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1
2 **CHAPTER 809. CHILD CARE SERVICES**
3

4 **SUBCHAPTER A. GENERAL PROVISIONS**
5

6 **§809.1. Short Title and Purpose.**
7

- 8 (a) The rules contained in this chapter may be cited as the Child Care Rules.
9
10 (b) The purpose of these rules is to interpret and implement the requirements of state and
11 federal statutes and regulations governing child care and quality improvement
12 activities funded through the Texas Workforce Commission (Commission), to
13 include:
14
15 (1) the Child Care and Development Fund (CCDF), which includes:
16
17 (A) funds allocated to local workforce development areas (workforce areas)
18 as provided in §800.58 of this title;
19
20 (B) private donated funds described in §809.17(b)(1);
21
22 (C) public transferred funds described in §809.17(b)(2);
23
24 (D) public certified expenditures described in §809.17(b)(3); and
25
26 (E) funds used for children receiving protective services described in
27 §809.49.
28
29 (2) other funds that are used for child care services allocated to workforce areas
30 under Chapter 800 of this title.
31
32 (c) The rules contained in this chapter shall apply to the Commission, Local Workforce
33 Development Boards (Boards), their child care contractors, child care providers, and
34 parents applying for or eligible to receive child care services.
35

36 *The provisions of this §809.1 adopted to be effective January 29, 2007, 32 TexReg 336*
37

38 **§809.2. Definitions.**
39

40 The following words and terms, when used in this chapter, shall have the following
41 meanings, unless the context clearly indicates otherwise.
42

- 43 (1) Attending a job training or educational program--An individual is attending a
44 job training or educational program if the individual:
45
46 (A) is considered by the program to be officially enrolled;

- 1
2 (B) meets all attendance requirements established by the program; and
3
4 (C) is making progress toward successful completion of the program as
5 determined by the Board upon eligibility redetermination as described in
6 §809.42(b).
7

8 (2) Child--An individual who meets the general eligibility requirements contained
9 in this chapter for receiving child care services.

10
11 (3) Child care contractor--The entity or entities under contract with the Board to
12 manage child care services. This includes contractors involved in determining
13 eligibility for child care services, contractors involved in the billing and
14 reimbursement process related to child care subsidies, as well as contractors
15 involved in the funding of quality improvement activities as described in
16 §809.16.
17

18 (4) Child care services--Child care subsidies and quality improvement activities
19 funded by the Commission.
20

21 (5) Child care subsidies--Commission-funded child care reimbursements to an
22 eligible child care provider for the direct care of an eligible child.
23

24 (6) Child experiencing homelessness--A child who is homeless as defined in the
25 McKinney-Vento Act (42 U.S.C. 11434(a)), Subtitle VII-B, §725.
26

27 (7) Child with disabilities--A child who has a physical or mental impairment that
28 substantially limits one or more major life activities, has a record of such an
29 impairment, or is regarded as having such an impairment. Major life activities
30 include, but are not limited to, caring for oneself; performing manual tasks;
31 walking; hearing; seeing, speaking, or breathing; learning; and working.
32

33 (8) Educational program--A program that leads to:

34 (A) a high school diploma;

35 (B) a General Educational Development (GED) credential; or

36 (C) a postsecondary degree from an institution of higher education.
37
38

39 (9) Excessive unexplained absences--More than 40 unexplained absences within a
40 12-month eligibility period as described in §809.78(a)(3).
41
42

43 (10) Family--Two or more individuals related by blood, marriage, or decree of
44 court, who are living in a single residence and are included in one or more of
45 the following categories:
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- (A) Two individuals, married--including by common-law, and household dependents; or
 - (B) A parent and household dependents.
- (11) Household dependent--An individual living in the household who is one of the following:
- (A) An adult considered as a dependent of the parent for income tax purposes;
 - (B) A child of a teen parent; or
 - (C) A child or other minor living in the household who is the responsibility of the parent.
- (12) Improper payments--Any payment of CCDF grant funds that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements governing the administration of CCDF grant funds and includes payments:
- (A) to an ineligible recipient;
 - (B) for an ineligible service;
 - (C) for any duplicate payment; and
 - (D) for services not received.
- (13) Job training program--A program that provides training or instruction leading to:
- (A) basic literacy;
 - (B) English proficiency;
 - (C) an occupational or professional certification or license; or
 - (D) the acquisition of technical skills, knowledge, and abilities specific to an occupation.
- (14) Listed family home--A family home, other than the eligible child's own residence, that is listed, but not licensed or registered with, the Texas

1 Department of Family and Protective Services (DFPS) pursuant to Texas
2 Human Resources Code §42.052(c).

3
4 (15) Military deployment--The temporary duty assignment away from the
5 permanent military installation or place of residence for reserve components of
6 the single military parent or the dual military parents. This includes deployed
7 parents in the regular military, military reserves, or National Guard.
8

9 (16) Parent--An individual who is responsible for the care and supervision of a
10 child and is identified as the child's natural parent, adoptive parent, stepparent,
11 legal guardian, or person standing in loco parentis (as determined in
12 accordance with Commission policies and procedures). Unless otherwise
13 indicated, the term applies to a single parent or both parents.
14

15 (17) Protective services--Services provided when:

16
17 (A) a child is at risk of abuse or neglect in the immediate or short-term future
18 and the child's family cannot or will not protect the child without DFPS
19 Child Protective Services (CPS) intervention;
20

21 (B) a child is in the managing conservatorship of DFPS and residing with a
22 relative or a foster parent; or
23

24 (C) a child has been provided with protective services by DFPS within the
25 prior six months and requires services to ensure the stability of the
26 family.
27

28 (18) Provider--A provider is defined as:

29
30 (A) a regulated child care provider as defined in §809.2(18);
31

32 (B) a relative child care provider as defined in §809.2(19); or
33

34 (C) a listed family home as defined in §809.2(13), subject to the
35 requirements in §809.91(b).
36

37 (19) Regulated child care provider--A provider caring for an eligible child in a
38 location other than the eligible child's own residence that is:

39
40 (A) licensed by DFPS;
41

42 (B) registered with DFPS; or
43

44 (C) operated and monitored by the United States military services.
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- (20) Relative child care provider--An individual who is at least 18 years of age, and is, by marriage, blood relationship, or court decree, one of the following:
 - (A) The child's grandparent;
 - (B) The child's great-grandparent;
 - (C) The child's aunt;
 - (D) The child's uncle; or
 - (E) The child's sibling (if the sibling does not reside in the same household as the eligible child).
 - (21) Residing with--Unless otherwise stipulated in this chapter, a child is considered to be residing with the parent when the child is living with and physically present with the parent during the time period for which child care services are being requested or received.
 - (22) Teen parent--A teen parent (teen) is an individual 18 years of age or younger, or 19 years of age and attending high school or the equivalent, who has a child.
 - (23) Texas Rising Star program--A voluntary, quality-based rating system of child care providers participating in Commission-subsidized child care.
 - (24) Texas Rising Star Provider--A provider certified as meeting the TRS program standards. TRS providers are certified as one of the following:
 - (A) 2-Star Program Provider;
 - (B) 3-Star Program Provider; or
 - (C) 4-Star Program Provider.
 - (25) Working--Working is defined as:
 - (A) activities for which one receives monetary compensation such as a salary, wages, tips, and commissions; or

- 1
2 (B) participation in Choices or Supplemental Nutrition Assistance Program
3 Employment and Training (SNAP E&T) activities.
4

5 *The provisions of this §809.2 adopted to be effective January 29, 2007, 32 TexReg 336;*
6 *amended to be effective January 8, 2013, 38 TexReg 155; amended to be effective February*
7 *16, 2015, 40 TexReg 708; amended to be effective October 1, 2016, 41 TexReg 7529;*
8 *amended to be effective August 1, 2018, 43 TexReg 4474*
9

10 **§809.3. Waiver Request.**

- 11
12 (a) The Commission may waive child care rules upon request from a person directly
13 affected by the rules, if it determines that the waiver benefits a parent, child care
14 contractor, or provider, and the Commission determines that the waiver does not
15 harm child care or violate state or federal statutes or regulations.
16
17 (b) Prior to submitting a waiver request to the Commission, the child must have been
18 determined by the Board's child care contractor to meet the minimum qualifications
19 set forth in §809.41(a).
20

21 *The provisions of this §809.3 adopted to be effective January 29, 2007, 32 TexReg 336*
22

23 **SUBCHAPTER B. GENERAL MANAGEMENT**

24
25 **§809.11. Board Responsibilities.**

- 26
27 (a) A Board shall be responsible for the administration of child care in a manner
28 consistent with Texas Government Code, Chapter 2308, as amended, and related
29 provisions under Chapter 801 of this title (relating to Local Workforce Development
30 Boards).
31
32 (b) A Board shall ensure that access to child care services shall be available through all
33 Texas Workforce Centers within a workforce area.
34
35 (c) Child care services are support services for workforce employment, job training, and
36 services under Texas Government Code, Chapter 2308 and Chapter 801 of this title.

- 1
2 (d) Upon request, a Board shall provide the Commission with access to child care
3 administration records and submit related information for review and monitoring,
4 pursuant to Commission rules and policies.
5

6 *The provisions of this §809.11 adopted to be effective January 29, 2007, 32 TexReg 336*
7

8 **§809.12. Board Plan for Child Care Services.**
9

- 10 (a) A Board shall, as part of its Texas Workforce Development Board Plan (Board plan),
11 develop, amend, and modify the Board plan to incorporate and coordinate the design
12 and management of the delivery of child care services with the delivery of other
13 workforce employment, job training, and educational services identified in Texas
14 Government Code §2308.251 et seq., as well as other workforce training and
15 services included in the One-Stop Service Delivery Network.
16
17 (b) The goal of the Board plan is to coordinate workforce training and services, to
18 leverage private and public funds at the local level, and to fully integrate child care
19 services for low-income families with the network of workforce training and services
20 under the administration of the Boards.
21
22 (c) Boards shall design and manage the Board plan to maximize the delivery and
23 availability of safe and stable child care services that assist families seeking to
24 become independent from, or who are at risk of becoming dependent on, public
25 assistance while parents are either working or attending a job training or educational
26 program.
27

28 *The provisions of this §809.12 adopted to be effective January 29, 2007, 32 TexReg 336*
29

30 **§809.13. Board Policies for Child Care Services.**
31

- 32 (a) A Board shall develop, adopt, and modify its policies for the design and management
33 of the delivery of child care services in a public process in accordance with Chapter
34 802 of this title.
35
36 (b) A Board shall maintain written copies of the policies that are required by federal and
37 state law, or as requested by the Commission, and make such policies available to
38 the Commission and the public upon request.
39
40 (c) At a minimum, a Board shall develop policies related to:
41
42 (1) how the Board determines that the parent is making progress toward successful
43 completion of a job training or educational program as described in §809.2(1);
44
45 (2) maintenance of a waiting list as described in §809.18(b);
46

- 1 (3) assessment of a parent share of cost as described in §809.19(a)(1), including:
2
3 (A) provisions for a parent's failure to pay the parent share of cost, including
4 the reimbursement of providers, as a program violation that is subject to
5 early termination of child care services within a 12-month eligibility
6 period; and
7
8 (B) criteria for determining the affordability of the parent share of cost, as
9 described in §809.19(d) - (e);
10
11 (4) maximum reimbursement rates as provided in §809.20, including policies
12 related to reimbursement of providers that offer transportation;
13
14 (5) family income limits as described in Subchapter C of this chapter (relating to
15 Eligibility for Child Care Services);
16
17 (6) provision of child care services to a child with disabilities under the age of 19
18 as described in §809.41(a)(1)(B);
19
20 (7) minimum activity requirements for parents as described in §809.48 and
21 §809.50;
22
23 (8) time limits for the provision of child care while the parent is attending an
24 educational program as described in §809.41(b);
25
26 (9) Board priority groups as described in §809.43(a);
27
28 (10) transfer of a child from one provider to another as described in §809.71(3);
29
30 (11) providers charging the difference between their published rate and the Board's
31 reimbursement rate as provided in §809.92(d);
32
33 (12) procedures for fraud fact-finding as provided in §809.111; and
34
35 (13) policies and procedures to ensure that appropriate corrective actions are taken
36 against a provider or parent for violations of the automated attendance
37 requirements specified in §809.115(d) - (e).
38

39 *The provisions of this §809.13 adopted to be effective January 29, 2007, 32 TexReg 336;*
40 *amended to be effective September 8, 2008, 33 TexReg 7568; amended to be effective*
41 *January 8, 2013, 38 TexReg 155; amended to be effective October 1, 2016, 41 TexReg 7529;*
42 *amended to be effective August 1, 2018, 43 TexReg 4474*
43
44

1 **§809.14. Coordination of Child Care Services.**

- 2
- 3 (a) A Board shall coordinate with federal, state, and local child care and early
4 development programs and representatives of local governments in developing its
5 Board plan and policies for the design and management of the delivery of child care
6 services, and shall maintain written documentation of its coordination efforts.
7
- 8 (b) Pursuant to Texas Education Code §29.158, and in a manner consistent with federal
9 law and regulations, a Board shall coordinate with school districts, Head Start, and
10 Early Head Start program providers to ensure, to the greatest extent practicable, that
11 full-day, full-year child care is available to meet the needs of low-income parents
12 who are working or attending a job training or educational program.
13

14 *The provisions of this §809.14 adopted to be effective January 29, 2007, 32 TexReg 336*

15

16 **§809.15. Promoting Consumer Education.**

- 17
- 18 (a) A Board shall promote informed child care choices by providing consumer education
19 information to:
- 20
- 21 (1) parents who are eligible for child care services;
- 22
- 23 (2) parents who are placed on a Board's waiting list;
- 24
- 25 (3) parents who are no longer eligible for child care services; and
- 26
- 27 (4) applicants who are not eligible for child care services.
- 28
- 29 (b) The consumer education information, including consumer education information
30 provided through a Board's website, shall contain, at a minimum:
- 31
- 32 (1) information about the Texas Information and Referral Network/2-1-1 Texas
33 (2-1-1 Texas) information and referral system;
- 34
- 35 (2) the website and telephone number of DFPS, so parents may obtain health and
36 safety requirements including information on:
- 37
- 38 (A) the prevention and control of infectious diseases (including
39 immunizations);
- 40
- 41 (B) building and physical premises safety;
- 42
- 43 (C) minimum health and safety training appropriate to the provider setting;
44 and
- 45
- 46 (D) the regulatory compliance history of child care providers;

- 1
2 (3) a description of the full range of eligible child care providers set forth in
3 §809.91; and
4
5 (4) a description of programs available in the workforce area relating to school
6 readiness and quality rating systems, including:
7
8 (A) Texas Rising Star (TRS) Provider criteria, pursuant to Texas
9 Government Code §2308.315; and
10
11 (B) integrated school readiness models, pursuant to Texas Education Code
12 §29.160;
13
14 (5) a list of child care providers that meet quality indicators, pursuant to Texas
15 Government Code §2308.3171;
16
17 (6) information on existing resources and services available in the workforce area
18 for conducting developmental screenings and providing referrals to services
19 when appropriate for children eligible for child care services, including the use
20 of:
21
22 (A) the Early and Periodic Screening, Diagnosis, and Treatment program
23 under 42 U.S.C. 1396 et seq.; and
24
25 (B) developmental screening services available under Part B and Part C of
26 the Individuals with Disabilities Education Act (20 U.S.C. 1419, 1431 et
27 seq.; and
28
29 (7) a link to the Agency's designated child care consumer education website.
30
31 (c) A Board shall cooperate with the Texas Health and Human Services Commission
32 (HHSC) to provide 2-1-1 Texas with information, as determined by HHSC, for
33 inclusion in the statewide information and referral network.
34

35 *The provisions of this §809.15 adopted to be effective January 29, 2007, 32 TexReg 336;*
36 *amended to be effective January 8, 2013, 38 TexReg 155; amended to be effective October 1,*
37 *2016, 41 TexReg 7529*
38

39 **§809.16. Quality Improvement Activities.**
40

- 41 (a) Child care funds allocated by the Commission pursuant to its allocation rules
42 (generally, Chapter 800, General Administration, Subchapter B, Allocation and
43 Funding, and specifically §800.58, Child Care), including local public transferred
44 funds and local private donated funds, as provided in §809.17, to the extent they are
45 used for nondirect care quality improvement activities, may be expended on any
46 quality improvement activity described in 45 CFR Part 98.

- 1
2 (b) Boards must ensure compliance with 45 CFR Part 98 regarding construction
3 expenditures, as follows:
4
5 (1) State and local agencies and nonsectarian agencies or organizations.
6
7 (A) Funds shall not be expended for the purchase or improvement of land, or
8 for the purchase, construction, or permanent improvement of any
9 building or facility.
10
11 (B) Funds may be expended for minor remodeling, and for upgrading child
12 care facilities to ensure that providers meet state and local child care
13 standards, including applicable health and safety requirements.
14
15 (2) Sectarian agencies or organizations.
16
17 (A) The prohibitions in paragraph (1) of this subsection apply.
18
19 (B) Funds may be expended for minor remodeling only if necessary to bring
20 the facility into compliance with the health and safety requirements
21 established pursuant to 45 CFR Part 98.
22
23 (c) Expenditures certified by a public entity, as provided in §809.17(b)(3), may include
24 expenditures for any quality improvement activity described in 45 CFR Part 98.
25

26 *The provisions of this §809.16 adopted to be effective January 29, 2007, 32 TexReg 336;*
27 *amended to be effective January 8, 2013, 38 TexReg 155; amended to be effective February*
28 *16, 2015, 40 TexReg 708; amended to be effective October 1, 2016, 41 TexReg 7529*
29

30 **§809.17. Leveraging Local Resources.**

- 31
32 (a) Leveraging Local Funds.
33
34 (1) The Commission encourages Boards to secure local public and private funds
35 for the purpose of matching federal funds in order to maximize resources for
36 child care needs in the community.
37
38 (2) A Board is encouraged to secure additional local funds in excess of the amount
39 required to match federal funds allocated to the Board in order to maximize its
40 potential to receive additional federal funds should they become available.
41
42 (3) A Board's performance in securing and leveraging local funds for match may
43 make the Board eligible for incentive awards.
44
45 (b) The Commission accepts the following as local match:
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- (1) Funds from a private entity that:
 - (A) are donated without restrictions that require their use for:
 - (i) a specific individual, organization, facility, or institution; or
 - (ii) an activity not included in the CCDF State Plan or allowed under this chapter;
 - (B) do not revert back to the donor's facility or use;
 - (C) are not used to match other federal funds; and
 - (D) are certified by both the donor and the Commission as meeting the requirements of subparagraphs (A) - (C) of this paragraph.
- (2) Funds from a public entity that:
 - (A) are transferred without restrictions that would require their use for an activity not included in the CCDF State Plan or allowed under this chapter;
 - (B) are not used to match other federal funds; and
 - (C) are not federal funds, unless authorized by federal law to be used to match other federal funds.
- (3) Expenditures by a public entity certifying that the expenditures:
 - (A) are for an activity included in the CCDF State Plan or allowed under this chapter;
 - (B) are not used to match other federal funds; and
 - (C) are not federal funds, unless authorized by federal law to be used to match other federal funds.
- (c) A Board shall ensure that a public entity certifying expenditures for direct child care as described in §809.17(b)(3), determines and verifies that the expenditures are for child care provided to an eligible child. At a minimum, the public entity shall verify that the child:
 - (1) is under 13 years of age, or at the option of the Board, is a child with disabilities under 19 years of age; and
 - (2) resides with:

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- (A) a family whose income does not exceed 85 percent of the state median income for a family of the same size; and
 - (B) a parent who requires child care in order to work or attend a job training or educational program.
- (d) A Board shall submit private donations, public transfers, and public certifications to the Commission for acceptance, with sufficient information to determine that the funds meet the requirements of subsection (b) of this section.
- (e) Completing Private Donations, Public Transfers, and Public Certifications.
- (1) A Board shall ensure that:
 - (A) private donations of cash and public transfers of funds are paid to the Commission; and
 - (B) public certifications are submitted to the Commission.
 - (2) Private donations and public transfers are considered complete when the funds have been received by the Commission.
 - (3) Public certifications are considered complete to the extent that a signed written instrument is delivered to the Commission that reflects that the public entity has expended a specific amount of funds on eligible activities described in subsection (b)(3) of this section.
- (f) A Board shall monitor the funds secured for match and the expenditure of any resulting funds to ensure that expenditures of federal matching funds available through the Commission do not exceed an amount that corresponds to the private donations, public transfers, and public certifications that are completed by the end of the program year.

The provisions of this §809.17 adopted to be effective January 29, 2007, 32 TexReg 336; amended to be effective October 1, 2016, 41 TexReg 7529

§809.18. Maintenance of a Waiting List.

- (a) A Board shall ensure that a list of parents waiting for child care services, because of the lack of funding or lack of providers, is maintained and available to the Commission upon request.
- (b) A Board shall establish a policy for the maintenance of a waiting list that includes, at a minimum:

- 1 (1) the process for determining that the parent is potentially eligible for child care
2 services before placing the parent on the waiting list; and
3
4 (2) the frequency in which the parent information is updated and maintained on
5 the waiting list.
6

7 *The provisions of this §809.18 adopted to be effective January 29, 2007, 32 TexReg 336*
8

9 **§809.19. Assessing the Parent Share of Cost.**

- 10
11 (a) For child care funds allocated by the Commission pursuant to its allocation rules
12 (generally, Chapter 800, General Administration, Subchapter B, Allocation and
13 Funding, and specifically, §800.58, Child Care), including local public transferred
14 funds and local private donated funds, as provided in §809.17, the following shall
15 apply.
16
17 (1) A Board shall set a parent share of cost policy that assesses the parent share of
18 cost in a manner that results in the parent share of cost:
19
20 (A) being assessed to all parents, except in instances when an exemption
21 under paragraph (2) of this subsection applies;
22
23 (B) being an amount determined by a sliding fee scale based on the family's
24 size and gross monthly income, including a possible reexamination of
25 the sliding fee scale if there are frequent terminations for lack of
26 payment pursuant to subsection (e) of this section, which also may
27 consider the number of children in care;
28
29 (C) being an amount that is affordable and does not result in a barrier to
30 families receiving assistance;
31
32 (D) being assessed only at the following times:
33
34 (i) initial eligibility determination;
35
36 (ii) 12-month eligibility redetermination;
37
38 (iii) upon the addition of a child in care;
39
40 (iv) upon a parent's report of a change in income, family size, or number
41 of children in care that would result in a reduced parent share of cost
42 assessment; and
43
44 (v) upon resumption of work, job training, or education activities
45 following temporary changes described in §809.51(a)(2) and upon
46 resumption of work, job training, or education activities during the

1 three-month continuation of care period described in §809.51(c);
2 and
3

4 (E) not increasing above the amount assessed at initial eligibility
5 determination or at the 12-month eligibility redetermination based on the
6 factor in subparagraph (B) of this paragraph, except upon the addition of
7 a child in care as described in subsection (a)(1)(C)(iii) of this section.
8

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

11 (A) Parents who are participating in Choices or who are in Choices child care
12 described in §809.45;

13 (B) Parents who are participating in SNAP E&T services or who are in
14 SNAP E&T child care described in §809.47;

15 (C) Parents of a child receiving Child Care for Children Experiencing
16 Homelessness as described in §809.52; or
17

18 (D) Parents who have children who are receiving protective services child
19 care pursuant to §809.49 and §809.54(c), unless DFPS assesses the
20 parent share of cost.
21

22 (3) Teen parents who are not covered under exemptions listed in paragraph (2) of
23 this subsection shall be assessed a parent share of cost. The teen parent's share
24 of cost is based solely on the teen parent's income and size of the teen's family
25 as defined in §809.2.
26

27 (b) For child care services funded from sources other than those specified in subsection
28 (a) of this section, a Board shall set a parent share of cost policy based on a sliding
29 fee scale. The sliding fee scale may be the same as or different from the provisions
30 contained in subsection (a) of this section.
31

32 (c) A Board shall establish a policy regarding reimbursement of providers when parents
33 fail to pay the parent share of cost.
34

35 (d) A Board shall establish a policy regarding termination of child care services within a
36 12-month eligibility period when a parent fails to pay the parent share of cost. The
37 Board's policy must include:
38

39 (1) a requirement to evaluate and document each family's financial situation for
40 extenuating circumstances that may affect affordability of the assessed parent
41 share of cost pursuant to paragraph (2) of this subsection, and a possible
42 temporary reduction pursuant to subsection (g) of this section before the Board
43 or its child care contractor may terminate care under this section;
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- (2) general criteria for determining affordability of a Board's parent share of cost, and a process to identify and assess the circumstances that may jeopardize a family's self-sufficiency under subsection (g) of this section;
 - (3) maintenance of a list of all terminations due to failure to pay the parent share of cost, including family size, income, family circumstances, and the reason for termination, for use when conducting evaluations of affordability, as required under paragraph (4) of this subsection; and
 - (4) the Board's definition of what constitutes frequent terminations and its process for assessing the general affordability of the Board's parent share of cost schedule, pursuant to subsection (e) of this section.
- (e) A Board with frequent terminations of care for lack of payment of the parent share of cost must reexamine its sliding fee scale and adjust it to ensure that fees are not a barrier to assistance for families at certain income levels.
- (f) A Board that does not have a policy to reimburse providers when parents fail to pay the parent share of cost may establish a policy to require the parent to pay the provider before the family can be redetermined eligible for future child care services.
- (g) The Board or its child care contractor may review the assessed parent share of cost for a possible temporary reduction if there are extenuating circumstances that jeopardize a family's self-sufficiency. The Board or its child care contractor may temporarily reduce the assessed parent share of cost if warranted by these circumstances. Following the temporary reduction, the parent share of cost amount immediately prior to the reduction shall be reinstated.
- (h) If the parent is not covered by an exemption as specified in subsection (a)(2) of this section, then the Board or its child care contractor shall not waive the assessed parent share of cost under any circumstances.
- (i) If the parent share of cost, based on family income and family size, is calculated to be zero, then the Board or its child care contractor shall not charge the parent a minimum share of cost amount.
- (j) A Board may establish a policy to reduce the parent share of cost amount assessed pursuant to subsection (a)(1)(B) of this section upon the parent's selection of a TRS-certified provider. Such Board policy shall ensure:
- (1) that the parent continue to receive the reduction if:
 - (A) the TRS provider loses TRS certification; or

1 (B) the parent moves or changes employment within the workforce area and
2 no TRS-certified providers are available to meet the needs of the parent's
3 changed circumstances; and
4

5 (2) that the parent no longer receives the reduction if the parent voluntarily
6 transfers the child from a TRS-certified provider to a non-TRS-certified
7 provider.
8

9 *The provisions of this §809.19 adopted to be effective January 29, 2007, 32 TexReg 336;*
10 *amended to be effective September 8, 2008, 33 TexReg 7568; amended to be effective*
11 *January 8, 2013, 38 TexReg 155; amended to be effective October 1, 2016, 41 TexReg 7529;*
12 *amended to be effective August 1, 2018, 43 TexReg 4474*
13

14 **§809.20. Maximum Provider Reimbursement Rates.**
15

16 (a) Based on local factors, including a market rate survey provided by the Commission,
17 a Board shall establish maximum reimbursement rates for child care subsidies to
18 ensure that the rates provide equal access to child care in the local market and in a
19 manner consistent with state and federal statutes and regulations governing child
20 care. At a minimum, Boards shall establish reimbursement rates for full-day and
21 part-day units of service, as described in §809.93(f), for the following:
22

23 (1) Provider types:

24 (A) Licensed child care centers, including before- or after-school programs
25 and school-age programs, as defined by DFPS;
26

27 (B) Licensed child care homes as defined by DFPS;
28

29 (C) Registered child care homes as defined by DFPS; and
30

31 (D) Relative child care providers as defined in §809.2.
32

33 (2) Age groups in each provider type:
34

35 (A) Infants age 0 to 17 months;
36

37 (B) Toddlers age 18 to 35 months;
38

39 (C) Preschool age children from 36 to 71 months; and
40

41 (D) School age children 72 months and over.
42

43 (b) A Board shall establish enhanced reimbursement rates:
44

45 (1) for all age groups at TRS provider facilities; and
46

1
2 (2) only for preschool-age children at child care providers that participate in
3 integrated school readiness models pursuant to Texas Education Code §29.160.
4

5 (c) The minimum enhanced reimbursement rates established under subsection (b) of this
6 section shall be greater than the maximum rate established for providers not meeting
7 the requirements of subsection (b) of this section for the same category of care up to,
8 but not to exceed, the provider's published rate. The maximum rate must be at least:
9

10 (1) 5 percent greater for a:

11 (A) 2-Star Program Provider; or

12 (B) child care provider meeting the requirements of subsection (b)(2) of this
13 section;
14

15 (2) 7 percent greater for a 3-Star Program Provider; and
16

17 (3) 9 percent greater for a 4-Star Program Provider.
18

19 (d) Boards may establish a higher enhanced reimbursement rate than those specified in
20 subsection (c) of this section for TRS providers, as long as there is a minimum 2
21 percentage point difference between each star level.
22

23 (e) A Board or its child care contractor shall ensure that providers that are reimbursed
24 for additional staff or equipment needed to assist in the care of a child with
25 disabilities are paid a rate up to 190 percent of the provider's reimbursement rate for
26 a child of that same age. The higher rate shall take into consideration the estimated
27 cost of the additional staff or equipment needed by a child with disabilities. The
28 Board shall ensure that a professional, who is familiar with assessing the needs of
29 children with disabilities, certifies the need for the higher reimbursement rate
30 described in this subsection.
31
32

33 (f) The Board shall determine whether to reimburse providers that offer transportation as
34 long as the combined total of the provider's published rate, plus the transportation
35 rate, is subject to the maximum reimbursement rate established in subsection (a) of
36 this section.
37
38

39 *The provisions of this §809.20 adopted to be effective January 29, 2007, 32 TexReg 336;*
40 *amended to be effective September 8, 2008, 33 TexReg 7568; amended to be effective*
41 *January 8, 2013, 38 TexReg 155; amended to be effective February 16, 2015, 40 TexReg*
42 *708; amended to be effective October 1, 2016, 41 TexReg 7529*
43

44 **§809.21. Determining the Amount of the Provider Reimbursement.**
45

1 (a) The actual reimbursement that the Board or the Board's child care contractor pays to
2 the provider shall be the Board's maximum daily rate or the provider's published
3 daily rate, whichever is lower, less the following amounts:
4

5 (1) The parent share of cost assessed and adjusted when the parent share of
6 cost is reduced; and
7

8 (2) Any child care funds received by the parent from other public or private
9 entities.
10

11 (b) A Board or its child care contractor shall ensure that the provider's published daily
12 rates are calculated according to Commission guidance and include the provider's
13 enrollment fees, supply fees, and activity fees.
14

15 *The provisions of this §809.21 adopted to be effective January 29, 2007, 32 TexReg 336;*
16 *amended to be effective January 8, 2013, 38 TexReg 155*
17

18 **SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES**

19

20 **§809.41. A Child's General Eligibility for Child Care Services.**

21

22 (a) Except for a child receiving or needing protective services as described in §809.49,
23 for a child to be eligible to receive child care services, at the time of eligibility
24 determination or redetermination, a Board shall ensure that the child:
25

26 (1) meets one of the following age requirements:
27

28 (A) be under 13 years of age; or
29

30 (B) at the option of the Board, be a child with disabilities under 19 years of
31 age;
32

33 (2) is a U.S. citizen or legal immigrant as determined under applicable federal
34 laws, regulations, and guidelines; and
35

36 (3) resides with:
37

38 (A) a family within the Board's workforce area:
39

40 (i) whose income does not exceed the income limit established by the
41 Board, which income limit must not exceed 85 percent of the state
42 median income (SMI) for a family of the same size; and
43

44 (ii) whose assets do not exceed \$1,000,000 as certified by a family
45 member; or
46

1 (iii) that meets the definition of experiencing homelessness as defined in
2 §809.2.

3
4 (B) parents who require child care in order to work or attend a job training or
5 educational program; or

6
7 (C) a person standing in loco parentis for the child while the child's parent is
8 on military deployment and the deployed military parent's income does
9 not exceed the limits set forth in subparagraph (A) of this paragraph.

10
11 (b) Notwithstanding the requirements set forth in subsection (c) of this section, a Board
12 shall establish policies, including time limits, for the provision of child care services
13 while the parent is attending an educational program.

14
15 (c) Time limits pursuant to subsection (b) of this section shall ensure the provision of
16 child care services for four years, if the eligible child's parent is enrolled in an
17 associate's degree program that will prepare the parent for a job in a high-growth,
18 high-demand occupation as determined by the Board.

19
20 (d) A Board may establish a policy to allow parents attending a program that leads to a
21 postsecondary degree from an institution of higher education to be exempt from
22 residing with the child as defined in §809.2.

23
24 (e) Boards that establish initial family income eligibility at a level less than 85 percent
25 of SMI must ensure that the family remains income-eligible for care after passing the
26 Board's initial income eligibility limit.

27
28 (f) Unless otherwise specified, this subchapter applies only to child care services using
29 funds allocated pursuant to §800.58 of this title, including local public transferred
30 funds and local private donated funds described in §809.17.

31
32 *The provisions of this §809.41 adopted to be effective January 29, 2007, 32 TexReg 336;*
33 *amended to be effective June 22, 2009, 34 TexReg 4197; amended to be effective January 8,*
34 *2013, 38 TexReg 155; amended to be effective October 1, 2016, 41 TexReg 7529*

35
36 **§809.42. Eligibility Verification, Determination, and Redetermination.**

37
38 (a) A Board shall ensure that its child care contractor verifies all eligibility requirements
39 for child care services prior to authorizing child care.

40
41 (b) A Board shall ensure that eligibility for child care services shall be redetermined no
42 sooner than 12 months following the initial determination or most recent
43 redetermination.

1 *The provisions of this §809.42 adopted to be effective January 29, 2007, 32 TexReg 336;*
2 *amended to be effective October 1, 2016, 41 TexReg 7529*

3
4 **§809.43. Priority for Child Care Services.**

5
6 (a) A Board shall ensure that child care services are prioritized among the following
7 three priority groups:

8
9 (1) The first priority group is assured child care services and includes children of
10 parents eligible for the following:

11 (A) Choices child care as referenced in §809.45;

12 (B) Temporary Assistance for Needy Families (TANF) Applicant child care
13 as referenced in §809.46;

14 (C) SNAP E&T child care as referenced in §809.47; and

15 (D) Transitional child care as referenced in §809.48.

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21 (2) The second priority group is served subject to the availability of funds and
22 includes, in the order of priority:

23 (A) children who need to receive protective services child care as referenced
24 in §809.49;

25 (B) children of a qualified veteran or qualified spouse as defined in §801.23
26 of this title;

27 (C) children of a foster youth as defined in §801.23 of this title;

28 (D) children experiencing homelessness as defined in §809.2 and described
29 in §809.52;

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

33 (F) children of teen parents as defined in §809.2; and

34 (G) children with disabilities as defined in §809.2.

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38
39 (3) The third priority group includes any other priority adopted by the Board.
40
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- 1
2 (b) A Board shall not establish a priority group under subsection (a)(3) of this section
3 based on the parent's choice of an individual provider or provider type.
4

5 *The provisions of this §809.43 adopted to be effective January 29, 2007, 32 TexReg 336;*
6 *amended to be effective September 8, 2008, 33 TexReg 7568; amended to be effective*
7 *January 8, 2013, 38 TexReg 155; amended to be effective October 1, 2016, 41 TexReg 7529*
8

9 **§809.44. Calculating Family Income.**

- 10
11 (a) For the purposes of determining family income and assessing the parent share of
12 cost, Boards shall ensure that family income is calculated in accordance with
13 Commission guidelines that:
14
15 (1) take into account irregular fluctuations in earnings; and
16
17 (2) ensure that temporary increases in income, including temporary increases that
18 result in monthly income exceeding 85 percent of SMI do not affect eligibility
19 or parent share of cost.
20
21 (b) In accordance with Commission income calculation guidelines, Boards shall ensure
22 that the following income sources are excluded from the family income:
23
24 (1) Medicare, Medicaid, SNAP benefits, school meals, and housing assistance;
25
26 (2) Monthly monetary allowances provided to or for children of Vietnam veterans
27 born with certain birth defects;
28
29 (3) Needs-based educational scholarships, grants, and loans; including financial
30 assistance under Title IV of the Higher Education Act--Pell Grants, Federal
31 Supplemental Educational Opportunity grants, Federal Work Study Program,
32 PLUS, Stafford loans, and Perkins loans;
33
34 (4) Individual Development Account (IDA) withdrawals for the purchase of a
35 home, medical expenses, or educational expenses;
36
37 (5) Onetime cash payments, including tax refunds, Earned Income Tax Credit
38 (EITC) and Advanced EITC, onetime insurance payments, gifts, and lump sum
39 inheritances;
40
41 (6) VISTA and AmeriCorps living allowances and stipends;
42
43 (7) Noncash or in-kind benefits such as employer-paid fringe benefits, food, or
44 housing received in lieu of wages;
45
46 (8) Foster care payments and adoption assistance;

- 1
2 (9) Special military pay or allowances, including subsistence allowances, housing
3 allowances, family separation allowances, or special allowances for duty
4 subject to hostile fire or imminent danger;
5
6 (10) Income from a child in the household between 14 and 19 years of age who is
7 attending school;
8
9 (11) Early withdrawals from qualified retirement accounts specified as hardship
10 withdrawals as classified by the Internal Revenue Service (IRS);
11
12 (12) Unemployment compensation;
13
14 (13) Child support payments;
15
16 (14) Cash assistance payments, including Temporary Assistance for Needy
17 Families (TANF), Supplemental Security Income (SSI), Refugee Cash
18 Assistance, general assistance, emergency assistance, and general relief;
19
20 (15) Onetime income received in lieu of TANF cash assistance;
21
22 (16) Income earned by a veteran while on active military duty and certain other
23 veterans' benefits, such as compensation for service-connected death,
24 vocational rehabilitation, and education assistance;
25
26 (17) Regular payments from Social Security, such as Old-Age, and Survivors
27 Insurance Trust Fund;
28
29 (18) Lump sum payments received as assets in the sale of a house, in which the
30 assets are to be reinvested in the purchases of a new home (consistent with IRS
31 guidance);
32
33 (19) Payments received as the result of an automobile accident insurance settlement
34 that are being applied to the repair or replacement of an automobile; and
35
36 (20) Any income sources specifically excluded by federal law or regulation.
37
38 (c) Income that is not listed in subsection (b) of this section as excluded from income is
39 included as income.
40

41 *The provisions of this §809.44 adopted to be effective January 29, 2007, 32 TexReg 336;*
42 *amended to be effective September 8, 2008, 33 TexReg 7568; amended to be effective*
43 *January 8, 2013, 38 TexReg 155; amended to be effective October 1, 2016, 41 TexReg 7529*
44

45 **§809.45. Choices Child Care.**
46

1 (a) A parent is eligible for Choices child care if the parent is participating in the Choices
2 program as stipulated in Chapter 811 of this title.

3
4 (b) For a parent receiving Choices child care who ceases participation in the Choices
5 program during the 12-month eligibility period, Boards must ensure that Choices
6 child care continues:

7
8 (1) for the three-month period pursuant to §809.51(b); and

9
10 (2) for the remainder of the eligibility period, if the parent resumes participation in
11 Choices or begins participation in work or attendance in a job training or
12 education program during the three-month period described in §809.51(c).

13
14 *The provisions of this §809.45 adopted to be effective January 29, 2007, 32 TexReg 336;*
15 *amended to be effective October 1, 2016, 41 TexReg 7529*

16
17 **§809.46. Temporary Assistance for Needy Families Applicant Child Care.**

18
19 (a) A parent is eligible for TANF Applicant child care if the parent:

20
21 (1) receives a referral from the Health and Human Services Commission (HHSC)
22 to attend a Workforce Orientation for Applicants (WOA);

23
24 (2) locates employment or has increased earnings prior to TANF certification; and

25
26 (3) needs child care to accept or retain employment.

27
28 (b) To receive TANF Applicant child care, the parent shall be working and not have
29 voluntarily terminated paid employment of at least 25 hours a week within 30 days
30 prior to receiving the referral from HHSC to attend a WOA, unless the voluntary
31 termination was for good cause connected with the parent's work.

32
33 *The provisions of this §809.46 adopted to be effective January 29, 2007, 32 TexReg 336;*
34 *amended to be effective September 8, 2008, 33 TexReg 7568; amended to be effective*
35 *January 8, 2013, 38 TexReg 155; amended to be effective October 1, 2016, 41 TexReg 7529*

36
37 **§809.47. Supplemental Nutrition Assistance Program Employment and Training Child**
38 **Care.**

39
40 (a) A parent is eligible to receive SNAP E&T child care services if the parent is
41 participating in SNAP E&T services, in accordance with the provisions of 7 CFR
42 Part 273.

43
44 (b) For a parent receiving SNAP E&T child care services who ceases participation in the
45 E&T program during the 12-month eligibility period, Boards must ensure that SNAP
46 E&T child care continues:

- 1
2 (1) for the three-month period pursuant to §809.51(b); and
3
4 (2) for the remainder of the eligibility period, if the parent resumes participation in
5 the SNAP E&T program or begins participation in work or attendance in a job
6 training or education program during the three-month period described in
7 §809.51(c).
8

9 *The provisions of this §809.47 adopted to be effective January 29, 2007, 32 TexReg 336;*
10 *amended to be effective January 8, 2013, 38 TexReg 155; amended to be effective October 1,*
11 *2016, 41 TexReg 7529*
12

13 **§809.48. Transitional Child Care.**

- 14
15 (a) A parent is eligible for Transitional child care services if the parent:
16
17 (1) has been denied TANF and was employed at the time of TANF denial; or
18
19 (2) has been denied TANF within 30 days because of expiration of TANF time
20 limits; and
21
22 (3) requires child care to work or attend a job training or educational program for a
23 combination of at least an average of 25 hours per week for a single-parent
24 family or 50 hours per week for a two-parent family, or a higher number of
25 hours per week as established by a Board.
26
27 (b) Boards may establish an income eligibility limit for Transitional child care that is
28 higher than the eligibility limit for At-Risk child care, pursuant to §809.50, provided
29 that the higher income limit does not exceed 85 percent of the state median income
30 for a family of the same size.
31
32 (c) For former TANF recipients who are employed when TANF is denied, Transitional
33 child care shall be available for:
34
35 (1) a period of up to 12 months from the effective date of the TANF denial; or
36
37 (2) a period of up to 18 months from the effective date of the TANF denial in the
38 case of a former TANF recipient who was eligible for child caretaker
39 exemptions pursuant to Texas Human Resources Code §31.012(c) and
40 voluntarily participates in the Choices program.
41
42 (d) A Board may allow a reduction to the requirement in subsection (a)(3) of this section
43 if a parent's documented medical disability or need to care for a physically or
44 mentally disabled family member prevents the parent from participating in work,
45 education, or job training activities for the required hours per week.
46

1 (e) For purposes of meeting the education requirements stipulated in subsection (a)(3) of
2 this section, the following shall apply:

3
4 (1) each credit hour of postsecondary education counts as three hours of education
5 activity per week; and

6
7 (2) each credit hour of a condensed postsecondary education course counts as six
8 education activity hours per week.
9

10 *The provisions of this §809.48 adopted to be effective January 29, 2007, 32 TexReg 336;*
11 *amended to be effective September 8, 2008, 33 TexReg 7568; amended to be effective*
12 *January 8, 2013, 38 TexReg 155; amended to be effective October 1, 2016, 41 TexReg 7529*
13

14 **§809.49. Child Care for Children Receiving or Needing Protective Services.**

15
16 (a) A Board shall ensure that determinations of eligibility for children needing
17 protective services are performed by DFPS.

18
19 (1) Child care will continue as long as authorized and funded by DFPS.

20
21 (2) DFPS may authorize child care for a child under court supervision under the
22 age of 19.

23
24 (3) Child care discontinued by DFPS prior to the end of the 12-month eligibility
25 period shall be subject to the Continuity of Care provisions in §809.54.
26

27 (b) A Board shall ensure that requests made by DFPS for specific eligible providers are
28 enforced for children in protective services, including children of foster parents when
29 the foster parent is the owner, director, assistant director or other individual with an
30 ownership interest in the provider.
31

32 *The provisions of this §809.49 adopted to be effective January 29, 2007, 32 TexReg 336;*
33 *amended to be effective October 1, 2016, 41 TexReg 7529*
34

35 **§809.50. At-Risk Child Care.**

36
37 (a) A parent is eligible for child care services under this section if at initial eligibility
38 determination and at eligibility redetermination as described in §809.42:

39
40 (1) the family income does not exceed the income limit established by the Board
41 pursuant to §809.41(a)(3)(A); and

42
43 (2) child care is required for the parent to work or attend a job training or
44 educational program for a combination of at least an average of 25 hours per
45 week for a single-parent family or 50 hours per week for a two-parent family,
46 or a higher number of hours per week as established by the Board.

- 1
2 (b) A Board may allow a reduction to the work, education, or job training activity
3 requirements in subsection (a)(2) of this section if a parent's documented medical
4 disability or need to care for a physically or mentally disabled family member
5 prevents the parent from participating in these activities for the required hours per
6 week.
7
8 (c) For purposes of meeting the education requirements stipulated in subsection (a)(2) of
9 this section, the following shall apply:
10
11 (1) each credit hour of postsecondary education counts as three hours of education
12 activity per week;
13
14 (2) each credit hour of a condensed postsecondary education course counts as six
15 education activity hours per week; and
16
17 (3) teen parents attending high school or the equivalent shall be considered as
18 meeting the education requirements in subsection (a)(2) of this section.
19
20 (d) When calculating income eligibility for a child with disabilities, a Board shall deduct
21 the cost of the child's ongoing medical expenses from the family income.
22
23 (e) Boards may establish a higher income eligibility limit for teen parents than the
24 eligibility limit established pursuant to §809.41(a)(3)(A) provided that the higher
25 income limit does not exceed 85 percent of the state median income for a family of
26 the same size.
27
28 (f) A teen parent's family income is based solely on the teen parent's income and size of
29 the teen's family as defined in §809.2(9).
30
31 (g) Boards may establish a higher income eligibility limit for families with a child who
32 is enrolled in Head Start, Early Head Start, or public pre-K provided that the higher
33 income limit does not exceed 85 percent of the state median income for a family of
34 the same size.
35

36 *The provisions of this §809.50 adopted to be effective September 8, 2008, 33 TexReg 7568;*
37 *amended to be effective January 8, 2013, 38 TexReg 155; amended to be effective October 1,*
38 *2016, 41 TexReg 7529*
39

40 **§809.51. Child Care during Interruptions in Work, Education, or Job Training.**
41

- 42 (a) Except for a child experiencing homelessness, as described in §809.52, if the child
43 met all of the applicable eligibility requirements for child care services in this
44 subchapter on the date of the most recent eligibility determination or
45 redetermination, the child shall be considered to be eligible and will receive services
46 during the 12-month eligibility period described in §809.42, regardless of any:

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- (1) change in family income, if that family income does not exceed 85 percent of SMI for a family of the same size; or
- (2) temporary change in the ongoing status of the child's parent as working or attending a job training or education program. A temporary change shall include, at a minimum, any:
 - (A) time-limited absence from work for an employed parent for periods of family leave (including parental leave) or sick leave;
 - (B) interruption in work for a seasonal worker who is not working between regular industry work seasons;
 - (C) student holiday or breaks within a semester, between the fall and spring semesters, or between the spring and fall semesters, for a parent participating in training or education;
 - (D) reduction in work, training, or education hours, as long as the parent is still working or attending a training or education program;
 - (E) other cessation of work or attendance in a training or education program that does not exceed three months;
 - (F) change in age, including turning 13 years old or a child with disabilities turning 19 years old during the eligibility period; and
 - (G) change in residency within the state.
- (b) During the period of time between eligibility redeterminations, a Board shall discontinue child care services due to a parent's loss of work or cessation of attendance at a job training or educational program that does not constitute a temporary change in accordance with subsection (a)(2) of this section. However, Boards must ensure that care continues at the same level for a period of not less than three months after such loss of work or cessation of attendance at a job training or educational program.
- (c) If a parent resumes work or attendance at a job training or education program at any level and at any time during the period described in subsection (b) of this section, then the Board shall ensure that:
 - (1) care will continue to the end of the 12-month eligibility period at the same or greater level, depending upon any increase in the activity hours of the parent;

1 (2) the parent share of cost will not be increased during the remainder of the 12-
2 month eligibility period, including for parents who are exempt from the parent
3 share of cost pursuant to §809.19; and

4
5 (3) the Board's child care contractor verifies only:

6
7 (A) that the family income does not exceed 85 percent of SMI; and

8
9 (B) the resumption of work or attendance at a job training or education
10 program.

11
12 (d) The Board may suspend child care services during interruptions in the parent's work,
13 job training, or education status only at the concurrence of the parent.

14
15 *The provisions of this §809.51 adopted to be effective October 1, 2016, 41 TexReg 7529*

16
17 **§809.52. Child Care for Children Experiencing Homelessness.**

18
19 (a) For a child experiencing homelessness, as defined in §809.2, a Board shall ensure
20 that the child is initially enrolled for a period of three months.

21
22 (b) If, during the three-month initial enrollment period, the parent of a child
23 experiencing homelessness:

24
25 (1) is unable to provide documentation verifying that the child is eligible under
26 §809.41(a)(1) - (2) (regarding age and citizenship status), then care shall be
27 discontinued following the three-month enrollment period; or

28
29 (2) provides documentation verifying eligibility under §809.41(a), then care shall
30 continue through the end of the 12-month initial eligibility period (inclusive of
31 the three-month initial enrollment period).

32
33 *The provisions of this §809.52 adopted to be effective September 8, 2008, 33 TexReg 7568;*
34 *amended to be effective October 1, 2016, 41 TexReg 7529*

35
36 **§809.53. Child Care for Children Served by Special Projects.**

37
38 (a) Special projects developed in federal and state statutes or regulations and funded
39 using non-CCDF sources may add groups of children eligible to receive child care.

40
41 (b) The eligibility criteria as stated in the statutes, regulations, or funding sources shall
42 control for the special project, unless otherwise indicated by the Commission.

43
44 (c) The time limit for receiving child care for children served by special projects may
45 be:
46

- 1 (1) specifically prescribed by federal or state statutes or regulations according to
2 the particular project;
3
4 (2) otherwise set by the Commission depending on the purpose and goals of the
5 special project; and
6
7 (3) limited to the availability of funds.
8

9 *The provisions of this §809.53 adopted to be effective January 29, 2007, 32 TexReg 336;*
10 *amended to be effective October 1, 2016, 41 TexReg 7529*

11
12 **§809.54. Continuity of Care.**
13

- 14 (a) Enrolled children, including children whose eligibility for Transitional child care has
15 expired, shall receive child care through the end of the applicable eligibility periods
16 described in §809.42.
17
18 (b) Except as provided by §809.75 relating to child care during appeal, nothing in this
19 chapter shall be interpreted in a manner as to result in a child being removed from
20 care.
21
22 (c) In closed DFPS CPS cases (DFPS cases) where child care is no longer funded by
23 DFPS, child care shall continue through the end of the applicable eligibility periods
24 described in §809.42 using funds allocated to the Board by the Commission.
25
26 (d) A Board shall ensure that no enrolled children of military parents in military
27 deployment have a disruption of child care services or eligibility during military
28 deployment, including parents in military deployment at the end of the 12-month
29 eligibility redetermination period.
30
31 (e) A Board shall ensure that a child who is required by a court-ordered custody or
32 visitation arrangement to leave a provider's care is permitted to continue receiving
33 child care by the same provider, or another provider if agreed to by the parent in
34 advance of the leave, upon return from the court-ordered custody or visitation
35 arrangement.
36

37 *The provisions of this §809.54 adopted to be effective January 29, 2007, 32 TexReg 336;*
38 *amended to be effective January 8, 2013, 38 TexReg 155; amended to be effective October 1,*
39 *2016, 41 TexReg 7529*
40

41 **§809.55. Waiting Period for Reapplication.**
42

- 43 (a) A parent is ineligible to reapply for child care services or to be placed on the waiting
44 list for services for 60 calendar days if the parent's eligibility or the child's
45 enrollment is terminated due to:
46

- 1 (1) excessive unexplained absences under §809.78(a); or
2
3 (2) nonpayment of parent share of cost pursuant to a Board's established policy
4 under §809.19(d).
5
6 (b) To ensure full alignment between Child Care Services rules and the Choices program
7 requirements, the provisions of subsection (a) of this section will not apply to
8 individuals who, during the 60-calendar day waiting period:
9
10 (1) become Choices participants who require child care to participate in Choices;
11 or
12
13 (2) are on Choices sanction status and require child care to demonstrate
14 participation in Choices.
15

16 *The provisions of this §809.55 adopted to be effective August 1, 2018, 43 TexReg 4744*
17

18 **SUBCHAPTER D. PARENT RIGHTS AND RESPONSIBILITIES**
19

20 **§809.71. Parent Rights.**
21

22 A Board shall ensure that the Board's child care contractor informs the parent in writing
23 that the parent has the right to:
24

- 25 (1) choose the type of child care provider that best suits their needs and to be
26 informed of all child care options available to them as included in the
27 consumer education information described in §809.15;
28
29 (2) visit available child care providers before making their choice of a child care
30 option;
31
32 (3) receive assistance in choosing initial or additional child care referrals including
33 information about the Board's policies regarding transferring children from one
34 provider to another;
35
36 (4) be informed of the Commission rules and Board policies related to providers
37 charging parents the difference between the Board's reimbursement and the
38 provider's published rate as described in §809.92(c) - (d);
39
40 (5) be represented when applying for child care services;
41
42 (6) be notified of their eligibility to receive child care services within 20 calendar
43 days from the day the Board's child care contractor receives all necessary
44 documentation required to initially determine eligibility for child care;
45

- 1 (7) receive child care services regardless of race, color, national origin, age, sex,
2 disability, political beliefs, or religion;
- 3
- 4 (8) have the Board and the Board's child care contractor treat information used to
5 determine eligibility for child care services as confidential;
- 6
- 7 (9) receive written notification at least 15 calendar days before termination of
8 child care services;
- 9
- 10 (10) reject an offer of child care services or voluntarily withdraw their child from
11 child care, unless the child is in protective services;
- 12
- 13 (11) be informed of the possible consequences of rejecting or ending the child care
14 that is offered;
- 15
- 16 (12) be informed of the eligibility documentation and reporting requirements
17 described in §809.72 and §809.73;
- 18
- 19 (13) be informed of the parent appeal rights described in §809.74;
- 20
- 21 (14) be informed of required background and criminal history checks for relative
22 child care providers through the listing process with DFPS, as described in
23 §809.91(e), before the parent or guardian selects the relative child care
24 provider;
- 25
- 26 (15) receive written notification pursuant to §809.78(d) of the possible termination
27 of child care services for excessive absences, as described in §809.78(a)(1);
28 and
- 29
- 30 (16) receive written notification of possible termination of child care services for
31 failure to pay the parent share of cost, pursuant to §809.19(d).
- 32

33 *The provisions of this §809.71 adopted to be effective January 29, 2007, 32 TexReg 336;*
34 *amended to be effective November 14, 2011, 36 TexReg 7675; amended to be effective*
35 *January 8, 2013, 38 TexReg 155; amended to be effective October 1, 2016, 41 TexReg 7529;*
36 *amended to be effective August 1, 2018, 43 TexReg 4744*

37
38 **§809.72. Parent Eligibility Documentation Requirements.**

- 39
- 40 (a) Except for a child experiencing homelessness pursuant to §809.52 at initial
41 eligibility, before a child can be initially determined or redetermined eligible for
42 child care services and care authorized, parents shall provide the Board's child care
43 contractor with all information necessary to determine eligibility according to the
44 Board's administrative policies and procedures.

- 1
2 (b) A parent's failure to submit eligibility documentation shall result in initial denial of
3 child care services or termination of services at the 12-month eligibility
4 redetermination period.
5

6 *The provisions of this §809.72 adopted to be effective January 29, 2007, 32 TexReg 336;*
7 *amended to be effective October 1, 2016, 41 TexReg 7529*
8

9 **§809.73. Parent Reporting Requirements.**
10

- 11 (a) Boards shall ensure that during the 12-month eligibility period, parents are only
12 required to report items that impact a family's eligibility or that enable the Board or
13 Board contractor to contact the family or pay the provider.
14
15 (b) Pursuant to subsection (a) of this section, parents shall report to the child care
16 contractor, within 14 calendar days of the occurrence, the following:
17
18 (1) Changes in family income or family size that would cause the family to exceed
19 85 percent of SMI for a family of the same size;
20
21 (2) Changes in work or attendance at a job training or educational program not
22 considered to be temporary changes, as described in §809.51; and
23
24 (3) Any change in family residence, primary phone number, or e-mail (if
25 available).
26
27 (c) Failure to report changes described in subsection (a) of this section may result in
28 fact-finding for suspected fraud as described in Subchapter F of this chapter.
29
30 (d) A Board shall allow parents to report and the child care contractor shall take
31 appropriate action regarding changes in:
32
33 (1) income and family size, which may result in a reduction in the parent share of
34 cost pursuant to §809.19; and
35
36 (2) work, job training, or education program participation that may result in an
37 increase in the level of child care services.
38

39 *The provisions of this §809.73 adopted to be effective January 29, 2007, 32 TexReg 336;*
40 *amended to be effective October 1, 2016, 41 TexReg 7529*
41

42 **§809.74. Parent Appeal Rights.**
43

- 44 (a) Unless otherwise stated in this section, a parent may request a hearing pursuant to
45 Chapter 823 of this title:
46

- 1 (1) if the parent's eligibility or child's enrollment is denied, delayed, reduced,
2 suspended, or terminated by the Board's child care contractor, Choices
3 caseworker, or SNAP E&T caseworker; or
4
5 (2) regarding the amount of recoupment determined pursuant to Subchapter F of
6 this chapter.
7
8 (b) A parent may have an individual represent him or her during this process.
9
10 (c) A parent of a child in protective services may not appeal pursuant to Chapter 823 of
11 this title, but shall follow the procedures established by DFPS.
12

13 *The provisions of this §809.74 adopted to be effective January 29, 2007, 32 TexReg 336;*
14 *amended to be effective November 26, 2007, 32 TexReg 8543; amended to be effective*
15 *September 8, 2008, 33 TexReg 7568; amended to be effective January 8, 2013, 38 TexReg*
16 *155; amended to be effective October 1, 2016, 41 TexReg 7529*
17

18 **§809.75. Child Care during Appeal.**
19

- 20 (a) For a child currently enrolled in child care, a Board shall ensure that child care
21 services continue during the appeal process until a decision is reached, if the parent
22 requests a hearing.
23
24 (b) A Board shall ensure that child care does not continue during the appeal process if
25 the child's enrollment is terminated due to excessive unexplained absences, pursuant
26 to §809.78(a), or nonpayment of parent share of cost, pursuant to §809.19(d).
27
28 (c) The cost of providing services during the appeal process is subject to recovery from
29 the parent by the Board, if the appeal decision is rendered against the parent.
30

31 *The provisions of this §809.75 adopted to be effective January 29, 2007, 32 TexReg 336;*
32 *amended to be effective September 8, 2008, 33 TexReg 7568; amended to be effective*
33 *January 8, 2013, 38 TexReg 155; amended to be effective October 1, 2016, 41 TexReg 7529;*
34 *amended to be effective August 1, 2018, 43 TexReg 4744*
35

36 **§809.78. Attendance Standards and Notice and Reporting Requirements.**
37

- 38 (a) A Board shall ensure that parents are notified of the following:
39
40 (1) Parents shall ensure that the eligible child attends on a regular basis consistent
41 with the child's authorization for enrollment and attendance standards
42 described in paragraph (2) of this subsection. Failure to meet attendance
43 standards described in paragraph (2) of this subsection may result in
44 termination for the child due to excessive unexplained absences pursuant to
45 subsection (d) of this section.
46

- 1 (2) Meeting attendance standards for child care services consists of no more than
2 40 total unexplained absences in a 12-month eligibility period.
3
- 4 (3) Unexplained absences may include:
5
6 (A) Any absence that is not due to a child's documented chronic illness or
7 disability, or to a court-ordered custody or visitation agreement;
8
9 (B) Any missed attendance recording that cannot be explained, except if the
10 attendance reporting system is not available through no fault of the
11 parent or provider; or
12
13 (C) Any denied or rejected attendance recording in which the parent does not
14 contact the Agency's Child Care Services unit to report the issue.
15
- 16 (4) Notwithstanding paragraph (2) of this subsection, child care providers may end
17 a child's enrollment with the provider if the child does not meet the provider's
18 established policy regarding attendance.
19
- 20 (5) Parents shall use the attendance card to report daily attendance and absences.
21
- 22 (6) Parents shall not designate anyone under age 16 as a secondary cardholder,
23 unless the individual is a child's parent.
24
- 25 (7) Parents shall not designate the owner, assistant director, or director of the child
26 care facility as a secondary cardholder.
27
- 28 (8) Parents shall:
29
30 (A) ensure that the attendance card is not misused by secondary cardholders;
31
32 (B) inform secondary cardholders of the responsibilities for using the
33 attendance card;
34
35 (C) ensure that secondary cardholders comply with these responsibilities;
36 and
37
38 (D) ensure the protection of attendance cards issued to them or secondary
39 cardholders.
40
- 41 (9) The parent or secondary cardholders giving the attendance card or the personal
42 identification number (PIN) to another person, including the child care
43 provider, is grounds for a potential fraud determination pursuant to Subchapter
44 F of this chapter.
45

1 (10) Parents shall report to the child care contractor instances in which a parent's
2 attempt to record attendance in the child care automated attendance system is
3 denied or rejected and cannot be corrected at the provider site. Failure to report
4 such instances may result in an unexplained absence counted toward the
5 attendance standards described in paragraphs (2) and (3) of this subsection.
6

7 (b) Boards shall ensure that parents sign a written acknowledgment indicating their
8 understanding of the attendance standards and reporting requirements at each of the
9 following stages:

10
11 (1) initial eligibility determination; and

12
13 (2) each eligibility redetermination, as required in §809.42(b).
14

15 (c) Boards shall ensure that absences due to a child's documented chronic illness or
16 disability or court-ordered visitation are not counted in the number of unexplained
17 absences in subsection (a)(2) and (3) of this section.
18

19 (d) Boards shall ensure that before terminating care pursuant to §809.78(a)(1), the child
20 care contractor:

21
22 (1) provides written notice to the parent and the child care provider at reasonable
23 times through established communication channels of the child's absences and
24 the potential termination of services, at a minimum when a child reaches 15,
25 and 30 general absences cumulatively within a 12-month eligibility period; and
26

27 (2) documents that multiple attempts were made, as described in paragraph (1) of
28 this subsection, to determine why the child is absent and to explain the
29 importance of regular attendance.
30

31 (e) Where a child's enrollment has been ended by a provider in subsection (a)(4) of this
32 section, Boards shall work with the parent to place the otherwise eligible child with
33 another eligible provider.
34

35 *The provisions of this §809.78 adopted to be effective January 8, 2013, 38 TexReg 155;*
36 *amended to be effective October 1, 2016, 41 TexReg 7529; amended to be effective August 1,*
37 *2018, 43 TexReg 4744*
38

39 **SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE**

40 **§809.91. Minimum Requirements for Providers.**

41 (a) A Board shall ensure that child care subsidies are paid only to:
42

43 (1) regulated child care providers as described in §809.2;
44
45
46

- 1 (2) relative child care providers as described in §809.2, subject to the requirements
2 in subsection (e) of this section; or
3
- 4 (3) at the Board's option, child care providers licensed in a neighboring state,
5 subject to the following requirements:
6
- 7 (A) Boards shall ensure that the Board's child care contractor reviews the
8 licensing status of the out-of-state provider every month, at a minimum,
9 to confirm the provider is meeting the minimum licensing standards of
10 the state;
11
- 12 (B) Boards shall ensure that the out-of-state provider meets the requirements
13 of the neighboring state to serve CCDF-subsidized children; and
14
- 15 (C) The provider shall agree to comply with the requirements of this chapter
16 and all Board policies and Board child care contractor procedures.
17
- 18 (b) A Board shall not prohibit a relative child care provider who is listed with DFPS and
19 who meets the minimum requirements of this section from being an eligible relative
20 child care provider.
21
- 22 (c) Except as provided by the criteria for TRS Provider certification, a Board or the
23 Board's child care contractor shall not place requirements on regulated providers
24 that:
25
- 26 (1) exceed the state licensing requirements stipulated in Texas Human Resources
27 Code, Chapter 42; or
28
- 29 (2) have the effect of monitoring the provider for compliance with state licensing
30 requirements stipulated in Texas Human Resources Code, Chapter 42.
31
- 32 (d) When a Board or the Board's child care contractor, in the course of fulfilling its
33 responsibilities, gains knowledge of any possible violation regarding regulatory
34 standards, the Board or its child care contractor shall report the information to the
35 appropriate regulatory agency.
36
- 37 (e) For relative child care providers to be eligible for reimbursement for Commission-
38 funded child care services, the following applies:
39
- 40 (1) Relative child care providers shall list with DFPS; however, pursuant to 45
41 CFR §98.41(e), relative child care providers listed with DFPS shall be exempt
42 from the health and safety requirements of 45 CFR §98.41(a).
43
- 44 (2) A Board shall allow relative child care providers to care for a child in the
45 child's home (in-home child care) only for the following:
46

- 1 (A) A child with disabilities as defined in §809.2, and his or her siblings;
- 2
- 3 (B) A child under 18 months of age, and his or her siblings;
- 4
- 5 (C) A child of a teen parent; and
- 6
- 7 (D) When the parent's work schedule requires evening, overnight, or
- 8 weekend child care in which taking the child outside of the child's home
- 9 would be disruptive to the child.

10

11 (3) A Board may allow relative in-home child care for circumstances in which the

12 Board's child care contractor determines and documents that other child care

13 provider arrangements are not available in the community.

14

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

16 providers:

17

18 (1) Except for foster parents authorized by DFPS pursuant to §809.49, licensed

19 child care centers, including before- or after-school programs and school-age

20 programs, in which the parent or his or her spouse, including the child's parent

21 or stepparent, is the director or assistant director, or has an ownership interest;

22 or

23

24 (2) Licensed, registered, or listed child care homes where the parent also works

25 during the hours his or her child is in care.

26

27 *The provisions of this §809.91 adopted to be effective January 29, 2007, 32 TexReg 336;*

28 *amended to be effective June 24, 2007, 32 TexReg 3698; amended to be effective October 18,*

29 *2010, 35 TexReg 9359; amended to be effective November 14, 2011, 36 TexReg 7675; amended*

30 *to be effective January 8, 2013, 39 TexReg 155; amended to be effective October 1, 2016, 41*

31 *TexReg 7529*

32

33 **§809.92. Provider Responsibilities and Reporting Requirements.**

34

35 (a) A Board shall ensure that providers are given written notice of and agree to their

36 responsibilities, reporting requirements, and requirements for reimbursement under

37 this subchapter prior to enrolling a child.

38

39 (b) Providers shall:

40

41 (1) be responsible for collecting the parent share of cost as assessed under §809.19

42 before child care services are delivered;

43

44 (2) be responsible for collecting other child care funds received by the parent as

45 described in §809.21(a)(2);

46

- 1 (3) report to the Board or the Board's child care contractor instances in which the
2 parent fails to pay the parent share of cost; and
3
4 (4) follow attendance reporting and tracking procedures required by the
5 Commission under §809.95, the Board, or, if applicable, the Board's child care
6 contractor.
7
8 (c) Providers shall not charge the difference between the provider's published rate and
9 the amount of the Board's reimbursement rate as determined under §809.21 to
10 parents:
11
12 (1) who are exempt from the parent share of cost assessment under §809.19(a)(2);
13 or
14
15 (2) whose parent share of cost is calculated to be zero pursuant to §809.19(f).
16
17 (d) A Board may develop a policy that prohibits providers from charging the difference
18 between the provider's published rate and the amount of the Board's reimbursement
19 rate (including the assessed parent share of cost) to all parents eligible for child care
20 services.
21
22 (e) Providers shall not deny a child care referral based on the parent's income status,
23 receipt of public assistance, or the child's protective service status.
24
25 (f) Providers shall not charge fees to a parent receiving child care subsidies that are not
26 charged to a parent who is not receiving subsidies.
27

28 *The provisions of this §809.92 adopted to be effective January 29, 2007, 32 TexReg 336;*
29 *amended to be effective January 8, 2013, 38 TexReg 155; amended to be effective October 1,*
30 *2016, 41 TexReg 7529*
31

32 **§809.93. Provider Reimbursement.**

- 33
34 (a) A Board shall ensure that reimbursement for child care is paid only to the provider.
35
36 (b) A Board or its child care contractor shall reimburse a regulated provider based on a
37 child's monthly enrollment authorization, excluding periods of suspension at the
38 concurrence of the parent as described in §809.51(d).
39
40 (c) A Board shall ensure that a relative child care provider is not reimbursed for days on
41 which the child is absent.
42
43 (d) A relative child care provider shall not be reimbursed for more children than
44 permitted by the DFPS minimum regulatory standards for Registered Child Care
45 Homes. A Board may permit more children to be cared for by a relative child care
46 provider on a case-by-case basis as determined by the Board.

- 1
2 (e) A Board shall not reimburse providers that are debarred from other state or federal
3 programs unless and until the debarment is removed.
4
5 (f) Unless otherwise determined by the Board and approved by the Commission for
6 automated reporting purposes, the monthly enrollment authorization described in
7 subsection (b) of this section is based on the unit of service authorized, as follows:
8
9 (1) A full-day unit of service is 6 to 12 hours of care provided within a 24-hour
10 period; and
11
12 (2) A part-day unit of service is fewer than 6 hours of care provided within a 24-
13 hour period.
14
15 (g) A Board or its child care contractor shall ensure that providers are not paid for
16 holding spaces open.
17
18 (h) A Board or the Board's child care contractor shall not pay providers:
19
20 (1) less, when a child enrolled full time occasionally attends for a part day; or
21
22 (2) more, when a child enrolled part time occasionally attends for a full day.
23
24 (i) The Board or its child care contractor shall not reimburse a provider retroactively for
25 new Board maximum reimbursement rates or new provider published rates.
26
27 (j) A Board or its child care contractor shall ensure that the parent's travel time to and
28 from the child care facility and the parent's work, school, or job training site is
29 included in determining whether to authorize reimbursement for full-day or part-day
30 care under subsection (f) of this section.
31

32 *The provisions of this §809.93 adopted to be effective January 29, 2007, 32 TexReg 336;*
33 *amended to be effective January 8, 2013, 38 TexReg 155; amended to be effective*
34 *October 1, 2016, 41 TexReg 7529; amended to be effective August 1, 2018, 43 TexReg*
35 *4774*
36

37 **§809.94. Providers Placed on Corrective or Adverse Action by the Texas Department**
38 **of Family and Protective Services.**
39

- 40 (a) For a provider placed on evaluation corrective action (evaluation status) by DFPS,
41 Boards shall ensure that:
42
43 (1) parents with children enrolled in Commission-funded child care are notified in
44 writing of the provider's evaluation status no later than five business days after
45 receiving notification from the Agency of DFPS' decision to place the provider
46 on evaluation status; and

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- (2) parents choosing to enroll children in Commission-funded child care with the provider are notified in writing of the provider's evaluation status prior to enrolling the children with the provider.
- (b) For a provider placed on probation corrective action (probationary status) by DFPS, Boards shall ensure that:
 - (1) parents with children in Commission-funded child care are notified in writing of the provider's probationary status no later than five business days after receiving notification from the Agency of DFPS' decision to place the provider on probationary status; and
 - (2) no new referrals are made to the provider while on probationary status.
- (c) A parent receiving notification of a provider's evaluation or probationary status with DFPS pursuant to subsections (a) and (b) of this section may transfer the child to another eligible provider without being subject to the Board transfer policies described in §809.71(3) if the parent requests the transfer within 14 calendar days of receiving such notification.
- (d) For a provider placed on evaluation or probationary status by DFPS, Boards shall ensure that the provider is not reimbursed at the Boards' enhanced reimbursement rates described in §809.20 while on evaluation or probationary status.
- (e) For a provider against whom DFPS is taking adverse action, Boards shall ensure that:
 - (1) parents with children enrolled in Commission-funded child care are notified no later than two business days after receiving notification from the Agency that DFPS intends to take adverse action against the provider;
 - (2) children enrolled in Commission-funded child care with the provider are transferred to another eligible provider no later than five business days after receiving notification from the Agency that DFPS intends to take adverse action against the provider; and
 - (3) no new referrals for Commission-funded child care are made to the provider while DFPS is taking adverse action.

- 1
2 (f) For adverse actions in which DFPS has determined that the provider poses an
3 immediate risk to the health or safety of children and cannot operate pending appeal
4 of the adverse action, but for which there is a valid court order that overturns DFPS'
5 determination and allows the provider to operate pending administrative review or
6 appeal, Boards shall take action consistent with subsection (e) of this section.
7

8 *The provisions of this §809.94 adopted to be effective June 22, 2009, 34 TexReg 4201;*
9 *amended to be effective October 1, 2016, 41 TexReg 7529*

10
11 **§809.95. Provider Automated Attendance Agreement.**
12

13 Boards shall notify providers of the following:

- 14
15 (1) Employees of child care providers shall not:
16
17 (A) possess, have on the premises, or otherwise have access to the attendance
18 card of a parent or secondary cardholder;
19
20 (B) accept or use the attendance card or PIN of a parent or secondary
21 cardholder; or
22
23 (C) perform the attendance or absence reporting function on behalf of the
24 parent;
25
26 (2) The owner, director, or assistant director of a child care provider shall not be
27 designated as the secondary cardholder by a parent with a child enrolled with
28 the provider;
29
30 (3) Providers shall report misuse of attendance cards and PINs to the Board or the
31 Board's child care contractor; and
32
33 (4) Providers shall report to the child care contractor authorized days that do not
34 match the referral in the Agency's automated attendance system within five
35 days of receiving the authorization. Failure to report the discrepancy may
36 result in withholding payment to the provider.

- 1
2 (5) Misuse of attendance reporting and violation of the requirements in this section
3 are grounds for a potential fraud determination pursuant to Subchapter F of this
4 chapter.
5

6 *The provisions of this §809.95 adopted to be effective January 8, 2013, 38 TexReg 155;*
7 *amended to be effective October 1, 2016, 41 TexReg 7529*
8

9 **SUBCHAPTER F. FRAUD FACT-FINDING AND IMPROPER PAYMENTS**

10
11 **§809.111. General Fraud Fact-Finding Procedures.**
12

- 13 (a) This subchapter establishes authority for a Board to develop procedures for the
14 prevention of fraud by a parent, provider, or any other person in a position to commit
15 fraud consistent with fraud prevention provisions in the Agency-Board Agreement.
16
17 (b) In this subchapter, a person commits fraud if, to obtain or increase a benefit or other
18 payment, either for the person or another person, the person:
19
20 (1) makes a false statement or representation, knowing it to be false; or
21
22 (2) knowingly fails to disclose a material fact.
23
24 (c) A Board shall ensure that procedures for researching and fact-finding for possible
25 fraud are developed and implemented to deter and detect suspected fraud for child
26 care services in the workforce area.
27
28 (d) These procedures shall include provisions that suspected fraud is reported to the
29 Commission in accordance with Commission policies and procedures.
30
31 (e) Upon review of suspected fraud reports, the Commission may either accept the case
32 for investigation and action at the state level, or return the case to the Board or its
33 child care contractor for action including, but not limited to, the following:
34
35 (1) further fact-finding; or
36
37 (2) other corrective action as provided in this chapter or as may be appropriate.

- 1
2 (f) The Board shall ensure that a final fact-finding report is submitted to the
3 Commission after a case is returned to the Board or its child care contractor and all
4 feasible avenues of fact-finding and corrective actions have been exhausted.
5

6 *The provisions of this §809.111 adopted to be effective January 29, 2007, 32 TexReg 336;*
7 *amended to be effective October 1, 2016, 41 TexReg 7529*
8

9 **§809.112. Suspected Fraud.**
10

- 11 (a) A parent, provider, or any other person in a position to commit fraud may be
12 suspected of fraud if the person presents or causes to be presented to the Board or its
13 child care contractor one or more of the following items:
14
15 (1) A request for reimbursement in excess of the amount charged by the provider
16 for the child care; or
17
18 (2) A claim for child care services if evidence indicates that the person may have:
19
20 (A) known, or should have known, that child care services were not provided
21 as claimed;
22
23 (B) known, or should have known, that information provided is false or
24 fraudulent;
25
26 (C) received child care services during a period in which the parent or child
27 was not eligible for services;
28
29 (D) known, or should have known, that child care subsidies were provided to
30 a person not eligible to be a provider; or
31
32 (E) otherwise indicated that the person knew or should have known that the
33 actions were in violation of this chapter or state or federal statute or
34 regulations relating to child care services.
35
36 (b) The following parental actions may be grounds for suspected fraud and cause for
37 Boards to conduct fraud fact-finding or the Commission to initiate a fraud
38 investigation:
39
40 (1) Not reporting or falsely reporting at initial eligibility or at eligibility
41 redetermination:
42
43 (A) household composition, or income sources or amounts that would have
44 resulted in ineligibility or a higher parent share of cost; or
45

- 1 (B) work, training, or education hours that would have resulted in
- 2 ineligibility; or
- 3
- 4 (2) Not reporting during the 12-month eligibility period:
- 5
- 6 (A) changes in income or household composition that would cause the family
- 7 income to exceed 85 percent of SMI (taking into consideration
- 8 fluctuations of income); or
- 9
- 10 (B) a permanent loss of job or cessation of training or education that exceeds
- 11 three months; or
- 12
- 13 (C) improper or inaccurate reporting of attendance.
- 14

15 *The provisions of this §809.112 adopted to be effective January 29, 2007, 32 TexReg 336;*
 16 *amended to be effective October 1, 2016, 41 TexReg 7529*

17
 18 **§809.113. Action to Prevent or Correct Suspected Fraud.**

- 19
- 20 (a) The Commission or Board may take the following actions pursuant to Commission
- 21 policy if the Commission or Board finds that a provider has committed fraud:
- 22
- 23 (1) Temporary withholding of payments to the provider for child care services
- 24 delivered;
- 25
- 26 (2) Nonpayment of child care services delivered;
- 27
- 28 (3) Recoupment of funds from the provider;
- 29
- 30 (4) Stop authorizing care at the provider's facility or location;
- 31
- 32 (5) Prohibiting future eligibility to provide Commission-funded child care
- 33 services; or
- 34
- 35 (6) Any other action consistent with the intent of the governing statutes or
- 36 regulations to investigate, prevent, or stop suspected fraud.
- 37
- 38 (b) The Commission or Board may take the following actions pursuant to Commission
- 39 policy if the Commission or Board finds that a parent has committed fraud:
- 40
- 41 (1) recouping funds from the parent;
- 42
- 43 (2) prohibiting future child care eligibility, provided that the prohibition does not
- 44 result in a Choices or SNAP E&T participant becoming ineligible for child
- 45 care;
- 46

- 1 (3) limiting the enrollment of the parent's child to a regulated child care provider;
- 2
- 3 (4) terminating care during the 12-month eligibility period if eligibility was
- 4 determined using fraudulent information provided by the parent; or
- 5
- 6 (5) any other action consistent with the intent of the governing statutes or
- 7 regulations to investigate, prevent, or stop suspected fraud.
- 8

9 *The provisions of this §809.113 adopted to be effective January 29, 2007, 32 TexReg 336;*
10 *amended to be effective January 8, 2013, 38 TexReg 155; amended to be effective October 1,*
11 *2016, 41 TexReg 7529*

12
13 **§809.114. Failure to Comply with Commission Rules and Board Policies.**

- 14
- 15 (a) The Board shall ensure that parents and providers comply with Commission rules.
- 16
- 17 (b) The Commission, Board or Board's child care contractor may consider failure by a
- 18 provider or parent to comply with this chapter as an act that may warrant corrective
- 19 and adverse action as detailed in §809.115 (relating to Corrective Adverse Actions).
- 20
- 21 (c) Failure by a provider or parent to comply with this chapter shall also be considered a
- 22 breach of contract, which may also result in corrective action as detailed in this
- 23 subchapter.
- 24

25 *The provisions of this §809.114 adopted to be effective January 29, 2007, 32 TexReg 336*

26
27 **§809.115. Corrective Adverse Actions.**

- 28
- 29 (a) When determining appropriate corrective actions, the Board or Board's child care
- 30 contractor shall consider:
- 31
- 32 (1) the scope of the violation;
- 33
- 34 (2) the severity of the violation; and
- 35
- 36 (3) the compliance history of the person or entity.
- 37
- 38 (b) Corrective actions for providers may include, but are not limited to, the following:
- 39
- 40 (1) Closing intake;
- 41
- 42 (2) Moving children to another provider selected by the parent;
- 43
- 44 (3) Withholding provider payments or reimbursement of costs incurred; and
- 45
- 46 (4) Recoupment of funds.

- 1
2 (c) When a provider violates a provision of Subchapter E of this chapter, a written
3 Service Improvement Agreement may be negotiated between the provider and the
4 Board or the Board's child care contractor. At the least, the Service Improvement
5 Agreement shall include the following:
6
7 (1) The basis for the Service Improvement Agreement;
8
9 (2) The steps required to reach compliance including, if applicable, technical
10 assistance;
11
12 (3) The time limits for implementing the improvements; and
13
14 (4) The consequences of noncompliance with the Service Improvement
15 Agreement.
16
17 (d) The Board shall develop policies and procedures to ensure that the Board or the
18 Board's child care contractor take corrective action consistent with subsections (a) -
19 (c) of this section against a provider when a provider:
20
21 (1) possesses, or has on the premises, attendance cards without the parent being
22 present at the provider site;
23
24 (2) accepts or uses an attendance card or PIN of a parent or secondary cardholder;
25 or
26
27 (3) performs the attendance reporting function on behalf of a parent.
28
29 (e) The Board shall develop policies and procedures to require the Board's child care
30 contractor to take corrective action consistent with subsections (a) - (c) of this
31 section against a parent when a parent or parent's secondary cardholder gives his or
32 her:
33
34 (1) card to a provider; or
35
36 (2) PIN to a provider.
37

38 *The provisions of this §809.115 adopted to be effective January 29, 2007, 32 TexReg 336;*
39 *amended to be effective January 8, 2013, 38 TexReg 155; amended to be effective October 1,*
40 *2016, 41 TexReg 7529*
41

42 **§809.117. Recovery of Improper Payments to a Provider or Parent.**
43

- 44 (a) A Board shall attempt recovery of all improper payments as defined in §809.2.
45

- 1 (b) Recovery of improper payments shall be managed in accordance with Commission
2 policies and procedures.
3
- 4 (c) The provider shall repay improper payments for child care services received in the
5 following circumstances:
6
- 7 (1) Instances involving fraud;
8
- 9 (2) Instances in which the provider did not meet the provider eligibility
10 requirements in this chapter;
11
- 12 (3) Instances in which the provider was paid for the child care services from
13 another source;
14
- 15 (4) Instances in which the provider did not deliver the child care services;
16
- 17 (5) Instances in which referred children have been moved from one facility to
18 another without authorization from the child care contractor; and
19
- 20 (6) Other instances when repayment is deemed an appropriate action.
21
- 22 (d) A parent shall repay improper payments for child care only in the following
23 circumstances:
24
- 25 (1) Instances involving fraud as defined in this subchapter;
26
- 27 (2) Instances in which the parent has received child care services while awaiting
28 an appeal and the determination is affirmed by the hearing officer; or
29
- 30 (3) Instances in which the parent fails to pay the parent share of cost and the
31 Board's policy is to pay the provider for the parent's failure to pay the parent
32 share of cost.
33
- 34 (e) A Board shall ensure that a parent subject to the repayment provisions in subsection
35 (d) of this section shall prohibit future child care eligibility until the repayment
36 amount is recovered, provided that the prohibition does not result in a Choices or
37 SNAP E&T participant becoming ineligible for child care.
38

39 *The provisions of this §809.117 adopted to be effective January 29, 2007, 32 TexReg 336;*
40 *amended to be effective October 1, 2016, 41 TexReg 7529*
41

42 **SUBCHAPTER G. TEXAS RISING STAR PROGRAM**

43 **§809.130. Short Title and Purpose.**

- 44 (a) The rules contained in this subchapter may be cited as the TRS Program rules.
45
46

- 1
2 (b) The purpose of the TRS Program rules is to interpret and implement Texas
3 Government Code §2308.3155(b) requiring the Commission to establish rules to
4 administer the TRS program, including guidelines for rating a child care provider for
5 TRS certification.
6
7 (c) The TRS Program rules identify the organizational structure and categories of, and
8 the scoring factors that shall be included in, the TRS guidelines.
9
10 (d) The TRS guidelines for rating a child care provider shall:
11
12 (1) describe measures for the TRS program that contain, at a minimum, measures
13 for child care providers regarding:
14
15 (A) director and staff qualifications and training;
16
17 (B) caregiver-child interactions;
18
19 (C) curriculum;
20
21 (D) nutrition and indoor and outdoor activities; and
22
23 (E) parent involvement and education;
24
25 (2) specify measures that:
26
27 (A) must be met in order for a provider to be certified at each star level; and
28
29 (B) are observed and have points awarded through on-site assessments; and
30
31 (3) specify the scoring methodology and scoring thresholds for each star level.
32
33 (e) The TRS guidelines:
34
35 (1) shall be reviewed and updated by the Commission at a minimum of every four
36 years in conjunction with the rule review of Chapter 809, conducted pursuant
37 to Texas Government Code §2001.039, and the TRS guidelines review shall:
38
39 (A) consider input from stakeholders; and
40
41 (B) include at least one public hearing held prior to submitting the
42 stakeholder input to the Commission;
43
44 (2) shall be adopted by the Commission subject to the requirements of the Texas
45 Open Meetings Act; and
46

- 1 (3) also may be reviewed and amended as determined necessary by the
2 Commission in accordance with the requirements of the Texas Open Meetings
3 Act.
4

5 *The provisions of this §809.130 adopted to be effective February 16, 2015, 40 TexReg 708;*
6 *amended to be effective March 14, 2016, 41 TexReg 1975*
7

8 **§809.131. Eligibility for the TRS Program.**
9

- 10 (a) A child care provider is eligible to apply for the TRS program if the provider has a
11 current agreement to serve Commission-subsidized children and:
12
13 (1) has a permanent (nonexpiring) license or registration from DFPS;
14
15 (2) has at least 12 months of licensing history with DFPS, and is not on:
16
17 (A) corrective action with a Board pursuant to Subchapter F of this chapter;
18
19 (B) a "Notice of Freeze" with the Commission pursuant to Chapter 213 of the
20 Texas Labor Code (Enforcement of the Texas Unemployment
21 Compensation Act) or Chapter 61 of the Texas Labor Code (Payment of
22 Wages); or
23
24 (C) corrective or adverse action with DFPS; or
25
26 (3) is regulated by and in good standing with the US Military.
27
28 (b) A child care facility is not eligible to apply for the TRS program if, during the most
29 recent 12-month DFPS licensing history, the provider had:
30
31 (1) any of the critical licensing deficiencies listed in the TRS guidelines;
32
33 (2) five or more of the high or medium-high licensing deficiencies listed in the
34 TRS guidelines; or
35
36 (3) 10 or more total licensing deficiencies of any type.
37

38 *The provisions of this §809.131 adopted to be effective February 16, 2015, 40 TexReg 708*
39

40 **§809.132. Impact of Certain Deficiencies on TRS Certification.**
41

- 42 (a) A TRS provider shall lose TRS certification if the provider:
43
44 (1) is placed on corrective action with a Board pursuant to Subchapter F of this
45 chapter;
46

- 1 (2) is under a "Notice of Freeze" with the Commission pursuant to Chapter 213 of
2 the Texas Labor Code (Enforcement of the Texas Unemployment
3 Compensation Act) or Chapter 61 of the Texas Labor Code(Payment of
4 Wages);
5
- 6 (3) is placed on corrective or adverse action by DFPS; or
7
- 8 (4) had 15 or more total licensing deficiencies of any type during the most recent
9 12-month licensing history.
- 10
- 11 (b) TRS providers with any of the critical licensing deficiencies listed in the TRS
12 guidelines during the most recent 12-month DFPS licensing history shall have the
13 following consequences:
14
- 15 (1) reduction of a 4-Star Program Provider or 3-Star Program Provider to a 2-Star
16 Program Provider; or
17
- 18 (2) a 2-Star Program Provider shall lose certification.
19
- 20 (c) TRS providers with five or more of the high or medium-high deficiencies listed in
21 the TRS guidelines during the most recent 12-month DFPS licensing history shall
22 lose a star level with a 2-Star Program Provider losing certification.
23
- 24 (d) TRS providers with 10 to 14 total licensing deficiencies of any type during the most
25 recent 12-month DFPS licensing history shall be placed on a six-month TRS
26 program probationary period. Further:
27
- 28 (1) TRS providers on a six-month probationary period that are re-cited by DFPS
29 within the probationary period for any of the same deficiencies shall lose a star
30 level with a 2-Star Program Provider losing certification;
31
- 32 (2) if any new deficiencies--not to exceed 14 total deficiencies--are cited by DFPS
33 during the first probationary period, a second six-month probationary period
34 shall be established effective upon the date of final DFPS determination of the
35 deficiencies; and
36
- 37 (3) if any new deficiencies--not to exceed 14 total deficiencies--are cited by DFPS
38 during the second six-month probationary period, a provider shall lose TRS
39 certification.
40
- 41 (e) Providers losing a star level due to licensing deficiencies shall be reinstated at the
42 former star level if the deficiency is not re-cited by DFPS within the next six months.
43
- 44 (f) Providers losing TRS certification shall not be eligible to reapply for
45 certification sooner than 12 months following the loss of the certification.
46

2
3 **§809.133. Application and Assessments for the TRS Program.**

- 4
5 (a) TRS program applicants must complete:
- 6
7 (1) an orientation on the TRS guidelines, including an overview of the:
- 8
9 (A) TRS program application process;
- 10
11 (B) TRS program measures; and
- 12
13 (C) TRS program assessment process; and
- 14
15 (2) a TRS program self-assessment tool.
- 16
17 (b) Boards shall ensure that:
- 18
19 (1) written acknowledgment of receipt of the application and self-assessment is
- 20 sent to the provider;
- 21
22 (2) within 20 days of receipt of the application, the provider is sent an estimated
- 23 time frame for scheduling the initial assessment;
- 24
25 (3) an assessment is conducted for any provider that meets the eligibility
- 26 requirements in §809.131 and requests to participate in the TRS program; and
- 27
28 (4) TRS certification is granted for any provider that is assessed and verified as
- 29 meeting the TRS provider certification criteria set forth in the TRS guidelines.
- 30
31 (c) Boards shall ensure that TRS assessments are conducted as follows:
- 32
33 (1) On-site assessment of 100 percent of the provider classrooms at the initial
- 34 assessment for TRS certification and at each scheduled recertification; and
- 35
36 (2) Recertification of all TRS providers every three years.
- 37
38 (d) Boards shall ensure that certified TRS providers are monitored on an annual basis
- 39 and the monitoring includes:
- 40
41 (1) at least one unannounced on-site visit; and
- 42
43 (2) a review of the provider's licensing compliance as described in new §809.132.
- 44

- 1 (e) Boards shall ensure compliance with the process and procedures in the TRS
2 guidelines for conducting assessments of nationally accredited child care facilities
3 and child care facilities regulated by the US Military.
4
- 5 (f) Boards shall ensure compliance with the process and procedures in the TRS
6 guidelines for conducting assessments of certified TRS providers that have a change
7 of ownership, move, or expand locations.
8

9 *The provisions of this §809.133 adopted to be effective February 16, 2015, 40 TexReg 708*

10
11 **§809.134. Minimum Qualifications for TRS Assessors and Mentors.**
12

- 13 (a) Boards shall ensure that TRS assessors and mentors meet the minimum education
14 requirements as follows:
15
 - 16 (1) Bachelor's degree from an accredited four-year college or university in early
17 childhood education, child development, special education, child psychology,
18 educational psychology, elementary education, or family consumer science;
19
 - 20 (2) Bachelor's degree from an accredited four-year college or university with at
21 least 18 credit hours in early childhood education, child development, special
22 education, child psychology, educational psychology, elementary education, or
23 family consumer science with at least 12 credit hours in child development; or
24
 - 25 (3) Associate's degree in early childhood education, child development, special
26 education, child psychology, educational psychology, elementary education, or
27 family consumer science with two years of experience as a director in an early
28 childhood program, with preference given to experience with a provider that is
29 accredited or TRS certified.
30
- 31 (b) The Commission may grant a waiver of no more than two years of the minimum
32 education requirements in subsection (a) if a Board can demonstrate that no
33 applicants in its local workforce development area meet the minimum education
34 requirements.
35
- 36 (c) Boards shall ensure that TRS assessors and mentors meet the minimum work
37 experience requirements of one year of full-time early childhood classroom
38 experience in a child care, Early Head Start, Head Start, or prekindergarten through
39 third-grade school program.
40
- 41 (d) Boards shall ensure that if an individual performs the duties of both an assessor and
42 a mentor, the individual providing TRS mentoring services to a provider does not act
43 as the assessor of that same provider when determining TRS certification.
44

- 1 (e) Boards shall ensure that TRS assessors and mentors are required to complete annual
2 professional development and continuing education consistent with child care
3 licensing minimum training requirements for a center director.
4
- 5 (f) Boards shall ensure that TRS assessors and mentors meet the background check
6 requirement consistent with 40 TAC, Chapter 745.
7
- 8 (g) Boards shall ensure that TRS assessors and mentors demonstrate:
9
- 10 (1) knowledge of best practices in early childhood education; and
11
12 (2) understanding of early childhood evaluations, observations, and assessment
13 tools for both teachers and children.
14

15 *The provisions of this §809.134 adopted to be effective February 16, 2015, 40 TexReg 708*
16

17 **§809.135. TRS Process for Reconsideration.**
18

19 Boards shall ensure a process for reconsideration of facility assessment at the Board level
20 for the TRS program. The TRS program is not subject to Chapter 823 of this title, the
21 Integrated Complaints, Hearings, and Appeals rules.
22

23 *The provisions of this §809.135 adopted to be effective February 16, 2015, 40 TexReg 708*