

Chapter 811. CHOICES

The Texas Workforce Commission (Commission) proposes the following regarding Chapter 811 Choices Rules:

In Subchapter A. General Provisions, repeal §§811.1-811.4;

In Subchapter B. Access to Choices Services, repeal §§811.11-811.14;

In Subchapter C. Choices Services, repeal §§811.21-811.37;

In Subchapter D. Restrictions on Choices Services, repeal §811.51;

In Subchapter E. Support Services and Other Initiatives, repeal §§811.61-811.67;

In Subchapter F. Appeals, repeal §§811.71-811.72;

in Subchapter A. General Provisions, new §§811.1-811.3;

in Subchapter B. Choices Services Responsibilities, new §§811.11-811.14;

in Subchapter C. Choices Services, new §§811.21-811.29;

in Subchapter D. Choices Work Activities, new §§811.41-811.52

in Subchapter E. Support Services and Other Initiatives, new §§811.61-811.67 and

in Subchapter F. Appeals, new §§811.71-811.73.

The four purposes of TANF (42 U.S.C.A. §601(a)), are:

(1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;

(2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;

(3) prevent and reduce the incidence of out-of-wedlock pregnancies; and

(4) encourage the formation and maintenance of two-parent families.

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

In light of these purposes and goals, the Commission intends that recipients of TANF, as well as applicants who are at risk of becoming dependent on public assistance or former TANF recipients who have transitioned off of public assistance, be provided Choices and other services available through the One-Stop Service Delivery Network. More specifically, the changes to the Choices rules are proposed to meet the overarching philosophies and goals of Choices services that include the following:

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

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

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

continuing the focus on work first design;

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

clearly stating client responsibilities;

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

describing allowable component activities;

clarifying the application of good cause; and

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

Choices services are used to help cash assistance applicants and recipients transition from welfare to work and to assist former recipients in retaining employment and working towards self-sufficiency using the work first design.

The work first design provides individuals with an immediate connection to the local labor market by identifying available job opportunities based on local employer needs. Individuals possessing the skills and abilities needed to fulfill available job openings are employed immediately. This immediate attachment to the labor force emphasizes the importance of work and an individual's personal responsibility to participate in work activities that will enable families to move towards self-sufficiency. The work first design also emphasizes career enhancement through the provision of employer-driven education and training services to increase individuals' skills and enhance their abilities to follow a career path.

On March 31, 2002, the Texas welfare waiver will expire, and on April 1, 2002, Texas will operate under provisions of the federal welfare reform law not modified by State law. Under federal law, Texas will have more mandatory

recipients and must serve additional recipients to meet state and federal performance requirements. In addition, the federal welfare reform law specifies allowable activities and limitations on such activities.

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

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

New §811.2 sets forth the definitions relating to Choices services. This section includes the same provisions contained in repealed §811.2 with changes to several terms to update and consolidate information consistent with the federal regulations, new state law and for consistency and clarification. The following terms are added: TDHS, Exempt Recipient, Mandatory Recipient, PRWORA, and Work Ready. Modifications were made to the definitions of Earned Income Deduction and temporary cash assistance. The definition for temporary assistance was deleted to eliminate redundancy.

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

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

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

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

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

New §811.14 sets forth the good cause for recipients provisions relating to Choices services. The new language is changed to explain that the existence of good cause shall be reevaluated monthly. Good Cause for domestic violence is limited by state law to a total of twelve months from the first determination of good cause. Additional changes include removing the exception for good cause for individuals who are incarcerated and to clarify good cause reasons for inability to obtain needed child care. Clarification is also included to specify that family circumstances precluding participation include substance abuse and mental health issues.

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

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

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

Clarification is provided on assessment requirements for applicants, recipients, and former recipients.

New §811.23, re-designates the "employability plan" as the "family employment plan" to emphasize the need to consider family circumstances that must be addressed to assist the individual in obtaining and retaining employment. The section continues to focus on developing a family employment plan based on employers' needs in the local labor market. New language was added regarding the family employment plan to require Boards to provide certain information to persons who did not receive this information during the WOA. Information about services available through the One-Stop Service Delivery Network must be provided to assist individuals in obtaining employment. This information must be provided prior to the development of the family employment plan. New language is also included to specify how required participation hours are to be distributed between the adults in two-parent families. In new §811.24, requirements for the Family Work Requirement Form for two-parent families are outlined. The purpose of the form is to document the agreement by both adults in the family to comply with family work requirements through distribution of required hours of participation between one or both adults in the two-parent family.

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

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

New §811.27 sets forth special provisions for teen heads of household to reflect the participation requirements outlined for teens who do not have high school diplomas.

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

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

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

New §§811.41-811.52 define Choices work activities.

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

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

New §811.43 sets forth the subsidized employment provisions. This section includes provisions previously contained in repealed §811.27. The new provision provides examples of subsidized employment; explains who may act as employer of record; and requires Boards to set a policy establishing the amount of wages that are subsidized.

New §811.44 sets forth the on-the-job training provisions. This section includes provisions previously contained in repealed §811.30. The new provisions add clarification regarding on-the-job training relating to the benefits to paid participants in the training, provide that reimbursement to employers for extraordinary costs of providing the training and additional supervision related to the training is permitted, and that on-the-job training is limited in duration relative to the respective occupation and service strategy of the individual. The section also provides that unsubsidized employment after satisfactory completion is expected and that failure by employers to hire any individuals in a manner equal to those that are provided to regular employees is not permitted.

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

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

New §811.47 sets forth the requirements for Choices individuals who, as a core work activity, provide child care services to another Choices individual participating in community service. This section is a new provision as allowed under the federal regulations in 45 CFR §261.30(l). The flexibility afforded in the federal regulations is passed to a Board with the requirement that if a Board elects to allow this activity, then local policies are required to ensure the health, safety, and well-being of the children in care. The requirements also specify that limits on the maximum number of children in care must be specified by a Board and that the methodology and mechanism for clients reporting hours of participation by providing care shall also be incorporated.

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

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

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

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

New §811.52 sets forth the parenting skills training provisions. This section includes the same provisions contained in repealed §811.35 with added language to require that the determination of the need for parenting skills training be performed during the assessment stage. The purpose for including this requirement is to identify as early as possible the need for these services.

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

In new §§811.61-811.67, Choices support services are outlined. Definitions are provided for each support service and clarifications regarding those services are included.

In new § 811.61, language is added to clarify that subsidized support services may only be provided to recipients who are meeting their work requirements. Support services are intended to assist individuals who are engaged in allowable work activities that will lead to employment. A corresponding change is made to §809.92 in the Child Care and Development rules.

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

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

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

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

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

In new §811.71, new language is added to clarify that (1) individuals against whom an adverse action is taken by a Texas Workforce Center Partner or (2) a person who believes that a Choices individual has displaced the person from employment may request a review by a respective Board. In subsection (d) the term person is added to clarify

that it applies to all types of appeals that fall under the section including those referenced in new paragraph (a)(2). In subsection (e) the rule also includes the term "calendar" before days merely for clarification.

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

New §811.73 clarifies that Boards shall provide necessary information about appeals related to the denial of benefits based on noncompliance with Choices service requirements to the Texas Department of Human Services (TDHS).

Additional Background regarding Choices services. Rules of the Texas Department of Human Services relating to employment services, contained in part in 40 TAC Chapter 3, include the following: requirements of applicants of temporary cash assistance to attend workforce orientation sessions and for recipients to participate in employment services; the exemptions from participation requirements; and financial penalties applied to benefits resulting from noncompliance. Mandatory recipients of temporary cash assistance benefits, pursuant to the Personal Responsibility Agreement, are required to work or participate in Choices, the state's TANF employment services program. The Commission, where applicable, cross-references those rules for the purposes of continuity or clarity.

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

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

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

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

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

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

there are no anticipated economic costs to persons required to comply with the rules; however, costs may be incurred if a recipient fails to meet work requirements. Those costs may include monetary sanctions imposed by the TDHS.

Mr. Townsend has also determined that there is no anticipated adverse impact on small businesses as a result of enforcing or administering the rule because small businesses are not regulated by the rule.

James Barnes, Director of Labor Market Information, has determined that there is no foreseeable negative impact upon employment conditions in this state as a result of the proposed amendment. The result of the rules should be improved resources of skilled workers from which employers may benefit and employment opportunities and work enhancing skills throughout Texas for persons at risk of becoming dependent on public assistance.

Luis Macias, Acting Director of Workforce Development, has determined that the public benefit anticipated as a result of the rules as proposed will be to clarify and improve the state and local partnership in policy making and service delivery that will ensure that recipients of temporary cash assistance receive services to aid them in assuming their responsibility to move quickly into work or work activities leading to self-sufficiency.

Comments on the proposed rules may be submitted to John Moore, Assistant General Counsel, Texas Workforce Commission, 101 East 15th Street, Room 608, Austin, Texas 78778, (512) 463-3041. Comments may also be submitted via fax to (512) 463-1426, or e-mailed to John.Moore@twc.state.tx.us. Comments must be received by the Commission no later than thirty days from the date this proposal is published in the Texas Register. In addition, a public hearing will be held on February 26, 2002 at 1:00 p.m. at 101 East 15th St., Rm. 244, Austin, Texas to receive comments.

For additional information about services and activities provided through the Texas Workforce Commission, visit our web page at www.texasworkforce.org.

Subchapter A. GENERAL PROVISIONS

40 TAC §§811.1 - 811.4

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The rules are repealed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities; and Texas Human Resources Code Chapters 31 and 34. The repeal affects Texas Labor Code, Title 4, Texas Human Resources Code Chapters 31 and 34 and Texas Government Code Chapter 2308.

§811.1.Purpose and Goal.

§811.2.Definitions.

§811.3.General Board Responsibilities.

§811.4.Choices Service Strategy.

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

Filed with the Office of the Secretary of State on February 5, 2002.

TRD-200200713

John Moore

Assistant General Counsel

Texas Workforce Commission

Earliest possible date of adoption: March 24, 2002

For further information, please call: (512) 463-2573

Subchapter B. ACCESS TO CHOICES SERVICES

40 TAC §§811.11 - 811.14

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The rules are repealed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities; and Texas Human Resources Code Chapters 31 and 34.

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

§811.11.Board Responsibilities Regarding Access.

§811.12.Applicant Responsibilities.

§811.13.Recipient Responsibilities.

§811.14.Good Cause for Recipients.

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

Filed with the Office of the Secretary of State on February 5, 2002.

TRD-200200714

John Moore

Assistant General Counsel

Texas Workforce Commission

Earliest possible date of adoption: March 24, 2002

For further information, please call: (512) 463-2573

Subchapter C. CHOICES SERVICES

40 TAC §§811.21 - 811.37

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The rules are repealed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities; and Texas Human Resources Code Chapters 31 and 34.

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

§811.21.General Provisions.

§811.22.Assessment.

§811.23.Employability Plan.

§811.24. *Job Readiness Services.*
§811.25. *Job Search Services.*
§811.26. *Unsubsidized Employment.*
§811.27. *Subsidized Employment.*
§811.28. *Internship.*
§811.29. *Self-Employment Assistance.*
§811.30. *On-the-Job Training.*
§811.31. *Job Skills Training.*
§811.32. *Work Skills Training.*
§811.33. *Community Service.*
§811.34. *Vocational Educational Training.*
§811.35. *Parenting Skills Training.*
§811.36. *Educational Services.*
§811.37. *Job Retention, Career Advancement, and Re-employment Services.*

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

Filed with the Office of the Secretary of State on February 5, 2002.

TRD-200200715

John Moore

Assistant General Counsel

Texas Workforce Commission

Earliest possible date of adoption: March 24, 2002

For further information, please call: (512) 463-2573

Subchapter D. RESTRICTIONS ON CHOICES SERVICES

40 TAC §811.51

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The rules are repealed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities; and Texas Human Resources Code Chapters 31 and 34.

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

§811.51. *Restrictions on Length of Education and Training.*

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

Filed with the Office of the Secretary of State on February 5, 2002.

TRD-200200716

John Moore

Assistant General Counsel

Texas Workforce Commission

Earliest possible date of adoption: March 24, 2002

For further information, please call: (512) 463-2573

Subchapter E. SUPPORT SERVICES AND OTHER INITIATIVES

40 TAC §§811.61 - 811.67

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The rules are repealed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities; and Texas Human Resources Code Chapters 31 and 34.

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

§811.61. *Support Services.*

§811.62. Child Care for Applicants and Recipients .

§811.63. Transportation.

§811.64. Work-Related Expenses.

§811.65. Wheels to Work.

§811.66. General Equivalency Diploma (GED) Testing Payments.

§811.67. Individual Development Accounts.

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

Filed with the Office of the Secretary of State on February 5, 2002.

TRD-200200717

John Moore

Assistant General Counsel

Texas Workforce Commission

Earliest possible date of adoption: March 24, 2002

For further information, please call: (512) 463-2573

Subchapter F. APPEALS

40 TAC §811.71, §811.72

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The rules are repealed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities; and Texas Human Resources Code Chapters 31 and 34.

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

§811.71. Board Review.

§811.72. Appeals to the Agency.

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

Filed with the Office of the Secretary of State on February 5, 2002.

TRD-200200718

John Moore

Assistant General Counsel

Texas Workforce Commission

Earliest possible date of adoption: March 24, 2002

For further information, please call: (512) 463-2573

Subchapter A. GENERAL PROVISIONS

40 TAC §§811.1 - 811.3

The new rules are proposed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities; and Texas Human Resources Code Chapters 31 and 34.

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

§811.1. Purpose and Goal.

(a) The purposes of Temporary Assistance for Needy Families (TANF), as outlined in Title IV, Social Security Act, §401 (42 U.S.C.A. §601) are:

(1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;

(2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;

(3) prevent and reduce the incidence of out-of-wedlock pregnancies; and

(4) encourage the formation and maintenance of two-parent families.

(b) The goal of Choices services is to end the dependence of needy parents on public assistance by promoting job preparation, work, and marriage. A Board may exercise flexibility in providing services to applicants, recipients and former recipients to meet this Choices goal. A Board is also provided the flexibility and may engage in strategies

that promote the prevention and reduction of out-of-wedlock pregnancies and encourage the formation and maintenance of two-parent families if those strategies support the primary goal of Choices services, which is employment and job retention.

(c) The goal of the Commission is to ensure delivery of the employment and training activities as described in the TANF State Plan.

(d) Boards shall identify the workforce needs of local employers and design Choices services to ensure that local employer needs are met and that the services are consistent with the goals and purposes of Choices services as referenced in this section, and as authorized by PRWORA, the applicable federal regulations at 45 C.F.R. Part 260 - 265, the TANF State Plan, this chapter, and consistent with a Board's approved integrated workforce training and services plan as referenced in §801.17 of this title.

§811.2. Definitions.

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

(1) Applicant--A person who applies for temporary cash assistance.

(2) TDHS--The Texas Department of Human Services.

(3) Exempt Recipient--A recipient who is not required as defined by TDHS Rules, 40 TAC, 3.1101, to participate in Choices services.

(4) Earned Income Deduction (EID)--A standard work-related and income deduction, available through the TDHS for four months, as defined in TDHS Rules, 40 TAC, §31.003 to recipients who are employed at least 30 hours a week and earn at least \$700 a month.

(5) Former recipient--A person who is an adult or teen head of household who no longer receives temporary cash assistance.

(6) Individual--A person who is an applicant, recipient or former recipient as defined in this section.

(7) Mandatory Recipient--A recipient who is required as defined by TDHS Rules, 40 TAC, §3.1101, to participate in Choices services.

(8) PRWORA--The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105, as amended.

(9) Recipient--A person who is an adult or teen head of household who receives temporary cash assistance.

(10) Temporary cash assistance--The cash grant provided through TDHS to individuals who meet certain residency, income, and resource criteria as provided under federal and state statutes and regulations, including the PRWORA, the TANF block grant statutes, the TANF State Plan, temporary cash assistance provided under Texas Human Resources Code Chapters 31 or 34, and other related regulations.

(11) Work-Based Services--Includes those services defined in Human Resources Code §31.0126.

(12) Work Ready--An individual is considered work ready if he or she has the skills that are required by employers in the workforce area. A Board must ensure immediate access to the labor market to determine whether the individual has those necessary skills to obtain employment.

§811.3. Choices Service Strategy.

(a) A Board shall ensure that its strategic planning process includes an analysis of the local labor market to:

(1) determine employers' needs;

(2) determine emerging and demand occupations; and

(3) identify employment opportunities, which includes those with a potential for career advancement.

(b) A Board shall set local policies for a Choices service strategy that coordinates various service delivery approaches to:

(1) assist applicants in gaining employment as an alternative to public assistance;

(2) utilize a work first design as referenced in paragraph (2) of subsection (c) of this section to provide recipients access to the labor market; and

(3) assist former recipients in job retention and career advancement to remain independent of temporary cash assistance.

(c) The Choices service strategy shall include:

(1) Workforce Orientation for Applicants (WOA). As a condition of eligibility, applicants are required to attend a workforce orientation that includes information on options available to allow them to enter the Texas workforce. As part of the orientation, a Board shall ensure that applicants are provided with an appointment to develop a family employment plan. A Board shall ensure that the WOA is offered frequently enough to allow applicants to comply with the TDHS requirement that gives applicants ten (10) calendar days to attend a WOA. A Board shall ensure that the applicants are informed of:

(A) employment services available through a Board to assist applicants in achieving self-sufficiency without the need for temporary cash assistance;
(B) benefits of becoming employed;
(C) impact of time-limited benefits;
(D) individual and parental responsibilities; and
(E) other services and activities, including education and training, available through the One-Stop Service Delivery Network.

(2) Work First Design.

(A) The work first design:

(i) allows individuals to take immediate advantage of the labor market and secure employment, which is critical due to individual time-limited benefits; and

(ii) meets the needs of employers by linking individuals with skills that match those job requirements identified by the employer.

(B) Boards shall provide individuals access to other services and activities available through the One-Stop Service Delivery Network, which includes the WOA, to assist with employment in the labor market before certification for temporary cash assistance.

(C) Post-employment services shall be provided in order to assist an individual's progress towards self-sufficiency as described in paragraph (3) of subsection (c) of this section and §811.51 of this chapter.

(D) In order to assist an individual's progress toward self-sufficiency:

(i) Boards shall provide recipients who are employed, including those receiving the Earned Income Deduction, with information on available post-employment services; or

(ii) Boards may provide former recipients with post-employment services as determined by Board policy. The length of time these services may be provided is subject to §811.51(e) of this chapter.

(E) In order to assist employers, Boards shall coordinate with local employers to address needs related to:

(i) employee post-employment education or training;

(ii) employee child care, transportation or other support services available to obtain and retain employment; and

(iii) employer tax credits.

(F) A Board shall ensure that a family employment plan is based on employer needs, individual skills and abilities, and individual time limits for temporary cash assistance.

(3) Post-Employment Services. A Board shall ensure that post-employment services are designed to assist individuals with job retention, career advancement and reemployment, as defined in §811.51 of this chapter. Post-employment services are a continuum in the Choices service strategy to support an individual's progression to self-sufficiency.

(4) Adult Services. A Board shall ensure that services for adults shall include activities individually designed to lead to employment and self-sufficiency as quickly as possible.

(5) Teen Services. A Board shall ensure that services for teen heads of household shall include assistance with completion of secondary school or a certificate of general equivalence and making the transition from school to employment, as described in §811.27 and §811.50 of this chapter.

(6) Individuals with Disabilities. A Board shall ensure that services for individuals with disabilities include reasonable accommodations to allow the individuals to access and participate in services, where applicable. A Board shall ensure that Memoranda of Understanding are established with the applicable agencies to serve individuals with disabilities.

(7) Local Flexibility. A Board may develop additional service strategies that are consistent with the goal and purpose of this chapter and the One-Stop Service Delivery Network.

(8) Coordinated Interagency Plan. A Board shall ensure the development of a coordinated interagency plan in cooperation with TDHS that is consistent with any memorandum of understanding between TDHS and the Commission.

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

Filed with the Office of the Secretary of State on February 5, 2002.

TRD-200200719

John Moore

Assistant General Counsel

Texas Workforce Commission

Earliest possible date of adoption: March 24, 2002

For further information, please call: (512) 463-2573

Subchapter B. CHOICES SERVICES RESPONSIBILITIES

40 TAC §§811.11 - 811.14

The new rules are proposed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities; and Texas Human Resources Code Chapters 31 and 34.

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

§811.11.Board Responsibilities.

(a) A Board shall ensure that Choices services are provided to applicants for temporary cash assistance who attend Workforce Orientation for Applicants (WOA).

(b) A Board shall ensure that recipient status is verified monthly and recipients either:

(1) comply with Choices services requirements as outlined in the family employment plan unless the individual is exempted by TDHS; or

(2) have good cause as described in §811.14 of this subchapter (relating to Good Cause for Recipients).

(c) A Board shall ensure that post-employment services, including job retention and career advancement services, are available to recipients, including those receiving the Earned Income Deduction.

(d) A Board shall ensure that the monitoring of program requirements and activities is ongoing and frequent, as determined by a Board, and consists of the following:

(1) tracking and reporting actual hours of participation, at least monthly;

(2) tracking and reporting of support services;

(3) determining and arranging for any intervention needed to assist the individual in complying with Choices service requirements;

(4) ensuring that the individual is progressing toward achieving the goals and objectives in the family employment plan; and

(5) monitoring all other participation requirements.

(e) A Board shall ensure that:

(1) verification that an applicant attends the WOA is completed and TDHS is notified in accordance with TDHS rule, 40 T.A.C. §3.7301; and

(2) notification is made to TDHS if a recipient fails to comply with Choices services requirements.

(f) A Board shall ensure that documentation is obtained and maintained regarding all client contacts and data entered into TWIST.

§811.12.Applicant Responsibilities.

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

§811.13.Recipient Responsibilities.

(a) A Board shall ensure that mandatory recipients, and exempt recipients who voluntarily participate in Choices services, comply with the provisions contained in this section.

(b) Mandatory recipients, and exempt recipients who voluntarily participate in Choices services, shall:

(1) accept a job offer at the earliest possible opportunity;

(2) participate in or receive ancillary services necessary to enable the individual to work or participate in employment-related activities, including counseling, treatment, vocational or physical rehabilitation, and medical or health services;

(3) report hours of participation in component activities, including hours of employment; and

(4) attend scheduled appointments.

(c) Within two-parent families, mandatory recipients, and exempt recipients who voluntarily participate in Choices services, shall participate in assessment and family employment planning appointments and assigned employment and training activities as follows:

(1) participate in Choices employment and training as specified in §811.25(c)-(d) of this chapter;

(2) comply with requirements regarding core and non-core activities, as specified in §§811.25-811.28 of this chapter; and

(3) sign a form that contains all the information identified in the Agency's Family Work Requirement form, as described in §811.24 of this chapter.

(d) Within single-parent families, mandatory recipients, and exempt recipients who voluntarily participate in Choices services, shall participate in assessment and employment planning appointments and assigned employment and training activities as follows:

(1) participate in Choices employment and training activities as specified in §811.25(b) of this chapter; and
(2) comply with requirements regarding core and non-core activities, as specified in §§811.25-811.28 of this chapter.

(e) A Board shall ensure that recipients who elect to receive the Earned Income Deduction through TDHS:

(1) report actual hours of work to a Board; and

(2) are provided with information on available post-employment services.

§811.14. Good Cause for Recipients.

(a) Good cause applies only to recipients. A Board shall ensure whether the recipient has good cause as provided in this chapter.

(b) A Board shall ensure that a good cause determination:

(1) is based on the individual circumstances of the recipient;

(2) is based on face-to-face or telephone contact with the recipient;

(3) covers a temporary period when a recipient may be unable to attend scheduled appointments or participate in ongoing work activities;

(4) is made at the time of occurrence; and

(5) is conditional upon efforts to enable the recipient to address circumstances that limit the ability to participate in Choices services as required in the Personal Responsibility Agreement.

(c) The following reasons may constitute good cause for purposes of this chapter if the mandatory recipient is unable to meet the participation requirements due to:

(1) temporary illness or incapacitation;

(2) court appearance;

(3) caring for a physically or mentally disabled household member who requires the recipient's presence in the home;

(4) demonstrates that there is:

(A) no available transportation and the distance prohibits walking;

(B) a disruption in transportation arrangements; or

(C) no available job within reasonable commuting distance, which means that travel from home to the job or training would require commuting time of more than two hours round trip;

(5) demonstrates an inability to obtain needed child care based on the following reasons:

(A) informal child care by a relative or under other arrangements is unavailable or unsuitable, as defined in the Child Care and Development State Plan, or Board policy regarding child care as specified in §811.47 of this chapter;

(B) appropriate and affordable formal child care arrangements are unavailable, as defined in the Child Care and Development State Plan; and

(C) appropriate child care within a reasonable distance from home or the work site is unavailable, as defined in the Child Care and Development State Plan;

(6) is without other support services necessary for participation;

(7) receives a job referral that results in an offer below the federal minimum wage, except when a lower wage is permissible under federal minimum wage law; or

(8) is in a family crisis or a family circumstance that may preclude participation, including domestic violence, substance abuse, and mental health, provided the recipient engages in problem resolution through appropriate referrals for counseling and support services.

(d) A Board shall ensure that recipients in single-parent families caring for children under age six are informed of:

(1) the penalty exception to the family work requirement, including the criteria and applicable definitions for determining whether an individual has demonstrated an inability to obtain needed child care, as defined in §811.14(c)(5) of this section; and

(2) a Board's policy and procedures for determining a family's inability to obtain needed child care, and any other requirements or procedures, such as fair hearings, associated with this provision, as required by 45 CFR §261.56.

(e) A Board shall ensure that good cause:

(1) is reevaluated at least on a monthly basis;

(2) is extended if the circumstances giving rise to the good cause exception are not resolved after available resources to remedy the situation have been considered; and

(3) that is based on the existence of domestic violence does not exceed a total of twelve months from the first determination of good cause.

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

Filed with the Office of the Secretary of State on February 5, 2002.

TRD-200200720

John Moore

Assistant General Counsel

Texas Workforce Commission

Earliest possible date of adoption: March 24, 2002

For further information, please call: (512) 463-2573

Subchapter C. CHOICES SERVICES

40 TAC §§811.21 - 811.29

The new rules are proposed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities; and Texas Human Resources Code Chapters 31 and 34.

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

§811.21. General Provisions.

(a) A Board shall ensure that services are available to assist individuals with obtaining employment as quickly as possible and, if employed, with retaining employment. These services may include:

- (1) job readiness and job search-related services;
- (2) work-based services;
- (3) post-employment services;
- (4) education and training services as described in this chapter; and
- (5) support services.

(b) A Board shall ensure that employment and training activities are conducted in compliance with the Fair Labor Standards Act (FLSA) as follows:

- (1) the amount of time per week that an individual may be required to participate in activities that are not exempt from minimum wage and overtime under the FLSA shall be determined by the temporary cash assistance and food stamp benefits amount being divided by the minimum wage so that the amount paid to the individual would be equal to or more than the amount required for payment of wages, including minimum wage and overtime; and
- (2) if a Board provides activities that meet all of the following categories set forth in this paragraph, the activity is considered "training" under the FLSA and minimum wage and overtime is not required:

- (A) the training is similar to that given in a vocational school;
- (B) the training is for the benefit of the trainees;
- (C) trainees do not displace regular employees;
- (D) employers derive no immediate advantage from trainees' activities;
- (E) trainees are not entitled to a job after training is completed; and
- (F) employers and trainees understand that trainee is not paid.

(c) A Board shall ensure that placement in work-based services does not result in the displacement of currently employed workers or impair existing contracts for services or collective bargaining agreements.

(d) A Board may, through local policies and procedures, require the use of the Eligible Training Provider Certification System (ETPS) and Individual Training Account (ITA) systems as described in 40 T.A.C. Chapter 841 to provide for Choices services for individuals participating in Choices services and paid for with TANF funds.

(e) A Board shall, through local policies and procedures, make available job development services, which include:

- (1) contacting local employers or industry associations to request that job openings be listed with Texas Workforce Centers, and other entities in the One-Stop Service Delivery Network selected by the Board;
- (2) identifying the hiring needs of employers;
- (3) assisting the employer in creating new positions for job seekers based on the job developer's and employer's analysis of the employer's business needs; or
- (4) finding opportunities with an employer for a specific job seeker or a group of job seekers.

(f) A Board shall ensure that job development services identify, at a minimum, job openings for current mandatory recipients.

(g) A Board shall, through local policies and procedures, make available job placement services. Job placement services shall include:

- (1) identifying employers' workforce needs;
- (2) identifying individuals who have sufficient skills and abilities to be successfully linked with employment; and
- (3) matching the skills of the job seeker pool to the hiring needs of local employers.

§811.22. Assessment.

(a) A Board shall ensure that initial and ongoing assessments are performed to determine the employability and retention needs of applicants, recipients and former recipients as follows:

(1) An assessment is required for mandatory recipients, and for exempt recipients who voluntarily participate in Choices services, and who are:

(A) at least age 18; or

(B) heads of household, as determined by TDHS, that are not yet age 18, who have not completed secondary school or received a certificate of general equivalence and are not attending secondary school.

(2) An assessment shall be provided to applicants who choose to participate in Choices services.

(3) Ongoing assessments shall be provided to former recipients who choose to participate in Choices services.

(b) Assessments shall include evaluations of strengths and potential barriers to obtaining and retaining employment, such as:

(1) skills and abilities, employment, and educational history in relation to employers' workforce needs in the local labor market;

(2) support services needs; and

(3) family circumstances that may affect participation, including the existence of domestic violence, substance abuse, and mental health, or the need for parenting skills training, as one of the factors considered in evaluating employability.

(c) For recipients who are at least age 18, or who are heads of household but are not yet age 18 and have not completed secondary school or received a certificate of general equivalence and are not attending secondary school:

(1) The assessments shall also include evaluations of the recipient's:

(A) vocational and educational skills, experience, and needs; and

(B) literacy level by using a statewide standard literacy assessment instrument with the following exception: recipients receiving the Earned Income Deduction are excluded from the literacy assessment. A Board shall ensure that the grade-level results or other literacy information is provided to TDHS for use in determining the appropriateness of the initial state time-limit designation for temporary cash assistance as described in the Texas Human Resources Code §31.0065, relating to state time-limited benefits.

(2) The grade-level results or other literacy information are provided to TDHS for use in determining the appropriateness of the initial state time-limit designation for temporary cash assistance as described in the Texas Human Resources Code §31.0065, relating to state time-limited benefits.

(d) Assessment Outcome. Assessments shall result in the development of a family employment plan, as described in §811.23 of this subchapter.

§811.23. Family Employment Plan.

(a) Boards must ensure that prior to the development of a family employment plan, recipients receive general information about services provided through the One-Stop Service Delivery Network that will assist them in obtaining employment, if the recipient did not receive this information during the Workforce Orientation for Applicants (WOA).

(b) Family employment plans are required for mandatory recipients, and for exempt recipients who voluntarily participate in Choices services.

(c) Family employment plans shall be provided to applicants and former recipients who choose to participate in Choices services.

(d) A Board shall ensure that a family employment plan is developed during the assessment and:

(1) is based on assessments, as described in §811.22 of this subchapter;

(2) contains the goal of self-sufficiency through employment to meet the needs of the local labor market;

(3) contains the steps and services to achieve the goal, including:

(A) connecting the individual immediately to the local labor market;

(B) addressing potential barriers that limit the individual's ability to work or participate in activities;

(C) arranging support services for the individual or the family to address circumstances that limit the individual's ability to work or participate, including services for domestic violence; and

(D) providing post-employment skill enhancement and career advancement;

(4) is signed by the individual, unless the individual is receiving the Earned Income Deduction, and a Board's designated representative; and

(5) assigns required hours and outlines the participation agreement for compliance with Choices services requirements. Family employment plans for two-parent families must include a description of how the required hours of participation will be distributed between one or both adults in the two-parent household.

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

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

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

(1) contains an agreement by both adults in the family to comply with the family work requirements through distribution of required hours of participation between one or both adults in the two-parent family; and
(2) is signed by the adults in the household that are required to participate in Choices services, except for the following:

(A) individuals who are temporarily unable to sign the form, such as an individual who is temporarily unavailable;

or

(B) individuals receiving the Earned Income Deduction whose only participation requirement is to report their hours of employment.

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

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

(1) TANF core activities are:

(A) job search and job readiness assistance, as described in §811.41 of this chapter;

(B) unsubsidized employment, as described in §811.42 of this chapter;

(C) subsidized employment, as described in §811.43 of this chapter;

(D) on-the-job training, as described in §811.44 of this chapter;

(E) work experience, as described in §811.45 of this chapter;

(F) community service, as described in §811.46 of this chapter;

(G) vocational educational training, as described in §811.48 of this chapter; or

(H) child care services to a Choices individual who is participating in a community service, as described in §811.47 of this chapter.

(2) TANF non-core activities are:

(A) job skills training, as described in §811.49 of this chapter;

(B) educational services for individuals who have not completed secondary school or received a certificate of general equivalence, as described in §811.50 of this chapter.

(b) A recipient in a single-parent family is deemed to be engaged in work during the month if he or she participates for at least a minimum weekly average of thirty hours. An average of twenty hours per week must be derived from participation in core activities. Up to an average of ten hours per week may be derived from participation in non-core activities.

(c) Two-parent families that are not receiving subsidized child care are deemed to be engaged in work during the month if one or both adults in the family participate for at least a minimum weekly average of thirty-five hours. An average of thirty hours per week must be derived from participation in core activities. Up to an average of five hours per week may be derived from participation in non-core activities.

(d) Two-parent families that are receiving subsidized child care are deemed to be engaged in work during the month if one or both adults in the family participate for at least a minimum weekly average of fifty-five hours. An average of fifty hours per week must be derived from participation in core activities. Up to an average of five hours per week may be derived from participation in non-core activities. The following work participation exceptions apply to two-parent families who are receiving subsidized child care:

(1) two-parent families with one adult in good cause status are deemed to be engaged in work during the month if the adult who is not in good cause status participates for at least a minimum weekly average of thirty-five hours. An average of thirty hours per week must be derived from participation in core activities. Up to an average of five hours per week may be derived from participation in non-core activities; or

(2) two-parent families with both adults in good cause status will not have a family work requirement.

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

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

(1) An employment activity is defined as:

(A) unsubsidized employment, as described in §811.42 of this chapter;

(B) subsidized employment, as described in §811.43 of this chapter;

(C) on-the-job training, as described in §811.44 of this chapter; or

(D) work experience, as described in §811.45 of this chapter.

(2) The number of hours that a recipient is required to participate in community service or another unpaid work activity, must be determined in compliance with the Fair Labor Standards Act as described in §811.21(b) of this subchapter. If a recipient's hours of community service or other unpaid work activity are not sufficient to meet the core work activities requirement outlined in §811.25 (b)-(d) of this subchapter, the recipient must be enrolled in additional core activities.

(b) Exempt recipients who voluntarily participate in Choices services are not subject to the requirements outlined in §811.26(a) of this section.

(c) Job search and job readiness activities, as defined in §811.41 of this chapter, are limited as follows:

(1) recipients may not be enrolled for more than 4 weeks of consecutive activity;

(2) recipients may not be enrolled for more than 6 weeks of total activity in a federal fiscal year;

(3) in order for a recipient to qualify for their remaining 2 weeks of job search and job readiness, they must first comply with §811.26(a) of this section, which requires that the recipient be engaged in an employment activity or in community service; and

(4) only once per federal fiscal year, may a partial week count as a full week of participation, per individual.

(d) Recipients may not be enrolled in vocational education training, as defined in §811.48 of this chapter, for more than a cumulative total of 12 months.

(e) No more than 30 of recipients engaged in work activities in a month may be included in the Board's numerator because they are:

(1) participating in vocational educational training; and

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

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

§811.27.Special Provisions for Teen Heads of Household.

(a) A Board must ensure that teen heads of household who have not completed secondary school or received a certificate of general equivalence are enrolled in educational activities as defined in §811.50 of this chapter.

(b) Teen heads of household who have not completed secondary school or received a certificate of general equivalence will count as engaged in work if they:

(1) maintain satisfactory attendance at a secondary school or the equivalent during the month as follows:

(A) during months in which school is in session, maintains satisfactory attendance;

(B) in months in which school is not in session, participates in allowable activities as described in §811.25 of this subchapter; or

(2) participate in education directly related to employment for an average of at least 20 hours per week during the month; or

(3) participate in Choices employment and training activities as specified in §811.25 of this subchapter.

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

(a) A Board shall ensure that recipients in single-parent families with children under age six are notified of the penalty exception to Choices participation as described in §811.14(c)(5) of this chapter.

(b) A recipient in a single-parent family will count as engaged in work if he or she participates for at least an average of twenty hours per week in core activities.

§811.29.Special Provisions Regarding Exempt Recipients Who Voluntarily Participate

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

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

Filed with the Office of the Secretary of State on February 5, 2002.

TRD-200200721

John Moore

Assistant General Counsel

Texas Workforce Commission

Earliest possible date of adoption: March 24, 2002

For further information, please call: (512) 463-2573

Subchapter D. CHOICES WORK ACTIVITIES

40 TAC §§811.41 - 811.52

The new rules are proposed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities; and Texas Human Resources Code Chapters 31 and 34. The rules affect Texas Labor Code, Title 4, Texas Human Resources Code Chapters 31 and 34 and Texas Government Code Chapter 2308.

§811.41. Job Search and Job Readiness Assistance.

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

(b) A Board shall ensure that job search and job readiness services:

(1) incorporate the following:

(A) individual and group activities; and

(B) staff-assisted and client-directed activities.

(2) are limited to activities necessary for an individual to secure immediate employment.

(3) provide individual assistance or coordinated, planned, and supervised activities that prepare individuals for seeking employment, and including but are not limited to, the following:

(A) job skills assessment;

(B) job placement;

(C) counseling;

(D) information on available jobs;

(E) occupational exploration, including information on local emerging and demand occupations;

(F) interviewing skills and practice interviews;

(G) assistance with applications and resumes;

(H) job fairs;

(I) life skills; or

(J) guidance and motivation for development of positive work behaviors necessary for the labor market.

(4) are time limited as defined in this subchapter.

§811.42. Unsubsidized Employment.

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

(b) Unsubsidized employment is full or part-time employment, in which wages are paid in full by the employer, and includes the following:

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

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

(c) Boards may provide self-employment assistance:

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

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

and

(3) that may include microenterprise services.

(A) Microenterprise services shall include entrepreneurial training.

(B) Microenterprise services may include:

(i) business counseling;

(ii) financial assistance; and

(iii) technical assistance.

§811.43. Subsidized Employment.

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

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

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

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

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

(c) Wages.

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

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

§811.44. On-the-Job Training.

(a) On-the-job training is a core activity as defined in §811.25(a)(1) of this chapter.

(b) A Board shall ensure that a determination is made on a case-by-case basis whether to authorize, arrange, or refer individuals for subsidized, time-limited training activities, to assist the individual with obtaining knowledge and skills that are essential to the workplace while in a job setting. On-the-job training is training by an employer that is provided to a paid participant while engaged in productive work in a job that:

(1) provides knowledge or skills essential to the full and adequate performance of the job;

(2) provides reimbursement to the employer of a percent of the wage rate of the individual for the extraordinary costs of providing the training and additional supervision related to the training;

(3) is limited in duration as appropriate to the occupation for which the individual is being trained, taking into account the content of the training, the prior work experience of the individual, and the service strategy of the individual, as appropriate; and

(4) includes training specified by the employer.

(c) Unsubsidized employment after satisfactory completion of the training is expected. A Board shall not contract with employers who have previously exhibited a pattern of failing to provide individuals in on-the-job training with continued long-term employment, which provides wages, benefits, and working conditions that are equal to those that are provided to regular employees who have worked a similar length of time and are doing a similar type of work.

§811.45. Work Experience.

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

(b) A Board shall ensure that a determination is made on a case-by-case basis whether to authorize, arrange, or refer individuals for unsalaried, work-based training positions in the private for-profit sector to improve the employability of an individual who has been unable to find employment.

(c) A Board shall ensure that all recipients who are unemployed after completing job search services are evaluated on an individual basis to determine if enrollment in work experience shall be required, based on available resources and the local labor market.

(d) A Board shall ensure that each work experience placement:

(1) is time-limited;

(2) is designed to move the individual quickly into regular employment; and

(3) has designated hours, tasks, skills attainment objectives, and staff supervision.

(e) A Board shall ensure that entities that enter into non-financial agreements with a Board, identify work experience positions and provide job training and work experience within their organization. These positions shall enable individuals to gain the skills necessary to compete for positions within the entity as well as positions in the labor market.

§811.46. Community Service.

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

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

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

(a) Child care services to a Choices individual participating in community service is a core activity as defined in §811.25(a)(1) of this chapter.

(b) Choices individuals may provide child care services for other Choices individuals who are engaged in a community service activity. The hours spent by the Choices individual providing child care are considered a core activity. Boards that elect to allow this activity must set local policies which include:

(1) ensuring the health, safety and well-being of the children in care;

(2) limits on the maximum number of children that may be cared for; and

(3) the methodology and mechanism for clients reporting hours of participation.

§811.48. Vocational Educational Training.

(a) Vocational educational training is a core activity as defined in §811.25(a)(1) of this chapter.

(b) A Board shall ensure that a determination is made, on a case-by-case basis, whether to authorize, arrange, or refer individuals for vocational and educational training. Services provided by the Texas Rehabilitation Commission may be counted as vocational education training if the service provided to the individual leads to employment.

(c) The vocational educational training shall:

(1) relate to the types of jobs available in the labor market;

(2) be consistent with employment goals identified in the family employment plan, when possible;

(3) be provided only if there is an expectation that employment will be secured upon completion of the training; and
(4) be subject to the time limitations as detailed in this subchapter.

§811.49. Job Skills Training.

(a) Job skills training is a non-core activity as defined in §811.25(a)(2) of this chapter.

(b) Job skills training services are designed to increase an individual's employability. Job skills training may also include activities ensuring that individuals become familiar with workplace expectations and exhibit work behavior and attitudes necessary to compete successfully in the labor market. Various types of activities, which are directly related to employment, may qualify, such as personal development and preemployment classes.

(c) A Board shall ensure that a determination is made on a case-by-case basis whether to authorize, arrange, or refer individuals for job skills training as outlined in the family employment plan.

(d) Job skills training shall be:

(1) directly related to employment; and

(2) consistent with employment goals identified in the family employment plan, when possible.

(e) Job skills training includes Adult Basic Education (ABE), English as a Second Language (ESL), or Workforce Adult Literacy services.

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

(a) Educational services are only available for recipients who have not completed secondary school or who have not received a certificate of general equivalence as follows.

(1) Educational services for recipients age 20 or older are non-core activities as defined in §811.25(a)(2) of this chapter.

(2) Educational services for recipients that are teen heads of household recipients age 19 and younger are core activities as defined in §811.27 of this chapter.

(b) A Board shall ensure that a determination is made, on a case-by-case basis, whether to authorize, arrange, or refer recipients who are age 20 and older for the following educational or other training services:

(1) secondary school leading to a high school diploma or a certificate of general equivalence;

(2) Workforce Adult Literacy; or

(3) other educational activities which are directly related to employment.

§811.51. Post-Employment Services.

(a) A Board shall ensure that post-employment services, which include job retention, career advancement, and reemployment services, are offered to recipients who are employed, and to applicants and former recipients who have obtained employment but require additional assistance in retaining employment and achieving self-sufficiency.

(b) A Board shall ensure that post-employment services are monitored, and ensure that hours of employment are required and reported by recipients for at least the length of time the recipient receives temporary cash assistance.

(c) A Board shall ensure that ongoing contact is established with individuals receiving post-employment services at least monthly.

(d) A Board may, through local policies and procedures, make available post-employment services to former recipients who are denied temporary cash assistance due to earnings. The post-employment services for former recipients may include the following:

(1) assistance and support for the transition into employment through direct services or referrals to resources available in the workforce area;

(2) child care, if needed, as specified in rules at 40 T.A.C. Chapter 809;

(3) work-related expenses, including those identified in §811.64 of this chapter;

(4) transportation, if needed;

(5) job search, job placement, and job development services to help an individual who loses a job to obtain employment; or

(6) referrals to available education or training resources to increase an employed individual's skills or to help the individual qualify for advancement and long-term employment goals.

(e) The maximum length of time a former recipient may receive services under this section is dependent upon:

(1) the individual's circumstances;

(2) whether the individual is at risk of returning to public assistance. A person is considered at risk of returning to temporary cash assistance if he or she is a food stamp recipient, or receives subsidized child care;

(3) the individual's ongoing need for these services; and

(4) the availability of funds for these services.

(f) Post-employment service providers may include employers, community colleges, technical colleges, proprietary schools, faith-based and community-based organizations.

§811.52. Parenting Skills Training.

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

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

Filed with the Office of the Secretary of State on February 5, 2002.

TRD-200200722

John Moore

Assistant General Counsel

Texas Workforce Commission

Earliest possible date of adoption: March 24, 2002

For further information, please call: (512) 463-2573

Subchapter E. SUPPORT SERVICES AND OTHER INITIATIVES

40 TAC §§811.61 - 811.67

The new rules are proposed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities; and Texas Human Resources Code Chapters 31 and 34. The rules affect Texas Labor Code, Title 4, Texas Human Resources Code Chapters 31 and 34 and Texas Government Code Chapter 2308.

§811.61. Support Services.

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

(b) A Board shall ensure that support services, including subsidized child care, are provided only to recipients who are meeting requirements outlined in §811.14 and §§811.25-811.28 of this chapter, and as outlined in §809.102 of this title.

§811.62. Child Care for Applicants and Recipients.

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

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

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

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

§811.63. Transportation.

A Board shall ensure that transportation assistance shall:

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

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

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

§811.64. Work-Related Expenses.

(a) If other resources are not available, work-related expenses necessary for applicants, recipients, or former recipients to accept or retain specific and verified job offers that pay at least the federal minimum wage may be provided or reimbursed.

(b) A Board shall ensure that written policies are developed related to the methods and limitations for provision of work-related expenses.

(c) Work-related expenses may include: tools, uniforms, equipment, transportation, car repairs, housing or moving expenses, and the cost of vocationally required examinations or certificates.

§811.65. Wheels to Work.

(a) The Agency may develop a Wheels to Work initiative in which local nonprofit organizations provide automobiles for Choices individuals who have obtained employment but are unable to accept or retain the employment solely because of a lack of transportation.

(b) A Board may, through local policies and procedures, establish services to assist individuals who verify the need for an automobile to accept or retain employment by referring them to available providers.

(c) Persons or organizations donating automobiles under a Wheels to Work initiative shall receive a charitable donation receipt for federal income tax purposes.

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

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

§811.67.Individual Development Accounts (IDAs).

(a) A Board may set local policy and procedures to provide for implementation and oversight of individual development accounts (IDA) under this section using TANF funds in accordance with 45 C.F.R. §§263.20-263.23.

An individual development account means an account established by, or for, an eligible individual to allow the individual to accumulate funds for specific purposes.

(b) A Board shall ensure that any individual development accounts created and matched with TANF funds are established and administered through a contract with a private nonprofit entity or through a state or local government entity acting in cooperation with a private nonprofit entity. The private nonprofit entity, or cooperating state or local entity, must coordinate with a financial institution in administering the accounts.

(c) Applicants, recipients, and former recipients may be eligible for IDAs if all of the requirements of this section are met.

(d) IDAs may be established for an eligible individual, and may be contributed to with the individual's earned income and up to fifty percent of the individual's federal Earned Income Tax Credit refund. Federal Earned Income Tax Credit refunds shall not be matched with TANF funds.

(e) Federal TANF funds, as well as public or private funds, may be used to provide matching funds for qualified expenses and to administer IDAs, and shall be expended in a manner consistent with applicable federal and state statutes and regulations, with the exception of federal Earned Income Tax Credit refunds.

(f) Use of funds in an individual's IDA, shall be in accordance with the Social Security Act §404(h) (42 U.S.C.A. §604(h)) and 45 C.F.R. §§263.20-263.23 and limited to expenses related to:

(1) postsecondary educational expenses;

(2) first home purchase; or

(3) business capitalization.

(g) A Board shall ensure that only qualified withdrawals are made by eligible individuals, and must develop policies and procedures to address unauthorized withdrawals, to include notification:

(1) to the individual that unauthorized withdrawals may impact the individual's eligibility for public assistance programs;

(2) to the individual of forfeiture of the entitlement to the matching funds for an unauthorized withdrawal; and

(3) to TDHS within seven working days of the unauthorized withdrawal.

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

Filed with the Office of the Secretary of State on February 5, 2002.

TRD-200200723

John Moore

Assistant General Counsel

Texas Workforce Commission

Earliest possible date of adoption: March 24, 2002

For further information, please call: (512) 463-2573

Subchapter F. APPEALS

40 TAC §§811.71 - 811.73

The new rules are proposed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities; and Texas Human Resources Code Chapters 31 and 34.

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

§811.71.Board Review.

(a) The following may request a review by the respective Board:

(1) an individual against whom an adverse action is taken by a Texas Workforce Center Partner; or

- (2) a person who believes that a Choices individual has displaced the person from employment.
- (b) A request for review shall be submitted in writing and delivered to a Board within 15 calendar days of the date of the adverse action. The request shall also contain:
- (1) a concise statement of the disputed adverse action;
- (2) a recommended resolution; and
- (3) any supporting documentation the individual deems relevant to the dispute.
- (c) On receipt of a request for review, a Board shall coordinate a review by appropriate Board staff.
- (d) The parties to the request for review are the aggrieved person, applicant, or individual and the Texas Workforce Center Partner.
- (e) Additional information may be requested from the parties. Such information shall be provided within 15 calendar days of the request.
- (f) Within 30 calendar days of the date the request for review is received or of the date that additional requested information is received by the reviewing Board staff member, a Board shall send the parties written notification of the results of the review.

§811.72.Appeals to the Agency.

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

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

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

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

Filed with the Office of the Secretary of State on February 5, 2002.

TRD-200200724

John Moore

Assistant General Counsel

Texas Workforce Commission

Earliest possible date of adoption: March 24, 2002

For further information, please call: (512) 463-2573