

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 MAY 29, 2007, THE TEXAS WORKFORCE COMMISSION ADOPTED THE BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated date of publication in the *Texas Register*: June 15, 2007

The rule will take effect: June 24, 2007.

The Texas Workforce Commission (Commission) adopts amendments, *with changes*, to the following section of Chapter 809 relating to Child Care Services, as published in the February 16, 2007, issue of the *Texas Register* (32 TexReg 608):

Subchapter E. Requirements to Provide Child Care, §809.91

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The Commission is entrusted by the citizens of the state of Texas to be a responsible steward of public funds. The Commission takes this responsibility seriously, particularly concerning the health and safety of children. The receipt of public child care funds includes the responsibility to ensure that child care is provided in a safe environment. With the exception of the requirements specifically applicable to relative child care providers, Commission rules ensure that the health and safety of children receiving Commission-funded child care services are protected by requiring that child care providers that care for children in Commission-funded child care—i.e., licensed child care centers, licensed child care homes, and registered child care homes—be subject to state-mandated and federally required health and safety standards under the supervision of the Texas Department of Family and Protective Services (DFPS). These standards include requiring immunizations for children, conducting periodic health and safety inspections, as well as conducting background checks for criminal history, and checking the Child Protective Services' (CPS) child abuse registry (Texas Human Resources Code, Chapter 42).

Child Care and Development Fund (CCDF) regulations, however, allow states to exempt children who are cared for by relatives from federally mandated minimum health and safety standards (45 C.F.R. §98.41(e)). In the preamble to the CCDF regulations, the Administration for Children and Families (ACF) expressly states that the "intent of the statute was to give grantees (states) the option to exempt certain relatives from the health and safety requirements that all other CCDF child care providers must meet" (*Federal Register*, Vol. 63, No. 142, July 24, 1998, at 39957, or CCDF preamble). The Commission is firmly committed to the principle

of parent choice and believes that parents have the right to choose the type of child care provider that best meets their needs, including relative providers. However, the principle of parent choice does not override the principle of ensuring the health and safety of children receiving publicly funded child care services.

Federal regulations also allow states to impose more stringent requirements on child care service providers that receive assistance under CCDF than those requirements imposed on other child care providers, as long as those additional requirements are consistent with the safeguards for parental choice (45 C.F.R. §98.40). Other than prohibiting an individual who appears on the Texas Department of Public Safety's (DPS) Sex Offender Registry from being an eligible relative child care provider, the Commission has not established more stringent requirements for relative child care providers, and as such, these providers are not subject to criminal background checks or child abuse registry checks, as other regulated and listed providers are. Further, the CCDF preamble provides that "with respect to criminal background checks...(ACF agrees) that it is appropriate to encourage States to adopt criminal background checks as part of their effort to meet CCDF health and safety standards" (CCDF preamble at 39956). In light of the flexibility afforded states under the CCDF regulations, the Commission has determined that additional requirements for unregulated relative child care providers can be incorporated into existing rules to the extent allowed under state law.

In Texas, family homes listed with DFPS are subject to background checks. A family home is defined in §42.002(9) of the Texas Human Resources Code as:

"a home that provides regular care in the *caretaker's own residence* for not more than six children under 14 years of age, excluding children who are related to the caretaker, and that provides care after school hours for not more than six additional elementary school children, but the total number of children, including children who are related to the caretaker, does not exceed 12 at any given time. *The term does not include a home that provides care exclusively for any number of children who are related to the caretaker.*" (emphasis added)

While §42.002(9) of the Texas Human Resources Code appears to exempt providers that care exclusively for children who are related to the provider from the definition of "family home," and Texas Human Resources Code §42.052(d) states that a family home that provides care exclusively for any number of children related to the caretaker is not required to be listed or registered with DFPS, neither provision prohibits a relative care provider from being listed with DFPS.

Furthermore, DFPS rule at 40 TAC §745.141 states that a child care operation that is considered exempt from DFPS regulations may still apply for a permit from DFPS if the operator is required to have a permit to receive public funding. Therefore, if the Commission requires relative child care providers to list with DFPS as a prerequisite to receiving Commission funds, relative child care providers—based on DFPS rules—will be required to have a criminal background check conducted by DFPS. DFPS agreed that, under the DFPS rule mentioned above, relatives providing Commission-funded child care services may apply for a permit to be a listed family home in order to receive the public funds. However, DFPS clarified that the relative applying for

a listed family home permit still must meet the requirement in the definition of a family home that the listed home be *the caretaker's own residence*.

Thus, if the relative child care provider is providing care exclusively in the child's own home (in-home care) and not in the relative's own home, then the relative provider does not meet the definition of a family home (i.e., the care is not in the caretaker's own residence) and cannot apply for a permit to be a listed family home. Therefore, the Commission cannot require a relative be listed with DFPS if the relative is providing care outside his or her home.

Based on this information, the Commission has modified the rule language to specify that relatives caring for children in the relative's residence must be listed with DFPS. The rule language also states that if the care is not in the relative's residence, but in the child's own home, then the relative will not be required to list with DFPS. However, the Commission retains the provision in the current rule stating that the relative caring for a child in the child's residence (but not in the relative's residence) must not appear on the DPS Sex Offender Registry.

Because CCDF regulations at 45 C.F.R. §98.30(e) require states to allow in-home care, the Commission, at this time, does not require all relative care to take place in the relative's residence and be listed with DFPS. However, CCDF regulations do allow states to place limitations on in-home care. The Commission will monitor the use of care provided in the child's residence. Based on that information, future rule amendments may be considered, consistent with state and federal regulations.

The Commission has fully examined both state and federal regulations regarding criminal and child abuse background checks and analyzed the feasibility of requiring background checks of relative providers before authorizing Commission-funded child care. Commission rules allow parents the right to choose a relative provider (eligible under 45 C.F.R. §98.2 and §809.91 of this chapter), but the Commission has concluded that a parent's right to choose a relative provider cannot come at the expense of placing that child in a home with someone whose criminal history or appearance in the CPS central registry of child abuse and neglect may indicate the individual could potentially endanger the child, particularly when this placement is government funded.

Therefore, the Commission adopts rules to require that relative child care providers caring for a child in the relative's residence be listed with DFPS, and in doing so, to make these relative providers subject to criminal background checks, CPS central registry searches, and facility inspection in the event of a complaint of suspected child abuse or neglect.

Approximately 10,000 relative providers care for children receiving Commission-funded child care services during any given month, not accounting for the location of the care. Furthermore, approximately 1,250 such relative providers come into the subsidized child care system each month. By contrast, DFPS reports that there are approximately 3,895 listed family homes (DFPS 2006 Data Book) and 118 requests per month to be a listed family home. The Commission recognizes that the adopted rules will lead to a substantial increase in the DFPS workload in order to conduct the background checks for relative child care providers. The Commission also recognizes that DFPS will need increased resources to assist in the implementation of the new

rules and the Commission is committed to working with DFPS to help that agency meet its resource needs.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE

The Commission adopts the following amendments:

809.91. Minimum Requirements for Providers

Section 809.91(b) provides the requirements for child care providers listed with DFPS. Section 809.91(b)(1) states that Local Workforce Development Boards (Boards) shall not prohibit a relative child care provider who is listed with DFPS and meets the eligibility requirements of §809.91 from being an eligible relative child care provider. The Commission includes this statement to clarify that although §809.91(b)(2) allows Boards the option to include listed family homes as eligible child care providers if the Boards ensure that there are local requirements designed to protect the health and safety of children, Boards do not have the option to exclude relative providers listed with DFPS as eligible relative child care providers.

Section 809.91(b)(2) gives Boards the option to include listed family homes as eligible providers, as long as the Boards ensure that there are local laws in effect that protect the health and safety of children. The Commission adds language to clarify that this option applies only to listed family homes, as defined in §809.2(12) of this chapter, that provide care for children unrelated to the provider. This provision is consistent with 45 C.F.R. §98.41(e), which does not allow states to exempt non-relative child care providers from health and safety standards.

Section 809.91(f), which prohibits an individual who appears on the DPS Sex Offender Registry from being an eligible relative child care provider, is removed. This provision is removed because for relative providers who are listed with DFPS this function effectively will be implemented through the criminal background check conducted by DFPS. However, due to the clarification received from DFPS regarding its regulatory authority for listed family homes, the requirement prohibiting an individual appearing on the DPS Sex Offender Registry from being an eligible relative provider is retained in new §809.91(f)(2) for relative care provided in the child's own home.

New §809.91(f)(1) is a broader provision designed to ensure that prior to authorizing care with the relative provider who will be caring for a child in the relative's own residence, a more comprehensive background check on a relative child care provider is conducted by DFPS using DFPS criteria for listed family homes. The new subsection requires that relative child care providers caring for a child in the relative's own residence shall list with DFPS to ensure that a criminal background check and a check of the CPS central registry is conducted prior to authorizing care with that relative. Furthermore, the requirements for a listed family home include a criminal history and background check for each person 14 years of age or older who will regularly or frequently be staying or working at the home while children are being provided care. Therefore, Commission rules requiring relative providers who are caring for a child in the

relative's residence to be listed with DFPS require that all adults residing in or regularly staying or working at the home will be subject to a criminal history and background check.

The Commission emphasizes that the criminal background check and the check of individuals on the CPS central registry of child abuse and neglect will be conducted by DFPS using its current application and background check procedures for listed family homes. The Commission does not intend for a Board or a Board's child care contractor to conduct any of the functions associated with the listing process.

Prior to authorizing child care, the child care contractor must inform the parent that a prospective relative caring for a child in the relative's home must be listed with DFPS and provide the application—or notify the relative how to access the application—for listing with DFPS. The relative must submit the application along with the \$20 annual fee to DFPS and DFPS will conduct the necessary background checks. If there is no criminal history match or match on the CPS central registry of child abuse and neglect, DFPS will inform the relative that no matches occurred and will issue a listing to the relative. Once the listing is issued, the relative will be eligible to provide Commission-funded child care services for the eligible child. DFPS has informed the Commission that background checks usually are completed within 48 hours and the listing issued to the relative within one week of receiving the application. The Board's sole responsibility is to ensure that the child care contractor verifies that the relative is listed with DFPS, which can be authenticated by viewing the listing permit that DFPS provides to the relative. DFPS also has informed the Commission that once the listing is issued, the DFPS Web site is updated the next day, and the child care contractor can verify the listing through the Web site.

The Commission emphasizes that the child care contractor cannot authorize the relative to receive Commission child care funds until DFPS issues the listing to the relative. Additionally, the Commission does not intend that relative child care providers be reimbursed retroactively for child care provided to the eligible child by the relative pending the results of the DFPS background checks.

In addition, new §809.91(f)(1) states that in all other respects, relatives listed with DFPS are exempt from the CCDF health and safety requirements at 45 C.F.R. §98.41(a). This provision is consistent with 45 C.F.R. §98.41(e), which allows states to exempt relative child care providers from health and safety standards. Specifically, other than the background checks required of child care providers listing with DFPS, relative providers who care for children receiving Commission-funded child care services are exempt from standards related to the prevention and control of infectious disease; building and physical premises safety; and minimum health and safety training.

New §809.91(f)(2) retains the provision that Boards must ensure that an individual appearing on the DPS Sex Offender Registry is not an eligible relative child care provider. However, pursuant to comments received from DFPS, new §809.91(f)(2) clarifies that this provision applies only to relatives providing care in the child's own residence. Again, the Commission emphasizes that for relatives providing care in the relative's residence, a broader criminal history and background

check, which includes a sex offender check, is performed by DFPS as part of the listing process required by §809.91(f)(1).

Comment: Five commenters supported the rule change. Two of the commenters stated that the rule would reduce the risk of abuse and neglect for children served through their subsidized child care programs. Another commenter stated that this rule change is a significant step toward protecting the health and safety of children receiving care through the child care subsidy program.

Response: The Commission appreciates the support of the rules.

Comment: One commenter stated that the rule language will require a background check only on the relative provider and requested that the Commission expand this to include all adults residing in the home.

Response: The Commission appreciates the comment and clarifies that §42.056 of the Texas Human Resources Code, and related DFPS regulations, require that the background check for providers listing with DFPS must include "each person 14 years of age or older who will regularly or frequently be staying or working at the facility or home while children are being provided care." Therefore, Commission rules requiring relative providers to be listed with DFPS require that all adults residing in or regularly staying or working at the home will be subject to a background check.

Comment: One commenter noted that the preamble stated that the relative provider will pay DFPS an annual \$20 fee but it was unclear whether a background check will be performed each year or only initially.

Response: The Commission appreciates the comment and clarifies that §42.056 of the Texas Human Resources Code, and related DFPS regulations, require that the background check for providers listing with DFPS be conducted at least once every two years.

Comment: One commenter expressed concern about the costs to the relative provider associated with being listed with DFPS. The commenter stated that while the \$20 yearly fee and the cost of carbon monoxide detectors may seem minimal to some, many low-income relative providers may not be able to absorb such costs and thus will reject a job opportunity.

Response: While the Commission recognizes the concerns, the Commission strongly believes in protecting the health and safety of children cared for with public funds. Further, Texas Human Resources Code §42.060, and related DFPS regulations, require the use of carbon monoxide detectors in certain child care settings. The Commission points out that reliable carbon monoxide detectors can be purchased for \$25 and believes that the long-term safety benefits of a carbon monoxide detector in the home far outweigh the \$25 onetime cost. Additionally, the Commission believes that the \$20 annual fee required by DFPS is a reasonable cost and that the costs associated with listing with DFPS can be absorbed by the relative through the child care subsidy paid to the relative by the Commission.

Comment: One commenter stated that as long as federal regulations permit relative care (as provided in 45 C.F.R. §98.41), neither the Boards nor their child care contractors have any control over which relatives may visit or live in a home (without registering with DPS) while children are under the supervision of the *one* relative that was predetermined eligible by DFPS.

Response: The Commission appreciates the comment and is aware of the reality of certain family situations. The Commission acknowledges that children may regularly come into contact or even reside with relatives who have a criminal background, including relatives registered with DPS as sex offenders. However, as stated in the preamble, the Commission is entrusted by the citizens of the state of Texas to be a responsible steward of public funds. This is particularly important in the provision of publicly funded child care services, which involve the health and safety of children. The receipt of public child care funds includes the responsibility to ensure that child care is provided in a safe environment. As mentioned previously, DFPS rules regarding listed family homes reflect state law requiring a background check for each person 14 years of age or older who will regularly or frequently be staying or working at the home while children are being provided care. Although the adopted rules will not completely prevent children from coming into contact with relatives with a criminal background, by requiring a background check for anyone who regularly frequents the home, the rules are designed to minimize the risk of children who receive publicly funded child care services being placed in potentially unsafe environments.

Comment: One commenter requested clarification regarding allegations of abuse and neglect. The commenter stated that local licensing staff indicated that they do not typically make visits of this type when relative care is involved. The commenter asked if this type of situation will then be turned over to CPS for investigation.

Response: The Commission has consulted with DFPS on this matter and DFPS has indicated that any reported allegation of abuse and neglect at a relative child care provider site listed with DFPS will be investigated by both Child Care Licensing and CPS. Child Care Licensing will investigate the report for possible abuse and neglect violations based on licensing standards, while CPS will investigate the report based on child protective standards.

Comment: One commenter expressed concerns with the safety, feasibility, and practicality if the child care contractor were required to monitor relative care providers in their homes. The commenter believed that such a task would require additional labor costs because there would need to be at least two child care contractor representatives to enter a private residence. The commenter further stated that there is still a potential danger when two or more child care representatives enter the residence to monitor the relative child care provider.

Response: The Commission emphasizes that the adopted rules do not require child care contractors to monitor the care provided in a relative's home for compliance with DFPS regulations. As stated previously, the criminal background check and the check of individuals on the CPS central registry of child abuse and neglect will be conducted by DFPS using its current application and background check procedures for listed family homes.

Additionally, any investigation of reported abuse or neglect will be conducted by DFPS. The Commission does not intend for a Board or a Board's child care contractor to conduct any of the functions associated with the listing process or with monitoring for compliance with DFPS rules or regulations.

Although these rules do not place requirements on Boards for monitoring compliance with DFPS rules or regulations, the Commission expects Boards to continue to implement their policies and procedures for researching and fact-finding for possible improper payments or suspected fraud as required by subchapter F of this chapter.

Comment: Three commenters supported the rules yet expressed concerns that the rules will have an adverse impact on the availability of subsidized child care, especially in rural areas. One of the commenters had discussions with another state that adopted a similar policy and was informed that there was a decrease in relative care—either relatives did not want to consent to a background check or they were not authorized because of their previous criminal or CPS history. Another commenter stated that many families with relative providers may cease to participate in the subsidy program—not as a result of the criminal background check, but because they feel it may not be cost effective, given lower reimbursement rates and costs to become a listed provider. If no viable child care is available, particularly in rural areas where there is a shortage of day care facilities, the impact on the labor force, the economy, and public assistance could become evident.

Two of the commenters were concerned that this impact on the availability of child care will affect the Board's ability to meet the performance measure for the number of children served. One of the commenters stated that the rule would increase a Board's average rate per child if eligible children are transferred to a more expensive licensed facility or registered home. One commenter stated that due to the lack of regulated child care facilities in the local workforce development area, the Board has no choice but to rely heavily upon relative care providers as a means to get individuals back to work and on track to self-sufficiency. A decrease in the number of relative care providers could impede the Board's ability to spend its child care dollars if such mandates are placed on relative care providers. The rules could adversely affect the Board's ability to meet its performance measure.

Response: The Commission appreciates the comments and understands the concerns. The Commission recognizes that the adopted rule may lead some current relative child care providers to discontinue the provision of Commission-funded child care services. The Commission also recognizes that the adopted rules may prevent some relatives who are currently providing Commission-funded child care services from being eligible providers because of the required background check. In these cases, some parents eligible for Commission-funded child care may choose to enroll their children in a regulated child care facility while others may choose to have their children remain with the relative, but not receive Commission funds. The Commission emphasizes that these child care choices remain solely with the parent.

The Commission is aware that there may be potential impact on Board performance as a result of relative providers deciding not to list with DFPS or relative providers who may not

be eligible because of the results of the background check. However, the Commission maintains that it is not possible at this time to quantify any anticipated impact on the cost of care or Board performance resulting from this rule. The Commission will work with the Boards to monitor and analyze any increased costs or adverse effects on Board performance. Furthermore, the Commission will monitor very closely any adverse impact the rule may have on the ability of parents in rural areas to secure adequate child care.

Comment: DFPS supported the intent of the rules to protect children through background checks of child care providers. However, DFPS stated that the listed family home category is designed for non-relative caregivers. The rules would result in DFPS regulating a category of caregivers otherwise outside of its regulatory language. DFPS expressed concern about the impact of a significant and unexpected workload. The estimated number of new providers requesting to become listed family homes per month is a substantial increase over the average number of requests to become a listed family home in Fiscal Year 2005. DFPS will not be able to support this influx of listed family home applicants without additional resources. DFPS stated that the new rules would require two background check workers and four background check technicians to process the listed family home applications and conduct the background checks. However, DFPS stated that the agency can absorb any additional abuse and neglect investigations with existing resources.

DFPS stated that even though the state would see a revenue increase in collected fees from the providers, it is important to note that §42.0521 of the Texas Human Resources Code requires that all fees collected by Child Care Licensing be deposited into the General Revenue fund. In order for the fee revenue to offset the costs of listing these relative care providers, the Legislature would need to appropriate these funds to DFPS.

Response: The Commission appreciates the comment and the support and input DFPS staff provided to the Commission in the development of these rules. The Commission believes that both agencies shared the same goal during this process—to protect the safety of children receiving publicly funded child care services. The Commission recognizes that the listed family home category is not designed for relative caregivers and that DFPS will need increased resources to assist the Commission in the implementation of the adopted rules.

The Commission is committed to working with DFPS to help it meet its resource needs. As the Commission discussed with DFPS during the development of these rules, the Commission intends to provide CCDF funds appropriated to the Commission to enable DFPS to conduct the background checks. The Commission does not anticipate that additional state resources will be needed. Again, the Commission appreciates the efforts of DFPS staff in working with the Commission to ensure that the integrity of public child care funds is maintained.

Comment: DFPS also submitted a verbal comment to explain that, pursuant to state law, the listed family home definition requires the care to be provided in the caretaker's own residence. DFPS stated that it does not list or otherwise regulate care provided outside the caretaker's own home. Thus, unless the care is provided in the relative's home, DFPS will not list the relative as a family home provider.

Response: The Commission appreciates the clarification and modifies the rule language in §809.91(f) to specify that relatives caring for a child in the relative's residence must list with DFPS, while relatives caring for a child in the child's residence, but outside of the relative's residence, must be subject to a check against the DPS Sex Offender Registry.

Comment: Two commenters expressed concerns related to the workload the adopted rules would have on DFPS. The commenters were concerned that DFPS will not be able to absorb the increased workload and as a result will take longer than one week. Delays from DFPS with these background checks will ultimately delay the Board's child care and workforce contractors from performing their services as efficiently as possible.

One commenter recommended that the rules be implemented immediately for new relative providers. For cases currently authorized with a relative provider, the commenter recommended that implementation be applied at the next recertification. If all current relative providers are given the same date to be listed, the commenter questioned whether DFPS will be able to maintain the current one-week time frame for processing listing applications and child care could be adversely affected by processing delays.

Response: The Commission appreciates the comments and recognizes that DFPS will require additional resources to assist in the implementation of the new rules. As mentioned previously, the Commission will continue to work with DFPS to help that agency meet its resource needs in order for it to conduct the background checks in a timely manner. The Commission will provide guidance to the Boards regarding the implementation timeline for these rules. The implementation of the rules will be based on ensuring that DFPS has acquired the necessary resources to conduct the required background checks.

Comment: One commenter requested that the Commission and DFPS develop a way to report to the Boards when relative providers have lost their listed status. Another commenter requested that the Commission modify the existing child care automated systems to include the date the relative provider was listed with DFPS and the date the listing expired. The commenter requested that the automated system include a report that will enable the Board to see when the listing is scheduled to expire.

Response: The Commission agrees with the comment. The Commission will work closely with DFPS to ensure that up-to-date information related to relative providers' listing status is provided to the Boards and the Boards' child care contractors on a regular basis. Additionally, the Commission will modify its child care automated systems to include the requested information and report.

Comment: Two commenters suggested that the Commission revise the definition of a relative in order to allow for relative providers in blended families, where two or more children have different noncustodial parents. Although not specifically mentioned in the rules, the definition of a relative provider in §809.2(18) defines a relative provider as an individual who is related to the child by marriage, blood relationship, or court decree. The commenters pointed out that many custodial parents frequently have children by more than

one noncustodial parent. An example is if an unmarried mother has two children by different fathers, the rules would not allow the mother to place both children with one of the children's grandmothers. In this instance, if the mother chose relative care, she would have to select two relative providers.

The commenters requested that the Commission revise the definition of a relative so that an eligible relative provider must meet the criteria for at least one child. If a provider is an eligible relative for one child in the family, through blood relationship with his or her noncustodial parent, the commenters recommended that the relative be able to provide care for that child's sibling too, even if not technically an eligible relative to the sibling. One of the commenters requested that the Commission add "in loco parentis" to the definition of relative provider. The commenters stated that this would greatly simplify the child care process for the single parent, if all children can be taken to the same provider, instead of possibly a different provider for each child.

Response: The Commission appreciates the comment and the desire to simplify the child care process as well as to keep half-siblings together in one care setting. However, as indicated in the comment, §809.2(18)—the definition of a relative child care provider—is not part of the rule amendments issued for public comment. Therefore, the Commission cannot address changes to that section. The Commission will research the applicable CCDF regulations and state law governing caregivers who are not related to the child by blood, marriage, or court order. The Commission will report the findings and provide guidance to the Boards on this issue.

COMMENTS WERE RECEIVED FROM:

Diana Spiser, Assistant Commissioner for Child Care Licensing, DFPS
Susan Ashmore, Director of Child Care Services, Alamo Workforce Development Board
Lizzy Bosell, Permian Basin Workforce Development Board
Joyce Sneed, Child Care Services Contractor Manager, Concho Valley Workforce Development Board
Susan Thomas, Rural Child Care Coordinator, Alamo Area Council of Governments
Susan Hoff, President, Child Care Group

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 the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

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

SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE

§809.91. Minimum Requirements for Providers

- (a) A Board shall ensure that child care subsidies are paid only to:
 - (1) regulated child care providers as described in §809.2(17);
 - (2) relative child care providers as described in §809.2(18), subject to the requirements in subsections (e) and (f) of this section; or
 - (3) at the Board option, listed family homes as defined in §809.2(12), subject to the requirements in paragraph subsection (b)(2) of this section.
- (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 C.F.R. §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 Provider Certification, a Board or the Board's child care contractor shall not place requirements on regulated providers that:
 - (1) exceed the state licensing requirements stipulated in Texas Human Resources Code, Chapter 42; or
 - (2) have the effect of monitoring the provider for compliance with state licensing requirements stipulated in Texas Human Resources Code, Chapter 42.
- (d) When a Board or the Board's child care contractor, in the course of fulfilling its responsibilities, gains knowledge of any possible violation regarding regulatory standards, the Board or its child care contractor shall report the information to the appropriate regulatory agency.
- (e) Relative child care providers shall not reside in the same household as the eligible child unless:
 - (1) the eligible child is a child of a teen parent; or
 - (2) the Board's child care contractor determines and documents that other child care provider arrangements are not reasonably available. Factors used to determine the reasonable availability of child care may include, but are not limited to:
 - (A) the parent's work schedule;
 - (B) the availability of adequate transportation; or
 - (C) the age of the child.

~~(f) An individual appearing on the Texas Department of Public Safety's Sex Offender Registry, pursuant to Chapter 62 of the Texas Code of Criminal Procedure, shall not be eligible to be a relative child care provider.~~

(f) ~~To~~ For relative child care providers to be eligible for reimbursement for Commission-funded child care services, the following applies:

(1) Relative child care providers caring for a child in the relative's own residence shall list with DFPS; however, pursuant to 45 C.F.R. §98.41(e), relative child care providers listed with DFPS shall be exempt from the health and safety requirements of 45 C.F.R. §98.41(a);

(2) For relative child care providers caring for a child in the child's own residence, Boards shall ensure that the relative child care provider does not appear on the Texas Department of Public Safety's Sex Offender Registry, pursuant to Chapter 62 of the Texas Code of Criminal Procedure.