

## **Chapter 809. CHILD CARE AND DEVELOPMENT**

### **Subchapter A. GENERAL PROVISIONS**

#### **40 TAC §809.1**

The Texas Workforce Commission (Commission) proposes an amendment to §809.1, concerning child care services. Concurrent with this amendment is the withdrawal of the amendment to §809.1 as proposed in the September 24, 1999, issue of the *Texas Register* (24 TexReg 8145).

The purpose of the amendment is to modify the language in §809.1(c) to incorporate an implementation date of December 1, 1999 for §809.62(a)(1). The Commission's intent is that the new implementation date provides the local workforce development boards (boards) and their respective child care contractors (contractors) with the necessary time to fully implement the automation systems and related programmatic changes necessary to facilitate payments directly to self-arranged providers.

**Background.** On February 11, 1999, the Commission published the adopted child care rules in the *Texas Register* (24 TexReg 826). Specifically, §809.1 provided that the boards would be required to implement the new rules on September 1, 1999. The Child Care Development Fund (CCDF) regulations require that parents have the ability to select self-arranged providers pursuant to 45 CFR 98.30. The Commission firmly believes in parents exercising parental choice among the full range of child care providers, including self-arranged child care providers, and parent responsibility in the selection. Self-arranged providers are of two types: (1) certain relatives: grandparents, great-grandparents, aunts and uncles, and siblings if the sibling is over 18 and does not reside in the residence of the child and (2) certain entities: typically licensed centers and registered family homes that, in the past, chose not to engage in a contract directly with the contractor for the delivery of child care services, but chose to be paid directly by the parents. The self-arranged providers are typically sought by parents to meet the need for nontraditional hours of child care, including weekends, evenings and night shifts. The self-arranged providers are also typically sought by parents in rural or remote locations. In an effort to reduce fraud, the Commission adopted a change to the payment method for self-arranged care. In the past, parents were paid directly for the self-arranged care and the parents were charged with making the payment to the self-arranged providers for the child care services rendered. Effective February 11, 1999 for implementation on September 1, 1999, boards and contractors are required to pay all providers of child care directly, including self-arranged providers. Several boards and contractors have requested additional time to fully implement the automation and programmatic changes necessary to pay self-arranged providers directly as specified in §809.62(a)(1) for several reasons. As an example, one contractor in one board area has indicated that more than 1,400 self-arranged providers and 3,100 self-arranged children are impacted in that area alone. The boards and contractors also have indicated that it is anticipated that some families and providers will choose to stop utilizing self-arrangement because of concerns over the payment method. For these reasons, several contractors and boards expressed that they are not able to fully implement the necessary automation changes by September 1, 1999.

The boards are challenged with implementing extensive integration, automation, and program design changes that are needed. The boards have demonstrated good faith efforts in moving forward to design the seamless workforce delivery system to address the needs of working families. The Commission understands that all boards do not have the systems in place to implement this provision. The Commission believes that the requested short-term extension is necessary for the undisrupted and continuous delivery of child care services. If the September 1, 1999 implementation date is not modified, this situation could result in a disruption of services because there would be no authorized method of paying for services. In turn, parents engaged in employment would be forced to leave employment to care for their children or leave their children unsupervised or in unregulated or unsafe care situations in order to maintain employment. The endangerment of the children in unsupervised or unsafe care arrangements would present an imminent peril to the children of the state. For this reason, the amendment is necessary to authorize a method of paying providers. Without the amendment the breakdown in service delivery would present an imminent peril to the public health, safety or welfare of the children of the state.

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

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

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

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

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

There are no probable economic costs to persons required to comply with the rule as amended.

Mr. Townsend also determined that there is no anticipated adverse impact on small businesses as a result of enforcing or administering the amendment because the extension in time would not require small businesses to do anything in addition to the current requirements.

Jean Mitchell, Director of Workforce Development, has determined that for each year of the first five years that the amendment will be in effect, the public benefit expected as a result of the adoption of the amendment is that the amendment will help ensure that eligible children living below or near the poverty level have increased access to child care funding and that parent choice is supported for parents selecting child care providers for their children. Mark Hughes, Director of Labor Market Information, has determined that, while the proposed rule could affect private sector or public sector employment under certain circumstances, there is no significant negative impact upon employment conditions in this state as a result of the proposed section.

Comments on the proposal may be submitted to Gary Frederick, Texas Workforce Commission Building, 101 East 15th Street, Room 434T, Austin, Texas 78778, (512) 305-9672. Comments may also be submitted via fax to (512) 463-7379 or e-mailed to: Gary.Frederick@twc.state.tx.us. Comments must be received by the Commission within 30 days from the date of the publication in the Texas Register .

The amendment is proposed under Texas Labor Code, §301.061 and §302.021, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission programs.

The amendment affects Texas Labor Code Title 4, particularly Chapters 301 and 302.

*§809.1.Short Title and Purpose.*

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

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

(c) The effective date of the rules in this Chapter 809 relating to Child Care and Development shall be twenty days after the date of filing the adoption in the Office of the Secretary of State; however, until September 1, 1999, the Boards shall continue to comply with the rules in effect on January 1, 1999 with the following exception. If a Board is unable to implement the provisions of §809.62(a)(1) by September 1, 1999, due to inability to complete automation or programmatic changes as needed, the Board shall implement the provisions of §809.62(a)(1) as soon thereafter as possible but not later than December 1, 1999. Pending implementation of §809.62(a)(1), not later than December 1, 1999, the Board may continue to make payments for child care services directly to eligible parents who choose to self-arrange child care.

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

Filed with the Office of the Secretary of State, on October 22, 1999.

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Earliest possible date of adoption: December 5, 1999

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