

1 **CHAPTER 809. CHILD CARE SERVICES**

2
3 **ADOPTED RULES TO BE PUBLISHED IN THE *TEXAS REGISTER*. THIS**
4 **DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT TO**
5 **FORMATTING CHANGES AS REQUIRED BY THE OFFICE OF THE SECRETARY**
6 **OF STATE.**

7
8 The Texas Workforce Commission (TWC) adopts amendments to the following sections of
9 Chapter 809, relating to Child Care Services:

- 10 Subchapter A. General Provisions, §809.1 and §809.2
- 11 Subchapter B. General Management, §§809.13 - 809.16 and §§809.18 - 809.20
- 12 Subchapter C. Eligibility for Child Care Services, §§809.41, 809.42, 809.44, 809.48,
- 13 809.50, 809.51, and 809.55
- 14 Subchapter D. Parent Rights and Responsibilities, §§809.71 - 809.73, 809.75, and 809.78
- 15 Subchapter E. Requirements to Provide Child Care, §§809.91 - 809.96
- 16 Subchapter F. Fraud Fact-Finding and Improper Payments, §809.112 and §809.115
- 17 Subchapter G. Texas Rising Star Program, §§809.130 - 809.136

18
19
20 TWC adopts the following new section to Chapter 809, relating to Child Care Services:

21 Subchapter C. Eligibility for Child Care Services, §809.56

22
23
24 The amendments to §§809.1, 809.2, 809.13 - 809.16, 809.42, 809.44, 809.48, 809.50, 809.51,
25 809.55, 809.71 - 809.73, 809.75, 809.78, 809.91, 809.92, 809.94 - 809.96, 809.112, 809.115,
26 809.130, 809.135, and 809.136 are adopted *without* changes to the proposed text as published in
27 the April 29, 2022, issue of the *Texas Register* (47 TexReg 2464), and, therefore, the adopted
28 rule text will not be published. The amendments to §§809.18 - 809.20, 809.41, 809.93, 809.131 -
29 809.134; and new §809.56 are adopted *with changes* to the proposed text as published and,
30 therefore, the adopted rule text will be published.

31
32 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

33 The purpose of the amendments to Chapter 809 is to implement House Bill (HB) 2607, HB 1792,
34 Senate Bill (SB) 1555, 87th Texas Legislature, Regular Session (2021), and improve TWC's
35 Child Care Services (CCS) program.

36
37 **House Bill 2607**

38
39 *Texas Rising Star Entry Level Rating*

40 HB 2607 amended Texas Government Code, §2308.3155 to require all regulated providers of
41 TWC-funded CCS be included in the Texas Rising Star program and to require TWC to amend
42 its Texas Rising Star program rules to include an Entry Level rating and a maximum length of
43 time that a child care provider can participate at the Entry Level rating. Amended Texas
44 Government Code, §2308.3155(b-2) requires TWC to develop a process to allow a child care
45 provider to request a waiver to extend the length of time that the child care provider may
46 participate at the Entry Level rating. The waiver cannot exceed 36 months. Amended Texas

1 Government Code, §2308.3155(b-1) specifies that an Entry Level child care provider is not
2 eligible for enhanced reimbursement rates available to Two-, Three-, and Four-Star certified
3 child care providers.

4
5 Prior to the enactment of HB 2607, TWC's three-member Commission (Commission) amended
6 Chapter 809 in January 2021 to adopt a Pre-Star child care provider designation and a
7 requirement that all regulated CCS child care providers achieve that designation. The
8 Commission is repealing the Pre-Star designation and replacing it with the legislatively
9 mandated Texas Rising Star Entry Level designation.

10
11 *Mandatory Texas Rising Star Participation and Enhanced Reimbursement Rates*

12
13 Because amended Texas Government Code, §2308.3155(a) makes Texas Rising Star mandatory
14 for regulated CCS providers, the definition of Texas Rising Star in §809.2 is amended to remove
15 "voluntary" and to reflect that the program is required for CCS providers; and §809.91 is
16 amended to require all regulated CCS providers participate in Texas Rising Star. Relative
17 providers are not required to participate in Texas Rising Star and will continue to operate under
18 the current rules for relative providers set forth in §809.91.

19
20 Additionally, because the Entry Level rating is intended to be a temporary designation and not
21 eligible for enhanced reimbursement rates, the definition of a Texas Rising Star provider in
22 §809.2 is amended to distinguish Entry Level child care providers from "certified" child care
23 providers, reserving Texas Rising Star "certification" only for certifications at the Two-, Three-,
24 and Four-Star level.

25
26 Also, amended Texas Government Code, §2308.3155(b-1) clarifies that providers at the Entry
27 Level designation are not eligible for the enhanced rate, therefore §809.20 is amended to include
28 that only "certified" Texas Rising Star providers receive the enhanced reimbursement rate.

29
30 To implement the requirements of HB 2607, Chapter 809, Subchapter G, Texas Rising Star
31 Program is amended to include an Entry Level designation within the Texas Rising Star
32 program. Amended Subchapter G includes the requirements to be considered for Entry Level
33 designation based upon a child care provider's demonstration that it does not have excessive
34 licensing findings.

35
36 *Eligibility to be Considered for Entry Level Rating*

37
38 Amended Texas Government Code, §2308.3155(b-1) stipulates that to qualify for the Entry
39 Level rating, a child care provider must meet the minimum quality standards that qualify the
40 child care provider to receive technical assistance and support under the Texas Rising Star
41 program.

42
43 The Commission amended Chapter 809 Subchapter G to establish the basic requirements for
44 Entry Level designation. A regulated provider, that is, providers licensed or registered with the
45 Texas Health and Human Services Commission's Child Care Regulation (CCR) department
46 (including an initial permit) or regulated by the United States Military, are eligible to be

1 considered for Entry Level Eligibility. This is the same basic criteria that was used in the Pre-
2 Star designation, which is now removed. If the child care provider is eligible to be considered for
3 the Entry Level rating, the child care provider will then need to meet the new proposed points
4 threshold for high and medium-high CCR deficiencies required for the Entry Level designation;
5 and once designated as Entry Level, will be eligible for technical assistance as required by Texas
6 Government Code, §2308.3155(b-1).

7
8 *Points Threshold for Meeting Entry Level Rating*
9

10 The Commission-established criteria for Entry Level designation described below will be set
11 forth in the Texas Rising Star Guidelines.

12
13 To be designated as Entry Level, the Commission established a points threshold of 75 based on:
14 --points assigned to CCR-weighted high and medium-high deficiencies received; and
15 --high-weighted deficiencies receiving a higher number of points (5 points each) than medium-
16 high-weighted deficiencies (3 points each).

17
18 A child care provider's most recent 12-month CCR licensing history will be reviewed. Providers
19 with initial permits or providers with fewer than 12 months of licensing history will be reviewed
20 based on all available CCR licensing history.

21
22 *Time Limits for Entry Level Rating*
23

24 Amended Texas Government Code, §2308.3155(b-1) requires the Commission to establish, by
25 rule, the maximum length of time a CCS provider can be at the Entry Level rating. The
26 Commission amended Chapter 809 Subchapter G to establish a 24-month maximum time frame a
27 CCS provider could be at the Entry Level designation. The CCS provider must achieve Texas
28 Rising Star certification of at least the Two-Star level within the 24-month period, unless the
29 provider requests, and TWC approves, a waiver extension as allowed by amended Texas
30 Government Code, §2308.3155(b-2).

31
32 All CCS providers must meet Entry Level requirements, and once designated as Entry Level,
33 will have a maximum of 24 months to attain star-level certification in Texas Rising Star. Entry
34 Level providers will be reviewed for Texas Rising Star certification no later than the 12th month
35 of the 24-month period. If an Entry Level provider is not eligible for certification as Texas
36 Rising Star by the 18th month, the provider cannot receive referrals for new families as an Entry
37 Level provider, unless the provider is located in a child care desert or serves an underserved
38 population, and the Agency approves the provider to receive new family referrals.

39
40 The intent of not allowing new family referrals after the 18th month is to minimize the likelihood
41 that children are placed in a facility that ultimately fails to meet Texas Rising Star certification.
42 This approach recognizes the importance of stable child care to children's healthy development.
43 Children who were previously referred may continue to be served during the provider's Entry
44 Level designation.

45
46 The Commission notes that Entry Level providers can be assessed for certification at any time if

1 they meet eligibility and screening requirements. At minimum, each Entry Level provider will
2 be screened at 12 months to determine eligibility for assessment.

3
4 The table below shows the milestones during the 24-month Entry Level period for regulated
5 child care providers that are new to the CCS system.

6
7 **Entry Level Timeline – New CCS Regulated Providers**

8

No Later Than...	Action
CCS Agreement Start	Must meet Entry Level designation
12th Month from CCS Start	Screening review for initial star-level certification
18th Month from CCS Start	If not meeting Texas Rising Star certification, no new family referrals
24th Month CCS Start	Deadline for attaining Texas Rising Star certification

9
10 *Entry-Level for Current CCS Providers*

11
12 For providers that have existing agreements with Local Workforce Development Boards
13 (Boards) to provide child care services, the 24-month Entry Level period will begin upon the
14 effective date of these rules--October 1, 2022--and providers will have until September 30, 2024,
15 to attain Texas Rising Star certification. For current providers that do not meet the points
16 threshold for Entry Level designation on October 1, 2022, TWC will provide a period of six
17 months, through March 31, 2023, for these providers to meet Entry Level requirements. If a
18 current CCS provider fails to attain at least Entry Level status after six months, the provider will
19 no longer be an eligible CCS provider and may apply for Entry Level designation at a later date.

20
21 The table below shows the milestones during the 24-month Entry Level period for current CCS
22 regulated child care providers.

23
24 **Entry Level Timeline – Current CCS Regulated Providers**

25

No Later Than...	Action
October 1, 2022	Determine if meeting Entry Level designation
March 31, 2023	Deadline for meeting Entry Level designation
March 31, 2024	If not meeting Texas Rising Star certification, no new family referrals
September 30, 2024	Deadline for attaining Texas Rising Star certification

26
27 *Criteria for the Entry-Level Extension Waiver*

28
29 Amended Texas Government Code, §2308.3155(b-2) allows for up to an additional 36 months
30 for a provider to remain at Entry Level and directs the Commission to establish the criteria for
31 approving this Entry Level extension waiver. Amended Texas Government Code, §2308.3155(b-
32 2) requires that the rules specify that approved waivers must not exceed 36 months.

33
34 The Commission amended Chapter 809 and establishes the following criteria for an Entry Level
35 extension waiver. The provider must be:

1 --located in a child care desert (as defined in Texas Labor Code, §302.0461(b)(2)(A)(i), and in
2 amended §809.2); or serving an underserved population as determined by TWC;
3 --unable to meet the certification requirements due to a declared emergency/disaster; or
4 --unable to meet the certification requirements due to conditions that are outside the provider's
5 control.

6
7 An underserved population could include limited availability of infant capacity or care for
8 children with disabilities.

9 10 *Texas Rising Star Providers on Suspension Status*

11
12 Under the former rules, there was no requirement that a Texas Rising Star provider become
13 recertified following the loss of certification. However, amended Texas Government Code,
14 §2308.3155(b-1) requires that CCS providers must meet Texas Rising Star certification. Because
15 state statute requires providers participating in the CCS program to be certified as Texas Rising
16 Star, the Commission amended Chapter 809 to establish a suspension status for certified Texas
17 Rising Star providers that no longer meet certification criteria.

18
19 Providers placed on suspension status must meet Entry Level requirements and be recertified
20 within 15 months of being placed on suspension status. The provider will not be able to receive
21 enhanced rates while on suspension status or be eligible for Entry Level designation.

22
23 Providers on suspension status will be eligible to request a reassessment after six months
24 following the start of the suspension status if they meet certification eligibility and screening
25 requirements. If the provider is not eligible to request a reassessment or is not certified at least at
26 the Two-Star level by the ninth month of the suspension, the provider will not receive new
27 family referrals during the remainder of the suspension period. However, TWC may approve the
28 provider to accept new family referrals if the provider is in a child care desert or serves an
29 underserved population. The Commission notes that providers on suspension status can be
30 assessed for certification at any time after the initial six months of suspension status in which
31 they meet certification eligibility and screening requirements.

32
33 Texas Rising Star providers on suspension status and not achieving recertification by the end of
34 the 15-month period are not eligible to provide TWC-funded child care services, are not eligible
35 for Entry Level designation, and must subsequently meet Texas Rising Star certification
36 eligibility and screening requirements to provide CCS.

37 38 *Prekindergarten Partnerships*

39
40 HB 2607 also added §302.00436 to the Texas Labor Code, to require Boards to inform the local
41 school districts and open-enrollment charter schools in the local workforce development area
42 (workforce area) regarding opportunities to partner with child care providers in the Boards'
43 workforce areas to expand access to and provide facilities for prekindergarten (pre-K) programs.

44
45 Pursuant to Texas Labor Code, §302.00436 the Commission amended §809.14 (Coordination of
46 Child Care Services) to require Boards to inform the local school districts/open-enrollment

1 charter schools of opportunities to partner with child care providers to expand access to and
2 provide facilities for pre-K programs. On July 1, 2022, TWC issued Workforce Development
3 (WD) Letter 09-22 and Technical Assistance Bulletin (TAB) 300 to provide Boards with
4 guidance and technical assistance on pre-K partnerships, including guidance on informing the
5 local education agencies, such as school districts and open-enrollment charter schools in the
6 workforce area, about opportunities to partner with child care providers in the Board's workforce
7 area to expand access to and provide facilities for pre-K programs.

8
9 Additionally, the Commission approved, with one-time stimulus funding, the hiring of local
10 TWC staff to serve as a resource to support, expand, and enhance pre-K partnership settings that
11 will focus on informing and engaging potential partners, and supporting and navigating the
12 formalization of partnerships. During the time of this stimulus-funded TWC pre-K partnership
13 initiative, this will allow for a collaborative approach, with the Boards, in meeting the
14 requirements of the amended Texas Labor Code, §302.00436 and the needs of the community.

15 16 Contracted Slots Reporting Requirements

17
18 Finally, HB 2607 amended Texas Labor Code, §302.0461(d) to change the Board reporting
19 requirements for contracted providers from every six months to every 12 months. On September
20 9, 2021, TWC issued WD Letter 19-21, which included the new 12-month reporting
21 requirement. The Commission amended §809.96 (Contracted Slots Agreements) to change the
22 Board reporting requirements for contracted providers from every six months to every 12
23 months.

24 25 **House Bill 1792**

26 27 Statewide Texas Rising Star Assessors

28
29 HB 1792 amended Texas Government Code, §2308.3155 to require TWC to competitively
30 procure a single entity to oversee a statewide roster of qualified assessors to evaluate child care
31 providers participating in the Texas Rising Star program during the initial certification process
32 and at any other time during the child care provider's participation in the program.

33
34 Amended Texas Government Code, §2308.3155(d) requires amendments to Chapter 809,
35 Subchapter G to separate the roles and responsibilities of Texas Rising Star assessments
36 provided by the single statewide entity and mentoring services provided by Boards, as well as
37 qualifications specific to assessors and mentors.

38
39 Specifically, §809.134 is amended to specify that both the Boards and TWC's designated
40 assessment entity shall ensure that Texas Rising Star staff:

41 --meet the background check requirements; and
42 --complete the Texas Rising Star standards training, as described in the Texas Rising Star
43 Guidelines.

44
45 The amended rules also specify that Boards ensure mentoring staff meet requirements for:
46 --minimum education;

1 --work experience requirements; and
2 --attaining mentor microcredentialing, as described in the Texas Rising Star Guidelines.

3
4 The amended rules specify that TWC's designated Texas Rising Star assessment entity ensure
5 that assessors attain and maintain the Texas Rising Star Assessor Certification, which will
6 replace the former minimum education and experience requirements for assessors.

7
8 Under former rules, Boards were allowed to have staff members who act as both mentors and
9 assessors, as long as the staff does not mentor and assess the same child care provider. With the
10 separation of assessors into a single entity, the amended rules continue this separation of duties
11 to address situations in which an individual may be under contract with or be employed by a
12 Board for mentoring services as well as under contract or employed by the single entity to
13 conduct Texas Rising Star assessments, to ensure that no conflict of interest exists during the
14 assessment process.

15
16 However, the Commission expects that communication and coordination among mentors and
17 assessors continue. The contract with TWC's designated Texas Rising Star assessment entity will
18 include specifications for communication with mentors, and TWC's contract with Boards will
19 include requirements for coordination with assessors.

20
21 Additionally, former rule language placed the responsibility regarding child care provider
22 requests for a reconsideration of the child care provider's Texas Rising Star assessment on
23 Boards. The amended rules continue the reconsideration practice but will require TWC's
24 designated Texas Rising Star assessment entity, rather than the Boards, have a procedure for
25 child care providers that request a reconsideration of their certification based on an assessment.

26 27 **Senate Bill 1555**

28 29 Age Groups for Reimbursement

30
31 SB 1555 amended Texas Government Code, §2308.315 to require Boards to establish graduated
32 reimbursement rates that align TWC's age groups with CCR ratios and group sizes and to require
33 higher rates in age groups with the lowest child-to-caregiver ratios. SB 1555 stipulates that the
34 reimbursement rates must be in place no later than December 1, 2023.

35
36 The former §809.20 requires Boards to have maximum reimbursement rates for the following
37 age groups:

- 38 --Infants ages 0 through 17 months;
- 39 --Toddlers ages 18 through 35 months;
- 40 --Preschool ages 36 through 71 months; and
- 41 --School ages 72 months and older.

42
43 The Commission amended §809.20 (Maximum Provider Reimbursement Rates) to require
44 Boards to have maximum reimbursement rates that align with the CCR age groups for a
45 Licensed Child Care Center, as defined in 40 TAC §746.1601 and §746.1609. The new age
46 groups will also be applied to licensed and registered homes. The new age groups are as follows:

- 1 --Infants ages 0 through 11 months;
- 2 --Infants ages 12 through 17 months;
- 3 --Toddlers ages 18 through 23 months;
- 4 --Toddlers age 2 years;
- 5 --Preschool age 3 years;
- 6 --Preschool age 4 years;
- 7 --Preschool age 5 years; and
- 8 --School ages 6 through 13 years.

9
10 In accordance with §809.20(a), which requires Boards to establish maximum reimbursement
11 rates at or above a level established by the Commission and in accordance with state regulations,
12 TWC will issue guidance requiring Boards to establish rates that are graduated to provide higher
13 rates for the age groups with the lowest child-to-caregiver ratios as established in CCR, pursuant
14 to amended Texas Government Code, §2308.315.

15
16 Amended Texas Government Code, §2308.315 requires TWC to supply any demographic data
17 needed by the Board to establish the rates. TWC supplies market rates, through the annual
18 Market Rate Survey (MRS), for the previously defined age groups as a benchmark to assist
19 Boards in establishing maximum reimbursement rates. TWC is working with the MRS contractor
20 to ensure that the contractor can collect and analyze market rates based on the CCR age groups,
21 and these rates will be included in the next MRS due in the fall of 2022.

22
23 Additionally, implementing SB 1555 will require TWC's child care information system to align
24 with the new age groups.

25
26 TWC is planning to replace the child care information system, The Workforce Information
27 System of Texas (TWIST), with a new Child Care Case Management System (CCCMS). TWC
28 will include the changes to implement SB 1555 in the requirements for the new CCCMS,
29 scheduled to be completed in 2023.

30
31 The authors of SB 1555 recognized that implementation would require time for TWC to collect
32 and analyze market rates data and make necessary information technology changes. As such, SB
33 1555 stipulates that implementation of the bill should be no later than December 1, 2023.

34
35 The provisions of the amended rules regarding age-group reimbursement rates will be effective
36 on December 1, 2023.

37
38 **Rule Amendments for Program Improvements**

39
40 Additionally, the Commission, with input from stakeholders, identified potential amendments to
41 Chapter 809 for program improvements that will:

- 42 --standardize statewide policies for service delivery consistency;
- 43 --streamline the list of Board policy requirements;
- 44 --codify the current TWC waiver to allow job search at initial eligibility;
- 45 --update language regarding automated attendance reporting;
- 46 --strengthen child care provider payment requirements to align with the industry practice of

1 prospective payments;
2 --include federal reporting requirements for providers charging parents above the parent share of
3 cost (PSoC), if allowed by the Board; and
4 --make technical changes and clarifications.

5
6 Statewide Policies for Service Delivery Consistency
7

8 Chapter 809 allows Boards to establish policies for various aspects of the Child Care Services
9 program, and those policies vary greatly among the 28 Boards.

10
11 To provide greater consistency in child care service delivery throughout the state, particularly for
12 the management of waiting lists, assessing the PSoC, and general eligibility requirements, the
13 Commission amended Chapter 809 to provide standard eligibility requirements statewide and
14 ensure greater efficiency in service delivery for the following policy areas.

15
16 *Statewide Waiting List Management*
17

18 Section 809.18 requires Boards to maintain a list of parents waiting for child care services due to
19 the lack of funding or lack of providers. The section requires Boards to have a policy that sets the
20 frequency in which the parent information is updated and maintained on the waiting list. Board
21 policies for requiring a parent to contact the Board to keep the child on the waiting list vary by
22 Board and range from 30 to 180 days. This wide range in waiting list maintenance policies
23 creates statewide inconsistencies in the accuracy of the number of children waiting for child care
24 services.

25
26 The Commission amended §809.18 to require Boards to contact parents with children on the
27 waiting list every three months and to remove the child from the waiting list if the parents
28 indicate that child care services are no longer required or if they do not respond to the Board
29 regarding the continued need for child care services.

30
31 As mentioned previously, TWC is planning to replace the child care information system in
32 TWIST with a new CCCMS. The new CCCMS will have the ability to automate the process for
33 contacting parents regarding the waitlist status. The provisions of the amended rules regarding
34 contacting parents with children on the waiting list will be effective on December 1, 2023.

35
36 *Statewide Parent Share of Cost Assessment*
37

38 Federal Child Care Development Fund (CCDF) regulations at 45 Code of Federal Regulations
39 (CFR) §98.45(k) require Lead Agencies to "establish, and periodically revise, by rule, a sliding
40 fee scale(s) for families that receive CCDF." Regulations also require that the sliding fee scales
41 must be based on income and family size, affordable, and not be a barrier to a family receiving
42 assistance. The sliding fee scale should be designed in a manner that gradually increases the
43 percentage of family income the parent pays as the income increases. Although not a regulatory
44 requirement, federal guidance suggests that the sliding fee scale not exceed 7 percent of the
45 family income.

1 Former §809.19 required Boards to establish PSoC amounts based on the federal requirements.
2 The PSoC is established based upon family income and family size.

3
4 Board sliding fee scales vary greatly among the workforce areas. For example:
5 --For a family at the lowest income range (10 percent state median income (SMI)/33 percent
6 federal poverty guidelines (FPG)) with a family size of three and \$600 monthly income, Board
7 sliding scales range from 1.6 percent to 8.2 percent of the family income.
8 --For a family in the mid-income range (55 percent SMI/150 FPG) with a family size of three
9 and \$3,288 monthly income, Board scales range from 4.3 percent to 9.5 percent.
10 --For a family at the highest income range (85 percent SMI) with a family size of three and
11 \$5,081 monthly income, Board scales range of 2.3 percent to 9.8 percent.

12
13 Board policies also vary greatly on additional amounts that may be added to the PSoC for each
14 additional child in care.

15
16 Additionally, TWC's former standard sliding scale requires Boards to have a static PSoC amount
17 within nine established income ranges. If the family income changes, but remains within the
18 income range, then the PSoC will not change. This methodology was established prior to the
19 requirement for the PSoC to remain stable within the 12-month eligibility period and was
20 designed to minimize the impact on the PSoC of relatively small changes in income.

21
22 However, the disadvantage of this methodology is that once the family income crosses an
23 income range, the increased PSoC could be greater than the income amount increase, resulting
24 "mini-cliffs" that create relatively substantial increases in the percentage of income a family pays
25 if a family experiences small increases in income.

26
27 The Commission amended Chapter 809 to create a consistent statewide policy on PSoC
28 assessments that would allow for greater consistency in ensuring that the PSoC amount is
29 affordable and would be aligned more closely with the percentage of the family income. The
30 policy:

31 --standardizes the PSoC assessment to provide a sliding-fee scale that could start from 2 percent
32 to 3.5 percent of family income and gradually increase as the family income increases, but does
33 not exceed 7 percent of the family income for one child in care; and

34 --allows for a lower incremental increased percentage of the family income for families and for
35 each additional child in care.

36
37 The former PSoC assessments led to variances in the amount charged to parents among
38 workforce areas, including among workforce areas with similar demographics, income levels,
39 and cost of living levels. The new statewide policy for PSoC assessments will standardize the
40 percentage of income a parent pays, limited to 7 percent of the family income, and will create
41 greater consistency in PSoC.

42
43 The Commission acknowledges that the new statewide PSoC standard will require substantial
44 changes to the child care automated system. As mentioned previously, TWC is planning to
45 replace the child care information system in TWIST with the new CCCMS. TWC will include
46 the changes to the PSoC in the requirements for the new CCCMS, scheduled to be completed in

1 2023.

2

3 The provisions of the amended rules regarding the statewide PSoC will be effective on
4 December 1, 2023.

5

6 *Statewide Income and Activity Eligibility Requirements*

7

8 Chapter 809, Subchapter C (Eligibility for Child Care Services) establishes general statewide
9 eligibility requirements that reflect the eligibility requirements in the CCDF regulations.

10 However, within the general requirements, Boards have some flexibility to place additional
11 requirements for eligibility. For example, the rules require that family income cannot exceed the
12 federal income limits of 85 percent of the SMI. However, the rules also allow Boards to have
13 lower income limits. Currently, five Boards have income limits lower than 85 percent of the
14 SMI. Similarly, TWC rules require that parents must participate in work, job training, or
15 education activities for 25 hours a week (50 hours for a dual-parent family), but Boards are
16 allowed to place higher hourly activity requirements on families. Currently, only one Board has
17 activity requirements greater than the minimum requirements in rule.

18

19 The Commission amended Chapter 809 to create a consistent statewide policy to:

20 --implement a standard income eligibility limit of 85 percent of the SMI; and

21 --require that parents must participate in work, job training, or education activities for 25 hours a
22 week (50 hours for a dual-parent family).

23

24 *Statewide Policy on Child Care during Education*

25

26 Boards place varying restrictions on providing child care for parents pursuing certain types of
27 education and degrees, and how Boards determine a parent is making progress in achieving
28 education and job training completions. For example, five Boards specifically allow child care
29 services while a parent is pursuing postgraduate degrees, while five other Boards do not specify
30 if advanced degrees are allowed, and 16 Boards specifically state that child care services while
31 pursuing a postgraduate degree are not allowed.

32

33 Additionally, the time limits for receiving child care services while participating in education
34 activities vary greatly by Board. Time limits range from 48 months to a maximum of 96 months
35 for all postsecondary education. Time limits also vary according to the type of education
36 pursued. For example, Boards allow from 60 months to 72 months for a bachelor's degree, and
37 from 24 months to 48 months for a certification program.

38

39 The Commission amended Chapter 809 to create a consistent statewide policy regarding child
40 care while the parent is in education activities. The rules establish a cumulative total of 60
41 months for parents to participate in CCS while enrolled full-time in an undergraduate degree
42 program.

43

44 The Commission notes that this limit applies to parents enrolled full-time in the education
45 programs and are meeting the participation requirements only through education hours. The
46 Commission also notes that the cumulate 60-month limit does not need to be consecutive

1 months, but it does include cumulative months enrolled in an undergraduate degree program.

2
3 The Commission notes that the amended rules remove postgraduate degrees from the definition
4 of an educational program, thus, removing the inclusion of postgraduate enrollment in counting
5 education activity hours for child care services eligibility. This creates a consistent policy
6 followed by a majority of Boards. As mentioned previously, 16 Boards specifically state in
7 policy that child care services while pursuing a postgraduate degree are not allowed.

8
9 Finally, §809.2(1) currently requires Boards to establish a policy to determine how a parent is
10 making progress toward successful completion of an education program or job training program.
11 Currently, Board policies vary widely regarding attendance requirements, grade point average,
12 and consideration for an education or training program's requirements specific requirements.

13
14 The Commission amended the definition of attending a job training or educational program to
15 establish a statewide policy that "making progress toward successful completion" of a job
16 training or education program is demonstrated through continued enrollment in the training or
17 educational program. This policy is intended to streamline and standardize the verification that
18 the parent is making progress toward completion of the program.

19
20 *Statewide Policies on Children with Disabilities*

21
22 CCDF regulations at 45 CFR §98.20(a)(1)(ii) allows Lead Agencies to serve children with
23 disabilities up to the age of 19 and §809.41(a)(1)(B) gives this flexibility to Boards. Currently,
24 27 Boards provide child care services for children with disabilities up to age 19.

25
26 The Commission amended Chapter 809 to create a consistent statewide policy to have children
27 with disabilities up to age 19 eligible for child care services.

28
29 *Streamline Rules on Board-Required Policies, and Remove Operational Procedures*

30
31 The Commission amended §809.13 to remove the list in §809.13(c) of required Board policies as
32 the required Board policies are described in other Chapter 809 sections, as well as in the Child
33 Care Services Guide. Section 809.13(c) was created to assist Boards in identifying in one place
34 their required policies. However, the section predated the issuance of the Child Care Services
35 Guide, which also provides the same comprehensive list of required Board policies.

36
37 The Commission notes that the requirement that Boards have policies formerly listed in
38 §809.13(c) has not changed in other sections of Chapter 809. This change simply removes
39 repeating these requirements in §809.13(c).

40
41 *Allowing Job Search for Initial Eligibility*

42
43 The Commission adopts new §809.56, Child Care during Initial Job Search. Under federal Child
44 Care Development Block Grant (CCDBG) regulation 45 CFR §98.21(a)(2)(iii), states may
45 initially qualify a family for assistance if the parent is seeking employment or engaging in job
46 search and may end assistance after a minimum of three months if the parent has not found

1 employment.

2

3 However, unemployed parents who are looking for work are not initially eligible for CCS under
4 the former §809.41(a)(3)(B). On June 15, 2021, the Commission approved a temporary waiver
5 for §809.41(a)(3)(B) to provide additional flexibility, allowable under federal CCDBG law and
6 regulations, to support parents who do not meet the activity requirements when eligibility is
7 determined. This waiver allows up to three months of child care for parents to search for work.
8 The waiver expires on October 1, 2022.

9

10 On June 30, 2021, TWC issued guidance to the Boards in WD Letter 13-21, regarding eligibility
11 for child care during the initial job search period.

12

13 The Commission amended §809.2 to include job search in the definition of working and added
14 new §809.56 in Chapter 809, Subchapter C (Eligibility for Child Care Services) for job search
15 child care with provisions consistent with the guidance issued in WD Letter 13-21, specifically:

16

17 --A parent, including a parent in a dual-parent family, is eligible for child care services if at
18 initial eligibility determination the family does not meet the minimum participation requirements
19 for At-Risk Child Care. (Note: Parents in the CCS program who are unemployed at the time of
20 eligibility redetermination are provided three months of continued care under §809.51(b)
21 regarding child care during interruptions in work.)

22

23 --Boards must allow parents to self-attest that the family meets the requirements for job search
24 child care, and that the family income does not exceed 85 percent of the state median income.

25

26 --Child care for job search at initial eligibility is limited to three months (with the clarification in
27 guidance that a Board may extend an initial job search period for a maximum of 30 calendar
28 days to ensure continuity of care in order to verify and determine eligibility requirements for
29 continued care).

30

31 --Total activity participation by the end of the three months must be at least 25 hours for a single-
32 parent family or 50 hours per week for a dual-parent family, and must consist of a minimum of
33 12 hours in employment for a single-parent family and 25 hours in employment for a dual-parent
34 family.

35

36 --If the family meets the participation requirements above, within, or by the end of the three
37 months, child care services will continue for a total of 12 months, inclusive of the months in
38 initial job search, as long as the family income is below 85 percent SMI.

39

40 --If the family does not meet minimum activity requirements by the end of the three months, care
41 must be terminated.

42

43 --The PSoC is initially assessed at the highest amount based on the family size and number of
44 children in care.

45

46 --The initially assessed amount will immediately be reduced to zero, which includes dual-parent

1 families in which one parent is working but the participation requirements are not met.

2
3 --If the parent begins to meet participation requirements within or by the end of the job search
4 period, the PSoC must be reinstated at the initially assessed amount or the amount based on the
5 actual family income, whichever is lower.

6
7 Adopted §809.56 also requires that eligibility for job search child care be limited to one three-
8 month job search period within a 12-month period.

9
10 The Commission notes the intent of requiring the 12/25 minimum number of activity hours in
11 employment is to emphasize employment outcomes during job search, while also allowing
12 families to meet the full 25/50 hourly requirement through a combination of employment,
13 education, and training. This policy strikes a balance between requiring job search individuals to
14 meet the activity through 100 percent employment and allowing the family to meet the full 25/50
15 requirement through a combination of employment, education, and training hours.

16
17 TWC currently has a Board Incentive Award that provides an incentive for Boards to assist
18 parents in child care job search to obtain employment. To emphasize this connection with the
19 workforce delivery network, the Commission included a requirement that a Board ensures that
20 the parent in child care for job search is registered in the state's labor exchange system and has
21 access to appropriate services available through the one-stop service delivery network.

22 23 Automated Attendance and Attendance Standards

24
25 TWC is conducting a procurement for a new automated attendance system. However, Chapter
26 809 rules included several requirements that are specific to the previous automated system,
27 particularly regarding the use of attendance cards for point-of-service devices. The type of
28 automated system and the process for recording attendance, including the use of attendance
29 cards, has not been determined.

30
31 The Commission amended the attendance reporting language in §809.78 (regarding parent
32 reporting requirements), §809.95 (regarding provider reporting requirements), and §809.115
33 (regarding corrective actions) related to using attendance cards or other language specific to the
34 previous system, which would allow flexibility for future automated attendance systems.

35 36 Provider Payments

37
38 CCDF regulations at 45 CFR §98.45(l) requires Lead Agencies to establish payment practices
39 that ensure timeliness of payment and reflect generally accepted payment practices of child care
40 providers that do receive CCDF. The regulations cite paying based on a child's enrollment rather
41 than attendance and paying prospectively prior to the delivery of services.

42
43 Section 809.93(b) requires Boards to reimburse regulated providers based on the child's
44 enrollment rather than attendance; however, former rules do not allow for providers to be paid
45 prospectively. Because payments are based on the enrollment authorization and not attendance,
46 the Commission amended §809.93 to require Boards to pay providers on that enrollment every

1 two weeks prior to the delivery of services, pursuant to 45 CFR §98.45(l).

2
3 Currently, 24 Boards reimburse providers either weekly or every two weeks. Additionally, the
4 two-week prospective payment aligns with current Commission policy regarding transfers that
5 includes a waiting period of two weeks before the effective date of a transfer, except in cases in
6 which the provider is subject to a CCL corrective action, when the transfer is authorized by Child
7 Protective Services (CPS) for a child in protective services, or on a case-by-case basis as
8 determined by the Board.

9
10 The Commission acknowledges this change will require detailed operational guidance to Boards
11 regarding reconciling payments, payment estimations, and child transfers. Additionally, paying
12 prospectively will also require changes to the child care information systems. In order to work
13 with Boards on operational details of this new policy and to include this change in the new
14 CCCMS, the provisions of the amended rules will be effective on December 1, 2023.

15
16 Providers Charging Parents the Difference between the Board Rate and the Provider Published
17 Rate

18
19 TWC rules at §809.92(c) prohibit providers from charging the difference to parents who are
20 exempt from the PSoC (parents participating in Choices, Supplemental Nutrition Assistance
21 Program Employment and Training, parents of children experiencing homelessness, and parents
22 of children in protective services) and whose PSoC is calculated to be zero. However, §809.92(d)
23 allows Boards to prohibit providers from charging the difference to all parents. Currently eight
24 Boards allow providers to charge the difference to parents not exempt from the PSoC.

25
26 CCDF regulations at 45 CFR §98.45(b) requires Lead Agencies to ensure that their payment
27 rates ensure equal access to the full range of providers that are available to parents not receiving
28 CCDF services, and that the rates are adequate without additional amounts above the assessed
29 PSoC for instances in which the provider's published rate exceeds the subsidy amount.

30
31 CCDF regulations at 45 CFR §98.45(b)(5) requires a rationale for the policy on whether child
32 care providers may charge additional amounts to families above the PSoC, including:
33 --a demonstration that the policy promotes affordability and access; and
34 --an analysis of the interaction between any such additional amounts with the required family
35 copayments, and of the ability of subsidy payment rates to provide access to care without
36 additional fees.

37
38 Additionally, 45 CFR §98.45(d)(2) requires Lead Agencies to track the extent to which "CCDF
39 child care providers charge amounts to families more than the required family co-payment....in
40 instances where the provider's price exceeds the subsidy payment, including data on the size and
41 frequency of any such payments."

42
43 To align with federal CCDF requirements, the Commission amended §809.92 to require Boards
44 that allow providers to charge parents amounts above the assessed PSoC to:
45 --require that each month, any provider that charges a family an amount above the PSoC reports
46 the following:

- 1 ----the specific families that were charged an additional amount above the PSoC;
- 2 ----the frequency with which each family was charged; and
- 3 ----the amount of each additional charge;
- 4 --provide the rationale for the Board's policy to allow providers to charge families additional
- 5 amounts above the required copayment, including a demonstration of how the policy promotes
- 6 affordability and access for families; and
- 7 --describe the Board's analysis of the interaction between the additional amounts charged to
- 8 families with the required PSoC and the ability of subsidy payment rates to provide access to
- 9 care without additional fees.

10
11 According to the most recent MRS, 5.2 percent of centers and 6.5 percent of homes charge
12 parents the difference between the reimbursement rate and the provider published rate. Further,
13 on August 31, 2021, the Commission approved substantial rate increases for all providers
14 designed to ensure that the payment rates ensure equal access required by 45 CFR §98.45. This
15 rate action could also reduce instances in which the provider's published rates are higher than
16 Board reimbursement rates.

17 Rule Clarifications and Technical Amendments

18
19
20 The Commission also amended the following sections of Chapter 809 to provide clarifications of
21 the rule provisions and technical changes:

- 22
23 --Throughout Chapter 809 - Changed Child Care Licensing (CCL) to Child Care Regulation
- 24 (CCR).
- 25 --§809.1 - Specified which sections of Chapter 809 do not apply to Board child care services
- 26 funded through non-CCDF sources.
- 27 --§809.16 - Clarified that Board quality activities must be in accordance with the CCDF State
- 28 Plan. Removed language regarding compliance with federal and state regulations as these
- 29 requirements are reflected in the CCDF State Plan.
- 30 --§809.20 - Included enhanced rate for infants and toddlers at a Texas School Ready provider
- 31 participating in the Texas School Ready infant/toddler program.
- 32 --§809.20 - Codified the current practice of Boards establishing a higher enhanced
- 33 reimbursement rate for nontraditional hours, as defined by the Board.
- 34 --§809.44 - Separated exclusions for one-time cash payments from tax credits and refunds from
- 35 the income calculation.
- 36 --§809.48 and §809.50 - Specified that dual-parent activity hours include a combination of work,
- 37 training, or education.
- 38 --§809.78 - Clarified the process regarding the 15- and 30-day thresholds for Boards notifying
- 39 parents of potential excessive absences.
- 40 --§809.93 - Included "blended-day" as an enrollment type.
- 41 --§809.93 - Revised outdated language regarding payments for "occasional" part-day/full-day
- 42 attendance.
- 43 --§809.94 - Removed the language prohibiting subsidy eligibility for providers that are on
- 44 Adverse Action with CCR but are appealing the action as this language is not necessary, due to
- 45 SB 764 (87th Texas Legislature, Regular Session (2021)), which prohibited these providers from
- 46 operating.

1 --§809.131 - Clarified that at minimum, a center director account is required to be created within
2 the Texas Early Childhood Professional Development System's Workforce Registry to meet
3 Texas Rising Star eligibility requirements.

4 --§809.134 - Revised that Texas Rising Star mentor staff with allowable associate degrees have
5 two years of suitable experience in early childhood education as determined by the Board to
6 allow Boards to determine suitable experience.

7
8 Chapter 809 Rule Review
9

10 Texas Government Code, §2001.039 requires that every four years each state agency review and
11 consider for readoption, revision, or repeal each rule adopted by that agency. TWC reviewed the
12 rules in Chapter 809 and determined that the rules are needed, reflect current legal and policy
13 considerations, and reflect current TWC procedures. The reasons for initially adopting the rules
14 continue to exist and any changes to the rules as a result of the rule review are described in Part
15 II of this preamble.

16
17 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

18 (Note: Minor editorial changes are made that do not change the meaning of the rules and,
19 therefore, are not discussed in the Explanation of Individual Provisions.)
20

21 **SUBCHAPTER A. GENERAL PROVISIONS**

22 TWC adopts the following amendments to Subchapter A:
23

24 **§809.1. Short Title and Purpose**

25 Section 809.1 is amended to clarify the following sections of Chapter 809 do not apply to child
26 care services that use non-Child Care and Development Fund sources allocated to workforce
27 areas:

28 --Funds used for quality improvement activities described in §809.16;

29 --Assessing the PSoC described in §809.19; and

30 --Subchapter C, relating to Eligibility for Child Care Services.
31

32 **§809.2. Definitions**

33 Section 809.2(1)(C) is amended to establish a statewide policy that "making progress toward
34 successful completion" of a job training or education program is demonstrated through continued
35 enrollment in the training or educational program. This policy is intended to streamline and
36 standardize the verification that the parent is making progress toward completion of the program,
37 aligning with the policies currently in place at a majority of Boards.
38

39 Section 809.2 is amended to add the definition of a Child Care Desert in paragraph (4). A child
40 care desert is defined as an area described in Texas Labor Code, §302.0461 in which the number
41 of children under age six with working parents is at least three times greater than the capacity of
42 licensed child care providers in the area, based on data published annually by the Commission.
43

44 Section 809.2(5), as renumbered, is amended to change the name of the child care licensing
45 entity from "Child Care Licensing (CCL)" to current "Child Care Regulation (CCR)." This
46 change is also made throughout the chapter.

1
2 Section 809.2(10)(C), as renumbered, is amended to state that an education program at an
3 institution of higher education must lead to an undergraduate degree. The change is made to
4 create a statewide standard that postgraduate degrees are not included in the definition of an
5 educational program for CCS eligibility activity hours. The Commission emphasizes that
6 enrollment in postgraduate degree programs does not in and of itself disqualify a parent from
7 CCS eligibility. The intent is that postgraduate hours are not included in the parent's or family's
8 activity hours for eligibility.
9

10 Section 809.2 is amended to remove the definition of a "Pre-Star provider." The Commission is
11 creating a new "Entry Level" designation as part of the definition of a Texas Rising Star provider
12 pursuant to Texas Government Code, §2308.3155 that requires all providers of TWC-funded
13 CCS be included in the Texas Rising Star program.
14

15 Section 809.2(25) is amended to remove "voluntary" from the definition of the Texas Rising Star
16 program, as this program is now a statutory requirement for CCS providers.
17

18 Section 809.2(26) is amended to include "Entry Level" provider designation in the definition of a
19 Texas Rising Star provider. Additionally, §809.2(26) is amended to clarify that star-level (Two-
20 Star, Three-Star, and Four-Star) Texas Rising Star providers are considered the be "certified"
21 providers throughout the rule language and "Entry Level" is considered to be a "designation."
22

23 Section 809.2(27) is amended to include job search in the definition of working.
24

25 **SUBCHAPTER B. GENERAL MANAGEMENT**

26 TWC adopts the following amendments to Subchapter B:
27

28 **§809.13. Board Policies for Child Care Services**

29 Section 809.13 is amended to remove the list of required Board procedures and policies in
30 subsection (c) as the required Board policies are described in other Chapter 809 sections. A
31 comprehensive list of policies required in Chapter 809 as well as procedural requirements for
32 Boards will be included in TWC's Child Care Services Guide and updated with any subsequent
33 rule amendments that require Board policies.
34

35 **§809.14. Coordination of Child Care Services**

36 Section 809.14 is amended to add subsection (c) pursuant to Texas Labor Code, §302.00436,
37 requiring Boards to inform local school districts and open-enrollment charter schools of
38 opportunities to partner with child care providers to expand access to and provide facilities for
39 pre-K programs.
40

41 **§809.15. Promoting Consumer Education**

42 Section 809.15(b)(2) is amended to change "CCL" to "CCR" as described in §809.2.
43

44 **§809.16. Quality Improvement Activities**

45 Section 809.16(a) is amended to clarify that Board quality activities must be in accordance with
46 the CCDF State Plan and to remove language regarding compliance with federal and state

1 regulations as these requirements are reflected in the CCDF State Plan.

2
3 **§809.18. Maintenance of a Waiting List**

4 Section 809.18 is amended to establish two new subsections. New subsection (a) will be
5 effective until December 1, 2023, and contains the waiting list maintenance provisions that are
6 currently in rule with the following changes:

7 --New §809.18(a)(1) clarifies that the waiting list includes children, as well as parents.

8 --New §809.18(a)(3) clarifies, pursuant to §809.22, that children who are directly referred from a
9 recognized pre-K or Head Start/Early Head Start partnership are exempted from the waiting list.

10
11 New §809.18(b) will be effective December 1, 2023, and contains the amended provisions in
12 new §809.18(a) and is further amended to remove the Board-determined process for determining
13 the child is potentially eligible for services and the frequency in which parent information is
14 updated and maintained. New §809.18(b)(4) creates a statewide policy to require that Boards
15 contact the parent every three months and remove the child from the waiting list if the parent
16 indicates that child care services are no longer required or does not respond to the Board
17 regarding the continued need for child care services.

18
19 **§809.19. Assessing the Parent Share of Cost**

20 Section 809.19 is amended to establish two new subsections. New subsection (a) will be
21 effective until December 1, 2023, and contains the PSoC provisions that are currently in rule
22 with the following changes:

23 --New §809.19(a) removes the requirement that child care funded through non-CCDF sources
24 must be assessed a PSoC.

25 --New §809.19(a)(2) clarifies that the Board policy regarding reimbursing providers if a parent
26 fails to pay the PSoC must state whether or not the Board will reimburse the provider if the
27 parent fails to pay. New §809.19(a)(2) also combines the language in current rule that if the
28 Board policy does not reimburse the provider, then the Board may have a policy that requires the
29 parent to pay the provider prior to being redetermined for future TWC-funded child care
30 services;

31 --New §809.19(a)(10) adds blended care referrals as eligible for a PSoC reduction by Board
32 policy.

33
34 New §809.19(b) will be effective December 1, 2023, and establishes a statewide PSoC policy.

35
36 New §809.19(b) states that the PSoC must be assessed to all parents, except those parents
37 exempted from the PSoC, and the amount is established by the Commission and determined on a
38 sliding fee scale based on the family size and gross monthly income and represented by a
39 percentage of the SMI.

40
41 The Commission notes that the actual percentage of income to be used will be established,
42 reviewed, and, if necessary, modified by the Commission on an annual basis as the annual SMI
43 amounts are released.

44
45 New §809.19(b) requires Boards to assess the PSoC in accordance with the amount established
46 by the Commission.

1
2 New §809.19(b) removes the requirement that Board policy include the general criteria for
3 determining affordability of the Board's PSoC, as the PSoC is no longer determined or
4 established by the Board. The amended rules remove the requirement that Boards have a
5 definition of what constitutes frequent terminations and its process for assessing PSoC
6 affordability.

7
8 Similarly, because the Board no longer determines the PSoC, new §809.19(b) removes the
9 requirement that Boards with frequent terminations for parent failure to pay the PSoC must
10 reexamine its PSoC and adjust it to ensure the PSoC is not a barrier to assistance.

11
12 The Commission notes that TWC will monitor and analyze terminations due to failure to pay the
13 PSoC and evaluate the state PSoC policy to determine if changes are needed to ensure the
14 amounts charged are a barrier to access.

15
16 **§809.20. Maximum Provider Reimbursement Rates**

17 Section 809.20(a)(2) is amended to be effective until December 1, 2023, and contains the
18 reimbursement age groups currently in rule.

19
20 Section 809.20(a) is amended to add new paragraph (3) to be effective December 1, 2023, and
21 aligns the age groups for reimbursement with the age groups defined by CCR as required by
22 amended Texas Government Code, §2308.315. The amended language adds new Board rates for
23 Infants ages 12 through 17 months, Toddlers age 2 years, Preschool age 4 years, Preschool age 5
24 years, and redefines school-age rates to start at six years (from the previous five years of age).

25
26 Sections 809.20(b)(1), (c), and (d) are amended to state that the enhanced reimbursement rates
27 are required for certified Texas Rising Star providers (Two-, Three- and Four-Star providers),
28 which aligns with Texas Government Code, §2308.3155(b-1) prohibiting providers at the Entry
29 Level designation from being eligible for the enhanced rate.

30
31 Section 809.20(b)(2) is amended to include infants and toddlers for enhanced rates for providers
32 participating in the Texas School Ready program for those age groups.

33
34 New §809.20(g) is added to include in rule the current practice that Boards may establish a
35 higher enhanced reimbursement rate for nontraditional hours, as defined by the Board.

36
37 **SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES**

38 TWC adopts the following amendments to Subchapter C:

39
40 **§809.41. A Child's General Eligibility for Child Care Services**

41 Section 809.41(a)(1)(B) is amended to establish a statewide policy that a child with disabilities
42 under 19 years of age meets age eligibility for child care services. Currently, 27 of the 28 Boards
43 allow eligibility for children with disabilities up to age 19.

44
45 Section 809.41(a)(3)(A)(i) is amended to establish a statewide income limit of 85 percent of the
46 SMI, which is the federal income limit. Accordingly, §809.41(e), regarding Boards that have

1 initial income limits lower than 85 percent SMI, is removed.

2
3 Section 809.41(a)(3)(B) is amended to allow job search as an allowable activity for child care
4 services eligibility.

5
6 Section 809.41(b) is amended to establish a statewide policy for parents enrolled in an
7 educational program, which allows them to participate in CCS for a cumulative total of 60
8 months. The limit applies only to parents enrolled in a full-time (as defined by the educational
9 institution) in a postsecondary undergraduate education program. Accordingly, with the new 60-
10 month requirement, §809.41(c) requiring four years of child care services for parents enrolled in
11 a program leading to a high-growth, high-demand occupation is removed.

12
13 Renumbered §809.41(c) is amended to change "postsecondary" to "undergraduate" degree to
14 align with the new definition of an educational program in §809.2.

15
16 Section 809.41(f), specifying that Subchapter C only applies to child care services using funds
17 allocated to the Boards pursuant to §800.58 (Child Care and Development Fund), is removed.
18 This provision is now included in §809.1.

19
20 **§809.42. Eligibility Verification, Determination, and Redetermination**

21 Section 809.42(b) is amended to include the three-month initial job search eligibility period in
22 new §809.56 as an exception to the 12-month eligibility period.

23
24 **§809.44. Calculating Family Income**

25 Section 809.44(b)(5) is amended to include tax-related exemptions from the family income
26 calculation and to clarify that all tax credits, not just the specified Earned Income Tax Credit
27 (EITC) and the Advanced EITC, are exempted from the family income calculation. Section
28 809.44(b)(5) is also amended to move onetime payments from this paragraph to new
29 §809.44(b)(20) related to one-time payments.

30
31 **§809.48. Transitional Child Care**

32 Section 809.48(a)(3) is amended to clarify that the minimum weekly activity requirement of 50
33 hours per week for a dual-parent family is a combined total from both parents. The Commission
34 clarifies that there is no minimum activity requirement for each parent.

35
36 Section 809.48 is amended to remove subsection (b) allowing Boards to establish a higher
37 income limit for Transitional Child Care. This paragraph is no longer needed with the statewide
38 income eligibility limit of 85 percent SMI established in §809.41.

39
40 Relettered §809.48(d) is amended to change postsecondary to undergraduate to reflect the
41 amended definition of an educational program in §809.2.

42
43 **§809.50. At-Risk Child Care**

44 Section 809.50(a)(1) is amended to establish a statewide income limit of 85 percent SMI for At-
45 Risk Child Care.

1 Section 809.50(a)(2) is amended to clarify that the minimum weekly activity requirement of 50
2 hours per week for a dual-parent family is a combined total from both parents. The Commission
3 clarifies that there is no minimum activity requirement for each parent.

4
5 Section 809.50(c) is amended to change postsecondary to undergraduate to reflect the amended
6 definition of an educational program in §809.2.

7
8 Section 809.50 is amended to remove subsection (e) which allows Boards to establish a higher
9 income limit for teen parents and subsection (g) which allows Boards to establish a higher
10 income limit for families with children enrolled in Head Start, Early Head Start, or public pre-K.
11 These provisions are no longer needed with the statewide income eligibility limit of 85 percent
12 SMI established in §809.41.

13
14 Subsections are relettered accordingly.

15
16 **§809.51. Child Care during Temporary Interruptions in Work, Education, or Job Training**

17 Section 809.51(a) is amended to include the three-month initial job search eligibility period in
18 new §809.56 as an exception to the 12-month eligibility period.

19
20 **§809.55. Waiting Period for Reapplication**

21 Section 809.55(a) is amended to remove specific paragraph citations in other sections of the
22 rules.

23
24 **§809.56. Child Care during Initial Job Search**

25 New §809.56 sets forth the requirements for child care during a parent's initial job search
26 activities. Section 809.56(a) states that a parent, including a parent in a dual-parent family, is
27 eligible for child care services at initial eligibility if the family does not meet the minimum
28 participation requirements for At-Risk Child Care. Section 809.56(b) allows parents to self-attest
29 that the parent does not meet the At-Risk participation requirements.

30
31 New §809.56(c) limits child care for job search to three months. Child care services will
32 continue following this three-month period, if, by the end of the three months, the family meets
33 family income eligibility and the following activity requirements:

34 --25 hours for a single parent, with at least 12 hours in employment; or

35 --50 hours combined for dual-parent families, with at least 25 combined hours in employment.

36
37 If the above participation requirements are met within or by the end of the three-month period,
38 care will continue for 12 months, inclusive of the care provided during the initial job search
39 period.

40
41 New §809.56(d) sets forth the requirements for the PSoC during the initial job search period.
42 Boards will initially assess the PSoC at the highest amount based on the family size and number
43 of children in care. However, this assessed amount will immediately be temporarily reduced to
44 zero. This reduction also applies to dual-parent families in which one parent is employed, but the
45 family meets the requirements for job search child care (that is, the family is not meeting the At-
46 Risk participation requirements). If the parent begins to meet the participation requirements

1 described in §809.56(c), the PSoC will be reinstated at the initially assessed amount or the
2 amount based on the actual family income, whichever is lower.

3
4 New §809.56(e) limits child care during the initial job search period to one such period within a
5 12-month period.

6
7 New §809.56(f) requires Boards to ensure that the parent in child care job search:
8 --registers with the state's labor exchange system (currently, WorkInTexas.com); and
9 --has access the appropriate services available through the one-stop delivery network described
10 in 40 TAC §801.28.

11 **SUBCHAPTER D. PARENT RIGHTS AND RESPONSIBILITIES**

12 TWC adopts the following amendments to Subchapter D:

13 **§809.71. Parent Rights**

14
15 Section 809.71(3) is amended to require that the information about transfer policies include the
16 two-week waiting period before the effective date of a transfer, except in cases in which the
17 provider is placed on corrective action by CCR, when the transfer is authorized by CPS for a
18 child in protective services, or on a case-by-case basis as determined by the Board.

19
20
21 Section 809.71(4), related to information on Board policies regarding providers charging parents
22 additional amounts above the PSoC, is amended to clarify that the information must include
23 providers charging any amounts above the assessed PSoC, not just an amount that makes up the
24 full difference between the PSoC and the provider's published rate.

25 **§809.72. Parent Eligibility Documentation Requirements**

26
27 Section 809.72 is amended to allow a child whose parents are conducting an initial job search
28 under the respective rule provisions for these conditions to receive child care services without the
29 parent first providing the Board's child care contractor with all information necessary to
30 determine initial eligibility.

31 **§809.73. Parent Reporting Requirements**

32
33 Section 809.73(a) is amended to clarify that parents in initial job search are only required to
34 report items that impact a family's eligibility or that enable the Board or contractor to contact the
35 family or pay the provider.

36 **§809.75. Child Care during Appeal**

37
38 Section 809.75 is amended to correct a reference in §809.19 related to nonpayment of the PSoC
39 as it relates to a parent appeal.

40 **§809.78. Attendance Standards and Notice and Reporting Requirements**

41
42 Section 809.78 is amended to remove or clarify requirements for attendance tracking that are
43 specific to the former automated attendance tracking or would be specific to a particular future
44 automated attendance system.

45
46 Section 809.78(a)(3) is amended to remove from unexplained absences any denied or rejected

1 attendance recording in which the parent does not contact TWC's Child Care Services unit to
2 report the issue.

3
4 Section 809.78(a)(5) is amended to remove language related to using attendance cards and to
5 include language stating that parents shall adhere to TWC procedures for reporting attendance
6 and absences, including the use of the attendance reporting system.

7
8 Section 809.78(a) is also amended to remove paragraphs (6) - (10) as these provisions apply
9 specifically to the previous system's use of attendance cards or use of the previous automated
10 attendance system.

11
12 Section 809.78(d)(1) clarifies that the written notification of potential termination due to the
13 failure to meet attendance standards should be provided "as soon as practicable" after the child
14 reaches the 15- or 30-day cumulative absence threshold.

15 16 **SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE**

17 TWC adopts the following amendments to Subchapter E:

18 19 **§809.91. Minimum Requirements for Providers**

20 Section 809.91 is amended to include Texas Rising Star certification or Entry Level designation
21 as a requirement to provide child care services. This section is also amended to remove
22 references to the Pre-Star designation.

23 24 **§809.92. Provider Responsibilities and Reporting Requirements**

25 Section 809.92(c) is amended to clarify that providers must not charge any amounts over the
26 PSoC, not just the full difference between the PSoC and the provider's published rates, to parents
27 who are exempt from the PSoC or have a zero PSoC assessment. This subsection is also
28 amended to add parents in initial job search child care during the initial job search period.

29
30 Section 809.92(d) is amended to also state that Boards may have a policy that allows providers to
31 charge amounts above the PSoC to parents not included in the subsection (c) exemptions.

32
33 New §809.92(e) requires Boards that allow providers to charge additional amounts pursuant to
34 §809.92(d) to ensure that the provider reports to the Board each month the:

- 35 --specific families that were charged an additional amount above the assessed amount;
- 36 --frequency with which each family was charged; and
- 37 --amount of each additional charge.

38
39 New §809.92(f) is added to include the federal reporting requirements regarding polices allowing
40 providers to charge parents above the PSoC amount. The new rule language requires Boards that
41 have a policy allowing providers to charge such amounts to:

- 42 --provide the rationale for the Board's policy, including a demonstration of how the policy
43 promotes affordability and access for families; and
- 44 --describe the Board's analysis of the interaction between the additional amounts charged to
45 families with the required PSoC and the ability of current reimbursement rates to provide access
46 to care without additional fees.

1
2 **§809.93. Provider Reimbursement**

3 Section 809.93(f) is amended to add in rule the current practice of blended-day enrollment
4 authorizations. The rule language clarifies that the blended-day referrals are for children enrolled
5 in a school program, pre-K, Head Start, or Early Head Start, in which child care is part-time with
6 care provided occasionally on a full-day basis. The Commission clarifies that there is not a
7 requirement in rules that providers accept part-day care as a prerequisite to receive blended-day
8 referrals. The part-day rate, however, is used in the calculation for the blended-day rate.
9

10 Accordingly, the amendment removes §809.93(h) prohibiting providers from being paid less
11 with a child enrolled in full-day care who occasionally attends part-day, or more when a part-day
12 child occasionally attends full-day. These occasional days should be reviewed and changed to a
13 blended-day referral if applicable.
14

15 New §809.93(j) is added to require Boards to pay regulated child care providers prospectively
16 every two weeks based on the monthly enrollment authorization. The Commission notes that this
17 provision is effective December 1, 2023.
18

19 **§809.94. Providers Placed on Corrective or Adverse Action by Child Care Regulation**

20 Section 809.94 is amended to update the change of the child care licensing entity to CCR.
21

22 Section 809.94(e), regarding providers appealing an Adverse Action by CCR but remain open
23 under a court order, is removed as providers appealing an Adverse Action are prohibited from
24 continuing operations by SB 764.
25

26 **§809.95. Provider Automated Attendance Agreement**

27 Section 809.95 is amended to remove references specific to the former automated attendance
28 system. The amended language states that owners, directors, assistant directors, or other provider
29 employees must not have access to a parent's information to access TWC's automated attendance
30 system. The language is general and does not specify any specific type of future automated
31 attendance system.
32

33 **§809.96. Contracted Slots Agreements**

34 Section 809.96(e)(1)(A) is amended to reference a child care desert, which is now defined in new
35 §809.2(4). The definition of a child care desert in new §809.2(4) includes the language
36 previously specified in §809.96(e)(1)(A). Section 809.96(e)(2) and (3) are amended to clarify
37 that eligibility for contracted slots include "recognized" pre-K, Early Head Start, and Head Start
38 partnerships, which are defined in §809.22.
39

40 Section 809.96(f) is amended to remove the reference to Board policies in §809.13(c) as that
41 subsection is removed.
42

43 Section 809.96(i) is amended to change the Board contracted slots reporting requirement from
44 six to 12 months pursuant to amended Texas Labor Code, §302.0461(d).
45

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

2 TWC adopts the following amendments to Subchapter F:

3
4 **§809.112. Suspected Fraud**

5 Section 809.112(b)(2) is amended to include reporting requirements during the three-month
6 initial job search period.

7
8 **§809.115. Corrective Adverse Actions**

9 Section 809.115(d) is amended to remove language specific to the former automated attendance
10 system.

11
12 **SUBCHAPTER G. TEXAS RISING STAR PROGRAM**

13 TWC adopts the following amendments to Subchapter G:

14
15 **§809.130. Short Title and Purpose**

16 Section 809.130(b) is amended to include Entry Level providers in the purpose of Subchapter G.

17
18 Section 809.130(d) is amended to add language that the Texas Rising Star guidelines distinguish
19 certified Texas Rising Star providers (Two-, Three-, and Four-Star providers) from designated
20 Entry Level providers.

21
22 **§809.131. Requirements for the Texas Rising Star Program**

23 Section 809.131 is amended to change the section name from "Eligibility for the Texas Rising
24 Star Program" to "Requirements for the Texas Rising Star Program." This change is made to
25 emphasize that Texas Rising Star is a mandatory program for child care services providers that
26 meet the requirements of Subchapter G and the Texas Rising Star guidelines.

27
28 New §809.131(a) outlines the requirements for Texas Rising Star certification. The new
29 subsection retains the previous requirements for application to the Texas Rising Star program,
30 namely, that the provider:

31 --has a permanent (nonexpiring) license or registration from CCR;

32 --has at least 12 months of licensing history with CCR, and is not on:

33 ----corrective action with a Board;

34 ----a "Notice of Freeze" with the Commission pursuant to Texas Labor Code, Chapter 213
35 (Enforcement of the Texas Unemployment Compensation Act) or Chapter 61 (Payment of
36 Wages); or

37 ----corrective or adverse action with CCR; or

38 --is regulated by and in good standing with the United States Military.

39
40 New §809.131(a) removes the former requirements that the provider must meet the Pre-Star
41 designation and adds that the provider must meet the criteria for star-level (Two-, Three- or
42 Four-Star) certification in the Texas Rising Star guidelines.

43
44 New §809.131(a) requires that Texas Rising Star-certified provider's center director is registered
45 in the Texas Early Childhood Professional Development System Workforce Registry (workforce
46 registry). The new rule language removes the former requirement that teaching staff are also

1 registered in the workforce registry.

2
3 New §809.131(b) contains the requirements for Entry Level designation.

4
5 Regulated child care providers not meeting the Texas Rising Star certification requirements in
6 §809.131 shall be initially designated as Entry Level if the child care provider:

7 --is not on corrective or adverse action with CCR; and

8 --does not exceed the points threshold for high and medium-high CCR deficiencies within the
9 most recent 12-month period as established in the guidelines.

10
11 New §809.131(c) states that providers meeting the Entry Level designation is eligible for
12 mentoring services.

13
14 New §809.131(d) states that the Entry Level designation is limited to an initial 24 months, unless
15 approved for a waiver.

16
17 New §809.131(e) sets forth the time periods for Entry Level--designated providers to be
18 reviewed for Texas Rising Star certification. The rule language states that Entry Level providers
19 will be reviewed for Texas Rising Star certification no later than the 12th month of the 24-month
20 period. If an Entry Level provider is not eligible for certification by the 18th month, the provider
21 shall not receive referrals for new families as an Entry Level provider unless the provider is
22 located in a "child care desert" or an "underserved" area.

23
24 New §809.131(f) and (g) sets forth the criteria for an Entry Level extension waiver. Section
25 809.131(f) allows TWC to approve a waiver to extend the 24-month Entry Level time limit, if
26 the provider is:

27 --located in a "child care desert" or an "underserved" area described in §809.96(e)(1);

28 --unable to meet the certification requirements due to a federal- or state-declared
29 emergency/disaster; or

30 --unable to meet the certification requirements due to conditions that TWC determines are
31 outside of the provider's control.

32 33 **§809.132. Impacts on Texas Rising Star Certification**

34 Because state statute requires providers participating in the CCS program to be certified as Texas
35 Rising Star, a certified program that drops below a Two-Star level due to licensing deficiencies
36 or non-compliance with Texas Rising Star standards, falls into a unique category of being a
37 certified provider, but with suspended certification and not eligible for enhanced reimbursement
38 or Entry Level designation.

39
40 Section 809.132(a) is amended to state that certified Texas Rising Star providers will be placed
41 on a "suspension status" for certain deficiencies, namely, if the provider:

42 --is placed on corrective action with a Board;

43 --is under a "Notice of Freeze" with the Commission pursuant to Texas Labor Code, Chapter 213
44 (Enforcement of the Texas Unemployment Compensation Act) or Chapter 61 (Payment of
45 Wages);

46 --is placed on corrective or adverse action by CCR;

1 --had 15 or more total high or medium-high weighted licensing deficiencies during the most
2 recent 12-month licensing history;
3 --had more than four probationary impacts during its three-year certification period;
4 --had a consecutive third probationary impact;
5 --is cited for specified CCR minimum standards regarding weapons and ammunition; or
6 --is not meeting at least the Two-Star level due to noncompliance with Texas Rising Star
7 guidelines at the most recent assessment of certification.

8
9 Section 809.132(b) regarding licensing deficiencies listed in the Texas Rising Star guidelines
10 that result in a "star-level drop" is amended to reflect the change that a Two-Star certified
11 provider will be placed on suspension status for the applicable licensing deficiencies.

12
13 Section 809.132(c) and (d) regarding licensing deficiencies listed in the Texas Rising Star
14 guidelines that result in a second probation period are amended to reflect the change that a Two-
15 Star certified provider will be placed on suspension status.

16
17 Section 809.132(e) relating to reinstatement at the former star level is amended to clarify that this
18 provision is for certified providers that are not on suspension status. This primarily relates to
19 Three- or Four-Star providers that have a star-level drop to Two- or Three-Star respectively, as
20 these providers are not placed on suspension status.

21
22 New §809.132(f) - (i) set forth the conditions for certified providers on suspension status.

23
24 Amended §809.132(f) states that providers on suspension status are eligible for a reassessment
25 after six months following the suspension date, as long as no deficiencies in subsections (b) - (d)
26 are cited during the previous six months. The six months is to allow sufficient time to
27 demonstrate that the provider's licensing history will not preclude the provider from eligibility.
28 This is similar to the former requirement that providers dropping below a Two-Star level must
29 wait six months before reapplying for the Texas Rising Star program. The Commission notes
30 that providers can be assessed for certification at any time after the six months in which they
31 meet eligibility and screening requirements.

32
33 New §809.132(g) states that providers on suspension status must achieve at least a Two-Star
34 certification no later than 15 months following the suspension and failure to achieve at least a
35 Two-Star certification will result in the provider's ineligibility to provide subsidized child care
36 services.

37
38 New §809.132(h) states that providers on suspension status are:

39 --eligible to provide subsidized child care services as long as the provider meets the Entry Level
40 criteria;

41 --not eligible for the enhanced reimburse rate and will be reimbursed at the Board's Entry Level
42 reimbursement rate; and

43 --not able to receive referrals from a new family during the last six months of the 15-month
44 period unless the provider is in a child care desert or serves an underserved population and is
45 approved by TWC to accept new family referrals.

1 New §809.132(i) states that providers on suspension status and not achieving recertification by
2 the end of the 15-month period are not eligible to provide TWC-funded child care services, are
3 not eligible for Entry Level designation, and must subsequently meet Texas Rising Star
4 certification eligibility and screening requirements to provide CCS.

5
6 **§809.133. Application and Assessments for the Texas Rising Star Certification**

7 Section 809.133 is amended to describe the separate roles of the Boards for mentoring and the
8 new TWC-designated statewide entity for conducting assessments. The following sections are
9 amended to move responsibility from the Board to the statewide entity.

10
11 Section 809.133(b) is amended to clarify that TWC's designated assessment entity is responsible
12 for the following application and certification requirements:

- 13 --Written acknowledgment of receipt of the application and self-assessment is sent to the
14 provider;
- 15 --Within 20 days of receipt of the application, the provider is sent an estimated time frame for
16 scheduling the initial assessment;
- 17 --An assessment is conducted for any provider that meets the eligibility requirements in
18 §809.131 and requests certification to participate in the Texas Rising Star program; and
- 19 --Texas Rising Star certification is granted for any provider that is assessed and verified as
20 meeting the Texas Rising Star provider certification criteria set forth in the Texas Rising Star
21 guidelines.

22
23 Section 809.133(c) is amended to clarify that TWC's designated assessment entity is responsible
24 for the following assessment requirements:

- 25 --On-site assessment of 100 percent of the provider classrooms at the initial assessment for
26 certification and at each scheduled recertification; and
- 27 --Recertification of all certified providers every three years.

28
29 Section 809.133(d) is amended to clarify that TWC's designated assessment entity is responsible
30 for the following monitoring requirements:

- 31 --At least one unannounced on-site visit; and
- 32 --A review of the provider's licensing compliance as described in §809.132.

33
34 Section 809.133(e) and (f) are amended to clarify that TWC's designated assessment entity is
35 responsible for complying with the process and procedures in the Texas Rising Star guidelines
36 for:

- 37 --conducting assessment of nationally accredited facilities and facilities operated by the United
38 States Military; and
- 39 --conducting assessments of certified Texas Rising Star providers that have a change of
40 ownership, move, or expand locations.

41
42 At adoption, §809.133(h) is added to clarify that Boards will continue to perform the tasks of the
43 designated entity outlined in Chapter 809, Subchapter G until the statewide assessment entity is
44 procured and designated by TWC. TWC estimates that the statewide assessment entity will be
45 procured and begin operations by late summer 2023.

1 **§809.134. Minimum Qualifications for Texas Rising Star Staff**

2 Section 809.134 is amended to clarify the minimum qualifications specific to Board mentor staff,
3 qualifications specific to the statewide entity assessor staff, and qualifications applying to both
4 mentors and assessors.

5
6 New §809.134(a) states that Boards and the statewide assessment entity are responsible for
7 ensuring that Texas Rising Star staff:

8 --meet the CCR background check requirement consistent with Chapter 745 (formerly in
9 §809.134(e)); and

10 --complete the Texas Rising Star standards training, as described in the Texas Rising Star
11 guidelines (formerly in §809.134(g)(1)).

12
13 Relettered §809.134(b) is amended to clarify that mentor staff must meet the minimum
14 education, experience, and microcredentialing requirements in relettered §809.134(c) - (f).

15
16 Renumbered §809.134(c)(3), relating to the requirements for mentors with associate degrees, is
17 amended to state that the mentor must also have two years of "suitable" experience in early
18 childhood education, as determined by the Board. The former language required that mentors
19 with associate degrees be required to have two years of experience as a director in an early
20 childhood program.

21
22 New §809.134(f) requires that all mentors must attain mentor microcredentialing as described in
23 the Texas Rising Star guidelines (formerly in §809.134(g)(3)).

24
25 Section 809.134(g) is amended to retain only the requirement that assessors attain and maintain
26 the Texas Rising Star Assessor Certification, as described in the guidelines.

27
28 Section 809.134(f), regarding all Texas Rising Star staff to demonstrate early childhood
29 education knowledge and best practices and an understanding of early childhood evaluations,
30 observations, and assessment tools for both teachers and children, is removed, as these practices
31 are demonstrated through the mentor microcredentialing and assessor certifications.

32
33 **§809.135. Texas Rising Star Process for Reconsideration**

34 Section 809.135 is amended to clarify that the statewide assessment entity is responsible for
35 ensuring that there is a process for reconsiderations of a facility assessment.

36
37 **§809.136. Roles and Responsibilities of Texas Rising Star Staff**

38 Section 809.136 is amended to clarify and separate the roles of mentor and assessor staff.

39
40 Section 809.136(1) is amended to specify that a mentor is a Board or Board contractor staff
41 member.

42
43 Section 809.136(2) is amended to specify that an assessor is a staff member or contractor of the
44 statewide assessment entity.

45
46 Section 809.136(3) is amended to clarify that a "dual-role" staff member is an individual who

1 meets the definition of both mentor and assessor staff.

2
3 Section 809.136(4) is amended to state that both the Board and the statewide assessment entity
4 are responsible for ensuring that "dual-role" mentoring staff members do not perform the
5 assessment function of the same provider, and that assessment staff members do not perform
6 mentoring for the same provider.

7
8 TWC hereby certifies that the adoption has been reviewed by legal counsel and found to be
9 within TWC's legal authority to adopt.

10
11 **PART III. PUBLIC COMMENTS**

12 Public comment closed on May 31, 2022. TWC received comments from the following Boards:

- 13
14 Alamo Workforce Development Board
15 Texoma Workforce Development Board
16 West Central Texas Workforce Development Board

17
18 TWC received group comments on behalf of the following organizations:

- 19
20 --Child Care Associates
21 --Children at Risk
22 --Early Matters (Austin, Dallas, El Paso, Houston, San Antonio, Waco)
23 --North Texas Early Education Alliance
24 --Pre-K 4 SA
25 --Ready Nation Council for a Strong America (Texas)
26 --Texas Association for the Education of Young Children
27 --Texas PN-3 Collaborative
28 --Texans Care for Children
29 --United Ways of Texas

30
31 TWC received additional comments from the following:

- 32
33 --Christian Preschool Centers, Inc.
34 --Paradigm Shift
35 --Magers Consulting
36 --Treehouse Children's Academy, Lubbock
37 --an individual

38
39 **§809.14. Coordination of Child Care Services**

40
41 **COMMENT:** One Board requested operational guidance for implementation of new
42 §809.14(c), specifically the manner and frequency in which Boards are to inform school
43 districts and charter schools about opportunities to partner with child care providers to
44 expand access to and provide facilities for pre-K programs.

45
46 **RESPONSE:** TWC has issued guidance WD Letter 09-22) to Boards regarding
47 requirements for informing districts and charter schools of partnership opportunities.

1 TWC has also issued technical assistance (TAB 300) to Boards regarding implementing
2 the partnership requirements of Texas Labor Code, §302.00436. No changes were made
3 in response to this comment.
4

5 **COMMENT:** Commenters recommended strengthening rules to incentivize and ensure
6 authentic, two-way engagement between Boards, school districts, and charter schools as
7 it relates to partnership opportunities. The commenters stated that this will require
8 removing the following barriers at TWC:
9

10 --Aligning subsidy and pre-K eligibility such that military children and English Language
11 Learners who currently qualify for pre-K may also qualify for child care scholarships;
12 and

13 --Requiring two-way engagement between Boards and school districts to discuss
14 partnership opportunities, analyze local child care capacity and potential partnership
15 sights based on community need, and include high-ranked Texas Rising Star providers in
16 recruitment efforts.
17

18 **RESPONSE:** The Commission acknowledges that communication between the Boards,
19 school districts, and charter schools regarding pre-K partnerships is important in the
20 ultimate success of partnerships. WD Letter 09-22 and TAB 300 will assist Boards with
21 effective engagement. Regarding aligning TWC-funded child care and pre-K eligibility,
22 all children eligible to receive TWC-funded child care must meet CCDF requirements,
23 including military children and English Language Learners, as listed in 45 CFR §98.20.
24 No changes were made in response to this comment.
25

26 **§809.16. Quality Improvement Activities**

27

28 **COMMENT:** One Board requested that, rather than being prohibited from using federal
29 funds to implement quality activities allowed by federal guidelines but not specifically
30 addressed in the CCDF State Plan, Boards should be allowed to request a waiver from
31 TWC to include in their annual quality plan any activities allowed by federal guidelines
32 but not specifically addressed in the CCDF State Plan.
33

34 **RESPONSE:** A waiver will not be necessary. Boards can include activities that are
35 allowable by federal guidelines in their annual quality plans and TWC will amend its
36 CCDF State Plan accordingly. No changes were made in response to this comment.
37

38 **§809.18. Maintenance of a Waiting List**

39

40 **COMMENT:** One Board was supportive of standardizing waiting list management.
41 However, the Board recommended keeping the practice of having the parent be
42 responsible for contacting the Board if the parent wishes to have the child remain on the
43 waiting list rather than Boards bearing the burden to contact the parent, as doing so would
44 require additional staff time and increased operations costs.
45

46 **RESPONSE:** TWC anticipates including in its new CCCMS an automated functionality
47 for contacting parents regarding their waiting list status. Through an automated solution,

1 TWC does not anticipate any increased operation burden to the Boards. No changes were
2 made in response to this comment.

3
4 **COMMENT:** TWC received several comments regarding the implementation of the new
5 requirement that Boards contact parents with children on the waiting list every three
6 months and remove the child from the list if the parent indicates that child care services
7 are no longer needed or does not respond to the Board.

8
9 One Board asked if the new automated system will automatically remove parents who do
10 not respond to the notification. One commenter requested that the rules specify that
11 Boards will contact the parent through multiple means (text, email, phone) and multiple
12 attempts and allow for sufficient time to respond. Commenters also recommended that
13 TWC give Boards adequate support and reasonable timelines to meet this requirement
14 until the roll-out of the automated system is complete.

15
16 **RESPONSE:** The Commission appreciates the comments and notes that the three-month
17 notification requirement was scheduled to be effective on October 1, 2023, thereby
18 allowing time for Boards to arrange for contacting parents through appropriate means and
19 in managing their waiting lists. The Commission recognizes the challenge some Boards
20 may face in complying with this requirement and moves the effective date to December
21 1, 2023. The Commission will examine the request to ensure the automation system
22 provides sufficient functionality to assist Boards in contacting parents and managing their
23 waiting lists. At adoption, the Commission modified the dates in §809.18(a) and (b).

24 25 **§809.19. Assessing the Parent Share of Cost**

26
27 **COMMENT:** One Board strongly supported the new rule establishing a statewide PSoC
28 policy.

29
30 **RESPONSE:** The Commission appreciates the comment.

31
32 **COMMENT:** One Board asked if the PSoC discount parents receive for selecting a
33 Texas Rising Star certified provider can be extended to those selecting an Entry Level
34 provider.

35
36 **RESPONSE:** No. The rule language in §809.19 states that the PSoC reductions are only
37 allowed for parents choosing a Texas Rising Star certified provider. The Entry Level
38 designation is not a Texas Rising Star certification. The effective date for revisions to the
39 PSoC was October 1, 2023. In light of changes made to the effective date in other
40 sections and the need to reduce confusion, the effective date in this section will also be
41 changed to December 1, 2023. At adoption, the Commission modified the dates in
42 §809.19(a) and (b).

43 44 **§809.20. Maximum Reimbursement Rates**

45
46 **COMMENT:** One Board supported the restructuring of reimbursement rates to align

1 with age groups defined by CCR. The Board also supported the addition of §809.20(g)
2 codifying the practice of Boards establishing a higher enhanced reimbursement rate for
3 nontraditional hours. However, the Board noted this will require the new CCCMS to
4 support this rate structure.

5
6 **RESPONSE:** The Commission appreciates the comment and agrees that all
7 functionalities will be reviewed during CCCMS implementation to support this rule
8 amendment. No changes were made in response to this comment.

9
10 **COMMENT:** Several providers recommended that they be given a six-month notice in
11 advance of the new age group rates to allow them to budget and adjust accordingly. Other
12 commenters encouraged the Commission to ensure that Boards provide adequate
13 resources to support staff regarding determining rates for providers.

14
15 **RESPONSE:** TWC will have the market rates for the new age groups in the 2022 Market
16 Rate Survey released in the fall of 2022. TWC anticipates that preliminary
17 reimbursement rates should be available in summer 2023. This timeline and early
18 availability of MRS rates should provide adequate time for providers and Boards to
19 prepare for the rate changes. The new age group reimbursements were scheduled to go
20 into effect on October 1, 2023, but the Commission changes that date to December 1,
21 2023, to provide additional time for providers and Boards to reach compliance. At
22 adoption, the Commission modified the dates in §809.20(a)(2) and (3).

23
24 **COMMENT:** Commenters applauded the alignment of age groups with CCR and
25 requested consideration of blended rates for mixed-age classrooms.

26
27 **RESPONSE:** The Commission notes that reimbursements are per child, not per
28 classroom making a blended classroom rate unnecessary. For example, children under 12
29 months will get the higher infant rate, even if those children are in a room with infants
30 from 12 to 18 months receiving the lower infant rate. No changes were made in response
31 to this comment.

32
33 **COMMENT:** Commenters recommended a full-time rate for children enrolled in pre-K
34 partnerships to ensure that child care providers have the adequate resources to cover the
35 additional hours of care in the child care facility.

36
37 **RESPONSE:** The Texas Education Agency is the agency designated by the legislature
38 for funding full-day pre-K for eligible 4-year old's, and for funding part-day pre-K for
39 eligible 3-year old's. TWC's child care funding supports the wraparound child care
40 services that are provided before and after pre-K. As such, TWC funds part-time child
41 care to wraparound full-day 4-year-old pre-K, and TWC funds full-day child care to
42 wraparound part-day 3-year-old pre-K. No changes were made in response to this
43 comment.

44
45 **COMMENT:** Commenters strongly recommended that high quality Texas Rising Star
46 providers are reimbursed at the maximum rate regardless of the published rate to ensure

1 equitable access and sustainable programs throughout the state.

2
3 **RESPONSE:** The Commission appreciates the comment. No changes were made in
4 response to this comment.

5
6 **§809.41. A Child's General Eligibility for Child Care Services**

7
8 **COMMENT:** One Board supported the recommended policy changes to §809.41 related
9 to providing care to children with disabilities under the age of 19, establishing a statewide
10 income limit, allowing job search as an allowable activity for child care services
11 eligibility, and establishing a statewide policy for time limits for care on parents enrolled
12 in educational activities.

13
14 **RESPONSE:** The Commission appreciates the support. No changes were made in
15 response to this comment.

16
17 **COMMENT:** One Board requested that parents currently receiving TWC-funded child
18 care while enrolled in a postgraduate program be given a 12-month grace period to allow
19 them to be informed at redetermination that this will be the last year they will be eligible
20 for education-related CCS as a postgraduate student.

21
22 **RESPONSE:** The Commission agrees that parents receiving TWC-funded child care
23 while enrolled in a graduate program when these rules become effective be given time to
24 complete the current semester of graduate work. No changes were made in response to
25 this comment.

26
27 **COMMENT:** One Board and an individual requested clarification on how the 60-month
28 time limit affects teen parents attending high school or high school equivalency courses.
29 The individual recommended that if the time limit includes high school and high school
30 equivalency, then the time limit should be extended to 100 months. The Board pointed
31 out that if a teen uses two years of TWC-funded child care during high school, that the
32 parent would only have three years remaining to receive TWC-funded care while
33 completing an undergraduate degree program that traditionally takes four or more years.

34
35 **RESPONSE:** The Commission appreciates the comment. The 60-month limit was
36 intended to only apply to postsecondary undergraduate education. At adoption, the
37 Commission modified §809.41(b) to clarify that the 60-month limit applies to parents
38 enrolled full-time in a postsecondary undergraduate educational program.

39
40 **COMMENT:** Two Boards asked if parents who are working less than 25 hours a week
41 and attending school part-time to meet the activity requirements are subject to the
42 cumulative 60-month limit for child care.

43
44 **RESPONSE:** Parents who are both working and attending an educational program are
45 not subject to the cumulative 60-month limit. This only applies if the parent is meeting
46 participation requirements with postsecondary undergraduate education only. Parents

1 who work and are in an educational program will follow the current procedures. No
2 changes were made in response to this comment.

3
4 **COMMENT:** One Board requested clarification if months are counted when the parent
5 is receiving education-related child care, but not currently attending school. The Board
6 specifically asked if summer breaks in school enrollment are included in the cumulative
7 60-month limit.

8
9 **RESPONSE:** Temporary breaks in a postsecondary undergraduate educational program
10 are not included in the cumulative 60-month limit. No changes were made in response to
11 this comment.

12
13 **COMMENT:** One Board requested clarification on whether training programs that do
14 not lead to a degree are included in the cumulative 60-month limit.

15
16 **RESPONSE:** The cumulative 60-month limit does not apply to training programs. It
17 only applies to parents in postsecondary undergraduate educational programs. No
18 changes were made in response to this comment.

19
20 **COMMENT:** One Board asked if the new CCCMS will be able to help track the
21 cumulative months. Because many years may pass between education enrollments while
22 receiving TWC-funded child care, it would be helpful to have a method of tracking in the
23 system other than just in the notes.

24
25 **RESPONSE:** This functionality will be reviewed during CCCMS implementation. No
26 changes were made in response to this comment.

27 28 **§809.42. Eligibility Verification, Determination, and Redetermination**

29
30 **COMMENT:** With the change in the definition of "attending a job training or
31 educational program" in §809.2(1)(C), one Board asked if the intent is that Boards only
32 verify "continued enrollment in the training or educational program" every 12 months at
33 eligibility redetermination, or if Boards should be verifying "continued enrollment" based
34 on the frequency with which parents must reenroll in training/education components
35 during their 12-month eligibility period.

36
37 **RESPONSE:** Continued participation in a job training or educational program is only
38 reviewed at redetermination. No changes were made in response to this comment.

39 40 **§809.48. Transitional Child Care**

41
42 **COMMENT:** One Board asked if the term "Transitional Child Care" is still being used.

43
44 **RESPONSE:** Yes, the term remains in state statute. However, the federal Child Care and
45 Development Block Grant Act requires 12 months of child care, rendering "transitional"
46 child care effectively obsolete. No changes were made in response to this comment.

1
2 **§809.50. At-Risk Child Care**

3
4 **COMMENT:** One Board asked if there is local flexibility for Boards to have a procedure
5 for dual-parent families requiring each parent to participate in an eligible activity at least
6 25 hours per week.

7
8 **RESPONSE:** Boards are not allowed under the amended rules to have such a policy. The
9 standard statewide policy of a combined 50 hours is to ensure family stability with child
10 care and consistency across the state in child care eligibility. No changes were made in
11 response to this comment.

12
13 **COMMENT:** One Board appreciated the clarification that the 50 hours per week activity
14 requirement for a dual-parent family is a combined total from both parents and that there
15 is no minimum activity requirement for each parent. The Board was somewhat concerned
16 about circumstances in which one parent may meet the entirety of the 50-hour
17 requirement, allowing families with only one parent participating to receive child care,
18 though the Board does acknowledge that this occurrence is rare.

19
20 **RESPONSE:** The Commission understands the concern, but, as the Board
21 acknowledged, this situation is rare, and the amended rules are to ensure family stability
22 with child care and consistency across the state in child care eligibility. No changes were
23 made in response to this comment.

24
25 **§809.56. Child Care during Initial Job Search**

26
27 **COMMENT:** Commenters applauded the extension of §809.56 for parents engaged in
28 job search and requested additional clarification on how parent job-search activities will
29 be monitored. The commenters advised against burdening child care providers with
30 tracking and monitoring parent eligibility as it relates to this job search period.

31
32 **RESPONSE:** The Commission appreciates the comment and agrees that child care
33 providers are not responsible for monitoring job search activities. Additionally, the
34 Commission notes that §809.56 does not place requirements for documenting job search
35 activities on parents beyond those required under other Commission rules, and Boards
36 will not be required to monitor job search activities during the three-month job search
37 period.

38
39 **COMMENT:** One Board requested clarification that parents must be meeting
40 participation requirements and be under the 85 percent SMI to qualify for continued
41 services for the remainder of the 12 months (inclusive of the three months already given).

42
43 **RESPONSE:** The Commission appreciates the comment and confirms that the family
44 must meet the federal income guidelines for continued eligibility. At adoption, the
45 Commission modified §809.56(c) to include this clarification.

1 **COMMENT:** One Board asked if parents will be able to self-attest that they registered
2 with the state's labor exchange system or will they need to submit verification of their
3 registration.
4

5 **RESPONSE:** The Board should grant access to WorkInTexas.com for the child care staff
6 to verify registration. No changes were made in response to this comment.
7

8 **COMMENT:** One Board heartily supported the addition of §809.56. The lack of child
9 care while seeking employment has long been a barrier for families and the Board is
10 delighted that the Commission has chosen to address this challenge in a proactive
11 manner. The Board also accepted the Commission's reasoning related to the 12/25
12 minimum number of activity hours in employment at the end of the three-month job
13 search period. However, the Board stated that this will require operational guidance for
14 implementation.
15

16 **RESPONSE:** The Commission appreciates the comment and support. TWC will provide
17 guidance to Boards regarding this requirement. No changes were made in response to this
18 comment.
19

20 **§809.91. Minimum Requirements for Providers**

21
22 **COMMENT:** One commenter expressed concerns over the requirement that all CCS
23 providers be Texas Rising Star. The commenter stated that there will be a percentage of
24 providers that will not participate, despite the financial consequences, or cannot meet the
25 criteria, and this will result in fewer providers available to parents in the workforce area.
26 This contradicts the effort to assist parents that are attempting to enter the workforce
27 because there will be fewer options, fewer placements, and longer waitlists.
28

29 One Board expressed similar concerns. The Board stated that it seems more logical that
30 the new requirement would be to keep the plan for the Entry Level Rating to serve as a
31 Child Care Services provider, rather than have them continue to Texas Rising Star status.
32 Setting some type of points threshold status for an Entry Level Rating would require that
33 CCS providers maintain a certain level of quality standard, without the volume and
34 expense of making all become Texas Rising Star. The Board stated that forcing all
35 providers to become Texas Rising Star to continue serving as CCS takes away the
36 uniqueness and voluntary piece of the Texas Rising Star program. Not only that, but
37 TWC will be further limiting CCS capacity that is available in the workforce area. Some
38 providers will stop serving as CCS providers simply because they do not want to be
39 forced to go down this route. The Board currently has 13 Texas Rising Star providers and
40 pays roughly 60 providers every two weeks. It does not seem logical that all will make it
41 to Entry Level or to Texas Rising Star status. The Board also asked if additional funding
42 will be allocated to assist Boards with the additional volume of work that will be required
43 in the future to move all providers to an Entry Level Rating and ultimately to Texas
44 Rising Star accreditation.
45

46 **RESPONSE:** State law requires all TWC-funded regulated providers participate in the

1 Texas Rising Star program. TWC will work with Boards to support providers during the
2 transition to mandatory Texas Rising Star. Texas Government Code, §2308.3155, as
3 amended by HB 1792, requires TWC to competitively procure a single entity to oversee
4 Texas Rising Star assessments, previously a responsibility of the Board. The procured
5 centralized entity will allow Boards to focus their efforts on mentoring programs through
6 the Texas Rising Star program.
7

8 Further, the Commission will also provide additional resources for Boards to assist
9 providers with becoming Texas Rising Star certified. In state fiscal year (SFY) 2022, the
10 Commission distributed \$17 million to Boards for both the assessment and mentoring
11 functions. Starting in SFY 2023, the Commission will increase the distribution to \$22
12 million, which will be dedicated only for mentoring services to assist providers to
13 achieve, maintain, and increase the level of Texas Rising Star certification. No changes
14 were made in response to these comments.
15

16 **§809.92. Provider Responsibilities and Reporting Requirements.**
17

18 **COMMENT:** Regarding the requirement for reporting instances in which the provider
19 charges parents more than the assessed PSoC, commenters recommended that TWC
20 ensure adequate support and timelines for providers to submit documentation regarding
21 PSoC, as the amended rule requires substantial amounts of documentation from the
22 provider that may distract them from necessary operations.
23

24 **RESPONSE:** CCDF regulations require the Lead Agency to track the extent to which
25 child care providers charge amounts to families more than the required family co-
26 payment, including data on the size and frequency of any such payments. The
27 Commission does not prohibit Boards from allowing providers to charge parents amounts
28 above the PSoC. However, if a Board allows this and if a provider does charge parents,
29 then the provider, as required by federal regulations, must report this to the Board. TWC
30 will issue guidance to Boards stating that the Board will only be allowed to require the
31 provider to submit the minimum information required under federal regulations. No
32 changes were made in response to these comments.
33

34 **COMMENT:** One Board appreciated the flexibility to continue to determine locally
35 whether to allow child care providers to charge parents more than the assessed PSoC in
36 instances where the provider's published rate exceeds the Board's reimbursement rate.
37

38 **RESPONSE:** The Commission appreciates the comment. No changes were made in
39 response to this comment.
40

41 **§809.93. Provider Reimbursement.**
42

43 **COMMENT:** One Board supported paying providers prospectively to align with
44 generally accepted payment practices within the child care industry. The Board
45 appreciates the Commission's acknowledgement that this change will require detailed
46 operational guidance and thus additional implementation time; the Board looks forward

1 to working with the Commission on the operational details required to implement this
2 new policy.

3
4 Other commenters greatly appreciated the decision to allow Boards to reimburse child
5 care providers prospectively. The commenters stated that paying providers in advance of
6 services mirrors the payment structure for providers not accepting subsidies and allows
7 for planning, stability, and sustainability.

8
9 **RESPONSE:** The Commission appreciates the comments. No changes were made in
10 response to these comments.

11
12 **COMMENT:** One Board asked if relative providers will be paid prospectively.

13
14 **RESPONSE:** The Commission appreciates the comment and clarifies that the intent of
15 the rule is to pay providers using standard payment practices of the regulated child care
16 industry. Unregulated relative providers do not fall under this requirement. At adoption,
17 the Commission modified §809.93(j) to clarify that only regulated child care providers
18 will be paid prospectively.

19
20 **COMMENT:** Several providers were highly in favor of the reimbursement being based
21 on enrollment rather than attendance and that the reimbursement be paid prospectively.

22
23 **RESPONSE:** The Commission appreciates the support and notes that rules have required
24 payments based on enrollments since 2016. No changes were made in response to this
25 comment.

26
27 **COMMENT:** One Board requested that the Commission reconsider paying providers
28 prospectively. The Board believes paying providers ahead of time would be more work
29 intensive for staff and that reconciling the payments would be a continual, arduous, and
30 ongoing process, leaving the process open to mistakes and that the reconciling process
31 would continue for weeks after the initial payment was made. Using taxpayer funds, it
32 seems counterintuitive to pay for services before they are rendered. Additionally, the
33 Board stated it is unclear how the Board's finance department would note a pre-paid
34 expense. The Board noted that the new CCCMS should have a built-in way to process
35 these types of payments easily and accurately.

36
37 The Board also asked how the new attendance system relates the new prospective
38 payment process and if the new attendance system will assist the Board's finance staff in
39 reconciling after the payments are made.

40
41 **RESPONSE:** Federal regulations require that providers be paid in accordance with
42 standard payment practices, and paying providers prospectively is allowed by the federal
43 regulations. Paying prospectively should not be more labor intensive than the current
44 payment process. As noted previously, payments to providers have been based on the
45 child enrollment (not on the child's attendance) since 2016. Paying the provider at the
46 beginning of the two-week enrollment period should not be any more labor intensive than

1 paying after the two-week enrollment period. The only change is in the timing of the
2 payment. Additionally, with the payment based on enrollment and not attendance, there
3 should be no need to reconcile the payments with attendance. TWC is reviewing all
4 functionality for the new CCCMS, which includes the functionality to assist Boards in
5 implementing prospective payments. No changes were made in response to this
6 comment.

7
8 **COMMENT:** Regarding prospective reimbursements, several providers recommend that
9 if a provider terminates a family due to nonpayment or failure to comply with behavior
10 code of conduct, then that provider is not required to pay back that reimbursement. The
11 intent behind this specification is to not punish providers from a family's failure to
12 comply with the parent responsibilities of CCS or any circumstances that put others in
13 harm's way.

14
15 **RESPONSE:** Federal requirements prevent multiple child care providers from being paid
16 for the same child within the same time frame. If the provider ends care due to the
17 parent's failure to pay the PSoC, the provider should follow Board policies and
18 procedures regarding reimbursement and payment of PSoC. However, if the termination
19 is based on provider policy, the provider will need to pay back the prospective payment
20 amount. No changes were made in response to this comment.

21
22 **COMMENT:** Regarding prospective reimbursements, one commenter requested
23 clarification for situations in which the child has an enrollment authorization, but has not
24 been in attendance, the parent will not communicate with the program, and the program
25 continues to keep the child "enrolled" and receives reimbursements. The commenters
26 asked at what point would the child be "disenrolled."

27
28 **RESPONSE:** Termination of enrollment should be taken by the Board in accordance
29 with attendance policies that are currently in rule and guidance. The Commission notes
30 that this requirement was to be effective October 1, 2023. The Commission extends the
31 effective date in the rule to December 1, 2023, to afford Boards additional time for
32 preparation. At adoption, the Commission modified the date in §809.93(j).

33 34 **§809.95. Provider Automated Attendance Agreement**

35
36 **COMMENT:** Several providers recommended using a system that is integrated with
37 Child Care Management Systems such as Procure, Brightwheel, Kinderlime, Jackrabbit,
38 etc. The commenters' experience with the previous point-of-service devices and
39 attendance cards were not a positive nor productive one for providers or families.

40
41 **RESPONSE:** TWC is reviewing all available functionality of the automated attendance
42 system during implementation to address this recommendation. No changes were made in
43 response to this comment.

1 **§809.96. Contracted Slots Agreements**

2
3 **COMMENT:** Commenters recommended that Boards and providers jointly develop and
4 implement procedures to manage enrollment and waitlists most efficiently for contracted
5 slots.

6
7 **RESPONSE:** Boards are required to enter into a contract with an eligible provider.
8 Through this jointly developed contract, it is possible to focus on and implement
9 procedures to most efficiently manage enrollment and waitlists. Each Board can take into
10 consideration priorities of its area and include this "contracted slots agreement" strategy
11 in the Board Plan, as described in §809.12. No changes were made in response to this
12 comment.

13
14 **§809.131. Requirements for the Texas Rising Star Program**

15
16 **COMMENT:** Several providers supported the Entry Level point threshold and changing
17 Pre-Star to Entry Level.

18
19 **RESPONSE:** The Commission appreciates the comments. No changes were made in
20 response to this comment.

21
22 **COMMENT:** One Board requested clarification on who will review the CCR points
23 threshold for an Entry Level Rating and asked if this process will be automated with the
24 new CCCMS.

25
26 **RESPONSE:** Because this is a requirement for a provider agreement with the Board, the
27 Board or Board contracted staff would review the points threshold. TWC is working with
28 the Children's Learning Institute (CLI) to provide an automated report of child care
29 programs that comply with the Entry Level designation points threshold. Specific
30 guidance on implementation of this report will be provided once finalized. No changes
31 were made in response to this comment.

32
33 **COMMENT:** Commenters encouraged TWC to ensure adequate and ongoing support,
34 resources, and communication for Boards and mentors as they onboard and support a
35 significant number of new programs into the Texas Rising Star program.

36
37 **RESPONSE:** TWC will continue to fund support provided by CLI and via CLI Engage.
38 No changes were made in response to this comment.

39
40 **COMMENT:** Commenters encouraged TWC to work with vendors who conduct
41 background checks and finger printing to ensure increased and more rapid access to
42 checks of prospective employees to expedite hiring.

43
44 **RESPONSE:** The Commission notes that this is a CCR function. CCR works with their
45 background check vendor. No changes were made in response to this comment.
46

1 **COMMENT:** Regarding the workforce registry requirement, one commenter expressed
2 concerns that some centers do not have the technology in place to access CLI Engage and
3 Texas Early Childhood Professional Development System (TECPDS). The commenters
4 stated that the system is very frustrating and challenging to upload documents onto
5 TECPDS via a phone.
6

7 **RESPONSE:** Boards may choose to use their 2 percent child care quality funding to
8 provide scanners or other technology to child care programs on a loan or consistent basis
9 to meet the requirements of Texas Rising Star. Additionally, Boards may choose to staff
10 personnel specific to this support, open their offices outside of "normal work hours," or
11 outfit their mentors with this technology to support the child care programs in meeting
12 this requirement. No changes were made in response to this comment.
13

14 **COMMENT:** Commenters recommended that the Commission extend the workforce
15 registry requirement to require all staff to be registered in TECPDS. The commenters also
16 encouraged TWC to support the ongoing maintenance of TECPDS, as well as the ability
17 for Boards to extract data to drive decision-making on their workforce.
18

19 **RESPONSE:** TWC will review data regarding participation within the Workforce
20 Registry to determine any future changes to requirements regarding participation. Boards
21 may choose to offer incentives to providers to have all staff participate in the Workforce
22 Registry. TWC will also continue to fund TECPDS to provide enhancements and
23 supports via the Workforce Registry. No changes were made in response to this
24 comment.
25

26 **COMMENT:** One Board requested clarification on the date by which Entry Level
27 designation for existing CCS providers must be met.
28

29 **RESPONSE:** Existing CCS child care programs will have up to six months from the
30 effective date of the rules to obtain Entry Level designation. No changes were made in
31 response to this comment.
32

33 **COMMENT:** Regarding the six-month timeline for current providers with agreements to
34 meet the Entry Level requirements, one commenter asked why it would be a six-month
35 window from their last licensing inspection. The commenter contended that providers
36 that were most recently inspected and received the violations would be penalized by the
37 time frame, while those that were inspected earlier would benefit from this time frame.
38 By only providing a six-month window from the rollout date of the program, TWC is
39 providing an opportunity for centers that had an inspection at approximately the prior 12-
40 month mark. Their violations in months one through six would fall off with that six-
41 month extension. However, the providers that had an inspection within the last six
42 months will not have enough time at the sixth-month mark for any licensing history
43 within their first one to six months of the 12-month window to fall off of their points
44 threshold.
45

46 **RESPONSE:** The Commission notes that this timeline is specific to child care programs

1 that are currently providing TWC-funded child care and do not meet the Entry Level
2 designation points threshold. While up to the most recent 12 months of a provider's
3 licensing history is reviewed, the situation described could happen at any time. No
4 changes were made in response to this comment.
5

6 **COMMENT:** Regarding the 24-month time limit for Entry Level providers, several
7 providers were concerned that Entry Level providers will not be eligible for certification
8 until after the first 12 months of the 24-month period.
9

10 **RESPONSE:** The Commission appreciates the comments. The Commission clarifies that
11 providers can be assessed for certification at any time in which they meet eligibility
12 screening requirements, not just after the first 12 months of Entry Level designation. At
13 adoption, the Commission modified §809.131(e) to state that providers will be reviewed
14 for certification no later than the 12th month of the 24-month period.
15

16 **COMMENT:** Several providers and one Board disagreed with the requirement that no
17 new family referrals are made in the last six months. The Board stated that restricting
18 new enrollments for the last six months of the providers time frame to become an Entry
19 Level Rating facility will further limit Board's enrollment processes and restrict access to
20 child care in our Board area and limit parent choices.
21

22 **RESPONSE:** The intent of not allowing new family referrals after the 18th month of the
23 Entry Level designation is to minimize the impact of needing to place children in a
24 facility for a short-term if the provider fails to meet certification during the remainder of
25 the provider's Entry Level designation.
26

27 **COMMENT:** One commenter asked if there will be a rolling schedule for conducting
28 assessments during the initial 12-month Entry Level designation period.
29

30 **RESPONSE:** Providers will be assessed for certification at any time in which they meet
31 eligibility and screening requirements. At minimum, each Entry Level provider will be
32 screened at 12-months to determine eligibility for assessment. TWC will have a
33 centralized entity overseeing assessments and these will be conducted timely and
34 efficiently. No changes were made in response to this comment.
35

36 **COMMENT:** One commenter asked if mentors will be expected to do a continuous
37 quality improvement plan (CQIP) with each center at the beginning of the Entry Level
38 process.
39

40 **RESPONSE:** CQIPs are required for any program working toward Texas Rising Star,
41 therefore, mentors will create a CQIP in collaboration with the child care program for
42 attaining Texas Rising Star certification. No changes were made in response to this
43 comment.
44

45 **COMMENT:** One Board requested clarification as to whether a non-CCS provider that
46 wishes to become a CCS provider must meet the requirements for Entry Level

1 designation in order to sign an agreement with a Board to begin providing services, or if
2 there is a grace period before such time as the new CCS provider must meet the
3 requirements for Entry Level designation as set forth in §809.131(b).
4

5 **RESPONSE:** Once the rule is effective, any child care program not currently CCS and is
6 wanting to provide CCS will be required to meet the Entry Level designation points
7 threshold before an agreement is signed and children are referred. No changes were made
8 in response to this comment.
9

10 **COMMENT:** One Board found the instructions regarding the allowable length of
11 months for each type of provider to gain Entry Level designation or become certified as
12 Texas Rising Star to be confusing. The Board requested a flowchart to easily understand
13 the time limits for each type of potential provider is suggested.
14

15 **RESPONSE:** The Commission appreciates the comment and has included timeline tables
16 in the preamble with the milestones and Entry Level time limits for current and new CCS
17 providers. Additionally, the Commission understands the confusion surrounding the
18 various milestone dates for a provider to become certified described in proposed
19 §809.131(e)(1) and (2). At adoption, the Commission amended §809.131(e) to remove
20 paragraphs (1) and (2) and to streamline the process for an Entry Level provider to
21 become a certified Texas Rising Star provider. To further create consistent language
22 within the chapter, the Commission also amended §809.131(e) to include the provision
23 that providers located in a child care desert or serving an underserved population are
24 allowed to have new family referrals during the Entry Level designation, if approved by
25 TWC. This aligns §809.131(e) with §809.132(h)(3), which also allows providers in child
26 care deserts or serving underserved populations to have new family referrals while on
27 suspension status, if approved by TWC.
28

29 **COMMENT:** Regarding the 36-month extension waiver period, one commenter stated
30 that this extension is too lengthy and that programs should be expected to complete
31 certification in 12 to 18 months. Additionally, the commenter stated that the language
32 allowing waivers due to "conditions outside of their control" is too vague and needs to be
33 defined so that waivers are not abused.
34

35 **RESPONSE:** TWC will review each child care program and make a case-by-case
36 determination if it qualifies for an extension waiver and how long that waiver may be
37 granted. The waiver is not required to be 36 months, but state statute requires that it
38 cannot exceed 36 months. No changes were made in response to this comment.
39

40 **COMMENT:** One Board commented that the 36-month extension language is not clear
41 on what the initial time frame is that the additional 36 months are attached to.
42

43 **RESPONSE:** The program has 24 months to obtain at minimum a Two-Star
44 certification. If at 24 months, the program still does not pass the certification screening
45 and qualifies for an extension waiver, it is applied at that time. At adoption, the
46 Commission modified §809.131(f) for clarification.

1
2 **§809.132. Impacts on Texas Rising Star Certification**
3

4 **COMMENT:** Two Boards requested clarification on the difference between suspension
5 status and loss of certification. One of the Boards stated that §809.132 is unclear on how
6 providers are placed on suspension status and asked if the new suspension status aligns
7 with current Texas Rising Star Guidelines in which a provider must wait 12 months
8 before it can reapply after losing its Texas Rising Star status.
9

10 **RESPONSE:** Legislation requires programs participating in the CCS program to be
11 certified as Texas Rising Star; therefore, a program that would have previously lost its
12 certification due to CCR screening issues or noncompliance with required Texas Rising
13 Star standards, falls into a unique category of being a certified provider, but with
14 suspended certification and not eligible for enhanced reimbursement or an Entry Level
15 rating. Once the program has completed its suspension status time frame and does not
16 meet certification requirements, it will lose its certification. No changes were made in
17 response to this comment.
18

19 **COMMENT:** Several providers expressed concerns about the timeline for suspensions.
20 The requirement is to be recertified with a star-level certification within 12 months of
21 being placed on suspension status. However, according to proposed §809.132(f) and (h),
22 the provider cannot be assessed until after the initial six months of the suspension status,
23 resulting in only a six-month period to get recertified after being placed on suspension
24 status. Additionally, it states that if the provider is not certified at least at the Two-Star
25 level by the sixth month of the suspension, the provider will not receive new family
26 referrals during the remainder of the suspension. This provides no time allowed to get
27 recertified without an immediate referral penalty. The providers stated that after being
28 involved in certifications, they have discovered that a six-month window is an unrealistic
29 time frame for both providers and assessors.
30

31 **RESPONSE:** The Commission appreciates the comments. To clarify the timeline for
32 suspension, at adoption the Commission modified §809.132(f) to state that suspended
33 providers are eligible for reassessment after six months of the 12-month suspension
34 period. The Commission also appreciates the comments regarding the restrictions on new
35 family referrals in the last six months that prohibit new referrals without allowing the
36 provider adequate time after the initial six-month period to become recertified.
37 Accordingly, at adoption, the Commission extended the period available for providers to
38 achieve their Two-Star status to 15 months, which will allow for a three-month period
39 between the mandatory initial six-month suspension and the requirement for no new
40 referrals during the last six months of the suspension period.
41

42 **COMMENT:** Several providers expressed concerns about the criteria for placing a
43 certified provider on suspension status. A provider will be placed on suspension status if
44 the provider has "had 15 or more total high or medium-high weighted licensing
45 deficiencies during the most recent 12-month licensing history." The providers were
46 concerned that the criteria does not line up with the Entry Level designation threshold of

1 75 points. More specifically, if a provider accumulated 15 medium-high deficiencies in a
2 12-month licensing history, the points would total to 45, which is significantly lower than
3 the 75-point threshold. Commenters recommended this to be changed to the 75-point
4 threshold based on the points being assigned to CCR-weighted high (5 points each) and
5 medium-high (3 points each) deficiencies.
6

7 **RESPONSE:** The difference in the threshold criteria for Entry Level and for certified
8 providers is intentional. The Entry Level designation is a lower threshold as a step toward
9 higher quality. However, certified Texas Rising Star providers provide an even higher
10 quality of care and compliance. Thus, the screening form compliance and impact criteria
11 are at a higher level than Entry Level designation for any certified providers. No changes
12 were made in response to this comment.
13

14 **COMMENT:** One Board requested clarification regarding the consequences if a certified
15 provider in suspension status does receive a deficiency as described in §809.132(b) - (d)
16 during the first six months of suspension status. The Board specifically asked whether the
17 six months start over or will the provider have to wait the full 12 months to be assessed
18 for certification reinstatement.
19

20 **RESPONSE:** Current guidance will remain, requiring the provider on suspension status
21 to have six consecutive months of clean CCR history (no additional deficiencies as
22 described in §809.132(b) - (d)) within the adopted 15-month suspension period. If the
23 provider does not have six consecutive months of clean CCR history by the end of the 15-
24 month suspension period, the provider loses certification and will be required to be
25 eligible for star-level certification prior to returning as a CCS provider. No changes were
26 made in response to this comment.
27

28 **§809.133. Application and Assessments for the Texas Rising Star Certification**

29

30 **COMMENT:** One Board requested clarification on the Texas Rising Star Certification
31 application process. The Board asked if applications would continue to be sent initially to
32 Boards, who then in turn would forward these applications to the newly designated
33 assessment entity.
34

35 **RESPONSE:** With the enhancements made to Engage, TWC recommends that Boards
36 encourage programs to continue to use the online upload feature within Engage to submit
37 their application documents. This allows for an automated notification to the centralized
38 entity that a provider is ready for assessment. The process will be detailed in
39 implementation guidance to the Boards. No changes were made in response to this
40 comment.
41

42 **COMMENT:** One Board requested verification that the new assessment entity will
43 assume the responsibility of conducting quarterly licensing screenings. Assuming that is
44 the case, the Board asked what date that transition will occur.
45

46 **RESPONSE:** The centralized entity will assume all assessment duties, to include

1 screenings prior to assessment and quarterly screening. Transfer of these duties will be
2 determined once the contract is executed and an approved business plan is in place. TWC
3 estimates that the statewide assessment entity will be procured and begin operations by
4 late summer 2023. In the transition period between the effective date of the rules and the
5 date TWC designates the assessment entity, the Boards will continue to perform the tasks
6 of the designated entity outlined in Chapter 809, Subchapter G. At adoption, the
7 Commission added §809.133(h) to clarify that the Boards will be responsible for the tasks
8 assigned to the Texas Rising Star assessor entity, within their respective workforce areas,
9 until the assessor entity is procured and designated by TWC.

10 **§809.134. Minimum Qualifications for Texas Rising Star Staff**

11
12
13 **COMMENT:** One commenter requested clarification on the time frame for mentors to
14 attain microcredentialing. The commenter expressed concerns with the process. The
15 commenter has been participating in microcredentialing since September 2021 and has
16 only made 10 submissions because it is taking CLI Engage approximately 4.3 weeks to
17 grade a submission. After nine months in the program, the commenter has only met 31 of
18 the 253 competencies and earned 28 badges.

19
20 **RESPONSE:** There is no time frame attached to obtaining the mentoring microcredential
21 or a prescribed number of badges earned. Mentors are required to participate in the
22 program, which includes attending a monthly Peer Learning Community and submission
23 of videos. No changes were made in response to this comment.

24
25 **COMMENT:** One Board requested that in addition to the Texas Rising Star standards
26 training offered virtually, that TWC staff continue to offer this training in person, and on
27 a more frequent basis, to address the anticipated hiring increase that will be required to
28 serve all Entry Level and certified Texas Rising Star providers.

29
30 **RESPONSE:** To ensure the integrity, consistency, and validity of the assessment training
31 and certification program, all new staff will be required to complete the coursework as
32 currently provided. TWC and CLI can discuss options to collaborate on providing some
33 additional in-person training sessions on applicable topics. No changes were made in
34 response to this comment.

35
36 **COMMENT:** One Board expressed gratitude for the flexibility for Boards to determine
37 "suitable" experience in early childhood education for mentors with associate degrees.
38 The Board requested clarification regarding how current mentor staff who have associate
39 degrees and suitable experience in early childhood education can have their TWC
40 waivers rescinded, as it appears this rule change will no longer require such a waiver for
41 those with suitable experience. The Board also requested operational guidance as to any
42 required local policies/procedures needed to document suitable experience.

43
44 **RESPONSE:** Boards may submit to TWC for review any staff résumés and transcripts
45 that the Board is unsure fits the suitable experience allowance. TWC guidance (WD
46 Letter 02-21) will be revised to indicate this change and provide some clarifying

1 terminology on suitable experience and current waivers. No changes were made in
2 response to this comment.

3
4 **COMMENT:** One Board expressed concerns that there are minimum education and
5 experience requirements for mentors (in addition to the requirement to attain
6 microcredentials), but the minimum education and experience requirements for assessors
7 has been replaced by the requirement only to attain and maintain Texas Rising Star
8 Assessor Certification. If attaining/maintaining the Texas Rising Star Assessor
9 Certification is adequate to replace the minimum education and experience requirement
10 for assessors, attaining mentor microcredentials should suffice for the
11 education/experience requirements for mentors, or assessor staff should be required to
12 meet minimum education/experience standards just as mentor staff must. The Board is
13 seeking consistency in education/experience/certification requirements amongst both
14 entities.

15
16 **RESPONSE:** The centralized entity will be responsible for identifying the education and
17 experience requirements for the assessment staff. TWC will require, at minimum, the
18 participation in and certification through the assessment training and certification
19 program. Mentors do not have a certification similar to the assessor certification
20 requirements; and, therefore, must have minimum education requirements. No changes
21 were made in response to this comment.

22 23 **§809.135. Texas Rising Star Process for Reconsideration**

24
25 **COMMENT:** One Board expressed support for the transfer of responsibility for Texas
26 Rising Star assessment reconsiderations to the TWC's designated assessment entity.

27
28 **RESPONSE:** The Commission appreciates the support. No changes were made in
29 response to this comment.

30 31 **PART IV. STATUTORY AUTHORITY**

32 The rules are adopted under Texas Labor Code, §301.0015 and §302.002(d), which provide
33 TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the
34 effective administration of TWC services and activities.

35
36 The adopted rules implement changes made to Texas Government Code, Chapter 2308 by House
37 Bill (HB) 1792, HB 2607, and Senate Bill 1555, 87th Texas Legislature, Regular Session (2021).

1 CHAPTER 809. CHILD CARE SERVICES

2
3 SUBCHAPTER A. GENERAL PROVISIONS

4
5 §809.1. Short Title and Purpose.

- 6
- 7 (a) The rules contained in this chapter may be cited as the Child Care Services
- 8 rules~~Rules~~.
- 9
- 10 (b) The purpose of the rules contained in this chapter~~these rules~~ is to interpret and
- 11 implement the requirements of state and federal statutes and regulations governing
- 12 child care and quality improvement activities funded through the Texas Workforce
- 13 Commission (Commission), to include the Child Care and Development Fund
- 14 (CCDF), which includes:
- 15
- 16 ~~(1) the Child Care and Development Fund (CCDF), which includes:~~
- 17
- 18 (1)~~(A)~~ funds allocated to local workforce development areas (workforce areas) as
- 19 provided in §800.58 of this title;
- 20
- 21 (2)~~(B)~~ private donated funds described in §809.17 of this chapter~~§809.17(b)(1)~~;
- 22
- 23 (3)~~(C)~~ public transferred funds described in §809.17 of this chapter~~§809.17(b)(2)~~;
- 24
- 25 (4)~~(D)~~ public certified expenditures described in §809.17 of this
- 26 chapter~~§809.17(b)(3)~~; and
- 27
- 28 (5)~~(E)~~ funds used for children receiving protective services described in §809.49
- 29 of this chapter.
- 30
- 31 ~~(2) other funds that are used for child care services allocated to workforce areas~~
- 32 ~~under Chapter 800 of this title.~~
- 33
- 34 (c) The rules contained in this chapter apply to other funds that are used for child care
- 35 services allocated to workforce areas under Chapter 800 of this title, except for the
- 36 following:
- 37
- 38 (1) Funds used for quality improvement activities described in §809.16 of this
- 39 chapter;
- 40
- 41 (2) Assessing the parent share of cost described in §809.19 of this chapter; and
- 42
- 43 (3) Subchapter C of this chapter (relating to Eligibility for Child Care Services).
- 44
- 45
- 46 (d)~~(e)~~ The rules contained in this chapter shall apply to the Commission, Local Workforce

1 Development Boards (Boards), their child care contractors, child care providers, and
2 parents applying for or eligible to receive child care services.

3
4 **§809.2. Definitions.**

5
6 The following words and terms, when used in this chapter, shall have the following
7 meanings, unless the context clearly indicates otherwise.

- 8
9 (1) Attending a job training or educational program--An individual is attending a
10 job training or educational program if the individual:
11
12 (A) is considered by the program to be officially enrolled;
13
14 (B) meets all attendance requirements established by the program; and
15
16 (C) is making progress toward successful completion of the program as
17 demonstrated through continued enrollment in the program~~determined~~
18 ~~by the Board~~ upon eligibility redetermination as described in §809.42
19 ~~§809.42(b)~~ of this chapter.
20
21 (2) Child--An individual who meets the general eligibility requirements contained
22 in this chapter for receiving child care services.
23
24 (3) Child care contractor--The entity or entities under contract with the Board to
25 manage child care services. This includes contractors involved in determining
26 eligibility for child care services, contractors involved in the billing and
27 reimbursement process related to child care ~~subsidies~~, as well as contractors
28 involved in the funding of quality improvement activities as described in
29 §809.16 of this chapter.
30
31 (4) Child Care Desert--An area described in Texas Labor Code, §302.0461 in
32 which the number of children under age six with working parents is at least
33 three times greater than the capacity of licensed child care providers in the
34 area, based on data published annually by the Commission.
35
36 (5)(4) Child Care Regulation (CCR)~~Licensing (CCL)~~--Division in the Texas Health
37 and Human Services Commission responsible for protecting the health, safety,
38 and well-being of children who attend or reside in regulated child care
39 facilities and homes. ~~Previously a division of the Texas Department of Family~~
40 ~~and Protective Services (DFPS), CCL is now part of the Texas Health and~~
41 ~~Human Services Commission (HHSC).~~
42
43 (6)(5) Child care services--Child care subsidies and quality improvement activities
44 funded by the Commission.
45
46 (7)(6) Child care subsidies--Commission-funded child care reimbursements to an

1 eligible child care provider for the direct care of an eligible child.

2
3 ~~(8)(7)~~ Child experiencing homelessness--A child who is homeless, as defined in the
4 McKinney-Vento Act (42 USC 11434(a)), Subtitle VII-B, §725.

5
6 ~~(9)(8)~~ Child with disabilities--A child who has a physical or mental impairment that
7 substantially limits one or more major life activities, has a record of such an
8 impairment, or is regarded as having such an impairment. Major life activities
9 include, but are not limited to, caring for oneself; performing manual tasks;
10 walking; hearing; seeing; speaking, or breathing; learning; and working.

11
12 ~~(10)(9)~~ Educational program--A program that leads to:

13
14 (A) a high school diploma;

15
16 (B) a Certificate of High School Equivalency; or

17
18 (C) ~~an undergraduate~~~~postsecondary~~ degree from an institution of higher
19 education.

20
21 ~~(11)(10)~~ Excessive unexplained absences--More than 40 unexplained absences
22 within a 12-month eligibility period as described in ~~§809.78~~~~§809.78(a)(3)~~ of
23 this chapter.

24
25 ~~(12)(11)~~ Family--Two or more individuals related by blood, marriage, or decree of
26 court, who are living in a single residence and are included in one or more of
27 the following categories:

28
29 (A) Two individuals, married--including by common-law, and household
30 dependents; or

31
32 (B) A parent and household dependents.

33
34 ~~(13)(12)~~ Household dependent--An individual living in the household who is:

35
36 (A) an adult considered a dependent of the parent for income tax purposes;

37
38 (B) a child of a teen parent; or

39
40 (C) a child or other minor living in the household who is the responsibility of
41 the parent.

42
43 ~~(14)(13)~~ Improper payments--Any payment of Child Care Development Fund
44 (CCDF) grant funds that should not have been made or that was made in an
45 incorrect amount (including overpayments and underpayments) under
46 statutory, contractual, administrative, or other legally applicable requirements

governing the administration of CCDF grant funds and includes payments:

- (A) to an ineligible recipient;
- (B) for an ineligible service;
- (C) for any duplicate payment; and
- (D) for services not received.

~~(14)~~ (15) Job training program--A program that provides training or instruction leading to:

- (A) basic literacy;
- (B) English proficiency;
- (C) an occupational or professional certification or license; or
- (D) the acquisition of technical skills, knowledge, and abilities specific to an occupation.

~~(15)~~ (16) Listed family home--A family home, other than the eligible child's own residence, that is listed, but not licensed or registered with, ~~CCR~~ CCL pursuant to Texas Human Resources Code, §42.052(c).

~~(16)~~ (17) Military deployment--The temporary duty assignment away from the permanent military installation or place of residence for reserve components of the single military parent or the dual military parents. This includes deployed parents in the regular military, military reserves, or National Guard.

~~(17)~~ (18) Parent--An individual who is responsible for the care and supervision of a child and is identified as the child's natural parent, adoptive parent, stepparent, legal guardian, or person standing in loco parentis (as determined in accordance with Commission policies and procedures). Unless otherwise indicated, the term applies to a single parent or both parents.

~~(18) Pre-Star provider--A designation for subsidy providers licensed or registered by CCL, based on meeting the Screening Criteria for Subsidized Child Care, which is further defined in the CCDF State Plan.~~

(19) Protective services--Services provided when a child:

- (A) ~~a child~~ is at risk of abuse or neglect in the immediate or short-term future and the child's family cannot or will not protect the child without Texas Department of Family and Protective Services (DFPS) Child Protective

1 Services (CPS) intervention;

2
3 (B) ~~a child~~ is in the managing conservatorship of DFPS and residing with a
4 relative or a foster parent; or

5
6 (C) ~~a child~~ has been provided with protective services by DFPS within the
7 prior six months and requires services to ensure the stability of the
8 family.

9
10 (20) Provider--A provider is defined as a:

11
12 (A) ~~a regulated child care provider as defined in paragraph (21) of this~~
13 ~~section~~;

14
15 (B) ~~a relative child care provider as defined in paragraph (22) of this section~~;
16 or

17
18 (C) ~~a listed family home as defined in paragraph (15) of this section~~, subject
19 to the requirements in §809.91(e)~~§809.91(b)~~ of this chapter.

20
21 (21) Regulated child care provider--A provider caring for an eligible child in a
22 location other than the eligible child's own residence that is:

23
24 (A) licensed by CCR~~ECL~~;

25
26 (B) registered with CCR~~ECL~~; or

27
28 (C) operated and monitored by the United States military services.

29
30 (22) Relative child care provider--An individual who is at least 18 years of age, and
31 is, by marriage, blood relationship, or court decree, the child's:

32
33 (A) grandparent;

34
35 (B) great-grandparent;

36
37 (C) aunt;

38
39 (D) uncle; or

40
41 (E) sibling (if the sibling does not reside in the same household as the
42 eligible child).

43
44 (23) Residing with--Unless otherwise stipulated in this chapter, a child is
45 considered to be residing with the parent when the child is living with, and
46 physically present with, the parent during the time period for which child care

1 services are being requested or received.

2
3 (24) Teen parent--A teen parent (teen) is an individual 18 years of age or younger,
4 or 19 years of age and attending high school or the equivalent, who has a child.

5
6 (25) Texas Rising Star program--A ~~voluntary~~, quality-based rating system of child
7 care providers participating in Commission-subsidized child care.

8
9 (26) Texas Rising Star provider--A regulated child care provider ~~certified as~~
10 meeting the Texas Rising Star program standards. Texas Rising Star providers
11 are ~~certified as a~~:

12
13 (A) designated as an Entry Level Provider;

14
15 (B)(A) certified as a Two-Star~~2-Star Program~~ Provider;

16
17 (C)(B) certified as a Three-Star~~3-Star Program~~ Provider; or

18
19 (D)(C) certified as a Four-Star~~4-Star Program~~ Provider.

20
21 (27) Working--Working is defined as:

22
23 (A) activities for which one receives monetary compensation such as a
24 salary, wages, tips, and commissions; ~~or~~

25
26 (B) participation in Choices or Supplemental Nutrition Assistance Program
27 Employment and Training (SNAP E&T) activities; or;

28
29 (C) engaging in job search at the time of eligibility determination or
30 redetermination as described in §809.56 of this chapter.

31
32 **SUBCHAPTER B. GENERAL MANAGEMENT**

33
34 **§809.13. Board Policies for Child Care Services.**

35
36 (a) A Board shall develop, adopt, and modify its policies for the design and management
37 of the delivery of child care services in a public process in accordance with Chapter
38 802 of this title.

39
40 (b) A Board shall maintain written copies of the policies that are required by federal and
41 state law, or as required under this chapter ~~requested by the Commission~~, and make
42 such policies available to the Commission and the public upon request.

43
44 ~~(c) At a minimum, a Board shall develop policies related to:~~

45
46 ~~(1) how the Board determines that the parent is making progress toward successful~~

1 completion of a job training or educational program, as described in §809.2(1)
2 of this chapter;

3
4 ~~(2) maintenance of a waiting list, as described in §809.18(b) of this subchapter;~~

5
6 ~~(3) assessment of a parent share of cost, as described in §809.19(a)(1) of this
7 subchapter, including:~~

8
9 ~~(A) provisions for a parent's failure to pay the parent share of cost, including
10 the reimbursement of providers, as a program violation that is subject to
11 early termination of child care services within a 12-month eligibility
12 period; and~~

13
14 ~~(B) criteria for determining the affordability of the parent share of cost, as
15 described in §809.19(d) and (e) of this subchapter;~~

16
17 ~~(4) maximum reimbursement rates, as provided in §809.20 of this subchapter,
18 including policies related to reimbursement of providers that offer
19 transportation;~~

20
21 ~~(5) family income limits, as described in Subchapter C of this chapter (relating to
22 Eligibility for Child Care Services);~~

23
24 ~~(6) provision of child care services to a child with disabilities under the age of 19,
25 as described in §809.41(a)(1)(B) of this chapter;~~

26
27 ~~(7) minimum activity requirements for parents, as described in §809.48 and
28 §809.50 of this chapter;~~

29
30 ~~(8) time limits for the provision of child care while the parent is attending an
31 educational program, as described in §809.41(b) of this chapter;~~

32
33 ~~(9) Board priority groups, as described in §809.43(a) of this chapter;~~

34
35 ~~(10) transfer of a child from one provider to another, as described in §809.71(3) of
36 this chapter, including a waiting period of two weeks before the effective date
37 of a transfer, except in cases in which the provider is subject to a CCL action,
38 as described in §809.94 of this chapter, or on a case-by-case basis by the
39 Board;~~

40
41 ~~(11) providers charging the difference between their published rate and the Board's
42 reimbursement rate as provided in §809.92(d) of this chapter;~~

43
44 ~~(12) procedures for fraud fact finding as provided in §809.111 of this chapter;~~

45
46 ~~(13) policies and procedures to ensure that appropriate corrective actions are taken~~

1 ~~against a provider or parent for violations of the automated attendance~~
2 ~~requirements specified in §809.115(d) and (e) of this chapter;~~

3
4 ~~(14) policies and procedures for contracted slots agreements as described in~~
5 ~~§809.96 of this chapter, if the Board opts to enter into such agreements; and~~

6
7 ~~(15) supporting direct referrals from recognized pre-K or HS/EHS partnerships, as~~
8 ~~described in §809.22 of this subchapter.~~

9
10 **§809.14. Coordination of Child Care Services.**

11
12 (a) A Board shall coordinate with federal, state, and local child care and early
13 development programs and representatives of local governments in developing its
14 Board plan and policies for the design and management of the delivery of child care
15 services, and shall maintain written documentation of its coordination efforts.

16
17 (b) Pursuant to Texas Education Code, §29.158, and in a manner consistent with federal
18 law and regulations, a Board shall coordinate with school districts, Head Start, and
19 Early Head Start program providers to ensure, to the greatest extent practicable, that
20 full-day, full-year child care is available to meet the needs of low-income parents
21 who are working or attending a job training or educational program.

22
23 (c) Pursuant to Texas Labor Code, §302.00436, a Board shall inform the local school
24 districts and open-enrollment charter schools in the Board's workforce area regarding
25 opportunities to partner with child care providers in the Board's area to expand
26 access to and provide facilities for prekindergarten (pre-K) programs.

27
28 **§809.15. Promoting Consumer Education.**

29
30 (a) A Board shall promote informed child care choices by providing consumer education
31 information to:

- 32
33 (1) parents who are eligible for child care services;
34
35 (2) parents who are placed on a Board's waiting list;
36
37 (3) parents who are no longer eligible for child care services; and
38
39 (4) applicants who are not eligible for child care services.

40
41 (b) The consumer education information, including consumer education information
42 provided through a Board's website, shall contain, at a minimum:

- 43
44 (1) information about the Texas Information and Referral Network/2-1-1 Texas
45 (2-1-1 Texas) information and referral system;

- 1 (2) the website and telephone number of ~~CCRCCL~~ so parents may obtain health
2 and safety requirements including information on:
3
4 (A) the prevention and control of infectious diseases (including
5 immunizations);
6
7 (B) building and physical premises safety;
8
9 (C) minimum health and safety training appropriate to the provider setting;
10 and
11
12 (D) the regulatory compliance history of child care providers;
13
14 (3) a description of the full range of eligible child care providers set forth in
15 §809.91 [of this chapter](#); and
16
17 (4) a description of programs available in the workforce area relating to school
18 readiness and quality rating systems, including:
19
20 (A) Texas Rising Star (TRS) Provider criteria, pursuant to Texas
21 Government Code, §2308.315; and
22
23 (B) integrated school readiness models, pursuant to Texas Education Code,
24 §29.160;
25
26 (5) a list of child care providers that meet quality indicators, pursuant to Texas
27 Government Code, §2308.3171;
28
29 (6) information on existing resources and services available in the workforce area
30 for conducting developmental screenings and providing referrals to services
31 when appropriate for children eligible for child care services, including the use
32 of:
33
34 (A) the Early and Periodic Screening, Diagnosis, and Treatment program
35 under 42 USC 1396 et seq.; and
36
37 (B) developmental screening services available under Part B and Part C of
38 the Individuals with Disabilities Education Act (20 USC 1419, 1431 et
39 seq.; and
40
41 (7) a link to the Agency's designated child care consumer education website.
42
43 (c) A Board shall cooperate with HHSC to provide 2-1-1 Texas with information, as
44 determined by HHSC, for inclusion in the statewide information and referral
45 network.
46

1 **§809.16. Quality Improvement Activities.**
2

3 (a) Child care funds allocated by the Commission pursuant to its allocation rules
4 (generally, Chapter 800, Subchapter B of this title (relating to Allocations), and
5 specifically §800.58 of this title (relating to Child Care)), including local public
6 transferred funds and local private donated funds, as provided in §809.17 of this
7 subchapter, to the extent they are used for nondirect care quality improvement
8 activities, ~~shall~~ may be expended in accordance with ~~45 CFR Part 98, §98.53, any~~
9 ~~applicable state laws, and~~ the CCDF State Plan.

10
11 (b) Boards must ensure compliance with 45 CFR Part 98 regarding construction
12 expenditures, as follows:

13
14 (1) State and local agencies and nonsectarian agencies or organizations.

15
16 (A) Funds shall not be expended for the purchase or improvement of land, or
17 for the purchase, construction, or permanent improvement of any
18 building or facility.

19
20 (B) Funds may be expended for minor remodeling, and for upgrading child
21 care facilities to ensure that providers meet state and local child care
22 standards, including applicable health and safety requirements.

23
24 (2) Sectarian agencies or organizations.

25
26 (A) The prohibitions in paragraph (1) of this subsection apply.

27
28 (B) Funds may be expended for minor remodeling only if necessary to bring
29 the facility into compliance with the health and safety requirements
30 established pursuant to 45 CFR Part 98.

31
32 (c) Expenditures certified by a public entity, as provided in ~~§809.17~~ ~~§809.17(b)(3)~~ of this
33 subchapter, may include expenditures for any quality improvement activity described
34 in 45 CFR Part 98.
35

36 **§809.18. Maintenance of a Waiting List.**
37

38 (a) The following provisions are effective prior to ~~December~~ **October** 1, 2023:
39

40 (1)~~(a)~~ A Board shall ensure that a list of parents and children waiting for child care
41 services, because of the lack of funding or lack of providers, is maintained and
42 available to the Commission upon request.

43
44 (2)~~(b)~~ A Board shall establish a policy for the maintenance of a waiting list that
45 includes, at a minimum:
46

1 (A)(1) the process for determining that the parent is potentially eligible for
2 child care services before placing the parent on the waiting list; and

3
4 (B)(2) the frequency in which the parent information is updated and
5 maintained on the waiting list.
6

7 (3)(e) A Board ~~shall~~ may exempt children from the waiting list who are directly
8 referred from a recognized pre-K or Head Start/Early Head Start (HS/EHS)
9 partnership as described in §809.22 of this ~~chapter~~ subchapter to a child care
10 provider to receive services in the contracted partnership program, ~~which is~~
11 subject to the availability of funding and the availability of subsidized slots at
12 the partnership site.
13

14 (b) The following provisions are effective ~~December~~ October 1, 2023:

15
16 (1) A Board shall ensure that a list of parents and children waiting for child care
17 services, because of the lack of funding or lack of providers, is maintained and
18 available to the Commission upon request.
19

20 (2) A Board shall ensure that the child is potentially eligible for child care services
21 prior to placing the child on the waiting list.
22

23 (3) A Board shall exempt children from the waiting list who are directly referred
24 from a recognized pre-K or HS/EHS partnership, as described in §809.22 of this
25 chapter, to a child care provider to receive services in the contracted partnership
26 program subject to the availability of funding and the availability of subsidized
27 slots at the partnership site.
28

29 (4) A Board shall contact the parent every three months and shall remove the child
30 from the waiting list if the parent indicates that child care services are no longer
31 required or does not respond to the Board regarding the continued need for child
32 care services.
33

34 §809.19. Assessing the Parent Share of Cost.

35
36 (a) The following provisions are effective prior to ~~December~~ October 1, 2023:

37
38 (1)(a) For child care funds allocated by the Commission pursuant to its allocation
39 rules (generally, Chapter 800, Subchapter B of this title (relating to
40 Allocations), and specifically, §800.58 of this title (relating to Child Care)),
41 including local public transferred funds and local private donated funds, as
42 provided in §809.17 of this subchapter, the following shall apply:-
43

44 (A)(1) A Board shall set a parent share of cost policy that assesses the parent
45 share of cost in a manner that results in the parent share of cost:
46

1 (i)(A) being assessed to all parents, except in instances when an
2 exemption under subparagraph (B) of this paragraph ~~(2) of this~~
3 ~~subsection~~ applies;

4
5 (ii)(B) being an amount determined by a sliding fee scale based on the
6 family's size and gross monthly income, including a possible
7 reexamination of the sliding fee scale if there are frequent
8 terminations for lack of payment pursuant to paragraph (4) of this
9 ~~subsection (e) of this section~~, which also may consider the number
10 of children in care;

11
12 (iii)(C) being an amount that is affordable and does not result in a
13 barrier to families receiving assistance;

14
15 (iv)(D) being assessed only at the following times:

16
17 (I)(i) initial eligibility determination;

18
19 (II)(ii) 12-month eligibility redetermination;

20
21 (III)(iii) upon the addition of a child in care;

22
23 (IV)(iv) upon a parent's report of a change in income, family
24 size, or number of children in care that would result in a
25 reduced parent share of cost assessment; and

26
27 (V)(v) upon resumption of work, job training, or education
28 activities following temporary changes described in
29 §809.51(a)(2) of this chapter, and upon resumption of
30 work, job training, or education activities during the three-
31 month continuation of care period described in §809.51(c)
32 of this chapter; and

33
34 (v)(E) not increasing above the amount assessed at initial eligibility
35 determination or at the 12-month eligibility redetermination based
36 on the factor in clause (ii) of this subparagraph ~~(B) of this~~
37 ~~paragraph~~, except upon the addition of a child in care as described
38 in clause (iv)(III) of this subparagraph ~~(D)(iii) of this paragraph~~.

39
40 (B)(2) Parents who are one or more of the following are exempt from paying
41 the parent share of cost:

42
43 (i)(A) Parents who are participating in Choices or who are in Choices
44 child care described in §809.45 of this chapter;

45
46 (ii)(B) Parents who are participating in SNAP E&T services or who are

1 in SNAP E&T child care described in §809.47 of this chapter;

2
3 ~~(iii)(C)~~ Parents of a child receiving Child Care for Children
4 Experiencing Homelessness as described in §809.52 of this
5 chapter; or

6
7 ~~(iv)(D)~~ Parents who have children who are receiving protective services
8 child care pursuant to §809.49 and §809.54(c) of this chapter,
9 unless DFPS assesses the parent share of cost.

10
11 ~~(C)(3)~~ Teen parents who are not covered under exemptions listed in
12 subparagraph (B) of this paragraph ~~(2) of this subsection~~ shall be
13 assessed a parent share of cost. The teen parent's share of cost is based
14 solely on the teen parent's income and size of the teen's family as defined
15 in §809.2 of this chapter.

16
17 ~~(b) For child care services funded from sources other than those specified in subsection~~
18 ~~(a) of this section, a Board shall set a parent share of cost policy based on a sliding~~
19 ~~fee scale. The sliding fee scale may be the same as or different from the provisions~~
20 ~~contained in subsection (a) of this section.~~

21
22 ~~(2)(e)~~ A Board shall establish a policy stating whether or not the Board will
23 reimburse ~~regarding reimbursement of~~ providers when parents fail to pay the
24 parent share of cost. If the Board does not reimburse providers under the
25 adopted policy, the Board may establish a policy requiring the parent pay the
26 provider before the family can be redetermined eligible for future child care
27 services.

28
29 ~~(3)(d)~~ A Board shall establish a policy regarding termination of child care services
30 within a 12-month eligibility period when a parent fails to pay the parent share
31 of cost. The Board's policy must include:

32
33 ~~(A)(1)~~ a requirement to evaluate and document each family's financial
34 situation for extenuating circumstances that may affect affordability of
35 the assessed parent share of cost pursuant to subparagraph (B) of this
36 paragraph ~~(2) of this subsection~~, and a possible temporary reduction
37 pursuant to paragraph (5) of this subsection ~~(g) of this section~~ before the
38 Board or its child care contractor may terminate care under this section;

39
40 ~~(B)(2)~~ general criteria for determining affordability of a Board's parent share
41 of cost, and a process to identify and assess the circumstances that may
42 jeopardize a family's self-sufficiency under paragraph (5) of this
43 subsection ~~(g) of this section~~;

44
45 ~~(C)(3)~~ maintenance of a list of all terminations due to failure to pay the parent
46 share of cost, ~~including family size, income, family circumstances, and~~

1 ~~the reason for termination~~, for use when conducting evaluations of
2 affordability, as required under [subparagraph \(D\) of this paragraph](#) ~~(4) of~~
3 ~~this subsection~~; and

4
5 ~~(D)(4)~~ the Board's definition of what constitutes frequent terminations and its
6 process for assessing the general affordability of the Board's parent share
7 of cost schedule, pursuant to [paragraph \(4\) of this subsection](#) ~~(e) of this~~
8 ~~section~~.

9
10 ~~(4)(e)~~ A Board with frequent terminations of care for lack of payment of the parent
11 share of cost must reexamine its sliding fee scale and adjust it to ensure that fees
12 are not a barrier to assistance for families at certain income levels.

13
14 ~~(f) A Board that does not have a policy to reimburse providers when parents fail to~~
15 ~~pay the parent share of cost may establish a policy to require the parent to pay~~
16 ~~the provider before the family can be redetermined eligible for future child care~~
17 ~~services.~~

18
19 ~~(5)(g)~~ The Board or its child care contractor may review the assessed parent share
20 of cost for a possible temporary reduction if there are extenuating circumstances
21 that jeopardize a family's self-sufficiency. The Board or its child care contractor
22 may temporarily reduce the assessed parent share of cost if warranted by these
23 circumstances. Following the temporary reduction, the parent share of cost
24 amount immediately prior to the reduction shall be reinstated.

25
26 ~~(6)(h)~~ If the parent is not covered by an exemption as specified in [paragraph \(1\)\(B\)](#)
27 [of this subsection](#) ~~(a)(2) of this section~~, then the Board or its child care
28 contractor shall not waive the assessed parent share of cost under any
29 circumstances.

30
31 ~~(7)(i)~~ If the parent share of cost, based on family income and family size, is
32 calculated to be zero, then the Board or its child care contractor shall not charge
33 the parent a minimum share of cost amount.

34
35 ~~(8)(j)~~ A Board may establish a policy to reduce the parent share of cost amount
36 assessed pursuant to [paragraph \(1\)\(A\)\(ii\) of this subsection](#) ~~(a)(1)(B) of this~~
37 ~~section~~ upon the parent's selection of a Texas Rising Star--certified provider.
38 Such Board policy shall ensure:

39
40 ~~(A)(1)~~ that the parent ~~continues~~~~continue~~ to receive the reduction if:

41
42 ~~(i)(A)~~ the Texas Rising Star provider loses Texas Rising Star
43 certification; or

44
45 ~~(ii)(B)~~ the parent moves or changes employment within the workforce
46 area and no Texas Rising Star--certified providers are available

1 to meet the needs of the parent's changed circumstances; and

2
3 ~~(B)(2)~~ that the parent no longer receives the reduction if the parent
4 voluntarily transfers the child from a Texas Rising Star--certified
5 provider to a non-Texas Rising Star--certified provider.

6
7 ~~(9)(k)~~ A Board may establish a policy to reduce the parent share of cost amount
8 assessed pursuant to paragraph (1)(A)(ii) of this subsection ~~(a)(1)(B) of this~~
9 ~~section~~ upon the child's referral for part-time or blended care. Such Board
10 policy shall ensure that:

11
12 ~~(A)(1)~~ the parent no longer receives the reduction if the referral is changed to
13 full-time care; and

14
15 ~~(B)(2)~~ a parent who qualifies for a reduction in parent share of cost for both
16 selecting a Texas Rising Star--certified provider (as defined in paragraph
17 (8) of this subsection ~~(j) of this section~~) and a child's part-time or blended
18 care referral will receive the greater of the two discounts.

19
20 (b) The following provisions are effective on ~~December~~ **October** 1, 2023:

21
22 (1) For child care funds allocated by the Commission pursuant to its allocation
23 rules (generally, Chapter 800, Subchapter B of this title (relating to
24 Allocations), and specifically, §800.58 of this title (relating to Child Care)),
25 including local public transferred funds and local private donated funds, as
26 provided in §809.17 of this subchapter, the following shall apply:

27
28 (A) The parent share of cost shall be:

29
30 (i) assessed to all parents, except in instances when an exemption
31 under subparagraph (C) of this paragraph applies; and

32
33 (ii) established by the Commission and determined by a sliding fee
34 scale based on the family's size and gross monthly income
35 determined in §809.44 of this chapter and as represented by a
36 percentage of the state median income (SMI) up to 85 percent SMI.

37
38 (B) A Board shall assess the parent share of cost in accordance with
39 subparagraph (A)(ii) of this paragraph and in a manner that results in the
40 parent share of cost:

41
42 (i) being assessed only at the following times:

43
44 (I) initial eligibility determination;

45
46 (II) 12-month eligibility redetermination;

1
2 (III) upon the addition of a child in care;

3
4 (IV) upon a parent's report of a change in income, family size, or
5 number of children in care that would result in a reduced
6 parent share of cost assessment; and

7
8 (V) upon resumption of work, job training, or education activities
9 following temporary changes described in §809.51(a) of this
10 chapter, and upon resumption of work, job training, or
11 education activities during the three-month continuation of
12 care period described in §809.51(c) of this chapter; and

13
14 (ii) not increasing above the amount assessed at initial eligibility
15 determination or at the 12-month eligibility redetermination, except
16 upon the addition of a child in care as described in subclause (i)(III)
17 of this subparagraph.

18
19 (C) Parents who are one or more of the following are exempt from paying the
20 parent share of cost:

21
22 (i) Parents who are participating in Choices or who are in Choices
23 child care described in §809.45 of this chapter;

24
25 (ii) Parents who are participating in SNAP E&T services or who are in
26 SNAP E&T child care described in §809.47 of this chapter;

27
28 (iii) Parents of a child receiving Child Care for Children Experiencing
29 Homelessness as described in §809.52 of this chapter; or

30
31 (iv) Parents who have children who are receiving protective services
32 child care pursuant to §809.49 and §809.54(c) of this chapter, unless
33 DFPS assesses the parent share of cost.

34
35 (D) Teen parents who are not covered under exemptions listed in
36 subparagraph (C) of this paragraph shall be assessed a parent share of
37 cost. The teen parent's share of cost is based solely on the teen parent's
38 income and size of the teen's family as defined in §809.2 of this chapter.

39
40 (2) A Board shall establish a policy stating whether or not the Board will
41 reimburse providers when parents fail to pay the parent share of cost. If the
42 Board does not reimburse providers under the adopted policy, the Board may
43 establish a policy requiring the parent pay the provider before the family can
44 be redetermined eligible for future child care services.

45
46 (3) A Board shall establish a policy regarding termination of child care services

1 within a 12-month eligibility period when a parent fails to pay the parent share
2 of cost. The Board's policy must include:

3
4 (A) a requirement to evaluate and document each family's financial situation
5 for extenuating circumstances that may affect affordability of the
6 assessed parent share of cost pursuant to subparagraph (B) of this
7 paragraph, and a possible temporary reduction pursuant to paragraph (4)
8 of this subsection before the Board or its child care contractor may
9 terminate care under this section;

10
11 (B) a process to identify and assess the circumstances that may jeopardize a
12 family's self-sufficiency under paragraph (4) of this subsection; and

13
14 (C) maintenance of a list of all terminations due to failure to pay the parent
15 share of cost.

16
17 (4) The Board or its child care contractor may review the assessed parent share of
18 cost for a possible temporary reduction if there are extenuating circumstances
19 that jeopardize a family's self-sufficiency. The Board or its child care
20 contractor may temporarily reduce the assessed parent share of cost if
21 warranted by these circumstances. Following the temporary reduction, the
22 parent share of cost amount immediately prior to the reduction shall be
23 reinstated.

24
25 (5) If the parent is not covered by an exemption as specified in paragraph (1)(C) of
26 this subsection, then the Board or its child care contractor shall not waive the
27 assessed parent share of cost under any circumstances.

28
29 (6) If the parent share of cost, based on family income and family size, is
30 calculated to be zero, then the Board or its child care contractor shall not
31 charge the parent a minimum share of cost amount.

32
33 (7) A Board may establish a policy to reduce the parent share of cost amount
34 assessed pursuant to paragraph (1)(A) of this subsection upon the parent's
35 selection of a Texas Rising Star--certified provider. Such Board policy shall
36 ensure:

37
38 (A) that the parent continues to receive the reduction if:

39
40 (i) the Texas Rising Star provider loses Texas Rising Star certification;
41 or

42
43 (ii) the parent moves or changes employment within the workforce area
44 and no Texas Rising Star--certified providers are available to meet
45 the needs of the parent's changed circumstances; and
46

1 (B) the parent no longer receives the reduction if the parent voluntarily
2 transfers the child from a Texas Rising Star--certified provider to a non-
3 Texas Rising Star--certified provider.

4
5 (8) A Board may establish a policy to reduce the parent share of cost amount
6 assessed pursuant to paragraph (1)(A) of this subsection upon the child's
7 referral for part-time or blended care. Such Board policy shall ensure that:

8
9 (A) the parent no longer receives the reduction if the referral is changed to
10 full-time care; and

11
12 (B) a parent who qualifies for a reduction in parent share of cost for both
13 selecting a Texas Rising Star--certified provider (as defined in paragraph
14 (7) of this subsection) and a child's part-time or blended care referral will
15 receive the greater of the two discounts.

16
17 **§809.20. Maximum Provider Reimbursement Rates.**

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

26
27 (1) Provider types:

28
29 (A) Licensed child care centers, including before- or after-school programs
30 and school-age programs, as defined by CCR~~CCL~~;

31
32 (B) Licensed child care homes as defined by CCR~~CCL~~;

33
34 (C) Registered child care homes as defined by CCR~~CCL~~; and

35
36 (D) Relative child care providers as defined in §809.2 of this chapter.

37
38 (2) Age groups in each provider type effective prior to **December**~~October~~ 1, 2023:

39
40 (A) Infants age 0 to 17 months;

41
42 (B) Toddlers age 18 to 35 months;

43
44 (C) Preschool age children from 36 to 71 months; and

45
46 (D) School-age children 72 months and older.

1
2 (3) Age groups in each provider type effective ~~December~~ **October** 1, 2023:

3
4 (A) Infants ages 0 through 11 months;

5
6 (B) Infants ages 12 through 17 months;

7
8 (C) Toddlers ages 18 through 23 months;

9
10 (D) Toddlers age 2 years;

11
12 (E) Preschool age 3 years;

13
14 (F) Preschool age 4 years;

15
16 (G) Preschool age 5 years; and

17
18 (H) School-age 6 years and older.

19
20 (b) A Board shall establish enhanced reimbursement rates:

21
22 (1) for all age groups at certified Texas Rising Star~~TRS~~ provider facilities; and

23
24 (2) only for infant, toddler, and preschool-age children at child care providers that
25 participate in integrated school readiness models for those age groups pursuant
26 to Texas Education Code, §29.160.

27
28 (c) The minimum enhanced reimbursement rates established under subsection (b) of this
29 section shall be greater than the maximum rate established for providers not meeting
30 the requirements of subsection (b) of this section for the same category of care up to,
31 but not to exceed, the provider's published rate. The maximum rate must be at least:

32
33 (1) 5 percent greater for a:

34
35 (A) certified Two-Star~~2-Star Program~~ Provider; or

36
37 (B) child care provider meeting the requirements of subsection (b)(2) of this
38 section;

39
40 (2) 7 percent greater for a certified Three-Star~~3-Star Program~~ Provider; and

41
42 (3) 9 percent greater for a certified Four-Star~~4-Star Program~~ Provider.

43
44 (d) Boards may establish a higher enhanced reimbursement rate than those specified in
45 subsection (c) of this section for certified Texas Rising Star~~TRS~~ providers, as long as
46 there is a minimum 2 percentage point difference between each star level.

1
2 (e) A Board or its child care contractor shall ensure that providers that are reimbursed
3 for additional staff or equipment needed to assist in the care of a child with
4 disabilities are paid a rate up to 190 percent of the provider's reimbursement rate for
5 a child of that same age. The higher rate shall take into consideration the estimated
6 cost of the additional staff or equipment needed by a child with disabilities. The
7 Board shall ensure that a professional, who is familiar with assessing the needs of
8 children with disabilities, certifies the need for the higher reimbursement rate
9 described in this subsection.

10
11 (f) The Board shall determine whether to reimburse providers that offer transportation as
12 long as the combined total of the provider's published rate, plus the transportation
13 rate, is subject to the maximum reimbursement rate established in subsection (a) of
14 this section.

15
16 (g) A Board may establish a higher enhanced reimbursement rate for nontraditional
17 hours, as defined by the Board.

18 19 **SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES**

20 21 **§809.41. A Child's General Eligibility for Child Care Services.**

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

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

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

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

31
32 (2) is a United States U.S. citizen or legal immigrant as determined under
33 applicable federal laws, regulations, and guidelines; and

34
35 (3) resides with:

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

37 (i) whose income does not exceed ~~the income limit established by the~~
38 ~~Board, which income limit must not exceed~~ 85 percent of the state
39 median income (SMI) for a family of the same size; and

40 (ii) whose assets do not exceed \$1,000,000 as certified by a family
41 member; or
42
43
44
45
46

1
2 (iii) that meets the definition of experiencing homelessness as defined in
3 §809.2 of this chapter.

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

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

11
12 (b) ~~A Notwithstanding the requirements set forth in subsection (c) of this section, a~~ Board
13 shall ensure that ~~establish policies, including time limits, for the provision of~~ child
14 care services while the parent is enrolled full-time in a postsecondary
15 undergraduate ~~attending an~~ educational program is provided for, but does not exceed,
16 a cumulative total of 60 months.

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

22
23 ~~(c)(d)~~ A Board may establish a policy to allow parents attending a program that leads to
24 an undergraduate ~~a postsecondary~~ degree from an institution of higher education to be
25 exempt from residing with the child as defined in §809.2 of this chapter.

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

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

34 35 **§809.42. Eligibility Verification, Determination, and Redetermination.**

36
37 (a) A Board shall ensure that its child care contractor verifies all eligibility requirements
38 for child care services prior to authorizing child care.

39
40 (b) A Board shall ensure that eligibility for child care services shall be redetermined no
41 sooner than 12 months following the initial determination or most recent
42 redetermination, except for Child Care during Job Search as described in §809.56 of
43 this chapter.

1 **§809.44. Calculating Family Income.**
2

3 (a) For the purposes of determining family income and assessing the parent share of cost,
4 Boards shall ensure that family income is calculated in accordance with Commission
5 guidelines that:

- 6
7 (1) take into account irregular fluctuations in earnings; and
8
9 (2) ensure that temporary increases in income, including temporary increases that
10 result in monthly income exceeding 85 percent of SMI do not affect eligibility
11 or parent share of cost.
12

13 (b) In accordance with Commission income calculation guidelines, Boards shall ensure
14 that the following income sources are excluded from the family income:

- 15
16 (1) Medicare, Medicaid, SNAP benefits, school meals, and housing assistance;
17
18 (2) Monthly monetary allowances provided to or for children of Vietnam veterans
19 born with certain birth defects;
20
21 (3) Needs-based educational scholarships, grants, and loans; including financial
22 assistance under Title IV of the Higher Education Act--Pell Grants, Federal
23 Supplemental Educational Opportunity grants, Federal Work Study Program,
24 PLUS, Stafford loans, and Perkins loans;
25
26 (4) Individual Development Account (IDA) withdrawals for the purchase of a
27 home, medical expenses, or educational expenses;
28
29 (5) ~~Tax refunds and tax credits~~ ~~Onetime cash payments, including tax refunds,~~
30 ~~Earned Income Tax Credit (EITC) and Advanced EITC, onetime insurance~~
31 ~~payments, gifts, and lump sum inheritances;~~
32
33 (6) VISTA and AmeriCorps living allowances and stipends;
34
35 (7) Noncash or in-kind benefits such as employer-paid fringe benefits, food, or
36 housing received in lieu of wages;
37
38 (8) Foster care payments and adoption assistance;
39
40 (9) Special military pay or allowances, including subsistence allowances, housing
41 allowances, family separation allowances, or special allowances for duty
42 subject to hostile fire or imminent danger;
43
44 (10) Income from a child in the household between 14 and 19 years of age who is
45 attending school;
46

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

36 §809.48. Transitional Child Care.

- 37 (a) A parent is eligible for Transitional child care services if the parent:
38
- 39 (1) has been denied TANF and was employed at the time of TANF denial; or
40
- 41 (2) has been denied TANF within 30 days because of expiration of TANF time
42 limits; and
43
- 44 (3) requires child care to work or attend a job training or educational program for a
45 combination of at least an average of 25 hours per week for a single-parent
46

1 family or a total combined 50 hours per week for a dualtwo-parent family, ~~or a~~
2 ~~higher number of hours per week as established by a Board.~~

3
4 ~~(b) Boards may establish an income eligibility limit for Transitional child care that is~~
5 ~~higher than the eligibility limit for At Risk child care, pursuant to §809.50, provided~~
6 ~~that the higher income limit does not exceed 85 percent of the state median income~~
7 ~~for a family of the same size.~~

8
9 ~~(b)(e)~~ For former TANF recipients who are employed when TANF is denied,
10 Transitional child care shall be available for:

- 11
12 (1) a period of up to 12 months from the effective date of the TANF denial; or
13
14 (2) a period of up to 18 months from the effective date of the TANF denial in the
15 case of a former TANF recipient who was eligible for child caretaker
16 exemptions pursuant to Texas Human Resources Code, §31.012(c) and
17 voluntarily participates in the Choices program.

18
19 ~~(c)(d)~~ A Board may allow a reduction to the requirement in subsection (a)(3) of this
20 section if a parent's documented medical disability or need to care for a physically or
21 mentally disabled family member prevents the parent from participating in work,
22 education, or job training activities for the required hours per week.

23
24 ~~(d)(e)~~ For purposes of meeting the education requirements stipulated in subsection
25 (a)(3) of this section, the following shall apply:

- 26
27 (1) each credit hour of undergraduate~~postsecondary~~ education counts as three
28 hours of education activity per week; and
29
30 (2) each credit hour of a condensed undergraduate~~postsecondary~~ education course
31 counts as six education activity hours per week.

32 33 **§809.50. At-Risk Child Care.**

34
35 (a) A parent is eligible for child care services under this section if at initial eligibility
36 determination and at eligibility redetermination as described in §809.42 of this
37 chapter:

- 38
39 (1) the family income does not exceed the income limit ~~established by the Board~~
40 pursuant to §809.41 of this chapter~~§809.41(a)(3)(A)~~; and
41
42 (2) child care is required for the parent to work or attend a job training or
43 educational program for a combination of at least an average of 25 hours per
44 week for a single-parent family or a total combined 50 hours per week for a
45 dualtwo-parent family, ~~or a higher number of hours per week as established by~~
46 ~~the Board.~~

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

35
36 **§809.51. Child Care during Interruptions in Work, Education, or Job Training.**
37

- 38 (a) Except for a child experiencing homelessness, as described in §809.52 [of this](#)
39 [chapter, and for child care during job search, as described in §809.56 of this chapter,](#)
40 if the child met all of the applicable eligibility requirements for child care services in
41 this subchapter on the date of the most recent eligibility determination or
42 redetermination, the child shall be considered to be eligible and will receive services
43 during the 12-month eligibility period described in §809.42 [of this chapter,](#)
44 regardless of any:
45
46 (1) change in family income, if that family income does not exceed 85 percent of

1 SMI for a family of the same size; or

2
3 (2) temporary change in the ongoing status of the child's parent as working or
4 attending a job training or education program. A temporary change shall
5 include, at a minimum, any:

6
7 (A) time-limited absence from work for an employed parent for periods of
8 family leave (including parental leave) or sick leave;

9
10 (B) interruption in work for a seasonal worker who is not working between
11 regular industry work seasons;

12
13 (C) student holiday or breaks within a semester, between the fall and spring
14 semesters, or between the spring and fall semesters, for a parent
15 participating in training or education;

16
17 (D) reduction in work, training, or education hours, as long as the parent is
18 still working or attending a training or education program;

19
20 (E) other cessation of work or attendance in a training or education program
21 that does not exceed three months;

22
23 (F) change in age, including turning 13 years old or a child with disabilities
24 turning 19 years old during the eligibility period; and

25
26 (G) change in residency within the state.

27
28 (b) During the period of time between eligibility redeterminations, a Board shall
29 discontinue child care services due to a parent's loss of work or cessation of
30 attendance at a job training or educational program that does not constitute a
31 temporary change in accordance with subsection (a)(2) of this section. However,
32 Boards must ensure that care continues at the same level for a period of not less than
33 three months after such loss of work or cessation of attendance at a job training or
34 educational program.

35
36 (c) If a parent resumes work or attendance at a job training or education program at any
37 level and at any time during the period described in subsection (b) of this section,
38 then the Board shall ensure that:

39
40 (1) care will continue to the end of the 12-month eligibility period at the same or
41 greater level, depending upon any increase in the activity hours of the parent;

42
43 (2) the parent share of cost will not be increased during the remainder of the 12-
44 month eligibility period, including for parents who are exempt from the parent
45 share of cost pursuant to §809.19 [of this chapter](#); and

- 1 (3) the Board's child care contractor verifies only:
2
3 (A) that the family income does not exceed 85 percent of SMI; and
4
5 (B) the resumption of work or attendance at a job training or education
6 program.
7

- 8 (d) The Board may suspend child care services during interruptions in the parent's work,
9 job training, or education status only at the concurrence of the parent.
10

11 **§809.55. Waiting Period for Reapplication.**
12

- 13 (a) A parent is ineligible to reapply for child care services or to be placed on the waiting
14 list for services for 60 calendar days if the parent's eligibility or the child's
15 enrollment is terminated due to:
16

- 17 (1) excessive unexplained absences under [§809.78 of this chapter](#)~~§809.78(a)~~; or
18
19 (2) nonpayment of parent share of cost pursuant to a Board's established policy
20 under [§809.19 of this chapter](#)~~§809.19(d)~~.
21

- 22 (b) To ensure full alignment between Child Care Services rules and the Choices program
23 requirements, the provisions of subsection (a) of this section will not apply to
24 individuals who, during the 60-calendar day waiting period:
25

- 26 (1) become Choices participants who require child care to participate in Choices;
27 or
28
29 (2) are on Choices sanction status and require child care to demonstrate
30 participation in Choices.
31

32 **§809.56. Child Care during Initial Job Search.**
33

- 34 (a) A parent, including a parent in a dual-parent family, is eligible for child care services
35 under this section if at initial eligibility determination the family does not meet the
36 minimum participation requirements for At-Risk Child Care as described in §809.50
37 of this chapter.
38

- 39 (b) A Board shall allow parents to self-attest that the:
40

- 41 (1) family meets the requirements of subsection (a) of this section; and
42
43 (2) family income does not exceed 85 percent of the state median income.
44

- 45 (c) Child care under this section is limited to an initial three-month job search period. If
46 total activity participation of at least 25 hours for a single-parent family or a total

1 combined 50 hours per week for dual-parent families, which must include a
2 minimum of 12 hours in employment for a single-parent family and a total combined
3 25 hours in employment for a dual-parent family, are met within the initial three
4 months, eligibility will continue for a total of 12 months, inclusive of the care
5 provided during the initial job search period, provided that the family income does
6 not exceed 85 percent of the state median income. If the family does not meet
7 minimum activity requirements under this subsection within three months, care must
8 be terminated.

9
10 (d) For child care during the initial three-month job search period, the follow applies
11 regarding the parent share of cost:

12
13 (1) A Board shall initially assess the parent share of cost at the highest amount
14 based on the family size and number of children in care.

15
16 (2) The initially assessed amount will immediately be temporarily reduced to zero.
17 This provision also applies to dual-parent families in which one parent is
18 employed but the family meets the requirements in subsection (a) of this
19 section for child care during initial job search.

20
21 (3) If the parent begins to meet participation requirements of subsection (c) of this
22 section within or by the end of the three-month job search period, the parent
23 share of cost shall be reinstated at the initially assessed amount or the amount
24 based on the actual family income, whichever is lower.

25
26 (e) Eligibility for child care under this section is limited to one initial three-month job
27 search period per family within a 12-month period.

28
29 (f) A Board shall ensure that the parent in child care for job search is registered with the
30 state's labor exchange system and has access to appropriate services available
31 through the one-stop delivery network described in §801.28 of this title.

32 33 **SUBCHAPTER D. PARENT RIGHTS AND RESPONSIBILITIES**

34 35 **§809.71. Parent Rights.**

36
37 A Board shall ensure that the Board's child care contractor informs the parent in writing
38 that the parent has the right to:

39
40 (1) choose the type of child care provider that best suits their needs and to be
41 informed of all child care options available to them as included in the
42 consumer education information described in §809.15 of this chapter;

43
44 (2) visit available child care providers before making their choice of a child care
45 option;

- 1 (3) receive assistance in choosing initial or additional child care referrals including
2 information about the Board's policies regarding transferring children from one
3 provider to another, which shall include a waiting period of two weeks before
4 the effective date of a transfer, except in cases in which the provider is subject
5 to a CCR action, as described in §809.94 of this chapter; when the transfer is
6 authorized by CPS for a child in protective services; or on a case-by-case basis
7 determined by the Board;
8
- 9 (4) be informed of the Commission rules and Board policies related to providers
10 charging parents amounts above the assessed parent share of cost~~the difference~~
11 ~~between the Board's reimbursement and the provider's published rate~~ as
12 described in §809.92 of this chapter~~§809.92(e)–(d);~~
13
- 14 (5) be represented when applying for child care services;
15
- 16 (6) be notified of their eligibility to receive child care services within 20 calendar
17 days from the day the Board's child care contractor receives all necessary
18 documentation required to initially determine eligibility for child care;
19
- 20 (7) receive child care services regardless of race, color, national origin, age, sex,
21 disability, political beliefs, or religion;
22
- 23 (8) have the Board and the Board's child care contractor treat information used to
24 determine eligibility for child care services as confidential;
25
- 26 (9) receive written notification at least 15 calendar days before termination of
27 child care services;
28
- 29 (10) reject an offer of child care services or voluntarily withdraw their child from
30 child care, unless the child is in protective services;
31
- 32 (11) be informed of the possible consequences of rejecting or ending the child care
33 that is offered;
34
- 35 (12) be informed of the eligibility documentation and reporting requirements
36 described in §809.72 and §809.73 of this chapter;
37
- 38 (13) be informed of the parent appeal rights described in §809.74 of this chapter;
39
- 40 (14) be informed of required background and criminal history checks for relative
41 child care providers through the listing process with CCR~~CCL~~ as described in
42 §809.91 of this chapter~~§809.91(e)~~ before the parent or guardian selects the
43 relative child care provider;
44
- 45 (15) receive written notification pursuant to §809.78 of this chapter~~§809.78(d)~~ of
46 the possible termination of child care services for excessive absences, as

described in [§809.78 of this chapter](#)~~§809.78(a)(1)~~; and

- (16) receive written notification of possible termination of child care services for failure to pay the parent share of cost, pursuant to [§809.19 of this chapter](#)~~§809.19(d)~~.

§809.72. Parent Eligibility Documentation Requirements.

- (a) [Parents shall provide the Board's child care contractor with all information necessary to determine initial eligibility according to the Board's administrative policies and procedures](#)~~Except for a child experiencing homelessness pursuant to §809.52 at initial eligibility~~, before a child can be initially determined or redetermined eligible for child care services and care authorized, [unless the child is experiencing homelessness pursuant to §809.52 of this chapter or receiving child care during initial job search pursuant to §809.56 of this chapter](#)~~parents shall provide the Board's child care contractor with all information necessary to determine eligibility according to the Board's administrative policies and procedures.~~
- (b) A parent's failure to submit eligibility documentation shall result in initial denial of child care services or termination of services at the 12-month eligibility redetermination period.

§809.73. Parent Reporting Requirements.

- (a) Boards shall ensure that during the 12-month eligibility period [described in §809.41 of this chapter, or during the three-month initial job search period and the subsequent eligibility period described in §809.56 of this chapter](#), parents are only required to report items that impact a family's eligibility or that enable the Board or Board contractor to contact the family or pay the provider.
- (b) Pursuant to subsection (a) of this section, parents shall report to the child care contractor, within 14 calendar days of the occurrence, the following:
- (1) Changes in family income or family size that would cause the family to exceed 85 percent of SMI for a family of the same size;
 - (2) Changes in work or attendance at a job training or educational program not considered to be temporary changes, as described in [§809.51 of this chapter](#); and
 - (3) Any change in family residence, primary phone number, or e-mail (if available).
- (c) Failure to report changes described in subsection (a) of this section may result in fact-finding for suspected fraud as described in Subchapter F of this chapter.

1 (d) A Board shall allow parents to report, and the child care contractor shall take
2 appropriate action, regarding changes in:

- 3
4 (1) income and family size, which may result in a reduction in the parent share of
5 cost pursuant to §809.19 of this chapter; and
6
7 (2) work, job training, or education program participation that may result in an
8 increase in the level of child care services.
9

10 **§809.75. Child Care during Appeal.**

11
12 (a) For a child currently enrolled in child care, a Board shall ensure that child care
13 services continue during the appeal process until a decision is reached, if the parent
14 requests a hearing.
15

16 (b) A Board shall ensure that child care does not continue during the appeal process if
17 the child's enrollment is terminated due to excessive unexplained absences, pursuant
18 to §809.78(a) of this chapter, or nonpayment of parent share of cost, pursuant to
19 §809.19 of this chapter ~~§809.19(d)~~.
20

21 (c) The cost of providing services during the appeal process is subject to recovery from
22 the parent by the Board, if the appeal decision is rendered against the parent.
23

24 **§809.78. Attendance Standards and Notice and Reporting Requirements.**

25
26 (a) A Board shall ensure that parents are notified of the following:
27

28 (1) Parents shall ensure that the eligible child attends on a regular basis consistent
29 with the child's authorization for enrollment and attendance standards
30 described in paragraph (2) of this subsection. Failure to meet attendance
31 standards described in paragraph (2) of this subsection may result in
32 termination for the child due to excessive unexplained absences pursuant to
33 subsection (d) of this section.
34

35 (2) Meeting attendance standards for child care services consists of no more than
36 40 total unexplained absences in a 12-month eligibility period.
37

38 (3) Unexplained absences may include:
39

40 (A) Any absence that is not due to a child's documented chronic illness or
41 disability, or to a court-ordered custody or visitation agreement; or
42

43 (B) Any missed attendance recording that cannot be explained, except if the
44 attendance reporting system is not available through no fault of the
45 parent or provider. ~~;~~
46

1 ~~(C) Any denied or rejected attendance recording in which the parent does not~~
2 ~~contact the Agency's Child Care Services unit to report the issue.~~

3
4 (4) Notwithstanding paragraph (2) of this subsection, child care providers may end
5 a child's enrollment with the provider if the child does not meet the provider's
6 established policy regarding attendance.

7
8 (5) Parents shall report attendance and absences and adhere to Agency procedures
9 for reporting attendance and absences, including the use of the Agency's
10 attendance reporting system~~use the attendance card to report daily attendance~~
11 ~~and absences.~~

12
13 ~~(6) Parents shall not designate anyone under age 16 as a secondary cardholder,~~
14 ~~unless the individual is a child's parent.~~

15
16 ~~(7) Parents shall not designate the owner, assistant director, or director of the child~~
17 ~~care facility as a secondary cardholder.~~

18
19 ~~(8) Parents shall:~~

20
21 ~~(A) ensure that the attendance card is not misused by secondary cardholders;~~

22
23 ~~(B) inform secondary cardholders of the responsibilities for using the attendance~~
24 ~~card;~~

25
26 ~~(C) ensure that secondary cardholders comply with these responsibilities; and~~

27
28 ~~(D) ensure the protection of attendance cards issued to them or secondary~~
29 ~~cardholders.~~

30
31 ~~(9) The parent or secondary cardholders giving the attendance card or the personal~~
32 ~~identification number (PIN) to another person, including the child care~~
33 ~~provider, is grounds for a potential fraud determination pursuant to Subchapter~~
34 ~~F of this chapter.~~

35
36 ~~(10) Parents shall report to the child care contractor instances in which a parent's~~
37 ~~attempt to record attendance in the child care automated attendance system is~~
38 ~~denied or rejected and cannot be corrected at the provider site. Failure to report~~
39 ~~such instances may result in an unexplained absence counted toward the~~
40 ~~attendance standards described in paragraphs (2) and (3) of this subsection.~~

41
42 (b) Boards shall ensure that parents sign a written acknowledgment indicating their
43 understanding of the attendance standards and reporting requirements at each of the
44 following stages:

45
46 (1) initial eligibility determination; and

- 1
- 2 (2) each eligibility redetermination, as required in [§809.42 of this chapter](#)
- 3 ~~§809.42(b)~~.
- 4
- 5 (c) Boards shall ensure that absences due to a child's documented chronic illness or
- 6 disability or court-ordered visitation are not counted in the number of unexplained
- 7 absences in subsection (a)(2) and (3) of this section.
- 8
- 9 (d) Boards shall ensure that before terminating care pursuant to [subsection \(a\)\(1\) of this](#)
- 10 [section §809.78\(a\)\(1\)](#), the child care contractor:
- 11
- 12 (1) provides written notice to the parent and the child care provider at reasonable
- 13 times through established communication channels of the child's absences and
- 14 the potential termination of services, at a minimum [as soon as practicable](#)
- 15 ~~after when a~~ child reaches 15, and 30 general absences cumulatively within a
- 16 12-month eligibility period; and
- 17
- 18 (2) documents that multiple attempts were made, as described in paragraph (1) of
- 19 this subsection, to determine why the child is absent and to explain the
- 20 importance of regular attendance.
- 21
- 22 (e) Where a child's enrollment has been ended by a provider in subsection (a)(4) of this
- 23 section, Boards shall work with the parent to place the otherwise eligible child with
- 24 another eligible provider.
- 25

26 SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE

27 §809.91. Minimum Requirements for Providers.

- 28
- 29
- 30 (a) A Board shall ensure that child care subsidies are paid only to:
- 31
- 32 (1) regulated child care providers as described in §809.2 of this chapter [meeting](#)
- 33 [the Texas Rising Star requirements as a certified provider, or designated as an](#)
- 34 [Entry Level provider for the prescribed time periods as described in §809.131](#)
- 35 [of this chapter](#), ~~subject to the requirements in subsection (g) of this section~~;
- 36
- 37 (2) relative child care providers, as described in §809.2 of this chapter, subject to
- 38 the requirements in subsection (e) of this section; or
- 39
- 40 (3) at the Board's option, child care providers licensed in a neighboring state,
- 41 subject to the following requirements:
- 42
- 43 (A) Boards shall ensure that the Board's child care contractor reviews the
- 44 licensing status of the out-of-state provider every month, at a minimum,
- 45 to confirm the provider is meeting the minimum licensing standards of
- 46 the state.

- 1
- 2 (B) Boards shall ensure that the out-of-state provider meets the requirements
- 3 of the neighboring state to serve CCDF-subsidized children.
- 4
- 5 (C) The provider shall agree to comply with the requirements of this chapter
- 6 and all Board policies and Board child care contractor procedures.
- 7
- 8 (b) A Board shall not prohibit a relative child care provider that is listed with ~~CCRCCL~~
- 9 and meets the minimum requirements of this section from being an eligible relative
- 10 child care provider.
- 11
- 12 (c) Except as provided by the criteria for Texas Rising Star Provider certification or
- 13 designation, a Board or the Board's child care contractor shall not place requirements
- 14 on regulated providers that:
- 15
- 16 (1) exceed Entry Level~~Pre-Star~~ designation requirements or the state licensing
- 17 requirements stipulated in Texas Human Resources Code, Chapter 42; or
- 18
- 19 (2) have the effect of monitoring the provider for compliance with state licensing
- 20 requirements stipulated in Texas Human Resources Code, Chapter 42.
- 21
- 22 (d) When a Board or the Board's child care contractor, in the course of fulfilling its
- 23 responsibilities, gains knowledge of any possible violation regarding regulatory
- 24 standards, the Board or its child care contractor shall report the information to the
- 25 appropriate regulatory agency.
- 26
- 27 (e) For relative child care providers to be eligible for reimbursement for Commission-
- 28 funded child care services, the following applies:
- 29
- 30 (1) Relative child care providers shall list with ~~CCRCCL~~; however, pursuant to 45
- 31 CFR §98.41(e), relative child care providers listed with ~~CCRCCL~~ shall be
- 32 exempt from the health and safety requirements of 45 CFR §98.41(a).
- 33
- 34 (2) A Board shall allow relative child care providers to care for a child in the
- 35 child's home (in-home child care) only for the following:
- 36
- 37 (A) A child with disabilities as defined in §809.2 of this chapter, and his or
- 38 her siblings;
- 39
- 40 (B) A child under 18 months of age and his or her siblings;
- 41
- 42 (C) A child of a teen parent; and
- 43
- 44 (D) When the parent's work schedule requires evening, overnight, or
- 45 weekend child care in which taking the child outside of the child's home
- 46 would be disruptive to the child.

1
2 (3) A Board may allow relative in-home child care for circumstances in which the
3 Board's child care contractor determines and documents that other child care
4 provider arrangements are not available in the community.
5

6 (f) Boards shall ensure that subsidies are not paid for a child at the following child care
7 providers:
8

9 (1) Except for foster parents authorized by DFPS pursuant to §809.49 of this
10 chapter, licensed child care centers, including before- or after-school programs
11 and school-age programs, in which the parent or his or her spouse, including
12 the child's parent or stepparent, is the director or assistant director, or has an
13 ownership interest; or
14

15 (2) Licensed, registered, or listed child care homes where the parent also works
16 during the hours his or her child is in care.
17

18 ~~(g) Regulated child care providers, except those operated and monitored by the US
19 military, must meet Pre-Star provider designation unless exempted under
20 requirements of subsection (h)(3) of this section.~~

21
22 ~~(h) Pre-Star provider designations and exemptions are defined in the Commission-
23 approved CCDF State Plan and include:~~

24
25 ~~(1) minimum Pre-Star criteria required for each provider type;~~

26
27 ~~(2) a progressive statewide roll out plan to require Pre-Star designation for receipt
28 of subsidies; and~~

29
30 ~~(3) limited provider exemption criteria to ensure parent choice is not negatively
31 impacted by the Pre-Star requirements.~~
32

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

34
35 (a) A Board shall ensure that providers are given written notice of and agree to their
36 responsibilities, reporting requirements, and requirements for reimbursement under
37 this subchapter prior to enrolling a child.
38

39 (b) Providers shall:
40

41 (1) be responsible for collecting the parent share of cost as assessed under §809.19
42 [of this chapter](#) before child care services are delivered;
43

44 (2) be responsible for collecting other child care funds received by the parent as
45 described in [§809.21 of this chapter](#) ~~§809.21(a)(2)~~;
46

- 1 (3) report to the Board or the Board's child care contractor instances in which the
2 parent fails to pay the parent share of cost; and
3
- 4 (4) follow attendance reporting and tracking procedures required by the
5 Commission under §809.95 of this chapter, the Board, or, if applicable, the
6 Board's child care contractor.
7
- 8 (c) Providers shall not charge more than~~the difference between the provider's published~~
9 ~~rate and the amount of~~ the Board's reimbursement rate as determined under §809.21
10 of this chapter to parents:
11
- 12 (1) who are exempt from the parent share of cost assessment under §809.19 of this
13 chapter~~;~~~~§809.19(a)(2); or~~
14
- 15 (2) whose parent share of cost is calculated to be zero pursuant to §809.19 of this
16 chapter~~; or~~~~§809.19(f)~~.
17
- 18 (3) parents in Child Care during Initial Job Search under §809.56 of this chapter
19 during the initial three-month period.
20
- 21 (d) A Board may develop a policy that allows~~prohibits~~ providers to charge parents more
22 than the assessed parent share of cost in instances where~~from charging the difference~~
23 ~~between~~ the provider's published rate exceeds~~and the amount of~~ the Board's
24 reimbursement rate (including the assessed parent share of cost) to all parents not
25 included in subsection (c) of this section~~eligible for child care services~~.
26
- 27 (e) For Boards that allow providers to charge additional amounts pursuant to subsection
28 (d) of this section, the Board must ensure the provider reports to the Board each
29 month:
30
- 31 (1) the specific families that were charged an additional amount above the assessed
32 amount;
33
- 34 (2) the frequency with which each family was charged; and
35
- 36 (3) the amount of each additional charge.
37
- 38 (f) Boards that develop a policy under subsection (d) of this section must:
39
- 40 (1) provide the rationale for the Board's policy to allow providers to charge
41 families additional amounts above the required copayment, including a
42 demonstration of how the policy promotes affordability and access for
43 families; and
44
- 45 (2) describe the Board's analysis of the interaction between the additional amounts
46 charged to families with the required parent share of cost and the ability of

[current reimbursement rates to provide access to care without additional fees.](#)

~~(g)~~(e) Providers shall not deny a child care referral based on the parent's income status, receipt of public assistance, or the child's protective service status.

~~(h)~~(f) Providers shall not charge fees to a parent receiving child care subsidies that are not charged to a parent who is not receiving subsidies.

§809.93. Provider Reimbursement.

(a) A Board shall ensure that reimbursement for child care is paid only to the provider.

(b) A Board or its child care contractor shall reimburse a regulated provider based on a child's monthly enrollment authorization, excluding periods of suspension at the concurrence of the parent, as described in §809.51(d) of this chapter.

(c) A Board shall ensure that a relative child care provider is not reimbursed for days on which the child is absent.

(d) A relative child care provider shall not be reimbursed for more children than permitted by the ~~CCR~~[CCL](#) minimum regulatory standards for Registered Child Care Homes. A Board may permit more children to be cared for by a relative child care provider on a case-by-case basis as determined by the Board.

(e) A Board shall not reimburse providers that are debarred from other state or federal programs unless and until the debarment is removed.

(f) Unless otherwise determined by the Board and approved by the Commission for automated reporting purposes, the monthly enrollment authorization described in subsection (b) of this section is based on the unit of service authorized, as follows:

(1) A full-day unit of service is 6 to 12 hours of care provided within a 24-hour period; ~~and~~

(2) A part-day unit of service is fewer than 6 hours of care provided within a 24-hour period; ~~and~~.

(3) A blended-day unit of service is for a child enrolled in a school program, pre-K, HS, or EHS in which child care is part-day with care provided occasionally on a full-day basis.

(g) A Board or its child care contractor shall ensure that providers are not paid for holding spaces open without a valid contracted slots agreement, as described in §809.96 of this ~~chapter~~[subchapter](#).

~~(h) A Board or the Board's child care contractor shall not pay providers:~~

1
2 (1) ~~less, when a child enrolled full time occasionally attends for a part day; or~~

3
4 (2) ~~more, when a child enrolled part time occasionally attends for a full day.~~

5
6 (h)(+) The Board or its child care contractor shall not reimburse a provider retroactively
7 for new Board maximum reimbursement rates or new provider published rates.

8
9 (i)(+) A Board or its child care contractor shall ensure that the parent's travel time to and
10 from the child care facility and the parent's work, school, or job training site is
11 included in determining the enrollment authorized ~~whether to authorize~~
12 ~~reimbursement for full day or part day care~~ under subsection (f) of this section.

13
14 (j) Effective December ~~October~~ 1, 2023, a Board shall pay regulated child care providers
15 prospectively every two weeks based on the enrollment authorization described in
16 subsection (b) of this section.

17
18 **§809.94. Providers Placed on Corrective or Adverse Action by Child Care Regulation**
19 **~~the Texas Department of Family and Protective Services.~~**

20
21 (a) For a provider placed on probation corrective action (probationary status) by
22 CCR ~~ECL~~, Boards shall ensure that:

23
24 (1) parents with children in Commission-funded child care are notified in writing of
25 the provider's probationary status no later than five business days after
26 receiving notification from the Agency of CCR's ~~ECL's~~ decision to place the
27 provider on probationary status; and

28
29 (2) no new referrals are made to the provider while on probationary status.

30
31 (b) A parent receiving notification of a provider's probationary status with CCR ~~ECL~~
32 pursuant to subsection (a) of this section may transfer the child to another eligible
33 provider without being subject to the Board transfer policies described in §809.71 of
34 this chapter ~~§809.71(3)~~ if the parent requests the transfer within 14 calendar days of
35 receiving such notification.

36
37 (c) For a provider placed on probationary status by CCR ~~ECL~~, Boards shall ensure that
38 the provider is not reimbursed at the Boards' enhanced reimbursement rates
39 described in §809.20 while on probationary status.

40
41 (d) For a provider against whom CCR ~~ECL~~ is taking adverse action, Boards shall ensure
42 that:

43
44 (1) parents with children enrolled in Commission-funded child care are notified no
45 later than two business days after receiving notification from the Agency that
46 CCR ~~ECL~~ intends to take adverse action against the provider;

- (2) children enrolled in Commission-funded child care with the provider are transferred to another eligible provider no later than five business days after receiving notification from the Agency that ~~CCR~~CCL intends to take adverse action against the provider; and
- (3) no new referrals for Commission-funded child care are made to the provider while ~~CCR~~CCL is taking adverse action.

~~(e) For adverse actions in which CCL has determined that the provider poses an immediate risk to the health or safety of children and cannot operate pending appeal of the adverse action, but for which there is a valid court order that overturns CCL's determination and allows the provider to operate pending administrative review or appeal, Boards shall take action consistent with subsection (d) of this section.~~

§809.95. Provider Automated Attendance Agreement.

Boards shall notify providers of the following:

- (1) ~~The owner, director, assistant director, or other employees~~Employees of child care providers shall not:

- (A) possess, have on the premises, or otherwise have access to a parent's information to access the Agency's attendance system; ~~or the attendance card of a parent or secondary cardholder;~~

- ~~(B) accept or use the attendance card or PIN of a parent or secondary cardholder; or~~

- ~~(B)~~(C) perform the attendance or absence reporting function on behalf of the parent;

- ~~(2) The owner, director, or assistant director of a child care provider shall not be designated as the secondary cardholder by a parent with a child enrolled with the provider;~~

- ~~(2)~~(3) Providers shall report misuse of the Agency's automated attendance system~~attendance cards and PINs~~ to the Board or the Board's child care contractor; ~~and~~

- ~~(3)~~(4) Providers shall report to the child care contractor authorized days that do not match the referral in the Agency's automated attendance system within five days of receiving the authorization. Failure to report the discrepancy may result in withholding payment to the provider; and.

- ~~(4)~~(5) Misuse of attendance reporting and violation of the requirements in this section

1 are grounds for a potential fraud determination pursuant to Subchapter F of this
2 chapter.

3
4 **§809.96. Contracted Slots Agreements.**

- 5
6 (a) In this section, the term "contracted slots agreement" is defined as a Board entering
7 into a contract with a child care provider to reserve a specific number of places, or
8 slots, for children participating in the child care subsidy program. This contract shall:
9
- 10 (1) define the number of slots to be reserved by age group (infant, toddler,
11 preschool, or school-age); and
 - 12 (2) meet the eligibility requirements as described in subsection (e) of this section.
- 13
14 (b) Boards may enter into a contracted slots agreement with providers that agree to
15 provide subsidized child care services to eligible children residing in the Board's
16 workforce area.
- 17
18 (c) A Board that enters into a contracted slots agreement shall include this strategy in
19 the Board Plan, as described in §809.12 of this chapter.
- 20
21 (d) Each contract between a Board and a provider must identify the number of places
22 (slots) to be reserved for children participating in the child care subsidy program.
- 23
24 (e) To be eligible for a contract, a child care provider must be a Texas Rising Star
25 Three-Star or Four-Star~~3-star or 4-star~~ provider and meet one of the following
26 priorities:
27
- 28 (1) Be located in:
29
30
 - 31 (A) a child care desert; or~~where the number of children under age six with~~
32 ~~working parents is at least three times greater than the capacity of~~
33 ~~licensed child care providers in the area, based on data published~~
34 ~~annually by the Commission; or~~
 - 35 (B) ~~in~~ an underserved area that has been identified by a Board as having an
36 inadequate supply of child care in accordance with the parameters
37 described in the CCDF State Plan.
 - 38 (2) Have a recognized partnership with local school districts to provide pre-K
39 services;
 - 40 (3) Have a recognized partnership with EHS or HS;
 - 41 (4) Increase the number of places reserved for infants and toddlers by high-quality
42 child care providers; or
- 43
44
45
46

1
2 (5) Satisfy a priority identified in the Board's plan, as described in §809.12 of this
3 chapter.

4
5 (f) A Board that enters into a contracted slots agreement may continue payment for
6 reserved slots during times of transition between the time that one child leaves the
7 program and another child is placed in the slot. The period of continued payment
8 shall adhere to the Board's policy for contracted slots agreements, ~~as described in~~
9 ~~§809.13(e)(14) of this chapter~~, and may not exceed one month following the month
10 of the vacancy.

11
12 (g) Except for children directly referred from recognized partnerships, as described in
13 §809.22 of this chapter, to fill open reserved slots, Boards shall contact families in
14 order of the Board's waiting list:

15
16 (1) that requested care in the ZIP code where the provider with the open reserved
17 slot is located; and

18
19 (2) whose child is in the age group for which a slot is available.

20
21 (h) In accordance with Commission guidelines, Boards that enter into contracted slots
22 agreements shall submit a report to the Commission within six months of entering
23 into a contract, determining the contract's effect on the:

24
25 (1) financial stability of providers participating in the contract;

26
27 (2) availability of high-quality child care options available to participants in the
28 Commission's subsidy program;

29
30 (3) number of high-quality providers in any part of the workforce area with a high
31 concentration of families that need child care;

32
33 (4) percentage of children participating in the Commission's subsidized child care
34 program at each Texas Rising Star provider in the workforce area; and

35
36 (5) additional information as requested by the Commission.

37
38 (i) A Board shall resubmit the report every ~~12~~¹² ~~six~~ months from the due date of the
39 Board's initial report to the Commission.

40
41 **SUBCHAPTER F. FRAUD FACT-FINDING AND IMPROPER PAYMENTS**

42
43 **§809.112. Suspected Fraud.**

44
45 (a) A parent, provider, or any other person in a position to commit fraud may be
46 suspected of fraud if the person presents or causes to be presented to the Board or its

1 child care contractor one or more of the following items:
2

- 3 (1) A request for reimbursement in excess of the amount charged by the provider
4 for the child care; or
5
6 (2) A claim for child care services if evidence indicates that the person may have:
7
8 (A) known, or should have known, that child care services were not provided
9 as claimed;
10
11 (B) known, or should have known, that information provided is false or
12 fraudulent;
13
14 (C) received child care services during a period in which the parent or child
15 was not eligible for services;
16
17 (D) known, or should have known, that child care subsidies were provided to
18 a person not eligible to be a provider; or
19
20 (E) otherwise indicated that the person knew or should have known that the
21 actions were in violation of this chapter or state or federal statute or
22 regulations relating to child care services.
23

24 (b) The following parental actions may be grounds for suspected fraud and cause for
25 Boards to conduct fraud fact-finding or the Commission to initiate a fraud
26 investigation:
27

- 28 (1) Not reporting or falsely reporting at initial eligibility or at eligibility
29 redetermination:
30
31 (A) household composition, or income sources or amounts that would have
32 resulted in ineligibility or a higher parent share of cost; or
33
34 (B) work, training, or education hours that would have resulted in
35 ineligibility; or
36
37 (2) Not reporting during the 12-month eligibility period inclusive of the three-
38 month initial job search period, if applicable:
39
40 (A) changes in income or household composition that would cause the family
41 income to exceed 85 percent of SMI (taking into consideration
42 fluctuations of income); or
43
44 (B) a permanent loss of job or cessation of training or education that exceeds
45 three months; or
46

1 (C) improper or inaccurate reporting of attendance.
2

3 **§809.115. Corrective Adverse Actions.**
4

5 (a) When determining appropriate corrective actions, the Board or Board's child care
6 contractor shall consider:

- 7
8 (1) the scope of the violation;
9
10 (2) the severity of the violation; and
11
12 (3) the compliance history of the person or entity.
13

14 (b) Corrective actions for providers may include, but are not limited to, the following:

- 15
16 (1) Closing intake;
17
18 (2) Moving children to another provider selected by the parent;
19
20 (3) Withholding provider payments or reimbursement of costs incurred; and
21
22 (4) Recoupment of funds.
23

24 (c) When a provider violates a provision of Subchapter E of this chapter, a written
25 Service Improvement Agreement may be negotiated between the provider and the
26 Board or the Board's child care contractor. At the least, the Service Improvement
27 Agreement shall include the following:
28

- 29 (1) The basis for the Service Improvement Agreement;
30
31 (2) The steps required to reach compliance including, if applicable, technical
32 assistance;
33
34 (3) The time limits for implementing the improvements; and
35
36 (4) The consequences of noncompliance with the Service Improvement
37 Agreement.
38

39 (d) The Board shall develop policies and procedures to ensure that the Board or the
40 Board's child care contractor take corrective action consistent with subsections (a) -
41 (c) of this section against a provider when a provider performs the attendance
42 reporting function on behalf of a parent.:-
43

- 44 (1) ~~possesses, or has on the premises, attendance cards without the parent being~~
45 ~~present at the provider site;~~
46

1 ~~(2) -accepts or uses an attendance card or PIN of a parent or secondary cardholder;~~
2 ~~or~~

3
4 ~~(3) -performs the attendance reporting function on behalf of a parent.~~

- 5
6 (e) The Board shall develop policies and procedures to require the Board's child care
7 contractor to take corrective action consistent with subsections (a) - (c) of this
8 section against a parent when a parent violates the Commission rules and procedures
9 related to attendance reporting. ~~or parent's secondary cardholder gives his or her:~~

10
11 ~~(1) -card to a provider; or~~

12
13 ~~(2) -PIN to a provider.~~

14
15 **SUBCHAPTER G. TEXAS RISING STAR PROGRAM**

16
17 **§809.130. Short Title and Purpose.**

- 18
19 (a) The rules contained in this subchapter may be cited as the Texas Rising Star Program
20 rules.
21
22 (b) The purpose of the Texas Rising Star Program rules is to interpret and implement
23 Texas Government Code, ~~§2308.3155~~§2308.3155(b), which requires the
24 Commission to establish rules to administer the Texas Rising Star program,
25 including guidelines for rating a child care provider for Texas Rising Star
26 certification and designation of an Entry Level child care provider.
27
28 (c) The Texas Rising Star Program rules identify the organizational structure and
29 categories of, and the scoring factors that shall be included in, the Texas Rising Star
30 guidelines.
31
32 (d) The Texas Rising Star guidelines ~~for rating a child care provider~~ shall:
33
34 (1) describe measures for ~~the~~ Texas Rising Star certification~~program~~ that contain,
35 at a minimum, measures for child care providers regarding:
36
37 (A) director and staff qualifications and training;
38
39 (B) teacher-child interactions;
40
41 (C) program administration; and
42
43 (D) indoor/outdoor environments;
44
45 (2) specify measures that:
46

1 (A) must be met in order for a provider to be certified at each star level; and

2
3 (B) are observed and have points awarded through on-site assessments; ~~and~~

4
5 (3) specify the scoring methodology and scoring thresholds for each certified star
6 level; ~~and~~.

7
8 (4) describe the high and medium-high CCR deficiencies points threshold pursuant
9 to §809.131 of this chapter and the process for designating providers at the
10 Entry Level.

11
12 (e) The Texas Rising Star guidelines:

13
14 (1) shall be reviewed and updated by the Commission at a minimum of every four
15 years in conjunction with the rule review of this chapter ~~Chapter 809~~,
16 conducted pursuant to Texas Government Code, §2001.039, and the Texas
17 Rising Star guidelines review shall:

18
19 (A) consider input from stakeholders; and

20
21 (B) include at least one public hearing held prior to submitting the
22 stakeholder input to the Commission;

23
24 (2) shall be adopted by the Commission subject to the requirements of the Texas
25 Open Meetings Act; and

26
27 (3) may be reviewed and amended as determined necessary by the Commission in
28 accordance with the requirements of the Texas Open Meetings Act.
29

30 **§809.131. Requirements ~~Eligibility~~ for the Texas Rising Star Program.**

31
32 (a) A regulated child care provider is eligible ~~to apply~~ for certification under the Texas
33 Rising Star program if the provider has a current agreement to serve Commission-
34 subsidized children and:

35
36 (1) has a permanent (nonexpiring) license or registration from CCR ~~ECL~~;

37
38 (2) has at least 12 months of licensing history with CCR ~~ECL~~, and is not on:

39
40 (A) corrective action with a Board pursuant to Subchapter F of this chapter;

41
42 (B) a "Notice of Freeze" with the Commission pursuant to Texas Labor
43 Code, Chapter 213 (Enforcement of the Texas Unemployment
44 Compensation Act) or Chapter 61 (Payment of Wages); or

45
46 (C) corrective or adverse action with CCR ~~ECL~~; and

- 1
2 (3) meets the criteria for star-level certification in the Texas Rising Star guidelines
3 pursuant to §809.130(d) of this subchapter~~requirements to be designated as a~~
4 ~~Pre-Star provider as specified in §802.2(18) of this chapter.~~
5
6 (4) has at minimum, a center director account~~and teaching staff~~ registered in the
7 Texas Early Childhood Professional Development System Workforce Registry;
8 or
9
10 (5) is regulated by and in good standing with the United States~~US~~ Military.

11
12 (b) Regulated child care providers not meeting the Texas Rising Star certification
13 requirements described in this subchapter and established in the Texas Rising Star
14 guidelines shall be initially designated as Entry Level if the child care provider:

15
16 (1) is not on corrective or adverse action with CCR; and

17
18 (2) does not exceed the points threshold for high and medium-high CCR
19 deficiencies within the most recent 12-month period as established in the
20 guidelines.

21
22 (c) A provider initially meeting the requirements in subsection (b) of this section is
23 eligible for mentoring services through the Texas Rising Star program during the time
24 periods described in subsections (d) - (f) of this section.

25
26 (d) A provider shall be initially designated as Entry Level for no more than 24 months
27 unless approved for a waiver under subsection (f) of this section.

28
29 (e) An Entry Level provider will be reviewed for Texas Rising Star certification **no later**
30 **than the end of the 12th month**~~after the first 12 months~~ of the 24-month period. If an
31 Entry Level provider is not eligible for certification~~certified~~ as Texas Rising Star **by**
32 **the end of the 18th**~~21st~~ **month**~~after the first 12 months~~, the provider **shall not receive**
33 **referrals for new families as an Entry Level provider, during the last three months of**
34 **the 24-month period**~~unless the provider is located in a child care desert or serves an~~
35 ~~underserved population, and is approved by the Agency to accept new family~~
36 ~~referrals. may receive up to two six-month extensions and:~~

37
38 ~~(1) shall continue to receive new family referrals during the first six-month extension;~~
39 ~~and~~

40
41 ~~(2) if a provider requires and receives a second six-month extension, shall not receive~~
42 ~~new family referrals during the second six-month extension.~~

43
44 (f) The Agency may approve a waiver **to extend**~~of~~ the time limit under subsection (d) of
45 this section if the provider is:
46

- (1) located in a child care desert or serves an underserved population as determined by the Agency;
- (2) unable to meet the certification requirements due to a federal or state declared emergency/disaster; or
- (3) unable to meet the certification requirements due to conditions that the Agency determines are outside the provider's control.

(g) Waivers approved under subsection (f) of this section shall not exceed a total of 36 months.

§809.132. Impacts~~Impact of Certain Deficiencies~~ on Texas Rising Star Certification.

- (a) A Texas Rising Star-certified~~Texas Rising Star~~ provider shall be placed on suspension status ~~lose Texas Rising Star certification~~ if the provider:
 - (1) is placed on corrective action with a Board pursuant to Subchapter F of this chapter;
 - (2) is under a "Notice of Freeze" with the Commission pursuant to Texas Labor Code, Chapter 213~~of the Texas Labor Code~~ (Enforcement of the Texas Unemployment Compensation Act) or Chapter 61~~of the Texas Labor Code~~ (Payment of Wages);
 - (3) is placed on corrective or adverse action by CCRCCL~~ECL~~;
 - (4) had 15 or more total high or medium-high weighted licensing deficiencies during the most recent 12-month licensing history;
 - (5) had more than four probationary impacts during its three-year certification period;
 - (6) had a consecutive third probationary impact; ~~or~~
 - (7) is cited for specified CCRCCL minimum standards regarding weapons and ammunition; or;
 - (8) is not meeting at least the Two-Star level due to non-compliance with Texas Rising Star guidelines at the most recent assessment of certification.
- (b) Texas Rising Star-certified~~Texas Rising Star~~ providers with any of the specified "star level drop" licensing deficiencies listed in the Texas Rising Star guidelines during the most recent 12-month CCRCCL licensing history shall be placed on a six-month Texas Rising Star ~~program~~-probationary period. Furthermore:

- 1 (1) reduction of one star level for each deficiency cited, so a ~~Four-Star~~4-star
2 certified provider is reduced to a ~~Three-Star~~3-star provider-, a ~~Three-Star~~3-star
3 provider is reduced to a ~~Two-Star~~2-star provider; or
4
- 5 (2) a ~~Two-Star~~2-star provider is placed on suspension status~~loses certification~~.
6
- 7 (c) Texas Rising Star certified providers with any of the specified "probationary"
8 licensing deficiencies listed in the Texas Rising Star guidelines during the most
9 recent 12-month ~~CCR~~CCL licensing history shall be placed on a six-month Texas
10 Rising Star probationary period. Furthermore:
11
- 12 (1) Texas Rising Star providers on a six-month Texas Rising Star probationary
13 period that are cited by ~~CCR~~CCL for any additional specified probationary
14 deficiencies within the probationary period shall be placed on a second,
15 consecutive probation and lose a star level, with a ~~Two-Star~~2-star certified
16 provider being placed on suspension status~~losing certification~~;
17
- 18 (2) if ~~CCR~~CCL does not cite any additional specified probationary deficiencies
19 during the probationary period, the provider can be removed from probation
20 status; and
21
- 22 (3) if any additional specified probationary deficiencies are cited by ~~CCR~~CCL
23 during the second probationary period, the Texas Rising Star provider shall be
24 placed on suspension status~~lose certification~~.
25
- 26 (d) ~~Texas Rising Star-certified~~~~Texas Rising Star~~ providers with 10 to 14 total high or
27 medium-high weighted licensing deficiencies during the most recent 12-month
28 ~~CCR~~CCL licensing history shall be placed on a six-month Texas Rising Star
29 program probationary period. Furthermore:
30
- 31 (1) ~~Texas Rising Star-certified~~~~Texas Rising Star~~ providers on a six-month
32 probationary period that are cited by ~~CCR~~CCL within the probationary period
33 for any additional high or medium-high weighted deficiencies shall be placed
34 on a second, consecutive probation and lose a star level, with a ~~Two-Star~~2-star
35 provider being placed on suspension status~~losing certification~~;
36
- 37 (2) if no additional high or medium-high weighted deficiencies are cited by
38 ~~CCR~~CCL during the probationary period, the provider can be removed from
39 probation status; and
40
- 41 (3) if any new high or medium-high weighted deficiencies--not to exceed 14 total
42 deficiencies--are cited by ~~CCR~~CCL during the second six-month probationary
43 period, a provider shall be placed on suspension status~~lose Texas Rising Star~~
44 ~~certification~~.
45
- 46 (e) Certified providers not on suspension status~~Providers~~ losing a star level due to

1 licensing deficiencies shall be reinstated at the former star level if no citations
2 described in subsections (b) - (d) of this section occur within the six-month reduction
3 time frame.

4
5 (f) Certified providers in suspension status~~Providers losing Texas Rising Star~~
6 ~~certification~~ shall be eligible ~~for to request a reassessment~~~~reapply for certification~~
7 after six months following the suspension date~~loss of the certification~~, as long as no
8 deficiencies described in subsections (b) - (d) of this section are cited during the
9 previous six months~~disqualification period~~.

10
11 (g) Certified providers in suspension status shall achieve at least a Two-Star certification
12 no later than 15~~12~~ months following the suspension date. Failure to achieve at least a
13 Two-Star certification within the 15-month~~12-month~~ period will result in the
14 provider's ineligibility to provide child care services under this chapter.

15
16 (h) Certified providers on suspension status:

17
18 (1) shall be eligible to provide child care services under this chapter as long as the
19 provider meets at least the Entry Level criteria described in §809.131(b) of this
20 chapter;

21
22 (2) shall not be eligible for the enhanced reimbursement rate and shall be
23 reimbursed at the Board's Entry Level reimbursement rate; and

24
25 (3) the provider shall not be able to receive referrals from a new family during the
26 last six months of the 15-month~~12-month~~ period, unless the provider is located
27 in a child care desert or serves an underserved population, and is approved by
28 the Agency to accept new family referrals.

29
30 (i) Certified providers in suspension status that fail to achieve at least a Two-Star
31 certification by the end the 15-month~~12-month~~ suspension period:

32
33 (1) are not eligible to provide child care services under this chapter;

34
35 (2) are not eligible for the Entry Level designation time frame described in
36 §809.131(e) of this chapter;

37
38 (3) are not eligible for the extension waiver described in §809.131(f) of this
39 chapter; and

40
41 (4) must subsequently meet at least a Two-Star certification eligibility and
42 screening requirements to provide child care services under this subchapter.

43
44 **§809.133. Application and Assessments for ~~the~~ Texas Rising Star Certification ~~Program~~.**

45
46 (a) Texas Rising Star certification applicants must complete:

1
2
3
4
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- (1) an orientation on the Texas Rising Star guidelines, including an overview of the:
 - (A) Texas Rising Star program application process;
 - (B) Texas Rising Star program measures; and
 - (C) Texas Rising Star program assessment process;
 - (2) the creation of a continuous quality improvement plan; and
 - (3) a Texas Rising Star program self-assessment tool.
- (b) The Agency's designated Texas Rising Star assessment entity~~Boards~~ shall ensure that:
- (1) written acknowledgment of receipt of the application and self-assessment is sent to the provider;
 - (2) within 20 days of receipt of the application, the provider is sent an estimated time frame for scheduling the initial assessment;
 - (3) an assessment is conducted for any provider that meets the eligibility requirements in §809.131 of this subchapter and requests certification under to participate in the Texas Rising Star program; and
 - (4) Texas Rising Star certification is granted for any provider that is assessed and verified as meeting the Texas Rising Star provider certification criteria set forth in the Texas Rising Star guidelines.
- (c) The Agency's designated Texas Rising Star assessment entity~~Boards~~ shall ensure that Texas Rising Star certification assessments are conducted as follows:
- (1) On-site assessment of 100 percent of the provider classrooms at the initial assessment for Texas Rising Star certification and at each scheduled recertification; and
 - (2) Recertification of all certified Texas Rising Star providers every three years.
- (d) The Agency's designated Texas Rising Star assessment entity~~Boards~~ shall ensure that certified Texas Rising Star providers are monitored on an annual basis and the monitoring includes:
- (1) at least one unannounced on-site visit; and

1 (2) a review of the provider's licensing compliance as described in §809.132 of
2 this ~~chapter~~ ~~subchapter~~.

3
4 (e) The Agency's designated Texas Rising Star assessment entity ~~Boards~~ shall ensure
5 compliance with the process and procedures in the Texas Rising Star guidelines for
6 conducting assessments of nationally accredited child care facilities and child care
7 facilities regulated by the United States ~~US~~ Military.

8
9 (f) The Agency's designated Texas Rising Star assessment entity ~~Boards~~ shall ensure
10 compliance with the process and procedures in the Texas Rising Star guidelines for
11 conducting assessments of certified Texas Rising Star providers that have a change
12 of ownership, move, or expand locations.

13
14 (g) Boards shall ensure compliance with the process and procedures in the Texas Rising
15 Star guidelines for implementing and supporting a continuous quality improvement
16 framework.

17
18 (h) Boards shall be responsible for the tasks assigned to the Texas Rising Star assessor
19 entity in this subchapter, within their respective workforce areas, until the assessor
20 entity is procured and designated by the Agency.

21
22 **§809.134. Minimum Qualifications for Texas Rising Star Staff.**

23
24 (a) Boards and the Agency's designated Texas Rising Star assessment entity shall ensure
25 that Texas Rising Star staff:

26
27 (1) meets the background check requirement consistent with Chapter 745 of this
28 title; and

29
30 (2) completes the Texas Rising Star standards training, as described in the Texas
31 Rising Star guidelines.

32
33 (b)(a) Boards shall ensure that Texas Rising Star mentor staff ~~meets~~ meet the minimum
34 requirements in subsections (c) - (f) ~~(b) - (g)~~ of this section.

35
36 (c) ~~(b)~~ Texas Rising Star mentor staff shall meet the minimum education requirements as
37 follows:

38
39 (1) Bachelor's degree from an accredited four-year college or university in early
40 childhood education, child development, special education, child psychology,
41 educational psychology, elementary education, or family consumer science; ;

42
43 (2) Bachelor's degree from an accredited four-year college or university with at
44 least 18 credit hours in early childhood education, child development, special
45 education, child psychology, educational psychology, elementary education, or
46 family consumer science with at least 12 credit hours in child development; or

1
2 (3) Associate's degree in early childhood education, child development, special
3 education, child psychology, educational psychology, elementary education, or
4 family consumer science, and with two years of suitable experience as a
5 ~~director in an early childhood education as determined by the Board program,~~
6 ~~with preference given to experience with a provider that is accredited or Texas~~
7 ~~Rising Star certified.~~

8
9 ~~(d)~~(e) The Commission may grant a waiver of no more than two years to obtain the
10 minimum education requirements in subsection ~~(c)~~(b) of this section if a Board can
11 demonstrate that no applicants in its workforce area meet the minimum education
12 requirements.

13
14 ~~(e)~~(d) Texas Rising Star mentor staff shall meet the minimum work experience
15 requirements of one year of full-time early childhood classroom experience in a child
16 care, EHS, HS, or pre-K through third-grade school program.

17
18 (f) All mentors must attain mentor microcredentialing, as described in the Texas Rising
19 Star Guidelines.

20
21 ~~(e) Texas Rising Star staff shall meet the background check requirement consistent with~~
22 ~~Chapter 745 of this title.~~

23
24 ~~(f) Texas Rising Star staff shall demonstrate:~~

25
26 ~~(1) knowledge of best practices in early childhood education; and~~

27
28 ~~(2) understanding of early childhood evaluations, observations, and assessment~~
29 ~~tools for both teachers and children.~~

30
31 (g) The Agency's designated Texas Rising Star assessment entity shall ensure that Texas
32 Rising Star assessor staff shall attain and maintain the Texas Rising Star Assessor
33 Certification, as described in the Texas Rising Star Guidelines~~meet the following~~
34 ~~training and certification criteria:~~

35
36 ~~(1) All staff must complete the Texas Rising Star standards training, as described~~
37 ~~in the Texas Rising Star guidelines.~~

38
39 ~~(2) All assessors must attain and maintain the Texas Rising Star Assessor~~
40 ~~Certification, as described in the Texas Rising Star guidelines.~~

41
42 ~~(3) All mentors must attain mentor micro-credentialing, as described in the Texas~~
43 ~~Rising Star guidelines.~~

1 **§809.135. Texas Rising Star ~~TRS~~ Process for Reconsideration.**

2
3 The Agency's designated Texas Rising Star assessment entity ~~Boards~~ shall ensure a
4 process for reconsideration of facility assessment ~~at the Board level~~ for Texas Rising Star
5 certification ~~the TRS program~~. Texas Rising Star assessments are ~~The TRS program is~~ not
6 subject to Chapter 823 of this title (relating to, ~~the~~ Integrated Complaints, Hearings, and
7 Appeals) ~~rules~~.

8
9 **§809.136. Roles and Responsibilities of Texas Rising Star Staff.**

10
11 Boards and the Agency's designated Texas Rising Star assessment entity shall ensure that
12 Texas Rising Star staff members comply with their assigned responsibilities, as
13 applicable.

- 14
15 (1) A mentor is defined as a Board or Board contract ~~designated~~ staff member who
16 helps providers obtain, maintain, or achieve higher star levels of certification.
17
18 (2) An assessor is defined as a ~~designated~~ ~~[Board]~~ staff member or contractor of
19 the Agency's designated Texas Rising Star assessment entity who assesses and
20 monitors providers that obtain, maintain, and achieve higher levels of quality.
21
22 (3) Dual-role staff is defined as an individual meeting the definitions of a mentor
23 and assessor under this section ~~designated staff members who assume the role~~
24 ~~of the assessor and mentor~~.
25
26 (4) For dual-role staff ~~If an individual performs the duties of both an assessor and a~~
27 ~~mentor~~, the Board and the Agency's designated Texas Rising Star assessment
28 entity shall ensure that the individual providing Texas Rising Star mentoring
29 services to a provider does not act as the assessor of that same provider when
30 determining Texas Rising Star certification.
31
32 (5) Texas Rising Star staff members are required to complete annual professional
33 development and continuing education consistent with the Texas Rising Star
34 annual minimum training hours requirement for a Texas Rising Star ~~--~~certified
35 child care center director.
36
37 (6) Pursuant to ~~Per the~~ Texas Family Code, §261.101, Texas Rising Star staff
38 members are mandated reporters when observing serious incidents as described
39 in the Texas Rising Star guidelines.