

TEXAS WORKFORCE COMMISSION LETTER

ID/No: WD 11-07

Date: February 5, 2007

Keyword: Child Care,
TANF/Choices

To: Local Workforce Development Board Executive Directors
Commission Executive Staff
Integrated Service Area Managers



From: Laurence M. Jones, Director, Workforce Development Division

Subject: **Definition of Parent under the New Child Care Services Rules and Determining *In Loco Parentis***

PURPOSE:

To provide Local Workforce Development Boards (Boards) with:

- the Texas Workforce Commission's (Commission) new Child Care Services rules §809.2(14) definition of "parent," which includes individuals standing *in loco parentis* (in place of a parent);
- the definition of *in loco parentis* to be included in the Child Care and Development Fund (CCDF) State Plan;
- requirements for determining whether an individual is standing *in loco parentis*; and
- procedures for submitting waiver requests for individuals who have been denied child care services because they do not meet the definition of parent, specifically *in loco parentis*.

REFERENCE:

Texas Workforce Commission Child Care Services Rules: 40 TAC §809.2(14), §809.3, §809.43(a)(2)(A), and §809.49

FLEXIBILITY RATINGS:

No Local Flexibility (NLF): This rating indicates that Boards must comply with the federal and state laws, rules, policies, and required procedures set forth in this WD Letter and have no local flexibility in determining whether and/or how to comply. Federal and state laws, rules, policies, and required procedures with a "No Local Flexibility" rating are indicated by the acronym, **NLF**, in the margin to the right of the applicable paragraph. Additionally, all information with a "No Local Flexibility" rating is indicated by "must" or "shall."

Failure to comply with the federal and state laws, rules, policies, and required procedures with a "No Local Flexibility" rating may result in corrective action, up to and including sanction and penalty.

Local Flexibility (LF): This rating indicates that Boards have local flexibility in determining whether and/or how to implement guidance or recommended practices set forth in this WD Letter. All guidance or recommended practices with a “Local Flexibility” rating are indicated by the acronym, **LF**, located in the margin to the right of the applicable paragraph. Additionally, guidance or recommended practices with a “Local Flexibility” rating are indicated by “may” or “recommend.”

Boards are not subject to corrective action for failure to comply with guidance or recommended practices with a “Local Flexibility” rating.

BACKGROUND:

On January 9, 2007, the Commission adopted new Chapter 809, which became effective on January 29, 2007. Section 809.2(14) defines “parent” as:

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).

This new definition:

- recognizes situations in which a child’s natural parent (or adoptive parent or legal guardian) may be unavailable to care for the child, making it necessary for the child to be cared for by an individual who is not the child’s legal guardian—i.e., standing *in loco parentis*; and
- includes these individuals in the definition of a parent for the purpose of child care eligibility.

CCDF regulations at 45 C.F.R. §98.16(f)(9) require states to define *in loco parentis* in their CCDF State Plan. Therefore, the Commission will amend the CCDF State Plan to include the following definition of *in loco parentis*, approved by the Commission on January 30, 2007:

An individual 18 years of age or older who is responsible for the day-to-day care and supervision of the child when the child’s natural parent, adoptive parent, stepparent, or legal guardian is not available to care for the child. The individual must document the reason the child’s parents are unavailable to care for the child and that he or she is exercising parental responsibility for the child.

This WD Letter provides Boards with guidance on the specific criteria required to determine whether an individual is standing *in loco parentis* and the waiver request procedures for individuals denied child care services because they do not meet the new §809.2(14) definition of parent, as further defined in this WD Letter.

PROCEDURES:

For individuals to receive child care services, the Board must ensure that they meet the definition of parent set forth in new Commission rule §809.2(14), which includes individuals standing *in loco parentis*.

NLF

Effective immediately, to determine whether an individual is standing *in loco parentis*, Boards must ensure that individuals meet the documentation requirements set forth in Attachment 1. NLF

Determining *in loco parentis* for Temporary Assistance for Needy Families (TANF) Recipients and Former TANF Recipients

Boards must be aware that the Texas Health and Human Services Commission (HHSC) determines caretaker status—including individuals standing *in loco parentis*—for children of Choices participants receiving TANF. Therefore, Choices participants are assumed to meet the definition of a parent, including the requirements for individuals standing *in loco parentis*, for each child listed on their TANF grant. NLF

If a Choices participant requests child care for a child not listed on the TANF grant, the Board must ensure that the Choices participant meets the *in loco parentis* documentation requirements in Attachment 1 for that child prior to authorizing Choices child care. NLF

Note: If the Board determines that the Choices participant is not standing *in loco parentis* for the child, the Board must ensure that good cause is not granted based on the participant’s inability to obtain child care for the child. NLF

Boards must be aware that former TANF recipients eligible for Transitional child care are assumed to meet the definition of a parent, including the requirements for an individual standing *in loco parentis*, for each child who was listed on their TANF grant. NLF

If an individual receiving Transitional child care requests child care for a child who was not listed on the TANF grant, the Board must ensure that the individual meets the *in loco parentis* documentation requirements in Attachment 1 for that child *prior* to authorizing Transitional child care. NLF

Child Care Authorized by Child Protective Services

Boards must be aware that individuals for whom child care is authorized by Child Protective Services (CPS) of the Texas Department of Family and Protective Services under §809.49 of Commission Child Care Services rules are assumed to meet the requirements for individuals standing *in loco parentis*. NLF

Boards must be aware that child care priority under §809.43(a)(2)(A), for children needing or receiving protective services, applies only to child care authorized and funded by CPS. NLF

Child Care Not Authorized by Child Protective Services

Boards must be aware that the documentation requirements for CPS Placement in Attachment 1 apply only to situations in which CPS has not authorized child care under §809.49 of the Commission Child Care Services rules. NLF

Waiver Requests

NLF

Boards must be aware of the following:

An individual who does not meet the definition of a parent in §809.2(14)—as further defined in this WD Letter—and is denied child care services based solely on that determination may submit a waiver request to the Commission under Commission rule §809.3.

Waiver Submission Process

Waiver requests must be signed and submitted in writing by the individual who has been denied child care services.

At a minimum, the waiver request must include the following:

- Name of the individual requesting the waiver;
- Individual's contact information (address);
- Individual's relationship to the child or children;
- Name of the child or children for whom the waiver is requested;
- Brief description of the reason for the waiver request;
- Documentation verifying the reason the parent is unavailable to care for the child;
- Documentation verifying that the individual requesting the waiver is responsible for the child; and
- Verification that the child is otherwise eligible to receive child care services.

Waiver requests must be addressed as follows:

Chair Diane Rath
Commissioner Ron Lehman
Commissioner Ronald G. Congleton
Texas Workforce Commission
101 East 15th Street, Room 440T
Austin, Texas 78778-0001

Boards may assist individuals in preparing waiver requests, including forwarding requests to the Commission. Attachment 2, *Definition of Parent—Waiver Request Letter*, is a template for Boards' use in assisting these individuals.

LF

ACTIONS REQUIRED:

Boards must ensure that appropriate staff is apprised of and complies with the requirements in this WD Letter.

INQUIRIES:

Direct inquiries regarding this WD Letter to Nicole Verver at (512) 936-3160 or nicole.verver@twc.state.tx.us.

ATTACHMENT:

Attachment 1: In Loco Parentis Matrix

Attachment 2: §809.2(14) Definition of Parent—Waiver Request Letter

Rescissions: None	Expiration: Continuing
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