

CHAPTER 809. CHILD CARE SERVICES

PROPOSED 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 **APRIL 29, 2008**, THE TEXAS WORKFORCE COMMISSION PROPOSED THE BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated Publication Date of the Proposal in the *Texas Register*: **May 16, 2008**
Estimated End of Comment Period: **June 16, 2008**

The Texas Workforce Commission (Commission) proposes the following new sections to Chapter 809, relating to Child Care Services:

Subchapter C. Eligibility for Child Care Services, §809.50 and §809.51

The Commission proposes amendments to the following sections of Chapter 809, relating to Child Care Services:

Subchapter B. General Management, §809.13, §809.19, and §809.20

Subchapter C. Eligibility for Child Care Services, §809.43, §809.44, §809.46, and §809.48

Subchapter D. Parent Rights and Responsibilities, §809.74 and §809.75

The Commission proposes the repeal of the following sections of Chapter 809, relating to Child Care Services:

Subchapter C. Eligibility for Child Care Services, §§809.50–809.52

- PART I. PURPOSE, BACKGROUND, AND AUTHORITY
- PART II. EXPLANATION OF INDIVIDUAL PROVISIONS
- PART III. IMPACT STATEMENTS
- PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The Commission proposes to amend Child Care Services rules, Chapter 809, to address:

- a legislatively mandated increase in reimbursement rates for child care providers that obtain Texas School Ready!TM certification (TSRC) or meet the Texas Rising Star Provider criteria;
- child care for a parent's extended temporary medical incapacitation or temporary cessation of work, education, or training; and
- continued eligibility for wraparound child care—i.e., care provided before and after a child care program's designated hours—for children who are receiving Commission-funded child care and are enrolled in Head Start, public prekindergarten (pre-K), or a school-readiness integration program.

The Commission also proposes to make several technical corrections and clarifications to Chapter 809 by:

- changing incorrect citations;
- using common phrases and language throughout the rules; and
- providing clarifying language that aligns the rules with Commission intent and current practice.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(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 B. GENERAL MANAGEMENT

The Commission proposes the following amendments to Subchapter B:

§809.13. Board Policies for Child Care Services

Section 809.13, relating to Local Workforce Development Board (Board) policies for child care services, requires Boards to:

- conduct fraud fact-finding; and
- establish policies regarding personal responsibility agreement (PRA) sanctions.

Section 809.13(d)(7) changes the reference from §§809.48, 809.50, and 809.51 to §809.48 and §809.50 to reflect the correct provisions setting forth the minimum activity requirements for parents.

Section 809.13(d)(11) changes the reference from §809.71(b)(2) to §809.71(3) to reflect the correct provision for transferring a child from one provider to another.

Section 809.13(d)(13) changes the reference from §809.92(b)(3) to §809.92(b)(4) to reflect the correct provision for attendance standards and procedures.

Section 809.13(d)(15) is amended to clarify that Boards are required to develop procedures for fraud fact-finding—not to investigate fraud—by replacing the term "investigating" with the term "fact-finding" to reflect the language used in §809.111. This change also aligns with current practices and principles from the January 2007 rule amendment, which states that it is the Commission's responsibility—not the Boards' responsibility—to determine if a person has committed fraud, and it is the Boards' role to research facts, not to investigate whether fraud has occurred. This policy is contained in WD Letter 59-06, Change 1, issued February 2, 2007, and entitled "Requirements for Reporting, Fact-Finding, and Prosecution of Fraud, Waste, Theft, and Program Abuse Cases, and Collection of Overpayments: *Update*."

New §809.13(d)(16) requires Boards to establish policies regarding sanctions imposed when a parent fails to comply with the provisions of the PRA as referenced in §809.76(c). Because a Board has the flexibility to terminate child care when a parent fails to comply with the provisions of the PRA, this sanction policy could affect the provision of workforce services and, therefore, as required by Commission rule §801.51(f) and as detailed in WD Letter 10-07, issued February

2, 2007, and entitled "Adoption of Local Workforce Development Board Policies in Open Meetings," Board members must adopt such policies in an open meeting.

New §809.13(d)(17) requires Boards to establish a policy concerning continued child care for children enrolled in Head Start, Early Head Start, or a public pre-K program as provided in §809.50(g). The decision to allow continued child care for children enrolled in early education programs is left with the Boards based on local workforce needs and circumstances. To facilitate local public input regarding this decision, Board members must adopt such policies in an open meeting as required by Commission rule §801.51(f) and as detailed in WD Letter 10-07.

§809.19. Assessing the Parent Share of Cost

Section 809.19(a)(2)(C) is amended to allow parents who have children receiving protective services child care pursuant to §809.49 and §809.54(c)(1), to be exempt from the parent share of cost—unless the Texas Department of Family and Protective Services (DFPS) authorizes a parent share of cost.

This subparagraph clarifies that a parent's exemption from the parent share of cost is applicable when a child's eligibility for child care is determined by DFPS for a child currently or formerly receiving protective services. The exemption from the parent share of cost applies to children receiving DFPS protective services as well as children formerly receiving protective services for whom DFPS has determined that child care is integral to that service need as provided by §809.54(c)(1). The current rule language does not specify that a parent of a child who formerly received protective services is exempt, but it is current practice and the intent of the Commission.

§809.20. Maximum Provider Reimbursement Rates

Section 809.20(b) replaces the term "graduated" reimbursement rates with the term "enhanced" reimbursement rates to describe the minimum five percent increase in rates for certain providers. The term enhanced is intended to mean higher. Enhanced rates may also be graduated, but this is not a requirement. Use of the term enhanced aligns with language used in Article IX, §19.111 of the General Appropriations Act, 80th Texas Legislature, Regular Session (2007), which requires the enhancement of reimbursement rates for child care providers that obtain certification under the TSRC system or meet Texas Rising Star Provider criteria.

New §809.20(b)(3) requires Boards to establish enhanced reimbursement rates for child care providers that obtain certification under the TSRC system. This new paragraph implements the direction of the Texas Legislature as provided in Article IX, §19.111 of the General Appropriations Act, 80th Texas Legislature, Regular Session (2007).

The Commission emphasizes that although Boards must establish enhanced reimbursement rates for infants, toddlers, and preschool children attending a certified Texas School Ready![™] facility, Boards have the flexibility to establish enhanced reimbursement rates for school-age children enrolled in such facilities.

However, an enhanced reimbursement rate must be applied to all age groups and classrooms for Texas Rising Star Providers and child care providers participating in a Texas Early Education

Model (TEEM) school readiness integration project developed by the State Center for Early Childhood Development at the University of Texas Health Science Center (State Center). School-age children or other TWC-subsidized children in the TEEM facility are not excluded from the enhanced reimbursement rates.

SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES

The Commission proposes the following amendments to Subchapter C:

§809.43. Priority for Child Care Services

Section 809.43(a)(2)(B) clarifies that a child is included in the second priority group if the parent is a qualified veteran "or qualified spouse." The phrase "or qualified spouse" is added to align with the definition in §801.23 of the Commission's Local Workforce Development Boards rules.

§809.44. Calculating Family Income

Section 809.44 clarifies that income sources listed are used for determining both eligibility and parent share of cost. The section also states that family income does not include any income sources specifically excluded by federal law or regulation.

Section 809.44(a) adds the phrase "and the parent share of cost" to make the list of income items also applicable to determining parent share of cost. This change aligns with Boards' longstanding practice of using the income inclusions and exclusions both for determining eligibility and for determining parent share of cost.

New §809.44(b)(11) adds a comprehensive exclusion to cover any income sources specifically excluded by federal law or regulation. Allowing a comprehensive exclusion for family income sources that are specifically excluded by federal law or regulation forgoes the need for a Commission rule change any time federal legislation or regulation is amended to exclude a specific income source from being counted toward eligibility for a federally funded program.

§809.46. Temporary Assistance for Needy Families Applicant Child Care

Section 809.46(c) changes the reference from §§809.50–809.52 to §809.50 resulting from the repeal of §§809.50–809.52 and the proposal of new §809.50.

Section 809.46(e) changes the reference from §§809.50–809.52 to §809.50 resulting from the repeal of §§809.50–809.52 and the proposal of new §809.50.

§809.48. Transitional Child Care

Section 809.48 is amended to incorporate the allowable reduction of work and education requirements for At-Risk child care into Transitional child care.

Section 809.48(b) replaces the phrase "children in families at risk of becoming dependent on public assistance" with "At-Risk child care" as set forth in new §809.50.

New §809.48(f) allows a Board to reduce the work, education, and job training activity requirements 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 the activities for the required hours per week.

New §809.48(g) specifies the education credit-hour equivalences for meeting the required education activity hours per week, specifically:

—§809.48(g)(1) states that each credit hour of postsecondary education counts as three hours of education activity per week; and

—§809.48(g)(2) states that each credit hour of a condensed postsecondary education course counts as six hours of education activity per week.

§809.50. Child Care for Children Living at Low Incomes

Section 809.50 is repealed and the common provisions of §§809.50–809.52 are consolidated into new §809.50, At-Risk Child Care.

§809.51. Child Care for Children with Disabilities

Section 809.51 is repealed and the common provisions of §§809.50–809.52 are consolidated into new §809.50, At-Risk Child Care.

§809.52. Child Care for Children of Teen Parents

Section 809.52 is repealed and the common provisions of §§809.50–809.52 are consolidated into new §809.50, At-Risk Child Care.

§809.50. At-Risk Child Care

New §809.50 consolidates and streamlines the rule language contained in repealed §§809.50–809.52 by combining similar provisions into one section rather than three.

New §809.50 also addresses eligibility for wraparound child care—i.e., child care provided before and after a child care provider's designated hours—for children who are receiving Commission-funded child care and enrolled in Head Start, public pre-K, or a school-readiness integration program.

Regarding wraparound child care for children receiving Commission-funded child care and who are enrolled in Head Start, which includes Early Head Start or public pre-K, the Texas Legislature—as provided in Texas Human Resources Code §72.003, Texas Government Code §2308.3165, and Texas Education Code, Chapter 29—has placed increased emphasis on local coordination among early childhood education programs in order to support integration across these programs. The continued provision of child care services assists in the extension of early childhood education program hours to full day and full year.

However, the varying eligibility periods among Commission-funded child care services, Head Start, and public pre-K have been identified as barriers that may prevent a child in Commission-funded child care from completing a Head Start or public pre-K program during the school year. Head Start and public pre-K eligibility are determined prior to the school or program year. Children are deemed eligible to remain in these programs regardless of changes in a family's work or income status. However, children in Commission-funded child care who are receiving wraparound care while enrolled in a Head Start or public pre-K program lose eligibility for

Commission-funded child care during the school year when a family's income or work hours change. These early education programs have identified the Child Care and Development Fund (CCDF) eligibility period as a barrier to a child's ability to continue participating in the early education program.

The Commission proposes this amendment with the intent of removing this barrier and to further the intent of the Texas Legislature in Texas Human Resources Code §72.003, Texas Government Code §2308.3165, and Texas Education Code, Chapter 29.

New §809.50(a) establishes the eligibility requirements for At-Risk child care. Section 809.50(a)(1) sets income limits—as established by the Board, and §809.50(a)(2) sets forth the work, education, and job training requirements for a parent to be determined eligible for child care.

New §809.50(b) allows Boards to reduce the work, education, and job training activity requirements 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 the activities for the required hours per week.

New §809.50(c) specifies the education credit hour equivalences for meeting the required education activity hours per week and states that teen parents attending high school or the equivalent shall be considered as meeting the education requirements.

New §809.50(d) states that when calculating income eligibility for a child with disabilities, a Board must deduct the cost of the child's ongoing medical expenses from the family income.

New §809.50(e) allows Boards to establish a higher income eligibility limit for teen parents than those specified in §809.41(a)(2)(A).

New §809.50(f) states that a teen parent's income is based solely on the teen parent's income and size of the teen's family as defined in §809.2(8).

New §809.50(g) states that a child receiving child care services under the Board's initial eligibility requirements in §809.41(a)(2)(A) who is enrolled in Head Start, Early Head Start, or public pre-K is eligible to continue receiving child care until the end of the school year as long as:

- the family's income does not exceed 85% of the state median income (SMI) for a family of the same size;
- child care is required for the parent to work or attend a job training or educational program for a minimum of 25 hours per week for a single-parent family or 50 hours per week for a two-parent family; and
- the parents continue to comply with the parent responsibilities described in Subchapter D.

Allowing child care to continue for a child enrolled in Head Start, Early Head Start, or public pre-K assists in the availability of full-day child care pursuant to §809.14(b). The continuation of child care under these provisions is allowed on the basis of the child meeting the federal

requirements described in §809.42(c)(2) as long as the parent is able to meet the Board's initial eligibility requirements. With the federal requirements establishing the eligibility income limit at 85% SMI, this rule only affects Boards whose initial income limits are below 85% SMI and whose work requirements are set higher than those set forth in §809.50(a)(2).

§809.51. Child Care during Temporary Interruptions in Work, Education, or Training

New §809.51 addresses child care during a parent's:

- extended temporary medical incapacitation; and
- temporary cessation of work, education, or job training activities.

Extended temporary medical incapacitation and temporary cessation of work, education, or training are not addressed in current rules. In both circumstances, a parent remains employed, in school, or in training but is temporarily unable to meet the weekly work or attendance hour requirements, thereby causing the parent to become ineligible for child care.

New §809.51(a) applies to the temporary cessation of work, education, or job training activities. This situation may occur when an individual remains employed but is temporarily not working, such as with public school employees and students who may no longer be meeting the hourly work, education, or job training requirements during semester or summer breaks. Section 809.51(a) states that if a parent has a temporary cessation of work, education, or job training activities and is unable to meet the requirements described in §809.50(a)(2), child care may be suspended for no more than 90 calendar days from the documented effective date of the cessation of these activities. During the suspension of child care based on the temporary cessation of work, the parent will not be receiving subsidized child care, but the parent will also not be required to reapply for child care services or be subject to the child care waiting list when they return to their work, education or job training activities pursuant to their work and attendance hour requirements described in §809.50(a)(2).

New §809.51(b) applies to temporary medical incapacitation. This situation may result from a health impairment that necessitates an employed parent, or a parent in education or job training, to have an extended temporary cessation or reduction in work or attendance hours causing them to be unable to meet the requirements described in §809.50(a)(2). The parent remains employed, in school or in training, but cannot work, attend school or training for an extended period of time, though the parent intends to return to their employment, education or job training following their temporary incapacitation. Section 809.51(b) states that if a parent has a documented temporary medical incapacitation and is unable to meet the work, education, or job training requirements described in §809.50(a)(2), the following shall apply:

- Child care may be allowed to continue for no more than 30 calendar days from the documented effective date of the temporary medical incapacitation; and
- Child care may be suspended for no more than 60 calendar days after the end of the 30-day calendar period following the documented temporary medical incapacitation.

The following new provisions apply to both the temporary cessation of work, education, or job training activities and medical incapacitation:

New §809.51(c) states that upon the parent's return to work, education, or job training activities, a Board is not required to resume child care at the same provider used prior to the documented temporary cessation of these activities or medical incapacitation. The Commission believes that requiring the provider to hold the slot open for the child places an undue financial burden on the child care provider. Additionally, the parent is not required to reapply for child care services or return to the child care wait list.

New §809.51(d) states that prior to any suspension of child care a parent must provide documentation from the employer, educational institution, or training provider stating that the parent will be returning to work, education, or job training activities following the temporary cessation of these activities or medical incapacitation. Even if a parent becomes incapacitated because of a sudden illness or medical emergency, the 30-day maximum period where child care services may continue allows the parent adequate time to provide the documentation. The Board may determine what is considered acceptable documentation which for example could include registration documents or a signed note from the school indicating that the parent will be returning after the break.

SUBCHAPTER D. PARENT RIGHTS AND RESPONSIBILITIES

The Commission proposes the following amendments to Subchapter D:

§809.74. Parent Appeal Rights

Section 809.74(a) is amended to include Choices caseworkers and FSE&T caseworkers and to add the suspension of child care as an action for which a parent has the right to request a hearing pursuant to Chapter 823 of the Commission's rules. The Commission believes the suspension of care as described under new §809.51 is an adverse action, pursuant to 823.2(2), similar to the currently appealable denial, delay, termination or reduction in child care services and, therefore, it is eligible for appeal by the parent. However, as described in the following section—§809.75(b)—child care must not continue during the appeal.

Sections 809.74(d) and (e) are removed because the information is contained in §809.74(a).

§809.75. Child Care during Appeal

Section 809.75(b)(7) removes the term "parent fees" and replaces it with the term "parent share of cost" to align with terminology used throughout this chapter.

New §809.75(b)(9) states that child care shall not continue during the appeal if the appeal is due to the suspension of child care services pursuant to §809.51 (related to Child Care during Temporary Interruptions in Work, Education, or Training). If for example the Board's child care contractor determines that the length of the suspension period for temporary work cessation or medical incapacitation should be 30 days rather than the maximum allowable 60 or 90 days, parents may appeal the length of the suspension period. However, because child care services will be suspended for only a limited amount of time with the understanding that services will continue following the brief suspension period, allowing child care to continue during any appeal would essentially nullify the suspension period.

PART III. IMPACT STATEMENTS

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

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

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

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

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

There are no anticipated economic costs to persons required to comply with the rules.

There is no anticipated adverse economic impact on small or microbusinesses as a result of enforcing or administering the rules.

Economic Impact Statement and Regulatory Flexibility Analysis

The Agency has determined that the proposed rules will not have an adverse economic impact on small businesses as these proposed rules place no requirements on small businesses, including child care providers.

Mark Hughes, Director of Labor Market Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Laurence M. Jones, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to:

- meet the requirements of the 80th Texas Legislature regarding enhanced reimbursement rates for child care providers;
- allow greater flexibility for Boards to design child care services to meet the needs of the local workforce development area; and
- allow greater flexibility for parents to continue receiving child care services.

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

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission sought the involvement of Texas' 28 Boards. The Commission provided the concept paper regarding

these rule amendments to the Boards for consideration and review on December 18, 2007. The Commission also conducted a conference call with Board executive directors and Board staff on January 4, 2008, to discuss the concept paper. During the rulemaking process, the Commission considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

The rules are proposed 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 the Texas Human Resources Code §44.002, regarding Administrative Rules.

The proposed rules will 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 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 801 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~~who 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 ~~§§809.48, 809.50, and 809.51~~;
 - (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)
§809.71(b)(2);
- (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) ~~§809.92(b)(3)~~, 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); ~~and~~
- (15) procedures for ~~investigating 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); and
- (17) continued child care for children enrolled in Head Start, Early Head Start, or a public pre-kindergarten program pursuant to §809.50(g).

§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 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 FSE&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.
- (b) A Board shall establish enhanced ~~graduated~~ reimbursement rates for:
 - (1) child care providers participating in integrated school readiness models developed by the State Center; ~~and~~

- (2) Texas Rising Star Providers pursuant to Texas Government Code §2308.315; and
- (3) child care providers that obtain Texas School Ready!™ certification pursuant to Texas Education Code §29.161.
- (c) The minimum reimbursement rates established under subsection (b) of this section shall be at least five percent 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~~who 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 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 subsection (b) of this section.
- (e) The Board shall determine whether to reimburse providers ~~that~~who 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.

SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES

§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) FSE&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 teen parents as defined in §809.2; and
 - (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. 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.
- (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;
 - (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; ~~and~~
- (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; and;
- (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 ~~§§809.50–809.52~~, 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) 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 ~~§§809.50–809.52~~.

§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; or
 - (2) has been denied 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 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 ~~children in families at risk of becoming dependent on public assistance~~, provided that the higher income limit does not exceed 85% of the state median income for a family of the same size.
- (c) 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 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 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) To assist in the availability of full-day child care as referenced in §809.14(b), a child receiving child care services under the Board's initial eligibility requirements pursuant to §809.41(a)(2)(A) who is enrolled in Head Start, Early Head Start, or public pre-K may remain eligible to continue receiving child care services until the end of the program's enrollment period as long as:
 - (1) the family's income does not exceed 85% of the state median income for a family of the same size;
 - (2) child care is required for the parent to work or attend a job training or educational program for a minimum of 25 hours per week for a single-parent family or 50 hours per week for a two-parent family; and
 - (3) the parents continue to meet the requirements of Subchapter D (regarding Parent Rights and Responsibilities).

§809.51. Child Care during Temporary Interruptions in Work, Education, or Job Training

- (a) If a parent has a temporary cessation of work, education, or job training activities and is unable to meet the requirements described in §809.50(a)(2), child care may be suspended for no more than 90 calendar days from the documented effective date of the cessation of these activities.
- (b) If a parent has a documented temporary medical incapacitation and is unable to meet the work, education, or job training requirements described in §809.50(a)(2), the following shall apply:
 - (1) Child care may be allowed to continue for no more than 30 calendar days from the documented effective date of the temporary medical incapacitation; and
 - (2) Child care may be suspended for no more than 60 calendar days after the end of the 30-day calendar period following the documented temporary medical incapacitation, as described in subsection (b)(1) of this section.
- (c) Upon the parent's return to work, education, or job training activities, a Board is not required to resume child care at the same provider used prior to the documented temporary cessation of these activities or medical incapacitation.

(d) Prior to any suspension of child care as described in this section, a parent must provide documentation from the employer, educational institution, or training provider stating that the parent will be returning to work, school, or job training activities following the temporary cessation of these activities or medical incapacitation.

~~§809.50. Child Care for Children Living at Low Incomes~~

~~(a) A child with disabilities is eligible for child care services if:~~

- ~~(1) the family income does not exceed the income limit established by the Board provided that the income limit does not exceed 85% of the state median income for a family of the same size; and~~
- ~~(2) child care is required for the parent to work or attend a job training or educational program for 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 a Board.~~

~~(b) A Board may allow a reduction to the requirement in subsection (a)(2) of this section if the need to care for a child with disabilities prevents the parent from participating in the activities for the required hours per week.~~

~~(c) For purposes of meeting the education requirements stipulated in subsection (a)(2) of this section, each credit hour of postsecondary education will count as three hours of education activity per week and each credit hour of a postsecondary education condensed course will count as six education activity hours per week.~~

~~§809.51. Child Care for Children with Disabilities~~

~~(a) A child with disabilities is eligible for child care services if:~~

~~(1) the child resides with a family whose income, after deducting the cost of the child's ongoing medical expenses, does not exceed the income limit established by the Board; and~~

~~(2) child care is required for the child's parents to work or attend a job training or educational program for 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 a Board.~~

~~(b) — A Board may allow a reduction to the requirements in subsection (a)(2) of this section if the need to care for a child with disabilities prevents the parent from participating in the activities for the required hours per week.~~

~~(c) — For purposes of meeting the education requirements stipulated in subsection (b)(2) of this section, each credit hour of postsecondary education will count as three~~

~~hours of education activity per week and each credit hour of a postsecondary education condensed course will count as six education activity hours per week.~~

~~§809.52. Child Care for Children of Teen Parents~~

~~(a) A child of a teen parent may be eligible for child care if:~~

~~(1) — the teen parent needs child care services to complete high school or the equivalent; and~~

~~(2) — the teen parent's family income does not exceed the income eligibility limit established by the Board. Boards may establish a higher income eligibility limit for teen parents provided that the higher income limit does not exceed 85% of the state median income for a family of the same size.~~

~~(b) The 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).~~

SUBCHAPTER D. PARENT RIGHTS AND RESPONSIBILITIES

§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 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.

~~(d) If the parent's eligibility or child's enrollment is denied, delayed, reduced, or terminated by a Choices caseworker, the parent may appeal pursuant to Chapter 823 of this title.~~

~~(e) If the parent's eligibility or child's enrollment is denied, delayed, reduced, or terminated by an FSE&T caseworker, the parent may appeal pursuant to Chapter 823 of this title.~~

§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~~per~~; ~~or~~

(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).

(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.