

FDCM Letter



2024 Fraud Deterrence and Compliance Monitoring (FDCM) Letter

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TO: Local Workforce Development Board Executive Directors
TWC Executive Director and Deputy Executive Director
Fraud Deterrence and Compliance Monitoring Directors
Child Care & Early Learning Directors
Office of General Counsel
Integrated Service Area Managers

FROM: Chuck Ross, Division Director of Fraud Deterrence and Compliance Monitoring

DATE: April 26, 2024

SUBJECT: **Board Instructions: Reporting Requirements for Suspected Fraud, Waste, Theft, Program Abuse Cases, and Recovery of Improper Payments for the Child Care Program**

This letter rescinds and replaces WD Letter 21-16, Change 3 – as it pertains to Child Care.

PURPOSE

The purpose of this Fraud Deterrence and Compliance Monitoring (FDCM) policy letter is to provide updated information to Local Workforce Development Boards (Boards) on processes regarding reporting and conducting fact-finding for suspected fraud, waste, theft, program abuse, and recovery of improper payments in the Texas Workforce Commission (TWC) child care program. **There is no local flexibility regarding any of the procedures outlined in this letter.**

BACKGROUND

Workforce Development (WD) Letter 21-16, Change 3, issued July 29, 2021, and titled “Requirements for Reporting and Fact-Finding for Suspected Fraud, Waste, Theft, Program Abuse Cases, and Recovery of Improper Payments—Update,” provided information on reporting fraud, waste, theft, abuse, and the recovery of improper payments in TWC programs. Additionally, WD Letter 21-16, Change 3, addressed changes resulting from the [Child Care and Development Block Grant Act \(CCDBG Act\) of 2014](#) and [TWC Chapter 809 Child Care Services Rules](#), which require Boards to conduct fact-finding before child care

services are terminated or improper payments are recouped. WD Letter 21-16, Change 3, provided details on the requirements for reporting and conducting fact-finding for fraud for all programs. This FDCM letter supersedes the previous guidance and details the requirements necessary to allow TWC and Boards to work in partnership in reporting and conducting fact-finding for child care fraud. **This policy letter provides Boards with information and examples of when and how to report suspected fraud or a violation of state law, federal law, or TWC policy within the child care program.**

While this letter focuses on fraud, the reporting requirements apply similarly to issues of theft, waste, and program abuse.

TWC is the lead agency of the federal Child Care and Development Fund program (CCDF) for Texas. TWC allocates CCDF funds to the Boards in order for them to oversee and administer the Child Care Services (CCS) program. In accordance with the Agency-Board Agreement (ABA), Boards must establish and implement procedures to prevent, report, investigate, and take administrative action concerning any fraud, possible illegal expenditures, unlawful activity, and violations of law or TWC rules, policies, and procedures occurring under TWC-awarded grants.

TWC-contracted funds must be spent on services for individuals who meet eligibility requirements. Boards have a legal and contractual duty to ensure that funds are spent in this manner. TWC rules dictate that funds not spent in accordance with this requirement result in improper payments, which Boards must attempt to recover, as applicable. TWC, through its monitoring authority in rule, ensures that resources are efficiently and effectively used for authorized purposes and are protected from fraud.

BOARD REQUIREMENTS

The ABA § 6.2.2 and Section 21 requires Boards to comply with and inform their staff about instructions issued by FDCM regarding reporting suspected fraud involving a TWC employee, Board staff member, or Board subrecipient staff member.

Additionally, the ABA prohibits retaliation by the Board or TWC against any individual filing a report of suspected activity. TWC prohibits retaliation in any form when reporting fraud, waste, and abuse in any program. For retaliation complaints, email FDCM.OfficeofInvestigations@twc.texas.gov and provide your name, phone number, and brief description of the complaint.

The ABA also requires that Boards cooperate with TWC to protect public dollars and detect and deter any fraud of any funding from any source, and to take all reasonable steps to protect the integrity of all funds it receives. When TWC has questions or concerns about the status or use of Board funds, including funds held or used by a Board subrecipient, the Board must take all necessary steps to address TWC's questions or concerns. If TWC determines that action by the Board is necessary to recover funds or to stop any fraud, waste, or abuse,

the Board must take such action. If a Board subrecipient owes money to TWC, the Board must help TWC collect the funds.

INFORMATION

Definitions

Abuse is defined as the intentional and unacceptable use of grant funds or misuse of one's position, or the intentional or improper use of government resources that can include the excessive or improper use of one's position, in a manner contrary to its rightful or legally intended use. It can take many forms, including fraud, waste, and mismanagement. Examples of abuse include the following:

- The intentional or wrongful use or destruction of state resources.
- The excessive or improper use of an employee's or official's position in a manner other than its rightful or legal use.

It is important to prevent abuse to ensure that grant funds are used for their intended purposes and within established guidelines.

Adverse Action is any action taken by the Board or TWC against a customer, parent, or provider resulting in recoupment, denial, or reduction in benefits or services to a party, including denying, delaying, reducing, suspending, or terminating a parent's eligibility or child's enrollment.

Clear and Convincing Evidence Standard is a higher standard, carrying a greater burden of persuasion than the preponderance of the evidence standard. Clear and convincing proof means that the evidence presented by a party must be highly and substantially more probable to be true than not, and the fact-finder must have a firm conviction of its factuality.

Emergency Reporting is required for any incident that may be a high-profile incident. High-profile incidents must be reported to the FDCM Office of Investigations (OI) immediately for investigation.

An **Employee** is any TWC staff member, Board member, Board staff member, or employee of a subrecipient whose work directly involves a TWC program and/or fund. This does not include a parent or provider.

Example: Board A contracts with Subrecipient B to be its primary child care subrecipient. Subrecipient B is the subrecipient and considered an employee for the purposes of this policy. Subrecipient B, in turn, contracts with individual child care providers, such as ABC Care or XYZ Kid, to provide services. The child care providers are not considered employees.

Fraud occurs when an individual obtains or increases a benefit or other payment, either for the individual or another individual, by:

- making a false statement or representation, knowing it to be false; or
- knowingly failing to disclose a material fact.

High-Profile Incident is an allegation that may attract media attention or may result in the disqualification of a provider from participating in CCS or criminal allegations.

Not Substantiated is one of the possible outcomes of an investigation. This determination may be used when there is not enough evidence that the subject committed fraud.

A **Parent** is an individual who is responsible for the care and supervision of a child and is identified as the child's natural parent, adoptive parent, stepparent, legal guardian, or person standing in loco parentis (as determined in accordance with Commission policies and procedures). Unless otherwise indicated, the term applies to a single parent or both parents. ([TWC Rules Chapter 809.2 \(18\)](#))

Partially Substantiated is one of the possible outcomes of an investigation. This determination may be used when a case involves multiple allegations and there is sufficient evidence to substantiate at least one of the allegations.

Predication is the justification for opening a case.

Program Integrity Reporting Tracking System (PIRTS) is a tool that Boards and OI must use to report and track child care fact-finding, fraud determinations, and recoupments. It is also used to report fact-finding for all other TWC programs affected by fraud, waste, and abuse.

A **Provider** is defined in [TWC Rules Chapter 809.2 \(20\)](#) as a:

- A. regulated child care provider;
- B. relative child care provider; or
- C. listed family home subject to the requirements in §809.91(e) of this chapter.

A **Subrecipient** is an entity, usually but not limited to a non-Federal entity, that receives a subaward from a pass-through entity¹ to carry out part of a Federal award; but does not include an individual that is a beneficiary of such award. A subrecipient may also be a

¹ TWC is the pass-through entity.

recipient of other Federal awards directly from a Federal awarding agency ([2 CFR 200.1](#)). Subrecipients, sometimes referred to as Boards or grantees, are entities that are receiving TWC grant funding and serving TWC customers with those funds.

- Child Care Contractor – The entity or entities under contract with the Board to manage child care services. This includes contractors involved in determining eligibility for child care services, contractors involved in the billing and reimbursement process related to child care, as well as contractors involved in the funding of quality improvement activities as described in §809.16 of this chapter.

Substantiated means that there is Clear and Convincing evidence that proves the subject of an investigation committed fraud.

Theft is the unlawful appropriation of property with the intent to deprive the owner of that property.

Undetermined is one of the possible outcomes of an investigation. This determination may be used when, based on the facts of the case, it is unclear whether the subject committed fraud or that a determination can no longer be made.

Waste is any practice that a reasonably prudent individual may deem a careless or inefficient use of resources, items, or services. Waste includes incurring unnecessary costs because of inefficient or ineffective practices, systems, or controls.

Suspected Fraud

Predication for Suspected Fraud Reporting and Fact-Finding in Child Care Program

Boards must use the fraud detection reports described in [Technical Assistance Bulletin 276, Change 1](#), issued July 13, 2022, and titled “Child Care and Unemployment Insurance Early Warning Report and Child Care Income Report” to detect potential fraud. These reports effectuate the Agency’s requirements in [Texas Labor Code 301.191 to detect and prevent fraud, waste, and abuse in the child care program](#).

Boards must investigate all referrals from the Office of Investigations.

Boards must be aware of the following:

- Pursuant to [TWC Chapter 809 Child Care Services Rule §809.112\(a\)](#), a parent, provider, or any other individual in a position to commit fraud may be suspected of fraud, and cause for Boards to conduct fact-finding or TWC to initiate a fraud investigation, if the individual presents, or causes to be presented, to the Board or its child care subrecipient one or more of the following items:
 - A request for reimbursement in excess of the amount charged by the provider for the child care.
 - A claim for child care services if evidence indicates that the individual may have:

- known, or should have known, that child care services were not provided as claimed;
 - known, or should have known, that information provided is false or fraudulent;
 - received child care services during a period in which the parent or child was not eligible for services;
 - known, or should have known, that child care subsidies were provided to an individual not eligible to be a provider; or
 - otherwise indicated that the individual knew, or should have known, that the actions violated TWC rules, state or federal statutes, or regulations relating to child care services.
- Pursuant to [§809.112\(b\)](#), the following parental actions may be grounds for suspected fraud and cause for Boards to conduct fact-finding or TWC to initiate a fraud investigation:
 - Not reporting, or falsely reporting at initial eligibility or at eligibility redetermination, the following:
 - Household composition or income sources or amounts that would have resulted in ineligibility or a higher parent share of cost.
 - Work, training, or education hours that would have resulted in ineligibility.
 - Not reporting the following during the 12-month eligibility period:
 - Changes in income or household composition that would cause the family income to exceed 85 percent of state median income (SMI) (taking into consideration fluctuations of income).
 - A permanent loss of job or cessation of training or education that exceeds three months.
 - Improper or inaccurate reporting of attendance.

PROCEDURES

REPORTING SUSPECTED FRAUD

Boards must require any member of the Board, Board staff, or subrecipient staff that has knowledge of suspected fraud, waste, abuse, possible illegal expenditures, unlawful activity, or violations of law or TWC rules, policies, and procedures occurring under the Child Care program to report such information to TWC’s Office of Investigations, as further outlined below, regardless of the dollar amount involved. Boards must not terminate any provider

from CCS participation based on a fraud determination without first notifying TWC's Office of Investigations.

Report Employee-Related and High-Profile Incidents Immediately to OI

If the suspected fraud involves a high-profile incident or an employee-related incident relating to child care operations, Boards must immediately contact OI.

- **High-profile incident:** Is an allegation that may attract media attention or may result in the disqualification of a provider from participating in CCS or criminal allegations.
- **Employee-Related Incidents:** OI will investigate any suspected fraud involving an employee as it relates to the Child Care program or funds. OI does not review incidents that do not affect the program. (See definition of Employee.) Boards must not conduct fact-finding on fraud incidents that involve TWC, Boards, or subrecipient employees unless OI specifically directs them to. TWC maintains full jurisdiction over TWC, Boards, and subrecipient employee investigations.

For the purpose of this policy, the following example does not require reporting to OI and must follow established Board or subrecipient personnel policies.

Example: Board D contracts with Company E to be its primary subrecipient. An employee of Company E submits check stubs to secure a personal loan to purchase a vehicle. After the dealership verifies employment, Company E learns that the employee falsified gross income on check stubs.

- If the employee's job duties involve the handling of TWC programs, grants, or funds, the incident DOES require a referral to OI.
- If the employee's job duties do not involve the handling of TWC programs, grants, or funds, the incident DOES NOT require a referral to OI. The Board and subrecipient must follow internal personnel policies.

Reporting Instructions for Employee-Related and High-Profile Incidents:

1. Complete the [FDCM-32 Incident Report](#) immediately upon learning of the incident. Instructions are available on the [FDCM-32instr form](#).
2. Submit an [FDCM-32](#) and any associated documentation relating to the incident by email to OI at FDCM.OfficeofInvestigations@twc.texas.gov. To maintain confidentiality of any sensitive information in FDCM-32, Boards must ensure that all emails are encrypted. Boards do not enter these employee-related or high-profile incidents in PIRTS or conduct investigations on these incidents.
3. OI will notify the Board if the fraud is substantiated.

If OI determines that the reported incident is not employee-related or high-profile and may be completed by the Board, the case will be returned to the individual who reported the incident.

Report Suspected Parent and Provider Fraud within Five Business Days

If the suspected fraud is not a high-profile incident and does not involve an Employee, Boards must enter the incident into PIRTS no later than five business days from the date of discovering such an act. Entering the incident in PIRTS satisfies the Board's requirement to notify OI.

Parent and Provider Incidents: The Board must ensure that the following actions are taken:

- The case must be entered into PIRTS within five business days of the Board learning of the allegation.
- To gain access to PIRTS, Boards must complete the [PIRTS User Agreement \(FDCM-67\)](#) and receive training from OI staff.
- Cases that do not meet the criteria may be referred to Boards for investigation by OI.

BOARD INVESTIGATIONS

Boards must ensure that the following occurs for each parent and provider case:

1. **PIRTS ENTRY:** Boards must ensure that cases are entered into PIRTS within five business days of learning of the allegation. Creation of the PIRTS entry constitutes sending a notice to OI.

Boards must ensure that all steps of the investigation, recoupment, and appeals process are documented in PIRTS.

Additionally, fact-finding must be concluded within 90 days of case entry into PIRTS. If fact-finding cannot be completed within 90 days, a journal entry must be made in PIRTS to explain the reason for the delay (such as needing assistance from OI with a subpoena).

2. **FACT-FINDING:** Boards must ensure that administrative fact-finding steps are documented in PIRTS. Administrative fact-finding documents must also include the following in PIRTS:
 - Ineligibility periods
 - Costs of services provided during the period or periods of ineligibility
 - Improper payments
 - Whether services will be terminated for the parent or provider. Boards must notify TWC's Office of Investigations prior to terminating any provider's CCS participation based on a fraud determination.

The [Child Care Fact-Finder's Desk Aid \(FDCM-55\)](#) contains useful information for the fact-finding process, forms, and sample letters, including question sets to help determine the facts of the

situation. https://twcgov.sharepoint.com/sites/fdcm_intra/SitePages/FDCM-Forms.aspx

OI staff is available to consult with Boards. Fact-finding training is available on request by calling or emailing the OI investigator assigned to the Board's local workforce development area.

3. **DOCUMENTATION:** Boards must ensure that fact-finding, determination letters, collection letters, and final demand letters, including any appeals and improper payment amounts, are documented in PIRTS. Additionally, Board must ensure that letters, relevant documents, and evidence are uploaded to the Network File Share (NFS) in PIRTS.
4. **ENTER A DETERMINATION IN PIRTS:** At the conclusion of an investigation, the Board must consider the facts to determine whether a case is substantiated, partially substantiated, not substantiated, or undetermined. A substantiated determination must show Clear and Convincing evidence that the subject has committed fraud. To substantiate a fraud determination, the Board must show that there was an **intentional misrepresentation of a material fact or detail, which can include failing to disclose a material fact.**
 - See [Rule 809.111\(e\) and \(f\)](#) for additional procedures involving the review of fraud reports at the Commission level.
 - Boards must adhere to guidelines included in [G-500: Board Corrective Adverse Actions, from the Child Care Services Guide](#).

Intentional—To establish intent, there must be Clear and Convincing evidence that a fact or detail was purposefully misrepresented. The facts must show that the individual knew or should reasonably have known that the information submitted was incorrect or that the individual intentionally failed to provide required information.

By using the information gathered through fact-finding, Boards must determine whether fraud was committed by answering the following questions:

- Did the individual have knowledge of the misrepresentation?
- Was there an admission of wrongdoing?
- Did the individual know or should reasonably be expected to have known that the information submitted was incorrect? Consider the following factors regarding this question:
 - Were they a first-time customer?
 - What was their level of education?

- Had they been involved in a previous issue and/or fraud case?
- Was the correct information provided during eligibility determination or redetermination?
- Were they provided child care parent responsibilities and reporting information?
- Were efforts made to seek clarification?
- Was their mistake reasonable?

Material—If there was an intentional misrepresentation of a fact or detail, was or is that fact or detail important to the outcome of an eligibility decision? Did this misrepresentation create the possibility or probability of an individual receiving something to which that individual would not otherwise be entitled?

5. SEND DETERMINATION LETTER

When fact-finding results in an adverse action, Boards must send a determination letter to the adversely affected party within one day of the case status changing to “pending closure.”

Boards must upload the determination letter into the PIRTS NFS and note the date the determination letter is mailed under Program Collections, which will start a 30-business day response timer in the PIRTS program.

OI cases may be referred to the Board for issuance of the determination letter and improper payment recoupments.

Board recoupments on OI cases will be documented in PIRTS by creating and relating a case to the original OI case.

An individual has the right to appeal a determination that affects the type and level of services they are provided. A determination letter is a written statement relating to an adverse action that is issued by either a Board, its designee, or TWC and sent to either a TWC customer, provider, or subrecipient relating to denial or termination of eligibility under programs administered by TWC or the Board.

A determination letter must include the following:

- A brief statement of the Adverse Action
- The mailing date of the determination letter
- An explanation of the individual’s right to appeal (See [TAC § 823.11](#) and [Texas Labor Code § 301.192](#))
 - For determinations issued by the Board, the letter should include the procedures for requesting informal resolution with the Board and for filing an appeal to the Board, including the appeal deadline of no later than 14 calendar days after the mailing date. The Board Informal Resolution procedure is described in [§ 823.12](#) and the Board Review process is detailed in [§ 823.13](#).

- For determinations issued by the Office of Investigation, the appeal process follows that which is described in [§ 823.20 – State-Level Complaints](#), which are filed with TWC’s Appellate Services department.
- The procedures for filing an appeal to the Board, including applicable time frames as required in §823.3
- Notification of the individual’s right to have a hearing representative, including legal counsel
- The address or fax number to which the appeal must be sent

An Adverse Action is any denial or reduction in benefits or services to a party, including a denial or reduction in benefits caused by a TWC customer’s job loss or change in work hours. Refer to definition of "Adverse Action" in this letter. Boards must ensure that all cases reported to TWC through PIRTS are placed under “pending closure” status in PIRTS when the determination letter is sent.

6. ATTEMPT RECOVERY OF IMPROPER PAYMENTS

Boards must attempt recovery of the following improper payments:

- Payment to an ineligible recipient
- Payment for an ineligible service
- Payment for any duplicate payment
- Payment for services not received

After a debt is final (no appeal or appeals exhausted), if full repayment is not made or if a repayment schedule is not in place within 30 business days of mailing the determination letter, the Board must take the following actions:

- Send a collection letter. Sample collection letter templates are available on the FDCM Forms Intranet page. The collection letter must be uploaded into the PIRTS NFS. Additionally, the date the collection letter is mailed must be noted in PIRTS under Program Collections, which will start a 30-business day response timer in the PIRTS program.
- If the subject does not respond within 30 business days of the mailing of the collection letter, the Board must send a final demand letter. The final demand letter must be uploaded into the PIRTS NFS. Additionally, the date the final demand letter is mailed must be noted in PIRTS under Program Collections, which will start a 30-business day response timer in the PIRTS program.
- Boards must refer cases to TWC Collections under the following circumstances:
 - The subject continues to not repay the debt or set up a payment plan with the Board after a determination letter, collections letter, and final demand letter have

all been sent and properly documented in PIRTS and appeals have been exhausted.

- If a repayment plan is in place, and a payment is missed with a current amount due of \$100 or more, wait 30 business days and send the final debt to TWC Collections.

To refer a case to TWC Collections, Boards must take the following actions:

- Send an email to programcollections@twc.texas.gov and provide the following information so Collections staff may place a warrant hold on the debtor's account with the Texas Comptroller:
 - Name of debtor
 - Social Security number (SSN) of debtor
 - Amount of debt
 - Date debt was incurred/determined
 - Point of contact from the Board
- Note the date of TWC Collections referral in PIRTS on the Program Collections page and document the referral under TWC Collections in PIRTS.

Board must also take the following actions related to documenting payments:

- Document recoupment of improper payments in PIRTS as Improper Payment Recoupment.
- Once a debt is paid in full, the Board must notify TWC Collections at programcollections@twc.texas.gov and provide the following information to remove the warrant hold:
 - Name of debtor
 - SSN of debtor
 - Date that debt was paid in full

When a Board learns that an individual from whom it is seeking collection of an improper payment has filed for bankruptcy, the Board must cease all collection activities immediately to avoid violation of the federal bankruptcy court's automatic stay against collection activities against the debtor. Penalties for violation of this automatic stay are severe. If the Board wishes to safeguard its claim to payment in the bankruptcy proceeding, the Board must first determine whether the bankruptcy was filed under the Federal Bankruptcy Code as a:

- Chapter 7 bankruptcy ("liquidation"); or

- Chapter 13 bankruptcy (“wage earner”—an employed individual who pays back pre-petition debts with post-petition earnings pursuant to a plan).

Training for the collections process is available by request from the TWC Finance Division’s Collections and Civil Actions department at (512) 463-1893.

7. **FUTURE ELIGIBILITY:** Pursuant to [§809.117\(d\)–\(e\)](#), Boards must ensure that parents affected by any of the following are prohibited from child care eligibility until an improper payment is paid in full (provided this does not result in a Choices or Supplemental Nutrition Assistance Program Employment and Training participant becoming ineligible for child care):

- Improper payment as a result of fraud
- Child care services provided while awaiting appeal
- Failure to pay the parent share of cost when the Board’s policy is to pay the provider for the parent’s failure to pay the parent share of cost

8. **RETAIN RECORDS:** Retain all documentation in PIRTS and leave PIRTS case status as “Pending Case Closure” until the debt is final and paid in full.

OI staff may review any open or closed PIRTS case during a review conducted by FDCMs Subrecipient Monitoring review if it is within scope, which may include a review of any aspect of a case, associated recoupments, or appeals.

Boards must retain all associated documentation to support the administrative determination resulting from fact-finding of the incident reported to TWC in PIRTS. Associated records must not be purged until the debt is final and paid in full and may be disposed of according to the Texas State Library’s retention guidelines.

Fraud Referral

The ABA provides authority for FDCM’s OI and Fraud Prosecutions departments to elevate reports of suspected fraud to the appropriate state or federal authority; accept the case for investigation or action at the state level; or return the case to the Board or Board’s subrecipient for action including, but not limited to:

- further investigation;
- referral for prosecution under the Texas Penal Code, or other state or federal laws; and
- other corrective action.

RESOURCES

FDCM resources referenced in this letter are available on the SharePoint intranet². (Board Access Instructions)

- [FDCM Forms Intranet page](#)
- [Program Investigations](#)
- [Child Care Resources](#)
- [OI Resources](#)

INQUIRIES

- Send inquiries regarding this letter to FDCM.OfficeofInvestigations@twc.texas.gov.
- Send inquiries regarding collection to ProgramCollections@twc.texas.gov.

REFERENCES

- [TWC Chapter 802 Integrity of the Texas Workforce System Rules](#)
- [TWC Chapter 809 Child Care Services Rules](#)
- [TWC Chapter 823 Integrated Complaints, Hearings, and Appeals Rules](#)
- [Subchapter K–Detection and Prevention of Child-Care Fraud, Waste, and Abuse, Chapter 301, Subtitle B–Texas Workforce Commission; Workforce Development; Employment Services, Title 4–Employment Services and Unemployment, Labor Code](#)
- [Workforce Letter 05-18: Recovery, Use, and Remittance of Child Care Recoupments from Parents](#)
- [TA Bulletin 276, Change 1, issued July 13, 2022, and titled “Child Care and Unemployment Insurance Early Warning Report and Child Care Income Report—Update”](#)

ACTION REQUIRED

All TWC and Board staff, supervisors, and managers must be aware of the information in this letter.

² The intranet is not available to the public. Board staff must complete the Board Access Instructions to view intranet pages located on SharePoint.

Rescissions: RID letter 07-2019 and WD Letter 21-16, Change 3- as it pertains to Child Care

Expiration: Until Rescinded