

PROPOSED 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*.

ON OCTOBER 15, 2003 THE TEXAS WORKFORCE COMMISSION PROPOSED THE BELOW RULE WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated Publication Date of the Proposal in the *Texas Register*: October 31, 2003.

Estimated End of Comment Period: December 1, 2003.

The Texas Workforce Commission (Commission) proposes the repeal of the following sections of Chapter 809 relating to Child Care and Development:

Subchapter A. General Provisions, §809.1;
Subchapter B. General Management, §809.20;
Subchapter C. Requirements to Provide Child Care, §809.44 and §809.46;
Subchapter D. Self-Arranged Care; §809.61 and §809.62;
Subchapter E. Parent Rights and Responsibilities, §809.72, §809.78 and §809.79;
Subchapter F. General Eligibility for Child Care, §809.92 and §809.93;
Subchapter G. Child Care for People Transitioning Off Public Assistance, §809.101;
Subchapter H. Children of Parents at Risk of Becoming Dependent on Public Assistance, §§809.121-809.123;
Subchapter K. Funds Management, §809.225, §809.226 and §809.231;
Subchapter M. Appeal Procedure, §809.271;
Subchapter N. Corrective and Adverse Action, §809.283; and
Subchapter O. Child Care Train Our Teachers (TOT) Award.

The Commission proposed new rules for the following sections of Chapter 809:

Subchapter A. General Provisions, §809.1;
Subchapter B. General Management, §809.20;
Subchapter C. Requirements to Provide Child Care, §809.44 and §809.46;
Subchapter D. Self-Arranged Care; §§809.61-809.63;
Subchapter E. Parent Rights and Responsibilities, §809.72, §809.78 and §809.79;
Subchapter F. General Eligibility for Child Care, §809.92 and §809.93;
Subchapter G. Child Care for People Transitioning Off Public Assistance, §809.101;
Subchapter H. Children of Parents at Risk of Becoming Dependent on Public Assistance, §§809.121-809.123;
Subchapter K. Funds Management, §809.225, §809.226 and §809.231;
Subchapter M. Appeal Procedure, §809.271; and
Subchapter N. Corrective and Adverse Action, §809.283.

Purpose

The purpose of the proposed rule changes is, in part, to comply with federal and state statutory requirements. The proposed rule changes also promote the efficient use of available funds providing affordable, safe and nurturing child care services to the maximum number of eligible families in order to enable them to achieve or maintain self-sufficiency. The Commission also proposes removing certain obsolete rule provisions.

Background

The Commission proposes rule changes in order to comply with federal laws regarding the exclusion of certain federal educational loans and monetary allowances paid to certain children of Vietnam veterans from the income eligibility calculation. The Commission also proposes the rule changes in response to Senate Bill 280 (SB 280) enacted by the 78th Legislature, Regular Session, which requires changes in the parent notification period for terminating child care services. SB 280 also allows the Commission the option of discontinuing the Train Our Teacher (TOT) scholarship program.

The proposed rule changes also provide clarification and establish new statewide parameters for local policies involving minimum work-activity hours, reimbursements to providers, and the parent responsibility agreement.

§809.1 Short Title and Purpose

The Commission proposes repealing §809.1(c) relating to the effective date for the implementation of the child care rules adopted in February 1999. It includes the provision that "...until September 1, 1999, the Boards shall continue to comply with the rules in effect on January 1, 1999." It also provides that Boards have until December 1, 1999 to implement direct payments to providers for self-arranged child care. The purposes for which these specific rules were adopted have been served, and they are no longer relevant.

The Commission also proposes adding a new §809.1(c) that provides clarification related to the proposed repeal of Subchapter O. Child Care Train Our Teachers (TOT) Award. SB 280 amends §302.066(a) of the Labor Code, making it optional rather than mandatory for the Commission to continue awarding TOT scholarships. Both the 76th and 77th Legislatures appropriated funds specifically to support the TOT scholarship awards. The 78th Legislature, however, appropriated no funds specifically to support the continuation of the TOT scholarships in the 2004-05 biennium.

Furthermore, an evaluation of the first two years of the TOT program indicates that the scholarships are not achieving the results intended. During the 2000-01 biennium, the Commission granted 700 scholarships for students to work toward receiving a Child Development Associate (CDA). Only 38 awardees, however, reported that they actually received the CDA.

As a result of this low success rate and lack of appropriated funds, the Commission proposes repeal of the rules in Chapter 809, Subchapter O. Child Care Train Our Teachers (TOT) Award and intends to discontinue the TOT scholarship program.

The proposed §809.1(c) stipulates that the Texas Workforce Commission will continue to administer and honor TOT scholarships awarded prior to July 1, 2003 under the rules in effect when the scholarship was awarded. The new rule also stipulates that repeal of the TOT award will not prohibit the Commission from enforcing the employment and reporting obligations required of TOT awardees.

§809.20 Leveraging Local Resources

The Commission proposes changing §802.20(a)(1) by adding subparagraph (B) in order to allow Boards to include certifications of eligible expenditures by private entities in their local match requirements. With the increase in the amount of local match required in the state's General

Appropriations Act for the 2004-05 biennium, the ability to certify eligible expenditures by private entities would assist the Boards in securing additional local matching funds.

The federal regulations at 45 CFR, Part 98 §98.53 provide for the use of certified or transferred public funds and for the use of private funds, within certain limitations, to meet the state's matching funds requirements. The Commission's current rules provide for the transfer and certification of public funds for this purpose, and for the donation of private funds. This proposed rule change allows Boards to certify child care expenditures by private entities provided that the expenditures do not expressly or effectively benefit a specific individual, organization, facility or institution.

§809.44 Provider General Liability Insurance Requirements

The Commission proposes a new §809.44 by changing subsection (a) and adding subsections (b), (c), and (d) in order to set limits on Board policies regarding liability insurance for child care providers. Current rules give the Boards flexibility in determining if general liability insurance will be required and the amount of the liability required for child care providers with signed agreements to serve TWC subsidized children. The proposed rule changes in §809.44 will align the liability insurance requirements for child care with the state requirements stipulated in Chapter 42 of the Human Resources Code.

State law (§42.049 of the Human Resource Code) requires only licensed child care centers to carry \$300,000 per occurrence in general liability insurance. If a center is unable to secure liability insurance or has exhausted the liability limits stipulated in its policy, the Texas Department of Protective and Regulatory Services (TDPRS) may exempt the center from this requirement, and the center must notify parents that they do not carry liability insurance. Furthermore, child care homes do not have to carry liability insurance to be licensed or registered by TDPRS.

Many Boards, however, in their agreements with child care providers require liability insurance in excess of the \$300,000 and do not allow an exemption from the requirement as stipulated in the state standards. Most Boards also require liability insurance in their agreements with licensed and registered child care homes, even though these providers are not required by the state to have general liability insurance.

It is the intent of the Commission that Boards not add additional requirements on child care providers that are not required by state law. State law requires liability insurance in the amount of \$300,000 per occurrence only for licensed child care centers. TDPRS is the agency responsible for regulating the child care industry and thereby enforces the licensing requirements for that industry.

Boards do not have the authority to regulate or license child care providers in any way, including requiring that providers maintain or obtain liability insurance. The Boards' roles are to ensure that providers that are required to meet the state's licensing requirements are in good standing with TDPRS. Boards are responsible for ensuring that parent choice is the basic foundation upon which the services are delivered. To that end, Boards' contractors may inform parents of the state's licensing requirements so parents can make informed decisions when selecting a child care provider as part of the required consumer education.

Other than consumer education, the Commission intends that no funds be expended on regulatory activities relating to the licensing or monitoring of child care providers, as that is the expressed

statutory authority of TDPRS and not an appropriate use of funds by a Board or a Board's contractor. Boards must ensure that they and their contractors do not create the appearance of regulating child care providers. The Boards should take steps to ensure that parents are not under the impression that child care providers with agreements are "approved" or otherwise "regulated" by the Boards or contractors as this would be contrary to the statutory division of authority between the TDPRS and TWC intended by the legislature.

Information obtained from the National Child Care Information Center (NCCIC) reveals that 26 states do not require liability insurance for licensed child care centers. For the 24 states that do require liability insurance for licensed child care centers, the average amount required is \$300,000 per occurrence. Of the 50 states, 41 do not require liability insurance for licensed or registered child care homes. Six of those 41 states do require transportation insurance if a provider transports children in care.

Section 809.44(a) specifies that the Boards have the flexibility to determine whether general liability insurance will be required and the amount of such liability only for licensed child care centers. TDPRS requires only licensed child care centers to have liability insurance, therefore, this rule change will align child care rules with TDPRS standards.

Section 809.44(b) is added to prohibit Boards from requiring more coverage for licensed child care centers than the \$300,000 currently required by TDPRS.

Section 809.44(c) is added to ensure that licensed child care centers that are required by TDPRS to have liability insurance but are unable to obtain insurance or have exhausted their liability limits must notify TDPRS, the parents and the Board that they do not have liability insurance. However, they must remain eligible to receive child care subsidies as long as they remain licensed by TDPRS.

Finally, §809.44(d) prohibits Boards from requiring liability insurance for licensed or registered child care homes that are not required by the state to have liability insurance.

§809.46 Assessing and Collecting Parent's Share of Cost Share

The Commission proposes changing §809.46(a) by removing the obsolete paragraph (4). Prior to September 3, 2001, the rules stated that parents or caretakers receiving TANF or SSI were exempt from the parent's share of cost. That exemption was amended effective September 3, 2001 to include only parents who are participating in Choices. Current §809.46(a)(4) was part of the old rules intended to clarify that the parent's share of cost was not waived if the child was the only family member receiving TANF or SSI. This provision became obsolete in September 3, 2001 when the exemption for SSI recipients was repealed. Consequently, §809.44(a)(4) is an obsolete provision intended to provide clarification that is no longer relevant. The Commission proposes removing this obsolete provision.

Repeal of §809.61 Qualifications to Provide Self-Arranged Care and §809.62 Reimbursement for Self-Arranged Care; Addition of §809.61 Qualifications to Provide Unregulated Relative Care, §809.62 Qualifications to Provide Regulated Self-Arranged Care, and §809.63 Reimbursement for Self-Arranged Child Care.

The Commission proposes that child care rules clearly distinguish between regulated self-arranged care and unregulated relative self-arranged care. The Commission proposes repealing the current §809.61 Qualifications to Provide Self-Arranged Care. The Commission proposes

establishing a new §809.61 Qualifications to Provide Unregulated Relative Self-Arranged Care. The provisions relating to regulated self-arranged care will be included in a new §809.62 Qualifications to Provide Regulated Self-Arranged Care. The current §809.62 Reimbursement for Self-Arranged Care will become §809.63.

§809.72 General Parent Rights

The Commission proposes changing §809.72(5) regarding the notification of termination of child care in order to comply with Senate Bill 280 (SB 280) enacted by the 78th Texas Legislature, Regular Session.

The current rule requires written notification by the Board's contractor at least 15 days before the denial, delay, reduction, or termination of child care. Senate Bill 280 (SB 280) changes the notification requirement to "not later than the 30th day before" the denial, delay, reduction, or termination of child care. The only exceptions provided by SB 280 are if the 30-day notice would interfere with the ability of the Board to comply with its duties regarding the number of children served or would require the expenditure of funds in excess of the amount appropriated to the Board. Under these circumstances the notice may be provided on the earliest date on which it is practicable for the Board. SB 280 also requires that the written notification include information regarding other child care services for which the recipient may be eligible.

To implement the requirements of SB 280, the Commission proposes changing §809.72(5) by changing the required written notification of denial, delay, reduction, or termination of child care from 15 days to 30 days. Boards will not be required to change their current policies or procedures regarding the allowability of costs or the recoupment of disallowable costs as a result of the extended notification period.

The Commission proposes adding a new §809.72(5)(C) that allows the exceptions to the 30-day notification as stipulated by SB 280. The Commission also proposes adding §809.72(6) to require that the written notification include information regarding other child care services for which the recipient may be eligible.

§809.78 Parent Responsibility Agreement

The Commission proposes changing §809.78(b)(1) in order to define more clearly how parents must show cooperation with the Office of the Attorney General (OAG), if necessary, to establish paternity and to enforce child support as required by the Parent Responsibility Agreement (PRA).

Not all Boards have the same expectations regarding the parent's responsibility to the OAG in determining paternity or enforcing payment of child support. Some Boards require only that the parent verify a previous submission to the OAG of appropriate documentation related to establishing paternity or non-payment of child support by the absent parent. Once the documentation is submitted, the parent is considered to have cooperated regardless of what subsequently happens.

To address this issue, TWC staff contacted the Texas Department of Human Services (TDHS) to determine how that agency defines this section of the Personal Responsibility Agreement signed by TANF recipients. The proposed change aligns child care rules with the TDHS definition regarding this section of the PRA.

The proposed language stipulates that the parent must cooperate with the Office of the Attorney General on an ongoing basis by: providing information about and helping to locate the absent parent; helping to establish paternity; and appearing in court hearings or other meetings to establish child support.

The Commission also proposes changing §809.78(b)(3) in order to correct the reference to the citation in the Education Code regarding exemption from school attendance as required by the PRA. Current rule cites §21.003 of the Education Code, however, the correct citation should be §25.086.

§809.79 Parent Responsibility Agreement, Sanctions and Exceptions

The Commission proposes changing §809.79 in order to strengthen the sanctions a Board may impose for non-compliance with the Parent Responsibility Agreement (PRA). The current rule provides that Boards may impose a sanction of an additional parent co-pay of \$25 per month for every month of non-compliance with the PRA. Boards have voiced a concern that the additional \$25 per month is inconsequential to the parents and is insufficient as an incentive for compliance with the PRA.

The Commission is addressing this concern by proposing to change §809.79(a)(2) to require the Boards to establish a sanction policy that includes the option of terminating the family's child care for non-compliance with the PRA.

§809.92 General Eligibility Requirements

The Commission proposes changing §809.92(b) by changing the word "parents" to "family" in order to remain consistent with the definition of "family" in §809.91(2).

The Commission also proposes changing §809.92(b)(1) in order to state specifically that the Boards determine income eligibility limits. The Boards, however, shall not set income limits higher than 85 percent of the state median income (SMI) as required by 45 CFR 98.20(a)(2). This change will make the rules consistent with the Commission's intent and the CCDF State Plan. Subsequent references to income limits in §809.121-§809.122 regarding eligibility for children living at low incomes and children with disabilities are also changed to specifically stipulate that the Board sets income limits for these populations provided that the income limit shall not exceed 85 percent of SMI.

§809.93 Calculating Income

The Commission proposes changing §809.93(a)(8) to clarify that income from Temporary Assistance for Needy Families (TANF) includes payments for both single-parent families and for two-parent families as provided in Chapters 31 and 34 respectively of the Human Resources Code.

The Commission also proposes changing §809.93(b) by adding paragraph (2) in order to comply with Title 38 USC §1823(c) which states that federal income support for children of Vietnam veterans born with spina bifida and children of women of Vietnam veterans with certain other birth defects shall not be included in determining eligibility and co-payments for federally-assisted programs.

The Commission proposes changing §809.93(b) by adding paragraph (3) in order to comply with the Title 20 United States Code (USC) §1087uu that requires the disregard of federal student aid when determining eligibility for programs funded in whole or in part with federal funds. Specifically, the disregard covers federal work-study programs funded by the *Economic Opportunity Program*, any student financial aid provided by the Bureau of Indian Affairs, and federal student assistance provided by *Higher Education Resources and Student Assistance*. Other educational loans and grants from state and local sources will still be included in calculating income.

§809.101 Transitional Child Care

The Commission proposes changing §809.101(a) in order to define transitional child care as care provided to former TANF recipients who: were denied cash assistance within the last 30 days and were working at the time their TANF benefits were denied; or have been denied cash assistance due to expiration of time limits within the last 30 days.

Currently, when a TANF recipient loses or is denied cash assistance, child care contractor staff uses DHS's SAVERR system to determine that the parent is eligible for transitional child care. There are some instances, however, when a parent may be eligible for transitional child care services but is not coded as transitional in the SAVERR system. It is the intent of the Commission that Boards request parents to provide proof that they are eligible for transitional child care and that the SAVERR system be used only to verify eligibility for parents coded as transitional in that system.

The Commission proposes changing §809.101 to add subsection (b) that specifically gives Boards the authority to set higher income eligibility limits for transitional child care than their initial eligibility limits, provided the limit does not exceed 85 percent of SMI. The Commission proposes this addition in order to clarify its intent and reinforce that provision in the CCDF State Plan.

The Commission proposes redesignating §809.101(b) to (c) and modifying it to add a provision from Chapter 31 of the Human Resources Code which stipulates that 18 months of transitional care be provided only to those Choices volunteers who are eligible for a child caretaker exemption.

The Commission proposes redesignating §809.101(c) to (d) and changing it in order to limit transitional child care to four weeks for clients participating in a Choices activity and who are not employed when their TANF cash assistance expires. As a result of this change, the Commission also proposes repealing the current subsection (d) relating to clients participating in a Choices activity when their TANF cash assistance expires.

§809.121 Children Living at Low Incomes; §809.122 Children with Disabilities

The Commission proposes changing §§809.121-122 by adding §809.121(a)(2) and §809.122(b)(2) to establish a minimum of 30 hours per week that parents must work or participate in training or education activities in order to receive at-risk child care services, or for child care services provided to children with disabilities. Boards, however, may set a higher number of required hours per week. Setting the minimum number of hours in work or training activities at 30 hours a week will increase the consistency of child care eligibility requirements across workforce services.

The Commission recognizes that family circumstances may dictate that exceptions be made to the minimum activity requirements. The Commission proposes adding §809.121(a)(5) and §809.122(b)(3) to allow Boards to reduce the minimum required activity hours per week if the parent's documented medical disability or the parent's need to care for a physically or mentally disabled family member prevents them from participating for the required weekly activity hours.

The Commission proposes adding §809.121(b) and §809.122(c) to provide that each credit hour of postsecondary education will count as three hours of education activity to be applied toward the education activity hours required in §809.121(a)(2) and §809.122(b)(2) respectively.

The Commission believes that requiring parents of children living at low incomes, including parents with children with disabilities, to participate in work or education activities will assist these families in becoming self-sufficient. A recent study by the Heritage Foundation found that if low-income, working families increase the number of hours they work each year from the current 700 to 2000 there would be an 80 percent reduction in child poverty. The Foundation concluded that policies that encourage work should be included in any poverty-reducing strategy.

§809.122 Children with Disabilities

The Commission proposes redesignating §809.122(c) to (d) and changing it in order to clarify rule language regarding the age eligibility for a child with disabilities. Current language states that Boards may extend child care services to children with disabilities who are "between the ages of 13 and 19." Current state rule language could be interpreted to mean that services can be provided to 19-year-olds. The federal child care regulations in §98.20(a)(ii) allow child care services to children with disabilities who are under 19 years of age. The Commission proposes changing the language to make it clear that 19 year-olds are not eligible for child care services.

§809.123 Children of Teen Parents

The Commission proposes changing §809.123(b)(2) to clarify that Boards have the authority to set higher income eligibility limits for children of teen parents than the Board's basic eligibility limits, provided the limit does not exceed 85 percent of SMI. The Commission proposes this addition in order to clarify its intent and reinforce that provision in the CCDF State Plan.

The Commission proposes changing §809.123(c)(2) in order to clarify when the income of a grandparent must be included in determining income eligibility for a teen parent's child. Current rule language states that if a teen parent "is, or has been, married" then the child's grandparent's income is not included in the income eligibility calculation. Section 809.123(c)(2)(B) was intended to apply only to teen parents not living with their parents. However, some Boards have interpreted it to apply to teen parents residing with their parents. The Commission proposes removing §809.123(c)(2)(B) to clarify that the gross income of the teen's parent(s) is excluded only if the teen does not reside in the same home as the teen's parent(s). The rule change also clarifies that any monetary amount given to the teen parent by his/her parent(s) who are not residing with the teen parent, must be included in calculating the teen parent's income eligibility.

§809.225 Continuity of Care

The Commission proposes changing §809.225(a) to clarify that families whose transitional child care has expired should be placed in at-risk care, as long as they remain eligible for child care services. In some workforce areas, families whose transitional child care benefits have expired are not rolled into at-risk child care, but put on a waiting list for child care services. That is not

the intent of the continuity of care rule. In order to comply with the continuity of care principle, when the family's transitional child care has expired the children should remain in child care as long as the family remains eligible.

§809.226 Provider Payments

The Commission proposes changing §809.226 in order to remove the obsolete reference to a "master contract" with Boards. The "master contract" referenced in the rule is now called a "Agency-Board" agreement.

§809.231 Provider Reimbursement Rates

The Commission proposes changing §809.231 by adding new subsections (b) and (c) and renumbering subsequent subsections.

The Commission proposes adding §809.231(b) in order to establish Commission expectations that Boards not reimburse any provider more than the individual Board's maximum rate or the provider's published rate whichever is lower. There is no provision in the CCDF federal regulations (45 CFR, Parts 98 and 99) to prohibit a state (or Board) from reimbursing providers at a rate that is higher than the Board's maximum rate. However, the Preamble to the CCDF federal regulations does remind the states of the "...general principle that federal subsidy funds cannot pay more for services than is charged to the general public for the same service."

It is the Commission's expectation that the Boards will adhere to the guidance in the Preamble of the federal CCDF regulations, and that Boards will reimburse providers at the lower of the Board's maximum reimbursement rate or the provider's published rate. That is the current practice among the Boards. However, there is no current rule in place to reinforce that expectation.

The Commission proposes adding §809.231(c) requiring Boards to establish the same maximum rate within each category of care for all regulated providers even if the provider is self-arranged by the parent and does not have a signed agreement with the Board.

Currently, Boards are using three approaches to setting the maximum reimbursement rates for the three categories of providers. Eight Boards reimburse regulated, self-arranged providers at the same rate as regulated providers with signed agreements while unregulated, relative providers are reimbursed at a lower rate. Eleven Boards reimburse all self-arranged providers (regulated facilities and unregulated relatives) at the same lower rate than paid to regulated providers with signed agreements. Nine Boards have three sets of maximum rates for each facility type and age group: one rate for providers with agreements; a lower rate for regulated, self-arranged providers; and an even lower rate for unregulated, relative care.

The Commission understands why Boards would reimburse unregulated, relative providers, who are not required by the state to maintain health and safety standards, at a lower rate than regulated providers who do have to maintain such standards. The Commission, however, believes that the practice of reimbursing regulated providers at different rates simply because the provider has an agreement with the Board limits parental choice since many providers without an agreement may refuse to accept CCDF subsidized children because they will be reimbursed at a lower rate than regulated providers with agreements.

§809.271 Child Care During Appeal

The Commission proposes changing §809.271(b) regarding continuing child care during the appeal process in order to address concerns raised by Boards regarding the cost of paying for such care. Specifically, the Commission proposes adding a paragraph (8) to stipulate that child care services shall not be provided during the appeal process if child care was terminated, reduced, denied or delayed due to the parent's failure to report, within 10 days, changes in a family's circumstance that would make them ineligible for child care services.

The Commission also proposes changing §809.271(b)(4) to clarify that child care services shall not be provided during the appeal process if the child's care was terminated, reduced, denied or delayed due to lack of funding caused by an increase in the number of enrolled children in state and Board priority groups.

§809.283 Corrective and Adverse Action

The Commission proposes changing §809.283(e) in order to correct the rule citation regarding sanctions that may be imposed on a contractor for failure to comply with the Service Improvement Agreement. The list of possible sanctions is provided in §809.283(a), not in §809.283(b) as §809.283(e) currently states.

Repeal of Subchapter O. Child Care Train Our Teachers (TOT) Award

The Commission proposes repealing the rules regarding the Train Our Teachers (TOT) Award and discontinuing the scholarship program based on authority granted in SB 280 enacted by the 78th Legislature, Regular Session.

Coordination with the Local Workforce Development Boards: In the development of these rules for publication and public comment, the Commission sought and received the involvement of each of Texas' twenty-eight Local Workforce Development Boards. The Commission provided policy concepts to the Boards for consideration and review pursuant to Texas Labor Code Section 302.064 and the Commission's Resolution Regarding Board Coordination in Policy Development adopted September 24, 2002. Prior and during this rulemaking process, the Commission considered the Boards' contributions. In addition, the Commission held discussions with the Child Care Network and the Workforce Leadership of Texas (WLT) Policy Committee regarding the development and implementation of these rules.

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

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

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

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

There are no foreseeable implications relating to costs or revenue of the state or local government as a result of enforcing or administering the amendments; and

Mr. Townsend has also determined that there is no anticipated adverse impact on small businesses as a result of enforcing or administering the rules because the rules do not require small businesses to take any action.

Donna Garrett, Director of Child Care Services, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to provide child care services to the maximum number of low-income families eligible under state and federal law.

Mark Hughes, Acting Director of Labor Market Information, has determined that the proposed rules would not affect private employment. Mr. Barnes does not expect any significant impact upon overall employment conditions in the state as a result of the proposed rules.

Comments on the proposal may be submitted to John Moore, Office of the General Counsel, Texas Workforce Commission, 101 East 15th Street, Room 608, Austin, Texas 78778-0001, (512) 463-3041. Comments may also be submitted via fax (512) 463-2220 or e-mail at John.Moore@twc.state.tx.us. Comments must be received by the Commission within thirty (30) days from the date this proposal is published in the Texas Register.

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

The repeal affects Texas Labor Code, Title 4; Texas Human Resources Code, Chapters 31, 34, and 42; and the Texas Government Code, Chapter 2308.

SUBCHAPTER A. GENERAL PROVISIONS

§809.1. Short Title and Purpose

SUBCHAPTER B. GENERAL MANAGEMENT REQUIREMENTS

§809.20. Leveraging Local Resources

SUBCHAPTER C. REQUIREMENTS TO PROVIDE CHILD CARE

§809.44. Provider General Liability Insurance Requirements

§809.46. Assessing and Collecting Parent's Share of Cost

SUBCHAPTER D. SELF-ARRANGED CARE

§809.61. Qualifications to Provide Self-Arranged Care

§809.62. Reimbursement for Self-Arranged Care

SUBCHAPTER E. PARENT RIGHTS AND RESPONSIBILITIES

§809.72. General Parent Rights

§809.78. Parent Responsibility Agreement

§809.79. Parent Responsibility Agreement, Sanctions and Exceptions

SUBCHAPTER F. GENERAL ELIGIBILITY FOR CHILD CARE

§809.92. General Eligibility Requirements

§809.93. Calculating Income

SUBCHAPTER G. CHILD CARE FOR PEOPLE TRANSITIONING OFF PUBLIC ASSISTANCE

§809.101. Transitional Child Care

SUBCHAPTER H. CHILDREN OF PARENTS AT RISK OF BECOMING DEPENDENT ON PUBLIC ASSISTANCE

§809.121. Children Living at Low Incomes

§809.122. Children with Disabilities

§809.123. Children of Teen Parents

SUBCHAPTER K. FUNDS MANAGEMENT

§809.225. Continuity of Care

§809.226. Provider Payments

§809.231. Provider Reimbursement Rates

SUBCHAPTER M. APPEAL PROCEDURE

§809.271. Child Care During Appeal

SUBCHAPTER N. CORRECTIVE AND ADVERSE ACTIONS

§809.283. Corrective and Adverse Action

SUBCHAPTER O. CHILD CARE TRAIN OUR TEACHERS (TOT) AWARD

§809.301. Scope and Purpose

§809.302. Definitions

§809.303. Eligibility

§809.304. Uses of the Award

§809.311. Award Administration

§809.312. Award Payments

§809.313. Procedure for Requesting Awards

§809.314. Procedure for Application Evaluation

§809.331. Recipient Responsibilities

§809.332. Sanctions for Non-Compliance

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

The rules affect Texas Labor Code, Title 4; Texas Human Resources Code, Chapters 31, 34, and 42; and the Texas Government Code, Chapter 2308.

SUBCHAPTER A. GENERAL PROVISIONS

§809.1. Short Title and Purpose

- (a) The rules contained in this chapter may be cited as the Child Care and Development Rules. The purpose of these rules is to interpret and implement the requirements of state and federal statutes and regulations governing child care and quality improvement activities funded through the Commission, fully integrating child care services with other workforce training and services under the jurisdiction of local workforce development boards.
- (b) For local workforce development areas where there is no certified local workforce development board with an approved plan or the Commission administers the delivery of

child care services, the rules contained in this chapter shall apply to the Commission, its contractors, and its providers of services.

(c) The rules effective on July 1, 2003, contained in Chapter 809, Subchapter O, relating to Child Care Train Our Teachers (TOT) Award shall apply to any remaining awards until such awards are closed out. The repeal of Subchapter O as it existed on July 1, 2003, shall not prohibit the Commission from taking action to enforce provisions relating to the awards that were granted prior to the repeal of Subchapter O.

~~(e) The effective date of the rules in this Chapter 809 relating to Child Care and Development shall be twenty days after the date of filing the adoption in the Office of the Secretary of State; however, until September 1, 1999, the Boards shall continue to comply with the rules in effect on January 1, 1999 with the following exception. If a Board is unable to implement the provisions of §809.62(a)(1) by September 1, 1999, due to inability to complete automation or programmatic changes as needed, the Board shall implement the provisions of §809.62(a)(1) as soon thereafter as possible but not later than December 1, 1999. Pending implementation of §809.62(a)(1), not later than December 1, 1999, the Board may continue to make payments for child care services directly to eligible parents who choose to self-arrange child care.~~

SUBCHAPTER B. GENERAL MANAGEMENT

§809.20. Leveraging Local Resources

- (a) Leveraging Local Funds. The Commission encourages Boards to secure local public and private funds for match to the extent possible to leverage all available resources for child care needs in the community.
- (1) A Board may secure local funds for match in the form of one or more of the methods in order to leverage (match) against federal funds available through the Commission:
- (A) donations of funds from a private entity;
 - (B) certification of expenditures by a private entity that represent expenditures eligible for federal match and that were not restricted in their use for a specific individual, organization, facility or institution; or
 - ~~(C)(B)~~ transfers of funds from a public entity; or
 - (D)(C) certifications of expenditures by a public entity that represent expenditures eligible for federal match.
- (2) A Board's performance in securing and leveraging local funds for match may make the Board eligible for incentive awards.
- (b) Securing Local Funds to Access Federal Matching Funds from the Commission.
- (1) A Board shall manage the securing of funds, including the selection of pledged and completed donations, transfers, and certifications that are used by the Board to receive federal matching funds through the Commission.
- (2) A Board shall ensure that federal matching funds are maximized by securing local funds for match in an amount that may exceed the amount required to match available federal funds.

- (c) Documenting Pledged Donations, Transfers and Certifications. A Board shall maintain written documentation of pledged donations, transfers and certifications that contain, at a minimum, the following:
- (1) the signature of the representative of the Board;
 - (2) the signature of the potential contributor;
 - (3) the potential contributor's commitment to fulfill the pledge of the donation, transfer or certification by paying or certifying the funds to the Commission for use in a specific workforce area on a set payment or certification schedule;
 - (4) the Board's commitment to use the donated or transferred funds as requested by the contributor, as long as it is consistent with federal regulations at 45 CFR §98.53; and
 - (5) sufficient information to determine that the funds will be used in a manner consistent with 45 CFR §98.53.
- (d) Submitting Pledged Donations, Transfers and Certifications for Acceptance by the Commission. A Board shall submit pledged donations, transfers, and certifications to the Commission for acceptance.
- (e) Completing Donations, Transfers and Certifications.
- (1) A Board shall ensure that donations of cash and transfers of funds are paid to the Agency and that certifications are also submitted to the Agency.
 - (2) Donations and transfers are considered complete to the extent that the funds have been paid to the Agency.
 - (3) Certifications are considered complete to the extent that a signed written instrument is delivered to the Agency that reflects that the public entity has expended a specific amount of funds on eligible child care services.
- (f) Reporting. A Board shall report information relating to pledged and completed donations, transfers and certifications as referenced in subsections (d) and (e) of this section and §800.72. Reporting Requirements.
- (g) Monitoring. A Board shall monitor the funds secured for match and the expenditure of any resulting funds to ensure that expenditures of unmatched federal funds available through the Commission do not exceed an amount that corresponds to the donations, transfers, and certifications that are completed by the end of the program year.

Subchapter C. Requirements to Provide Child Care

§809.44. Provider General Liability Insurance Requirements

- (a) The Boards shall determine whether general liability insurance, including transportation insurance, will be required of licensed child care center providers in their areas and, if so, the amount.
- (b) The liability insurance amount required by the Boards shall not exceed the state licensing requirements stipulated in Chapter 42 of the Human Resource Code.
- (c) A licensed child care center provider must notify the Texas Department of Protective and Regulatory Services (TDPRS), the parent, and the Board if the provider is unable to secure the required insurance due to financial reasons or for lack of availability of an underwriter willing to issue a policy, or if the provider's policy limits have been

exhausted. The provider shall remain eligible to receive Commission-funded child care subsidies as long as the provider is licensed by the TDPRS.

(d) Boards shall not require liability insurance for providers who are not required by state law to have liability insurance.

§809.46. Assessing and Collecting Parent's Share of Cost.

- (a) For child care funds allocated by the Commission pursuant to its allocation rules (Chapter 800, General Administration, Subchapter B, Allocation and Funding §800.58), the following shall apply.
- (1) A Board shall set a parent's share of cost policy in accordance with the requirements set forth in §809.12 of this chapter (relating to Board Policies and Plans for Child Care Services) that shall assess parent's share of cost in a manner that results in parent's share of cost:
 - (A) being assessed to all parents or caretakers, except in instances when an exemption under paragraph (2) of this subsection applies;
 - (B) being based on the family's size and gross monthly income, and may also be based on the number of children in care; and
 - (C) not exceeding the cost of care.
 - (2) Parents that are one or more of the following are exempt from paying parent's share of cost:
 - (A) parents who are participating in Choices;
 - (B) parents who participate in the Food Stamp Employment and Training; or
 - (C) parents who have children that are receiving protective services unless the Texas Department of Protective and Regulatory Services assesses parent's share of cost.
 - (3) Teen parents who live with their parents and who are not covered under exceptions outlined under paragraph (2) of this subsection shall be assessed parent's share of cost. The parent's share of cost is based solely on the teen parent's income.
 - ~~(4) Parent's share of cost shall be assessed to families in which the child is the only TANF or SSI recipient.~~
- (b) For child care services funded from sources other than those sources for funds allocated by the Commission for Child Care Services pursuant to its allocation rules, a Board shall set a parent's share of cost policy based on a sliding fee scale that may be the same as or different from the provisions contained in subsection (a) of this section.
- (c) Providers shall collect assessed parent's share of cost and subsidies before child care is delivered.
- (d) It is the sole responsibility of the provider to collect assessed parent's share of cost and subsidies.
- (e) A Board shall establish a policy regarding reimbursement of providers to address consequences for providers in situations when parents fail to pay parent's share of cost and subsidies.

Subchapter D. Self-Arranged Care

~~§809.61. — Qualifications to Provide Self-Arranged Care~~

- ~~(a) A relative who is at least 18 years of age and is one of the following is eligible to provide self-arranged care:~~
- ~~(1) the child's grandparent;~~
 - ~~(2) the child's great-grandparent;~~
 - ~~(3) the child's aunt;~~
 - ~~(4) the child's uncle; or~~
 - ~~(5) the child's sibling, if the sibling does not reside in the same household as the eligible child.~~
- ~~(b) If chosen by the parent, a person or entity who has not signed a Provider Agreement is eligible to provide self-arranged care if:~~
- ~~(1) licensed by the Texas Department of Protective and Regulatory Services;~~
 - ~~(2) registered with the Texas Department of Protective and Regulatory Services;~~
 - ~~(3) listed with the Texas Department of Protective and Regulatory Services;~~
 - ~~(4) licensed by the Texas Department of Health as a youth day camp; or~~
 - ~~(5) operated and monitored by the United States military services.~~
- ~~(c) A relative providing self-arranged care under subsection (a) of this section shall not be reimbursed for more children than permitted by the Texas Department of Protective and Regulatory Services' minimum regulatory standards for Registered Family Homes. A Board may permit more children to be cared for in self-arranged care situations on a case-by-case basis as determined by the Board.~~
- ~~(d) A Board shall ensure that requests made by the Texas Department of Protective and Regulatory Services, for specific providers or persons eligible to provide self-arranged care, are enforced for children in protective services.~~
- ~~(e) Before authorizing a person or entity "listed" with the Texas Department of Protective and Regulatory Services to provide child care, a Board shall ensure that there are in effect, under local law, requirements designated to protect the health and safety of children that are applicable to the persons or entities "listed" with the Texas Department of Protective and Regulatory Services. Boards may choose not to allow "listed" providers as self-arranged providers. Pursuant to federal regulations at 45 Code of Federal Regulations §98.41, the requirements shall include:~~
- ~~(1) the prevention and control of infectious diseases (including immunizations);~~
 - ~~(2) building and physical premises safety; and~~
 - ~~(3) minimum health and safety training appropriate to the child care setting.~~

§809.61. Qualifications to Provide Unregulated Relative Self-Arranged Care

- (a) A relative who is at least 18 years of age and is one of the following is eligible to provide self-arranged care:
- (1) the child's grandparent;

- (2) the child's great-grandparent;
 - (3) the child's aunt;
 - (4) the child's uncle; or
 - (5) the child's sibling, if the sibling does not reside in the same household as the eligible child.
- (b) A relative providing self-arranged care under this section shall not be reimbursed for more children than permitted by the Texas Department of Protective and Regulatory Services' minimum regulatory standards for Registered Child Care Homes. A Board may permit more children to be cared for in self-arranged care situations on a case-by-case basis as determined by the Board.

§809.62. Qualifications to Provide Regulated Self-Arranged Care

- (a) If chosen by the parent, a person or entity who has not signed a Provider Agreement is eligible to provide self-arranged care if the person or entity is:
- (1) licensed by the Texas Department of Protective and Regulatory Services; or
 - (2) registered with the Texas Department of Protective and Regulatory Services; or
 - (3) listed with the Texas Department of Protective and Regulatory Services; or
 - (4) licensed by the Texas Department of Health as a youth day camp; or
 - (5) operated and monitored by the United States military services.
- (b) A Board shall ensure that requests made by the Texas Department of Protective and Regulatory Services, for specific providers or persons eligible to provide self-arranged care, are enforced for children in protective services.
- (c) Before authorizing a person or entity "listed" with the Texas Department of Protective and Regulatory Services to provide child care, a Board shall ensure that there are in effect, under local law, requirements designated to protect the health and safety of children that are applicable to the persons or entities "listed" with the Texas Department of Protective and Regulatory Services. Boards may choose not to allow "listed" providers as self-arranged providers. Pursuant to federal regulations at 45 Code of Federal Regulations §98.41, the requirements shall include:
- (1) the prevention and control of infectious diseases (including immunizations);
 - (2) building and physical premises safety; and
 - (3) minimum health and safety training appropriate to the child care setting.

§809.632. Reimbursement for Self-Arranged Care

- (a) A Board shall ensure that reimbursement for self-arranged care is paid:
- (1) to the self-arranged provider; and
 - (2) after the Board or its contractor receives a complete Declaration of Services Statement (Declaration) verifying that services were rendered.
- (b) The Declaration shall contain:
- (1) the name, age, and identifying information of the child;
 - (2) the amount of care provided in terms of units of care;

- (3) the rate of payment;
- (4) the dates services were provided;
- (5) the name and identifying information of the self-arranged provider, including the location where care is provided;
- (6) verification by the self-arranged provider that the information submitted in the Declaration is correct; and
- (7) additional information as may be required by the Boards.

SUBCHAPTER E. PARENT RIGHTS AND RESPONSIBILITIES

§809.72. General Parent Rights

Parents have the right to:

- (1) have persons represent them when applying for child care;
- (2) notification of their eligibility to receive child care within 20 days from the day the Board's contractor receives all necessary documentation required to determine eligibility for child care;
- (3) receive child care regardless of race, color, national origin, age, sex, disability, political beliefs, or religion;
- (4) have the Board and the Board's contractor treat as confidential information that is used to determine eligibility for child care; ~~and~~
- (5) written notification by the Board's contractor at least 30~~15~~ days before the denial, delay, reduction, or termination of child care unless the following exceptions apply:
 - (A) Notification of denial, delay, reduction, or termination in child care is not required when child care is authorized to cease immediately because either the parent is no longer participating in the Choices program; or child care is authorized to end immediately for children in protective services child care;:-
 - (B) The Choices program participants and children in protective services child care are notified, of denial, delay, reduction, or termination of child care and the effective date of such actions by the Choices case worker or the Texas Department of Protective and Regulatory Services;:-
 - (C) If the notice on or before the 30th day before denial, delay, reduction or termination in child care would interfere with the ability of the Board to comply with its duties regarding the number of children served or would require the expenditure of funds in excess of the amount appropriated to the Board, notice may be provided on the earliest date on which it is practicable for the Board to provide notice; and
- (6) written notification of denial, delay, reduction or termination shall include information regarding other child care services for which the recipient may be eligible.

§809.78. Parent Responsibility Agreement

- (a) The parent or caretaker of a child receiving Commission-funded employment or training related child care services is required to sign a parent responsibility agreement as part of

the child care enrollment process, unless covered by the provisions of Human Resources Code, §31.0031. The parent's compliance with the provisions of the agreement shall be reviewed at each eligibility re-determination.

- (b) The parent responsibility agreement requires that:
- (1) each parent shall cooperate with the Title IV-D agency if necessary to establish paternity of the parent's children and to ~~or enforce child support;~~ on an ongoing basis by:
 - (A) Providing information about the absent parent;
 - (B) Helping to locate the absent parent;
 - (C) Helping to establish paternity; and
 - (D) Appearing at court hearings or other meetings to establish child support;
 - (2) each parent shall not use, sell, or possess marijuana or a controlled substance in violation of Health and Safety Code, Chapter 481, or abuse alcohol;
 - (3) each child in the family younger than 18 years of age attend school regularly, unless the child has a high school diploma or a high school equivalency certificate or is specifically exempted from school attendance by Education Code, ~~§25.08621-033~~.
- (c) Failure to comply with the provisions of the parent responsibility agreement may result in sanctions.

§809.79. Parent Responsibility Agreement, Sanctions and Exceptions

- (a) The following shall apply to sanctions for non-compliance with the Parent Responsibility Agreement.
- (1) Definitions. For purposes of this subsection, the following words and terms used in this subsection shall have the following meanings unless the context clearly indicates otherwise.
 - (A) **Sufficient documentation of current participation in, or completion of, a drug or alcohol abuse treatment program**--Verifiable, written documentation from a person licensed by the State of Texas and thereby permitted to furnish drug or alcohol treatment services independently, that the parent or caretaker is currently enrolled in a medically supervised and approved drug or alcohol abuse program and is participating in said program as directed; or that said parent or caretaker has participated in and acceptably completed such a program, post noncompliance.
 - (B) **Documentation of the parent's or caretaker's cooperation**--The written documentation signed by a judge, sheriff, sheriff's deputy, constable, or other sworn and licensed peace officer of the State of Texas; or a school principal or assistant principal that such parent or caretaker is cooperating with appropriate authorities concerning the child's failure to attend school regularly.
 - (C) **Appropriate authorities**--The school principals, assistant principals, or school district counselors, of the school district or system in which the child is enrolled, as well as the other officials cited in subparagraph (B) of this paragraph.
 - (2) Sanctions. Failure by the parent or caretaker to comply with any of the provisions of §809.78 of this chapter ~~shall may~~ result in ~~the~~ sanctions as determined by the

Board up to and including terminating the family's child care services provided as follows.

- ~~(2) Sanctions. Failure by the parent or caretaker to comply with any of the provisions of §809.78 of this chapter may result in the sanctions provided as follows.~~
- ~~(A) Failure to comply with §809.78(b)(1) of this chapter relating to the Parent Responsibility Agreement may result in a sanction of an additional parent fee of \$25.00 per month until the parent or caretaker provides documentation of compliance.~~
- ~~(B) Failure to comply with §809.78(b)(2) of this chapter relating to the Parent Responsibility Agreement may result in a sanction of an additional parent fee of \$25.00 per month for a period of up to six months.~~
- ~~(C) Failure to comply with §809.78(b)(3) of this chapter relating to the Parent Responsibility Agreement may result in a sanction of an additional parent fee of \$25.00 per month until the first month following the next full month in which the child has no unexcused absences at the school the child attends.~~
- (b) Exceptions from Parent Responsibility Agreement Requirements.
- (1) For purposes of this subsection, the following words and terms shall have the following meanings unless the context clearly indicates otherwise.
- (A) **Reasonable**--Those efforts which a willing, committed person would make to establish paternity, including but not limited to, appropriate lawsuit in a court of competent jurisdiction to establish paternity.
- (B) **Incestuous**--Sexual intercourse between persons as described in Texas Penal Code §25.02(a).
- (C) **Domestic Violence**--Such mental or physical abuse committed against a person as would reasonably cause and did cause the injured person grievous bodily, emotional, or mental harm.
- (2) Notwithstanding the requirements set forth in §809.78(b) of this chapter, the parent or caretaker is not required to comply with those requirements if one or more of the below situations exist.
- (A) the paternity of the child cannot be established after a reasonable effort to do so;
- (B) the child is the product of an incestuous relationship; or
- (C) the parent of the child is a victim of domestic violence.

SUBCHAPTER F. GENERAL ELIGIBILITY FOR CHILD CARE

§809.92. General Eligibility Requirements

- (a) The eligibility criteria set forth in this chapter are based primarily on the federal and state funding limitations. Nothing in this chapter shall be applied in a manner that conflicts with those limitations and the limitations contained in the use-of-funds provisions in the Commission's child care allocation rule contained in Subchapter B of Chapter 800 of this title (relating to Allocations and Funding).
- (b) For a child to be eligible for child care services, the child's family ~~parents~~ shall:

- (1) have a total gross income that does not exceed the income limit established by the local Board, which income limit must not exceed 85% of the state median income for a family of the same size;
 - (2) require child care to participate in training, education, or employment activities; and
 - (3) need the child care for a child under thirteen years of age, unless a different age requirement is indicated in the applicable eligibility rule contained in this chapter.
- (c) For purposes of this chapter, child care is needed to support participation in education for a limited time as determined by the Board.

§809.93. Calculating Income

- (a) Unless otherwise required by federal or state law, the "total gross income" of the family for purposes of determining eligibility means the monthly total of the following items listed.
- (1) Total gross earnings before deductions are made for taxes. These earnings include money, earnings of a child between 14 and 18 years old who is not in school, wages, or salary the family member receives for work performed as an employee. Wages or salaries include armed forces pay (including allotments from any armed forces received by a family group from a person not living in the household), commissions, tips, piece-rate payments, and cash bonuses earned. Overtime pay is estimated based on the person's history of receiving this pay.
 - (2) Net income from non-farm self-employment. These earnings include gross receipts minus business-related expenses from a person's own business, professional enterprise, or partnership, which result in the person's net income. Gross receipts include the value of all goods sold and services given. Expenses include costs of purchased goods, rent, heat, light, power, depreciation charges, wages and salaries paid, business taxes (not personal income taxes or self-employment Social Security tax), and similar costs. The value of salable merchandise used by the owners of retail stores is not included as part of net income.
 - (3) Net income from farm self-employment. These earnings include gross receipts minus operating expenses from operation of a farm by the client or the parent and his partners. Gross receipts include the value of products sold; governmental crop loans; and incidental receipts from the sale of wood, sand, mineral royalties, gravel, and similar items. Operating expenses include the cost of feed, fertilizer, seed and other farming supplies, cash wages paid to farm workers, depreciation, cash rent, interest on farm mortgages, repairs of farm buildings, farm-related taxes (not personal income taxes or self-employment Social Security tax), and similar expenses. The value of fuel, food, or other farm-related products used for the family's living expenses is not included as part of net income.
 - (4) Social security and railroad retirement benefits. These benefits include Social Security pensions and survivor's benefits, permanent disability insurance payments made by the Social Security Administration (before deductions for medical insurance), and railroad retirement insurance checks from the federal government. Gross benefits from these sources are the amounts before deductions for Medicare insurance.
 - (5) Dividends and interest. These earnings include dividends from stock holdings or membership in associations, interest on savings or bonds, periodic receipts from

estates or trust funds, and net royalties. Such earnings are averaged for a 12-month period.

- (6) Income from rental of a house, homestead, store, or other property, or rental income from boarders or lodgers. These earnings include net income from rental property, which is calculated by prorating and subtracting the following from gross receipts:
 - (A) prorated property taxes;
 - (B) insurance payments;
 - (C) bills for repair and upkeep of property; and
 - (D) interest on mortgage payments on the property. Capital expenditures and depreciation are not deductible.
- (7) Interest income from mortgages or contracts. These payments include interest income the buyer promises to pay in fixed amounts over a period of time until the principal of the note is paid.
- (8) Public assistance payments. These payments include Temporary Assistance for Needy Families (TANF) as authorized under Chapter 31 or 34 of the Human Resources Code, refugee assistance, Social Security Insurance, and general assistance (such as cash payments from a county or city).
- (9) Pensions, annuities, and irrevocable trust funds. These payments include pensions or retirement benefits paid to a retired person or his survivors by a former employer or by a union, either directly or through an insurance company. Also included are periodic payments from annuities, insurance, or irrevocable trust funds. Gross benefits from civil service pensions are benefits before deductions for health insurance.
- (10) Veteran's pensions, compensation checks, and G.I. benefits, except as provided in subsection (b) of this section. These benefits include money paid periodically by the Veteran's Administration to disabled veterans of the armed forces or to survivors of deceased veterans, subsistence allowances paid to veterans for education and on-the-job training and refunds paid to ex-servicemen as G.I. insurance premiums. The Commission or the contracted provider includes only that part of the educational allowance that is used for current living costs.
- (11) Educational loans and grants. These payments include money received by students as scholarships for educational purposes, except as provided in subsection (b) of this section. The Commission includes only that portion of the money actually used for current living costs.
- (12) Unemployment compensation. This includes unemployment payments from governmental unemployment insurance agencies or private companies and strike benefits from union funds paid to people while they are unemployed or on strike.
- (13) Workers' compensation and disability payments. These payments include compensation received periodically from private or public insurance companies for on-the-job injuries.
- (14) Spousal maintenance or alimony.
- (15) Child support. These payments include court-ordered child support, any maintenance or allowance used for current living costs provided by parents to a

minor child who is a student, or any informal child support payments made by an absent parent for the maintenance of a minor.

- (16) Cash support payments. These payments are regular cash support payments from friends or relatives received on a periodic basis more than three times a year.
 - (17) Inheritance. This is net income from the parent's share of an inheritance.
 - (18) Foster care payments. The total payment made to a parent on behalf of a legally assigned foster child or foster adult is counted as income.
 - (19) Sale of property. This includes capital gains from sale of property.
- (b) Income to the family that is not included in subsection (a) of this section is excluded in determining the total gross income. Income does not include:
- (1) ~~Income does not include food~~ Food Stamps;
 - (2) Monthly monetary allowance provided to or for children of Vietnam veterans born with spina bifida and children of women Vietnam veterans with certain other birth defects; or
 - (3) Income from the following federal scholarships, grants and loans authorized by 20U.S.C.A., Section 1087uu, *Disregard of Student Aid in Other Federal Programs* are exempt from the income calculation:
 - (A) Federal Work-Study Programs funded under Part C, Subchapter I of Chapter 34 of Title 42 – *Economic Opportunity Program*;
 - (B) Any student financial aid assistance provided by the Bureau of Indian Affairs programs; and
 - (C) Federal Student Assistance provided under Subchapter IV of Chapter 28 of Title 20 – *Higher Education Resources and Student Assistance*, including the following:
 - (i) Federal Pell Grants;
 - (ii) Federal Early Outreach & Student Services Programs:
 - (I) Federal TRIO Programs;
 - (II) Gaining Early Awareness and Readiness for Undergraduate Programs / 21st Century Scholar Certificates;
 - (III) Academic Achievement Incentive Scholarships;
 - (iii) Federal Supplemental Educational Opportunity Grants;
 - (iv) Leveraging Educational Assistance Partnership Program;
 - (v) Special Programs for Students Whose Families Are Engaged in Migrant and Seasonal Farmwork;
 - (vi) Robert C. Byrd Honors Scholarship Program;
 - (vii) Child Care Access Means Parents in School;
 - (viii) Learning Anytime Anywhere Partnerships;
 - (ix) Federal Family Education Loan Program;
 - (x) William D. Ford Direct Loan Program; and

(xi) Federal Perkins Loans.

SUBCHAPTER G. CHILD CARE FOR PEOPLE TRANSITIONING OFF PUBLIC ASSISTANCE

§809.101. Transitional Child Care

- (a) A Board shall ensure that transitional child care services will be provided for children of parents who were formerly TANF recipients; and
- (1) have been denied temporary cash assistance within the last 30 days and were employed at the time cash assistance was denied; because of; or
 - (2) have been denied temporary cash assistance within 30 days because of expiration of TANF time limits.
- ~~(1) employment and an increase in earnings which results in being ineligible for temporary cash assistance, or~~
- ~~(2) expiration of TANF time limits.~~
- (b) Boards may establish a higher income eligibility limit for transitional child care, provided that the higher income limit does not exceed 85% of state median income for a family of the same size.
- ~~(c)~~ Transitional child care shall be available for a period of up to 12 months, depending on income eligibility and whether the person is working, except in the case of an ~~exempt~~ TANF recipient who is eligible for a child caretaker exemption and voluntarily participates in the Choices program. For these individuals, transitional child care is available for a period up to 18 months.
- ~~(d)~~ TANF recipients who are not employed when temporary cash assistance expires, including recipients who are engaged in a Choices activity except as provided under subsection (e) of this section, shall receive up to 4 weeks of transitional child care in order to allow these individuals to search for work as needed. ~~Former TANF recipients must begin utilizing their 4 weeks of transitional child care within 30 days of denial of temporary cash assistance.~~
- ~~(d)~~ TANF recipients who are engaged in a Choices activity that extends beyond the date that temporary cash assistance expires and who are meeting the requirements of Chapter 811, may receive transitional child care in order to complete the activity. ~~This provision does not apply to individuals engaged in unsubsidized employment who are eligible under the provisions of subsection (a)(1) of this section.~~
- (e) TANF recipients who are engaged in a Choices activity, are meeting the requirements of Chapter 811, and are denied temporary cash assistance due to receipt of child support, shall be eligible to receive transitional child care services until the date on which the individual completes the activity, as defined by the Board.

SUBCHAPTER H. CHILDREN OF PARENTS AT RISK OF BECOMING DEPENDENT ON PUBLIC ASSISTANCE

§809.121. Children Living at Low Incomes

- (a) Children living at low incomes are eligible for child care if:
- (1) the family income does not exceed the income limit established by the local Board; 85% of the state median income for a family of the same size; and

- (2) child care is required for the child's parents to participate in training, education or employment activities for a minimum of 30 hours per week, or a higher number of hours per week as established by a local Board; or
- ~~(3)~~ the parents of the children are receiving temporary cash assistance or Supplemental Security Income; and
- ~~(4)~~ the parents receiving temporary cash assistance have met the Choices requirements as specified in Chapter 811 of this title, or have been determined by the Board to need child care to comply with those requirements, if the parents are subject to those requirements.
- (5) A Board may allow a reduction to the requirement in subsection (a)(2) of this section if a parent's documented medical disability or need to care for a physically or mentally disabled family member prevents the parent from participating in the activities for the required hours per week.
- (b) For purposes of meeting the education requirements stipulated in subsection (a)(2) of this section, each credit hour of postsecondary education will count as three hours of education activity per week.

§809.122. Children with Disabilities

- (a) The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.
 - Children with disabilities**--Individuals who meet the age requirements set forth in this subchapter and who are mentally or physically incapable of caring for themselves and meet the criteria set forth in this section.
- (b) Children with disabilities are eligible for child care if residing with parents:
 - (1) whose income, after deducting the cost of the child's ongoing medical expenses, does not exceed the income limit established by the local Board; ~~85% of the state median income for a family of the same size;~~ and
 - (2) child care is required for the child's parents to participate in training, education or employment activities for a minimum of 30 hours per week, or a higher number of hours per week as established by a local Board.
 - ~~(2) who are working, participating in training, or attending school.~~
 - (3) A Board may allow a reduction to requirement in subsection (b)(2) of this section if the need to care for a child with disabilities prevents the parent from participating in the activities for the required hours per week.
- (c) For purposes of meeting the education requirements stipulated in subsection (b)(2) of this section, each credit hour of postsecondary education will count as three hours of education activity per week.
- ~~(de)~~ A Board may elect to ~~provide extended~~ child care services to children with disabilities who are between the ages of 13 to and 19 years of age, provided that the other provisions in this section are also met.

§809.123. Children of Teen Parents

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

- (b) A child of a teen may be eligible for child care if:
- (1) the teen needs child care services to complete high school or the equivalent; and
 - (2) the family's total gross income does not exceed the income eligibility limit established by the local Board. Boards may establish a higher income eligibility limit for teen parents, provided that the higher income limit does not exceed 85% of the state median income for a family of the same size.
- (c) For purposes of determining whether the family's total gross income does not exceed the Board's established income eligibility limit for teen parents, exceed 85% of the state median income for a family of the same size, the following applies.
- (1) If residing with the teen's parent(s) (the child's grandparent(s)), the teen shall include in the family's total gross income, the income of the child's grandparent(s).
 - (2) If not residing with the teen's parent(s) [the child's grandparent(s)] ~~t~~The teen is not required to include the grandparent's' income in the family's total gross income but must include any monetary contribution received by the teen from the child's grandparent(s), if the teen:
 - (A) ~~does not reside with the child's grandparent; or~~
 - (B) ~~is, or has been, married.~~

SUBCHAPTER K. FUNDS MANAGEMENT

§809.225. Continuity of Care

- (a) General Principle. Enrolled children, including children whose eligibility for transitional child care has expired, shall receive child care as long as the family parent ~~remains~~ eligible for any available source of Commission-funded child care except as otherwise provided under subsection (b) of this section.
- (b) Exceptions. Nothing in this chapter shall be interpreted in a manner as to result in a child being removed from care, except when removal from care is required for child care to be provided to a child of parents eligible for one or more of the following types of priority child care:
 - (1) Choices Child Care under §809.102 of this Chapter,
 - (2) Transitional Child Care under §809.101 of this Chapter, or
 - (3) Workforce Orientation Applicant Child Care under §809.103 of this Chapter.
- (c) Former Texas Department of Protective and Regulatory Services (TDPRS) children as referenced in §809.105(b)(1) of this Chapter shall also continue receiving child care funded through the Commission for the period chosen by TDPRS, which shall not exceed six months, so long as it does not result in another child being removed from care.
- (d) Former TDPRS children as referenced in §809.105(b)(2) of this Chapter may continue receiving child care funded through the Commission if it does not result in removing another child from care.

§809.226. Provider Payments

A Board shall ensure that providers are reimbursed for child care according to the procedures and time frames specified in the Agency-Board Agreement, ~~master contract~~, the Provider Agreements, and as may be specified in the Commission's Grants and Contracts Manual.

§809.231. Provider Reimbursement Rates.

- (a) Based on local factors, including a market rate survey provided by the Agency, a Board shall establish the reimbursement rates for purchased child care to ensure that the rates provide equal access to child care services in the local market and in a manner consistent with state and federal statutes and regulations governing child care.
- (b) A Board shall reimburse providers at the Board's maximum rate or the provider's published rate, whichever is lower.
- (c) A Board shall establish the same maximum reimbursement rate for all regulated providers, with or without signed agreements, for each category of care.
- (~~d~~b) A Board shall establish a graduated reimbursement rate for Texas Rising Star Providers (formerly known as Designated Vendors), pursuant to Texas Government Code §2308.315. The minimum reimbursement rate for Texas Rising Star Providers shall be at least five percent greater than the maximum rate established for non-Texas Rising Star Providers for the same category of care up to, but not to exceed the provider's published rate. The Texas Rising Star Provider rate differential established in this section shall be funded with federal Child Care and Development funds dedicated to quality improvement activities.
- (~~e~~e) The Board or its contractor shall not reimburse a provider retroactively for new reimbursement rates.
- (~~f~~d) A Board or its contractor shall ensure that providers who are reimbursed for additional staff needed to assist in the care of a child with disabilities are paid a rate up to 190% of the provider's reimbursement rate for a child of that same age.
 - (1) The higher rate, which may be called an inclusion assistance rate, is an increased provider reimbursement rate to provide for additional staff to assist in the care of a child with disabilities, which shall take into consideration the estimated cost of the additional staff needed by a child with disabilities.
 - (2) The Board shall ensure that a professional, who is familiar with assessing the needs of children with disabilities, certifies the need for the inclusion assistance rate.
- (~~g~~e) A Board may provide incentives to providers and self-arranged child care providers to recognize quality in addition to the provisions set forth in subsection (~~d~~b) of this section.

SUBCHAPTER M. APPEAL PROCEDURE

§809.271. Child Care During Appeal

- (a) A Board shall ensure that child care continues during the appeal process until a decision is reached, if the parent requests a hearing.
- (b) A Board shall ensure that child care does not continue during the appeal process if the child's enrollment is denied, delayed, reduced, or terminated because of:
 - (1) excessive absences;

- (2) voluntary withdrawal from child care;
 - (3) change in federal or state laws or regulations;
 - (4) lack of funding; due to increases in the number of enrolled children in State and Board priority groups;
 - (5) a sanctions recommendation against the parent participating in the Choices program;
 - (6) voluntary withdrawal of a parent from the Choices program; ~~or~~
 - (7) non-payment of parent fees; or
 - (8) a parent's failure to report, within 10 days of occurrence, any change in the family's circumstances that would have rendered the family ineligible for subsidized child care.
- (c) The cost of providing services during the appeal process is subject to recovery from the parent by the Board, if the appeal decision is rendered against the parent.

SUBCHAPTER N. CORRECTIVE AND ADVERSE ACTIONS

§809.283. Corrective and Adverse Action

- (a) Corrective and adverse action (corrective action) may include sanctions set forth in Chapter 800, Subchapter E of this title (relating to Sanctions) and may include, but not be limited to, the following:
 - (1) requirement that the Board's contractor enter into a Service Improvement Agreement (SIA);
 - (2) suspension, nonrenewal, or termination of the enrollment agreement, Provider Agreement, contract for service delivery, other Board subcontracts, or the Board contract;
 - (3) temporarily withholding of payments;
 - (4) nonpayment of costs incurred; and
 - (5) recoupment of funds.
- (b) When determining which corrective actions are appropriate, the following shall be considered:
 - (1) the scope of the violation;
 - (2) the severity of the violation;
 - (3) the compliance history of the person or entity; and
 - (4) in the case of contractors, the contractor's failure to meet Commission performance standards.
- (c) Corrective action may include, but is not limited to, the following:
 - (1) closing intake;
 - (2) moving children to another provider facility selected by the parent;
 - (3) holding provider payments; and
 - (4) terminating, suspending, or not renewing a Provider Agreement if the Texas Department of Protective and Regulatory Services has cited a provider for serious or

continued noncompliance with the minimum licensing standards or placed the provider on some form of corrective or adverse action.

- (d) When a Board's contractor or provider violates a contract or agreement, a written SIA may be negotiated between the Commission, Board, Board's contractor, or provider. At the least, the SIA shall include, the following:
 - (1) the basis for the improvement agreement;
 - (2) the steps required to reach compliance including, if applicable, technical assistance;
 - (3) the time limits for implementing the improvements; and
 - (4) the consequences of noncompliance with the agreement.
- (e) Failure to fully comply with the terms of the SIA may result in the imposition of one or more of the sanctions set forth in subsection (a) of this section and Chapter 800, Subchapter E of this title (relating to Sanctions).

SUBCHAPTER O. CHILD CARE TRAIN OUR TEACHERS (TOT) AWARD

The new rules in Subchapter O of this Chapter, regarding the Child Care Train Our Teachers (TOT) Award, are repealed adopted under Texas Labor Code, §301.061, which provides the Commission with the authority to adopt, amend or repeal such rules as it deems necessary for the effective administration of the Commission's programs, and adopted under Senate House Bill 280 2609 (78th 76th-Legislature, Regular Session, 2003 1999), which amends Chapter 302 of the Texas Labor Code by amending adding §302.006 to provide that the Commission may continue or discontinue administering a scholarship award program for professional child care training.

~~§809.301. Scope and Purpose~~

- ~~(a) Purpose. The purpose of the Child Care Train Our Teachers (TOT) award is to improve the availability of quality child care by increasing the opportunity of child care workers to obtain credentials or degrees in early childhood development and increase the opportunity to retain employment.~~
- ~~(b) Goal. The goal of TOT is to increase the professional level of child care workers in the Texas workforce and to encourage employment retention in the child care industry across the state.~~

~~§809.302. Definitions~~

~~In addition to the definitions contained in §809.2 of this title (relating to Definitions), the following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.~~

- ~~(1) Applicant—A person applying for Child Care Train Our Teachers award.~~
- ~~(2) Award—Child Care Train Our Teachers award funds, up to a maximum of \$1,000 per award recipient, provided pursuant to Texas Labor Code §302.006 and this chapter.~~
- ~~(3) Certified Child Care Professional (CCP)—A nationally recognized child care credential that is awarded by the National Child Care Association, Inc.~~

- ~~(4) Child Care and Development Fund (CCDF) Subsidies—Funds allocated to local workforce development areas by the Texas Workforce Commission for the purpose of providing subsidized child care services to eligible families.~~
- ~~(5) Child care facility—A licensed, registered, or accredited child care facility as defined by Section 42.002, Human Resource Code excluding those facilities listed in Section 42.041(b), Texas Human Resources Code.~~
- ~~(6) Child Development Associate (CDA)—A nationally recognized child care credential that is awarded by The Council for Early Childhood Professional Recognition.~~
- ~~(7) Director—The executive director of the Texas Workforce Commission or the executive director's designee.~~
- ~~(8) Economically disadvantaged community—A county that has a per capita income that is below the state average or that has 1,000 or more children under 13 years of age that are at or below 150% of poverty.~~
- ~~(9) Level one certificate—A level one certificate in the fields of child development or early childhood education from a public or private institution of higher education.~~
- ~~(10) Low performing school—A Texas public school that, at the time the Train Our Teachers award is granted, has been designated and is considered by the Texas Education Agency as a low performing school.~~
- ~~(11) Public or private institution of higher education—An entity as defined in Texas Education Code §61.003(15).~~
- ~~(12) Recipient—A person determined to be eligible who has been granted a Child Care Train Our Teachers award and has executed a contract with the Commission for purposes of receiving an award.~~
- ~~(13) Satisfactory completion—Completion of the educational activity with at least a "C" average for which a recipient received an award.~~
- ~~(14) Satisfactory progress—Maintenance of an average grade of at least a "C" in an educational activity by a recipient as referenced in §809.331(a) of this chapter (relating to Recipient Responsibilities).~~

§809.303. Eligibility

A person is eligible for an award if the person:

- ~~(1) has obtained a high school diploma or its equivalent;~~
- ~~(2) intends to obtain one of the credentials, degrees, or certificates listed in §809.304 of this chapter (relating to Uses of the Award);~~
- ~~(3) is currently employed in a child care facility that accepts CCDF subsidies and that at the time of the award is located in an economically disadvantaged community or within the attendance zone of a low performing school.~~
- ~~(4) agrees to work for at least 18 consecutive months following receipt of the award in the same or in another child care facility that accepts CCDF subsidies and that at the time of the award is located in an economically disadvantaged community or within the attendance zone of a low performing school.~~

~~§809.304. Uses of the Award(a) — A recipient shall use an award to obtain one of the following credentials or degrees:~~

- ~~(1) a Child Development Associate (CDA) credential;~~
 - ~~(2) a Certified Child Care Professional (CCP) credential;~~
 - ~~(3) a level one certificate in the area of child development or early childhood education from a public or private institution of higher education; or~~
 - ~~(4) an associate degree in the area of child development or early childhood education from a public or private institution of higher education.~~
- ~~(b) A recipient shall use an award only for the following expenses related to obtaining child care credentials or degrees:~~
- ~~(1) tuition, fees, and books;~~
 - ~~(2) certification fees for the CDA or CCP credentials;~~
 - ~~(3) transportation expenses;~~
 - ~~(4) living expenses; and~~
 - ~~(5) other expenses if approved in writing in the award contract.~~

~~§809.311. Award Administration~~

- ~~(a) The director is responsible for the distribution of awards. The director may designate an employee or employees of the Commission who are knowledgeable in the administration of grants to administer the Train Our Teachers award.~~
- ~~(b) The director is not required to fund all applications for awards that are submitted.~~
- ~~(c) The director may distribute awards throughout the biennium in a manner that furthers the purpose and goals of the award.~~
- ~~(d) The director shall distribute awards to ensure that awards are available to child care workers statewide. The director may take into consideration the following factors when distributing awards:~~
 - ~~(1) the relative proportion of the total number of children under age 5 years old residing within each local workforce development area to the statewide total of children under the age of 5 years old;~~
 - ~~(2) the availability of degree granting public or private institutions of higher education; and~~
 - ~~(3) the proportion of the total number of accredited, credentialed, and degreed child care teachers in each local workforce development area to the statewide total of accredited, credentialed and degreed child care teachers.~~

~~§809.312. Award Payments~~

- ~~(a) The terms for distribution of funds under each award shall be set forth in individual award contracts.~~
- ~~(b) The director may distribute funds directly to:~~
 - ~~(1) an educational or credentialing organization for the payment of tuition and fees; and~~

~~(2) the recipient for books, transportation, living expenses, or other related expenses.~~

~~§809.313. Procedure for Requesting Awards~~

~~An applicant shall provide a complete award application and proof of current employment at a child care facility for the TOT award, as provided by the director.~~

~~§809.314. Procedure for Application Evaluation~~

- ~~(a) Each application shall be reviewed by the director.~~
- ~~(b) Upon determination by the director that an award application has been selected for award, the director shall enter into a contract with the recipient, provided there are funds available for the distribution of the award.~~

~~§809.331. Recipient Responsibilities~~

- ~~(a) A recipient shall maintain satisfactory progress in an educational activity and provide evidence of satisfactory progress in the educational activity in which the recipient is enrolled. Upon completion of the educational activity, the recipient shall provide evidence of satisfactory completion.~~
- ~~(b) Award contract amendments shall be requested in writing and approved by the director in advance of any changes being made to the contract.~~
- ~~(c) A recipient shall notify the director of any change in employment status or employer information.~~
- ~~(d) A recipient shall provide the director a narrative report summarizing expenditures made with funds from the award, including evidence that the objectives specified in the award contract have been achieved.~~

~~§809.332. Sanctions for Non-Compliance~~

- ~~(a) A recipient who fails to maintain employment in a child care facility that at the time of the award accepts CCDF subsidies and is located in an economically disadvantaged community or within the attendance of a low performing school for at least 18 consecutive months following receipt of the award shall repay the award as follows:
 - ~~(1) if employed in such a child care facility for less than six consecutive months following the receipt of the award, the entire amount of the award is immediately payable; or~~
 - ~~(2) if employed in such a child care facility for more than six but less than 18 consecutive months following the receipt of the award, the award may be repaid on a prorated basis over the course of 12 months, as determined by the director.~~~~
- ~~(b) The director may impose one or all of the following sanctions for any breach of an award contract:
 - ~~(1) immediate and full repayment by the recipient of the award amount;~~
 - ~~(2) referral of the recipient's failure to pay to a credit bureau until such time as the full award amount is repaid;~~
 - ~~(3) referral of the recipient's failure to repay to a local prosecutor for collection of the funds;~~~~

- ~~(4) notification of the recipient's failure to pay to the Office of the State Comptroller, which may affect the future receipt of state benefits or payments; and~~
- ~~(5) any other remedy available under state or federal law to collect a debt owed to the State of Texas.~~