a)(7) requiring parents to report to the child care contractor within three days any instances in which the parent's attempt to record attendance was denied or rejected. One of the commenters was unsure of the intent of this requirement and requested that it be removed. Another of the commenters pointed out that this time frame conflicted with the six-day time period that is allowed for parents to record or correct attendance.

Two of the commenters recommended the provision be changed to six calendar days, the number of days the system will allow the previous days' attendance to be recorded, instead of the proposed three days.

One commenter recommended that the Commission review policies related to automated attendance and align these policies to be consistent and easier for both clients and contractor staff to remember and enforce.

One commenter is concerned that some requirements for automated attendance are becoming increasingly punitive. This is an added responsibility for parents who have many other reporting requirements. In addition, the commenter stated that the Board has informed parents that any attempt at recording attendance that does not show as accepted will become an absence. Therefore, the need for parents to call the child care contractor for a denial or rejected code is unnecessary. Finally, the two commenters stated that this will add to the child care contractor's workload as the contractor has to attend to an increased number of phone calls from parents.

Response: The Commission appreciates the comments and has modified the language in §809.78(a)(7). The new language removes the requirement that the parent report any instances of denied attendance within three days. The modified rule language also clarifies that the incidents that must be reported are denials or rejections that cannot be corrected at the provider site.

The intent of the requirement is to notify the parents that part of their responsibility in reporting attendance is to review each attempt to record attendance to ensure that the attendance was approved. If the attempted recording of attendance is not approved for any reason, the parent has the opportunity at the provider site to correct the record. The parent should work with the provider to correct any attendance recording issues. However, if the attendance cannot be corrected at the provider site, the rule requires that the parents be notified that they must contact the contractor. The purpose of this requirement is to ensure that the parent and contractor resolve any attendance reporting issues, with the ultimate goal of ensuring continued child care services for the parent and reimbursements to the provider.

Comment: One commenter requested clarification if parents should report to the provider first rather than the child care contractor.

Response: The parent must report the failed attempt to the provider in order to determine what may have caused the failed attempt and to correct it at the provider site. However, if the attendance cannot be corrected, it must be the parent's required responsibility to report it to the contractor to ensure that appropriate actions are taken at the contractor level to correct any referral issues that may be the cause of the denial.

Comment: One commenter stated that the provisions of §809.78(a)(8)--notifying parents that five consecutive absences without the parent contacting the provider or contractor may result in termination of care without the 15-day notice and that care will not continue during appeal--should also apply to days in which the child was in attendance, but the parent failed to report.

Response: The Commission reiterates the response in §809.71(9) that the Board can continue the current policy of terminating care for five consecutive days of failure to record attendance. However, this is not a termination that is exempt from the 15-day termination notification described in §809.71(9)(B). The exemption from the 15-day notification of termination is only in instances in which the child was actually absent and the parent did not contact the contractor or the child care provider. Additionally, this also is not a termination that is exempt from the requirement that child care continues during any appeal.

Comment: One commenter requested clarification that the rule in §809.78(a)(8) will allow Board flexibility in identifying and terminating child care services as it relates to five days of consecutive absences with no parent contact. The commenter also noted additional reporting tools from TWIST may be necessary.

Response: The Commission notes that the rule states that parents must be notified that care may be terminated. The rule does not require termination for five days of no contact. Boards have the flexibility in their policies to determine appropriate actions for the five-day no contact. Further, the Agency will work with Boards to provide reporting tools for tracking the five days of no contact.

Comment: One commenter agreed with the new §809.78(b) requiring parental written acknowledgement of attendance reporting requirements.

Response: The Commission appreciates the comment.

SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE

The Commission adopts the following amendments to Subchapter E:

§809.91. Minimum Requirements for Providers

New §809.91(a)(4)(A) - (C) provides Boards the option of allowing child care providers licensed in another state to be eligible providers of subsidized child care. When an out-of-state provider is selected, Boards are required to ensure that an out-of-state provider's licensing status is reviewed at least every month. Boards must ensure that:

- (A) the Board's child care contractor reviews the licensing status of the out-of-state provider every month, at a minimum, to confirm the provider is meeting the minimum licensing standards of the state;
- (B) the out-of-state provider meets the requirements of the neighboring state to serve CCDF-subsidized children; and
- (C) the provider agrees to comply with the requirements of this chapter as well as all Board policies and Board child care contractor procedures.

In meeting these requirements, Boards must ensure that the provider:

- meets its state's licensing standards and accepts CCDF-funded children;
- accepts the Board's reimbursement rate schedule; and
- uses the Agency's child care automated attendance system.

The Commission's intent in implementing these requirements is to meet the child care needs of Texans who may be working in or close to a neighboring state.

New §809.91(f)(1) - (2) specifies that Boards must ensure that subsidies are not reimbursed for a child at the following facilities:

- (1) Licensed child care centers in which the parent or his or her spouse, including the child's parent or stepparent, is the director or assistant director, or has an ownership interest; or
- (2) Licensed, registered, or listed homes where the parent also works during the hours his or her child is in care.

This rule affecting parents who work at child care facilities only applies to home-based care situations; it does not apply to center-based care. The new rule aims to minimize the potential for fraud, waste, and abuse. Home-based care is provided to 12 children, at most, and typically

provided by the owner/operator and no more than one or two additional caregivers. If these additional caregivers are also the parents of children at the home, this situation would inevitably lead to parents caring for their own children. As a policy principle, subsidies must not be used for parents to care for their own children.

Guidance will be issued to the Boards through a WD Letter on verifying ownership interests in a child care facility.

Comment: One commenter expressed appreciation that §809.91(a)(4) gives the Boards the option of using an out-of-state child care provider for subsidized child care rather than requiring the Board to do so.

Response: The Commission appreciates the comment.

Comment: Four commenters agreed with the provisions of §809.91(f) that parents should not be in situations where child care subsidies are paid when parents are caring for their own children.

Response: The Commission appreciates the comments.

Comment: One commenter noted that "before and after-school programs" and "school-age programs" are excluded in §809.91(f)(1).

Response: The Commission has modified §809.91(f)(1) to include these operations.

§809.92. Provider Responsibilities and Reporting Requirements

New §809.92(e) prohibits providers from denying a child care referral based on the parent's income status, receipt of public assistance, or the child's DFPS Child Protective Services (CPS) status.

Providers may choose to limit the number of subsidized children they are willing to accept. However, this limitation must not be based on the parent's income status, receipt of public assistance, or the child's CPS status. For example, providers may choose to only accept up to 10 subsidized children, but providers cannot choose to only accept children of at-risk parents. Preventing the denial of care for children in these groups also helps to preserve parental choice.

New §809.92(f) prohibits providers from charging fees to a parent receiving child care subsidies that are not charged to parents who are not receiving subsidies.

Comment: One commenter disagreed with the new §809.92(e) prohibiting providers from denying a child care referral based on the parent's income status, receipt of public assistance, or the child's protective service status. One of the commenters stated that while this section may preserve parental choice, it also removes provider choice. This would be a forced rule on a private business. The commenter cited an example of a provider that informs the Board that it will only accept parents with a six-month referral because shorter referrals are a

disruption to the provider's business and do not allow the provider to adequately plan class sizes and staffing levels.

Response: The Commission clarifies that the rules do not require providers to accept referrals that interrupt their business practices that are applied to the general public. For example, if a provider has a policy that it does not accept part-week or part-time enrollments and this policy is applied to the general public, then the rule will not require that provider to accept part-week or part-time subsidized enrollments. However, providers cannot have enrollment policies that are applied only to subsidized children that are based on the parent's income status, receipt of public assistance, or the child's protective service status.

Comment: One commenter was concerned that new §809.92(e) will cause the Board to lose quality providers. The commenter stated that the Board is causing the providers' business economic harm when they tell them they must accept a child at a much lower rate than the other parents pay. The inequity in payment reimbursement between At-Risk and Choices and protective services children is significant when they are receiving the same care. The commenter stated if they were paying the provider's rate this would not be an issue.

Response: The Commission is concerned with the statement that there are inequities in reimbursement rates between At-Risk and Choices and protective services children. The Board's reimbursement rates to the providers should be the same for At-Risk, Choices, and children receiving protective services. At-risk parents pay the provider a parent share of the reimbursement rate, but the total amount paid to the provider is the same as At-Risk, Choices, and children in protective services.

Comment: One commenter agreed with the new §809.78(f) prohibiting providers from charging fees to parents receiving subsidized care that are not charged to parents who are not receiving subsidies.

Response: The Commission appreciates the comment.

§809.93. Provider Reimbursement

Section 809.93(a), the requirement for providers to submit a Declaration of Services Statement, is removed. The Commission waived the provider Declaration of Services Statement reporting requirement in January 2010 because providers no longer report attendance manually. With the implementation of the Agency's automated attendance system, parents are now responsible for reporting attendance through a POS device or through an IVR system.

Section 809.93(b), setting forth the required contents of the Declaration of Services Statement, is likewise removed.

New §809.93(b) requires a Board to ensure that relative child care providers are not reimbursed for days when the child is absent.

Boards are required to set attendance standards under §809.13(d)(13) of this chapter. A Board may establish a policy to pay for a certain number of absences. Some Boards pay for absences

for a child in relative care, while other Boards do not. Paying for absences follows the general practice of child care facilities charging parents for enrollment, rather than charging for daily attendance. This allows the provider to have a predictable level of income to pay for the required staffing level, even if a child does not attend for a particular day.

However, relative child care providers are not bound by this staffing requirement or the requirement to pay staff. In many instances, a child is absent from a regulated child care provider and cannot attend regulated care for that day because of the child's illness. In relative care, the ill child typically stays with the relative. Therefore, the Commission contends that paying for absences for children in relative care is not an efficient use of public child care funds.

Under new §809.93(b), the Board or its child care contractor must no longer count absences for children in relative care as part of the child's maximum allowed number of absences. However, to minimize the risk of a relative failing to report absences, Boards must continue to conduct random site visits to ensure proper attendance reporting for relative providers. The Commission also reminds Boards that all providers, including relative providers, must be reimbursed for attendance on any day on which the actual attendance cannot be reported using the child care automated attendance system due to circumstances beyond the parent or provider's control.

New §809.93(i) requires a Board or its child care contractor to ensure that the parent's travel time to and from the child care facility and the work, school, or job training site is included in determining whether to authorize full-day or part-day care.

This chapter does not specify when to authorize a full-day unit or part-day unit. Some Boards allow the parent's travel time to and from the child care facility and the work, school, or job training site to be included in the authorized days; other Boards do not include travel time. The Commission believes that allowing for travel time when authorizing care ensures parents the choice of providers that best meets their needs.

Comment: Five commenters agree with new §809.93(b) prohibiting Boards from reimbursing relative providers for days on which the child is absent. Two of the commenters suggested that the rule should apply to holidays as well. One of the commenters inquired if a Board's absence policy will still be applied to those customers who attend relative providers. Additionally, the commenter asked how TWIST will handle this rule change and not require more adjustments at the financial end for Boards that pay for days on which the parent does not record attendance.

Response: The Commission appreciates the comments. The Commission clarifies that relative provider holidays are considered days on which the child is absent and are included in the rule language. Therefore, Boards must not authorize paid holidays at a relative provider.

Regarding applying the Board's maximum number of absences for children in relative care, the Commission clarifies that an absence counted toward the Board's absence policy is a paid day in which the child was not present. If the provider is not paid for the absence, then the absence will not be included in the maximum number of absences allowed.

Finally, prior to this rule revision, some Board policies prohibited payment for absences at relative providers and TWIST is currently programmed to accommodate this policy without requiring manual adjustments to attendance in TWIST claims processing.

Comment: One commenter disagreed with §809.93(b) and stated this could encourage fraud because if a relative knows they will not get paid for an absence they are more likely to have the parent report the child as present instead of reporting the absence. The cost of home visits to monitor this rule change would be more substantial than just paying the absences for relative care. It also increases the need for fraud investigations, which are time consuming and costly.

Response: The Commission does not believe that this will increase misreporting of attendance at relative care or require an increase in home visits above the amount currently being conducted by the Board or Board's contractor. Boards must continue their efforts to identify potential attendance reporting abuse. The Commission's goal in this rule change is to have rules and procedures in effect that maximize the efficient use of public funds. Prohibiting Boards from paying relatives for days on which the child was not under the relative's care will assist the Boards in meeting the goal.

Comment: One commenter agreed with new §809.93(i) requiring that the parent's travel time to and from the child care facility and the parent's work, school, or job training site be included in determining whether to authorize full-day or part-day care.

Response: The Commission appreciates the comment.

New §809.95. Provider Automated Attendance Agreement

New §809.95 sets forth the requirements for providers regarding the child care automated attendance system. Specifically, Boards must notify providers that:

- (1) employees of child care facilities must not:
 - (A) possess, have on the premises, or otherwise have access to the attendance card of a parent or secondary cardholder;
 - (B) accept or use the attendance card or PIN of a parent or secondary cardholder; or
 - (C) perform the attendance or absence reporting function on behalf of a parent;
- (2) the owner, director, or assistant director of a child care facility must not be designated as the secondary cardholder by a parent with a child enrolled at the facility;
- (3) providers must report misuse of attendance cards and PINs to the Board or the child care contractor; and
- (4) providers shall report to the contractor within five days of receiving the authorization any discrepancies between the authorization and the referral in the child care automated attendance system. Failure to report the discrepancy may result in withholding payment to the provider.

The Commission implements these requirements to ensure the integrity of the child care automated attendance system and to help reduce or eliminate fraud, waste, and child care program abuse. Because the requirements of the child care automated attendance system--

particularly the security requirements surrounding the use of attendance cards and proper attendance reporting--have significant implications on imposing penalties for misuse, the Commission believes it is essential to delineate in rule the provider and parent responsibilities for the child care automated attendance system.

Comment: One commenter asked for confirmation that child care facilities include: licensed child care centers, licensed child care homes, registered child care homes, listed homes, and listed relative homes.

Response: The Commission has modified the language in §809.95(1) from "facilities" to "providers" to align with the definitions in §809.2.

Comment: One commenter requested a clarification for §809.95(2) prohibiting owners, directors, or assistant directors as being designated by the parent as a secondary cardholder. The commenter believes this prohibition is included in §809.95(1), which prohibits employees from possessing a parent or secondary cardholder's card.

Response: The Commission recognizes that there are many situations in which an employee of a child care provider is also a friend or family member of the parent with the child in subsidized care and the employee regularly brings the child to day care and takes the child home. In these situations, current Commission policy allows employees of a child care provider to be designated as a secondary cardholder by the parent and record attendance on behalf of the parent. The Commission clarifies that the purpose of §809.95(1) is to prohibit any employee from possessing the parent's or another secondary cardholder's card and performing the attendance reporting on behalf of the parent by using the card of the parent or secondary cardholder. The purpose of §809.95(2) is to prohibit any owner, director, or assistant director from being designated as a secondary cardholder, even if the individual is a friend or family member of the parent. The intent is to ensure that owners, directors, and assistant directors--individuals who may have a direct financial interest in the reimbursements made to the provider--do not perform the functions of attendance reporting for parents by establishing themselves as a secondary cardholder for the parent whose child is enrolled at the provider.

Comment: One commenter requested additional clarification regarding the intent of the proposed §809.95(4) stating that providers must be notified that they will not be reimbursed for days that do not match the referral in the automated attendance system, unless the provider reports the discrepancy within five days of receiving the authorization.

The commenter asked if this provision meant that the provider will not be paid for any days in which there was an error in the referral that was not reported within five days. The commenter asked what the contractor should do if a provider reports after the fifth day. The commenter's concern is if the Board does not pay the provider that the provider will make the subsidized family pay for those days of care.

Another commenter stated that this addition to the rules will unduly penalize providers if the reason for the discrepancy is due to child care contractor staff error. In those cases, the

contractor has the ability to make such corrections during processing of claims. Although the correction may be outside the five-day window, the providers should be paid for the care they have provided if such errors by contractor staff occur.

Response: The Commission understands the commenters' concerns, and has modified the rule language in §809.95(4) to require the provider to report discrepancies between the authorization and the referral in the child care automated attendance system. The modified language removes the requirement in the proposed rule that the provider shall not be reimbursed and now states that failure to report the discrepancy may result in withholding of the provider's payment.

The intent of this rule is to ensure that the provider takes responsibility (in conjunction with the parent's responsibilities for reporting failed attendance reports in §809.78(7)) to ensure that the attendance and billings are accurate on a timely basis. Discrepancies between the child care authorizations and the authorized days in the automated attendance system should be recognized by the parent on any failed attempt to record attendance and should be recognized by the provider by reviewing the automated attendance portal on a regular basis. Once discrepancies are discovered, contractor staff can correct the authorization or the information in the automated attendance system. However, this should be done on a timely basis in order to minimize the burden on both the provider and contractor to make multiple manual corrections that would otherwise be discovered weeks or even months later.

Comment: One commenter stated parents should be responsible for payment to the provider if a child attends on a day that does not match the referral.

Response: The Commission notes that parent responsibilities for reporting denials that may be due to discrepancies regarding authorized days in the child care automated attendance system are addressed in the new 809.78(7), which states that parents must be notified that failure to report denied attempts at recording attendance may result in an absence against the child or the parent being liable for the reimbursement to the provider.

SUBCHAPTER F. FRAUD FACT-FINDING AND IMPROPER PAYMENTS

The Commission adopts the following amendments to Subchapter F:

§809.113. Action to Prevent or Correct Suspected Fraud

Section 809.113(b) removes the acronym "FSE&T" and replaces it with the correct acronym "SNAP E&T."

§809.115. Corrective Adverse Actions

New §809.115(d)(1) - (3) requires Boards to adopt policies and procedures for corrective action when a provider violates the requirements of the child care automated attendance system. Specifically, corrective actions against a provider must be initiated by the Board's child care contractor when the provider:

- (1) possesses or has on the premises a parent's attendance card outside of the parent's presence at the site;
- (2) accepts or uses the attendance card or PIN of a parent or secondary cardholder; or

--(3) performs the attendance reporting function on behalf of a parent.

New §809.115(e) requires Boards to adopt policies and procedures for corrective action when a parent violates the requirements of the child care automated attendance system. Specifically, corrective actions against a parent must be initiated by the Board's child care contractor when the parent or the parent's designated secondary cardholder gives his or her:

--attendance card to a provider; or

--PIN to a provider.

Board policy and procedures for corrective action must consider the scope and severity of the parent's violation in accordance with §809.115(a) and as determined by Board policy, and include actions up to termination of child care services for parents.

The Commission allows Boards the latitude for actions if a parent or provider violates child care automated attendance system requirements, as determined by Board policy.

Comment: One commenter expressed appreciation for the Board flexibility in determining corrective actions for violations of the automated attendance requirements.

Response: The Commission appreciates the comment.

Comment: One commenter observed that WD Letter 60-09, Change 2, would need to be updated since it currently only addresses an employee of the provider possessing an attendance card and not the provider itself from possessing or having parent's attendance cards on the premise.

Response: The Commission intends for Agency staff to update all appropriate WD Letters and guidance upon the implementation of these rules.

Comment: One commenter expressed appreciation for the Commission's requirement that the Board adopt policies and procedures for corrective action when a parent violates the requirements of the automated attendance system by giving their attendance card or PIN to a provider. However, the commenter inquired what corrective action, short of termination from child care assistance, could be imposed on a parent for this type of transgression. Termination seems to be an overly harsh punishment for parents, especially considering that there are other corrective actions short of termination of the provider agreement that can be imposed on child care providers.

Response: The Commission understands that there are fewer corrective action remedies for parents than there are for providers. However, termination of care is not the only potential remedy for a parent. The Board may have a policy that requires recoupment of funds for a certain number of days if a parent has provided the PIN or the card to a provider.

Comment: Regarding the parent's use of the automated attendance system, one commenter stated that due to the parent's ability to record past attendance (the ability to "back swipe"

attendance), the automated attendance system has substantially increased the potential for fraud.

Response: The Commission disagrees that the automated attendance system has increased the potential for fraud. In fact, there is evidence to suggest that the automated attendance system has minimized the potential for fraudulently reporting attendance, as well as enhanced the ability of the Agency, Boards, and child care contractors to identify potentially fraudulent recording of attendance.

Comment: One commenter disagreed with the statement in the preamble's Impact Statements that there would be no additional costs to local governments as a result of enforcing the rules. The commenter stated that since child care was consolidated into TWIST there has been a significant increase in the number of hours to complete the billing process and complete the eligibility process during peak times of the year, resulting in employee overtime. The commenter suggested that one proposed rule would increase the volume of calls, resulting in more manpower needed to document and follow up on the incoming calls.

Response: Boards are not considered local governments. Further, it should be noted that any costs associated with accountability enhancements to child care automation are absorbed in TWC's allocation to the Boards of their program funding, including administrative expenses.

COMMENTS WERE RECEIVED FROM:

Susan Ashmore, Director, Workforce Solutions Alamo
Kay O'Dell, Executive Director, Workforce Solutions Northeast Texas
Lynne Bauereiss, Child Care Program Manager, Workforce Solutions Deep East Texas
David E. Black, Program Services Manager, Tarrant County CCMS
Shawna Chambers, Workforce Solutions Brazos Valley
Lisa Colyer, Child Care Contract Manager, Workforce Solutions of West Central Texas
Brenda Cox, Workforce Solutions South Plains
Julie Craig, Child Care Contracts Manager, Workforce Solutions Texoma
Kelley Fontenot, Senior Operations Specialist-Child Care, Workforce Solutions for North Central Texas, North Central Texas Council of Governments
Reta Green
Lucretia Hammond, Workforce Solutions Gulf Coast
Kasey Hampton, CPS Specialist II, Texas Department of Family and Protective Services
Patricia Walker Looper, Tarrant County CCMS Director
Ryan Malsbary, CCL Policy Specialist, Texas Department of Family and Protective Services
Joyce Sneed, Child Care Contract Manager, Workforce Solutions Concho Valley
Susan Thomas, Workforce Solutions Alamo
Lisa Witkowski, Child Care Director, Workforce Solutions for Tarrant County

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

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

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

CHAPTER 809. CHILD CARE SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

§809.2. Definitions.

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

- (1) Attending a job training or educational program--An individual is considered to be attending a job training or educational program if the individual:
 - (A) is considered by the program to be officially enrolled;
 - (B) meets all attendance requirements established by the program; and
 - (C) is making progress toward successful completion of the program as determined by the Board.
- (2) Child--An individual who meets the general eligibility requirements contained in this chapter for receiving child care services.
- (3) Child care contractor--The entity or entities under contract with the Board to manage child care services. This includes contractors involved in determining eligibility for child care services, contractors involved in the billing and reimbursement process related to child care subsidies, as well as contractors involved in the funding of quality improvement activities as described in §809.16.
- (4) Child care services--Child care subsidies and quality improvement activities funded by the Commission.
- (5) Child care subsidies--Commission-funded child care reimbursements to an eligible child care provider for the direct care of an eligible child.
- (6) Child with disabilities--A child who is mentally or physically incapable of performing routine activities of daily living within the child's typical chronological range of development. A child is considered mentally or physically incapable of performing routine activities of daily living if the child requires assistance in performing tasks (major life activity) that are within the typical chronological range of development, including but not limited to, caring for oneself; performing manual tasks; walking; hearing; seeing, speaking, breathing; learning; and working.
- (7) Educational program--A program that leads to:

- (A) a high school diploma;
 - (B) a General Educational Development (GED) credential; or
 - (C) a postsecondary degree from an institution of higher education.
- (8) Family--The unit composed of a child eligible to receive child care services, the parents of that child, and household dependents.
- (9) Household dependent--An individual living in the household who is one of the following:
- (A) An adult considered as a dependent of the parent for income tax purposes;
 - (B) A child of a teen parent; or
 - (C) A child or other minor living in the household who is the responsibility of the parent.
- (10) Improper payments--Payments to a provider or Board's child care contractor for goods or services that are not in compliance with federal or state requirements or applicable contracts.
- (11) Job training program--A program that provides training or instruction leading to:
- (A) basic literacy;
 - (B) English proficiency;
 - (C) an occupational or professional certification or license; or
 - (D) the acquisition of technical skills, knowledge, and abilities specific to an occupation.
- (12) Listed family home--A family home, other than the eligible child's own residence, that is listed, but not licensed or registered with, the Texas Department of Family and Protective Services (DFPS) pursuant to Texas Human Resources Code §42.052(c).
- (13) Military deployment--The temporary duty assignment away from the permanent military installation or place of residence for reserve components of the single military parent or the dual military parents ~~of a child enrolled in~~

~~child care services~~. This includes deployed parents in the regular military, military reserves, or National Guard.

- (14) Parent--An individual who is responsible for the care and supervision of a child and is identified as the child's natural parent, adoptive parent, stepparent, legal guardian, or person standing in loco parentis (as determined in accordance with Commission policies and procedures). Unless otherwise indicated, the term applies to a single parent or both parents.
- (15) Protective services--Services provided when:
 - (A) -a child is at risk of abuse or neglect in the immediate or short-term future and the child's family cannot or will not protect the child without DFPS Child Protective Services (CPS) intervention;
 - (B) -a child is in the managing conservatorship of DFPS and residing with a relative or a foster parent; or
 - (C) -a child has been provided with protective services by DFPS within the prior six months and requires services to ensure the stability of the family.
- (16) Provider--A provider is defined as:
 - (A) a regulated child care provider as defined in §809.2(17);
 - (B) a relative child care provider as defined in §809.2(18); or
 - (C) a listed family home as defined in §809.2(12), subject to the requirements in §809.91(b).
- (17) Regulated child care provider--A provider caring for an eligible child in a location other than the eligible child's own residence that is:
 - (A) licensed by DFPS;
 - (B) registered with DFPS;
 - (C) licensed by the Texas Department of State Health Services as a youth day camp; or
 - (D) operated and monitored by the United States military services.
- (18) Relative child care provider--An individual who is at least 18 years of age, and is, by marriage, blood relationship, or court decree, one of the following:

- (A) The child's grandparent;
 - (B) The child's great-grandparent;
 - (C) The child's aunt;
 - (D) The child's uncle; or
- (E) The child's sibling (if the sibling does not reside in the same household as the eligible child).
- (19) Residing with--~~A~~Unless otherwise stipulated in this chapter, a child is considered to be residing with the parent when the child is living with and physically present with the parent during the time period for which child care services are being requested or received ~~child's primary place of residence is the same as the parent's primary place of residence.~~
- (20) Teen parent--A teen parent (teen) is an individual 18 years of age or younger, or 19 years of age and attending high school or the equivalent, who has a child.
- (21) Working--Working is defined as:
- (A) activities for which one receives monetary compensation such as a salary, wages, tips, and commissions;
 - (B) job search activities (subject to the requirements in §809.41(d)); or
 - (C) participation in Choices or Supplemental Nutrition Assistance Program Employment and Training ~~Food Stamp Employment and Training~~ (SNAP E&T~~FSE&T~~) activities.

SUBCHAPTER B. GENERAL MANAGEMENT

§809.13. Board Policies for Child Care Services.

- (a) A Board shall develop, adopt, and modify its policies for the design and management of the delivery of child care services in a public process in accordance with Chapter ~~802801~~ of this title.
- (b) A Board shall maintain written copies of the policies that are required by federal and state law, or as requested by the Commission, and make such policies available to the Commission and the public upon request.
- (c) A Board shall also submit any modifications, amendments, or new policies to the Commission no later than two weeks after adoption of the policy by the Board.

- (d) At a minimum, a Board shall develop policies related to:
- (1) how the Board determines that the parent is making progress toward successful completion of a job training or educational program as described in §809.2(1);
 - (2) maintenance of a waiting list as described in §809.18(b);
 - (3) assessment of a parent share of cost as described in §809.19, including the reimbursement of providers when a parent fails to pay the parent share of cost;
 - (4) maximum reimbursement rates as provided in §809.20, including policies related to reimbursement of providers that offer transportation;
 - (5) family income limits as described in Subchapter C of this chapter (relating to Eligibility for Child Care Services);
 - (6) provision of child care services to a child with disabilities up to the age of 19 as described in §809.41(a)(1)(B);
 - (7) minimum activity requirements for parents as described in §809.48 and §809.50;
 - (8) time limits for the provision of child care while the parent is attending an educational program as described in §809.41(b);
 - (9) frequency of eligibility redetermination as described in §809.42(b)(2);
 - (10) Board priority groups as described in §809.43(a);
 - (11) transfer of a child from one provider to another as described in §809.71(3);
 - (12) provider eligibility for listed family homes as provided in §809.91(b), if the Board chooses to include listed family homes as eligible providers;
 - (13) attendance standards and procedures as provided in §809.92(b)(4), including provisions consistent with §809.54(f) (relating to Continuity of Care for custody and visitation arrangements);
 - (14) providers charging the difference between their published rate and the Board's reimbursement rate as provided in §809.92(d);
 - (15) procedures for fraud fact-finding as provided in §809.111;
 - (16) procedures for imposing sanctions when a parent fails to comply with the provisions of the parent responsibility agreement (PRA) as described in §809.76(c);

(17) mandatory waiting period for reapplying or being placed on the waiting list for child care services as described in §809.55; and

(18) policies and procedures to ensure that appropriate corrective actions are taken against a provider or parent for violations of the automated attendance requirements specified in §809.115(d) - (e).

§809.15. Promoting Consumer Education.

- (a) A Board shall promote informed child care choices by providing consumer education information to:
 - (1) parents who are eligible for child care services;
 - (2) parents who are placed on a Board's waiting list;
 - (3) parents who are no longer eligible for child care services; and
 - (4) applicants who are not eligible for child care services.

- (b) The consumer education information shall contain, at a minimum:
 - (1) information about the Texas Information and Referral Network/2-1-1 Texas (2-1-1 Texas) information and referral system;
 - (2) the ~~website~~ ~~Web site~~ and telephone number of DFPS, so parents may obtain health and safety requirements including information on:
 - (A) the prevention and control of infectious diseases (including immunizations);
 - (B) building and physical premises safety;
 - (C) minimum health and safety training appropriate to the provider setting; and
 - (D) the regulatory compliance history of child care providers;
 - (3) a description of the full range of eligible child care providers set forth in §809.91; and
 - (4) a description of programs available in the workforce area relating to school readiness and quality rating systems, including:

~~(A) school readiness models developed by the State Center for Early Childhood Development at the University of Texas Health Science Center (State Center); and~~

~~(A)(B) Texas Rising Star (TRS) Provider criteria, pursuant to Texas Government Code §2308.315;-~~

~~(B) the school readiness certification system, pursuant to Texas Education Code §29.161; and~~

~~(C) integrated school readiness models, pursuant to Texas Education Code §29.160; and~~

~~(5) a list of child care providers that meet quality indicators, pursuant to Texas Government Code §2308.3171.~~

- (c) A Board shall cooperate with the Texas Health and Human Services Commission (HHSC) to provide 2-1-1 Texas with information, as determined by HHSC, for inclusion in the statewide information and referral network.

§809.16. Quality Improvement Activities.

- (a) Child care funds allocated by the Commission pursuant to its allocation rules (generally, Chapter 800, General Administration, Subchapter B, Allocation and Funding, and specifically §800.58, Child Care), including local public transferred funds and local private donated funds, as provided in §809.17, to the extent they are used for nondirect care quality improvement activities, ~~shall only be used for the following: may be expended on any quality improvement activity described in 45 C.F.R. §98.51.~~ These activities may include, but are not limited to:

~~(1) Collaborative reading initiatives;~~

~~(2) School readiness, early learning, and literacy; or~~

~~(3) Local level support to promote child care consumer education provided by 2-1-1 Texas.~~

~~(1) activities designed to provide comprehensive consumer education to parents and the public;~~

~~(2) activities that increase parental choice; and~~

~~(3) activities designed to improve the quality and availability of child care.~~

- ~~(b) Boards must ensure compliance with 45 CFR 98.54(b) regarding construction expenditures, as follows:~~

(1) State and local agencies and nonsectarian agencies or organizations.

(A) Funds shall not be expended for the purchase or improvement of land, or for the purchase, construction, or permanent improvement of any building or facility.

(B) Funds may be expended for minor remodeling, and for upgrading child care facilities to ensure that providers meet state and local child care standards, including applicable health and safety requirements.

(2) Sectarian agencies or organizations.

(A) The prohibitions in paragraph (1) of this subsection apply.

(B) Funds may be expended for minor remodeling only if necessary to bring the facility into compliance with the health and safety requirements established pursuant to 45 CFR §98.41.

~~(b) Allowable activities to support the quality improvement activities described in subsection (a) of this section may include the following:~~

~~(1) Professional development and training for child care providers; or~~

~~(2) Purchase of curriculum and curriculum-related support resources for child care providers;~~

~~(c) Activities in subsection (a) of this section may be designed to meet the needs of children in any age group eligible for Commission-funded child care, as well as children with disabilities;~~

~~(d) In funding quality improvement activities allowable under this section, a Board may give priority to child care facilities:~~

~~(1) participating in the integrated school readiness models developed by the State Center;~~

~~(2) implementing components of school readiness curricula as approved by the State Center; or~~

~~(3) participating in or voluntarily pursuing participation in Texas Rising Star Provider Certification, pursuant to Texas Government Code §2308.316.~~

~~(c)~~(e) Expenditures certified by a public entity, as provided in §809.17(b)(3), may include expenditures for any quality improvement activity described in 45 ~~CFRC.F.R.~~ §98.51.

(d) Boards shall ensure that an assessment is conducted for any provider requesting TRS Provider certification pursuant to Texas Government Code §2308.316. Prior to conducting the assessment, Boards shall ensure that the provider has a current agreement to serve Commission-funded children; and

(1) has the appropriate permanent license or registration from, and is not on corrective or adverse action with, DFPS; or

(2) is regulated by the military.

(e) Boards shall ensure that TRS Provider certification is granted for any provider that is assessed and verified as meeting the TRS Provider certification criteria.

§809.19. Assessing the Parent Share of Cost.

(a) For child care funds allocated by the Commission pursuant to its allocation rules (generally, Chapter 800, General Administration, Subchapter B, Allocation and Funding, and specifically, §800.58, Child Care), including local public transferred funds and local private donated funds, as provided in §809.17, the following shall apply.

(1) A Board shall set a parent share of cost policy that assesses the parent share of cost in a manner that results in the parent share of cost:

(A) being assessed to all parents, except in instances when an exemption under paragraph (2) of this subsection applies;

(B) being an amount determined by a sliding fee scale based on the family's size and gross monthly income, and also may consider the number of children in care; and

(C) not exceeding the Board's maximum reimbursement rate or the provider's published rate, whichever is lower-cost of care.

(2) Parents who are one or more of the following are exempt from paying the parent share of cost:

(A) Parents who are participating in Choices;

(B) Parents who are participating in SNAP E&T services; or

- (C) Parents who have children who are receiving protective services child care pursuant to §809.49 and §809.54(c)(1), unless DFPS assesses the parent share of cost.
- (3) Teen parents who are not covered under exemptions listed in paragraph (2) of this subsection shall be assessed a parent share of cost. The teen parent's share of cost is based solely on the teen parent's income and size of the teen's family as defined in §809.2(8).
- (b) For child care services funded from sources other than those specified in subsection (a) of this section, a Board shall set a parent share of cost policy based on a sliding fee scale. The sliding fee scale may be the same as or different from the provisions contained in subsection (a) of this section.
 - (c) A Board shall establish a policy regarding reimbursement of providers when parents fail to pay the parent share of cost.
 - (d) The Board or its child care contractor may review the assessed parent share of cost for possible reduction if there are extenuating circumstances that jeopardize a family's self-sufficiency. The Board or its child care contractor may reduce the assessed parent share of cost if warranted by these circumstances.
 - (e) If the parent is not covered by an exemption as specified in subsection (a)(2) of this section, then the Board or its child care contractor shall not waive the assessed parent share of cost under any circumstances.
 - (f) If the parent share of cost, based on family income and family size, is calculated to be zero, then the Board or its child care contractor shall not charge the parent a minimum share of cost amount.

§809.20. Maximum Provider Reimbursement Rates.

- (a) Based on local factors, including a market rate survey provided by the Commission, a Board shall establish maximum reimbursement rates for child care subsidies to ensure that the rates provide equal access to child care in the local market and in a manner consistent with state and federal statutes and regulations governing child care. At a minimum, Boards shall establish reimbursement rates for full-day and part-day units of service, as described in §809.93(e), for the following:

(1) Provider types:

(A) Licensed child care centers, including before- or after-school programs and school-age programs, Child Care Centers as defined by DFPS;

(B) Licensed child care homes Child Care Homes as defined by DFPS;

(C) Registered child care homes ~~Child Care Homes~~ as defined by DFPS;
and

(D) Relative child care providers ~~Child Care Providers~~ as defined in
§809.2.

(2) Age groups in each provider type:

(A) Infants age 0 to 17 months;

(B) Toddlers age 18 to 35 months;

(C) Preschool age children from 36 to 71 months; and

(D) School age children 72 months and over.

(b) A Board shall establish enhanced reimbursement rates ~~for~~:

~~(1) child care providers participating in integrated school readiness models
developed by the State Center;~~

~~(2) Texas Rising Star Providers pursuant to Texas Government Code §2308.315;
and~~

~~(3) child care providers that obtain Texas School Ready!TM certification pursuant
to Texas Education Code §29.161.~~

(1) for all age groups at child care providers that obtain TRS Provider criteria
pursuant to Texas Government Code §2308.315;

(2) only for preschool-age children at child care providers that obtain school
readiness certification pursuant to Texas Education Code §29.161; and

(3) only for preschool-age children at child care providers that participate in
integrated school readiness models pursuant to Texas Education Code §29.160.

(c) The minimum reimbursement rates established under subsection (b) of this section shall be at least 5% greater than the maximum rate established for providers not meeting the requirements of subsection (b) of this section for the same category of care up to, but not to exceed, the provider's published rate.

(d) A Board or its child care contractor shall ensure that providers that are reimbursed for additional staff or equipment needed to assist in the care of a child with disabilities are paid a rate up to 190% of the provider's reimbursement rate for a child of that same age. The higher rate shall take into consideration the estimated cost of

the additional staff or equipment needed by a child with disabilities. The Board shall ensure that a professional, who is familiar with assessing the needs of children with disabilities, certifies the need for the higher reimbursement rate described in this subsection ~~(c)(b) of this section~~.

- (e) The Board shall determine whether to reimburse providers that offer transportation as long as the combined total of the provider's published rate, plus the transportation rate, is subject to the maximum reimbursement rate established in subsection (a) of this section.

§809.21. Determining the Amount of the Provider Reimbursement.

(a) The actual reimbursement that the Board or the Board's child care contractor pays to the provider shall be the Board's maximum daily rate or the provider's published daily rate, whichever is lower, less the following amounts:

- (1) The parent share of cost assessed and adjusted when the parent share of cost is reduced; and
- (2) Any child care funds received by the parent from other public or private entities.

(b) A Board or its child care contractor shall ensure that the provider's published daily rates are calculated according to Commission guidance and include the provider's enrollment fees, supply fees, and activity fees.

SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES

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

- (a) Except for a child receiving or needing protective services as described in §809.49, for a child to be eligible to receive child care services, a Board shall ensure that the child:
 - (1) meets one of the following age requirements:
 - (A) be under 13 years of age; or
 - (B) at the option of the Board, be a child with disabilities under 19 years of age;
 - (2) is a U.S. citizen or legal immigrant as determined under applicable federal laws, regulations, and guidelines; and
 - (3) resides with:

- (A) a family within the Board's workforce area whose income does not exceed the income limit established by the Board, which income limit must not exceed 85% of the state median income for a family of the same size; ~~and~~ and
 - (B) parents who require child care in order to work or attend a job training or educational program; or -
 - (C) a person standing in loco parentis for the child while the child's parent is on military deployment and the deployed military parent's income does not exceed the limits set forth in subparagraph (A) of this paragraph.
- (b) Notwithstanding the requirements set forth in subsection (c) of this section, a Board shall establish policies, including time limits, for the provision of child care services while the parent is attending an educational program.
 - (c) Time limits pursuant to subsection (b) of this section shall ensure the provision of child care services for four years, if the eligible child's parent is enrolled in an associate's degree program that will prepare the parent for a job in a high-growth, high-demand occupation as determined by the Board.
 - (d) Unless otherwise subject to job search limitations as stipulated in this title, the following shall apply:
 - (1) For child care funds allocated by the Commission pursuant to its allocation rules (generally, Chapter 800, General Administration, Subchapter B, Allocation and Funding, and specifically, §800.58 Child Care), an enrolled child may be eligible for child care services for four weeks within a federal fiscal year in order for the child's parent to search for work because of interruptions in the parent's employment.
 - (2) For child care services funded by the Commission from sources other than those specified in paragraph (1) of this subsection, child care services during job search activities are limited to four weeks within a federal fiscal year.
 - (e) A Board may establish a policy to allow parents attending a program that leads to a postsecondary degree from an institution of higher education to be exempt from residing with the child as defined in §809.2.

§809.43. Priority for Child Care Services.

- (a) A Board shall ensure that child care services are prioritized among the following three priority groups:

- (1) The first priority group is assured child care services and includes children of parents eligible for the following:
 - (A) Choices child care as referenced in §809.45;
 - (B) Temporary Assistance for Needy Families (TANF) Applicant child care as referenced in §809.46;
 - (C) ~~SNAP E&T~~ child care as referenced in §809.47; and
 - (D) Transitional child care as referenced in §809.48.

- (2) The second priority group is served subject to the availability of funds and includes, in the order of priority:
 - (A) children who need to receive protective services child care as referenced in §809.49;
 - (B) children of a qualified veteran or qualified spouse as defined in §801.23 of this title;
 - (C) children of a foster youth as defined in §801.23 of this title;

(D) children of parents on military deployment as defined in §809.2 whose parents are unable to enroll in military-funded child care assistance programs;

~~(E)(D)~~ children of teen parents as defined in §809.2; and

~~(F)(E)~~ children with disabilities as defined in §809.2.

- (3) The third priority group includes any other priority adopted by the Board.

- (b) A Board shall not establish a priority group under subsection (a)(3) of this section based on the parent's choice of an individual provider or provider type.

§809.44. Calculating Family Income.

- (a) Unless otherwise required by federal or state law, the family income for purposes of determining eligibility and the parent share of cost means the monthly total of the following items for each member of the family (as defined in §809.2(8)):

- (1) Total gross earnings. These earnings include wages, salaries, commissions, tips, piece-rate payments, and cash bonuses earned.

- (2) Net income from self-employment. Net income includes gross receipts minus business-related expenses from a person's own business, professional enterprise, or partnership, which result in the person's net income. Net income also includes gross receipts minus operating expenses from the operation of a farm.
- (3) Pensions, annuities, life insurance, and retirement income, and early withdrawals from a 401(k) plan not rolled over within 60 days of withdrawal. This includes Social Security pensions, veteran's pensions and survivor's benefits and any cash benefit paid to retirees or their survivors by a former employer, or by a union, either directly or through an insurance company. This also includes payments from annuities and life insurance.
- (4) Taxable capital gains, dividends, and interest. These earnings include capital gains from the sale of property and earnings from dividends from stock holdings, and interest on savings or bonds.
- (5) Rental income. This includes net income from rental of a house, homestead, store, or other property, or rental income from boarders or lodgers.
- (6) Public assistance payments. These payments include TANF as authorized under Chapters 31 or 34 of the Texas Human Resources Code, refugee assistance, Social Security Disability Insurance, Supplemental Security Income, and general assistance (such as cash payments from a county or city).
- (7) Income from estate and trust funds. These payments include income from estates, trust funds, inheritances, or royalties.
- (8) Unemployment compensation. This includes unemployment payments from governmental unemployment insurance agencies or private companies and strike benefits while a person is unemployed or on strike.
- (9) Workers' compensation income, death benefit payments and other disability payments. These payments include compensation received periodically from private or public sources for on-the-job injuries.
- (10) Spousal maintenance or alimony. This includes any payment made to a spouse or former spouse under a separation or divorce agreement.
- (11) Child support. These payments include court-ordered child support, any maintenance or allowance used for current living costs provided by parents to a minor child who is a student, or any informal child support cash payments made by an absent parent for the maintenance of a minor.
- (12) Court settlements or judgments. This includes awards for exemplary or punitive damages, noneconomic damages, and compensation for lost wages or

profits, if the court settlement or judgment clearly allocates damages among these categories.

(13) Lottery payments of \$600 or greater.

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

- (1) ~~Food stamps~~SNAP benefits;
- (2) Monthly monetary allowances provided to or for children of Vietnam veterans born with certain birth defects;
- (3) Educational scholarships, grants, and loans;
- (4) Earned Income Tax Credit (EITC) and the Advanced EITC;
- (5) Individual Development Account (IDA) withdrawals;
- (6) Tax refunds;
- (7) VISTA and AmeriCorps living allowances and stipends;
- (8) Noncash or in-kind benefits received in lieu of wages;
- (9) Foster care payments;
- (10) Special military pay or allowances, which include subsistence allowances, housing allowances, family separation allowances, or special allowances for duty subject to hostile fire or imminent danger;

(11) Income from a child in the household between 14 and ~~18-19~~ years of age who is attending school;

(12) Early 401(k) withdrawals specified as hardship withdrawals as classified by the Internal Revenue Service; and

(13)(11) Any income sources specifically excluded by federal law or regulation.

§809.46. Temporary Assistance for Needy Families Applicant Child Care.

- (a) A parent is eligible for TANF Applicant child care if the parent:
 - (1) receives a referral from the Health and Human Services Commission (HHSC) to attend a Workforce Orientation for Applicants (WOA);

- (2) locates employment or has increased earnings prior to TANF certification; and
 - (3) needs child care to accept or retain employment.
- (b) To receive TANF Applicant child care, the parent shall be working and not have voluntarily terminated paid employment of at least 25 hours a week within 30 days prior to receiving the referral from HHSC to attend a WOA, unless the voluntary termination was for good cause connected with the parent's work.
 - (c) Subject to ~~the availability of funds and~~ the continued employment of the parent, TANF Applicant child care shall be provided for up to 12 months or until the family reaches the Board's income limit for eligibility under any provision contained in §809.50, whichever occurs first.
 - (d) Parents who are employed fewer than 25 hours a week at the time they apply for temporary cash assistance are limited to 90 days of TANF Applicant child care. Applicant child care may be extended to a total of 12 months, inclusive of the 90 days, if before the end of the 90-day period, the applicant increases the hours of employment to a minimum of 25 hours a week.
 - (e) ~~A Subject to the availability of funds, a~~ parent whose time limit for TANF Applicant child care has expired may continue to be eligible for child care services provided the parent and child are otherwise eligible under any provision contained in §809.50.

§809.47. Supplemental Nutrition Assistance Program Food Stamp Employment and Training Child Care.

A parent is eligible to receive ~~SNAP E&TFSE&T~~ child care services if the parent is participating in ~~SNAP E&TFSE&T~~ services, in accordance with the provisions of 7 C.F.R. Part 273, as long as the case remains open.

§809.48. Transitional Child Care.

- (a) A parent is eligible for Transitional child care services if the parent:
 - (1) has been denied TANF ~~because of increased earnings within 30 days and was employed at the time of TANF denial~~; or
 - (2) has been denied ~~TANF temporary cash assistance~~ within 30 days because of expiration of TANF time limits; and
 - (3) requires child care to work or attend a job training or educational program for a combination of at least an average of 25 hours per week for a single-parent

family or 50 hours per week for a two-parent family, or a higher number of hours per week as established by a Board.

- (b) Boards may establish an income eligibility limit for Transitional child care that is higher than the eligibility limit for At-Risk child care, pursuant to §809.50, provided that the higher income limit does not exceed 85% of the state median income for a family of the same size.
- (c) For former TANF recipients who are employed when TANF is denied, Transitional child care shall be available for:
 - (1) a period of up to 12 months from the effective date of the TANF denial; or
 - (2) a period of up to 18 months from the effective date of the TANF denial in the case of a former TANF recipient who was eligible for child caretaker exemptions pursuant to Texas Human Resources Code §31.012(c) and voluntarily participates in the Choices program.
- (d) Former TANF recipients who are not employed when TANF expires, including recipients who are engaged in a Choices activity except as provided under subsection (e) of this section, shall receive up to four weeks of Transitional child care in order to allow these individuals to search for work as needed.
- (e) Former TANF recipients who are not employed when TANF is denied, are engaged in a Choices activity, are meeting the requirements of Chapter 811 of this title, and are denied TANF because of receipt of child support shall be eligible to receive Transitional child care services until the date on which the individual completes the activity, as defined by the Board.
- (f) A Board may allow a reduction to the requirement in subsection (a)(3) of this section if a parent's documented medical disability or need to care for a physically or mentally disabled family member prevents the parent from participating in work, education, or job training activities for the required hours per week.
- (g) For purposes of meeting the education requirements stipulated in subsection (a)(3) of this section, the following shall apply:
 - (1) each credit hour of postsecondary education counts as three hours of education activity per week; and
 - (2) each credit hour of a condensed postsecondary education course counts as six education activity hours per week.

§809.50. At-Risk Child Care.

- (a) A parent is eligible for child care services under this section if:

- (1) the family income does not exceed the income limit established by the Board pursuant to §809.41(a)(2)(A); and
 - (2) child care is required for the parent to work or attend a job training or educational program for ~~a combination of at least an average of a minimum of~~ 25 hours per week for a single-parent family or 50 hours per week for a two-parent family, or a higher number of hours per week as established by the Board.
- (b) A Board may allow a reduction to the work, education, or job training activity requirements in subsection (a)(2) of this section if a parent's documented medical disability or need to care for a physically or mentally disabled family member prevents the parent from participating in these activities for the required hours per week.
- (c) For purposes of meeting the education requirements stipulated in subsection (a)(2) of this section, the following shall apply:
- (1) each credit hour of postsecondary education counts as three hours of education activity per week;
 - (2) each credit hour of a condensed postsecondary education course counts as six education activity hours per week; and
 - (3) teen parents attending high school or the equivalent shall be considered as meeting the education requirements in subsection (a)(2) of this section.
- (d) When calculating income eligibility for a child with disabilities, a Board shall deduct the cost of the child's ongoing medical expenses from the family income.
- (e) Boards may establish a higher income eligibility limit for teen parents than the eligibility limit established pursuant to §809.41(a)(2)(A) provided that the higher income limit does not exceed 85% of the state median income for a family of the same size.
- (f) A teen parent's family income is based solely on the teen parent's income and size of the teen's family as defined in §809.2(8).

- (g) Boards may establish a higher income eligibility limit for families with a child who is enrolled in Head Start, Early Head Start, or public pre-K provided that the higher income limit does not exceed 85% of the state median income for a family of the same size.

§809.54. Continuity of Care.

- (a) Enrolled children, including children whose eligibility for Transitional child care has expired, shall receive child care as long as the family remains eligible for any available source of Commission-funded child care except as otherwise provided under subsection (b) of this section.
- (b) Except as provided by ~~§809.75(b)~~~~§809.76(b)~~ relating to child care during appeal, nothing in this chapter shall be interpreted in a manner as to result in a child being removed from care, except when removal from care is required for child care to be provided to a child of parents eligible for the first priority group as provided in §809.43.
- (c) In closed DFPS ~~CPS Child Protective Services~~ cases (DFPS cases) where child care is no longer funded by DFPS, the following shall apply:
 - (1) Former DFPS Children Needing Protective Services Child Care. Regardless of whether the family meets the income eligibility requirements of the Board or is working or attending a job training or educational program, if DFPS determines on a case-by-case basis that the child continues to need protective services and child care is integral to that need, then the Board shall continue the child care by using other funds, including funds received through the Commission, for child care services for up to six months after DFPS case is closed.
 - (2) Former DFPS Children Not Needing Protective Services Child Care. If the family meets the income eligibility requirements of the Board and if DFPS does not state on a case-by-case basis that the child continues to need protective services or child care is not integral to that need, then the Board may provide care subject to the availability of funds. To receive care under this paragraph, the parents must be working or attending a job training or an educational program.
- (d) A Board shall ensure that no children of military parents in military deployment have a disruption of child care services or eligibility because of the military deployment.
- (e) A Board shall ensure that a child who is required by a court-ordered custody or visitation arrangement to leave a provider's care is permitted to continue receiving child care by the same provider, or another provider if agreed to by the parent in

advance of the leave, upon return from the court-ordered custody or visitation arrangement.

- (f) A Board may encourage parents of other children to temporarily utilize the space the child under court-ordered custody or visitation arrangement has vacated until the child returns so he or she can return to the same provider.
- (g) A Board shall ensure that parents who choose to accept temporary child care to fill a position opened because of court-ordered custody or visitation shall not lose their place on the waiting list.
- (h) A Board shall ensure that parents who choose not to accept temporary child care to fill a position opened because of court-ordered custody or visitation shall not lose their place on the waiting list.

§809.55. Mandatory Waiting Period for Reapplication.

(a) A parent is ineligible to reapply for child care services or to be placed on the waiting list for services for at least 30 days but not to exceed 90 days as determined by Board policy if the parent's eligibility or child's enrollment is denied, delayed, reduced, suspended, or terminated pursuant to established Board policies and procedures for any of the following:

~~(1) Voluntary withdrawals;~~

~~(1)(2) Excessive absences;~~

~~(2)(3) Nonpayment of parent share of cost;~~

~~(3)(4) Five consecutive absences on authorized days of care with no parent contact with the child care provider or child care contractor; or~~

~~(4)(5) A parent's failure to report, within 10 days of occurrence, any change in the family's circumstances that would have rendered the family ineligible for subsidized care.~~

(b) A Board may allow the waiting period to extend beyond the 90 days for parents on a repayment schedule if Board policy requires that the parents fully repay the obligation prior to reapplying for child care services.

SUBCHAPTER D. PARENT RIGHTS AND RESPONSIBILITIES

§809.71. Parent Rights.

A Board shall ensure that the Board's child care contractor informs the parent in writing that the parent has the right to:

- (1) choose the type of child care provider that best suits their needs and to be informed of all child care options available to them as included in the consumer education information described in §809.15;
- (2) visit available child care providers before making their choice of a child care option;
- (3) receive assistance in choosing initial or additional child care referrals including information about the Board's policies regarding transferring children from one provider to another;
- (4) be informed of the Commission rules and Board policies related to providers charging parents the difference between the Board's reimbursement and the provider's published rate as described in §809.92(c) - (d);
- (5) be represented when applying for child care services;
- (6) be notified of their eligibility to receive child care services within ~~10-20~~ calendar days from the day the Board's child care contractor receives all necessary documentation required to determine eligibility for child care;
- (7) receive child care services regardless of race, color, national origin, age, sex, disability, political beliefs, or religion;
- (8) have the Board and the Board's child care contractor treat information used to determine eligibility for child care services as confidential;
- (9) receive written notification, except as provided by paragraph (10) of this section, ~~from the Board's child care contractor~~ at least 15 days before the denial, delay, reduction, or termination of child care services unless ~~the following exceptions apply:~~
 - (A) ~~Notification of denial, delay, reduction, or termination of child care services is not required when~~ the services are authorized to cease immediately because either the parent is no longer participating in the Choices or SNAP E&T program or services are authorized to end immediately for children in protective services child care; or

~~(B) the services are authorized to cease immediately as required by Board policy because the child has been absent for five consecutive authorized days of care and the parent has failed to contact the child care provider or the child care contractor by the end of the fifth authorized day;~~

~~(B) The Choices program participants and children in protective services child care are notified of denial, delay, reduction, or termination of child care and the effective date of such actions by the Choices caseworker or DFPS;~~

- (10) receive 30-day written notification from the Board's child care contractor if child care is to be terminated in order to make room for a priority group described in §809.43(a)(1), as follows:
 - (A) Written notification of denial, delay, reduction, or termination shall include information regarding other child care options for which the recipient may be eligible.
 - (B) If the notice on or before the 30th day before denial, delay, reduction, or termination in child care would interfere with the ability of the Board to comply with its duties regarding the number of children served or would require the expenditure of funds in excess of the amount allocated to the Board, notice may be provided on the earliest date on which it is practicable for the Board to provide notice;
- (11) reject an offer of child care services or voluntarily withdraw their child from child care unless the child is in protective services;
- (12) be informed of the possible consequences of rejecting or ending the child care that is offered;
- (13) be informed of the eligibility documentation and reporting requirements described in §809.72 and §809.73;
- (14) be informed of the parent appeal rights described in §809.74;
- (15) be informed of the Board's attendance policy as required in §809.13(d)(13) and the consequences for five consecutive absences without contact as described in paragraph (9)(B) of this section; and

- (16) be informed of required background and criminal history checks for relative child care providers through the listing process with DFPS, as described in §809.91(e), before the parent or guardian selects the relative child care provider.

§809.74. Parent Appeal Rights.

- (a) Unless otherwise stated in this section, a parent may request a hearing pursuant to Chapter 823 of this title, if the parent's eligibility or child's enrollment is denied, delayed, reduced, suspended, or terminated by the Board's child care contractor, Choices caseworker, or ~~SNAP E&T~~~~FSE&T~~ caseworker.
- (b) A parent may have an individual represent him or her during this process.
- (c) A parent of a child in protective services may not appeal pursuant to Chapter 823 of this title, but shall follow the procedures established by DFPS.

§809.75. Child Care during Appeal.

- (a) For a child currently enrolled in child care, a Board shall ensure that child care services continue during the appeal process until a decision is reached, if the parent requests a hearing.
- (b) A Board shall ensure that child care does not continue during the appeal process if the parent's eligibility or child's enrollment is denied, delayed, reduced, suspended, or terminated because of:
 - (1) excessive absences;
 - (2) voluntary withdrawal from child care;
 - (3) change in federal or state laws or regulations that affect the parent's eligibility;
 - (4) lack of funding because of increases in the number of enrolled children in state and Board priority groups;
 - (5) a sanctions finding against the parent participating in the Choices program;
 - (6) voluntary withdrawal of a parent from the Choices program;
 - (7) nonpayment of parent share of cost;

- (8) a parent's failure to report, within 10 days of occurrence, any change in the family's circumstances that would have rendered the family ineligible for subsidized child care; ~~or~~
- (9) a suspension of child care services pursuant to §809.51 (related to Child Care during Temporary Interruptions in Work, Education, or Training); or

(10) five consecutive absences and the parent has failed to contact the child care provider or the child care contractor by the end of the fifth authorized day.

- (c) The cost of providing services during the appeal process is subject to recovery from the parent by the Board, if the appeal decision is rendered against the parent.

§809.76. Parent Responsibility Agreement.

- (a) The parent of a child receiving child care services is required to sign a parent ~~responsibility agreement~~ (PRA) as part of the child care enrollment process, unless covered by the provisions of Texas Human Resources Code §31.0031. The parent's compliance with the provisions of the agreement shall be reviewed at each eligibility redetermination.

- (b) The PRA requires that:

- (1) ~~for cases in which the child has a noncustodial parent, the custodial~~the parent shall:

- (A) cooperate with the Office of the Attorney General (OAG), if necessary, to establish paternity of the parent's children and to enforce child support on an ongoing basis by:

- (i) providing documentation to the Board's child care contractor that the parent has an open child support case with OAG and is cooperating with OAG; or

- (ii) opening a child support case with OAG and providing documentation to the Board's child care contractor that the parent is cooperating with OAG; or

- (B) provide documentation as determined by Board policy to the Board's child care contractor that the parent has an arrangement with the ~~noncustodial absent~~ parent for child support and is receiving child support on a regular basis. Such documentation ~~must~~shall include evidence of child support history, which may include~~ing~~:

- (i) a Board-established minimum amount of child support; and

(ii) in-kind child support; ~~in-kind child support;~~

- (2) each parent shall not use, sell, or possess marijuana or other controlled substances in violation of Texas Health and Safety Code, Chapter 481, and abstain from alcohol abuse; and
 - (3) each parent shall ensure that each family member younger than 18 years of age attends school regularly, unless the child has a high school diploma or a GED credential, or is specifically exempted from school attendance by Texas Education Code §25.086.
- (c) Failure by the parent to comply with any of the provisions of the PRA within three months of initial eligibility shall result in ~~sanctions as determined by the Board, up to and including terminating termination of~~ the family's child care services.
- (d) Boards shall ensure that a parent whose child care services are terminated due to failure to comply with the requirements of the PRA, as set forth in this section, shall not be eligible for child care services until the parent demonstrates compliance.

§809.77. Exemptions from the Parent Responsibility Agreement.

Notwithstanding the requirements set forth in §809.76(b)(1), the parent is not required to comply with those requirements if one or more of the following situations exist:

- (1) The paternity of the child cannot be established after a reasonable effort to do so;
- (2) The child was conceived as a result of incest or rape;
- (3) The parent of the child is a victim of domestic violence;
- (4) Adoption proceedings for the child are pending;
- (5) The parent of the child has been working with an agency for three months or less to decide whether to place the child for adoption;
- (6) The child may be physically or emotionally harmed by cooperation; ~~or~~
- (7) The parent may be physically or emotionally harmed by cooperation, to the extent of impairing the parent's ability to care for the child; or
- (8) A person is standing in loco parentis for a child with a parent in military deployment.

§809.78. Parent Attendance Reporting Requirements.

(a) A Board shall ensure that parents are notified of the following:

- (1) Parents shall use the attendance card to report daily attendance and absences.
- (2) Child care services may be terminated and parents may be held responsible for paying the provider for attendance and absences that are not reimbursed by the Board.
- (3) Parents shall not designate anyone under age 16 as a secondary cardholder, unless the individual is a child's parent.
- (4) Parents shall not designate the owner, assistant director, or director of the child care facility as a secondary cardholder.
- (5) Parents shall:
 - (A) ensure the attendance card is not misused by secondary cardholders;
 - (B) inform secondary cardholders of the responsibilities for using the attendance card;
 - (C) ensure that secondary cardholders comply with these responsibilities; and
 - (D) ensure the protection of attendance cards issued to them or secondary cardholders.
- (6) Child care services may be terminated if the parent or secondary cardholders give the attendance card or the personal identification number (PIN) to another person, including the child care provider.
- (7) Parents shall report to the child care contractor ~~within three days any~~ instances in which a parent's attempt to record attendance in the **child care automated attendance** ~~Child Care Automated Attendance~~ system is denied or rejected **and cannot be corrected at the provider site**. Failure to report such instances may result in an absence counted toward the Board's maximum number of allowable absences or the parent being liable for the reimbursement to the provider.
- (8) Five consecutive absences on authorized days of care, with no contact from the parent with the child care provider or child care contractor, may result in termination of child care services. Additionally, the 15-day notice of termination is not required in this circumstance, and child care shall not continue during any appeal.

(b) Boards shall ensure that parents sign a written acknowledgment indicating their understanding of parent attendance card responsibilities, at each of the following stages:

(1) initial eligibility determination; and

(2) each eligibility redetermination, conducted at a frequency determined by the Board, as required in §809.42(b)(2).

SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE

§809.91. Minimum Requirements for Providers.

(a) A Board shall ensure that child care subsidies are paid only to:

(1) regulated child care providers as described in §809.2(17);

(2) relative child care providers as described in §809.2(18), subject to the requirements in subsection (e) of this section; ~~or~~

(3) at the Board's option, listed family homes as defined in §809.2(12), subject to the requirements in subsection (b)(2) of this section; or

(4) at the Board's option, child care providers licensed in a neighboring state, subject to the following requirements:

(A) Boards shall ensure that the Board's child care contractor reviews the licensing status of the out-of-state provider every month, at a minimum, to confirm the provider is meeting the minimum licensing standards of the state;

(B) Boards shall ensure that the out-of-state provider meets the requirements of the neighboring state to serve CCDF-subsidized children; and

(C) The provider shall agree to comply with the requirements of this chapter and all Board policies and Board child care contractor procedures.

(b) For providers listed with DFPS, the following applies:

(1) A Board shall not prohibit a relative child care provider who is listed with DFPS and who meets the minimum requirements of this section from being an eligible relative child care provider.

(2) If a Board chooses to include listed family homes, as defined in §809.2(12), that provide care for children unrelated to the provider, a Board shall ensure that there are in effect, under local law, requirements applicable to the listed

family homes designated to protect the health and safety of children. Pursuant to 45 CFR §98.41, the requirements shall include:

- (A) the prevention and control of infectious diseases (including immunizations);
 - (B) building and physical premises safety; and
 - (C) minimum health and safety training appropriate to the child care setting.
- (c) Except as provided by the criteria for ~~Texas Rising Star~~ TRS Provider certification ~~Certification~~, a Board or the Board's child care contractor shall not place requirements on regulated providers that:
- (1) exceed the state licensing requirements stipulated in Texas Human Resources Code, Chapter 42; or
 - (2) have the effect of monitoring the provider for compliance with state licensing requirements stipulated in Texas Human Resources Code, Chapter 42.
- (d) When a Board or the Board's child care contractor, in the course of fulfilling its responsibilities, gains knowledge of any possible violation regarding regulatory standards, the Board or its child care contractor shall report the information to the appropriate regulatory agency.
- (e) For relative child care providers to be eligible for reimbursement for Commission-funded child care services, the following applies:
- (1) Relative child care providers shall list with DFPS; however, pursuant to 45 CFR §98.41(e), relative child care providers listed with DFPS shall be exempt from the health and safety requirements of 45 CFR §98.41(a) and subsection (b)(2) of this section.
 - (2) A Board shall allow relative child care providers to care for a child in the child's home (in-home child care) only for the following:
 - (A) A child with disabilities as defined in §809.2(6), and his or her siblings;
 - (B) A child under 18 months of age, and his or her siblings;
 - (C) A child of a teen parent; and
 - (D) When the parent's work schedule requires evening, overnight, or weekend child care in which taking the child outside of the child's home would be disruptive to the child.

- (3) A Board may allow relative in-home child care for circumstances in which the Board's child care contractor determines and documents that other child care provider arrangements are not available in the community.

(f) Boards shall ensure that subsidies are not paid for a child at the following child care providers:

(1) Licensed child care centers, including before- or after-school programs and school-age programs, in which the parent or his or her spouse, including the child's parent or stepparent, is the director or assistant director, or has an ownership interest; or

(2) Licensed, registered, or listed child care homes where the parent also works during the hours his or her child is in care.

§809.92. Provider Responsibilities and Reporting Requirements.

- (a) A Board shall ensure that providers are given written notice of and agree to their responsibilities, reporting requirements, and requirements for reimbursement under this subchapter prior to enrolling a child.
- (b) Providers shall:
 - (1) be responsible for collecting the parent share of cost as assessed under §809.19 before child care services are delivered;
 - (2) be responsible for collecting other child care funds received by the parent as described in §809.21(2);
 - (3) report to the Board or the Board's child care contractor instances in which the parent fails to pay the parent share of cost; and
 - (4) follow attendance reporting and tracking procedures required by the Commission, Board, or, if applicable, the Board's child care contractor. At a minimum, the provider shall:
 - (A) document and maintain a record of each child's attendance and submit attendance records to the Board's child care contractor upon request;
 - (B) inform the Board's child care contractor when an enrolled child is absent; and
 - (C) inform the Board's child care contractor that the child has not attended the first three days of scheduled care. The provider has until the close of

the third day of scheduled attendance to contact the Board's child care contractor regarding the child's absence.

- (c) Providers shall not charge the difference between the provider's published rate and the amount of the Board's reimbursement rate as determined under §809.21 to parents:
 - (1) who are exempt from the parent share of cost assessment under §809.19(a)(2); or
 - (2) whose parent share of cost is calculated to be zero pursuant to §809.19(f).
- (d) A Board may develop a policy that prohibits providers from charging the difference between the provider's published rate and the amount of the Board's reimbursement rate (including the assessed parent share of cost) to all parents eligible for child care services.
- (e) Providers shall not deny a child care referral based on the parent's income status, receipt of public assistance, or the child's protective service status.
- (f) Providers shall not charge fees to a parent receiving child care subsidies that are not charged to a parent who is not receiving subsidies.

§809.93. Provider Reimbursement.

- (a) A Board shall ensure that reimbursement for child care is paid:
 - ~~(1) —only to the provider, only; and~~
 - ~~(2) —after the Board or its child care contractor receives a complete Declaration of Services Statement from the provider verifying that services were rendered.~~
- ~~(b) The Declaration of Services Statement shall contain:~~
 - ~~(1) —name, age, and identifying information of the child;~~
 - ~~(2) —amount of care provided in terms of units of care;~~
 - ~~(3) —rate of payment;~~
 - ~~(4) —dates services were provided;~~
 - ~~(5) —name and identifying information of the provider, including the location where care is provided;~~

~~(6) verification by the provider that the information submitted in the Declaration of Services Statement is correct; and~~

~~(7) additional information as may be required by the Boards.~~

(b) A Board shall ensure that a relative child care provider is not reimbursed for days on which the child is absent.

(c) A relative child care provider shall not be reimbursed for more children than permitted by the DFPS minimum regulatory standards for Registered Child Care Homes. A Board may permit more children to be cared for by a relative child care provider on a case-by-case basis as determined by the Board.

(d) A Board shall not reimburse providers that are debarred from other state or federal programs unless and until the debarment is removed.

(e) Unless otherwise determined by the Board and approved by the Commission for automated reporting purposes, reimbursement for child care is based on the unit of service delivered, as follows:

(1) A full-day unit of service is 6 to 12 hours of care provided within a 24-hour period; and

(2) A part-day unit of service is fewer than 6 hours of care provided within a 24-hour period.

(f) A Board or its child care contractor shall ensure that providers are not paid for holding spaces open except as consistent with attendance policies as established by the Board.

(g) A Board or the Board's child care contractor shall not pay providers:

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

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

(h) The Board or its child care contractor shall not reimburse a provider retroactively for new Board maximum reimbursement rates or new provider published rates.

(i) A Board or its child care contractor shall ensure that the parent's travel time to and from the child care facility and the parent's work, school, or job training site is included in determining whether to authorize reimbursement for full-day or part-day care under subsection (e) of this section.

§809.95. Provider Automated Attendance Agreement.

Boards shall notify providers of the following:

- (1) Employees of child care facilities providers shall not:
 - (A) possess, have on the premises, or otherwise have access to the attendance card of a parent or secondary cardholder;
 - (B) accept or use the attendance card or PIN of a parent or secondary cardholder; or
 - (C) perform the attendance or absence reporting function on behalf of the parent;
- (2) The owner, director, or assistant director of a child care provider shall not be designated as the secondary cardholder by a parent with a child enrolled with the provider;
- (3) Providers shall report misuse of attendance cards and PINs to the Board or the Board's child care contractor; and
- (4) Providers shall report to the child care contractor not be reimbursed for authorized days that do not match the referral in the Agency's automated attendance system, unless the provider reports the discrepancy within five days of receiving the referral authorization. Failure to report the discrepancy may result in withholding payment to the provider.

SUBCHAPTER F. FRAUD FACT-FINDING AND IMPROPER PAYMENTS

§809.113. Action to Prevent or Correct Suspected Fraud.

- (a) The Commission, Board, or Board's child care contractor may take the following actions if the Commission finds that a provider has committed fraud:
 - (1) Temporary withholding of payments to the provider for child care services delivered;
 - (2) Nonpayment of child care services delivered;
 - (3) Recoupment of funds from the provider;
 - (4) Stop authorizing care at the provider's facility or location; or

- (5) Any other action consistent with the intent of the governing statutes or regulations to investigate, prevent, or stop suspected fraud.
- (b) The Commission, Board, or Board's child care contractor may take the following actions if the Commission finds that a parent has committed fraud:
- (1) recouping funds from the parent;
 - (2) prohibiting future child care eligibility, provided that the prohibition does not result in a Choices or SNAP E&T FSE&T participant becoming ineligible for child care;
 - (3) limiting the enrollment of the parent's child to a regulated child care provider;
or
 - (4) any other action consistent with the intent of the governing statutes or regulations to investigate, prevent, or stop suspected fraud.

§809.115. Corrective Adverse Actions.

- (a) When determining appropriate corrective actions, the Board or Board's child care contractor shall consider:
- (1) the scope of the violation;
 - (2) the severity of the violation; and
 - (3) the compliance history of the person or entity.
- (b) Corrective actions may include, but are not limited to, the following:
- (1) Closing intake;
 - (2) Moving children to another provider selected by the parent;
 - (3) Withholding provider payments or reimbursement of costs incurred;.
 - (4) Termination of child care services; and
 - (5) Recoupment of funds.
- (c) When a provider violates a provision of Subchapter E of this chapter, a written Service Improvement Agreement may be negotiated between the provider and the Board or the Board's child care contractor. At the least, the Service Improvement Agreement shall include the following:

- (1) The basis for the Service Improvement Agreement;
- (2) The steps required to reach compliance including, if applicable, technical assistance;
- (3) The time limits for implementing the improvements; and
- (4) The consequences of noncompliance with the Service Improvement Agreement.

(d) The Board shall develop policies and procedures to ensure that the Board or the Board's child care contractor take corrective action consistent with subsections (a) - (c) of this section against a provider when a provider:

- (1) possesses, or has on the premises, attendance cards without the parent being present at the provider site;
- (2) accepts or uses an attendance card or PIN of a parent or secondary cardholder;
or
- (3) performs the attendance reporting function on behalf of a parent.

(e) The Board shall develop policies and procedures to require the Board's child care contractor to take corrective action consistent with subsections (a) - (c) of this section against a parent when a parent or parent's secondary cardholder gives his or her:

- (1) card to a provider; or
- (2) PIN to a provider.