

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

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
PART XX. TEXAS WORKFORCE COMMISSION
CHAPTER 809. CHOICES CHILD CARE
CHAPTER 811. CHOICES

The Texas Workforce Commission (Commission) adopts the repeal of and new rules for Chapter 811 Choices with changes and the repeal of and new §809.102 relating to Choices Child Care without changes to the proposed text as published in the August 22, 2003, issue of the *Texas Register* (28 TexReg 6779).

The preamble is organized in the following parts:

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

- A. Purpose**
- B. Background and Authority**
 - 1. Statutory Purposes of TANF**
 - 2. State Plan Requirements**
 - 3. Federal Statutory Provisions for State Flexibility To Define "Engaged in Work" under 42 U.S.C. Section 602**
 - 4. Federal Authority for Flexibility and the Application of the Twelve Enumerated Work Activities under 42 U.S.C. Section 607**
 - 5. State Statutory Authority**
 - 6. State TANF Policy**
- C. Individual Work Requirements Include Activities That Support Children's Immunization, Medical and Dental Checkups, Children's School Attendance, and Individuals' Abstaining from Drug and Alcohol Abuse**
 - 1. The Effects of Failing to Immunize Children on Employment**
 - 2. The Effects of Substance Abuse on Employment**
 - 3. The Effects of Poor School Attendance on Parents' Work and Children's Success**
- D. Provisions Regarding Local Implementation**

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. COMMENTS AND RESPONSES

PART IV. REPEAL

PART V. FINAL RULES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

A. Purpose

The purpose of these rules is to implement House Bill 2292 (HB 2292) enacted by the 78th Legislature, Regular Session, 2003, which amends, in pertinent parts, Chapter 31, Texas Human Resources Code to incorporate the pay for performance model relating to Temporary Assistance for Needy Families (TANF) cash assistance and Medicaid assistance for the adult(s).

B. Background and Authority

1. Statutory Purposes of TANF

With the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Congress created TANF with the intent of giving states the flexibility to develop and implement creative and innovative strategies and approaches to accomplish four express purposes of TANF:

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

42 U.S.C. §601(a)

2. State Plan Requirements

Under the TANF state plan provision, 42 U.S.C. §602, Congress delineates the requirements that states must follow to receive federal funds:

- (i) Conduct a program, designed to serve all political subdivisions in the State (not necessarily in a uniform manner), that provides assistance to needy families with (or expecting) children and provides parents with job preparation, work, and support services to enable them to leave the program and become self-sufficient.
- (ii) Require a parent or caretaker receiving assistance under the program to ***engage in work (as defined by the State)*** once the State determines the parent or caretaker is ready to engage in work, or once the parent or caretaker has received assistance under the program for 24 months (whether or not consecutive), whichever is earlier, consistent with section 607(e)(2) of this title. (*emphasis added*)

Under 42 U.S.C. §602(a)(1)(A)(ii), Texas exercises its option to require an immediate engagement in work, rather than waiting for a 24-month period. Under the Texas TANF policy, the state requires individuals applying for temporary cash assistance to immediately engage in work through participation in a Workforce Orientation for Applicants (WOA). Local Workforce Development Boards (Boards) have the option of further engaging applicants in additional work activities, but are not required to do so until a determination of eligibility for TANF cash assistance is made by the Texas Department of Human Services (TDHS). After such eligibility determination, and at the point of commencement of further Choices services, Boards determine when a person is work ready, as defined in 40 TAC Section 811.2(13).

3. Federal Statutory Provisions for State Flexibility To Define "Engaged in Work" under 42 U.S.C. Section 602

The text and legislative history of PRWORA delineates Congressional intent on TANF. The federal statute and federal TANF regulations grant the states the flexibility to define engaged in work by determining what constitutes work activities.

Congress is committed to implementing a "work first" policy. TANF is designed to cure the deficiencies of the prior statute, Aid to Families with Dependent Children, which failed to emphasize work as a priority or provide sufficient state flexibility. In the printed legislative history of House Resolution 3734 (PRWORA), Congress expresses its intent that TANF provide the states with the flexibility needed to successfully initiate a "work first" program. It states, in part:

There is overwhelming public support for the idea that an able bodied adult receiving public assistance should work.... However, the current JOBS program under AFDC fails to adequately move in this direction for several reasons. First, it does not emphasize work as the first goal. Second, it fails to provide adequate state flexibility to carry out the types of work programs states feel would be successful. Finally, the current JOBS program lacks adequate accountability.

Under the legislation passed out of ... committee, these shortfalls are addressed by replacing the current JOBS program with strong, mandatory work requirements designed to move towards a "work-first" system of welfare reform and providing states the flexibility necessary to implement successful welfare-to-work programs while holding all states accountable for placing a minimum percentage of welfare recipients in work.

House Report (H.R.) No. 104-651 at 823 on House Resolution 3734 (PRWORA).

Congress provided that States are accountable for achieving minimum levels of participation as a condition of the receipt of federal funds. *Id.*

TANF combines the interests expressed by Congress [work-first priority, state flexibility, and state accountability] by requiring a state to submit a plan that demonstrates how a state will reach the goals prescribed. In that plan, Congress required that a state define the term "engaged in work." 42 U.S.C. §602(a)(1)(A)(ii) (an eligible state must submit to the Secretary of Health and Human Services a plan that outlines "how the State intends to ... [r]equire a parent or caretaker receiving assistance under the program to ***engage in work (as defined by the State)*** once the State determines the parent or caretaker is ready to engage in work") (emphasis added)

Congress recognizes each state's interest in crafting programs that achieve specific (and, possibly, unique) objectives that are consistent with the overarching federal interest of enabling public assistance recipients to achieve independence and reduce dependency on such assistance. Such flexibility was "key to the reform of our welfare system," according to the reported legislative history on PRWORA. House Report (H.R.) No. 104-651 at 826 on House Resolution 3734 (PRWORA). Congress further expressed its intent as follows:

The existing statutory restrictions under the current JOBS program limit the flexibility for states to readily design and implement welfare-to-work programs, which meet their needs.

...

The committee's decision to repeal the JOBS program and replace it with a highly flexible, mandatory work provision, will allow states to move forward with [the] types of innovations outlined by [the testimony].
H.R. Report No. 104-651 at 826-827.

The United States Department of Health and Human Services (USDHHS) states its support for state flexibility in the preamble to the federal regulations, as referenced in 64 Federal Register 17720, 17776 (April 12, 1999).

The law imposes a requirement on each parent or caretaker to work (see section 407(a)(1)(A)(ii) of the [Social Security] Act (42 U.S.C. Section 607)). That requirement applies when the state determines the individual is ready to work, or after he or she has received assistance for 24 months, whichever happens first. *For this requirement, the state defines work activities that meet the requirement.*

...

Readers should understand that these individual requirements are different from the work requirements described at section 407 of the Act (42 U.S.C. §607). Section 407 applies a requirement on each state to engage a certain percentage of its total caseload in specified work activities. For the state requirement, the law lists what activities meet the requirement. *A state could choose to use this statutory list for the work requirements on individuals described above, but is not required to do so.* (emphasis added)

Consequently, the Commission has explicit authority to define what it means to be engaged in work, including but not limited to the 12 enumerated work activities under 42 U.S.C. Section 607. Notwithstanding the ability of the Commission to add a new requirement beyond the enumerated 12 work activities under 42 U.S.C. Section 607, the Commission, at this time, instead incorporates the additional elements under the definition of "job readiness assistance." The ability to add requirements beyond and define the 12 enumerated work activities is clearly within the Commission's authority. This authority is based upon the explicit language of USDHHS in the preamble to the federal regulations. In addition, the Commission finds that exercise of the federal and state authority is a permissible agency construction of the federal and state statutes and is rational and consistent with the intent of those statutes. The Commission relies upon the following cases that support its exercise of authority, which is not just express, but also based on a permissible construction. Permissible construction is "whether the agency's construction is 'rational and consistent with the statute.'" *Sullivan v. Everhart*, 494 U.S. 83 (1990), citing *NLRB v. Food and Commercial Workers*, 484 U.S. 112, 123 (1987).

Under the authority granted by federal statute (TANF), the State of Texas has the flexibility to use its TANF funds to design services or provide benefits to meet any of the four statutory purposes of TANF. Based on this flexibility and under the authority granted by state statute, §302.002(d), §301.0015(a)(5), and §302.021, Texas Labor Code, the Commission has promulgated rules to define Choices work requirements.

4. Federal Authority for Flexibility and the Application of the Twelve Enumerated Work Activities under 42 U.S.C. Section 607

When examining the allowable requirements under "engaged in work," a distinction exists between

*(first) the state definition of individual work requirements under 42 U.S.C. Section 602 (discussed under Part I.4 previously) and
*(second) Congress' definition of "work activities" for purposes of state accountability for federal funding under 42 U.S.C. §607.

Regarding the first and pursuant to 42 U.S.C §602, states have the explicit responsibility to define what constitutes engaged in work. This responsibility, along with the flexibility afforded states under TANF, requires a state to set work requirements for individuals that are designed to assist them in obtaining and retaining employment. This may include more work requirements than are in the 12 enumerated work activities under 42 U.S.C. Section 607.

Regarding the second, the accountability for federal funding is based on a calculation of the number of individuals participating the required number of hours in the 12 enumerated work activities under 42 U.S.C. §607. This calculation is commonly referred to as "federal participation requirements" or "participation requirements."

When calculating whether a state has met its federal participation requirements, Congress has determined that hours of participation in the following 12 work activities will apply:

(d) "Work activities" defined,

As used in this section, the term "work activities" means--

- (1) unsubsidized employment;
- (2) subsidized private sector employment;
- (3) subsidized public sector employment;
- (4) work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available;
- (5) on-the-job training;
- (6) job search and job readiness assistance;
- (7) community service programs;
- (8) vocational educational training (not to exceed 12 months with respect to any individual);
- (9) job skills training directly related to employment;
- (10) education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency;
- (11) satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate; and
- (12) the provision of child care services to an individual who is participating in a community service program.

42 U.S.C. Section 607

Even when applying the term "work activity" for the limited purpose of calculating the state's participation requirements, in its preamble to the federal regulations USDHHS has affirmed a state's authority to further define these terms to provide clarity or cure ambiguity. 64 Fed.Reg. 17720, 17776 *et seq.* (April 12, 1999)

5. State Statutory Authority

In 1995, with the enactment of HB 1863, the 74th Legislature created the Texas Workforce Commission. Section 302.021 of the Texas Labor Code consolidated multiple employment and training activities under the Commission, including the responsibility for the TANF employment and training program (Choices). Pursuant to Section 302.021, Texas Labor Code, the Commission is responsible for the oversight and management of the Choices program, which is set forth in Chapter 31 of the Texas Human Resources Code. Specifically, Section 302.021(a) states the following:

The following job-training, employment, and employment-related educational programs and functions are consolidated under the authority of the Commission:

...

(4) employment programs under Chapter 31, Texas Human Resources Code

... (16) education, employment, employment support, training services, activities and programs funded under TANF (42 U.S.C. Section 601 *et seq.*)

HB 1863, Section 11.75, as added by the 74th Legislature, provides for the transfer of employment programs under Chapter 31, Texas Human Resources Code. The education, employment, employment support, training services, and other activities and programs funded under TANF (42 U.S.C. Section 601 *et seq.*) were included in the transfer as follows, in relevant parts, under subsections (b) and (e):

(b) The executive director of the Texas Workforce Commission shall determine, on a program-by-program basis, the date on which a program administered by the Texas Employment Commission on August 31, 1995, shall be transferred to the Texas Workforce Commission, and the date on which a program listed under Section 302.021, Texas Labor Code, as added by this article, and administered by another state agency on August 31, 1995, shall be transferred to the Texas Workforce Commission. The transfer under this subsection may begin on the date on which the executive director is appointed.

...

(e) A reference in a law or administrative rule to an agency that as of August 31, 1995, administered a program transferred to the Texas Workforce Commission means the Texas Workforce Commission.

HB 1863, Section 11.75, as added by Acts, 74th Leg., R.S., ch. 655, Section 11.75, eff. September 1, 1995 [as published in the Vernon's Texas Code Annotated under "Historical and Statutory Notes" to Section 302.021, Texas Labor Code (Bound Volume 1996)]

When the Texas Legislature transferred programs to the Texas Workforce Commission, it also gave the Commission the authority to administer such programs. Section 31.012, Texas Human Resources Code, entitled "Mandatory Work or Participation in Employment Activities Through the Job Opportunity and Basic Skills Program," subsection (d) states, "A state program operated under this section shall be administered by the division of workforce development of the Texas Workforce Commission when the program is transferred to that commission."

In addition to the transfer of authority, the Commission was also empowered with the rulemaking authority for implementation of the TANF employment and training program (Choices). Texas Labor Code §302.002(d) provides that "the Commission shall adopt rules in accordance with Chapter 2001, Government Code, as necessary for the proper administration of the [Workforce Development] division." The Workforce Development Division includes the TANF employment and training program (i.e., Choices program), which transferred to the Commission in 1996. Note, when the Texas Human Resources Code, including Chapter 31, refers to the "Department," it means the "Texas Workforce Commission" when referencing a TANF employment and training program. The rules governing the Choices program are set out by the Commission in Texas Workforce Commission rules 40 TAC Chapter 811.

The Health and Human Services Commission (HHSC) is the state entity responsible for the implementation and oversight of TANF cash assistance eligibility by the Texas Department of Human Services. HB 2292, 78th Legislature, R.S. (2003) strengthened the linkages among the human services agencies by consolidating 12 existing agencies within five agencies. HHSC, one of the five agencies, will oversee the operations of the remaining four agencies as well as the development of policies and rules. Section 1.03 of HB 2292 provides:

(e) Notwithstanding any other law, the executive commissioner shall adopt rules and policies for the operation of and provision of health and human services by the health and human services agencies.

...

(l) Notwithstanding any other law, the executive commissioner has the authority to adopt policies and rules governing the delivery of services to persons who are served by each health and human services agency and the rights and duties of persons who are served or regulated by each agency.

Texas Government Code §531.0055

Moreover, Section 1.07 of HB 2292, relating to TANF cash assistance eligibility, provides:

The [HHSC] commission shall:

(1) plan and direct the financial assistance program under Chapter 31, Texas Human Resources Code, including the procurement, management, and monitoring of contracts necessary to implement the program;

(2) adopt rules and standards governing the financial assistance program under Chapter 31, Texas Human Resources Code; and

(3) establish requirements for and define the scope of the ongoing evaluation of the financial assistance program under Chapter 31, Texas Human Resources Code.

Texas Government Code §531.0224

HB 2641, enacted by the 76th Legislature, 1999, directed HHSC to coordinate TANF services in order to increase self-sufficiency of TANF recipients and improve service delivery of services to recipients and to improve effectiveness of job training for TANF recipients (Texas Human Resources Code, Section 31.0127). Consistent with the memorandum of understanding implementing the 1999 law, the Commission has authority to adopt policy and administrative rules that govern the Commission's TANF employment and training program.

6. State TANF Policy

Consistent with federal law, the Texas Human Resources Code states that individuals must engage in work in order to receive TANF cash assistance and related Medicaid assistance for the adult(s) unless exempt from the work requirements. The statute specifically provides:

To the extent allowed by federal law, the Health and Human Services Commission or any health and human services agency, as defined by Section 531.001, Government Code, may deny medical assistance for a person who is eligible for financial assistance but to whom that assistance is not paid because of the person's failure to cooperate. Medical assistance to the person's family may not be denied for the person's failure to cooperate. Medical assistance may not be denied to a person receiving assistance under this chapter who is under the age of 19, a pregnant adult, or any other person who may not be denied medical assistance under federal law.

Texas Human Resources Code §31.0032(c)

Under HB 2292, the failure to be engaged in work has consequences for families receiving assistance, including the loss of TANF benefits, the loss by TANF recipients of related benefits such as support services and the loss by adult TANF recipients of Medicaid.

Testimony and legislative debate on HB 2292 centered in part on reinforcing the personal responsibility requirements relating to TANF cash assistance and Medicaid assistance for the adult(s) and to ensure that no state or federal funds are used to pay for assistance to individuals that fail to cooperate. The legislative intent was to ensure that families are cooperating in order to receive their cash assistance and supports the principle that the state should not support families who consistently refuse to cooperate. Given the significance of failing to be engaged in work, the Commission will strive to ensure that families understand what it means to be, and how to be, engaged in work. The Commission will also continue to work with HHSC and TDHS to ensure that eligibility of sanctioned adults is reinstated as soon as a demonstration of cooperation or a finding of good cause to waive noncooperation is made.

The Commission is adopting these rules as part of its commitment to assist TANF recipients who take steps to engage in work activities for the purposes of obtaining and retaining employment. The Commission finds it is part of its state and federal legislative mandates to address barriers that inhibit successful employment and job retention. The Commission seeks to effectuate its goal of helping recipients in the Choices program address family issues that impact their ability to obtain and retain employment.

C. Individual Work Requirements Include Activities That Support Children's Immunization, Medical and Dental Checkups, Children's School Attendance, and Individuals' Abstaining from Drug and Alcohol Abuse

The Commission set forth the definition of work requirements to address employment barriers faced by families who fail to immunize their children, ensure their children receive regular medical checkups, ensure their children attend school, and refrain from drug and alcohol abuse. By defining these requirements as part of the work requirements, the Commission is exercising the flexibility granted under TANF. The Commission is modifying the definition of "work requirements" to include additional activities required to be engaged in work. In response to comments, the Commission has also modified the definition of "job readiness assistance" to include activities that contribute to individuals' ability to obtain and retain employment. Those

activities include maintenance of their children's immunizations, medical and dental checkups, and school attendance, as well as abstaining from the use, possession, or sale of controlled substances and abstention from alcohol abuse. In doing so, the Commission is addressing the well-documented correlation between individuals' work performance and abuse of alcohol or drugs; the health of their children; and their children's success in school.

The Commission finds that the changes are supported by a growing body of research studies that significantly link child immunization and health, substance abuse treatment, and enforcement of school attendance requirements with positive employment outcomes for TANF recipients. The following is a summary of research studies that the Commission finds support the incorporation of parental responsibilities in the Choices rules, and if not performed, adversely impact employment:

1. The Effects of Failing To Immunize Children on Employment

*Vaccine-preventable diseases have many social and economic costs: sick children miss school and can cause parents to lose time from work. (What Would Happen If We Stopped Vaccinations, National Immunization Program, Center for Disease Control, 2003)

2. The Effects of Substance Abuse on Employment

*In the two years after [substance abuse] treatment, [TANF recipient's] ...quarterly earnings increased. (SAMHSA CSAT Publications-TAP 25, "The Impact of Substance Abuse Treatment on Employment Outcomes Among AFDC Clients in Washington State, Study of individuals admitted to substance abuse treatment from July 1994 - June 1996," Chapter IV Section A.)

*AFDC clients in the three substance abuse treatment groups were 50% to 100% more likely to become employed in the two-year, post-treatment period than their counterparts in the comparison groups. (SAMHSA, Executive Summary, Section C)

*A study's findings that substance abuse treatment had positive effects on employment and earnings among AFDC clients in Washington State are notable. (SAMHSA CSAT Publications-TAP 25, Executive Summary, Section D 1) 1996)

*Among the AFDC clients with any earnings whatsoever in the tracking period, average quarterly earnings increased by approximately 30% to 40% after treatment. (SAMHSA, Chapter III Section A 1)

*The economic costs due to losses in labor market productivity from reductions in the likelihood of employment, low labor supply, and poor on-the-job performance and earnings owing to drug abuse impose substantial hardship on individual workers and their families. (Terza and Vechnak, "The Effect of Substance Abuse on Employment Status, Department of Economics," The Pennsylvania State University, July, 2001 p. 1)

*Alcoholics are more likely to land jobs with fewer fringe benefits, higher risk of injury, and in smaller firms. (Terza and Vechnak, p. 2)

*Studies show important information [that alcohol and drug abuse] negatively impact the abilities of substance abusers to find jobs, and negatively impact the earnings levels of the jobs they find. (Terza and Vechnak, p. 3)

3. The Effects of Poor School Attendance on Parents' Work and Children's Success

*A report issued by the Committee for Economic Development, a private research entity, cites research showing when children are better educated, they are more productive as adults, likely to

be healthier, pay more taxes, and are less likely to require welfare and other public assistance. (Committee for Economic Development (2002). Preschool for All: Investing in a Productive and Just Society. Statement by the Research and Policy Committee of the Committee for Economic Development)

*Increasingly, employers seem to recognize that when child outcomes are not positive, the work of parents can be negatively affected. Similarly, when children do well, working parents (and mothers, in particular) seem to be able to concentrate more on their work responsibilities. This acknowledgement has had some significant implications for organizational commitment to work/life initiatives. (Maternal Employment and Child Outcomes, A Sloan Work and Family Encyclopedia Entry by Jacqueline Lerner, Ph.D., Boston College (2001)

[www.bc.edu/bc_org/avp/wfnetwork/rft/wfpedia/wfpMECOent.html])

*Early education is the most cost-effective way to decrease the number of unskilled adults in the future (D'Amico, C., Judy, R.W. (1997) Workforce 2020: Work and Workers in the 21st Century. The Hudson Institute).

4. The Effects of Poor Illness Prevention on Employment

A study of the welfare recipients' children (in grades 3 and 7) and school absenteeism found the following:

*Education [regarding the importance of school attendance and keeping children healthy] seems a promising way to break the cycle of [welfare] dependency.

*Absenteeism is a problem for a significant number of welfare children.

*Most absences among welfare children arise from illness rather than truancy.

*Among U.S. welfare children, illnesses accounted for 81% of absences for 3rd graders and 79% of absences for 7th graders.

*Efforts to improve health may do more to reduce absenteeism than efforts to combat truancy.

*Problems of truant children nevertheless merit attention.

*The study lists a series of presumptions and urges states to take proactive roles in recognizing the implications of the study: policies can promote parent involvement, parent involvement can improve school attendance, school attendance is an important factor in school success (David J. Fein, Wang S. Lee, and E. Christina Schofield, "Do Welfare Recipients' Children Have A School Attendance Problem? Results for a National Sample of Welfare and Non-Welfare Children." Presented at the Annual Meeting of the National Association of Welfare Research and Statistics, August 9, 1999).

D. Provisions Regarding Local Implementation

Under the joint implementation design of HHSC, the Texas Workforce Commission, and TDHS, the following process will apply:

*TDHS will not reinstate the family's TANF cash assistance until the Texas Workforce Center sends a notification to the local TDHS office indicating that the Choices work requirements are met.

*If a TANF recipient fails to cooperate for two consecutive months, the family's TANF case will be closed, and the family will be required to reapply for TANF cash assistance.

*Before certification, the conditional applicant will be required to attend a WOA and to demonstrate one month of cooperation with Choices work requirements.

*TDHS will not process the family's TANF application until the Texas Workforce Center sends a notification to the local TDHS office indicating that the Choices work requirements were met.

*Regarding good cause determinations, the Commission's intent is to ensure that failure to cooperate is not a result of circumstances that would have prevented Choices cooperation for good cause reasons. The Commission will continue to stress the importance of contacting individuals to determine whether a good cause reason for noncooperation exists.

During the one-month period of demonstrated cooperation, support services will be available as needed. For that reason, and consistent with new §31.0032, Texas Human Resources Code, as amended by HB 2292, §809.102 relating to Choices Child Care is changed. The change to the rule will provide that children of sanctioned families and conditional applicants that must demonstrate cooperation prior to the reinstatement of their TANF cash assistance are eligible to receive Choices Child Care.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

Technical modifications are made to update references to "recipients." These modifications make changes to the Choices definitions to identify sanctioned families and conditional applicants as mandatory individuals. Following is a more detailed explanation of the rule changes.

Section 811.2 sets forth the definitions relating to Choices services. The following terms are added: "conditional applicant," "mandatory individual," "mandatory recipient," and "sanctioned family." The terms individual, applicant, recipient, and former recipient were reviewed for appropriateness and, if necessary, modified to describe the applicable populations.

A sanctioned family who must demonstrate one month of cooperation in the program month following the family's initial Choices noncooperation may or may not be receiving TANF cash assistance. Due to the TDHS automation schedule, penalties that are received after the TDHS "cut-off" date will not be effective in the following month. For example, in November, the TDHS cut-off date is November 13. If a recipient noncooperates in November and Texas Workforce Center staff submit a penalty request on November 13, the effective date of the full-family sanction will be in January. However, the family must demonstrate cooperation throughout the month of December, which is the first program month after the month of noncooperation. During the month of December, the sanctioned family will still be receiving TANF cash assistance, and is considered mandatory. Likewise, if Texas Workforce Center staff submit a penalty before November 13, the sanction will be imposed in December. Thus, the family must demonstrate cooperation throughout December and will be considered a sanctioned family, but will not be receiving cash assistance.

In §811.2, and throughout the rule, a new definition entitled "work requirement" is used to describe the required activities for a family to be deemed engaged in work.

Section 811.3 sets forth Choices Service Strategies. The terms applicant, recipient, and former recipient were reviewed for appropriateness and, if necessary, modified to describe the applicable populations. New language is included to require Boards to identify, in their annual plan, employment opportunities with career advancement that may assist an individual's progress toward self-sufficiency. New language is included to emphasize that post-employment services are designed to support an individual's job retention, wage gains, and career progression. New language is also added to strengthen the requirements for Boards' memoranda of understanding regarding services for people with disabilities to ensure that referrals are made to allow people

with disabilities to maximize their potential for success in employment. Finally, a new subsection regarding housing partnerships was relocated from §811.11, which sets forth Board responsibilities, to §811.3. This new subsection requires Boards to develop collaborative partnerships with housing authorities and sponsors of local housing programs to address unmet housing needs of Choices individuals.

Section 811.11 sets forth Board Responsibilities. The terms applicant and recipient were reviewed for appropriateness and, if necessary, modified to describe the applicable populations. The rules also require conditional applicants, who must demonstrate one month of cooperation with Choices and attend a WOA, to be enrolled immediately in Choices services. Language was also added to specify a Board's responsibility to ensure that individuals attending the WOA are informed of the availability of, or referrals to, services for people with disabilities. Finally, this section requires that Boards establish a referral program for individuals with higher than average barriers to employment, so they may receive services to address such barriers.

Section 811.12 sets forth Applicant Responsibilities. The term applicant was reviewed for appropriateness and modified, if necessary, to describe the applicable populations. The rule clarifies that conditional applicants must attend a WOA.

Section 811.13 sets forth Responsibilities of Mandatory Individuals. The terms individual and recipient were reviewed for appropriateness and, if necessary, modified to describe the applicable populations.

Section 811.14 sets forth issues regarding Noncooperation. Timely and reasonable attempts must be made to contact mandatory recipients, sanctioned families, and conditional applicants to determine their reasons for noncooperation, and to determine if good cause is applicable. If good cause is not determined, these individuals must be notified of their right to appeal. Additionally, mandatory recipients who were not in sanction status must be notified of the required procedures to demonstrate one month of cooperation prior to the reinstatement of their family's TANF cash assistance.

Section 811.15 sets forth issues regarding Demonstrated Cooperation. This section sets forth the requirements for sanctioned families and conditional applicants to demonstrate one month of cooperation prior to reinstating their family's TANF cash assistance.

Section 811.16 sets forth Good Cause for Mandatory Individuals. The term recipient was reviewed for appropriateness and, if necessary, modified to describe the applicable populations. Families who must demonstrate one month of cooperation may receive good cause. If good cause is granted, the Board shall notify TDHS that the family demonstrated cooperation, and the family's TANF cash assistance may be reinstated. In addition, new language was added to allow for good cause based upon individual circumstances that preclude participation, including disability-related issues.

Section 811.21 sets forth General Provisions for Choices services. This section adds language to address the impact of the Fair Labor Standards Act on sanctioned families and conditional applicants who are not receiving TANF cash assistance, and who may be participating in an unpaid work activity. The allowable number of hours in such activities will be based on the household's food stamp allotment divided by the minimum wage.

Section 811.22 sets forth Assessment provisions. The term recipient was reviewed for appropriateness and, if necessary, modified to describe the applicable populations. Changes were also made to require that ongoing assessments address any skills needed for job-specific training. If the skills assessment indicates that an individual requires job-specific training for placement in employment that exceeds the Board's identified self-sufficiency wage, to the extent that funds are available and to the extent allowable, Boards shall place the individual in training activities designed to improve the individual's employment, job retention, and wage outcomes. It is the Commission's intent that training be provided within the Work First service delivery design and, as appropriate, be provided to assist individuals in obtaining needed skills as identified by employers. Language was also added to require that assessments address unmet housing needs, and address individual circumstances, including disability-related issues that may affect participation. Finally, this section ensures that assessments identify recipients with higher than average barriers to employment, so those individuals may be referred to community-based organizations, and other entities, to address the barriers.

Section 811.23 sets forth provisions regarding the Family Employment Plan. The term recipient was reviewed for appropriateness and, if necessary, modified to describe the applicable populations. This section includes new language specifying that support services needs include any disability-related issues. Language was also added to indicate that post-employment service strategies include the goal of an identified self-sufficiency wage. The family employment plan must also include information about the penalty and good cause process, the right of appeal, and the importance of immediately contacting a case worker should individual or family circumstances arise that prevent participation. New language is added to require that mandatory individuals also be notified of their responsibility to participate in certain job readiness activities set forth in §811.27(d).

In §§811.24-811.30 the term recipient was reviewed for appropriateness and, if necessary, modified to describe the applicable populations. Sanctioned families are not subject to the four/six week job search limitation during the month in which they are not receiving TANF cash assistance. The four/six week limitation is only applicable to families who are receiving TANF cash assistance.

Section 811.25 is amended to clarify that Parenting Skills Training is a non-core Choices activity.

Section 811.26 has been divided into two new subsections. New §811.26 contains special provisions regarding community service and new §811.27 contains special provisions regarding job search and job readiness.

Section 811.27 was further amended to identify certain job readiness activities in §811.41(d)(3)(A)-(D), which are mandatory, and to explain that these mandatory job readiness activities are not subject to the four/six week time limit. Mandatory individuals will receive a three-hour participation credit per week for their participation in the mandatory job readiness activities.

A technical amendment was made to §811.30(b) to specify its applicability to families with children under the age of six.

Section 811.31 was amended to state that Boards shall ensure that penalties are not requested for exempt recipients who voluntarily participate.

Sections 811.33 and 811.34 set forth Special Provisions regarding Conditional Applicants and Sanctioned Families to require that any job search activities be staff assisted. A technical amendment is included to cross-reference the definition of staff-assisted services.

Section 811.41 regarding Job Search and Job Readiness Assistance includes a new description of staff-assisted services. The terms "staff-assisted services" and "client-directed activities" are further defined. In addition, new job readiness activities designed to assist Choices individuals in obtaining and retaining employment were also added as discussed in detail in Part I of this preamble.

In §§811.45-811.50, the term recipient was reviewed for appropriateness and, as necessary, modified to describe the applicable populations.

Section 811.51 regarding Post-Employment Services was reviewed. The terms recipient and former recipient were modified, as necessary, to describe the applicable populations. Language was also added to encourage Boards to utilize mentoring techniques as part of their post-employment service strategies, as well as additional career planning and counseling, and referral to support services available in the community.

Section 811.52 regarding Parenting Skills Training is amended to identify important elements that Boards may wish to include in the parenting skills curriculum. The inclusion of these new elements is intended to assist Choices individuals with relevant family issues that contribute to their ability to obtain and retain employment.

Section 811.61 sets forth Support Services.- The new language clarifies that any support service classified as cash assistance may only be provided for four months or less to an unemployed individual who is not already receiving cash assistance. This section also contains language to clarify that conditional applicants and sanctioned families may receive necessary support services in order to demonstrate one month of cooperation.

Section 811.63(2) was moved because it applies to all support services, and is now located under §811.61(d).

Under federal regulations, support services designed to meet a basic need, such as transportation, are classified as cash assistance when provided to an unemployed TANF recipient. The federal regulations do provide for an exception if such services are designed to be short term. Therefore, the rules clarify that these support services are classified as a short-term nonrecurrent benefit—that is, they are designed to last for less than four months and, therefore, are exempt from the federal definition of cash assistance.

Section 811.73 was amended to require that Boards provide a recipient with copies of all appeals information sent to TDHS.

Coordination Activities: Prior to proposing these rule amendments, the Commission circulated a policy concept paper outlining the changes to the Board chairs, members and executive directors, the Workforce Leadership of Texas (WLT) Policy Committee, TDHS, and HHSC. During a

conference call with the Board executive directors, Commission staff reviewed the policy concept paper and requested feedback on the draft policy changes. In addition, Commission staff conducted regional seminars during early August 2003 to provide Board staff, Board contractor staff, partner agencies, and others with detailed information regarding the proposed rule changes. Finally, a public hearing on the Proposed Repeal of and New Rules for Child Care and Development, Child Care for People Transitioning Off Public Assistance, and the Proposed Repeal of and New Rules for Choices was held on September 24, 2003.

PART III. COMMENTS AND RESPONSES

Comments were received from the following: Brazos Valley Workforce Development Board; Tarrant County Work Advantage; Senator Judith Zaffirini; State Representative Garnet F. Coleman; State Representative Joseph Deshotel; State Representative Dawnna Dukes; State Representative Craig Eiland; State Representative Vilma Luna; State Representative Ruth Jones McClendon; State Representative Elliot Naishtat; State Representative Jim Solis; State Representative Carlos Uresti; Center for Public Policy Priorities; The Disability Policy Consortium; NOW Legal Defense and Education Fund; Texas Association of Centers for Independent Living; Texas Council for Developmental Disabilities; the Texas Council on Family Violence; Texas Legal Services Center; The University of Texas at Austin College of Education; Welfare Law Center; Harriet Irby; and Linda Wassenich.

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

Comment: Regarding §811.2(4), one commenter requested clarification on the meaning of "Choices Individuals"—whether this definition applies only to mandatory individuals or also applies to exempt individuals who voluntarily participate in Choices.

Response: The Commission agrees with the commenter and clarifies that this definition applies to all individuals who are eligible for Choices services. This definition does not make a distinction between those individuals who are mandatory and those individuals who are exempt and voluntarily participate in Choices.

Comment: Regarding §811.2(6), one commenter requested that the definition of "mandatory individual" include the phrase "who is required to participate in the Choices program."

Response: The Commission agrees that the definition of "mandatory individual" can be further clarified and will amend the rules accordingly.

Comment: Regarding §811.2, four commenters requested the inclusion of a new definition for "Self-Sufficiency." One commenter further requested that the new definition adopt the Workforce Investment Act (WIA) standard.

Response: The Commission disagrees that a new definition of "Self Sufficiency" should be added to the Choices rules. Because of local variations in cost of living and family size, among other factors, one definition cannot be applied across the state. The Commission prefers to provide maximum local flexibility for Boards to determine an appropriate self-sufficiency wage goal. This local definition may be similar to that utilized in WIA.

Comment: Regarding §811.2, one commenter also requested that the Commission include new definitions for "staff-assisted services" and "client-directed activities," set forth in §§811.33-811.34 and §811.41(b)(1)(B)-(C). The commenter further suggested that the definition for "client-directed activities" be correlated to WIA self-directed, core services.

Response: The Commission agrees that further clarification would be beneficial. Thus, the Commission will amend §§811.33-811.34 to provide a cross-reference to the description of "staff-assisted services" outlined in §811.41(b)(1)(B). The Commission will also amend §811.41(b)(1)(C) to include a description of "client-directed activities" that corresponds to the WIA self-directed services for the core level.

Comment: Regarding §811.2(8)(A), two commenters requested that the term "exempt recipients who voluntarily participate in Choices" be defined because of its extensive use throughout the chapter. The commenters further stated that the definition should include the requirements and expectations for those who voluntarily participate.

Response: The Commission disagrees that the term "exempt recipients who voluntarily participate in Choices" should be included in §811.2(8)(A) of the rules. The Commission emphasizes that these recipients have the same requirements and expectations as mandatory individuals.

Comment: Regarding §811.2(11)(A), several commenters opposed the changes made to the definition of "work activity." The commenters asserted that the definition is not authorized under federal law, because the changes jeopardize Medicaid assistance for adults who fail to comply with the Personal Responsibility Agreement. Several commenters stated that federal law only permits an agency to remove Medicaid assistance for adults "refusing to work." Several commenters also stated that meeting health check-up schedules for their children or keeping their children in school are impermissible inclusions in the definition of "work activities." Several of these commenters addressed their concerns to the Health and Human Services Commission (HHSC) and copied the Texas Workforce Commission (Commission) on these comments.

Response: Under the federal statutory language of 42 U.S.C. §601 *et seq.* (Block Grants to States for Temporary Assistance for Needy Families), the Commission finds that not only did Congress intend for states to define what constitutes "engaged in work," but Congress commanded that the Secretary of USDHHS require states to define "engaged in work." As set forth in Part I of the preamble, the Commission's authority rests within federal and state statutory authority. In particular, the regulations of the USDHHS that implement TANF confirm a state's discretion to define what it means to "engage in work" under a state program of family assistance (45 C.F.R. §261.10(a)(2)). The state's definition "may" include participation in the work activities defined in §607. *Id.* Under the state statute, the Texas Legislature has delegated authority to promulgate rules and implement the TANF employment and training program to the Texas Workforce Commission under §302.021, Texas Labor Code, and related state statutes as set forth in Part I.

Regarding Implementation of HB 2292. The Commission is effectuating the legislative intent regarding the pay for performance model and improving the work requirement definition to strengthen the employment outcomes of the Choices program. In doing so, the Commission is acting in concert with HHSC, which supports adoption of the rules.

Regarding commenters' concerns about the impact on the termination of medical assistance for certain adult recipients of financial assistance who fail to cooperate with the applicable requirements of a Personal Responsibility Agreement, this rule, in accordance with federal and state law, sets state policy for work requirements and does not terminate Medicaid. TDHS is charged with administering the Medicaid program in adherence with the state Medicaid policy. The state has opted to exercise its option to terminate Medicaid for failing to engage in work. Under federal law, the state may exercise this option as follows:

(b) Application of pre-welfare reform eligibility criteria ...

(3) Option to terminate medical assistance for failure to meet work requirements

(A) Individuals receiving cash assistance under TANF

In the case of an individual who - (i) is receiving cash assistance under a state program funded under part A of subchapter IV of this chapter, (ii) is eligible for medical assistance under this subchapter on a basis not related to section 1396a(1) of this title, and (iii) has the cash assistance under such program terminated pursuant to section 607(e)(1)(B) of this title (as in effect on or after the welfare reform effective date) because of refusing to work,

the state may terminate such individual's eligibility for medical assistance under this subchapter until such time as there no longer is a basis for the termination of such cash assistance because of such refusal.

(B) Exception for children

Subparagraph (A) shall not be construed as permitting a state to terminate medical assistance for a minor child who is not the head of a household receiving assistance under a state program funded under part A of subchapter IB of this chapter.

42 U.S.C. Section 1396u-1(b)(3)

The provisions within HB 2292 set forth that the HHSC is required to administer the Medicaid program. As discussed in Part I.B.5 of this preamble relating to State Statutory Authority, Section 531.0055, Texas Government Code, the role of HHSC in its oversight role of TDHS, a health and human services agency, determines Medicaid policy options under 42 U.S.C. Section 1396u-1.

The Commission has incorporated the work requirement provisions regarding the three areas of concern (activities that support immunization, medical and dental checkups, school attendance, and refraining from drug and alcohol abuse) that affect a recipient's success in obtaining and retaining employment into its definition of "job readiness assistance."

Individual Work Requirements (State Defined) versus State Work Activities for Federal Funds Participation Requirements (Limited to Enumerated Work Activities)

The commenters that raised questions about the authority to set work requirements fail to distinguish between requirements for calculating federal participation, which are set forth in 42 U.S.C. Section 607, and what a state may incorporate in its policy as individual work requirements. As indicated earlier in the preamble and incorporated herein by reference, the work activity list in the federal statute at 42 U.S.C. Section 607 is the baseline for state accountability in federal participation rates. However, the states may build upon this list in designing their overall state plan pursuant to 42 U.S.C. Section 602. In Texas, the state plan

incorporates the Choices rules at 40 TAC Chapter 811, which delineate how work requirements are part of the state policy. To clarify this precise distinction for state flexibility, as incorporated in TANF, the term "work activity" is changed to "work requirement" in the adopted rules. The Commission has determined that the states are not limited to the 12 enumerated work activities (42 U.S.C. Section 607) in designing their state programs. The Commission has carefully examined the comparison of what counts as state work activities for federal participation requirements and what the Commission has defined as work requirements that constitute engaged in work for an individual's work requirement.

The Commission has determined that the activities associated with maintenance of children's health and dental checkups, children's immunization, children's school attendance and taking steps to refrain from drug and alcohol abuse shall be applied to work requirements as well as the 12 enumerated activities under 42 U.S.C. Section 607(d). The state's exercise of its ability to clarify or cure ambiguity of terms additionally allows Texas to include the four work requirements under the definition of "job readiness assistance" listed under 42 U.S.C. Section 607(d). For that reason, the Commission has modified the language as proposed to make it more clear that the activities are state work requirements under 42 U.S.C. Section 602, because the Commission finds that the activities will assist individuals with obtaining and retaining employment. To emphasize the importance of these activities, the Commission has modified the rule to allow parents to complete work requirements by reducing required work hours by the amount of time needed to ensure that their children are immunized, getting medical and dental checkups, attending school, and that an individual takes the necessary steps to be free from drugs and alcohol abuse. Consequently, while participants will be required to comply with additional requirements, they will also be given credit for them.

In response to comments, the Commission incorporates these work requirements (immunization, medical and dental checkups, school attendance, and drug and alcohol abuse) into the definition of "job readiness assistance," one of the 12 enumerated work activities. As expressed earlier, the Commission finds that this incorporation is based on the intent of HB 2292, the federal statutes and regulations, and the positive employment outcomes anticipated by including these four activities under "job readiness assistance."

The Commission also finds that the explicit direction of Congress for the states to define "engaged in work" is sufficient authority, standing alone, to rely upon for expanding the definition of "job readiness assistance." The Commission defines what it means in Texas to be engaged in work for purposes of the employment and training program under TANF in the Choices rules under 40 TAC Section 811.2(11)(A). In addition to the Commission's authority to define one of the 12 enumerated work activities for purposes of individual state work requirements under 42 U.S.C. Section 602, the Commission also has authority to add to the enumerated 12 work requirements as authorized under 42 U.S.C. Section 602. Notwithstanding the authority to add to the 12 enumerated work activities that relate to federal participation requirements, the Commission has chosen not to do so in these adopted rules. In fact, the Commission has changed the language to merely define one of the 12 work activities and not go beyond the 12 activities. Consequently, the Commission has incorporated the changes in the rule under the definition of "job readiness assistance" component of the work requirement. The Commission therefore exercises its authority to define the work activities enumerated in 42 U.S.C. Section 607(d).

Furthermore, the *Chevron* case is cited in numerous other cases upholding that "construction of a statute by the administrative agency charged with its enforcement is entitled to deference, so long as the construction is reasonable and does not contradict the plain language of the statute." *Chevron U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837, 104 S.Ct. 2778 (1984) *Ford Motor Co. v. Motor Vehicle Board*, 21 S.W.3d 744, 762 (Tex.App.-Austin 2000, no pet. hist.) Moreover, the standard application by the Texas Supreme Court appears in *Quick v. City of Austin*, 7 S.W.3d 109, 123 (Tex. 1999) and provides that "the contemporaneous construction of a statute by the administrative agency charged with its enforcement is entitled to great weight."

Comment: Several commenters also expressed concern regarding the impact of this new provision. One commenter stated that parents should neither be penalized if they are working a low-paying job to try to keep their family together and a child is truant from school, nor penalized for not taking time off work to have regular medical and dental checkups for their children. In addition, two commenters stated that children should not be penalized for the actions of their parents. One commenter stated that the definition would jeopardize the ability of families who are victims of family violence to receive TANF and Medicaid because complying with immunization schedules and health checkups may not always be feasible during tumultuous times. The commenter also stated that children may be truant from school after fleeing [family violence], or it may be dangerous to return to school where the abuser may access the children. The commenter stated that the loss of crucial financial support and vital medical benefits could force some victims to return to their abusers in order to have access to needed financial and medical resources for their families.

Response: The Commission has amended the rule to clarify that job readiness will include activities that are intended to assist in maintaining a family's health, safety, and welfare. Under the job readiness activity, parents will receive work participation credit for activities that are necessary to ensure that their children attend school and receive regular medical checkups.

The Commission clarifies that HB 2292 establishes the parameters under which children's TANF benefits will be reduced for the parent's failure to meet TANF program requirements. The Commission also clarifies that according to HB 2292 and federal statute, Medicaid benefits are removed only for the adult(s) who fails to comply with work requirements.

With regard to family violence, the Commission clarifies that good cause is available for any inability to meet a Choices program requirement because of family violence, as set forth in §811.16. Complying with immunization schedules, health checkups, and school attendance is included in the amended rule under the definition of job readiness and, as such, falls under the existing good cause provisions.

Comment: Four commenters stated that the proposed definition of work activity will significantly impact TANF families that are exempt but choose to voluntarily participate, including persons with disabilities.

Response: Under the revised definition of job readiness, exempt recipients who voluntarily participate will also receive participation credit for engaging in activities that support children's immunizations, getting medical and dental checkups, taking steps to support children's school attendance, and taking steps to refrain from drug and alcohol abuse. The Commission reiterates

that exempt recipients who voluntarily participate are not subject to penalties, and the Commission amends Sections 811.14 and 811.31 accordingly.

Comment: One commenter acknowledged that HB 2292 required a "demonstrated cooperation" policy and supports the language in §811.15(c) and §811.16 that requires Choices staff to notify TDHS immediately when Choices excuses an individual from a demonstrated cooperation requirement based on a good cause finding of inability to participate for a reason, such as lack of child care, under §811.16. The commenter strongly supported the "good cause" exception policy consistent with 42 U.S.C. 607(e)(2).

Response: The Commission agrees that the good cause policy is important to reevaluate at a point when evaluating demonstrated cooperation, and intends that the rule continue such a practice of evaluating for good cause.

Comment: One commenter stated §811.2(11)(A) would imply that the Boards will be responsible for all activities in the PRA including child support and other elements of the Personal Responsibility Agreement as part of the customer's Family Employment Plan, which would indirectly make the Boards responsible for assisting the customer in complying, and reporting and issuing sanctions for things other than Choices activities.

Response: TDHS will continue its role in determining eligibility for TANF. Boards are required to continue coordination with TDHS by taking action, including that set out in §811.23 regarding the family employment plan. Boards are also responsible for communicating to TDHS regarding changes in family circumstances that impact TDHS. Furthermore, Commission intends that the Boards comply with fulfilling their role and ensuring that the Boards' contractors fulfill their role as it relates to enforcing the work requirements as defined in the rule relating to immunization, medical and dental checkups, school attendance, and refraining from abuse of drugs and alcohol. The Commission does not agree that Boards will be fulfilling the responsibility of other agencies. The Boards are a key component of integrated service delivery as set out in state law under Chapter 2308, Texas Government Code and Chapter 302, Texas Labor Code. The memorandum of understanding with HHSC and the TDHS relates a team approach to integrated case management to build upon the strengths of all partners. The Commission anticipates that the rules will help ensure that clients are directed to services in the local workforce development areas (workforce areas) that will improve employment outcomes to help both employers and Choices families succeed.

Comment: Regarding §811.3(a)(3), the Boards' annual planning process, one commenter recommended amending the rule to include the goal of self-sufficiency as Boards are identifying employment opportunities.

Response: The Commission agrees that the Boards' annual planning process should include the identification of all types of employment opportunities available for Choices individuals. In §811.3(c)(3), the Commission includes language directing Boards to establish post-employment services that will support an individual's progression to self-sufficiency. The Commission will amend §811.3(a)(3) to note that the annual planning process should also assist with career advancement opportunities that may lead to self-sufficiency.

Comment: Regarding §811.3 (c)(2)(B) on the availability of the Workforce Orientation for Applicants and other one-stop services, two commenters suggested that the rule be amended to

require Boards to ensure that TANF individuals with disabilities or caring for a disabled family member are referred to appropriate services to allow them to maximize their potential for success in employment. The commenters further stated that if these individuals are unable to maintain employment because of demands arising out of their disability, Boards should be directed to formulate a contingency plan so these individuals are not penalized.

Response: The Commission agrees that Boards should refer TANF individuals with disabilities or caring for a disabled family member to appropriate services that allow them to maximize their potential for success in employment. Section 811.3(c)(6) addresses services for individuals with disabilities and requires appropriate accommodations, as well as the development of memoranda of understanding with appropriate agencies to serve individuals with disabilities. The Commission will amend this section to require appropriate referrals to allow people with disabilities to maximize their potential for success. In addition, if individuals with disabilities are not able to maintain employment owing to demands arising out of their disability, they are eligible for one of the good cause provisions contained in §811.16(c), and therefore, not subject to a penalty.

Comment: Regarding §811.3(c)(3), one commenter requested a change in the definition of post-employment services to include service strategies that lead a family to maintain self-sufficiency.

Response: Current language in §811.3(c)(3) directs the Boards to provide post-employment services to support an individual's progression to self-sufficiency. Therefore, the Commission disagrees that an amendment to this subsection is required.

Comment: Regarding §811.3(c)(3), one commenter recommended aligning post-employment services for TANF individuals with the WIA follow-up definitions and description of services.

Response: The Commission agrees with the commenter's recommendation for aligning the definition of post-employment services for TANF and WIA customers. The Commission will amend §811.3(c)(3) to include language on job retention, wage gains, and career progress as set forth in WIA. The Commission will also amend §811.51 to reflect the availability of additional career planning and counseling, and referral to support services available in the community, as provided in WIA.

Comment: Regarding §811.3 (c)(6), two commenters requested that the rule be amended to require Boards to assist employers with understanding their obligations and the civil rights of people with disabilities in employment settings.

Response: The Commission agrees that employers should be aware of their obligations and the rights of people with disabilities. The Commission also agrees that the Boards should assist employers' understanding of the requirements for ensuring appropriate accommodations for people with disabilities.

Comment: Regarding §811.11(a)(3), two commenters urged the Commission to amend the rule to require Boards to provide information concerning disability-related issues, such as accessibility, employment, and referral to other agencies during the Workforce Orientation for Applicants.

Response: The Commission agrees with the commenters' suggestion and will amend the rule to include disability-related information during the Workforce Orientation for Applicants.

Comment: Regarding §811.11(d), three commenters requested that the language be amended to clarify that Boards must identify situations in which unmet housing needs are creating barriers to a recipient's self-sufficiency.

Response: The Commission agrees with the commenter's suggestion to add language to clarify that the Boards must identify Choices individuals who have unmet housing needs. The Commission will amend §811.22, which directs Boards to conduct assessments of potential barriers to obtaining employment.

Comment: Regarding §811.11(d), one commenter suggested that the Commission reconsider whether this is the most appropriate location within the rule for this requirement.

Response: The Commission agrees with the commenter, has reviewed the placement of this new language, and has determined it would be more appropriate to relocate this section under Subchapter A, General Provisions, §811.3. Choices Service Strategy. This section includes similar requirements for developing partnerships with other state agencies.

Comment: Regarding §811.14(a), three commenters suggested that the rule be amended to prohibit the Boards from penalizing exempt recipients, who voluntarily participate in Choices, for failure to meet requirements.

Response: The Commission agrees with the commenters and has amended §811.14, regarding Noncooperation, and §811.31, regarding exempt recipients who voluntarily participate, to include new language indicating that penalties are only requested for mandatory recipients.

Comment: Regarding §811.14(b), two commenters requested that clarifying language be added to indicate that when Boards contact a recipient to determine the reason for noncooperation, they also determine if that reason qualifies as good cause.

Response: The Commission agrees with the commenters' suggestion on clarifying the language and will amend the rule accordingly.

Comment: Regarding §811.14(b) and (c), one commenter stated that although the rules describe a Board's responsibility to make a reasonable attempt to contact the recipient to determine the reason for noncompliance prior to initiating a penalty, more specific language is needed to ensure that families with disabilities are protected from sanctions.

Response: The Commission will amend §811.16, which now addresses timely and reasonable attempts under the new rule numbering, to clarify that a mandatory individual with a disability-related issue that precludes participation is eligible to receive good cause. The Commission would also like to call attention to the existing good cause reason for individuals who are caring for a disabled family member.

Comment: Regarding §811.15(c), one commenter supported the requirement that TDHS be notified immediately when good cause is determined for a conditional applicant or sanctioned family, during the demonstrated cooperation period.

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

Comment: Regarding §811.16 (b)(2), two commenters requested an explanation of the deletion of the phrase "with the recipient" from the rule. The commenters stated that a determination of good cause should not be made without the recipient's input.

Response: The Commission agrees with the commenter that an explanation is warranted. The references to a "recipient" were removed as a technical change. The Commission's intent is to avoid linking good cause exclusively to TANF recipients. Sanctioned families and conditional applicants do not receive TANF benefits during their demonstrated cooperation period, yet are still eligible for good cause.

Comment: Regarding §811.16(c), two commenters requested the addition of a new good cause reason for any other individual or family circumstances that may preclude participation in required Choices services or activities.

Response: The Commission disagrees that additional language is needed. Current language in §811.16(c)(8) allows good cause for family crisis or family circumstances that preclude participation in Choices services.

Comment: Regarding §811.16(c)(7), one commenter requested the sentence to be reworded to include an "offer of compensation below the rate necessary for self-sufficiency."

Response: The Commission disagrees that good cause should be granted in situations where the job referral results in an offer of compensation below the rate necessary for self-sufficiency. The current rule provides for good cause if the compensation is below the federal minimum wage, except when a lower wage is permissible under federal minimum wage law.

Choices services are provided under the Work First Design, as set forth in §811.3(c)(2), which promotes an immediate attachment to the labor force that is critical because of individual time-limited benefits. The Commission supports the provision of post-employment services, as detailed in §811.3(c)(3), in a continuum of services to support an individual's progression to self-sufficiency.

Comment: Regarding §811.21(a), two commenters urged the Commission to require Boards to include technical assistance or referrals for technical assistance relating to accommodations or modifications needed by a person with a disability.

Response: The Commission interprets this comment to be directed at the technical assistance needs of employers. The Commission concurs that employers may require technical assistance regarding their obligations to and the rights of people with disabilities, but disagrees that Boards are the most appropriate entities to provide such technical assistance. The Boards may provide referrals for technical assistance as appropriate.

Comment: Regarding §811.21(e), two commenters urged the Commission to include language that directs Boards to identify and develop job placements appropriate to individuals with disabilities.

Response: The Commission agrees with the commenters that job placements should be appropriate for individuals with disabilities, but disagrees that additional language is needed. Section 811.21(g) reflects the Commission's intent to require Boards to identify appropriate employment based on an individual's skills and abilities, including people with disabilities. The Commission supports appropriate job placements for all job seekers.

Comment: Regarding §811.22(a), one commenter requested that initial and ongoing assessments include wage advancement and career development needs.

Response: The Commission agrees and will amend the rule accordingly.

Comment: Regarding §811.22(b), three commenters suggested that amendments be made to reflect pre- and post-employment skills assessment tied to self-sufficiency.

Response: The Commission will amend §811.22 by adding a new subsection (d) to address providing training to individuals whose skills assessments indicate a need for job-specific training for placement in a job paying wages equal to or above the Board's self-sufficiency wage.

Comment: Regarding §811.22(b), three commenters suggested that language be added regarding unmet housing needs as set forth in Senate Bill 280 and HB 2292.

Response: The Commission concurs that clarification is needed regarding the assessment of unmet housing needs and will amend the rule accordingly.

Comment: Regarding §811.22(c) and §811.11(k), two commenters requested that the Commission define "higher than average barriers to employment."

Response: The Commission disagrees with the commenters' suggestion that a definition for "higher than average barriers to employment" be included in the rule. The Commission prefers to provide maximum flexibility to the Boards and supports the existing language that requires Boards to define this term, as appropriate for their workforce area. This flexibility allows Boards to define this term based upon the characteristics of their Choices caseload; upon results from any locally utilized assessment tools; or other mechanisms used to identify barriers to employment.

Comment: Regarding §811.22(b)(3), two commenters urged the Commission to amend the rule to include the consideration of disabilities during the assessment.

Response: The Commission agrees and will amend the rule accordingly.

Comment: Regarding §811.23(d), two commenters requested additional language requiring the family employment plan to include an employment target wage adequate for self-sufficiency, and what the Commission would determine is a self-sufficiency wage.

Response: The Commission disagrees that a new definition of "Self Sufficiency" should be added to the Choices rules. Because of local variations in cost of living and family size, among other factors, one definition cannot be applied across the state. The Commission prefers to provide maximum local flexibility for Boards to determine an appropriate self-sufficiency wage goal. This local definition may be similar to that utilized in WIA.

The Commission will amend the rule to clarify that the family employment plan includes the appropriate, locally developed, self-sufficiency wage goal.

Comment: Regarding §811.23(d)(3)(D), one commenter stated that the phrase "developing post-employment targets" is unclear.

Response: The Commission concurs that the phrase "developing post-employment targets" is unclear and will amend the rule to clarify the intent that the family employment plan include service strategies to assist individuals in reaching a goal of a locally defined self-sufficiency wage.

Comment: Regarding §811.23(d)(3)(C), two commenters suggested that rules be amended to require that the family employment plan includes necessary support services to address circumstances that limit the individual's ability to participate or work because of a disability or caring for a disabled family member.

Response: The Commission agrees and will amend the rules accordingly.

Comment: Regarding §811.23(d)(5), three commenters requested this sentence include the good cause process and importance of contacting a caseworker should mandatory individuals not be able to participate.

Response: The Commission appreciates the comment and agrees to clarify information that should be provided to mandatory individuals. The Commission will amend the rule to include information in the family employment plan to address the penalty, good cause, and appeal processes.

Comment: Regarding §811.23(e)(5), two commenters suggested that language contained in the rule be consistent with §2.160 of HB 2292, which changes the requirements for children's immunizations.

Response: The Commission agrees that any references to requirements for children's immunizations will be consistent with recent law, as reflected in the TDHS rules, and will amend accordingly §811.41(B), which sets forth job readiness activities.

Comment: Regarding §811.23(e)-(f), one commenter requested that this section be deleted from the rules because TDHS already requires the client to sign the Responsibility Agreement. The commenter also stated that no additional funds are available to monitor the Responsibility Agreement for compliance.

Response: The Commission agrees to amend the rule to remove the Responsibility Agreement from the Family Employment Plan. The Commission further amends §811.41 to add new job readiness activities that are designed to assist Choices individuals in obtaining and retaining employment. These include activities that support the maintenance of their children's health, dental checkups, immunizations, and school attendance, as well as abstaining from the use and abuse of drugs and alcohol.

Comment: Regarding §811.23(e)(9), one commenter wanted this stricken from the rules as it is extralegal.

Response: The Commission concurs and will amend the rules accordingly.

Comment: Regarding §811.28(b), one commenter requested that children under six be included in this sentence.

Response: The Commission concurs and will amend the rule accordingly.

Comment: Regarding §811.29, two commenters urged the Commission to amend the rule to state that exempt recipients who have disabilities or care for family members with disabilities, who voluntarily participate in Choices services, are exempt from penalties associated with participation in Choices and should not be unilaterally dropped from Choices services.

Response: The Commission reiterates that all exempt recipients who volunteer for Choices services are not subject to penalties. Section 811.14 addresses noncooperation and the Commission agrees to amend the rule to indicate more clearly that penalties be submitted only for mandatory recipients, as defined in §811.2(8)(d).

Comment: Regarding §811.30, two commenters questioned the terms "mandatory individuals who are disabled," "mandatory individuals who are needed at home to care for a disabled adult in the household," and "mandatory individuals who are needed at home to care for an ill or disabled child in the household." The commenter stated that these terms are not consistent with the Texas Human Resources Code §31.012 and TDHS rule §3.1101.

Response: The Commission agrees that an explanation of these terms is needed. Working with the Commission, TDHS has modified Form 1836, the Medical Release/Physician's Statement form. This form and its instructions are available on the TDHS web site at <http://www.dhs.state.tx.us/Handbooks/TexasWorks/Forms/tw-forms.asp?HB=TWH&Form=1836-A>. This form allows physicians to identify disabled individuals who are able to work, or participate in activities to prepare them for work, for a specified number of hours per week. TDHS classifies these individuals as mandatory, and the Commission assigns a reduced hourly participation requirement based upon the physician's statement.

Comment: Regarding §811.46, one commenter requested that a good cause reason be if there is no community service slot available to a client.

Response: The Commission disagrees that an additional good cause reason for lack of a community service slot is necessary. Good cause is intended to address a recipient's individual or family circumstances that preclude participation. The unavailability of a community service does not fit this criteria. The Board should actively pursue the development of appropriate community service opportunities. These opportunities are available through county offices, hospital districts, school districts, state agencies, and other public or private nonprofit organizations. In addition, recipients may be enrolled in other work activities.

Comment: Regarding §811.49(b), one commenter requested that language be included to address wage advancement, career progression, and job retention.

Response: The Commission disagrees that job skills training should include references to wage advancement, career progression, and job retention. In some instances, the type of training identified by an employer may focus on needs for entry-level workers. Including the suggested language may inadvertently inhibit a Board from addressing an employer's expressed needs.

Comment: Regarding §811.49(b), one commenter requested that language be added to link job skills training services to an increase in employability at a wage that provides self-sufficiency.

Response: The Commission disagrees that all job skills training should be linked to wages that provide self-sufficiency. As customers enter the workforce, they will likely obtain several jobs before reaching a job that achieves self-sufficiency. The Commission does not want to limit a Board's ability to provide job skills training services to customers as they progress up the employment ladder.

Comment: In §811.49(e), the commenter requested the addition of occupation-specific training.

Response: The Commission disagrees. Occupation-specific training needs are addressed under Vocational Educational Training found in §811.48.

Comment: Regarding §811.51, one commenter requested that job training be included as a post-employment service.

Response: The Commission agrees to clarify that under §811.51, former recipients are eligible to receive post-employment vocational educational training. The Commission will make a conforming amendment in §811.51 to specify that training is an allowable post-employment service.

Comment: Regarding §811.71, one commenter requested clarification of the appeals process as it relates to or intersects with any appeal to TDHS. The commenter also requested that "Texas Workforce Center Partner" be defined.

Response: The Commission disagrees that a clarification is necessary in §811.71, which addresses appeals to the Boards. Section 811.73 sets forth that any recipient whose TANF cash assistance was terminated may appeal the decision to TDHS. Appeals would include terminations based on noncompliance with Choices requirements. In such situations, the Board shall prepare necessary information for TDHS. The Commission clarifies that "Texas Workforce Center Partner" is defined in §800.2, and will amend §811.71 to include this cross-reference.

Comment: Regarding §811.72, one commenter requested that the Board be required to provide an appellant with the same information provided to TDHS.

Response: The Commission concurs that appellants should be given all information provided to TDHS and will amend §811.73 accordingly.

Comment: Regarding §809.102, one commenter supported the amendment that sanctioned families and conditional applicants are eligible for Choices child care.

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

Comment: Two commenters provided comments during the public hearing that relate to changes to provisions in the child care rules that have not yet been published for public comment.

Response: Those comments will be considered by the Commission prior to the proposal of the child care rule changes.

PART IV. RULE REPEAL

The repeals are adopted under the following sections:

Section 301.0015, Texas Labor Code, which provides that the Commission has authority to adopt rules necessary to administer the Commissions policies, including rules necessary for the administration of Title 4, Texas Labor Code, relating to employment services and unemployment;

Section 302.002(d), Texas Labor Code, which authorizes Commission to adopt, amend or repeal such rules in accordance with Chapter 2001, Government Code as necessary for the proper administration of the Workforce Development Division;

Section 302.021, Texas Labor Code, which consolidated under the jurisdiction of the Commission job-training, employment, and employment-related educational programs and other functions listed in the section (including the employment programs under Chapter 31, Human Resources Code, and the education, employment, employment support, training services, activities and programs funded under Temporary Assistance for Needy Families, 42 U.S.C. §601 et seq.); and

House Bill 1863, 74th Leg., R.S., ch. 655, 1995, Tex. Gen. Laws 3543, 3621, subsections (b) and (e) which authorize rulemaking and administration of programs under 302.021 by the Commission by stating that "A reference in a law or administrative rule to an agency that as of August 31, 1995, administered a program transferred to the Texas Workforce Commission means the "Texas Workforce Commission."

SUBCHAPTER A. GENERAL PROVISIONS

§811.1. Purpose and Goal.

§811.2. Definitions.

§811.3. Choices Service Strategy.

SUBCHAPTER B. ACCESS TO CHOICES SERVICES

§811.11. Board Responsibilities.

§811.12. Applicant Responsibilities.

§811.13. Recipient Responsibilities.

§811.14. Good Cause for Recipients.

SUBCHAPTER C. CHOICES SERVICES

§811.21. General Provisions.

§811.22. Assessment.

§811.23. Family Employment Plan.

- §811.24. Family Work Requirement Form for Two-Parent Families.
- §811.25. TANF Core and TANF Non-Core Activities.
- §811.26. Special Provisions Regarding Core and Non-Core Activities.
- §811.27. Special Provisions for Teen Heads of Household.
- §811.28. Special Provisions for Recipients in Single Parent Families with Children Under Age Six.
- §811.29. Special Provisions Regarding Exempt Recipients Who Voluntarily Participate.
- §811.30. Special Provisions Regarding Persons With Disabilities

SUBCHAPTER D. CHOICES WORK ACTIVITIES

- §811.41. Job Search and Job Readiness Assistance.
- §811.42. Unsubsidized Employment.
- §811.43. Subsidized Employment.
- §811.44. On-the-Job Training.
- §811.45. Work Experience.
- §811.46. Community Service.
- §811.47. Child Care Services to a Recipient Participating in Community Service.
- §811.48. Vocational Educational Training.
- §811.49. Job Skills Training.
- §811.50. Educational Services for Recipients Who Have Not Completed Secondary School or Received a Certificate of General Equivalence.
- §811.51. Post-Employment Services.
- §811.52. Parenting Skills Training.

SUBCHAPTER E. SUPPORT SERVICES AND OTHER INITIATIVES

- §811.61. Support Services.
- §811.62. Child Care for Choices Individuals.
- §811.63. Transportation.
- §811.64. Work-Related Expenses.
- §811.65. Wheels to Work.
- §811.66. Certificate of General Equivalence (GED) Testing Payments.
- §811.67. Individual Development Accounts (IDAs).

SUBCHAPTER F. APPEALS

- §811.71. Board Review.
- §811.72. Appeals to the Agency.
- §811.73. Appeals to the Texas Department of Human Services (TDHS).

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PART V. FINAL RULES

The new rules are adopted under the following sections:

Section 301.0015, Texas Labor Code, which provides that the Commission has authority to adopt rules necessary to administer the Commission's policies, including rules necessary for the administration of Title 4, Texas Labor Code, relating to employment services and unemployment;

Section 302.002(d), Texas Labor Code, which authorizes Commission to adopt, amend or repeal such rules in accordance with Chapter 2001, Government Code as necessary for the proper administration of the Workforce Development Division;

Section 302.021, Texas Labor Code, which consolidated under the jurisdiction of the Commission job-training, employment, and employment-related educational programs and other functions listed in the section (including the employment programs under Chapter 31, Human Resources Code, and the education, employment, employment support, training services, activities and programs funded under Temporary Assistance for Needy Families, 42 U.S.C. §601 et seq.); and

House Bill 1863, 74th Leg., R.S., ch. 655, 1995, Tex. Gen. Laws 3543, 3621, subsections (b) and (e) which authorize rulemaking and administration of programs under 302.021 by the Commission by stating that "A reference in a law or administrative rule to an agency that as of August 31, 1995, administered a program transferred to the Texas Workforce Commission means the "Texas Workforce Commission."

SUBCHAPTER A. GENERAL PROVISIONS

§811.1. Purpose and Goal.

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

Plan, this chapter, and consistent with a Board's approved integrated workforce training and services plan as referenced in §801.17 of this title.

§811.2. Definitions.

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

- (1) Applicant -- An adult, or teen head of household, in a family person who applies for temporary cash assistance, who previously did not leave TANF in a sanctioned status.
- (2) TDHS -- The Texas Department of Human Services.
- (3) ~~Exempt Recipient -- A recipient who is not required as defined by TDHS Rules, 40 TAC, 3.1101, to participate in Choices services.~~
- (34) Earned Income Deduction (EID) -- A standard work-related and income deduction, available through the TDHS for four months, as defined in TDHS Rules, 40 TAC, §3.1003 to recipients who are employed at least 30 hours a week and earn at least \$700 a month.
- (5) ~~Extended TANF Recipient -- A person who receives TANF cash assistance past the date of the individual's 60-month limit due to a hardship exemption as defined in TDHS Rules, 40 TAC, §3.6001.~~
- (6) ~~Former recipient -- A person who is an adult or teen head of household who no longer receives temporary cash assistance.~~
- (47) Choices Individual -- An adult, or teen head of household, in a family A person who is an applicant, conditional applicant, recipient, or former recipient, or sanctioned family as defined in this chapter-section.
- (5) Conditional Applicant -- An adult, or teen head of household, in a family who left TANF in a sanctioned status, but who is reapplying for temporary cash assistance.
- (6) Mandatory Individual -- An adult, or teen head of household, in a family who is a conditional applicant, mandatory recipient, or sanctioned family as defined in this chapter, who is required to participate in Choices services.
- (8) ~~Mandatory Recipient -- A recipient, including Extended TANF recipients who are required as defined by TDHS Rules, 40 TAC, §3.1101, and §3.6001 to participate in Choices services.~~
- (79) PRWORA -- The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105, as amended.
- (810) Recipient -- A person who is aAn adult, or teen head of household, in a family who receives temporary cash assistance-, and includes:

- (A) Exempt Recipient -- A recipient who is not required to participate in Choices services, as defined by TDHS Rules, 40 TAC, 3.1101;
 - (B) Extended TANF Recipient -- A recipient who receives TANF cash assistance past the 60-month time limit because of a hardship exemption as defined in TDHS Rules, 40 TAC, §3.6001;
 - (C) Former Recipient -- an adult, or teen head of household, in a family who no longer receives temporary cash assistance because of employment; or
 - (D) Mandatory Recipient -- An adult, or teen head of household, in a family, including extended TANF recipients who are required as defined by TDHS Rules, 40 TAC, §3.1101, and §3.6001, to participate in Choices services.
- (9) Sanctioned Family -- An adult, or teen head of household, in a family who must demonstrate cooperation for one month in order to reinstate TANF cash assistance.
- (1044) Temporary cash assistance -- The cash grant provided through TDHS to individuals who meet certain residency, income, and resource criteria as provided under federal and state statutes and regulations, including the PRWORA, the TANF block grant statutes, the TANF State Plan, temporary cash assistance provided under Texas Human Resources Code Chapters 31 or 34, and other related regulations. The term is also referred to as "TANF cash assistance."
- (11) Work ~~Requirement Activity~~-- for the purpose of 45 U.S.C. §607 and 45 CFR §261.10, a Choices individual is deemed to be engaged in work by cooperating with:work activities are defined as follows:
- (A) all requirements ~~activities~~ set forth in the family employment plan Responsibility Agreement, as set forth in this chapter; and
 - (B) all TANF Core and Non-Core activities, as set forth in this chapter.
- (12) Work-Based Services -- Includes those services defined in Texas Human Resources Code §31.0126.
- (13) Work Ready -- A Choices individual is considered work ready if he or she has the skills that are required by employers in the workforce area. A Board must ensure immediate access to the labor market to determine whether the Choices individual has those necessary skills to obtain employment.

§811.3. Choices Service Strategy.

- (a) A Board shall ensure that its strategic planning process includes an analysis of the local labor market to:
 - (1) determine employers' needs;

- (2) determine emerging and demand occupations; and
 - (3) identify employment opportunities, which includes those with a potential for career advancement **that may assist an individual's progression towards self-sufficiency.**
- (b) A Board shall set local policies for a Choices service strategy that coordinates various service delivery approaches to:
- (1) assist applicants and conditional applicants in gaining employment as an alternative to public assistance;
 - (2) utilize a work first design as referenced in paragraph (2) of subsection (c) of this section to provide ~~recipients~~ mandatory individuals, and exempt recipients who voluntarily participate in Choices services, ~~participating in Choices~~ access to the labor market; and
 - (3) assist former recipients in job retention and career advancement to remain independent of temporary cash assistance.
- (c) The Choices service strategy shall include:
- (1) Workforce Orientation for Applicants (WOA). As a condition of eligibility, applicants and conditional applicants are required to attend a workforce orientation that includes information on options available to allow them to enter the Texas workforce.
 - (2) Work First Design.
 - (A) The work first design:
 - (i) allows individuals to take immediate advantage of the labor market and secure employment, which is critical due to individual time-limited benefits; and
 - (ii) meets the needs of employers by linking individuals with skills that match those job requirements identified by the employer.
 - (B) Boards shall provide individuals access to other services and activities available through the One-Stop Service Delivery Network, which includes the WOA, to assist with employment in the labor market before certification for temporary cash assistance.
 - (C) Post-employment services shall be provided in order to assist an individual's progress towards self-sufficiency as described in paragraph (3) of subsection (c) of this section and §811.51 of this chapter.
 - (D) In order to assist an individual's progress toward self-sufficiency:

- (i) Boards shall provide ~~recipients~~ Choices individuals who are employed, including those receiving the EID, with information on available post-employment services; or
 - (ii) Boards may provide Choices individuals ~~former recipients~~ with post-employment services as determined by Board policy. The length of time these services may be provided is subject to §811.51~~(e)~~ of this chapter.
 - (E) In order to assist employers, Boards shall coordinate with local employers to address needs related to:
 - (i) employee post-employment education or training;
 - (ii) employee child care, transportation or other support services available to obtain and retain employment; and
 - (iii) employer tax credits.
 - (F) A Board shall ensure that a family employment plan is based on employer needs, individual skills and abilities, and individual time limits for temporary cash assistance.
- (3) Post-Employment Services. A Board shall ensure that post-employment services are designed to assist individuals with job retention, career advancement and reemployment, as defined in §811.51 of this chapter. Post-employment services are a continuum in the Choices service strategy to support an individual's **job retention, wage gains, career progression, and** progression to self-sufficiency.
 - (4) Adult Services. A Board shall ensure that services for adults shall include activities individually designed to lead to employment and self-sufficiency as quickly as possible.
 - (5) Teen Services. A Board shall ensure that services for teen heads of household shall include assistance with completion of secondary school or a certificate of general equivalence and making the transition from school to employment, as described in §811.~~2927~~ and §811.50 of this chapter.
 - (6) Individuals with Disabilities. A Board shall ensure that services for individuals with disabilities include reasonable accommodations to allow the individuals to access and participate in services, where applicable by law. A Board shall ensure that Memoranda of Understanding (MOU) are established with the appropriate agencies to serve individuals with disabilities, **and that referrals are made, as appropriate, to allow people with disabilities to maximize their potential for success in employment.**
 - (7) Target Populations. A Board shall ensure that services are concentrated, as further defined in §811.11 (~~ded~~) and (~~efe~~) of this chapter, on the needs of the following:

- (A) recipients who have 6 months or less remaining of their state TANF time limit, irrespective of any extension of time due to a hardship exemption;
 - (B) recipients who have twelve months or less remaining of their 60-month TANF time limit, irrespective of any extension of time due to a hardship exemption; and
 - (C) recipients who are Extended TANF Recipients.
- (8) Local Flexibility. A Board may develop additional service strategies that are consistent with the goal and purpose of this chapter and the One-Stop Service Delivery Network.
- (9) Local-Level MOU. A Board shall ensure the development of a local-level MOU in cooperation with TDHS for coordinated case management that is consistent with the MOU between TDHS and the Commission.
- (10) Housing Partnerships. A Board shall establish a collaborative partnership with housing authorities and sponsors of local housing programs and services to address the unmet housing needs of recipients.**

SUBCHAPTER B. CHOICES SERVICES RESPONSIBILITIES

§811.11. Board Responsibilities.

- (a) A Board shall ensure that:
- (1) procedures are developed, in conjunction with TDHS, to notify applicants and conditional applicants on the availability of regularly scheduled Workforce Orientations for Applicants (WOA) and alternative WOAs;
 - (2) the WOA is offered frequently enough to allow applicants and conditional applicants to comply with the TDHS requirement that gives applicants ten (10) calendar days to attend a WOA;
 - (3) during a regularly scheduled WOA or alternative WOA, applicants and conditional applicants are informed of:
 - (A) employment services available through the One-Stop Service Delivery Network to assist applicants in achieving self-sufficiency without the need for temporary cash assistance;
 - (B) benefits of becoming employed;
 - (C) impact of time-limited benefits;
 - (D) individual and parental responsibilities; and

- (E) other services and activities, including education and training, available through the One-Stop Service Delivery Network, including services and referrals for services available to people with disabilities.;
 - (4) alternative WOAs are developed that allow applicants and conditional applicants with extraordinary circumstances to receive the information listed in §811.11(a)(3) of this subsection;
 - (5) procedures are developed to notify TDHS of applicants and conditional applicants ~~who that~~ contacted the Board's workforce centers to request alternative WOAs;
 - (6) verification that ~~an~~ applicants and conditional applicants attends a scheduled or alternative WOA is completed and TDHS is notified in accordance with TDHS rule, 40 T.A.C. §3.7301; and
 - (7) applicants and conditional applicants are provided with an appointment to develop a family employment plan.
- (b) A Board shall ensure that:
- (1) Choices services are offered to applicants who attend a WOA.
 - (2) Conditional applicants who attend a WOA are immediately scheduled to begin Choices services.
- (c) A Board shall ensure that recipient status is verified monthly, ~~and recipients either:~~
- (1) ~~comply with Choices services requirements as outlined in the family employment plan unless the recipient is exempted by TDHS; or~~
 - (2) ~~have good cause as described in §811.14 of this subchapter (relating to Good Cause for Recipients).~~
- ~~(d) A Board shall establish a collaborative partnership with housing authorities and sponsors of local housing programs and services to address the unmet housing needs of recipients.~~
- (~~d~~) A Board shall develop policies and procedures to ensure that services are concentrated on individuals approaching their state or federal time limit, as identified in §811.3(c)(7)(~~A~~) and (~~B~~) of this chapter. Concentrated services may include targeted outreach, enhanced analysis of circumstances that may limit a recipient's ability to participate, and targeted job development.
- (~~e~~) A Board shall ensure that all Extended TANF Recipients are outreached and offered the opportunity to participate in Choices activities.
- (~~f~~) A Board shall ensure that post-employment services, including job retention and career advancement services, are available to recipients, Choices individuals including those receiving EID.

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

- (1) ensuring receipt of support services
- (2) tracking and reporting of support services;
- (3) tracking and reporting actual hours of participation, at least monthly;
- (4) determining and arranging for any intervention needed to assist the individual in complying with work Choices service requirements;
- (5) ensuring that the individual is progressing toward achieving the goals and objectives in the family employment plan; and
- (6) monitoring all other work participation requirements.

(~~hh~~) A Board shall ensure that:

- (1) no less than four hours of training regarding family violence is provided to staff who:
 - (A) provide information to ~~an applicant or recipient of temporary cash assistance~~ Choices individuals;
 - (B) recommend penalties or grant good cause; or
 - (C) provide employment planning or employment retention services; ~~and~~
- (2) Choices individuals recipients who are identified as being victims of family violence are referred to an individual or an agency that specializes in issues involving family violence.

~~(i) A Board shall ensure that:~~

- ~~(1) reasonable attempts, as defined by the Board, are made to contact a recipient prior to initiating a penalty to determine the reason for non-compliance;~~
- ~~(2) the attempts to contact a recipient are documented; and~~
- ~~(3) notification is made to TDHS if a recipient fails to comply with Choices services requirements.~~

(~~ij~~) A Board shall ensure that documentation is obtained and maintained regarding all contact with Choices individuals and data entered into TWIST.

(~~j~~) A Board shall ensure that a referral program is developed to provide Choices individuals with higher than average barriers to employment, as described in this chapter, with

referrals to pre-employment and post-employment services offered by community-based and other organizations.

§811.12. Applicant Responsibilities.

Applicants and conditional applicants are required to attend a scheduled or an alternative WOA, in accordance with TDHS rule 40 T.A.C. §§3.7301-3.7302.

§811.13. Recipient Responsibilities of Mandatory Individuals, and Exempt Recipients Who Voluntarily Participate-

- (a) A Board shall ensure that mandatory individuals recipients, and exempt recipients who voluntarily participate in Choices services, comply with the provisions contained in this section.
- (b) Mandatory individuals recipients, and exempt recipients who voluntarily participate in Choices services, shall:
 - (1) accept a job offer at the earliest possible opportunity;
 - (2) participate in or receive ancillary services necessary to enable ~~the mandatory~~ individuals recipient to work or participate in employment-related activities, including counseling, treatment, vocational or physical rehabilitation, and medical or health services;
 - (3) report hours of participation in component activities, including hours of employment; and
 - (4) attend scheduled appointments.
- (c) Within two-parent families, mandatory individuals mandatory recipients, and exempt recipients who voluntarily participate in Choices services, shall participate in assessment and family employment planning appointments and assigned employment and training activities as follows:
 - (1) participate in Choices employment and training as specified in §811.25(c)-(d) of this chapter;
 - (2) comply with requirements regarding core and non-core activities, as specified in §§811.25-811.32~~3028~~ of this chapter; ~~and~~
 - (3) comply with all requirements specified in the family employment plan; and**
 - ~~(4)~~ sign a form that contains all the information identified in the Commission's Family Work Requirement form, as described in §811.24 of this chapter.
- (d) Within single-parent families, mandatory individuals mandatory recipients, and exempt recipients who voluntarily participate in Choices services, shall participate in assessment

and employment planning appointments and assigned employment and training activities as follows:

- (1) participate in Choices employment and training activities as specified in §811.25(b) of this chapter; ~~and~~
 - (2) comply with requirements regarding core and non-core activities, as specified in §§811.25-811.32~~3028~~ of this chapter; ~~and~~.
 - (3) comply with all requirements specified in the family employment plan.**
- (e) A Board shall ensure that recipients who elect to receive the EID through TDHS:
- (1) report actual hours of work to a Board; and
 - (2) are provided with information on available post-employment services.

§811.14. Noncooperation.

- (a) A Board shall ensure that cooperation by mandatory individuals with work **Choices** requirements is verified each month to ensure that the individuals:
- (1) comply with work **Choices services** requirements as set forth in the family employment plan, unless the recipient is exempted by TDHS;
 - (2) have good cause as described in this chapter; or
 - (3) have not cooperated with work **Choices** requirements and a penalty is requested.
- (b) A Board shall ensure that timely and reasonable attempts, as defined by the Board, are made to contact a recipient prior to initiating a penalty to:
- (1) determine the reason for noncooperation and whether good cause is applicable, as described in §811.16(c) of this subchapter;
 - (2) inform the recipient of:
 - (A) the violation, if good cause has not been determined;
 - (B) the right to appeal; and
 - (C) the necessary procedures to demonstrate cooperation.
- (c) A Board shall ensure that timely and reasonable attempts, as defined by the Board, are made to contact a sanctioned family and conditional applicants upon discovery of noncooperation to determine if good cause exists.

(d) A Board shall ensure that the reasonable attempts to contact a mandatory individual are documented.

(e) A Board shall ensure that TDHS is notified of:

(1) a mandatory recipient's failure to comply with work ~~Choices services~~ requirements; and

(2) that the noncooperation is submitted as early as possible in the same month in which the noncooperation occurs.

§811.15. Demonstrated Cooperation.

(a) Conditional applicants are required to demonstrate one month of cooperation to become eligible for reinstatement of TANF cash assistance.

(b) Sanctioned families are required to demonstrate one month of cooperation as a condition of eligibility for TANF cash assistance.

(c) A Board shall ensure that TDHS is immediately notified if:

(1) a sanctioned family denied TANF cash assistance because of one month of noncooperation has demonstrated full cooperation with work ~~Choices~~ requirements for the program month immediately following the program month in which the family noncooperated;

(2) a conditional applicant whose TANF case is closed because of two or more months of noncooperation has demonstrated full cooperation with work ~~Choices~~ requirements for four consecutive weeks; or

(3) a sanctioned family or conditional applicant has been granted good cause during the demonstrated cooperation period.

§811.1614. Good Cause for ~~Mandatory Individuals, and Exempt Recipients Who Voluntarily Participate~~Recipients.

(a) Good cause applies only to ~~mandatory individuals, and exempt recipients who voluntarily participate in Choices services~~recipients. A Board shall ensure ~~that whether the recipient has~~ good cause is determined as provided in this chapter.

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

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

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

(3) covers a temporary period when ~~a mandatory individuals, or exempt recipients who voluntarily participate in Choices services,~~recipient may be unable to attend scheduled appointments or participate in ongoing work activities;

- (4) is made at the time the change in ~~the recipient's~~ circumstances is made known to the Board's service provider; and
 - (5) is conditional upon efforts to ~~enable the recipient to~~ address circumstances that limit the ability to participate in Choices services as required in the ~~Personal~~ Responsibility Agreement.
- (c) The following reasons may constitute good cause for purposes of this chapter ~~if the~~ **mandatory recipient** ~~is unable to meet the participation requirements due to:~~
- (1) temporary illness or incapacitation;
 - (2) court appearance;
 - (3) caring for a physically or mentally disabled household member who requires the recipient's presence in the home;
 - (4) a demonstration that there is:
 - (A) no available transportation and the distance prohibits walking; or
 - (B) no available job within reasonable commuting distance, as defined by the Board;
 - (5) an inability to obtain needed child care, as defined by the Board and based on the following reasons:
 - (A) informal child care by a relative or under other arrangements is unavailable or unsuitable, and based on, where applicable, Board policy regarding child care as specified in §811.47 of this chapter. Informal child care may also be determined unsuitable by the parent;
 - (B) eligible formal child care providers are unavailable, as defined in Chapter 809 of this title;
 - (C) affordable formal child care arrangements within maximum rates established by the Board are unavailable; and
 - (D) formal or informal child care within a reasonable distance from home or the work site is unavailable;
 - (6) an absence of ~~is without~~ other support services necessary for participation;
 - (7) receipt of ~~receives~~ a job referral that results in an offer below the federal minimum wage, except when a lower wage is permissible under federal minimum wage law;

- (8) an individual ~~is in a~~ family crisis or a family circumstance that may preclude participation, including substance abuse, ~~and mental health, and disability-related issues,~~ provided the ~~recipient~~ mandatory individual, or exempt recipient who voluntarily participates in Choices services, engages in problem resolution through appropriate referrals for counseling and support services; or
 - (9) an individual is a victim of family violence.
- (d) A Board shall promulgate policies and procedures for determining a family's inability to obtain child care and shall ensure that mandatory individuals~~recipients~~ in single-parent families caring for children under age six are informed of:
- (1) the penalty exception to the family work requirement, including the criteria and applicable definitions for determining whether a mandatory individual~~recipient~~ has demonstrated an inability to obtain needed child care, as defined in §811.164(c)(5)(A)-(D) of this section.
 - (2) a Board's policy and procedures for determining a family's inability to obtain needed child care, and any other requirements or procedures, such as fair hearings, associated with this provision, as required by 45 CFR §261.56.
- (e) A Board shall ensure that good cause:
- (1) is reevaluated at least on a monthly basis;
 - (2) is extended if the circumstances giving rise to the good cause exception are not resolved after available resources to remedy the situation have been considered; and
 - (3) that is based on the existence of family violence does not exceed a total of twelve consecutive months per occurrence .

SUBCHAPTER C. CHOICES SERVICES

§811.21. General Provisions.

- (a) A Board shall ensure that services are available to assist Choices individuals with obtaining employment as quickly as possible and, if employed, with retaining employment. These services may include:
- (1) job readiness and job search-related services;
 - (2) work-based services;
 - (3) post-employment services;
 - (4) education and training services as described in this chapter; and
 - (5) support services.

- (b) A Board shall ensure that employment and training activities are conducted in compliance with the Fair Labor Standards Act (FLSA) as follows:
- (1) the amount of time per week that a recipient may be required to participate in activities that are not exempt from minimum wage and overtime under the FLSA shall be determined by the temporary cash assistance and food stamp benefits amount being divided by the minimum wage so that the amount paid to the recipient would be equal to or more than the amount required for payment of wages, including minimum wage and overtime; or
 - (2) the amount of time per week that a sanctioned family or conditional applicant may be required to participate in activities that are not exempt from minimum wage and overtime under the FLSA shall be determined by the food stamp benefits amount being divided by the minimum wage so that the amount paid to the sanctioned individual would be equal to or more than the amount required for payment of wages, including minimum wage and overtime; and
 - (32) if a Board provides activities that meet all of the following categories set forth in this paragraph, the activity is considered "training" under the FLSA and minimum wage and overtime is not required:
 - (A) the training is similar to that given in a vocational school;
 - (B) the training is for the benefit of the trainees;
 - (C) trainees do not displace regular employees;
 - (D) employers derive no immediate advantage from trainees' activities;
 - (E) trainees are not entitled to a job after training is completed; and
 - (F) employers and trainees understand that trainee is not paid.
- (c) A Board shall ensure that placement in work-based services does not result in the displacement of currently employed workers or impair existing contracts for services or collective bargaining agreements.
- (d) A Board may, through local policies and procedures, require the use of the Eligible Training Provider Certification System (ETPS) and Individual Training Account (ITA) systems as described in 40 T.A.C. Chapter 841 to provide for Choices services for individuals participating in Choices services and paid for with TANF funds.
- (e) A Board shall, through local policies and procedures, make available job development services, which include:
- (1) contacting local employers or industry associations to request that job openings be listed with Texas Workforce Centers, and other entities in the One-Stop Service Delivery Network selected by the Board;

- (2) identifying the hiring needs of employers;
 - (3) assisting the employer in creating new positions for job seekers based on the job developer's and employer's analysis of the employer's business needs; or
 - (4) finding opportunities with an employer for a specific job seeker or a group of job seekers.
- (f) A Board shall ensure that job development services identify, at a minimum, job openings for current mandatory individuals~~mandatory recipients~~.
- (g) A Board shall, through local policies and procedures, make available job placement services. Job placement services shall include:
- (1) identifying employers' workforce needs;
 - (2) identifying job seekers who have sufficient skills and abilities to be successfully linked with employment; and
 - (3) matching the skills of the job seeker pool to the hiring needs of local employers.

§811.22. Assessment.

- (a) A Board shall ensure that initial and ongoing assessments are performed to determine the employability and retention needs, including wage advancement and career development needs, of Choices individuals as follows:
- (1) An assessment is required for mandatory individuals~~mandatory recipients~~, and for exempt recipients who voluntarily participate in Choices services, and who are:
 - (A) at least age 18; or
 - (B) heads of household, as determined by TDHS, who are not yet age 18, have not completed secondary school or received a certificate of general equivalence, and are not attending secondary school.
 - (2) An assessment shall be provided to applicants who choose to participate in Choices services.
 - (3) Ongoing assessments shall be provided to former recipients who choose to participate in Choices services.
- (b) Assessments shall include evaluations of strengths and potential barriers to obtaining and retaining employment, such as:
- (1) skills and abilities, employment, and educational history in relation to employers' workforce needs in the local labor market;

- (2) pre- and post-employment skills development needs to determine the necessity for job-specific training;
 - (3) unmet housing needs and whether those needs are a barrier to full participation in the workforce and progression to self-sufficiency;
 - (4~~2~~) support services needs; and
 - (5~~3~~) individual and family circumstances that may affect participation, including the existence of family violence, substance abuse, ~~and~~ mental health, disability-related issues, or the need for parenting skills training, as one of the factors considered in evaluating employability.
- (c) A Board shall ensure that the assessment identifies Choices individuals with higher than average barriers to employment, as defined by the Board.
- (d) A Board shall ensure that if the skills assessment indicates that an individual requires job-specific training for placement in a job paying wages that equal or exceed the Board's identified self-sufficiency wage, the Board shall, to the extent funds are available and to the extent allowed under this chapter, place the individual in vocational educational training activities or job skills training activities that are designed to improve employment and wage outcomes and job retention; and
- (~~ee~~) For mandatory individuals ~~recipients~~ who are at least age 18, or who are heads of household but are not yet age 18 and have not completed secondary school or received a certificate of general equivalence and are not attending secondary school:
- (1) The assessments shall also include evaluations of the mandatory individual's ~~recipient's~~:
 - (A) vocational and educational skills, experience, and needs; and
 - (B) literacy level by using a statewide standard literacy assessment instrument with the following exception: recipients receiving the EID are excluded from the literacy assessment. A Board shall ensure that the grade-level results or other literacy information is provided to TDHS for use in determining the appropriateness of the initial state time-limit designation for temporary cash assistance as described in the Texas Human Resources Code §31.0065, relating to state time-limited benefits.
 - (2) The grade-level results or other literacy information are provided to TDHS for use in determining the appropriateness of the initial state time-limit designation for temporary cash assistance as described in the Texas Human Resources Code §31.0065, relating to state time-limited benefits.
- (~~fe~~) Assessment Outcome. Assessments shall result in the development of a family employment plan, as described in §811.23 of this subchapter.

§811.23. Family Employment Plan.

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

(6) provides information about the penalty process, good cause process, right of appeal, and the importance of immediately contacting a case worker should individual or family circumstances arise that prevent participation.

(e) A Board shall ensure that mandatory individuals are notified of their responsibility to participate in job readiness activities as set forth in §811.41(d) of this chapter.

~~(e) — A Board shall ensure that the family employment plan contains the responsibilities listed in the Responsibility Agreement, which state that:~~

~~(1) — each adult member of the household receiving cash assistance must participate as required in Choices;~~

~~(2) — each family must cooperate with child support requirements to establish paternity and help obtain child support for children on their case;~~

~~(3) — each adult or teen parent must not voluntarily quit a job without good cause;~~

~~(4) — each child in the family must get a medical checkup as scheduled through the Texas Health Steps program;~~

~~(5) — each child must be current with the required immunizations;~~

~~(6) — each child receiving TANF who is younger than 18, or a teen parent younger than 19, must attend school regularly unless the child has a high school diploma or a GED;~~

~~(7) — each TANF recipient must attend parenting skills classes, if requested to do so;~~

~~(8) — each parent or relative of a child receiving assistance must not use, sell, or possess controlled substances or abuse alcohol after signing a Responsibility Agreement; and~~

~~(9) — each family must truthfully represent their situation in completing the application, the interview, providing proof of their situation, reporting changes in address, income, assets, and family size, and by keeping or rescheduling all appointments.~~

~~(f) — A Board shall ensure that the responsibilities in §811.23(e)(1) and (3) of this section are monitored for compliance.~~

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

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

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

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

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

- (a) Participation hours are subject to the restrictions regarding TANF core and TANF non-core activities as set forth in outlined 45 U.S.C. Section § 607, in 45 C.F.R. §§261.10, §261.12, §261.31, §261.32, and §261.33, and as set forth outlined in this section and §811.26 of this subchapter.
 - (1) TANF core activities are:
 - (A) job search and job readiness assistance, as described in §811.41 of this chapter;
 - (B) unsubsidized employment, as described in §811.42 of this chapter;
 - (C) subsidized employment, as described in §811.43 of this chapter;
 - (D) on-the-job training, as described in §811.44 of this chapter;
 - (E) work experience, as described in §811.45 of this chapter;
 - (F) community service, as described in §811.46 of this chapter;
 - (G) vocational educational training, as described in §811.48 of this chapter; or
 - (H) child care services to a mandatory individual, or exempt recipient who voluntarily participates in Choices services, recipient who is participating in community service, as described in §811.47 of this chapter.

- (2) TANF non-core activities are:
- (A) job skills training, as described in §811.49 of this chapter;
 - (B) educational services for mandatory individuals, and exempt recipients who voluntarily participate in Choices services, recipients who have not completed secondary school or received a certificate of general equivalence, as described in §811.50 of this chapter.
 - (C) parenting skills training, as described in §811.52 of this chapter.
- (b) ~~A-Mandatory individuals, and exempt recipients who voluntarily participate in Choices services, recipient~~ in a single-parent family **are required to** ~~is deemed to be engaged in work during the month if he or she~~ participates for at least a minimum weekly average of thirty hours. An average of twenty hours per week must be derived from participation in core activities. Up to an average of ten hours per week may be derived from participation in non-core activities.
- (c) Mandatory individuals, and exempt recipients who voluntarily participate in Choices services, in Two-parent families who are not receiving Commission-funded child care, **are required to have one or both adults in the family participate** ~~are deemed to be engaged in work during the month if one or both adults in the family participate~~ for at least a minimum weekly average of thirty-five hours. An average of thirty hours per week must be derived from participation in core activities. Up to an average of five hours per week may be derived from participation in non-core activities.
- (d) Mandatory individuals, and exempt recipients who voluntarily participate in Choices services, in Two-parent families who are receiving Commission-funded child care, are **are required to have one or both adults in the family participate** ~~deemed to be engaged in work during the month if one or both adults in the family participate~~ for at least a minimum weekly average of fifty-five hours. An average of fifty hours per week must be derived from participation in core activities. Up to an average of five hours per week may be derived from participation in non-core activities. The following work participation exceptions apply to two-parent families who are receiving Commission-funded child care:
- (1) two-parent families with one adult in good cause status are deemed to be engaged in work during the month if the adult who is not in good cause status participates for at least a minimum weekly average of thirty-five hours. An average of thirty hours per week must be derived from participation in core activities. Up to an average of five hours per week may be derived from participation in non-core activities; or
 - (2) two-parent families with both adults in good cause status for whom no penalty will be requested for failure to meet the minimum weekly average hours based on the good cause determination.

§811.26. Special Provisions Regarding Community Service ~~Core and Non-Core Activities.~~

- (a) Mandatory recipients, with the exception of those described in §811.29~~27~~ and §811.32~~30~~ of this subchapter, who are not in an employment activity after four weeks of participation in Choices services, must be placed into community service. Mandatory recipients who are not in an employment activity after reaching their six-week limit per federal fiscal year in job search and job readiness activities must be placed into community service. Mandatory recipients required to participate in a community service activity must be scheduled to participate no less than the minimum weekly average hours calculated as specified in §811.21 (b) of this subchapter.
- (1) An employment activity is defined as:
 - (A) unsubsidized employment, as described in §811.42 of this chapter;
 - (B) subsidized employment, as described in §811.43 of this chapter;
 - (C) on-the-job training, as described in §811.44 of this chapter; or
 - (D) work experience, as described in §811.45 of this chapter.
 - (2) The number of hours that a recipient is required to participate in community service or another unpaid work activity, must be determined in compliance with the FSLA as described in §811.21(b) of this subchapter. If a recipient's hours of community service or other unpaid work activity are not sufficient to meet the core work activities requirement as set forth ~~outlined~~ in §811.25 (b)-(d) of this subchapter, the recipient must be enrolled in additional core activities.
- (b) Exempt recipients who voluntarily participate in Choices services are not subject to the requirements set forth ~~outlined~~ in §811.26(a) of this section.

§811.27. Special Provisions Regarding Job Search and Job Readiness.

- (~~a~~e) Recipients participating in unsubsidized employment in §811.26(a)(1)(A) who lose that employment may participate in job search as defined in §811.41(c) and job readiness activities as defined in §811.41(d)(1)-(2) unless they have reached the six-week limit per federal fiscal year.
- (~~b~~d) Job search and job readiness activities as defined in §811.41, with the exception of the job readiness activities set forth in §811.41(d)(3)(A)-(D), of this chapter, are limited as follows:
- (1) mandatory recipients, and exempt recipients who voluntarily participate in Choices services may not be enrolled for more than 4 weeks of consecutive activity;
 - (2) mandatory recipients, and exempt recipients who voluntarily participate in Choices services, may not be enrolled for more than 6 weeks of total activity in a federal fiscal year;

- (3) in order for a mandatory recipient to qualify for their remaining 2 weeks of job search and job readiness, they must first comply with §811.26(a) of this section, which requires that the mandatory recipient be engaged in an employment activity or in community service; and
- (c4) only once per federal fiscal year, may a partial week count as a full week of participation, per recipient.
- (d) A Board shall ensure that mandatory individuals~~recipients~~:
 - (1) are continuously enrolled in the job readiness activities set forth in §811.41(d)(3) of this chapter; and
 - (2) receive a three-hour participation credit per week for such activities.

§811.28. Special Provisions Regarding Vocational Educational Training and Educational Services.

- (ae) Mandatory individuals, and exempt recipients who voluntarily participate in Choices services~~Recipients~~ may not be enrolled in vocational education training, as defined in §811.48 of this chapter, for more than a cumulative total of 12 months.
- (bf) No more than thirty percent of mandatory individuals, and exempt recipients who voluntarily participate in Choices services,~~recipients~~ engaged in work activities in a month may be included in the Board's numerator because they are:
 - (1) participating in vocational educational training; and
 - (2) teen heads of household participating in educational activities as described in §811.~~2927~~ of this subchapter.
- (gc) Mandatory individuals, and exempt recipients who voluntarily participate in Choices services,~~Recipients~~ shall only be enrolled in core and non-core activities.

§811.297. Special Provisions for Teen Heads of Household.

- (a) A Board must ensure that teen heads of household who have not completed secondary school or received a certificate of general equivalence are enrolled in educational activities as defined in §811.50 of this chapter.
- (b) Teen heads of household who have not completed secondary school or received a certificate of general equivalence will count as engaged in work if they:
 - (1) maintain satisfactory attendance at a secondary school or the equivalent during the month as follows;

- (A) during months in which school is in session, maintains satisfactory attendance;
- (B) in months in which school is not in session, participates in allowable activities as described in §811.25 of this subchapter; or
- (2) participate in education directly related to employment for an average of at least 20 hours per week during the month; or
- (3) participate in Choices employment and training activities as specified in §811.25 of this subchapter.

§811.3028. Special Provisions for Mandatory Individuals, and Exempt Recipients Who Voluntarily Participate in Choices Services, Recipients in Single-Parent Families with Children Under Age Six.

- (a) A Board shall ensure that mandatory individuals, and exempt recipients who voluntarily participate in Choices services,~~recipients in single-parent families with children under age six~~ are notified of the penalty exception to Choices participation as described in §811.164(d) of this chapter.
- (b) A mandatory individual, and exempt recipient who voluntarily participates in Choices services,~~recipient in a single-parent family with children under age six~~ will count as engaged in work if he or she participates for at least an average of twenty hours per week in core activities.

§811.3129. Special Provisions Regarding Exempt Recipients Who Voluntarily Participate.

- (a) Boards are not required to provide Choices services as set forth~~outlined~~ in §§811.25-811.32 ~~3028~~ of this subchapter to exempt recipients who fail to meet work requirements.
- (b) Boards shall ensure that a penalty is not requested for exempt recipients who voluntarily participate in Choices.**

<new>§811.320. Special Provisions Regarding Persons with Disabilities.

- (a) Mandatory individuals, who are disabled~~Disabled recipients~~ shall count as engaged in work to the extent that the individuals:
 - (1) participate in Choices employment and training activities for the time period and to the extent determined able as specified by a physician; or
 - (2) participate in activities as directed by the Texas Rehabilitation Commission or similar organization.
- (b) Mandatory individuals, Recipients~~needed at home to care for a disabled adult in the household~~ shall count as engaged in work if the recipient participates in Choices services for a time period and to the extent determined able as specified by a physician.

- (c) ~~Mandatory individuals, Recipients,~~ who are needed at home to care for an ill or disabled child in the household shall count as engaged in work if the recipient participates in Choices services for a time period and to the extent determined able as specified by a physician.

§811.33. Special Provisions Regarding Conditional Applicants.

A Board shall ensure that conditional applicants enrolled in job search activities, as described in this chapter, receive staff-assisted services as defined in §811.41(b)(1)(B) of this chapter.

§811.34. Special Provisions Regarding Sanctioned Families.

A Board shall ensure that sanctioned families enrolled in job search activities, as described in this chapter, receive staff-assisted services as defined in §811.41(b)(1)(B) of this chapter.

SUBCHAPTER D. CHOICES WORK ACTIVITIES

§811.41. Job Search and Job Readiness Assistance.

- (a) Job search and job readiness are core activities as defined in §811.25(a)(1) of this chapter.
- (b) A Board shall ensure that job search and job readiness services:
- (1) incorporate the following:
 - (A) individual and group activities; ~~and~~
 - (B) staff-assisted services in which Texas Workforce Center staff provide direction and guidance to job seekers, including appropriate referrals based on their skills and abilities and to pre-scheduled job interviews; and preparatory activities that are essential to obtaining and retaining employment; and~~and client-directed activities.~~
 - (C) client-directed activities that do not require significant staff involvement, and include activities in which clients independently identify employment opportunities based upon their employment strengths, perform preparatory activities that are essential to obtaining and retaining employment, and activities that address the health, safety, and welfare of their families.
 - (2) are limited to activities necessary for Choices individuals to secure immediate employment.
 - (3) provide individual assistance or coordinated, planned, and supervised activities that prepare Choices individuals for seeking employment, ~~and including but are not limited to, the following:~~

(c) Job search activities include:

- (~~1~~A) job skills assessment;
- (~~2~~B) job placement;
- (~~3~~C) counseling;
- (~~4~~D) information on available jobs;
- (~~5~~E) occupational exploration, including information on local emerging and demand occupations;
- (~~6~~F) interviewing skills and practice interviews;
- (~~7~~G) assistance with applications and resumes;
- (~~8~~H) job fairs;

(d) Job readiness activities are designed to assist Choices individuals with addressing issues that will aid them in obtaining and retaining employment, including:

- (~~1~~I) life skills; ~~or~~
- (~~2~~J) guidance and motivation for development of positive work behaviors necessary for the labor market; or
- (3) activities essential to the health, safety, and welfare of their families, as follows:
 - (A) activities associated with maintenance of their children's health and dental checkups, as required by 40 TAC §3.301;
 - (B) activities associated with maintenance of their children's immunizations, as required by 40 TAC §3.301;
 - (C) activities necessary to ensure their children's school attendance, as required by 40 TAC §3.301; and
 - (D) activities necessary to abstain from the use, possession, or sale of controlled substances, and to abstain from alcohol abuse, including participation in counseling.

(e4) Job search and job readiness activities are time-limited as defined in §811.27 of this chapter.

§811.42. Unsubsidized Employment.

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

- (b) Unsubsidized employment includes the following:
 - (1) full or part-time employment, in which wages are paid in full by the employer;
 - (2) unsubsidized internship with wages paid by the internship employer; and
 - (3) self-employment.

§811.43. Subsidized Employment.

- (a) Subsidized employment is a core activity as defined in §811.25(a)(1) of this chapter.
- (b) Subsidized employment is full or part-time employment that is subsidized in full or in part and complies with this section. Subsidized employment may occur in either the private sector or public sector. A Board shall not be the employer of record for Choices individuals enrolled in a subsidized employment activity. Subsidized employment includes but is not limited to the following:
 - (1) subsidized internship with a portion of the Choices individual's wages subsidized;
 - (2) subsidized employment with a staffing agency acting as the employer of record; and
 - (3) subsidized employment with the actual employer acting as the employer of record.
- (c) Wages.
 - (1) Wages shall be at least federal or State minimum wage, whichever is higher. Boards must set a policy to establish the amount of the wage that is subsidized.
 - (2) Employers must provide the same wages and benefits to subsidized employees as for unsubsidized employees with similar skills, experience, and position.

§811.44. On-the-Job Training.

- (a) On-the-job training is a core activity as defined in §811.25(a)(1) of this chapter.
- (b) A Board shall ensure that a determination is made on a case-by-case basis whether to authorize, arrange, or refer a Choices individual for subsidized, time-limited training activities, to assist the Choices individual with obtaining knowledge and skills that are essential to the workplace while in a job setting. On-the-job training is training by an employer that is provided to a Choices individual while engaged in productive work in a job that:
 - (1) provides knowledge or skills essential to the full and adequate performance of the job;

- (2) provides reimbursement to the employer of a percent of the wage rate of the Choices individual for the extraordinary costs of providing the training and additional supervision related to the training;
 - (3) is limited in duration as appropriate to the occupation for which the Choices individual is being trained, taking into account the content of the training, the prior work experience of the Choices individual, and the service strategy of the Choices individual, as appropriate; and
 - (4) includes training specified by the employer.
- (c) Unsubsidized employment after satisfactory completion of the training is expected. A Board shall not contract with employers who have previously exhibited a pattern of failing to provide Choices individuals in on-the-job training with continued long-term employment, which provides wages, benefits, and working conditions that are equal to those that are provided to regular employees who have worked a similar length of time and are doing a similar type of work.

§811.45. Work Experience.

- (a) Work experience is a core activity as defined in §811.25(a)(1) of this chapter.
 - (b) A Board shall ensure that a determination is made on a case-by-case basis whether to authorize, arrange, or refer mandatory individuals, and exempt recipients who voluntarily participate in Choices services, ~~recipients~~ for unsalaried, work-based training positions in the private for-profit sector to improve the employability of a mandatory individual ~~recipient~~ who has been unable to find employment.
 - (c) A Board shall ensure that all mandatory individuals, and exempt recipients who voluntarily participate in Choices services, ~~recipients~~ who are unemployed after completing job search services are evaluated on an individual basis to determine if enrollment in work experience shall be required, based on available resources and the local labor market.
- (d) A Board shall ensure that each work experience placement:
- (1) is time-limited;
 - (2) is designed to move the mandatory individuals, and exempt recipients who voluntarily participate in Choices services, ~~recipient~~ quickly into regular employment; and
 - (3) has designated hours, tasks, skills attainment objectives, and staff supervision.
- (e) A Board shall ensure that entities that enter into non-financial agreements with a Board, identify work experience positions and provide job training and work experience within their organization. These positions shall enable mandatory individuals, and exempt recipients who voluntarily participate in Choices services, ~~recipients~~ to gain the skills

necessary to compete for positions within the entity as well as positions in the labor market.

§811.46. Community Service.

- (a) Community service is a core activity as defined in §811.25(a)(1) of this chapter.
- (b) A Board shall ensure that a determination is made, on a case-by-case basis, whether to authorize, arrange, or refer mandatory individuals, and exempt recipients who voluntarily participate in Choices services. ~~A Board shall ensure that all recipients subject to §811.26(a) of this chapter are referred~~ to a community service program that provides employment or training activities to recipients through unsalaried, work-based positions in the public or private nonprofit sectors to improve the employability of recipients who have been unable to find employment.
- (c) A Board shall ensure that all mandatory recipients subject to §811.26(a) of this chapter are referred to a community service program.

§811.47. Child Care Services to a Mandatory Recipient Individual, or Exempt Recipient Who Voluntarily Participates in Choices Services, ~~Recipient Participating in Community Service.~~

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

§811.48. Vocational Educational Training.

- (a) Vocational educational training is a core activity as defined in §811.25(a)(1) of this chapter.
- (b) A Board shall ensure that a determination is made, on a case-by-case basis, whether to authorize, arrange, or refer Choices individuals for vocational educational training. Services provided by the Texas Rehabilitation Commission may be counted as vocational education training if the service provided to the Choices individual leads to employment.

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

§811.49. Job Skills Training.

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

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

§811.50. Educational Services for Mandatory Individuals, and Exempt Recipients w/Who Voluntarily Participate in Choices Services, Recipients Who Have Not Completed Secondary School or Received a Certificate of General Equivalence.

- (a) Educational services are only available for mandatory individuals and exempt recipients who voluntarily participate in Choices services, recipients who have not completed

secondary school or who have not received a certificate of general equivalence as follows.

- (1) Educational services for mandatory individuals, and exempt recipients who voluntarily participate in Choices services, recipients age 20 or older are non-core activities as defined in §811.25(a)(2) of this chapter.
 - (2) Educational services for mandatory individuals, and exempt recipients who voluntarily participate in Choices services, recipients who are teen heads of household recipients age 19 and younger are core activities as defined in §811.297 of this chapter.
- (b) A Board shall ensure that a determination is made, on a case-by-case basis, whether to authorize, arrange, or refer mandatory individuals, and exempt recipients who voluntarily participate in Choices services, recipients who are age 20 and older for the following educational or other training services:
- (1) secondary school leading to a high school diploma or a certificate of general equivalence;
 - (2) Workforce Adult Literacy; or
 - (3) other educational activities which are directly related to employment.
- (c) Boards may count up to 5 hours per week of study or homework time toward a mandatory individual recipient's, and exempt recipient who voluntarily participates in Choices services, family participation requirement if:
- (1) study or homework time is directly correlated to the demands of the course work for out-of-class preparation as described by the educational institution;
 - (2) the educational institution's policy requires a certain number of out-of-class preparation hours for the class;
 - (3) study or homework time has been directly verified from the educational institution; and
 - (4) the mandatory individual, or exempt recipient who voluntarily participates in Choices services, recipient is making progress as determined by the educational institution.

§811.51. Post-Employment Services.

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

- (b) A Board shall ensure that post-employment services are monitored, and ensure that hours of employment are required and reported by mandatory recipients, and exempt recipients who voluntarily participate in Choices services, for at least the length of time the mandatory recipients, and exempt recipients who voluntarily participate in Choices services, receives temporary cash assistance.
- (c) A Board shall ensure that ongoing contact is established with Choices individuals receiving post-employment services at least monthly.
- ~~(d)~~ A Board may include mentoring techniques as part of a post-employment strategy.
- ~~(e)~~ A Board may, through local policies and procedures, make ~~available~~ post-employment services available to:
- (1) former recipients who are denied temporary cash assistance because of due to earnings-; and
- (2) sanctioned families and conditional applicants who obtain employment during the one month of demonstrated cooperation.
- ~~(f)~~ The post-employment services for former recipients may include the following:
- (1) assistance and support for the transition into employment through direct services or referrals to resources available in the workforce area;
- (2) child care, if needed, as specified in rules at 40 T.A.C. Chapter 809;
- (3) work-related expenses, including those identified in §811.64 of this chapter;
- (4) transportation, if needed;
- (5) job search, job placement, and job development services to help a former recipient who loses a job to obtain employment; ~~or~~
- (6) referrals to available education or training resources to increase an employed individual's skills or to help the individual qualify for advancement and long-term employment goals;
- ~~(7)~~ additional career planning and counseling; or
- ~~(8)~~ referral to support services available in the community.
- ~~(g)~~ The maximum length of time a former recipient, conditional applicant, and sanctioned family may receive services under this section is dependent upon:
- (1) ~~the former recipient's~~ family circumstances;

- (2) ~~whether the former recipient is at~~the risk of returning to public assistance. A person is considered at risk of returning to temporary cash assistance if he or she is a food stamp recipient, or receives Commission-funded child care;
 - (3) the ~~former recipient's~~ongoing need for these services; and
 - (4) the availability of funds for these services.
- (h) Post-employment service providers may include employers, community colleges, technical colleges, proprietary schools, faith-based and community-based organizations.

§811.52. Parenting Skills Training.

Parenting skills training activities are intended to assist families in maintaining their health, safety, and welfare; these activities are also intended to assist Choices individuals with relevant family issues that contribute to their ability to obtain and retain employment. These activities may addressA Board shall ensure:

- (1) ~~that a determination is made, on a case by case basis and as determined during the assessments described in §811.22 of this chapter, whether to authorize, arrange, or refer Choices individuals for parenting skills training including one or more of the following:~~ nutrition education;
- (2) budgeting and life skills; and
- (3) instruction on the necessity of physical and emotional safety for children;
- (4) instruction on the necessity of maintaining children's health to include immunizations and dental checkups;
- (5) instruction on the necessity of ensuring children's school attendance;
- (6) instruction on the necessity of abstaining from using, possessing, or selling controlled substances; and
- (7) instruction on the necessity of abstaining from abusing alcohol.

SUBCHAPTER E. SUPPORT SERVICES AND OTHER INITIATIVES

§811.61. Support Services.

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

(b)(b) A Board shall ensure that support services, including Commission-funded child care, are provided only to mandatory individuals, and exempt recipients who voluntarily participate in Choices services, recipients who are meeting work requirements set forth outlined in §811.14811.16, §811.23, §§811.25-811.3228, and §811.30 of this chapter, and as set forth outlined in §809.102 of this title. In applying this provision, a Board shall ensure support services are provided to a mandatory individual, and an exempt recipient who voluntarily participates in Choices services, recipient if it is determined ~~that the recipient needs the support services~~ are needed to comply with work requirements set forth outlined in §811.14811.16, §811.23, and §§811.25-811.3228, and §811.30 of this chapter, and as set forth outlined in §809.102 of this title.

(e)(c) A Board shall ensure that:

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

(2) the Board's child care contractor service provider is notified immediately of the recipient's failure to meet work Choices requirements; and

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

(d) A Board shall ensure that support services, classified as cash assistance, for:

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

(2) unemployed conditional applicants and sanctioned families do not extend beyond the one month of demonstrated cooperation.

§811.62. Child Care for Choices Individuals.

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

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

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

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

§811.63. Transportation.

A Board shall ensure that transportation assistance shall:

- (1) be provided if needed to enable a Choices individual to work, attend, and participate in required Choices services, or access necessary support services if alternative transportation resources are not available; and
- ~~(2) not extend beyond four months for applicants or former recipients who are unemployed and not receiving temporary cash assistance; and~~
- (23) use the most economical means of transportation that meets the Choices individual's needs.

§811.64. Work-Related Expenses.

- (a) If other resources are not available, work-related expenses necessary for Choices individuals to accept or retain specific and verified job offers that pay at least the federal minimum wage may be provided or reimbursed.
- (b) A Board shall ensure that written policies are developed related to the methods and limitations for provision of work-related expenses.
- (c) Work-related expenses may include: tools, uniforms, equipment, transportation, car repairs, housing or moving expenses, and the cost of vocationally required examinations or certificates.

§811.65. Wheels to Work.

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

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

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

§811.67. Individual Development Accounts (IDAs).

- (a) A Board may set local policy and procedures to provide for implementation and oversight of IDAs under this section using TANF funds in accordance with 45 C.F.R. §§263.20-263.23. An IDA means an account established by, or for, an eligible individual to allow the individual to accumulate funds for specific purposes.

- (b) A Board shall ensure that any IDAs created and matched with TANF funds are established and administered through a contract with a private nonprofit entity or through a state or local government entity acting in cooperation with a private nonprofit entity. The private nonprofit entity, or cooperating state or local entity, must coordinate with a financial institution in administering the accounts.
- (c) Choices individuals may be eligible for IDAs if all of the requirements of this section are met.
- (d) IDAs may be established for an eligible individual, and may be contributed to with the individual's earned income and up to fifty percent of the individual's federal Earned Income Tax Credit refund. Federal Earned Income Tax Credit refunds shall not be matched with TANF funds.
- (e) Federal TANF funds, as well as public or private funds, may be used to provide matching funds for qualified expenses and to administer IDAs, and shall be expended in a manner consistent with applicable federal and state statutes and regulations, with the exception of federal Earned Income Tax Credit refunds.
- (f) Use of funds in an individual's IDA, shall be in accordance with the Social Security Act §404(h) (42 U.S.C. §604(h)) and 45 C.F.R. §§263.20-263.23 and limited to expenses related to:
 - (1) postsecondary educational expenses;
 - (2) first home purchase; or
 - (3) business capitalization.
- (g) A Board shall ensure that only qualified withdrawals are made by eligible individuals, and must develop policies and procedures to address unauthorized withdrawals, to include notification:
 - (1) to the individual that unauthorized withdrawals may impact the individual's eligibility for public assistance programs;
 - (2) to the individual of forfeiture of the entitlement to the matching funds for an unauthorized withdrawal; and
 - (3) to TDHS within seven working days of the unauthorized withdrawal.

SUBCHAPTER F. APPEALS

§811.71. Board Review.

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

- (1) a Choices individual against whom an adverse action is taken by a Texas Workforce Center Partner, as defined in §800.2 of this title; or
 - (2) a person who believes that a Choices individual has displaced the person from employment.
- (b) A request for review shall be submitted in writing and delivered to a Board within 15 calendar days of the date of the adverse action. The request shall also contain:
 - (1) a concise statement of the disputed adverse action;
 - (2) a recommended resolution; and
 - (3) any supporting documentation the Choices individual deems relevant to the dispute.
 - (c) On receipt of a request for review, a Board shall coordinate a review by appropriate Board staff.
 - (d) The parties to the request for review are the aggrieved person, applicant, or individual and the Texas Workforce Center Partner.
 - (e) Additional information may be requested from the parties. Such information shall be provided within 15 calendar days of the request.
 - (f) Within 30 calendar days of the date the request for review is received or of the date that additional requested information is received by the reviewing Board staff member, a Board shall send the parties written notification of the results of the review.

§811.72. Appeals to the Agency.

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

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

A recipient who expresses dissatisfaction with a decision regarding the termination or reduction of his or her TANF cash assistance ~~benefits~~ may appeal the decision to TDHS. If the termination

or reduction of temporary cash assistance is based upon noncompliance with work Choices requirements, a Board shall prepare and provide the necessary information to TDHS, and the recipient.

§809.102. Choices Child Care.

- (a) Children eligible to receive Choices child care include:
 - (1) children of TANF recipients participating in the Choices program as stipulated in 40 TAC Chapter 811 of this title; and
 - (2) children of sanctioned families and conditional applicants, as defined in Chapter 811 of this title, who must demonstrate cooperation prior to the resumption of TANF cash assistance as stipulated in Chapter 811 of this title.
- (b) Child care shall be provided to children of parents participating in the Choices program as stipulated in 40 TAC Chapter 811 of this title, who need child care to accept employment and remain employed.
- (c) Persons approved for Choices but waiting to enter an approved initial component of the program may receive up to two weeks of child care:
 - (1) when child care will prevent loss of the Choices placement, and
 - (2) if child care is available to meet the needs of the child and parent.

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