

1 **CHAPTER 809. CHILD CARE SERVICES**

2 **ADOPTED RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS***
3 ***REGISTER*. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS**
4 **SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE *TEXAS REGISTER*.**

5 ON JUNE 16, 2020, THE TEXAS WORKFORCE COMMISSION ADOPTED THE BELOW
6 RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

7
8 Estimated date of publication in the *Texas Register*: **July 3, 2020**
9 The rules will take effect: **July 6, 2020**

10 The Texas Workforce Commission (TWC) adopts amendments to the following sections of
11 Chapter 809, relating to Child Care Services, *without* changes, as published in the February 21,
12 2020, issue of the *Texas Register* (45 TexReg 1194):

- 13 Subchapter B. General Management, §809.15 and §809.20
- 14 Subchapter D. Parent Rights and Responsibilities, §809.71
- 15 Subchapter E. Requirements to Provide Child Care, §§809.91, 809.93, and 809.94
- 16 Subchapter G. Texas Rising Star Program, §809.132

17 PART I. PURPOSE, BACKGROUND, AND AUTHORITY
18 PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

19 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

20 Senate Bill (SB) 781, 86th Texas Legislature, Regular Session (2019), amended §42.071 of the
21 Human Resources Code to discontinue evaluation as a corrective action for the Texas Health and
22 Human Services Commission’s (HHSC) Child Care Licensing (CCL) staff to impose on a
23 licensed child care facility or family home. Effective September 1, 2019, CCL will either
24 recommend a voluntary plan of action or place a facility on probation as corrective action when
25 needed.

26 The amendments to TWC Chapter 809 Child Care Services rules remove references to
27 evaluation as a corrective action to align with Chapter 42 of the Human Resources Code as
28 amended by SB 781.

29 Additionally, House Bill (HB) 5, 85th Texas Legislature, Regular Session (2017), reorganized
30 several functions within the HHSC umbrella. Included in this reorganization was the transfer of
31 CCL from the Texas Department of Family and Protective Services (DFPS) to HHSC. These rule
32 amendments change references throughout Chapter 809 to reflect the transfer of CCL from
33 DFPS to HHSC.

34 Finally, §658E(c)(4) of the Child Care and Development Block Grant Act (2014) and 45 Code of
35 Federal Regulations (CFR) §98.45 require state Child Care and Development Fund (CCDF) lead
36 agencies to conduct a market rate survey (MRS) of child care rates and to use market rate data to
37 set direct care reimbursement rates. States must ensure equal access to child care services for
38 children participating in child care subsidies by setting direct care reimbursement rates that are

1 sufficient to provide comparable services to those received by families that do not receive
2 assistance.

3 As the CCDF lead agency for Texas, TWC conducts an annual MRS to analyze and summarize
4 child care market rate data for the state and for the 28 Local Workforce Development Boards
5 (Boards). Section 809.20, Maximum Provider Reimbursement Rates, authorizes Boards to set
6 reimbursement rates for their local workforce development areas (workforce areas) based on
7 local factors, including the MRS, and to ensure that the rates provide equal access to child care.

8 The US Department of Health and Human Services Office of Inspector General (OIG) recently
9 released a report--*States' Payment Rates Under the Child Care and Development Fund Program*
10 *Could Limit Access to Child Care Providers*--in which OIG found that many states were not
11 setting their child care reimbursement rates at a level sufficient to ensure that eligible children
12 have equal access to child care services that are comparable to services available to children
13 whose parents are not eligible to receive child care assistance. OIG recommended that Office of
14 Child Care (OCC) evaluate whether states are ensuring equal access for families in the CCDF
15 program, as required by statute.

16 OCC concurred with OIG's recommendation and prioritized review of equal access requirements
17 in its review of CCDF State Plans. Based on the review, OCC placed 33 states on Corrective
18 Action Plans (CAPs) for not achieving equal access requirements, with 21 of those based
19 specifically on inadequate rates.

20 OCC notified states at the 2019 State and Territories Administrators Meeting that CAPs were
21 implemented for states whose rates were at or below the 25th percentile of the market rate, as
22 determined by a statistically valid MRS. OCC also notified states that it would be reevaluating
23 the 25th percentile "floor" on an ongoing basis, and states can expect OCC to raise the floor over
24 time to improve equal access to child care services.

25 Based on OCC's actions to place states on CAPs for equal access if they fail to meet a minimum
26 floor for their rates, on September 24, 2019, TWC's three-member Commission (Commission)
27 took action to ensure that Boards' maximum reimbursement rates are set at a level adequate to
28 ensure equal access as set forth in the CCDF regulations at 45 CFR §98.45 Equal Access.
29 Specifically, the Commission directed staff to develop guidance--subsequently issued through
30 Workforce Development Letter 23-19, issued on October 15, 2019, and titled "Child Care
31 Provider Maximum Reimbursement Rate Increases"--requiring Boards to set their maximum
32 reimbursement rate at or above the 30th percentile of the 2019 MRS, in compliance with
33 §809.20(a), which requires that rates provide equal access to child care.

34 Section 809.20 authorizes Boards to establish maximum provider reimbursement rates and to
35 ensure that the rates provide equal access to child care. To further support the federal
36 requirement of equal access, §809.20 is amended to require Boards to establish maximum
37 reimbursement rates at or above a level established by the Commission.

38 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

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

1 **SUBCHAPTER B. GENERAL MANAGEMENT**

2 **TWC adopts the following amendments to Subchapter B:**

3 **§809.15. Promoting Consumer Education**

4 Section 809.15 is amended to change "DFPS" to "CCL" to reflect the transfer of CCL from
5 DFPS to HHSC.

6 **§809.20. Maximum Provider Reimbursement Rates**

7 Section 809.20(a) is amended to require Boards to establish maximum reimbursement rates for
8 child care subsidies at or above a level established by the Commission. The purpose of the rule
9 amendment is to ensure that Boards' maximum reimbursement rates are set at a level adequate to
10 enable equal access to subsidized child care services as set forth in the CCDF regulations at 45
11 CFR §98.45 Equal Access.

12 Section 809.20 is also amended to change "DFPS" to "CCL" to reflect the transfer of CCL from
13 DFPS to HHSC.

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

15 **TWC adopts the following amendments to Subchapter D:**

16 **§809.71. Parent Rights**

17 Section 809.71 is amended to change "DFPS" to "CCL" to reflect the transfer of CCL from
18 DFPS to HHSC.

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

20 **TWC adopts the following amendments to Subchapter E:**

21 **§809.91. Minimum Requirements for Providers**

22 Section 809.91 is amended to change "DFPS" to "CCL" to reflect the transfer of CCL from
23 DFPS to HHSC.

24 **§809.93. Provider Reimbursement**

25 Section 809.93 is amended to change "DFPS" to "CCL" to reflect the transfer of CCL from
26 DFPS to HHSC.

27 **§809.94. Providers Placed on Corrective or Adverse Action by the Texas Department of**
28 **Family and Protective Services**

29 Section 809.94 is amended to remove references to evaluation as a corrective action to align with
30 Chapter 42 of the Human Resources Code as amended by SB 781. Specifically, §809.94(a),
31 regarding providers placed on evaluation by CCL, is removed and subsequent subsections are
32 relettered accordingly.

33 Section 809.94 is also amended to change "DFPS" to "CCL" to reflect the transfer of CCL from
34 DFPS to HHSC.

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

36 **TWC adopts the following amendments to Subchapter G:**

1 **§809.132. Impact of Certain Deficiencies on TRS Certification**

2 Section 809.132 is amended to change "DFPS" to "CCL" to reflect the transfer of CCL from
3 DFPS to HHSC.

4 No comments were received.

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

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

10 The adopted rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as
11 Texas Government Code, Chapter 2308.

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- (B) integrated school readiness models, pursuant to Texas Education Code §29.160;
 - (5) a list of child care providers that meet quality indicators, pursuant to Texas Government Code §2308.3171;
 - (6) information on existing resources and services available in the workforce area for conducting developmental screenings and providing referrals to services when appropriate for children eligible for child care services, including the use of:
 - (A) the Early and Periodic Screening, Diagnosis, and Treatment program under 42 USC 1396 et seq.; and
 - (B) developmental screening services available under Part B and Part C of the Individuals with Disabilities Education Act (20 USC 1419, 1431 et seq.); and
 - (7) a link to the Agency's designated child care consumer education website.
- (c) A Board shall cooperate with HHSC to provide 2-1-1 Texas with information, as determined by HHSC, for inclusion in the statewide information and referral network.

§809.20. Maximum Provider Reimbursement Rates.

- (a) Based on local factors, including a market rate survey provided by the Commission, a Board shall establish maximum reimbursement rates for child care subsidies at or above a level established by the Commission to ensure that the rates provide equal access to child care in the local market and in a manner consistent with state and federal statutes and regulations governing child care. At a minimum, Boards shall establish reimbursement rates for full-day and part-day units of service, as described in §809.93(f), for the following:
 - (1) Provider types:
 - (A) Licensed child care centers, including before- or after-school programs and school-age programs, as defined by CCL;
 - (B) Licensed child care homes as defined by CCL;
 - (C) Registered child care homes as defined by CCL; and
 - (D) Relative child care providers as defined in §809.2.
 - (2) Age groups in each provider type:

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- (A) Infants age 0 to 17 months;
 - (B) Toddlers age 18 to 35 months;
 - (C) Preschool age children from 36 to 71 months; and
 - (D) School-age children 72 months and older.
- (b) A Board shall establish enhanced reimbursement rates:
- (1) for all age groups at TRS provider facilities; and
 - (2) only for preschool-age children at child care providers that participate in integrated school readiness models pursuant to Texas Education Code §29.160.
- (c) The minimum enhanced reimbursement rates established under subsection (b) of this section shall be greater than the maximum rate established for providers not meeting the requirements of subsection (b) of this section for the same category of care up to, but not to exceed, the provider's published rate. The maximum rate must be at least:
- (1) 5 percent greater for a:
 - (A) 2-Star Program Provider; or
 - (B) child care provider meeting the requirements of subsection (b)(2) of this section;
 - (2) 7 percent greater for a 3-Star Program Provider; and
 - (3) 9 percent greater for a 4-Star Program Provider.
- (d) Boards may establish a higher enhanced reimbursement rate than those specified in subsection (c) of this section for TRS providers, as long as there is a minimum 2 percentage point difference between each star level.
- (e) A Board or its child care contractor shall ensure that providers that are reimbursed for additional staff or equipment needed to assist in the care of a child with disabilities are paid a rate up to 190 percent of the provider's reimbursement rate for a child of that same age. The higher rate shall take into consideration the estimated cost of the additional staff or equipment needed by a child with disabilities. The Board shall ensure that a professional, who is familiar with assessing the needs of children with disabilities, certifies the need for the higher reimbursement rate described in this subsection.

- 1 (f) The Board shall determine whether to reimburse providers that offer transportation as
2 long as the combined total of the provider's published rate, plus the transportation
3 rate, is subject to the maximum reimbursement rate established in subsection (a) of
4 this section.

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

6
7 **§809.71. Parent Rights.**

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9 A Board shall ensure that the Board's child care contractor informs the parent in writing
10 that the parent has the right to:

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12 (1) choose the type of child care provider that best suits their needs and to be
13 informed of all child care options available to them as included in the
14 consumer education information described in §809.15;
15
16 (2) visit available child care providers before making their choice of a child care
17 option;
18
19 (3) receive assistance in choosing initial or additional child care referrals including
20 information about the Board's policies regarding transferring children from one
21 provider to another;
22
23 (4) be informed of the Commission rules and Board policies related to providers
24 charging parents the difference between the Board's reimbursement and the
25 provider's published rate as described in §809.92(c) - (d);
26
27 (5) be represented when applying for child care services;
28
29 (6) be notified of their eligibility to receive child care services within 20 calendar
30 days from the day the Board's child care contractor receives all necessary
31 documentation required to initially determine eligibility for child care;
32
33 (7) receive child care services regardless of race, color, national origin, age, sex,
34 disability, political beliefs, or religion;
35
36 (8) have the Board and the Board's child care contractor treat information used to
37 determine eligibility for child care services as confidential;
38
39 (9) receive written notification at least 15 calendar days before termination of
40 child care services;
41
42 (10) reject an offer of child care services or voluntarily withdraw their child from
43 child care, unless the child is in protective services;
44
45 (11) be informed of the possible consequences of rejecting or ending the child care
46 that is offered;

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2 (12) be informed of the eligibility documentation and reporting requirements
3 described in §809.72 and §809.73;
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5 (13) be informed of the parent appeal rights described in §809.74;
6
7 (14) be informed of required background and criminal history checks for relative
8 child care providers through the listing process with CCL as described in
9 §809.91(e) before the parent or guardian selects the relative child care
10 provider;
11
12 (15) receive written notification pursuant to §809.78(d) of the possible termination
13 of child care services for excessive absences, as described in §809.78(a)(1);
14 and
15
16 (16) receive written notification of possible termination of child care services for
17 failure to pay the parent share of cost, pursuant to §809.19(d).
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19 **SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE**

20
21 **§809.91. Minimum Requirements for Providers.**

- 22
23 (a) A Board shall ensure that child care subsidies are paid only to:
24
25 (1) regulated child care providers as described in §809.2;
26
27 (2) relative child care providers as described in §809.2, subject to the requirements
28 in subsection (e) of this section; or
29
30 (3) at the Board's option, child care providers licensed in a neighboring state,
31 subject to the following requirements:
32
33 (A) Boards shall ensure that the Board's child care contractor reviews the
34 licensing status of the out-of-state provider every month, at a minimum,
35 to confirm the provider is meeting the minimum licensing standards of
36 the state;
37
38 (B) Boards shall ensure that the out-of-state provider meets the requirements
39 of the neighboring state to serve CCDF-subsidized children; and
40
41 (C) The provider shall agree to comply with the requirements of this chapter
42 and all Board policies and Board child care contractor procedures.
43
44 (b) A Board shall not prohibit a relative child care provider who is listed with CCL and
45 who meets the minimum requirements of this section from being an eligible relative
46 child care provider.

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2 (c) Except as provided by the criteria for TRS Provider certification, a Board or the
3 Board's child care contractor shall not place requirements on regulated providers
4 that:
5
6 (1) exceed the state licensing requirements stipulated in Texas Human Resources
7 Code, Chapter 42; or
8
9 (2) have the effect of monitoring the provider for compliance with state licensing
10 requirements stipulated in Texas Human Resources Code, Chapter 42.
11
12 (d) When a Board or the Board's child care contractor, in the course of fulfilling its
13 responsibilities, gains knowledge of any possible violation regarding regulatory
14 standards, the Board or its child care contractor shall report the information to the
15 appropriate regulatory agency.
16
17 (e) For relative child care providers to be eligible for reimbursement for Commission-
18 funded child care services, the following applies:
19
20 (1) Relative child care providers shall list with CCL; however, pursuant to 45 CFR
21 §98.41(e), relative child care providers listed with CCL shall be exempt from
22 the health and safety requirements of 45 CFR §98.41(a).
23
24 (2) A Board shall allow relative child care providers to care for a child in the
25 child's home (in-home child care) only for the following:
26
27 (A) A child with disabilities as defined in §809.2, and his or her siblings;
28
29 (B) A child under 18 months of age, and his or her siblings;
30
31 (C) A child of a teen parent; and
32
33 (D) When the parent's work schedule requires evening, overnight, or
34 weekend child care in which taking the child outside of the child's home
35 would be disruptive to the child.
36
37 (3) A Board may allow relative in-home child care for circumstances in which the
38 Board's child care contractor determines and documents that other child care
39 provider arrangements are not available in the community.
40
41 (f) Boards shall ensure that subsidies are not paid for a child at the following child care
42 providers:
43
44 (1) Except for foster parents authorized by DFPS pursuant to §809.49, licensed
45 child care centers, including before- or after-school programs and school-age
46 programs, in which the parent or his or her spouse, including the child's parent

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

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4 (2) Licensed, registered, or listed child care homes where the parent also works
5 during the hours his or her child is in care.
6

7 **§809.93. Provider Reimbursement.**
8

- 9 (a) A Board shall ensure that reimbursement for child care is paid only to the provider.
10
11 (b) A Board or its child care contractor shall reimburse a regulated provider based on a
12 child's monthly enrollment authorization, excluding periods of suspension at the
13 concurrence of the parent as described in §809.51(d).
14
15 (c) A Board shall ensure that a relative child care provider is not reimbursed for days on
16 which the child is absent.
17
18 (d) A relative child care provider shall not be reimbursed for more children than
19 permitted by the CCL minimum regulatory standards for Registered Child Care
20 Homes. A Board may permit more children to be cared for by a relative child care
21 provider on a case-by-case basis as determined by the Board.
22
23 (e) A Board shall not reimburse providers that are debarred from other state or federal
24 programs unless and until the debarment is removed.
25
26 (f) Unless otherwise determined by the Board and approved by the Commission for
27 automated reporting purposes, the monthly enrollment authorization described in
28 subsection (b) of this section is based on the unit of service authorized, as follows:
29
30 (1) A full-day unit of service is 6 to 12 hours of care provided within a 24-hour
31 period; and
32
33 (2) A part-day unit of service is fewer than 6 hours of care provided within a 24-
34 hour period.
35
36 (g) A Board or its child care contractor shall ensure that providers are not paid for
37 holding spaces open.
38
39 (h) A Board or the Board's child care contractor shall not pay providers:
40
41 (1) less, when a child enrolled full time occasionally attends for a part day; or
42
43 (2) more, when a child enrolled part time occasionally attends for a full day.
44
45 (i) The Board or its child care contractor shall not reimburse a provider retroactively for
46 new Board maximum reimbursement rates or new provider published rates.

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2 (j) A Board or its child care contractor shall ensure that the parent's travel time to and
3 from the child care facility and the parent's work, school, or job training site is
4 included in determining whether to authorize reimbursement for full-day or part-day
5 care under subsection (f) of this section.
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7 **§809.94. Providers Placed on Corrective or Adverse Action by the Texas Department**
8 **of Family and Protective Services.**
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- 10
11 (a) For a provider placed on probation corrective action (probationary status) by CCL,
12 Boards shall ensure that:
13
14 (1) parents with children in Commission-funded child care are notified in writing
15 of the provider's probationary status no later than five business days after
16 receiving notification from the Agency of CCL's decision to place the provider
17 on probationary status; and
18
19 (2) no new referrals are made to the provider while on probationary status.
20
21 (b) A parent receiving notification of a provider's probationary status with CCL
22 pursuant to subsection (a) of this section may transfer the child to another eligible
23 provider without being subject to the Board transfer policies described in §809.71(3)
24 if the parent requests the transfer within 14 calendar days of receiving such
25 notification.
26
27 (c) For a provider placed on probationary status by CCL, Boards shall ensure that the
28 provider is not reimbursed at the Boards' enhanced reimbursement rates described in
29 §809.20 while on probationary status.
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31 (d) For a provider against whom CCL is taking adverse action, Boards shall ensure that:
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33 (1) parents with children enrolled in Commission-funded child care are notified no
34 later than two business days after receiving notification from the Agency that
35 CCL intends to take adverse action against the provider;
36
37 (2) children enrolled in Commission-funded child care with the provider are
38 transferred to another eligible provider no later than five business days after
39 receiving notification from the Agency that CCL intends to take adverse action
40 against the provider; and
41
42 (3) no new referrals for Commission-funded child care are made to the provider
43 while CCL is taking adverse action.
44
45 (e) For adverse actions in which CCL has determined that the provider poses an
46 immediate risk to the health or safety of children and cannot operate pending appeal

1 of the adverse action, but for which there is a valid court order that overturns CCL's
2 determination and allows the provider to operate pending administrative review or
3 appeal, Boards shall take action consistent with subsection (d) of this section.
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5 **SUBCHAPTER G. TEXAS RISING STAR PROGRAM**
6

7 **§809.132. Impact of Certain Deficiencies on TRS Certification.**
8

- 9 (a) A TRS provider shall lose TRS certification if the provider:
10
11 (1) is placed on corrective action with a Board pursuant to Subchapter F of this
12 chapter;
13
14 (2) is under a "Notice of Freeze" with the Commission pursuant to Chapter 213 of
15 the Texas Labor Code (Enforcement of the Texas Unemployment
16 Compensation Act) or Chapter 61 of the Texas Labor Code (Payment of
17 Wages);
18
19 (3) is placed on corrective or adverse action by CCL; or
20
21 (4) had 15 or more total licensing deficiencies of any type during the most recent
22 12-month licensing history.
23
24 (b) TRS providers with any of the critical licensing deficiencies listed in the TRS
25 guidelines during the most recent 12-month CCL licensing history shall have the
26 following consequences:
27
28 (1) reduction of one-star level, so a 4-Star Program Provider is reduced to a 3-Star
29 Program Provider, a 3-Star Program Provider is reduced to a 2-Star Program
30 Provider; or
31
32 (2) a 2-Star Program Provider loses certification.
33
34 (c) TRS providers with five or more of the high or medium-high deficiencies listed in
35 the TRS guidelines during the most recent 12-month CCL licensing history shall lose
36 a star level with a 2-Star Program Provider losing certification.
37
38 (d) TRS providers with 10 to 14 total licensing deficiencies of any type during the most
39 recent 12-month CCL licensing history shall be placed on a six-month TRS program
40 probationary period. Further:
41
42 (1) TRS providers on a six-month probationary period that are re-cited by CCL
43 within the probationary period for any of the same deficiencies shall lose a star
44 level with a 2-Star Program Provider losing certification;
45

- 1 (2) if any new deficiencies--not to exceed 14 total deficiencies--are cited by CCL
2 during the first probationary period, a second six-month probationary period
3 shall be established effective upon the date of final CCL determination of the
4 deficiencies; and
5
6 (3) if any new deficiencies--not to exceed 14 total deficiencies--are cited by CCL
7 during the second six-month probationary period, a provider shall lose TRS
8 certification.
9
10 (e) Providers losing a star level due to licensing deficiencies shall be reinstated at the
11 former star level if no citations described in §809.132(b) - (d) occur within the six-
12 month reduction time frame.
13
14 (f) Providers losing TRS certification shall be eligible to reapply for certification after
15 six months following the loss of the certification, as long as no current deficiencies
16 are re-cited and no additional licensing deficiencies are cited during the
17 disqualification period.