

## **40 TAC Chapter 811. Choices Rules**

### **ADOPTED RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*. THIS DOCUMENT WILL NOT HAVE ANY SUBSTANTIVE CHANGES BUT IS SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE *TEXAS REGISTER*.**

The Texas Workforce Commission (Commission) adopts the following repeal of rules regarding Chapter 811 Choices Rules without changes to the proposed text as published in the February 22, 2002 issue of the *Texas Register* (27 TexReg 1293):

in Subchapter A. General Provisions, §§811.1-811.4;  
in Subchapter B. Access to Choices Services, §§811.11-811.14;  
in Subchapter C. Choices Services, §§811.21-811.37;  
in Subchapter D. Restrictions on Choices Services, §811.51;  
in Subchapter E. Support Services and Other Initiatives, §§811.61-811.67; and  
in Subchapter F. Appeals, §§811.71-811.72.

The Texas Workforce Commission (Commission) adopts the following new rules regarding Chapter 811 Choices Rules with changes to the proposed text in §§811.1-811.3, §§811.11-811.14, §§811.21-811.26, §811.28, §§811.41-811.46, §§811.47-811.52, §§811.61-811.67 and §811.71, as published in the February 22, 2002 issue of the *Texas Register* (27 TexReg 1293). The proposed text in §811.27, §811.29, and §§811.72-811.73 is adopted without changes and will not be republished.

The four purposes of Temporary Assistance to Needy Families (TANF) (42 U.S.C.A. §601(a)), are to:

- (1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
- (2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;
- (3) prevent and reduce the incidence of out-of-wedlock pregnancies; and
- (4) encourage the formation and maintenance of two-parent families.

The goal of Choices services is to end the dependence of needy families on public assistance by promoting work, job preparation, and marriage. A Local Workforce Development Board (Board) is provided the flexibility afforded in the final federal TANF regulations to engage in strategies that also promote the prevention and reduction of out-of-wedlock pregnancies and encourage the formation and maintenance of two-parent families if those strategies support the primary goals of Choices services, which are employment, job retention, and career advancement.

In light of these purposes and goals, the Commission intends that recipients, as well as applicants who are at risk of becoming dependent on public assistance or former recipients who have transitioned off of public assistance, be provided Choices and other services available through

the One-Stop Service Delivery Network. More specifically, the changes to the Choices rules are adopted to meet the overarching philosophies and goals of Choices services that include the following:

providing Boards with maximum flexibility to address all purposes of TANF, while ensuring that services provided under purposes 3 and 4, as set forth in adopted §811.1, support the primary goal of promoting employment, job retention and career advancement;

clearly stating the responsibilities of Boards in planning for and managing Choices services including setting forth a Board's responsibilities related to assessment, development of family employment plans, and the delivery of services to individuals;

improving linkages between employer needs and individuals who participate in Choices services;

continuing the focus on the work first design;

linking individuals with comprehensive services available through the One-Stop Service Delivery Network;

clearly stating individual responsibilities;

addressing barriers that limit an individual's ability to work or participate;

describing allowable activities;

clarifying the application of good cause; and

emphasizing the provision of post-employment services to promote job retention and career advancement.

Choices services help cash assistance applicants and recipients transition from welfare to work and assist former recipients in retaining employment and working towards self-sufficiency using the work first design. The work first design provides applicants and recipients with an immediate connection to the local labor market by identifying available job opportunities based on local employer needs. This immediate attachment to the labor force emphasizes the importance of work and a recipient's personal responsibility to participate in work activities that enable the family to move towards self-sufficiency. The work first design also emphasizes post-employment, employer-driven education and training services to increase individuals' skills and encourage career advancement.

On March 31, 2002, the Texas welfare waiver expired. As of April 1, 2002, Texas operates under provisions of the federal welfare reform law not modified by state law or rule. Under federal law, Texas will have more recipients with a work requirement. In addition, the federal welfare reform law specifies allowable activities and limitations on such work requirements.

Because of the number of format and organizational changes to the Choices rules, the rules are being repealed and replaced with new sections. Following is a more detailed explanation of the changes to each rule.

In general, the rules are directed at Boards, in part because the Commission contracts with Boards and Boards are responsible for passing down requirements to their service providers. Boards contract directly with service providers, not the Commission.

New §811.1 sets forth the purpose and goal of Choices services. This section includes the same provisions contained in repealed §811.1 and adds new provisions in subsection (c) that emphasize the responsibility of Boards to comply with the TANF State Plan. In addition, a new subsection (d) is added that requires Boards to design Choices services based on local employer needs. This subsection was contained in current §811.11 that is being repealed. Several provisions contained in § 811.11 specific to the Choices services merely repeat requirements generally applicable to other Board-administered services and activities. Specifically, the basic provisions continue to apply regarding Board flexibility, referenced in Chapter 800, Board planning; referenced in §801.3, monitoring responsibilities; referenced in Chapter 800, Subchapters H and I; and sanctions provisions referenced in Chapter 800, Subchapter E.

New §811.2 sets forth the definitions relating to Choices services. This section includes the same provisions contained in repealed §811.2 with changes to several terms to update and consolidate information consistent with the federal regulations, new state law and for consistency and clarification. The following terms are added: Texas Department of Human Services (TDHS), Exempt Recipient, Mandatory Recipient, Personal Responsibility and Work Opportunities Reconciliation Act (PRWORA), and Work Ready. Modifications were made to the definitions of Choices Individual, Earned Income Deduction (EID), and temporary cash assistance. The definition for temporary assistance was deleted to eliminate redundancy. The terms individual, applicant, recipient, and former recipient were reviewed for appropriateness and, in some places, modified to describe the applicable populations.

New §811.3 sets forth the Choices service strategy provisions related to Choices services. This section includes some of the same provisions contained in repealed §811.4 with significant changes to expand upon the provisions relating to the work first design, post-employment services (job retention, career advancement, and reemployment services), provisions relating to individuals with disabilities, and the local-level Memorandum of Understanding (MOU) for coordinated case management with TDHS. The work first design ensures that individuals are connected with employment at the earliest possible opportunity and provided with employer-driven education and training and other necessary post-employment services to facilitate job retention and career advancement.

**New Subchapter B sets forth provisions relating to Choices Services. The title of the Subchapter is repealed and adopted as "Choices Services."**

New §811.11 sets forth Board responsibilities related to Choices services. This section includes some of the same provisions contained in repealed §811.11, with changes to clarify that hours of participation are tracked and reported as "actual" hours. The changes also clarify that documentation and record keeping shall be available to support information entered into The Workforce Information System of Texas (TWIST). TWIST is the automated system used to track client participation in Choices activities.

New §811.12 sets forth the applicant responsibilities provisions relating to Choices services. The provisions contain the same language as set forth in repealed §811.12 with the only change being to add an acronym, WOA, for Workforce Orientation for Applicants.

New §811.13 sets forth the recipient responsibilities provisions relating to Choices services. The provisions contain the same language as set forth in repealed §811.13 with the following changes. The new language adds a clarification of a Board's role with respect to ensuring that recipients are required to comply with Choices services requirements. In addition, the section clarifies the participation requirements for single-parent and two-parent families as specified in federal statute and regulations.

New §811.14 sets forth conditions under which good cause must be determined, reevaluated, and extended. The Commission provides Boards with the maximum flexibility available under federal law and regulations to determine what may constitute good cause if a mandatory recipient fails to participate for a variety of reasons. Certain changes were made to the reasons why a mandatory participant may receive good cause, including: removing the exception for good cause for recipients who are incarcerated; clarifying good cause reasons for certain parents' inability to obtain needed child care; and including family crises or situations such as domestic violence, substance abuse, and mental health issues that may preclude participation.

**New Subchapter C sets forth the provisions relating to Choices Services. The purposes for the new rules are as follows.**

New §811.21, adds language to the general provisions to clarify the applicability of and a Board's responsibility for complying with the Fair Labor Standards Act (FLSA) related to Choices services. A clarification to the title of the "eligible training provider system" is included for consistency with the changes to Chapter 841 regarding the Workforce Investment Act (WIA). A clarification is added to emphasize the minimum levels of job development services to address the needs of recipients with mandatory family work requirements. The changes also make clear that Boards are required to make available job placement services.

In new §811.22, the provisions set forth and clarify the general requirements relating to the assessment of Choices individuals.

New §811.23, re-designates the "employability plan" as the "family employment plan" to emphasize the need to consider family circumstances that must be addressed to assist the Choices individual in obtaining and retaining employment. The section continues to focus on developing a family employment plan based on employers' needs in the local labor market. New language is added regarding the family employment plan to require Boards to provide certain information to persons who did not receive this information during the WOA. Information about services available through the One-Stop Service Delivery Network must be provided to assist job seekers in obtaining employment. This information must be provided prior to the development of the family employment plan. New language is also included to specify how required participation hours are to be distributed between the adults in two-parent families.

In new §811.24, requirements are outlined for the Family Work Requirement form for two-parent families. The purpose of the form is to document the agreement by both adults in the two-parent family to comply with family work requirements through distribution of required hours of participation between one or both adults in the two-parent family.

New §811.25 sets forth the TANF core and non-core activities provisions. The provision also sets forth the participation hours for single-parent and two-parent families. The required

participation hours are consistent with federal regulation.

New §811.26 sets forth the special provisions for core and non-core activities, which include a new provision requiring certain recipients who are not employed or engaged in work activities after four weeks of participation in Choices activities to participate in community service. This requirement provides recipients with valuable skills necessary to enter the labor market. The community service requirement may also create an incentive to enter the labor market. Also included are descriptions of the restrictions regarding Choices activities and a clarification that recipients shall only be enrolled in core and non-core activities for which all or part of the hours in the activities are contributing to the family work requirement. Specific restrictions include: a limit of six weeks for job search in a federal fiscal year, of which no more than four weeks may be consecutive; a twelve-month cumulative limit on vocational educational training; and a limitation of 30 percent of a Board's numerator derived from recipients participating in vocational educational training and teen heads of household participating in educational activities. The Commission recognizes that Boards may utilize other funding sources to provide for extended job search past six weeks for those recipients who may need additional assistance in securing employment.

New §811.27 sets forth special provisions for teen heads of household to reflect the participation requirements outlined for teen heads of household who have not completed secondary school or received a certificate of general equivalency.

New §811.28 sets forth the special provisions for recipients in single-parent families with children under age six to include new language that adds a section to emphasize the federal requirements that recipients in single-parent families with children under the age of six be notified of the penalty exception if child care services are unavailable. In addition, recipients in single-parent families with children under the age of six must participate an average of twenty hours per week.

New §811.29 sets forth special provisions for exempt recipients who voluntarily participate in Choices services. Boards are not required to provide services to these exempt recipients if they fail to meet work requirements.

#### **Subchapter D. Choices Work Activities. Subchapter D is repealed and renamed.**

New §§811.41-811.52 define Choices work activities.

New §811.41 sets forth the job search and job readiness assistance provisions. This section includes provisions previously contained in repealed §811.24 and §811.25. The new provisions combine the job search and job readiness assistance provisions into one activity consistent with federal regulations.

New §811.42 sets forth the unsubsidized employment provisions. This section includes provisions previously contained in repealed §811.26 and clarifies that self-employment assistance is included under the definition of unsubsidized employment.

New §811.43 sets forth the subsidized employment provisions. This section includes provisions previously contained in repealed §811.27. The new provisions provide examples of subsidized

employment; explain who may act as employer of record; and require a Board to set a policy establishing the amount of wages that are subsidized.

New §811.44 sets forth the on-the-job training provisions. This section includes provisions previously contained in repealed §811.30. The new provisions clarify that on-the-job training is provided to paid participants while engaged in productive work on the job; provide for reimbursement to employers for extraordinary costs of training and additional supervision related to the training; and limit the duration of the training as appropriate for the occupation and service strategy of the paid participant. The section also provides that unsubsidized employment after satisfactory completion of training is expected and prohibits Boards from contracting with employers who exhibit a pattern of failure to provide paid participants who receive on-the-job training with continued, long-term employment in a manner equal to that provided to regular employees.

New §811.45 sets forth the work experience provisions. This section includes the same provisions contained in repealed §811.32. The activity was renamed to be consistent with federal regulations. Additionally, nonprofit and public sectors were excluded as providers of work experience activities, because they are included as providers in §811.46.

New §811.46 sets forth the community service provisions. This section includes the same provisions contained in repealed §811.33 with added language to require that recipients be placed in community service activities.

New §811.47 sets forth the requirements for recipients who, as a core work activity, provide child care services to other recipients participating in community service. This section is a new provision as allowed under the federal regulations in 45 CFR §261.30(l). The Commission's intent is to ensure that only recipients who demonstrate personal responsibility in meeting Choices requirements receive Commission-funded child care in order to ensure the efficient and effective use of limited funds to assist families transitioning from welfare to work. The flexibility afforded in the federal regulations is passed to a Board with the requirement that, if a Board elects to allow this activity, then local policies are required to ensure the health, safety, and well-being of the children in care. The requirements also specify that limits on the maximum number of children in care must be specified by a Board and that the methodology and mechanism for recipients reporting hours of participation by providing child care shall also be incorporated.

New §811.48 sets forth the vocational educational training provisions. This section includes the same provisions contained in repealed §811.34. To encourage Boards to address the needs of individuals with disabilities, the Commission has added a new provision in subsection (b) to allow services by the Texas Rehabilitation Commission to be deemed as vocational educational training provided the services lead to employment, and deleted the word "and" to clarify that the core activity described is vocational educational training.

New §811.49 sets forth the job skills training provisions as a non-core activity. This section includes the same provisions contained in repealed §811.31. The new provisions clarify that job skills training includes Adult Basic Education (ABE), English-as-a-Second Language (ESL), and workforce adult literacy services.

New §811.50 sets forth allowable non-core educational services for recipients who have not completed secondary school or received a certificate of general equivalence. This section includes some of the provisions in repealed §811.36, with added language to incorporate provisions required under federal regulations. The new language clarifies that only recipients who have not completed secondary school or who have not received a certificate of general equivalence are eligible to receive educational services.

New §811.51 sets forth the post-employment services provisions. This section includes the same provisions contained in repealed §811.37. The activity was renamed, and clarifies that post-employment services may include job retention, career advancement, and reemployment. A new provision was added to clarify the length of time a former recipient may receive post-employment services.

New §811.52 sets forth the parenting skills training provisions. This section includes the same provisions contained in repealed §811.35 with added language to require that the determination of the need for parenting skills training be performed during the initial and ongoing assessments.

**Subchapter E relating to support services and other initiatives, includes changes to §§811.61, 811.62, 811.66 and 811.67.**

In new §§811.61-811.67, Choices support services are outlined. The Commission's intent in limiting certain support services is to ensure the effective and efficient use of funds. Definitions are provided for each support service and clarifications regarding those services are included.

In new § 811.61, language is added to clarify that subsidized support services shall only be provided to recipients who are meeting their Choices requirements. Support services are intended to assist Choices individuals who are engaged in allowable work activities that will lead to employment. A provision is added, however, to clarify that Boards shall provide, on a case-by-case basis, support services to a nonparticipating recipient if support services will enable him or her to comply with Choices requirements. A provision is also added to clarify that Boards must adopt policies to ensure that (1) support services are terminated immediately upon a determination that the recipient is not meeting participation requirements; (2) the Board's child care service provider is notified immediately of the nonparticipation; and (3) upon notification, the Board's child care service provider then immediately notifies the child care provider that services are terminating due to nonparticipation. The Commission's intent is to ensure that child care providers are paid for services delivered. A corresponding change is made to §809.92 in the Child Care and Development rules.

In new §811.62, language regarding child care for Choices individuals is substantially the same as the previous language and designed to cross-reference to the Child Care and Development rules contained in Chapter 809 of this title.

In new §§811.63-811.65 no changes were adopted. Those sections will continue to remain effective.

In new §811.66, Certificate of General Equivalence (GED) Testing Payments contains a technical correction by changing "are" to "is."

In new §811.67, language is changed to clarify that Choices individuals are not automatically eligible for Individual Development Accounts (IDAs), unless those individuals meet the requirements under the section. Other changes are merely for consistent reference to "IDAs," "TANF funds," and "TDHS."

**Subchapter F is changed to add new §811.73, which relates to Appeals to the Texas Department of Human Services, and is added as the location for rules relating to Appeals, which includes §811.71 and §811.72.**

In new §811.71, new language is added to clarify that (1) individuals against whom an adverse action is taken by a Texas Workforce Center Partner, or (2) a person who believes that a Choices individual has displaced the person from employment may request a review by a respective Board. In subsection (d), the term "person" is added to clarify that it applies to all types of appeals that fall under the section, including those referenced in new paragraph (a)(2). In subsection (e), the rule also includes the term "calendar" before days merely for clarification.

In new §811.72, the term "calendar" is added to days in subsection (b) for clarification.

New §811.73 clarifies that Boards shall provide necessary information about appeals related to the denial of benefits based on noncompliance with Choices requirements to the TDHS.

Additional background regarding Choices services. TDHS rules relating to employment services, contained in part in 40 TAC Chapter 3, include the following: requirements of applicants to attend WOAs and for recipients to participate in employment services; the exemptions from Choices requirements; and financial penalties applied to benefits resulting from noncompliance. Mandatory recipients, pursuant to the Personal Responsibility Agreement, are required to work or participate in Choices, the state's TANF employment services program. The Commission, where applicable, cross-references those rules for the purposes of continuity or clarity.

Although these Commission rules govern services available through the TANF block grant funds, individuals are eligible for and may receive services funded through other resources, including services available under the Welfare-to-Work Formula Grant. Boards have the jurisdiction and the authority to set local policies and determine Choices service delivery strategies and procedures, other One-Stop Service Delivery Network services and activities available in each local workforce development area, and the locations where services are available and delivered consistent with federal and state regulations, rules, and policies. One such federal requirement is that the funding for Workforce Investment Act services should be utilized only after other funding sources, including Choices funds, are exhausted.

Comments were received from the following seven Boards:

Capital Area Workforce Development Board,  
Coastal Bend Workforce Development Board,  
Concho Valley Workforce Development Board,  
Dallas County Workforce Development Board,  
Gulf Coast Workforce Development Board,  
Middle Rio Workforce Development Board, and  
North Central Workforce Development Board.

The following entities also commented: Welfare Law Center, Now Legal Defense and Education Fund, Child Care Law Center, Texas Welfare Reform Organization, and the Center for Public Policy Priority.

Some commenters were for the rules, some disagreed with the changes, and some made recommendations for changes to the proposed language. The comment summaries and responses are as follows:

Comment: Regarding §811.3, one commenter stated that the section requires that TANF recipients and applicants are informed of their individual and parental responsibilities, but does not define those parental responsibilities.

Response: The Commission has not provided a definition for what constitutes parental responsibilities, preferring instead to provide maximum local flexibility for implementation of Choices services. This information may include information on the Personal Responsibility Agreement signed by the Choices individual during the application process for temporary cash assistance, parenting skills training, immunizations, etc.

Comment: Regarding §811.3, one commenter supported the requirement that Boards ensure that MOUs are used to establish relationships with other agencies to serve individuals with disabilities but requested that Boards be required to contract with private, non-governmental organizations as well, when necessary, to ensure that the needs of individuals with disabilities are met.

Response: The Commission disagrees that an amendment is required to address the commenter's concern regarding services to individuals with disabilities. Section 811.3(c)(6) requires Boards to ensure that MOUs or other "contracts" be developed with private, non-governmental organizations. MOUs are required with appropriate agencies that may include private, non-governmental organizations.

Comment: Regarding §811.3, one commenter supported the requirement that Boards ensure that services to individuals with disabilities include reasonable accommodations to allow individuals to access and participate in services, but recommended deleting "where applicable" as unnecessary words.

Response: The Commission appreciates support of this section, but disagrees that the phrase is unnecessary. The Commission agrees, however, that the language is unclear and will amend the rule by adding "where applicable by law."

Comment: Regarding §811.3(c), one commenter expressed concern that the proposed rules are attempting to codify what should be encouraged as best practices and provided the examples, which are addressed under the respective rule numbers, including §811.3(c)(2)(F), and §811.61. Regarding §811.3(c)(2)(F), the commenter stated concern about language that requires the family employment plan to be based upon employer need, and that the rule ignores the concepts of customer choice and the encouragement of self-employment and entrepreneurship.

Response: The rules codify what the Commission believes to be essential elements of comprehensive services that are designed to provide for the efficient use of limited resources and

to ensure effective outcomes. The Commission disagrees that the rules on the family employment plan ignore the concepts of customer choice and the encouragement of self-employment and entrepreneurship. The family employment plan is based on the needs of employers because they provide the jobs necessary to serve the needs of Choices individuals transitioning from welfare to work. While customer choice is important, without focus on employer needs, individuals will not be placed into available jobs. In the case of self-employment, the Choices individual and the employer are the same.

Comment: Regarding §811.3(c)(8), one commenter requested clarification on whether the coordinated interagency plan will be integrated into the Board's strategic planning process or will be a stand-alone plan, and requested an amendment to the proposed rule to provide further definition to the scope and purpose of the interagency plan.

Response: The Commission appreciates the commenter's question because it pointed out an error in the rule language. Boards are required to develop local-level MOUs, not coordinated interagency plans, and the rule will be amended to reflect that change. State law enacted in 2001 mandates the development of a MOU between the Commission and TDHS to establish guidelines for coordinated case management. Upon execution of the state-level MOU, the Commission will provide a copy to each Board to assist in the development of its local-level MOUs that must conform to the conditions of the state-level MOU.

Comment: Regarding §811.3(c)(8), one commenter expressed support for the local flexibility given in the proposed rules on WOAs, rather than mandating that they be held at least two times a week. By allowing the flexibility to hold WOAs as needed, Boards will be better able to manage limited resources.

Response: The Commission appreciates the commenter's support of this provision.

Comment: Regarding §811.11(c) and (d), three commenters suggested that rules be amended to require Boards to ensure that individuals receive the support services designated in their family employment plans, including child care services as provided in §811.51(d)(2), and to monitor the provision of those services.

Response: The Commission interprets the comments to request that the rule be amended to ensure that individuals receive support services, specifically transitional child care, and to ensure Boards monitor the receipt of these services. The Commission disagrees that the rule requires amending because §811.61(a) requires Boards to ensure the provision of support services, including the provision of transitional child care services as outlined in §811.62. The Commission agrees that §811.11(d) could be clarified, and will amend the rule to require Boards to ensure that the receipt of needed support services is monitored.

Comment: Regarding §811.11(d), one commenter requested that the rule be amended to clarify that Boards, and not the "Choices program," are responsible for determining and arranging any needed intervention to assist individuals with meeting Choices service requirements. Additionally, regarding §811.11(d)(3), one commenter requested that the term "intervention" be further defined as "including but not limited to supports, services, and reasonable modifications."

Response: The Commission believes that the commenter is making a distinction between Boards and their service providers who provide Choices services, and requesting that the rules require

Boards to be responsible for the provision of intervention services. If this is correct, the Commission disagrees because (1) the Commission contracts with Boards only and directs these requirements to Boards; (2) Boards are prohibited by law from directly delivering services, and, therefore, contract with service providers; and (3) Boards are responsible for ensuring that their service providers comply with all state and federal requirements. The Commission disagrees with the commenter's suggestion that the term "intervention" be further defined because the term is self-explanatory.

Comment: Regarding §811.13, one commenter said the rules should not be amended to require individuals, including both voluntary and mandatory participants in Choices, as well as those who participate voluntarily, to participate in or receive counseling, treatment, physical rehabilitation, medical, mental health or other similar services. The rules should require the Boards to ensure that the Choices program assists individuals in finding and arranging for such treatment if individuals need and want this help.

Response: Support services are initiated in response to the declaration of need by a Choices individual. If a Choices individual has identified barriers, the mechanism for addressing them is outlined in the family employment plan as specified in §811.23(d)(3)(B). The family employment plan is a dynamic document that may be modified as circumstances change.

Comment: Regarding §811.14(b)(3), one commenter supported the Commission's clarification that good cause determination should cover a temporary period when a recipient may be unable to participate in Choices. The commenter further stated that this will significantly decrease the misuse of good cause designations automatically given for extended periods of time and will increase the effectiveness of the Choices program.

Response: The Commission appreciates the commenter's support of the clarification that good cause determination covers a temporary period.

Comment: Regarding §811.14(b)(4), three commenters requested that the language which requires that good cause be made at the time of occurrence be deleted as it is vague and confusing. The rules should provide that a good cause determination can be made at any time that program staff become aware of a recipient's circumstances that may give rise to a good cause determination, and should provide sufficient time for making such determination. The commenters also requested that the regulations be amended to include the requirement that every recipient be fully informed, in advance, of the existence of good cause determinations and the reasons that may constitute good cause.

Response: The Commission agrees that the language regarding time of occurrence is vague and will amend the rules to clarify the Commission's intent that time of occurrence means the time at which a recipient notifies a Board's service provider of changes in his or her circumstances that constitute good cause. In addition, the Commission agrees that Boards should ensure that recipients are informed that they must notify the Board's service provider if there are changes in their circumstances that preclude their participation in Choices activities, as this may constitute good cause. The rules will be amended in §811.23 to clarify that the family employment plan must contain this information. The Commission disagrees, however, that a list of specific reasons for nonparticipation should be provided to recipients.

Comment: Regarding §811.14(b)(5), four commenters stated that the rules that require that good cause must be "conditional upon efforts to enable the recipient to address circumstances that limit the ability to participate in Choices services as required in the Personal Responsibility Agreement" and suggested that it is the recipient who must make efforts to address circumstances that limit participation. Individuals should not be denied good cause when the Choices program has failed to address the circumstances that limit participation.

Response: The Commission would like to clarify that identifying and addressing potential barriers that limit a recipient's ability to work or to participate in Choices services is a collaborative effort between the Board's service provider and the recipient. Boards are required in §811.23(d)(3), the family employment plan, to ensure that barriers are addressed. Recipients have a personal responsibility to engage in activities necessary to address any barriers that reduce their ability to obtain employment and support their families.

Comment: Regarding §811.14(b)(5), one commenter supported the requirement that good cause determinations be conditional upon efforts to enable the recipient to address circumstances that limit the ability to participate in Choices services. The commenter further stated, in support of the rule, that good cause should be granted to participants who are actively trying to resolve the circumstances that limit their ability to participate in Choices. This rule is consistent with the Choices Work First philosophy and will encourage participants to take personal responsibility in resolving the problems that are not allowing them to participate.

Response: The Commission appreciates the commenter's support of the provision.

Comment: Regarding §811.14 (c), one commenter recommended the deletion of the twelve-month limitation on good cause for domestic violence because no other reason for good cause is subject to time limitations and because of the individual nature of domestic violence cases and the potential for harm or loss of life. Additionally, the wording of the rule is vague and the possible permutations of domestic violence cases are too varied for this to be an effective rule.

Response: The Commission appreciates the commenter's concern regarding families involved in domestic violence, but disagrees that the rule should be amended. This section of the Choices rules is not new, however, but continues to implement state law enacted in 1999. The Texas Human Resources Code 31.0322(b)(2) places a twelve-month limitation on good cause for domestic violence.

Comment: Regarding §811.14(c)(1), one commenter requested that the section be amended to include a definition for "temporarily [sic] illness or incapacitation" and to require the Commission or Boards to provide written notice of the definition.

Response: The Commission disagrees with the request for a definition for "temporary illness or incapacitation," preferring instead to provide maximum local flexibility for implementation of Choices services. While the Commission agrees that individuals be notified of the definition for temporary illness or incapacitation, it disagrees with the recommendation that the Commission limit local flexibility by promulgating a rule that includes specific procedures for oral and written notifications.

Comment: Regarding §811.14(c)(3), one commenter suggested that the rules be amended to extend good cause to any parent with disabled children, rather than limiting the good cause

exemption only to a parent with children whose disabilities required the parent to remain in the home for full-time caretaking.

Response: The Commission disagrees with the request to extend good cause to any recipient with a disabled child. Under state law, the TDHS determines which recipients are exempt from participation in Choices due to individual or family circumstances, including a recipient who is the caretaker of a physically or mentally disabled child who requires the caretaker's presence in the home. Boards must ensure that good cause is granted to recipients who experience a temporary interruption in participation in Choices activities due to circumstances beyond their control. If a longer-term change in a family's circumstances occurs after eligibility is determined, Boards forward a request to TDHS to review the recipient's work status. Families not subject to a work requirement are not penalized. The rules reflect the Commission's intent to ensure the efficient and effective use of limited funds to assist families in transition from welfare to work.

Comment: Regarding §811.14(c)(5), one commenter suggested requiring Boards to inform TANF recipients about all grounds for good cause contained in the regulations, not just good cause that is based on the unavailability of child care. Boards should be required to inform individuals of the standards and criteria used to define these other grounds for good cause.

Response: The Commission disagrees that a list of specific reasons for nonparticipation should be provided to recipients as each family's circumstances must be evaluated individually. The Commission agrees, however, that recipients be informed that they must notify the Board if there are changes in circumstances that may preclude their participation in Choices activities as this may constitute good cause and will amend the proposed rules in §811.23 to clarify that the family employment plan must contain this information.

Comment: Regarding §811.14(c)(5), three commenters suggested that the rule is more restrictive than the Commission's current rule because the phrase "a breakdown in child care arrangements" has been deleted as a description of the type of problems that may serve as reasons for good cause. The commenters suggested that §811.14(c)(5) be amended to parallel the language in §811.14(c)(4)(A)-(B), which provides for good cause when there is no available transportation or a disruption in transportation. The commenters further suggested that the phrase "a breakdown in child care arrangements," be reinserted into the rules throughout to make it clear that even when a parent has child care, such arrangements can be temporarily disrupted due to illness, transportation problems or other reasons.

Response: The Commission agrees that the language on good cause for inability to obtain child care should parallel that for good cause for inability to obtain transportation, and will amend the rule to delete §811.14(c)(4)(B), which describes a "disruption in transportation arrangements." This amendment assures that the language on inability to obtain available child care and on transportation is parallel. The Commission declines, however, to amend §811.14(C)(5)(b) to reinsert the phrase "a breakdown in child care arrangements," as this is redundant. If a recipient experiences a breakdown in care, this situation can be covered under one of the existing child care good cause reasons, such as child care is "unavailable."

Comment: Regarding §811.14(c)(5)(A), four commenters requested that the rules be amended to include a definition for unsuitability of informal care that is the same definition as that included in the Child Care and Development State Plan.

Response: The Commission disagrees with the commenter's suggestion that a definition for "unsuitability of informal care" be included in the rules. TANF regulations require the Commission to define this term only for recipients who are single parents with a child under six years of age. The Commission, therefore, will amend the rule to require Boards to define the term for all Choices individuals, including recipients who are single parents with children under the age of six, preferring to provide Boards with maximum local flexibility to define this term. The amendment will, however, specify that parents shall also have the right to determine care that is unsuitable, to conform to federal parental choice requirements. The Commission will also amend the Child Care and Development Fund State Plan to ensure consistency of terms.

Comment: Regarding §811.14(c)(5)(B), three commenters stated concerns about the definition of "affordable child care arrangements" in the Child Care State Plan. All three commenters requested that the definition be included in the rules and that the definition include any child care arrangement that falls within the maximum rates established by each local Board. The commenters stated that the definition provides that TANF recipients are exempt from co-payments. The commenters went on to state that the USDHHS urged states to set the co-payment rates at a maximum of 10% of the family's gross income, but that some Boards have established higher co-payments. All three commenters recommended that the rules recognize that some families are not able to afford child care co-payments of 9% to 13%, and establish criteria for reducing or waiving co-payments when family circumstances make the co-payment amount a hardship.

Response: The Commission agrees with the commenters' suggestion on a definition for "affordable child care arrangements" and will amend the rule to define "affordable formal child care arrangements," as those that fall within the maximum rates established by each Board. The Commission would like to clarify, however, that "affordability" of child care is not an issue for recipients who need child care to meet the Choices requirements in Chapter 811 because they are exempt from parent co-payments and their child care is fully subsidized. In addition, children eligible for Choices child care are a priority for service, and therefore, do not go on the wait list. Finally, the Commission would also like to point out that, for those for whom a co-payment is applicable, its current Child Care rules at §809.47, "Reduction of Assessed Parent's Share of Cost," allow for a reduction of parent co-payments for families in extenuating circumstances.

The Commission disagrees with the commenters' interpretation of the discussion of parent co-payments in the federal preamble to the Child Care and Development Fund final rule. In that discussion, the USDHHS explicitly states that 10% is offered as a benchmark and is not intended to limit the (state's) lead agency. The lower the parent co-payments, the higher the subsidy. The higher the subsidy, the lower the number of children who can be served. The Commission believes that each Board is in the best position to determine the most appropriate combination of child care income eligibility limits, provider maximum reimbursement rates, and sliding fee scales for parent co-payments to best serve the workforce development needs of residents in each local workforce development area.

Comment: Regarding §811.14(c)(5)(B), three commenters stated that the current definition for appropriate care in the Child Care and Development State Plan suggests that as long as a provider is licensed, registered, or listed with the state, the care is appropriate. The commenters stated that some providers offer care that is unsafe or of poor quality, that being a listed provider with TDPRS is not an accurate measure of whether safe, quality care is being provided, and that

the definition should clarify that child care may not be appropriate because it is unsafe or of poor quality, even if it is licensed, registered or listed. The commenters recommended that the definition of appropriate care clarify that care may be inappropriate for one child, even if it is appropriate for another.

The commenters further suggested requiring that children of Choices participants who engage in community service receive the same level of protection as children in self-arranged child care, as regulated by TDPRS, including setting a maximum number of children who may be cared for, the prevention and control of infectious diseases, building and premises safety, continuity of care, and health and safety training.

Response. TDPRS is responsible for licensing and regulating child care that meets the state's minimum requirements for health and safety. Specific information on unsafe or poor quality child care provided by licensed, registered, or listed child care providers should be reported directly to TDPRS. As authorized by state law, the Commission provides Boards with the flexibility to use persons or entities listed with TDPRS to provide Commission-funded child care services. By rule, however, the Commission requires Boards to ensure that only listed providers required to comply with local law protecting the health and safety of children are authorized to provide child care services. Federal law and regulations specify that parents have a right to choose the type of child care option that best suits their needs. The Commission complies with federal requirements on parental choice by requiring Boards to ensure that parents are provided both with information on available child care options as well as assistance, as needed, in choosing child care.

Comment: Regarding §811.14(c)(5)(B)-(C), four commenters stated that the Commission should set a maximum time limit for one-way travel from home to child care provider to work, and provide Boards with the ability to reduce the distance that is considered "reasonable" based on individual circumstances. One commenter recommended that the rule be amended to be the same as the proposed standard regarding transportation in §811.14(c)(4)(C). One commenter also stated that the definition of reasonable distance should be given to each recipient. Finally, in setting reasonable distance, one commenter suggested that the cost of private and public transportation be considered.

Response: The Commission disagrees with the commenters' suggestion to set a statewide standard for a maximum time limit for one-way travel from home to child care provider to work. Because of geographical differences throughout the state, the Commission's intent is to provide Boards with the local flexibility to determine the most appropriate time limit based on regional commuting differences and individual circumstances. In order to provide consistency, the Commission will amend §811.14(c)(4)(C) and §811.14(c)(5)(C) to remove the definition of reasonable commuting distance to provide Boards with maximum local flexibility to define this term.

Comment: Three commenters recommended that the rules specify that TANF families must be informed that recipients have a right to an exception from penalties for failure to participate in work requirements when child care is unavailable in writing (within 10 days of approval of the TANF application) and orally (at specific times, such as at the first face-to-face interview).

Response: While the Commission agrees that recipients must be notified of the penalty exception when child care services are unavailable, it disagrees with the recommendation that the

Commission limit local flexibility by promulgating a rule that includes specific procedures for oral and written notifications.

Comment: Regarding §811.14(c)(6), one commenter suggested allowing good cause to be extended to those individuals for whom Boards failed to provide support services, reasonable modifications necessary for equal and meaningful participation, or failed to screen, assess, or address a disability in the family employment plan.

Response: The Commission disagrees that the rule requires clarification. Boards forward information on changes in circumstances that preclude a recipient's participation in Choices activities for an extended period of time to TDHS to review the recipient's work status. The Commission's good cause policy provides the reasonable accommodation necessary to ensure that the family's benefits are not adversely affected during the TDHS review.

Comment: Regarding §811.14(d), three commenters requested that the rules require Boards to notify all TANF families of the penalty exception for the inability to obtain child care, not just single-parent families caring for children under age six. The commenter stated that the lead child care agency must inform "parents who receive TANF benefits" of the right to the exception (45 CFR, 98.33(b)).

Two commenters requested that the rules require Boards, as specified in 45 CFR 261.56, to promulgate such policies and procedures for determining the penalty exception and any other requirements or procedures, such as fair hearing, associated with this provision, and suggested that the rules require Boards to submit such policies to the Commission for approval and retention.

Response: The Commission disagrees that federal regulations require that all recipients must be informed of the penalty exception for an inability to obtain needed child care. The federal regulations at 45 CFR 98.33, based on Section 407 (e)(2) of PRWORA, require states to "Inform parents who receive TANF benefits about the ...exception to the individual penalties associated with the work requirement for any single custodial parent who has a demonstrated inability to obtain needed child care for a child under six years of age." The Commission's rules codify this requirement.

The Commission does agree, however, that Boards must be required, as specified in 45 CFR 261.56, to promulgate such policies and procedures for determining the penalty exception and any other requirements or procedures, such as fair hearing, associated with this provision, and will amend the rule to include this requirement. The Commission disagrees that Boards submit their policies to the Commission for approval and retention, both because the Commission monitors Boards' policies and because the Commission prefers instead to allow Boards maximum flexibility for development of local policies and procedures.

Comment: Regarding §811.14(d)(1)(2), one commenter expressed appreciation for the Commission's inclusion of the requirement to provide information to parents on Boards' policies and procedures for determining an inability to obtain needed child care, other procedures and policies, and rights to fair hearing procedures.

Response: The Commission appreciates the support of the inclusion of this requirement.

Comment: Regarding §811.14 (e)(1), one commenter supported the requirement that good cause be evaluated monthly. The commenter further stated that this will significantly decrease the misuse of good cause designations automatically given for extended periods of time and will increase the effectiveness of the Choices program.

Response: The Commission appreciates the commenter's support of this requirement.

Comment: Regarding §811.22, one commenter suggested that the rules be amended to require Boards to provide to applicants and recipients both voluntary initial screenings and in-depth assessments conducted by qualified professionals using validated screening and assessment tools (in accordance with guidance from the Office for Civil Rights at the USDHHS regarding the application of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act to the administration of TANF programs), and to fully explain the advantages of participation.

The commenter also suggested that the rules be amended to distinguish between an initial, cursory screening and an in-depth assessment, and that the purpose for both is to determine, not just employability, but also the reasonable modifications and support services necessary for an individual to participate in work, education, or training activities as well as to avoid benefit reduction and terminations resulting from a lack of disability accommodation or other barriers to participation. The commenter further suggested the rules be amended to clarify that mental health problems and substance abuse, referred to in the rules, are only examples, and not inclusive, of other disabilities that may be barriers to employment.

Response: In certifying a family's eligibility for temporary cash assistance, TDHS screens for and determines which recipients are not subject to work requirements based on disability. Boards ensure that barriers to employment based on local employer needs are identified and addressed. Identifying and addressing barriers that limit a recipient's ability to work or participate in Choices activities is a collaborative effort between Boards' service providers and recipients. Planned actions to address those barriers are documented in the family employment plan, a dynamic document that is modified as additional information becomes available. Assessment is an ongoing process that begins with an individual's initial contact with Choices services, and based upon individual need, may include standardized screening and assessment instruments. The Commission disagrees that clarification of the definitions for either assessment or barriers to employment is needed.

Comment: Regarding §811.22(a)(1), one commenter stated the rules are unclear because definitions are not provided for what constitutes an in-depth assessment.

Response: The Commission has not provided a definition for in-depth assessment, preferring instead to provide maximum local flexibility for implementation of Choices services.

Comment: Regarding §811.23(d)(1) and (3), one commenter supported the Commission's proposal of a family employment plan based on assessments to address potential barriers that limit the arrangements for support services that address an individual's ability to work and participate. The commenter, however, suggested that the rules be amended to require that the family employment plan address not services and supports, but reasonable modifications needed by individuals with disabilities entitled to these modifications. The commenter suggested a further amendment to require Boards to specify the provision and providers of services, supports,

and modifications needed by individuals with disabilities to achieve family employment plan goals.

Response: The Commission appreciates the commenter's support of the family employment plan, but disagrees that the rule requires clarification. Boards' service providers forward information on changes in circumstances that preclude a recipient's participation in work or Choices activities for an extended period of time to TDHS to review the recipient's work status. The Commission's good cause policy provides the reasonable accommodation necessary to ensure that the family's benefits are not adversely affected during the TDHS review.

Comment: Regarding §811.23(d)(3)(C), two commenters supported the requirement of a family employment plan that includes "arranging support services for the individual or the family to address circumstances that limit the individual's ability to work or participate ...." The commenters suggested that the rules be amended, however, to specifically include the arranging of child care services as an essential element of support services that should be discussed with all families, and included in the family employment plans of families who need child care in order to meet the terms and conditions of their plans.

Response: The Commission agrees that child care is a critical support service for families who require such assistance to transition from welfare to work as documented in the family employment plan. The Commission does not agree that the rule should be amended.

Comment: Regarding §811.23(d)(5), one commenter strongly supported the redesignation of the employability plan as the family employment plan as this change recognizes the need to consider the circumstances of the entire family needing to be addressed in order to assist the participant in obtaining and retaining employment. Additionally, the commenter strongly supported the "FEP" requirement for a description of how the required participation hours will be distributed between the adults in two-parent households because it effectively makes the participation requirements for each adult in a two-parent household unmistakable and sets an exact standard for each individual to attain.

Response: The Commission appreciates the support of this provision.

Comment: Regarding §811.13(c)(3) and §811.24, one commenter is concerned that the requirement for a Family Work Requirement form adds additional and unnecessary paperwork, and perpetuates the thinking that one adult in a two-parent household is only responsible for his or her share of required participation hours. The commenter stated that how the family chooses to meet the family participation requirement and distribute the required hours is not important, only that the two-parent family understands that family participation requirements must be met or the mandatory adult(s) will be sanctioned.

Response: The Commission understands and tries to avoid unnecessary paperwork, but does not agree that the form should be modified to remove each parent's hourly participation requirement. This information is required to document the family's work requirement and the agreement between the parents on the division of the required hours. The work requirement applies to the family and state policies allow a family to divide the required family hourly work requirement between two adults. The purpose of the form is to provide appropriate notification to each adult in the family of the family's total work requirement and each adult's agreement to share in that requirement. In the event that both adults are sanctioned due to one adult's failure to comply

with his or her hourly requirements, this notification ensures that both adults understand the consequences for failure to comply with their agreements.

Comment: Regarding §811.25, one commenter recommended not distinguishing between core and non-core activities because it would make it more difficult for families to satisfy TANF work requirements and for parents who wish to participate in education and job skills training to improve their employability and increase their ability to obtain higher paying jobs that will enable them to become self-sufficient. The commenter suggested stating that individuals satisfy work requirements if they can participate in work activities, but are unable to participate in the total number of hours of required or core activities due to a disability or child's disability, or because of other barriers to employment. The commenters suggested that the rules are not consistent with the reasonable modification requirements under the ADA and Section 504, because the rules do not clearly state that individuals with disabilities have a right to work fewer hours or to work more hours at "non-core" activities. The rules could be interpreted as discouraging or prohibiting reasonable modifications.

Response: The Commission disagrees with the commenter's recommendation to remove the distinction between core and non-core activities as the definitions in the rules are consistent with federal law and TANF regulations. The Commission also disagrees that the rule requires clarification. Boards ensure that information on changes in circumstances that preclude a recipient's participation in Choices activities for an extended period of time are forwarded to TDHS to review the recipient's work status. The Commission's good cause policy provides the reasonable accommodation necessary to ensure that the family's benefits are not adversely affected during the TDHS review.

Comment: Regarding §811.26, one commenter requested clarification on whether a mandatory recipient who has lost his or her job is required to be enrolled in community service immediately.

Response: To promote rapid reattachment to employment, a mandatory recipient who has lost employment may be enrolled in job search and job readiness if he or she has not met the six-week job readiness and job search limit per federal fiscal year. If he or she has met the six-week limit for the federal fiscal year, community service must be initiated immediately. The Commission will amend the rule to clarify when reemployment assistance is provided to recipients who have participated in Choices for four or more weeks at the time they lose employment.

Comment: Regarding §811.26(a), one commenter disagreed with the requirement that mandatory recipients be placed into unpaid community service. The commenter asked why community service is the only option and pointed out that there is a remaining core activity listed in §811.25, vocational educational training, which might be preferable. The commenter went on to point out the benefits that can be associated with short-term (3-4 weeks) intensive vocational educational training as a means to increase a client's employability. The commenter believed that the provision of vocational educational training will place clients in a "real job" sooner.

Response: For recipients without adequate work skills, as evidenced by their lack of employment, the Commission's intent is to provide an opportunity to learn valuable work skills in the community service setting. Prior to enrollment in community service, Boards ensure that comprehensive job development services offer recipients a wide array of job openings requiring varying degrees of skill levels. The Commission disagrees with the commenter that community

service is the only option available after a recipient has been enrolled in Choices services for four weeks. Recipients may also be enrolled in unsubsidized employment, subsidized employment, on-the-job-training, or work experience. These employment activities, as well as community service, may be provided in conjunction with vocational educational training. This ensures an immediate attachment to the labor force, and an emphasis on work and on recipients' personal responsibilities to support their families and to work or participate in other Choices activities. The rules encourage career advancement through work or a combination of work and education and training services.

Comment: Regarding §811.26(a), one commenter disagreed with requiring mandatory recipients, with certain exceptions, who are not in employment activity after four weeks of participation in Choices services be placed in community service because it limits the employment activities in which an individual may enroll. The commenter stated the Work First philosophy is extreme and serves to keep Choices participants in low-end, low-wage jobs that offer little opportunity for career advancement. The commenter stated the rule does not consider that four weeks is an inadequate time period to find employment, given the economy, lack of jobs and that Choices participants are competing for entry-level jobs with a well-educated, experienced workforce.

Response: The Commission disagrees that the rules take the Work First design to the extreme. Choices Ramp Up Plans submitted by Boards in July 2001 documented their plans for providing extensive and comprehensive job development strategies that included employers who need individuals of varying skill levels, as well as self-employment assistance in local workforce development areas with limited employment opportunities. The rule reflects the Boards' commitments, in their Choices Ramp Up Plans, to serve employers and Choices individuals seeking employment. The Commission supports career advancement for Choices individuals, and encourages Boards to provide post-employment services to support job retention and earning increases over time. The Commission intends, however, that recipients without adequate skills to meet the needs of employers be given the opportunity to learn valuable work skills through community service.

Comment: Regarding §811.26(b), one commenter asked if rural clients who are exempt began voluntarily participating in Choices prior to the expiration of the waiver, and were then recoded as mandatory after the waiver expiration, will still be treated as volunteers, for the purposes of §811.26(b).

Response: Recipients exempted under TDHS rules, who voluntarily participate in Choices services and who are later recoded as mandatory by TDHS, must meet the requirements stated in §811.26(a) at the time the change is effective in the TDHS automated system. The Texas welfare waiver expired on March 31, 2002 and Texas must now comply with the federal definitions for the purpose of calculating the state's performance.

Comment: Regarding §811.26(e), one commenter asked if additional hours in educational activities would count towards the 30% cap for individuals who have already met participation in core hours.

Response: The state's 30% cap as specified in Section 407(c)(2)(D) of PRWORA applies to recipients who are meeting their Choices requirements based on hours derived from (1) participation in vocational educational training or (2) participation by teen heads of household in

education or education-related employment. The 30% cap includes any vocational education hours that contribute to recipients' work requirements. Recipients who are enrolled in other activities in addition to vocational educational training, and have sufficient participation hours from the other activities, will not be included in the 30% cap. For example, if a recipient is enrolled in community service for an average of 30 hours per week and is also enrolled in vocational educational training, the recipient has met his or her participation requirement through community service. In this instance, the recipient will not be included in the 30% cap regardless of his or her participation in vocational educational training and the months of participation do not count toward state and federal twelve-month limits on this activity.

Comment: Regarding §811.27, one commenter believed that teen heads of household should not be required to enroll in educational activities if they do not have a high school diploma or a GED, preferring that the rules allow these teens to seek employment based on a local evaluation of the teen's circumstances.

Response: The Commission concurs that the attainment of educational credentials is critical to long-term self sufficiency of teen heads of household. The rules, however, do not limit teen heads of household to attendance at high school, but also allow enrollment in education related to employment or other Choices activities specified in the family employment plan.

Comment: Regarding §811.27, one commenter requested clarification on two issues regarding teen heads of households. First, will teen heads of household participating in GED meet participation requirements if they meet satisfactory attendance and progress requirements. Second, will teen heads of household participating in GED be required to participate at least 20 hours a week to meet Choices participation requirements.

Response: In response to the first request for clarification, §811.27 allows teen heads of household who have not completed secondary school or received a GED to either (1) maintain satisfactory attendance at school or the equivalent (i.e., GED); (2) participate at least 20 hours per week in education directly related to employment; or (3) participate in Choices employment and training activities as specified in §811.25. Therefore, satisfactory attendance in GED will meet participation requirements. Boards must work with the educational institution to determine what constitutes satisfactory attendance.

In response to the second request for clarification, teen heads of household enrolled in GED are not required to participate at least 20 hours a week to meet participation requirements. As stated above, teen heads of household must satisfactorily attend GED in order to meet participation requirements. There is no specific hourly requirement imposed for GED. An average of 20 hours per week is required for education directly related to employment.

Comment: Regarding §811.27, one commenter requested a definition of education related to employment as it applies to teen heads of household.

Response: The Commission did not define this activity, preferring instead to provide Boards with the local flexibility to define this activity.

Comment: Regarding §811.28, one commenter suggested deleting the entire section because (1) subsection (a) of proposed §811.28 is identical to §811.14(d)(1), and does not include the requirements mandated by federal law as set forth in §811.14(d)(2); and (2) subsection (b) of

proposed §811.28 should be moved to §811.25, which defines work activity participation requirements for various family configurations. The commenter further suggested that the intent of §811.28(b) is to mandate fewer participation requirements for single-parent families with children under age six than for other single-parent families; thus, this provision should be included as a separate subsection of §811.25.

Response: The Commission disagrees. The participation exception requirements are in separate subsections to promote clarity.

Comment: Regarding §811.29, two commenters asked for clarification on exempts who voluntarily participate in Choices prior to the expiration of the waiver, and are then recoded as mandatory after the waiver expiration. Will they lose their volunteer status that qualifies them for extra months of transitional child care benefits?

Response: Exempt recipients who voluntarily participate in Choices services and who are later recoded as mandatory by TDHS will retain eligibility for additional months of transitional child care benefits if there is no break in their participation in Choices services.

Comment: Regarding §811.29, one commenter suggested the rules either be deleted or amended to provide that individuals who are exempt from the Choices program who choose to participate voluntarily are eligible for Choices services such as child care. The commenter asserted the provision is in violation of guidance from the Office for Civil Rights at the USDHHS on the application of the ADA and Section 504 of the Rehabilitation Act to the administration of TANF programs by denying individuals with disabilities who are exempt from mandatory Choices participation on the basis of disability a meaningful and equal opportunity to participate in Choices activities and to receive support services in order to meet the goals of PRWORA to end dependence of needy families on government benefits by promoting job preparation, work, and marriage.

Response: The Commission agrees with the commenter regarding the goal of PRWORA to end dependence of families on government assistance by promoting job preparation, work, and marriage. The Commission disagrees, however, that the rule requires clarification. The Commission's good cause policy provides the reasonable accommodation for exempt recipients whose voluntary participation in Choices activities is temporarily interrupted. The rules reflect the Commission's intent to ensure the effective and efficient use of limited funds to assist families' transition from welfare to work.

Comment: Regarding §811.42, one commenter requested clarification on the inclusion of entrepreneurial training under unsubsidized employment. Are training services a client receives as part of self-employment assistance classified as unsubsidized employment?

Response: The Commission agrees that clarification is needed, and will amend the rule to state that entrepreneurial training provided prior to business start-up is not classified as unsubsidized employment in §811.42. Additionally, entrepreneurial training provided prior to business start-up shall be classified as job skills training as specified in §811.49.

Comment: Regarding §811.43(b), one commenter requested clarification on whether the prohibition of a Board being the employer of record in a subsidized employment activity extends to the Board's contractor.

Response: The rules only prohibit Boards from being the employer of record in a subsidized employment activity.

Comment: Regarding §811.46, one commenter questioned whether the Board or the Board's contractor may enter into community service agreements.

Response: Section 811.46(b) requires Boards to ensure that all recipients subject to community service requirements must be referred to a community service program providing employment or training activities. The rule does not require a community service agreement. However, Boards have local flexibility in determining whether a community service agreement is required and whether they or their service providers may execute the agreement.

Comment: Regarding §811.46, one commenter asked if educational hours in a postsecondary educational component could be counted as participation under community service?

Response: The definition of community service contained in §811.46 does not include educational hours.

Comment: Regarding §811.2 and §811.47, three commenters stated that the rules should: (1) define “Choices individual” or use the phrase “mandatory recipients” if it is intended to be covered and (2) clarify that providing child care qualifies as a core work activity whether or not the children are children of Choices participants doing community service as a core work activity. The commenters stated that allowing a Choices participant to provide child care for children whose parents perform community service is not practical for the parent providing the care because the community service may end when a job is obtained or the worker switches to another work activity so the participation may end at any time. Also, the Choices participants in community service who find employment or switch work activities may need to find other child care for some work hours, which makes it more difficult for them to keep jobs or satisfy work activities.

The commenters further stated that the rule should ensure that recipients providing child care are able to improve their employability by providing child care to all families, not just Choices families and require that Boards arrange training and technical support to enable recipient child care providers to make the transition into jobs as unsubsidized child care providers. The commenters suggested clarifying that recipients have the option and must not be required to engage in providing child care.

Finally, the commenters stated that recipients should be protected by the FLSA provisions that apply to recipients providing child care as a core activity. The commenters suggested either removing the distinction between core and non-core activities, which the commenters strongly recommend for all recipients and particularly for those who are providing child care as their work activity; or defining all child care-related education and training as vocational educational training, a core activity. Thus, recipients could integrate necessary training with their work activities to enable them to achieve self-sufficiency.

Response: The Commission did include a definition for “Individual” in §811.2(6) that means an applicant, a recipient, or a former recipient. However, the Commission agrees that the definition needs clarification, and will amend the rule to define a “Choices Individual.” The Commission

will also amend §811.47 to specify that this section applies only to recipients participating in Choices services. The Commission disagrees with the recommendations on the flexibility extended to Boards to establish policies allowing recipients to fulfill their work requirements by providing child care for other recipients participating in community service. This core activity is specifically authorized in Section 407(d)(12) of PRWORA and TANF federal regulations. The Commission declines to impose restrictions beyond federal requirements in order to provide maximum local flexibility to Boards.

Section 811.21 requires Boards to ensure that employment and training activities are conducted in compliance with the FLSA. Federal law and regulations specify that only child care provided to a child of a recipient participating in community service may be counted as a core activity in meeting Choices requirements. As with all Choices work activities, the intent is for recipients to gain skills that will enable them to obtain unsubsidized employment.

Comment: Regarding §811.47(b), one commenter strongly disagreed with the rule because it poses a serious health risk to children, and suggested it be deleted unless the quality of child care services provided by a Choices participant can be assured. The commenter further suggested that Choices individuals do not have the education and/or financial resources to complete the state's process for becoming a "registered child care provider," a designation necessary to become a Self-Arranged Child Care Provider. If the provider is not a close relative as specified in the CCDF regulations, then the provider must be licensed, registered or otherwise authorized to provide care in Texas under the provisions set forth in the TDHS regulations. Because the Choices participants will not typically be licensed or otherwise authorized to provide care and not a close relative, the commenter believed that it is unlikely that Choices participants will be able to provide care.

Response: The Commission disagrees as the rule complies with federal law and TANF regulations. Recipients are not required to provide child care as a community service activity, but if elected, the recipient could receive available child care training. The rule reflects the Commission's intent to extend the flexibility afforded to states to Boards, allowing this work activity to be established at the discretion of Boards.

Comment: Regarding §811.48, one commenter expressed a concern that the twenty-hour community service requirement may hinder the provision of Texas Rehabilitation Commission specialized services.

Response: The Commission appreciates the commenter's concern for individuals in need of specialized services, but disagrees that the community service requirement would hinder the provision of specialized services. Rehabilitative services are designed to assist an individual in addressing his or her physical or mental barriers and finding employment. The Commission's intent is to complement these services by assisting recipients through an opportunity to learn valuable work skills.

Additionally, the rules do not include a minimum twenty-hour per week community service requirement. Rather, the total required hours of participation in community service is calculated each month by dividing the total value of a family's temporary cash assistance and food stamp benefit amounts by the federal minimum wage. For example, a recipient whose temporary cash assistance and food stamp benefit amounts total \$412 in a month would be required to participate in community service for 80 hours in that month ( $\$412 / \$5.15 = 80$  hours). If this calculation

results in a recipient participating less than twenty hours in any given week, then the Board must require the recipient to complete the twenty-hour per week core service requirement by participating in an additional core activity.

Comment: Regarding §811.48, one commenter asked if academic courses provided by a postsecondary educational institution will be allowed if they are part of a vocational educational training curriculum.

Response: Academic courses that are part of a vocational educational training curriculum will be an allowable core activity, within the restrictions and limitations described in federal and state laws and rules.

Comment: Regarding §811.49(a), one commenter raised several issues on the definition for Job Skills Training. One comment dealt with a concern over job skills training being defined a non-core activity instead of a core activity. According to the commenter, the definition includes "soft" skills, as well as literacy, ESL, and adult basic education; recent research (and practical experience) indicate that "soft" skills may be more important to help welfare clients gain employment than "hard" skills; and basic skills are essential if clients are to go beyond entry level employment and advance to jobs paying a living wage. It seems ironic that such training, which may be the best way to prepare some harder-to-serve welfare recipients for jobs and eventual self-sufficiency, cannot be considered a core activity.

A second comment stated that most occupational educational training should also include a mix of needed "soft" skills and basic skills in programs that concentrate on specific occupational skills. Because the definition of Job Skills Training includes some activities which are very similar to those listed under Job Search Assistance, i.e., §811.41(C), (I) & (J), similar activities could be provided under the heading of personal development and pre-employment classes. The commenter questioned whether it can be assumed that as long as the major emphasis of an activity fits the definitions for occupational educational training or Job Skills Training, that activity will be treated as a whole which complies with the regulations.

Finally, the commenter stated that attempting to define Job Search Assistance as a separate, limited activity may be an exercise in futility, because the purpose of Choices is to help TANF recipients obtain employment, so every activity is, in a broad sense, "job search assistance."

Response: In response to the first comment, job skills training is a federally required non-core activity as defined in federal law and TANF regulations. In response to the second comment, the Commission is unclear on the commenter's intent with regard to treating activities as "a whole." The Commission believes that the commenter is requesting clarification on activities that can be provided under the definition of two separate allowable activities, such as job readiness and job skills training. The Commission agrees that certain activities may be provided under both job readiness and job skills training. If the intent of the activity is to provide job skills training, then all services included in that activity are defined as job skills training. The Commission also clarifies that there is no Choices activity defined as occupational educational training. The Commission interprets the comment to reference vocational educational training. In response to the third comment, the Commission agrees that the intent of all Choices activities is to assist Choices individuals in obtaining and retaining employment; however, the Commission disagrees that every activity is defined as job search assistance.

Comment: Regarding §811.49, one commenter asked if pre-employment classes can be used as a job skills training activity instead of job readiness. The commenter also asked if job skills training could be used in conjunction with other activities to meet participation.

Response: The Commission would like to clarify that various types of activities directly related to employment may qualify as job skills training, including personal development and pre-employment classes. These are activities that may also be provided under job readiness. The Commission also confirms that job skills training may be provided in conjunction with other activities to meet Choices requirements. However, since job skills training is a non-core activity, it must be provided in conjunction with core activities that meet the requirements of §811.24.

Comment: Regarding §811.49 and §811.50, one commenter asked whether or not study time is allowed to count toward an individual's participation requirement.

Response: The Commission intends that study time for related academic courses counts toward a recipient's work requirement, within the restrictions and limitations described in federal and state laws, rules and guidelines, and will amend the rule to include that clarification.

Comment: One commenter requested clarification on whether the activities contained in §811.49 and §811.50 are considered non-core activities or components that could be included under vocational educational training.

Response: The activities contained in §811.49 (job skills training) are non-core activities and are not part of vocational educational training. The activities in §811.50 (education services) are non-core activities for recipients age 20 or older who have not completed secondary school or received a GED. Educational services for recipients who are teen heads of household age 19 or younger as defined in §811.27 are core activities.

Comment: One commenter requested clarification regarding §811.50, and the eligibility criteria for educational services for persons who have not completed secondary school or received a certificate of general equivalency. The commenter asked if someone who is over the age of 20, who has a high school diploma or general equivalency, but has a literacy assessment that shows they have less than a 12<sup>th</sup> or 9<sup>th</sup> grade educational level, can still receive job skills training services. Does the fact that they have the high school diploma or GED make them ineligible for job skills training as a non-core activity?

Response: The Commission wishes to clarify that recipients age 20 or older who have completed secondary school or received a certificate of general equivalency, irrespective of their functional literacy levels, may not participate in educational services at §811.50. Participation in work-based literacy services would be an allowable non-core activity under job skills training at §811.49.

Comment: Regarding §811.50, one commenter suggested the rules be amended to allow individuals to satisfy work requirements by participating in education in a much broader range of situations, including adult literacy programs.

Response: The Commission disagrees. The rules comply with federal law and TANF regulations that call for an immediate attachment to the labor market. The Commission expects

that post-employment services would include work-based training designed in conjunction with employers to promote continuing education and career advancement.

Comment: Regarding §811.51(e)(2), one commenter requested clarification on the language in §811.51(e)(2) and in the use of Rider 21a funds that stated that only former TANF recipients "at risk" of returning to TANF be eligible for services and asked whether Boards may locally define "at risk," as including recovering substance abusers, victims of domestic violence, and families coping with mental illness or special needs.

Response: Services to former recipients shall only be provided to individuals who are at risk of returning to temporary cash assistance based on their classification as financially needy. Therefore, Choices services to former recipients are linked to an income eligibility test that is based on an individual's continued eligibility for Commission-funded child care or for food stamp benefits. Boards shall not define "at risk" of returning to temporary cash assistance based on personal or family situations such as recovering from substance abuse or being a victim of domestic violence.

In regard to Fiscal Year 2002 Rider 23(a) funds, the Commission contracted with certain Boards to provide services to assist former recipients to retain employment. The Commission believes that the most effective service strategy is to initiate these services immediately upon denial of temporary cash assistance while families continue to be eligible for transitional child care services. The Commission disagrees that the definition of "at risk" of returning to temporary cash assistance should be revised to include former recipients who are on the waiting list for Income Eligible child care.

Comment: Regarding §811.51, one commenter expressed appreciation for the Commission's inclusion of the section on post-employment services as an adjunct to the Work First philosophy. The commenter praised the rules because they include a variety of post-employment activities without restricting the local flexibility. The commenter suggested that the only thing lacking in this section is the additional funding to pay for post-employment activities.

Response: The Commission appreciates the commenter's support of the inclusion of post-employment services. With regard to the comment on the lack of additional funding, the Commission emphasizes that in addition to TANF funds, Boards may have other funding sources available within the One-Stop Service Delivery Network to support the post-employment needs of individuals.

Comment: Regarding §811.52, one commenter requested clarification for whether the determination of the need to receive parenting skills training occurs only at the initial assessment or at both the initial and ongoing assessments.

Response: The Commission's intent is that recipients be referred for parenting skills training at the time the need is identified, whether during the initial or ongoing assessments. Boards are provided flexibility in determining how assessments are conducted, but are responsible for addressing barriers that will affect a recipient's ability to obtain and retain employment at the time the need is identified.

Comment: Regarding §811.61(b), two commenters requested clarification on whether support services may be provided to Choices clients at the time (1) a penalty is requested; (2) the client is

coded as "in sanction status" by the TDHS; or (3) the client resumes meeting work requirements. The commenter also asked if Boards must discontinue child care services to teen parents enrolled in alternative high schools who are sanctioned but still receiving child care.

Response: The Commission's intent is that Commission-funded child care be provided to recipients who are demonstrating personal responsibility in meeting the requirements of Chapter 811. At the time a penalty is requested, all support services must be discontinued. No support services are to be provided until such time as the recipient is once again engaged in work activities and meeting requirements, unless the Board determines, on a case-by-case basis, that a recipient needs, and therefore, shall receive support services to comply with the requirements of this section. Teen heads of household satisfactorily attending high school in an "alternative" setting would be considered meeting requirements and eligible for child care services. Support services must be reinstated for recipients who are in sanction status but resume Choices participation.

Comment: Regarding §811.61(b), one commenter requested clarification on whether a sanctioned Choices parent who is enrolled in training and co-enrolled in WIA can continue to receive child care services using WIA funds.

Response: The Commission's intent is that Commission-funded child care be provided to recipients who are demonstrating personal responsibility in meeting the requirements of Chapter 811. Recipients who are not meeting their Choices requirements shall not receive support services funded by TANF or any other funding source, including WIA.

Comment: Regarding §811.61(b), two commenters suggested deleting this provision because many individuals, without good cause, will not be able to meet Choices participation requirements unless and until child care and other supportive services are provided. The commenters stated that the provision denies needed support services to individuals who are unable to find work in a slowing economy and may need support services, especially child care, to participate in job search activities. The commenters suggested requiring that families who engage in core activities at less than the required level be allowed to receive child care services. The commenters stated that the provision violates guidance from the Office for Civil Rights at the USDHHS by denying individuals with disabilities who are exempt from mandatory Choices participation based on disability a meaningful and equal opportunity to participate in Choices activities and to receive support services.

Response: The Commission disagrees. Child care assistance is provided to recipients who are fully engaged in Choices activities that will enable them to obtain and retain employment, but it is the Commission's responsibility to establish policies that promote effective and efficient use of limited funds. TDHS establishes criteria and determines who is not subject to work requirements based upon disability. Information regarding changes in circumstances that will preclude a recipient's full engagement in work activities for an extended period of time are forwarded to TDHS to review the recipient's work status. The Commission's good cause policy provides the reasonable accommodation necessary to ensure that the family's benefits are not adversely affected during the review by TDHS.

Comment: Regarding §811.61(b), one commenter recommended that the rule be either deleted or amended to clarify how long support services may be provided when there is an interruption in an individual's participation in work activities that resulted in failure to meet assigned work

requirements during a month, and, if the support services were stopped, when they may be resumed. The commenters also stated that the rule interferes with the local discretion necessary to assist TANF recipients to meet participation requirements by allowing local decisions on when support services need to be provided.

Response: The Commission's intent is that Commission-funded child care not be provided to a recipient participating in Choices but not meeting the requirements of Chapter 811, beginning at the time the failure becomes known by the Board's service providers and continuing until such time as the recipient is once again fully engaged in work activities and meeting requirements.

In this example, the recipient discontinued participation in her assigned work activity, but quickly resumed participation after being counseled by the Board's service providers. Ideally, the Board's service providers would have arranged additional activities in order for the recipient to make up the missed hours of participation. If this is not feasible; however, and the recipient does not meet the number of participation hours assigned for that month, a sanction request must be forwarded to TDHS. In this example, however, child care assistance may continue because the break in participation was short in duration and the recipient began meeting requirements once again before it was practical to terminate the authorization for Choices child care. The resumption and continuation of child care assistance, irrespective of the recipient's sanction status, is contingent upon the recipient's willingness to engage in Choices activities and to meet the requirements of Chapter 811.

Comment: Regarding §811.62(b), one commenter expressed appreciation for the Commission's inclusion of the provision for transitional child care subsidy in the regulations, and would like to encourage the Commission to proceed with a funding request to the Texas Legislature for transitional child care subsidy funds, without which this provision is meaningless.

Response: State law established transitional child care as a priority for service. The Commission appreciates the support provided by the commenter in recognizing the importance of transitional child care services provided to Choices individuals moving from welfare to work.

Comment: Regarding §811.71, two commenters stated that the rules should clarify that the local Board review process can be used to appeal a decision of either a Texas Workforce Center Partner, or of the Choices program itself.

Response: The Commission agrees that appeals relating to the Choices services should be included, which are separate from appeals that are handled by TDHS. Because the language in §811.71(a) and 40 TAC Chapter 823 also provides for appeals relating to Choices services and activities, the Commission does not agree that amending the rule is needed.

Comment: Regarding §811.71, Board Review, two commenters requested that the Boards be required to establish procedures relating to the local Board review process. The commenters also requested that the appeal process include a number of specific provisions relating to how much time an individual has to request a review; who will conduct the review; whether the appeal is an in-person meeting or hearing, phone hearing, or paper review; where the appeal will take place if it is an in-person meeting or hearing; who the appeal should be addressed to; who will make the decision; and any other relevant information. In §811.72, Appeals to the Agency, one commenter indicated that state-level appeal procedures should include the same information.

Response: The Commission agrees that the Boards should establish local procedures consistent with the Commission rules for handling local appeals and that best practices would recommend including the information indicated by the commenter; however, since the Commission rules allow the local reviews to consist of a staff review of the file, as reflected in §811.71(c) and the state-level hearing rules require the Boards to provide notices regarding the appeal process in 40 TAC §823.3, the Commission does not agree that the rules need amending. In conducting local reviews, the Commission recognizes that Board policy may reflect a choice to expedite the local review and appeal process by referring issues under review to the state for immediate setting of a state-level hearing.

The Commission agrees that providing information relating to the state-level appeals process is appropriate; however, the hearing notice that Boards ensure is provided to individuals under 40 TAC §823.3 should generally include information regarding the appeal process. Also, the majority of the information requested is contained in the rules at 40 TAC Chapter 823; therefore, the Commission does not agree with amending the rules at this time. In addition, the notice of hearing issued at the state level includes information relating to many of the items requested. For example, there is information regarding the hearing being held by telephone, unless an in person hearing is necessary, that a hearing officer will be assigned to hold the hearing, and the time and date of the hearing. For that reason, the Commission does not agree that changes to the rules are necessary.

Comment: Two commenters requested that the Boards be required to distribute Board review policies in writing to Choices participants, and to submit their policies to the Commission for approval. The commenter stated that the Commission should retain copies of these policies and make them available to the public upon request.

Response: The Commission agrees that the Boards' review policies should be provided to individuals in writing and the Commission rule at §823.3, which provide for notifying persons of the appeal process, is intended to mean notification in writing. Because 40 TAC Chapter 823 is not open for comment and the rules can be interpreted as requiring written notification, the Commission does not see a need to amend those rules at this time. The Commission would agree that the best practices of Boards should include providing notice of the appeal process in writing to individuals. The Commission does not agree that it is necessary to require that the Boards' local policies be sent to the Commission for approval since the Commission's monitoring process should verify the Boards' compliance with these rules.

Comment: One commenter stated that some Boards had no written procedures for appealing decisions of the Choices program under §811.71, which would include good cause decisions based on child care unavailability.

Response: The Commission agrees that methods for requesting local reviews must be made clear to individuals in the workforce area that receive an adverse decision from the Commission. Because Boards are required to comply with the provisions related to local reviews and appeals as required by 40 TAC Chapter 811 and compliance with Chapter 823, the Commission does not agree with amending the rules.

Comment: One commenter requested that the rules clarify that Boards must allow persons with disabilities to request a review orally if needed due to a disability and to state that individuals with disabilities must be offered assistance during the review process if needed. The Boards

should be required to inform individuals of the right to participate in a hearing and/or have a different review process. The Commenter also stated that the requests should inform individuals of the right to request sign language interpreters and translators if needed. The commenter also stated that Boards should inform individuals about the ability to be represented by another.

Response: The Commission agrees that Boards should provide accommodations for persons with disabilities when necessary and to take appropriate steps to communicate the accommodations when applicable. Because the Boards are charged with ensuring that persons with disabilities are provided access to local reviews and state-level appeals as a matter of law, the Commission does not agree with repeating that requirement in each of the Commission rules. The procedures and practices of the Boards should already address these concerns. For that reason, the Commission does not agree with amending the rules.

Comment: One commenter indicated that the rules should clearly state that the Commission appeal process can be used to appeal a decision of a Workforce Board concerning either a Texas Workforce Center partner, or of the Choices program itself.

Response: The Commission agrees that appeals include appeals relating to the Choices services, which are separate from appeals that are handled by the TDHS. Because the language in §811.71(a) broadly covers appeals relating to the Choices services and activities, and those decisions are appealable to the state level under §811.72, the Commission does not agree with amending the rules.

For additional information about services and activities provided through the Texas Workforce Commission, visit our web page at [www.texasworkforce.org](http://www.texasworkforce.org).

## REPEAL OF EXISTING RULES

The rules are repealed under Texas Labor Code §301.061 and §302.002, 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 Agency services and activities; and Texas Human Resources Code Chapters 31 and 34.

The repeal affects Texas Labor Code, Title 4, Texas Human Resources Code Chapters 31 and 34 and Texas Government Code Chapter 2308.

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#### **SUBCHAPTER F. APPEALS**

- §811.71. Board Review
- §811.72. Appeals to the Agency

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The new rules are adopted under Texas Labor Code §301.061 and §302.002, 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 Agency services and activities; and Texas Human Resources Code Chapters 31 and 34.

The rules affect Texas Labor Code, Title 4, Texas Human Resources Code Chapters 31 and 34 and Texas Government Code Chapter 2308.

#### **SUBCHAPTER A. GENERAL PROVISIONS**

##### **§811.1. Purpose and Goal.**

- (a) The purposes of Temporary Assistance for Needy Families (TANF), as outlined in Title IV, Social Security Act, §401 (42 U.S.C.A. §601) are:
- (1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
  - (2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;
  - (3) prevent and reduce the incidence of out-of-wedlock pregnancies; and
  - (4) encourage the formation and maintenance of two-parent families.
- (b) The goal of Choices services is to end the dependence of needy parents on public assistance by promoting job preparation, work, and marriage. A Board may exercise flexibility in providing services to Choices individuals ~~applicants, recipients and former recipients~~ to meet this Choices goal. A Board is also provided the flexibility and may engage in strategies that promote the prevention and reduction of out-of-wedlock pregnancies and encourage the formation and maintenance of two-parent families if those strategies support the primary goal of Choices services, which is employment and job retention.
- (c) The goal of the Commission is to ensure delivery of the employment and training activities as described in the TANF State Plan.
- (d) Boards shall identify the workforce needs of local employers and design Choices services to ensure that local employer needs are met and that the services are consistent with the goals and purposes of Choices services as referenced in this section, and as authorized by PRWORA, the applicable federal regulations at 45 C.F.R. Part 260 - 265, the TANF State Plan, this chapter, and consistent with a Board's approved integrated workforce training and services plan as referenced in §801.17 of this title.

### **§811.2. Definitions.**

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

- (1) Applicant -- A person who applies for temporary cash assistance.
- (2) TDHS -- The Texas Department of Human Services.
- (3) Exempt Recipient -- A recipient who is not required as defined by TDHS Rules, 40 TAC, 3.1101, to participate in Choices services.
- (4) Earned Income Deduction (EID) -- A standard work-related and income deduction, available through the TDHS for four months, as defined in TDHS Rules, 40 TAC, §34.1003 to recipients who are employed at least 30 hours a week and earn at least \$700 a month.

- (5) Former recipient -- A person who is an adult or teen head of household who no longer receives temporary cash assistance.
- (6) Choices Individual -- A person who is an applicant, recipient or former recipient as defined in this section.
- (7) Mandatory Recipient -- A recipient who is required as defined by TDHS Rules, 40 TAC, §3.1101, to participate in Choices services.
- (8) PRWORA -- The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105, as amended.
- (9) Recipient -- A person who is an adult or teen head of household who receives temporary cash assistance.
- (10) Temporary cash assistance -- The cash grant provided through TDHS to individuals who meet certain residency, income, and resource criteria as provided under federal and state statutes and regulations, including the PRWORA, the TANF block grant statutes, the TANF State Plan, temporary cash assistance provided under Texas Human Resources Code Chapters 31 or 34, and other related regulations.
- (11) Work-Based Services -- Includes those services defined in Human Resources Code §31.0126.
- (12) Work Ready -- ~~A Choices~~ An individual is considered work ready if he or she has the skills that are required by employers in the workforce area. A Board must ensure immediate access to the labor market to determine whether the Choices individual has those necessary skills to obtain employment.

**<new>§811.3. Choices Service Strategy.**

- (a) A Board shall ensure that its strategic planning process includes an analysis of the local labor market to:
  - (1) determine employers' needs;
  - (2) determine emerging and demand occupations; and
  - (3) identify employment opportunities, which includes those with a potential for career advancement.
- (b) A Board shall set local policies for a Choices service strategy that coordinates various service delivery approaches to:
  - (1) assist applicants in gaining employment as an alternative to public \_\_\_\_\_ assistance;

- (2) utilize a work first design as referenced in paragraph 2 of subsection (c) of this section to provide recipients participating in Choices access to the labor market; and
  - (3) assist former recipients in job retention and career advancement to remain independent of temporary cash assistance.
- (c) The Choices service strategy shall include:
- (1) Workforce Orientation for Applicants (WOA). As a condition of eligibility, applicants are required to attend a workforce orientation that includes information on options available to allow them to enter the Texas workforce. As part of the orientation, a Board shall ensure that applicants are provided with an appointment to develop a family employment plan. A Board shall ensure that the WOA is offered frequently enough to allow applicants to comply with the TDHS requirement that gives applicants ten (10) calendar days to attend a WOA. A Board shall ensure that the applicants are informed of:
    - (A) employment services available through a Board to assist applicants in achieving self-sufficiency without the need for temporary cash assistance;
    - (B) benefits of becoming employed;
    - (C) impact of time-limited benefits;
    - (D) individual and parental responsibilities; and
    - (E) other services and activities, including education and training, available through the One-Stop Service Delivery Network.
  - (2) Work First Design.
    - (A) The work first design:
      - (i) allows individuals to take immediate advantage of the labor market and secure employment, which is critical due to individual time-limited benefits; and
      - (ii) meets the needs of employers by linking individuals with skills that match those job requirements identified by the employer.
    - (B) Boards shall provide individuals access to other services and activities available through the One-Stop Service Delivery Network, which includes the WOA, to assist with employment in the labor market before certification for temporary cash assistance.
    - (C) Post-employment services shall be provided in order to assist an individual's progress towards self-sufficiency as described in paragraph (3) of subsection (c) of this section and §811.51 of this chapter.

- (D) In order to assist an individual's progress toward self-sufficiency:
    - (i) Boards shall provide recipients who are employed, including those receiving the ~~Earned Income Deduction~~ EID, with information on available post-employment services; or
    - (ii) Boards may provide former recipients with post-employment services as determined by Board policy. The length of time these services may be provided is subject to §811.51(e) of this chapter.
  - (E) In order to assist employers, Boards shall coordinate with local employers to address needs related to:
    - (i) employee post-employment education or training;
    - (ii) employee child care, transportation or other support services available to obtain and retain employment; and
    - (iii) employer tax credits.
  - (F) A Board shall ensure that a family employment plan is based on employer needs, individual skills and abilities, and individual time limits for temporary cash assistance.
- (3) **Post-Employment Services.** A Board shall ensure that post-employment services are designed to assist individuals with job retention, career advancement and reemployment, as defined in §811.51 of this chapter. Post-employment services are a continuum in the Choices service strategy to support an individual's progression to self-sufficiency.
  - (4) **Adult Services.** A Board shall ensure that services for adults shall include activities individually designed to lead to employment and self-sufficiency as quickly as possible.
  - (5) **Teen Services.** A Board shall ensure that services for teen heads of household shall include assistance with completion of secondary school or a certificate of general equivalence and making the transition from school to employment, as described in §811.27 and §811.50 of this chapter.
  - (6) **Individuals with Disabilities.** A Board shall ensure that services for individuals with disabilities include reasonable accommodations to allow the individuals to access and participate in services, where applicable by law. A Board shall ensure that Memoranda of Understanding (MOU) are established with the ~~applicable~~ appropriate agencies to serve individuals with disabilities.
  - (7) **Local Flexibility.** A Board may develop additional service strategies that are consistent with the goal and purpose of this chapter and the One-Stop Service Delivery Network.

- (8) ~~Coordinated Interagency Plan~~Local-Level MOU. A Board shall ensure the development of a ~~coordinated interagency plan~~local-level MOU in cooperation with TDHS for coordinated case management that is consistent with ~~any the memorandum of understanding~~MOU between TDHS and the Commission.

## SUBCHAPTER B. CHOICES SERVICES RESPONSIBILITIES

### §811.11. Board Responsibilities.

- (a) A Board shall ensure that Choices services are provided to applicants ~~for temporary cash assistance who attend Workforce Orientation for Applicants (WOA)~~.
- (b) A Board shall ensure that recipient status is verified monthly and recipients either:
- (1) comply with Choices services requirements as outlined in the family employment plan unless the recipient individual is exempted by TDHS; or
  - (2) have good cause as described in §811.14 of this subchapter (relating to Good Cause for Recipients).
- (c) A Board shall ensure that post-employment services, including job retention and career advancement services, are available to recipients, including those receiving ~~the Earned Income Deduction~~EID.
- (d) A Board shall ensure that the monitoring of ~~program~~Choices requirements and activities is ongoing and frequent, as determined by a Board, and consists of the following:
- ~~(1)~~ (1) ensuring receipt of support services
  - ~~(1)~~ (1) tracking and reporting actual hours of participation, at least monthly;
  - ~~(2)~~ (2) tracking and reporting of support services;
  - ~~(3)~~ (3) tracking and reporting actual hours of participation, at least monthly;
  - ~~(3)~~ (4) determining and arranging for any intervention needed to assist the individual in complying with Choices service requirements;
  - ~~(4)~~ (5) ensuring that the individual is progressing toward achieving the goals and objectives in the family employment plan; and
  - ~~(5)~~ (6) monitoring all other participation requirements.
- (e) A Board shall ensure that:
- (1) verification that an applicant attends the WOA is completed and TDHS is notified in accordance with TDHS rule, 40 T.A.C. §3.7301; and

- (2) notification is made to TDHS if a recipient fails to comply with Choices services requirements.
- (f) A Board shall ensure that documentation is obtained and maintained regarding all contact with Choices individuals ~~client contacts~~ and data entered into TWIST.

### **§811.12. Applicant Responsibilities.**

Applicants are required to attend a scheduled ~~Workforce Orientation for Applicants (WOA)~~, in accordance with TDHS rule 40 T.A.C. §3.7301.

### **§811.13. Recipient Responsibilities.**

- (a) A Board shall ensure that mandatory recipients, and exempt recipients who voluntarily participate in Choices services, comply with the provisions contained in this section.
- (b) Mandatory recipients, and exempt recipients who voluntarily participate in Choices services, shall:
  - (1) accept a job offer at the earliest possible opportunity;
  - (2) participate in or receive ancillary services necessary to enable the recipient individual to work or participate in employment-related activities, including counseling, treatment, vocational or physical rehabilitation, and medical or health services;
  - (3) report hours of participation in component activities, including hours of employment; and
  - (4) attend scheduled appointments.
- (c) Within two-parent families, mandatory recipients, and exempt recipients who voluntarily participate in Choices services, shall participate in assessment and family employment planning appointments and assigned employment and training activities as follows:
  - (1) participate in Choices employment and training as specified in §811.25(c)-(d) of this chapter;
  - (2) comply with requirements regarding core and non-core activities, as specified in §§811.25-811.28 of this chapter; and
  - (3) sign a form that contains all the information identified in the Agency's Commission's Family Work Requirement form, as described in §811.24 of this chapter.
- (d) Within single-parent families, mandatory recipients, and exempt recipients who voluntarily participate in Choices services, shall participate in assessment and employment planning appointments and assigned employment and training activities as follows:

- (1) participate in Choices employment and training activities as specified in §811.25(b) of this chapter; and
  - (2) comply with requirements regarding core and non-core activities, as specified in §§811.25-811.28 of this chapter.
- (e) A Board shall ensure that recipients who elect to receive the ~~Earned Income Deduction~~EID through TDHS:
- (1) report actual hours of work to a Board; and
  - (2) are provided with information on available post-employment services.

**§811.14. Good Cause for Recipients.**

- (a) Good cause applies only to recipients. A Board shall ensure whether the recipient has good cause as provided in this chapter.
- (b) A Board shall ensure that a good cause determination:
  - (1) is based on the individual circumstances of the recipient;
  - (2) is based on face-to-face or telephone contact with the recipient;
  - (3) covers a temporary period when a recipient may be unable to attend scheduled appointments or participate in ongoing work activities;
  - (4) is made at the time the change in the recipient's circumstances is made known to the Board's service provider of occurrence; and
  - (5) is conditional upon efforts to enable the recipient to address circumstances that limit the ability to participate in Choices services as required in the Personal Responsibility Agreement.
- (c) The following reasons may constitute good cause for purposes of this chapter if the mandatory recipient is unable to meet the participation requirements due to:
  - (1) temporary illness or incapacitation;
  - (2) court appearance;
  - (3) caring for a physically or mentally disabled household member who requires the recipient's presence in the home;
  - (4) ~~demonstrates that there is a~~ demonstration that there is:
    - (A) no available transportation and the distance prohibits walking; or
    - (B) ~~a disruption in transportation arrangements; or~~

- (~~CB~~) no available job within reasonable commuting distance, ~~which means that travel from home to the job or training would require commuting time of more than two hours round trip;~~ as defined by the Board;
- (5) ~~demonstrates an inability to obtain needed child care, based on the following reasons;—~~ as defined by the Board and based on the following reasons:
- (A) informal child care by a relative or under other arrangements is unavailable or unsuitable, and based on, where applicable, Board policy regarding child care as specified in §811.47 of this chapter. Informal child care may also be determined unsuitable by the parent. , as defined in the Child Care and Development State Plan, or Board policy regarding child care as specified in §811.47 of this chapter;
  - (B) eligible formal child care providers are unavailable, as defined in Chapter 809 of this title;
  - (~~BC~~) appropriate and affordable formal child care arrangements within maximum rates established by the Board are unavailable; and, — as defined in the Child Care and Development State Plan; and
  - (~~CD~~) appropriate formal or informal child care within a reasonable distance from home or the work site is unavailable, as defined in the Child Care and Development State Plan;;
- (6) is without other support services necessary for participation;
- (7) receives a job referral that results in an offer below the federal minimum wage, except when a lower wage is permissible under federal minimum wage law; or
- (8) is in a family crisis or a family circumstance that may preclude participation, including domestic violence, substance abuse, and mental health, provided the recipient engages in problem resolution through appropriate referrals for counseling and support services.
- (d) A Board shall promulgate policies and procedures for determining a family's inability to obtain child care and shall ensure that recipients in single-parent families caring for children under age six are informed of:
- (1) the penalty exception to the family work requirement, including the criteria and applicable definitions for determining whether a recipient ~~an individual~~ has demonstrated an inability to obtain needed child care, as defined ~~in §811.14(e)(5) of this section; and in §811.14(c)(5)(A)-(D) of this section.~~
  - (2) a Board's policy and procedures for determining a family's inability to obtain needed child care, and any other requirements or procedures, such as fair hearings, associated with this provision, as required by 45 CFR §261.56.

- (e) A Board shall ensure that good cause:
  - (1) is reevaluated at least on a monthly basis;
  - (2) is extended if the circumstances giving rise to the good cause exception are not resolved after available resources to remedy the situation have been considered; and
  - (3) that is based on the existence of domestic violence does not exceed a total of twelve months from the first determination of good cause.

## **SUBCHAPTER C. CHOICES SERVICES**

### **§811.21. General Provisions.**

- (a) A Board shall ensure that services are available to assist Choices individuals with obtaining employment as quickly as possible and, if employed, with retaining employment. These services may include:
  - (1) job readiness and job search-related services;
  - (2) work-based services;
  - (3) post-employment services;
  - (4) education and training services as described in this chapter; and
  - (5) support services.
- (b) A Board shall ensure that employment and training activities are conducted in compliance with the Fair Labor Standards Act (FLSA) as follows:
  - (1) the amount of time per week that a recipient ~~an individual~~ may be required to participate in activities that are not exempt from minimum wage and overtime under the FLSA shall be determined by the temporary cash assistance and food stamp benefits amount being divided by the minimum wage so that the amount paid to the recipient ~~individual~~ would be equal to or more than the amount required for payment of wages, including minimum wage and overtime; and
  - (2) if a Board provides activities that meet all of the following categories set forth in this paragraph, the activity is considered "training" under the FLSA and minimum wage and overtime is not required:
    - (A) the training is similar to that given in a vocational school;
    - (B) the training is for the benefit of the trainees;
    - (C) trainees do not displace regular employees;
    - (D) employers derive no immediate advantage from trainees' activities;

- (E) trainees are not entitled to a job after training is completed; and
  - (F) employers and trainees understand that trainee is not paid.
- (c) A Board shall ensure that placement in work-based services does not result in the displacement of currently employed workers or impair existing contracts for services or collective bargaining agreements.
  - (d) A Board may, through local policies and procedures, require the use of the Eligible Training Provider Certification System (ETPS) and Individual Training Account (ITA) systems as described in 40 T.A.C. Chapter 841 to provide for Choices services for individuals participating in Choices services and paid for with TANF funds.
  - (e) A Board shall, through local policies and procedures, make available job development services, which include:
    - (1) contacting local employers or industry associations to request that job openings be listed with Texas Workforce Centers, and other entities in the One-Stop Service Delivery Network selected by the Board;
    - (2) identifying the hiring needs of employers;
    - (3) assisting the employer in creating new positions for job seekers based on the job developer's and employer's analysis of the employer's business needs; or
    - (4) finding opportunities with an employer for a specific job seeker or a group of job seekers.
  - (f) A Board shall ensure that job development services identify, at a minimum, job openings for current mandatory recipients.
  - (g) A Board shall, through local policies and procedures, make available job placement services. Job placement services shall include:
    - (1) identifying employers' workforce needs;
    - (2) identifying job seekers ~~individuals~~ who have sufficient skills and abilities to be successfully linked with employment; and
    - (3) matching the skills of the job seeker pool to the hiring needs of local employers.

**§811.22. Assessment.**

- (a) A Board shall ensure that initial and ongoing assessments are performed to determine the employability and retention needs of Choices individuals ~~applicants, recipients and former recipients~~ as follows:
  - (1) An assessment is required for mandatory recipients, and for exempt recipients who voluntarily participate in Choices services, and who are:

- (A) at least age 18; or
    - (B) heads of household, as determined by TDHS, ~~that who~~ are not yet age 18, ~~who~~ have not completed secondary school or received a certificate of general equivalence, and are not attending secondary school.
  - (2) An assessment shall be provided to applicants who choose to participate in Choices services.
  - (3) Ongoing assessments shall be provided to former recipients who choose to participate in Choices services.
- (b) Assessments shall include evaluations of strengths and potential barriers to obtaining and retaining employment, such as:
- (1) skills and abilities, employment, and educational history in relation to employers' workforce needs in the local labor market;
  - (2) support services needs; and
  - (3) family circumstances that may affect participation, including the existence of domestic violence, substance abuse, and mental health, or the need for parenting skills training, as one of the factors considered in evaluating employability.
- (c) For recipients who are at least age 18, or who are heads of household but are not yet age 18 and have not completed secondary school or received a certificate of general equivalence and are not attending secondary school:
- (1) The assessments shall also include evaluations of the recipient's:
    - (A) vocational and educational skills, experience, and needs; and
    - (B) literacy level by using a statewide standard literacy assessment instrument with the following exception: recipients receiving the ~~Earned Income Deduction~~EID are excluded from the literacy assessment. A Board shall ensure that the grade-level results or other literacy information is provided to TDHS for use in determining the appropriateness of the initial state time-limit designation for temporary cash assistance as described in the Texas Human Resources Code §31.0065, relating to state time-limited benefits.
  - (2) The grade-level results or other literacy information are provided to TDHS for use in determining the appropriateness of the initial state time-limit designation for temporary cash assistance as described in the Texas Human Resources Code §31.0065, relating to state time-limited benefits.
- (d) **Assessment Outcome.** Assessments shall result in the development of a family employment plan, as described in §811.23 of this subchapter.

### §811.23. Family Employment Plan.

- (a) Boards must ensure that prior to the development of a family employment plan, recipients receive general information about services provided through the One-Stop Service Delivery Network that will assist them in obtaining employment, if the recipient did not receive this information during the ~~Workforce Orientation for Applicants (WOA)~~.
- (b) Family employment plans are required for mandatory recipients, and for exempt recipients who voluntarily participate in Choices services.
- (c) Family employment plans shall be developed with applicants and former recipients who choose to participate in Choices services.
- (d) A Board shall ensure that a family employment plan is developed during the assessment and:
  - (1) is based on assessments, as described in §811.22 of this subchapter;
  - (2) contains the goal of self-sufficiency through employment to meet the needs of the local labor market;
  - (3) contains the steps and services to achieve the goal, including:
    - (A) connecting the job seeker individual immediately to the local labor market;
    - (B) addressing potential barriers that limit the job seeker's individual's ability to work or participate in activities;
    - (C) arranging support services for the job seeker individual or the family to address circumstances that limit the individual's ability to work or participate, including services for domestic violence; ~~and~~
    - (D) providing post-employment skill enhancement and career advancement; and
    - (E) requiring recipients to notify the Board's service provider of changes in family circumstances that may preclude participation in Choices services;
  - (4) is signed by the Choices individual, unless the Choices individual is a recipient receiving the Earned Income Deduction EID, and a Board's designated representative service provider; and
  - (5) assigns required hours and outlines the participation agreement for compliance with Choices services requirements. Family employment plans for two-parent families must include a description of how the required hours of participation will be distributed between one or both adults in the two-parent household.

- (e) A Board shall ensure that progress towards meeting the goals of the family employment plan is evaluated and the family employment plan is modified as appropriate to meet employer needs in the local labor market.

#### **§811.24. Family Work Requirement Form for Two-Parent Families.**

A Board shall ensure that a Family Work Requirement form is developed for all two-parent families that:

- (1) contains an agreement by both adults in the family to comply with the family work requirements through distribution of required hours of participation between one or both adults in the two-parent family; and
- (2) is signed by the adults in the household that are required to participate in Choices services, except for the following:
  - (A) ~~recipients individuals~~ who are temporarily unable to sign the form, such as a recipient ~~an individual~~ who is temporarily unavailable; or
  - (B) ~~recipients individuals~~ receiving the ~~Earned Income Deduction~~ EID whose only participation requirement is to report their hours of employment.

#### **§811.25. TANF Core and TANF Non-Core Activities.**

- (a) Participation hours are subject to the restrictions regarding TANF core and TANF non-core activities as outlined in 45 C.F.R. §261.31, §261.32 and §261.33, and as outlined in this section and §811.26 of this subchapter.

- (1) TANF core activities are:
  - (A) job search and job readiness assistance, as described in §811.41 of this chapter;
  - (B) unsubsidized employment, as described in §811.42 of this chapter;
  - (C) subsidized employment, as described in §811.43 of this chapter;
  - (D) on-the-job training, as described in §811.44 of this chapter;
  - (E) work experience, as described in §811.45 of this chapter;
  - (F) community service, as described in §811.46 of this chapter;
  - (G) vocational educational training, as described in §811.48 of this chapter; or
  - (H) child care services to a ~~Choices individual~~ recipient who is participating in a community service, as described in §811.47 of this chapter.
- (2) TANF non-core activities are:

- (A) job skills training, as described in §811.49 of this chapter;
  - (B) educational services for recipients ~~individuals~~ who have not completed secondary school or received a certificate of general equivalence, as described in §811.50 of this chapter.
- (b) A recipient in a single-parent family is deemed to be engaged in work during the month if he or she participates for at least a minimum weekly average of thirty hours. An average of twenty hours per week must be derived from participation in core activities. Up to an average of ten hours per week may be derived from participation in non-core activities.
- (c) Two-parent families ~~that~~ who are not receiving Commission-funded ~~subsidized~~ child care are deemed to be engaged in work during the month if one or both adults in the family participate for at least a minimum weekly average of thirty-five hours. An average of thirty hours per week must be derived from participation in core activities. Up to an average of five hours per week may be derived from participation in non-core activities.
- (d) Two-parent families ~~that~~ who are receiving Commission-funded ~~subsidized~~ child care are deemed to be engaged in work during the month if one or both adults in the family participate for at least a minimum weekly average of fifty-five hours. An average of fifty hours per week must be derived from participation in core activities. Up to an average of five hours per week may be derived from participation in non-core activities. The following work participation exceptions apply to two-parent families who are receiving Commission-funded ~~subsidized~~ child care:
- (1) two-parent families with one adult in good cause status are deemed to be engaged in work during the month if the adult who is not in good cause status participates for at least a minimum weekly average of thirty-five hours. An average of thirty hours per week must be derived from participation in core activities. Up to an average of five hours per week may be derived from participation in non-core activities; or
  - (2) two-parent families with both adults in good cause status for whom no penalty will be requested for failure to meet the minimum weekly average hours based on the good cause determination. ~~will not have a family work requirement.~~

#### **§811.26. Special Provisions Regarding Core and Non-Core Activities.**

- (a) Mandatory recipients, with the exception of those described in §811.27 of this subchapter, who are not in an employment activity after four weeks of participation in Choices services, must be placed into community service. -Mandatory recipients who are not in an employment activity after reaching their six-week limit per federal fiscal year in job search and job readiness activities must be placed into community service. Mandatory recipients required to participate in a Community ~~community~~ Service ~~service~~ activity must be scheduled to participate no less than the minimum weekly average hours calculated as specified in §811.21 (b) of this subchapter.
- (1) An employment activity is defined as:

- (A) unsubsidized employment, as described in §811.42 of this chapter;
  - (B) subsidized employment, as described in §811.43 of this chapter;
  - (C) on-the-job training, as described in §811.44 of this chapter; or
  - (D) work experience, as described in §811.45 of this chapter.
- (2) The number of hours that a recipient is required to participate in community service or another unpaid work activity, must be determined in compliance with the ~~Fair Labor Standards Act~~ FSLA as described in §811.21(b) of this subchapter. If a recipient's hours of community service or other unpaid work activity are not sufficient to meet the core work activities requirement outlined in §811.25 (b)-(d) of this subchapter, the recipient must be enrolled in additional core activities.
- (b) Exempt recipients who voluntarily participate in Choices services are not subject to the requirements outlined in §811.26(a) of this section.
- (c) Recipients participating in unsubsidized employment in §811.26(a)(1)(A) of this subsection who lose that employment may participate in job search and job readiness activities unless they have reached the six-week limit per federal fiscal year.
- (ed) Job search and job readiness activities, as defined in §811.41 of this chapter, are limited as follows:
- (1) recipients may not be enrolled for more than 4 weeks of consecutive \_\_\_\_\_ activity;
  - (2) recipients may not be enrolled for more than 6 weeks of total activity in a federal fiscal year;
  - (3) in order for a recipient to qualify for their remaining 2 weeks of job search and job readiness, they must first comply with §811.26(a) of this section, which requires that the recipient be engaged in an employment activity or in community service; and
  - (4) only once per federal fiscal year, may a partial week count as a full week of participation, per ~~individual~~ recipient.
- ~~(de)~~ Recipients may not be enrolled in vocational education training, as defined in §811.48 of this chapter, for more than a cumulative total of 12 months.
- (ef) No more than thirty percent of recipients engaged in work activities in a month may be included in the Board's numerator because they are:
- (1) participating in vocational educational training; and

- (2) teens heads of household participating in educational activities as described in §811.27 of this subchapter.

(fg) Recipients shall only be enrolled in core and non-core activities.

#### **§811.27. Special Provisions for Teen Heads of Household.**

- (a) A Board must ensure that teen heads of household who have not completed secondary school or received a certificate of general equivalence are enrolled in educational activities as defined in §811.50 of this chapter.
- (b) Teen heads of household who have not completed secondary school or received a certificate of general equivalence will count as engaged in work if they:
  - (1) maintain satisfactory attendance at a secondary school or the equivalent during the month as follows;
    - (A) during months in which school is in session, maintains satisfactory attendance;
    - (B) in months in which school is not in session, participates in allowable activities as described in §811.25 of this subchapter; or
  - (2) participate in education directly related to employment for an average of at least 20 hours per week during the month; or
  - (3) participate in Choices employment and training activities as specified in §811.25 of this subchapter.

#### **§811.28. Special Provisions for Recipients in Single-Parent Families with Children Under Age Six.**

- (a) A Board shall ensure that recipients in single-parent families with children under age six are notified of the penalty exception to Choices participation as described in §811.14~~(c)(5)~~(d) of this chapter.
- (b) A recipient in a single-parent family will count as engaged in work if he or she participates for at least an average of twenty hours per week in core activities.

#### **§811.29. Special Provisions Regarding Exempt Recipients Who Voluntarily Participate**

Boards are not required to provide Choices services as outlined in §§811.25-811.28 of this subchapter to exempt recipients who fail to meet work requirements.

### **SUBCHAPTER D. CHOICES WORK ACTIVITIES**

#### **§811.41. Job Search and Job Readiness Assistance.**

- (a) Job search and job readiness are core activities as defined in §811.25(a)(1) of this chapter.

- (b) A Board shall ensure that job search and job readiness services:
- (1) incorporate the following:
    - (A) individual and group activities; and
    - (B) staff-assisted and client-directed activities.
  - (2) are limited to activities necessary for Choices individuals ~~an individual~~ to secure immediate employment.
  - (3) provide individual assistance or coordinated, planned, and supervised activities that prepare Choices individuals for seeking employment, and including but are not limited to, the following:
    - (A) job skills assessment;
    - (B) job placement;
    - (C) counseling;
    - (D) information on available jobs;
    - (E) occupational exploration, including information on local emerging and demand occupations;
    - (F) interviewing skills and practice interviews;
    - (G) assistance with applications and resumes;
    - (H) job fairs;
    - (I) life skills; or
    - (J) guidance and motivation for development of positive work behaviors necessary for the labor market.
  - (4) are time-limited as defined in ~~this subchapter~~ Subchapter C of this chapter.

**§811.42. Unsubsidized Employment.**

- (a) Unsubsidized employment is a core activity as defined in §811.25(a)(1) of this chapter.
- (b) ~~Unsubsidized employment is full or part-time employment, in which wages are paid in full by the employer, and includes~~ includes the following:
  - (1) full or part-time employment, in which wages are paid in full by the employer;

~~(2) unsubsidized internship with wages paid by the internship employer; and~~

~~(23) self-employment, assistance as set forth in subsection (b) of this section.~~

~~(b) Boards may provide self-employment assistance:~~

~~(1) to enable individuals to start up or continue a small business, which is defined as having ten or fewer employees;~~

~~(2) to individuals based upon an objective assessment process that identifies individuals who are likely to succeed; and~~

~~(3) that may include microenterprise services.~~

~~(A) Microenterprise services shall include entrepreneurial training.~~

~~(B) Microenterprise services may include:~~

~~(i) business counseling;~~

~~(ii) financial assistance; and~~

~~(iii) technical assistance.~~

### **§811.43. Subsidized Employment.**

(a) Subsidized employment is a core activity as defined in §811.25(a)(1) of this chapter.

(b) Subsidized employment is full or part-time employment that is subsidized in full or in part and complies with this section. Subsidized employment may occur in either the private sector or public sector. A Board shall not be the employer of record for Choices individuals enrolled in a subsidized employment activity. Subsidized employment includes but is not limited to the following:

(1) subsidized internship with a portion of the Choices individual's wages subsidized;

(2) subsidized employment with a staffing agency acting as the employer of record; and

(3) subsidized employment with the actual employer acting as the employer of record.

(c) Wages.

(1) Wages shall be at least federal or ~~state~~ State minimum wage, whichever is higher. Boards must set a policy to establish the amount of the wage that is subsidized.

(2) Employers must provide the same wages and benefits to subsidized employees as for unsubsidized employees with similar skills, experience, and position.

#### **§811.44. On-the-Job Training.**

- (a) On-the-job training is a core activity as defined in §811.25(a)(1) of this chapter.
- (b) A Board shall ensure that a determination is made on a case-by-case basis whether to authorize, arrange, or refer a Choices individual ~~individuals~~ for subsidized, time-limited training activities, to assist the Choices individual with obtaining knowledge and skills that are essential to the workplace while in a job setting. On-the-job training is training by an employer that is provided to a Choices individual ~~paid participant~~ while engaged in productive work in a job that:
  - (1) provides knowledge or skills essential to the full and adequate performance of the job;
  - (2) provides reimbursement to the employer of a percent of the wage rate of the Choices individual for the extraordinary costs of providing the training and additional supervision related to the training;
  - (3) is limited in duration as appropriate to the occupation for which the Choices individual is being trained, taking into account the content of the training, the prior work experience of the Choices individual, and the service strategy of the Choices individual, as appropriate; and
  - (4) includes training specified by the employer.
- (c) Unsubsidized employment after satisfactory completion of the training is expected. A Board shall not contract with employers who have previously exhibited a pattern of failing to provide Choices individuals in on-the-job training with continued long-term employment, which provides wages, benefits, and working conditions that are equal to those that are provided to regular employees who have worked a similar length of time and are doing a similar type of work.

#### **§811.45. Work Experience.**

- (a) Work experience is a core activity as defined in §811.25(a)(1) of this chapter.
- (b) A Board shall ensure that a determination is made on a case-by-case basis whether to authorize, arrange, or refer recipients ~~individuals~~ for unsalaried, work-based training positions in the private for-profit sector to improve the employability of a recipient ~~an individual~~ who has been unable to find employment.
- (b~~c~~) A Board shall ensure that all recipients who are unemployed after completing job search services are evaluated on an individual basis to determine if enrollment in work experience shall be required, based on available resources and the local labor market.
- (e~~d~~) A Board shall ensure that each work experience placement:
  - (1) is time-limited;

- (2) is designed to move the ~~recipient individual~~ quickly into regular employment; and
  - (3) has designated hours, tasks, skills attainment objectives, and staff \_\_\_\_\_ supervision.
- (de) A Board shall ensure that entities that enter into non-financial agreements with a Board, identify work experience positions and provide job training and work experience within their organization. These positions shall enable ~~recipients individuals~~ to gain the skills necessary to compete for positions within the entity as well as positions in the labor market.

**§811.46. Community Service.**

- (a) Community service is a core activity as defined in §811.25(a)(1) of this chapter.
- (b) A Board shall ensure that all ~~individuals recipients~~ subject to §811.26(a)(~~d~~) of this chapter are referred to a community service program that provides employment or training activities to ~~individuals recipients~~ through unsalaried, work-based positions in the public or private nonprofit sectors to improve the employability of ~~individuals recipients~~ who have been unable to find employment.

**§811.47. Child Care Services to a ~~Choices Individual~~ Recipient Participating in Community Service.**

- (a) Child care services to a ~~Choices individual recipient~~ participating in community service is a core activity as defined in §811.25(a)(1) of this chapter.
- (b) ~~Choices individuals~~ A recipient may provide child care services for another Choices individual recipient who is engaged in a community service activity, as described in §811.46 in Subchapter C of this chapter. The hours spent by the recipient Choices individual providing child care are considered a core activity. Boards that elect to allow this activity must set local policies which include:
  - (1) ensuring the health, safety and well-being of the children in care;
  - (2) limits on the maximum number of children that may be cared for; and
  - (3) the methodology and mechanism for ~~clients~~ reporting hours of \_\_\_\_\_ participation by recipients.

**§811.48. Vocational Educational Training.**

- (a) Vocational educational training is a core activity as defined in §811.25(a)(1) of this chapter.
- (b) A Board shall ensure that a determination is made, on a case-by-case basis, whether to authorize, arrange, or refer Choices individuals for vocational ~~and~~ educational training.

Services provided by the Texas Rehabilitation Commission may be counted as vocational education training if the service provided to the Choices individual leads to employment.

- (c) The vocational educational training shall:
- (1) relate to the types of jobs available in the labor market;
  - (2) be consistent with employment goals identified in the family employment plan, when possible;
  - (3) be provided only if there is an expectation that employment will be secured upon completion of the training; and
  - (4) be subject to the time limitations as detailed in this subchapter.
- (d) Boards may count up to 5 hours per week of study or homework time toward a recipient's family participation requirement if:
- (1) study or homework time is directly correlated to the demands of the course work for out-of-class preparation as described by the educational institution;
  - (2) the educational institution's policy requires a certain number of out-of-class preparation hours for the class;
  - (3) study or homework time has been directly verified from the educational institution; and
  - (4) the recipient is making progress as determined by the educational institution.

#### **§811.49. Job Skills Training.**

- (a) Job skills training is a non-core activity as defined in §811.25(a)(2) of this chapter.
- (b) Job skills training services are designed to increase a Choices ~~an~~ individual's employability. Job skills training may also include activities ensuring that Choices individuals become familiar with workplace expectations and exhibit work behavior and attitudes necessary to compete successfully in the labor market. Various types of activities, which are directly related to employment, may qualify, such as personal development and preemployment classes.
- (c) A Board shall ensure that a determination is made on a case-by-case basis whether to authorize, arrange, or refer Choices individuals for job skills training as outlined in the family employment plan.
- (d) Job skills training shall be:
- (1) directly related to employment; and

- (2) consistent with employment goals identified in the family employment plan, when possible.
- (e) Job skills training includes:
  - (1) Adult Basic Education (ABE), English-as-a-Second-Language (ESL), or Workforce Adult Literacy services.
    - (A) Boards may count up to 5 hours per week of study or homework time toward a recipient's family participation requirement if:
      - (i) study or homework time is directly correlated to the demands of the course work for out-of-class preparation as described by the educational institution;
      - (ii) the educational institution's policy requires a certain number of out-of-class preparation hours for the class;
      - (iii) study or homework time has been directly verified from the educational institution; and
      - (iv) the recipient is making progress as determined by the educational institution.
  - (2) entrepreneurial training provided prior to business start up; and
  - (3) self-employment assistance:
    - (A) to Choices individuals currently engaged in operating a small business;
    - (B) to Choices individuals based upon an objective assessment process that identifies individuals who are likely to succeed; and
    - (C) which may include microenterprise services such as:
      - (i) business counseling;
      - (ii) financial assistance; and
      - (iii) technical assistance.

**§811.50. Educational Services for ~~Recipients Individuals~~ Who Have Not Completed Secondary School or Received a Certificate of General Equivalence.**

- (a) Educational services are only available for recipients who have not completed secondary school or who have not received a certificate of general equivalence as follows.
  - (1) Educational services for recipients age 20 or older are non-core activities as defined in §811.25(a)(2) of this chapter.

- (2) Educational services for recipients that are teen heads of household recipients age 19 and younger are core activities as defined in §811.27 of this chapter.
- (b) A Board shall ensure that a determination is made, on a case-by-case basis, whether to authorize, arrange, or refer recipients who are age 20 and older for the following educational or other training services:
- (1) secondary school leading to a high school diploma or a certificate of general equivalence;
  - (2) Workforce Adult Literacy; or
  - (3) other educational activities which are directly related to employment.
- (c) Boards may count up to 5 hours per week of study or homework time toward a recipient's family participation requirement if:
- (1) study or homework time is directly correlated to the demands of the course work for out-of-class preparation as described by the educational institution;
  - (2) the educational institution's policy requires a certain number of out-of-class preparation hours for the class;
  - (3) study or homework time has been directly verified from the educational institution; and
  - (4) the recipient is making progress as determined by the educational institution.

#### **§811.51. Post-Employment Services.**

- (a) A Board shall ensure that post-employment services, which include job retention, career advancement, and reemployment services, are offered to recipients who are employed, and to applicants and former recipients who have obtained employment but require additional assistance in retaining employment and achieving self-sufficiency.
- (b) A Board shall ensure that post-employment services are monitored, and ensure that hours of employment are required and reported by recipients for at least the length of time the recipient receives temporary cash assistance.
- (c) A Board shall ensure that ongoing contact is established with Choices individuals receiving post-employment services at least monthly.
- (d) A Board may, through local policies and procedures, make available post-employment services to former recipients who are denied temporary cash assistance due to earnings. The post-employment services for former recipients may include the following:
  - (1) assistance and support for the transition into employment through direct services or referrals to resources available in the workforce area;

- (2) child care, if needed, as specified in rules at 40 T.A.C. Chapter 809;
  - (3) work-related expenses, including those identified in §811.64 of this chapter;
  - (4) transportation, if needed;
  - (5) job search, job placement, and job development services to help a former recipient ~~an individual~~ who loses a job to obtain employment; or
  - (6) referrals to available education or training resources to increase an employed individual's skills or to help the individual qualify for advancement and long-term employment goals.
- (e) The maximum length of time a former recipient may receive services under this section is dependent upon:
- (1) the former recipient's ~~individual's~~ circumstances;
  - (2) whether the former recipient ~~individual~~ is at risk of returning to public assistance. A person is considered at risk of returning to temporary cash assistance if he or she is a food stamp recipient, or receives Commission-funded ~~subsidized~~ child care;
  - (3) the former recipient's ~~individual's~~ ongoing need for these services; and
  - (4) the availability of funds for these services.
- (f) Post-employment service providers may include employers, community colleges, technical colleges, proprietary schools, faith-based and community-based organizations.

### **§811.52. Parenting Skills Training.**

A Board shall ensure that a determination is made, on a case-by-case basis and as determined during the assessments described in §811.22 of this chapter, whether to authorize, arrange, or refer Choices individuals for parenting skills training including one or more of the following: nutrition education, budgeting and life skills, and instruction on the necessity of physical and emotional safety for children.

## **SUBCHAPTER E. SUPPORT SERVICES AND OTHER INITIATIVES**

### **§811.61. Support Services.**

- (a) A Board shall ensure that support services as specified in this subchapter are provided, if needed, to Choices individuals ~~applicants, recipients, and former recipients~~ to address barriers to employment or participation in Choices services, subject to availability of resources and funding. A Board shall ensure that support services provided to Choices individuals ~~applicants, recipients, and former recipients~~ are coordinated with the employer, when appropriate.

(b) ~~(b)~~—A Board shall ensure that support services, including Commission-funded subsidized child care, are provided only to recipients who are meeting requirements outlined in §811.14, ~~§811.23~~, and §§811.25-811.28 of this chapter, and as outlined in §809.102 of this title. In applying this provision, a Board shall ensure support services are provided to a recipient if it is determined that the recipient needs the support services to comply with requirements outlined in §811.14, §811.23, and §§811.25-811.28 of this chapter, and as outlined in §809.102 of this title.

(c) A Board shall ensure that:

(1) support services are terminated immediately upon a determination of a recipient's failure to meet Choices requirements, unless otherwise determined by the Board's service provider as referenced in subsection (b) of this section;

(2) the Board's child care service provider is notified immediately of the recipient's failure; and

(3) upon notification, the Board's child care service provider immediately notifies the child care provider that services are terminating due to failure to meet Choices requirements.

#### **§811.62. Child Care for ~~Applicants and Recipients~~ Choices Individuals.**

(a) A Board shall ensure that child care is provided if needed, as specified in Chapter 809 of this title.

(b) Transitional child care is provided as needed, as specified in §809.101 of this title.

(c) Choices child care is provided as needed, as specified in §809.102 of this title.

(d) Applicant child care is provided as needed, as specified in §809.103 of this title.

#### **§811.63. Transportation.**

A Board shall ensure that transportation assistance shall:

(1) be provided if needed to enable a Choices individual ~~an applicant, a recipient, and a former recipient~~ to work, attend, and participate in required Choices services, or access necessary support services if alternative transportation resources are not available;

(2) not extend beyond four months for applicants or former recipients who are unemployed and not receiving temporary cash assistance; and

(3) use the most economical means of transportation that meets the Choices individual's needs.

#### **§811.64. Work-Related Expenses.**

(a) If other resources are not available, work-related expenses necessary for Choices individuals ~~applicants, recipients, or former recipients~~ to accept or retain specific and

verified job offers that pay at least the federal minimum wage may be provided or reimbursed.

- (b) A Board shall ensure that written policies are developed related to the methods and limitations for provision of work-related expenses.
- (c) Work-related expenses may include: tools, uniforms, equipment, transportation, car repairs, housing or moving expenses, and the cost of vocationally required examinations or certificates.

**§811.65. Wheels to Work.**

- (a) The Commission may develop a Wheels to Work initiative in which local nonprofit organizations provide automobiles for Choices individuals who have obtained employment but are unable to accept or retain the employment solely because of a lack of transportation.
- (b) A Board may, through local policies and procedures, establish services to assist Choices individuals who verify the need for an automobile to accept or retain employment by referring them to available providers.
- (c) Persons or organizations donating automobiles under a Wheels to Work initiative shall receive a charitable donation receipt for federal income tax purposes.

**§811.66. Certificate of General Equivalence (GED) Testing Payments.**

A Board shall ensure that the cost of certificate of ~~general equivalence (GED)~~ testing and issuance of the certificate is paid through direct payments to the GED test centers and the Texas Education Agency for Choices individuals referred for testing by a Board's provider of Choices services.

**§811.67. Individual Development Accounts (IDAs).**

- (a) A Board may set local policy and procedures to provide for implementation and oversight of ~~individual development accounts (IDAs)~~ under this section using TANF funds in accordance with 45 C.F.R. §§263.20-263.23. An ~~individual development account~~ IDA means an account established by, or for, an eligible individual to allow the individual to accumulate funds for specific purposes.
- (b) A Board shall ensure that any ~~individual development accounts~~ IDAs created and matched with TANF funds are established and administered through a contract with a private nonprofit entity or through a state or local government entity acting in cooperation with a private nonprofit entity. The private nonprofit entity, or cooperating state or local entity, must coordinate with a financial institution in administering the accounts.
- (c) Choices individuals Applicants, recipients, and former recipients may be eligible for IDAs if all of the requirements of this section are met.
- (d) IDAs may be established for an eligible individual, and may be contributed to with the individual's earned income and up to fifty percent of the individual's federal Earned

Income Tax Credit refund. Federal Earned Income Tax Credit refunds shall not be matched with TANF funds.

- (e) Federal TANF funds, as well as public or private funds, may be used to provide matching funds for qualified expenses and to administer IDAs, and shall be expended in a manner consistent with applicable federal and state statutes and regulations, with the exception of federal Earned Income Tax Credit refunds.
- (f) Use of funds in an individual's IDA, shall be in accordance with the Social Security Act §404(h) (42 U.S.C.A. §604(h)) and 45 C.F.R. §§263.20-263.23 and limited to expenses related to:
  - (1) postsecondary educational expenses;
  - (2) first home purchase; or
  - (3) business capitalization.
- (g) A Board shall ensure that only qualified withdrawals are made by eligible individuals, and must develop policies and procedures to address unauthorized withdrawals, to include notification:
  - (1) to the individual that unauthorized withdrawals may impact the individual's eligibility for public assistance programs;
  - (2) to the individual of forfeiture of the entitlement to the matching funds for an unauthorized withdrawal; and
  - (3) to TDHS within seven working days of the unauthorized withdrawal.

## **SUBCHAPTER F. APPEALS**

### **§811.71. Board Review.**

- (a) The following may request a review by the respective Board:
  - (1) ~~a Choices~~ an individual against whom an adverse action is taken by a Texas Workforce Center Partner; or
  - (2) a person who believes that a Choices individual has displaced the person from employment.
- (b) A request for review shall be submitted in writing and delivered to a Board within 15 calendar days of the date of the adverse action. The request shall also contain:
  - (1) a concise statement of the disputed adverse action;
  - (2) a recommended resolution; and

- (3) any supporting documentation the Choices individual deems relevant to the dispute.
- (c) On receipt of a request for review, a Board shall coordinate a review by appropriate Board staff.
- (d) The parties to the request for review are the aggrieved person, applicant, or individual and the Texas Workforce Center Partner.
- (e) Additional information may be requested from the parties. Such information shall be provided within 15 calendar days of the request.
- (f) Within 30 calendar days of the date the request for review is received or of the date that additional requested information is received by the reviewing Board staff member, a Board shall send the parties written notification of the results of the review.

**§811.72. Appeals to the Agency.**

- (a) After results of a review have been issued, the party that disagrees with the outcome of the review may request an Agency hearing to appeal the results of the review.
- (b) The request for appeal to the Agency from a Board's review shall be filed in writing with the Appeals Department, Texas Workforce Commission, 101 East 15<sup>th</sup> Street, Room 410, Austin, Texas 78778-0001, within 15 calendar days after receiving written notification of the results of the review.
- (c) The appeal to the Agency shall include a hearing, which is limited to the issues and the information considered in a Board review.
- (d) The Agency hearing shall be held in accordance with the procedures applicable to an appeal as contained in Chapter 823 of this title (relating to General Hearings).

**§811.73. Appeals to the Texas Department of Human Services (TDHS).**

A recipient who expresses dissatisfaction with a decision regarding the termination or reduction of his or her cash assistance benefits may appeal the decision to TDHS. If the termination or reduction of temporary cash assistance is based upon noncompliance with Choices requirements, a Board shall prepare and provide necessary information to TDHS.