

CHAPTER 809. CHILD CARE SERVICES

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

ON SEPTEMBER 6, 2016, THE TEXAS WORKFORCE COMMISSION ADOPTED THE BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated date of publication in the *Texas Register*: **September 23, 2016**

The rules will take effect: **October 1, 2016**

The Texas Workforce Commission (Commission) adopts amendments to the following sections of Chapter 809, relating to Child Care Services, *without* changes, as published in the June 17, 2016, issue of the *Texas Register* (41 TexReg 4394):

- Subchapter B. General Management, §809.13, §§809.15 - 809.17,
- Subchapter C. Eligibility for Child Care Services, §§809.42 - 44, §809.46, §§809.48 - 49, and §809.53
- Subchapter D. Parent Rights and Responsibilities, §809.72, §§809.74 - 809.75
- Subchapter E. Requirements to Provide Child Care, §809.95
- Subchapter F. Fraud Fact-Finding and Improper Payments, §809.111, 809.113, §809.115

The Texas Workforce Commission (Commission) adopts amendments to the following sections of Chapter 809, relating to Child Care Services, *with* changes, as published in the June 17, 2016, issue of the *Texas Register* (41 TexReg 4394):

- Subchapter A. General Provisions, §809.2
- Subchapter B. General Management, §§809.19 - 809.20
- Subchapter C. Eligibility for Child Care Services, §809.41, §809.45, §809.47, §§809.50 -51, and §809.54
- Subchapter D. Parent Rights and Responsibilities, §809.71, §809.73, §809.78
- Subchapter E. Requirements to Provide Child Care, §§809.91 - 809.94
- Subchapter F. Fraud Fact-Finding and Improper Payments, §809.112 and §809.117

The Commission adopts the following new section to Chapter 809, relating to Child Care Services, *without* changes, as published in the June 17, 2016, issue of the *Texas Register* (41 TexReg 4394):

- Subchapter C. Eligibility for Child Care Services, §809.52

The Commission adopts the repeal of the following sections of Chapter 809, relating to Child Care Services, *without* changes, as published in the June 17, 2016, issue of the *Texas Register* (41 TexReg 4394):

- Subchapter C. Eligibility for Child Care Services, §809.55
- Subchapter D. Parent Rights and Responsibilities, §§809.76 - 809.77
- Subchapter F. Fraud Fact-Finding and Improper Payments, §809.116

PART I. PURPOSE, BACKGROUND, AND AUTHORITY
PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the adopted Chapter 809 rule change is to amend the Commission's Child Care Services rules to address changes resulting from the Child Care and Development Block Grant Act (CCDBG Act) of 2014. The adopted amendments to Chapter 809 also include, where appropriate, changes in rule language based on the Notification of Proposed Rulemaking (NPRM) issued December 24, 2015, by the U.S. Health and Human Services Administration for Children and Families.

The CCDBG Act authorizes the federal Child Care and Development Fund (CCDF), which is the primary federal funding source for providing child care subsidy assistance to low-income families and for improving the quality of care for all children. The Texas Workforce Commission (Agency) is the CCDF Lead Agency in Texas. The CCDF program is administered by the 28 Local Workforce Development Boards (Boards). Additionally, the Texas Department of Family and Protective Services (DFPS) is responsible for administering the health and safety requirements of the CCDF program.

On November 19, 2014, President Obama signed the CCDBG Act of 2014, reauthorizing the CCDBG Act for the first time since 1996. The new law makes significant changes to the CCDF program, designed to promote children's healthy development and safety, improve the quality of child care, and provide support for parents who are working or are in training or education.

The primary purpose of the Commission's amendments to Chapter 809 is to implement the following changes to the CCDF program resulting from the CCDBG Act of 2014:

Twelve-Month Eligibility Period

The CCDBG Act of 2014 added a 12-month eligibility and redetermination period requirement for children determined eligible for subsidized child care. This change to the CCDF program is designed to provide more stable assistance to families, protection for working families, and increased opportunities for children to remain in child care services.

CCDBG Act §658E(c)(2)(N)(i) and (ii) require states to demonstrate in the CCDF State Plan that after initial eligibility, each child who receives assistance will be considered to meet all eligibility requirements for such assistance and will receive such assistance for not fewer than 12 months before the state or designated local entity redetermines the eligibility of the child. The 12-month eligibility period applies regardless of changes in income--as long as income does not exceed the federal threshold of 85 percent of the state median income (SMI)--or temporary changes in participation in work, training, or educational activities.

Therefore, a state shall not terminate assistance prior to the end of the 12-month period if the family experiences a temporary job loss or temporary change in participation in a training or educational activity.

Although the CCDBG Act requires a period of 12-month minimum eligibility and receipt of child care services prior to redetermination, §658E(c)(2)(N)(iii) allows states the option to terminate eligibility due to a permanent (nontemporary) change in work, training, or education. However, the CCDBG Act requires that prior to terminating a subsidy, the state must continue to provide child care assistance for a period of at least three months to allow parents to engage in job search, resume work, or attend an educational or training program as soon as possible.

Parent Share of Cost during the 12-Month Eligibility Period

To support continued care throughout the 12-month eligibility period, NPRM §98.21(a)(3):

--prohibits states from increasing the parent share of cost during the 12-month eligibility period, regardless of increases in the family income; and

--requires that states act upon information provided by the parent that would result in a reduction in the parent share of cost.

NPRM §98.45(k)(2) requires that the parent share of cost be based on income and the size of the family and may be based on other factors as appropriate, but may not be based on the cost of care or amount of the subsidy payment.

Income Calculation to Consider Irregular Income Fluctuations

CCDBG Act §658E(c)(2)(N)(i)(II) requires that states take into consideration irregular fluctuations of earnings when calculating income for eligibility. NPRM §98.21(c) further clarifies this requirement by adding that the calculation of income policies ensure that temporary increases in income, "including temporary increases that result in monthly income exceeding 85 percent of SMI (calculated on a monthly basis), do not affect eligibility or family co-payments."

Graduated Phaseout of Eligibility

Where a Lead Agency or designated local agency has established an initial eligibility threshold below 85 percent of SMI, CCDBG Act §658E(c)(2)(N)(iv) requires Lead Agencies to have a "Graduated Phaseout of Eligibility" that includes policies and procedures to continue child care assistance at the time of redetermination for children of parents who are working or attending a job training or educational program and whose income has risen above the Lead Agency's initial income eligibility threshold to qualify for assistance but remains at or below 85 percent of SMI.

Priority and Eligibility for Children Experiencing Homelessness

CCDBG Act §650E(3)(B)(i) and NPRM §98.46(a)(3) and §98.51 require states to give priority for services to children experiencing homelessness. NPRM §98.2 defines a "child experiencing homelessness" as a child meeting the definition of homelessness under the McKinney-Vento Homelessness Act of 1987 (McKinney-Vento Act).

The NPRM preamble clarifies that Lead Agencies have flexibility in how they offer priority to these populations, including by prioritizing enrollment, waiving copayments, paying higher rates for access to higher-quality care, or using grants or contracts to reserve slots for priority populations.

Additionally, the CCDBG Act and the NPRM require that state procedures permit enrollment (after an initial eligibility determination) of children experiencing homelessness while required documentation is being obtained.

Attendance and Provider Reimbursements

CCDBG Act §658E(c)(2)(S) and NPRM §98.45(m) require implementation of provider payment practices that:

- align with generally accepted payment practices for children who do not receive CCDF funds; and
- support the fixed costs of providing child care services by delinking provider payments from a child's occasional absences.

Consumer Education Information

CCDBG Act §658E(c)(2)(E) and NPRM §98.33 require that states collect and disseminate, through a consumer-friendly and easily accessible website, consumer education information to parents of eligible children, the general public, and, where applicable, providers regarding:

- availability of the full diversity of child care services;
- quality of providers;
- state processes for licensing, conducting background checks, and monitoring child care providers;
- other programs for which families that receive child care services may be eligible;
- research and best practices concerning children's development; and
- state policies regarding social-emotional behavioral health of children.

Additionally, NPRM §98.33(d) requires that parent consumer education include information on:

- licensing compliance information for the provider selected by the parent;
- how to submit a complaint regarding a child care provider;
- how to contact community resources that assist parents in locating quality child care; and
- how CCDF subsidies are designed to promote equal access to the full range of child care providers.

CCDBG Act §658E(c)(2)(E) also requires that Lead Agencies provide eligible parents with information on existing resources and other services in the state that conduct developmental screening and provide referrals and services, when appropriate, for children eligible for subsidized child care, including:

- the Medicaid Early and Periodic Screening, Diagnosis, and Treatment program; and
- the Early Childhood Intervention (ECI) and Preschool Program for Children with Disabilities developmental screening services.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

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

SUBCHAPTER A. GENERAL PROVISIONS

The Commission adopts the following amendments to Subchapter A:

§809.2. Definitions

Attending a Job Training or Educational Program

Consistent with CCDBG Act §658E(c)(2)(N)(i) - (ii), the definition of "attending a job training or educational program" is amended to clarify that the requirement in the definition that the

individual be making progress toward successful completion of the program as determined by the Board, is only applied at the parent's 12-month redetermination.

Consistent with the CCDBG Act, care cannot be discontinued during the 12-month eligibility period for failure to make progress toward completion of an education or training program. However, the NPRM allows additional eligibility requirements at the 12-month redetermination period. Boards must ensure that the parent is making progress toward completion of the program, as determined by the Board, when redetermining eligibility for continued care, but are prohibited from making this a condition of eligibility at the parent's initial eligibility determination. When developing policies and procedures for determining if the parent is making progress toward completion of the program, the Commission cautions against relying solely on the parent's grade point average (GPA), particularly one semester's GPA. If a Board uses the GPA, the Commission encourages Boards to establish a minimum threshold that would demonstrate if a parent has consistently failed to complete coursework during the eligibility period.

The requirement in the definition that the individual must be considered by the program to be officially enrolled in and meeting the attendance requirements of the program is retained without change because enrollment and attendance in the program should be maintained throughout the 12-month eligibility period. Discontinuing care due to a nontemporary cessation of attendance in a training or education activity during the 12-month eligibility period is addressed in §809.51(b).

As described in amended §809.73, parents are required to report items that impact a family's eligibility during the 12-month eligibility period. Boards may develop procedures for confirming continued enrollment and attendance during the 12-month eligibility period, including requesting that education institutions and training providers confirm enrollment at each semester and the resumption of training classes in order to determine that the parent has not had a nontemporary cessation of education or training activities.

The Commission notes that the language in §809.41 regarding Board policies for child care during education, including time limits or eligibility based on the type of education pursued by the parent, is not changed by these amendments.

A Child Experiencing Homelessness

Consistent with NPRM §98.2, §809.2 is amended to add the definition for a "child experiencing homelessness" as a child meeting the definition of homeless pursuant to the McKinney-Vento Act.

Child with Disabilities

The definition of a "child with disabilities" is amended to align with the definition under §504 of the Rehabilitation Act of 1973.

Family

The definition of a "family" is amended to mirror the Workforce Innovation and Opportunity Act (WIOA) definition of a family. The intent of this change is to clarify, consistent with current practice for both the child care and WIOA programs, that the individuals in a family are "living in a single household." Additionally, consistent with WIOA, the definition of married

individuals includes "common-law" marriages. Consistent with the WIOA program guidelines, written attestation must be obtained from both parties affirming the common-law marriage.

Improper Payments

The definition of "improper payments" is amended to align with the current definition of an improper payment in CCDF regulation §98.100(d). The amended §809.2(11) defines an improper payment as:

Any payment of CCDF grant funds that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements governing the administration of CCDF grant funds and includes:

- to an ineligible recipient;
- for an ineligible service;
- for any duplicate payment; and
- for services not received.

Regulated Child Care Provider

The definition of a "regulated child care provider" is amended to remove providers licensed by the Texas Department of State Health Services (DSHS) as a youth day camp as eligible providers of subsidized child care services.

CCDBG Act §658H and NPRM §98.43 require that states have in effect "requirements, policies, and procedures to require and conduct criminal background checks for child care staff members of all licensed, regulated, or registered child care providers and all providers eligible to deliver services." These requirements include a Federal Bureau of Investigation (FBI) fingerprint check. Relative providers are exempt from this requirement, which must otherwise be implemented no later than September 30, 2017.

DSHS youth day camps are not subject to DFPS child care licensing and monitoring requirements. DSHS conducts background checks of staff in compliance with state law for youth camps, but unlike the CCDBG Act and NPRM, state law does not require an FBI fingerprint criminal background check for youth day camp staff. Nonetheless, certain youth day camps may be eligible for DFPS to license as child care centers. Therefore, to allow sufficient time for day camps that serve subsidized children to choose to work with DFPS to become licensed, the Commission will not implement this provision until September 30, 2017.

Working

The definition of "working" is amended to remove job search activities from the definition. Child care during periods of cessation of work, job training, or education is addressed in §809.51.

Comment:

One commenter strongly supported the requirement that the parent demonstrate successful progress toward completion of an education program only be applied at the 12-month redetermination date.

Response:

The Commission appreciates the comment.

Comment:

Commenters requested that the requirement for the parent to be making progress toward successful completion of the education program be applied at initial eligibility if the parent is already enrolled in an education or job training program.

Response:

Past performance in an education or training program should not be considered in initial eligibility for child care. The parent's progress toward completion of the program should only be based on the performance while the parent is receiving child care, as the lack of stable child care may have been a contributing factor to the parent's inability to work toward successful completion of the education or training activity.

Comment:

Commenters requested that the criteria for determining if a parent is making progress toward successful completion of an education and/or training program be consistent across the state. The commenters stated that allowing various standards in the state leads to confusion when a parent moves from one local workforce development area (workforce area) to another. One commenter stated that there should not be more than one way to define the completion of a college course (i.e., grade point average) and that individual Boards should not have differing criteria to determine the extent of progress. Parents deserve to have equal access to child care assistance regardless of where they live or attend school.

Response:

The Commission understands the concerns; however, the Commission believes that this standard should remain a local decision based on local needs and factors specific to education and training programs in the workforce area. Local Workforce Development Boards (Boards) are in the best position, based on their knowledge of and experience with local training and education programs, to make policies regarding the criteria for determining whether the parent is making progress toward successful completion of the program.

Comment:

Commenters requested that if a parent is officially enrolled in the training or education program and meeting the program's attendance requirements, that should be sufficient documentation for a Board to determine that the parent is making progress toward program completion.

Response:

Boards have the flexibility within the rule to determine that being enrolled in and meeting attendance standards of the program would meet the Board standard for making progress toward completion of the program.

Comment:

A commenter requested clarification as to whether the parent would be eligible for the three-month continued care (described in §809.51) once the Board determines that the minimum threshold for making progress has not been met.

Response:

The requirement that the parent is making successful progress toward completion of the program is only applied at the 12-month eligibility redetermination. If the parent is determined as not meeting this requirement at redetermination, then the parent is not eligible for care for the next eligibility period (unless the parent meets other eligibility requirements regarding participation in work activities). The three-month period of continued care does not apply to parents who do not meet the eligibility requirements at the 12-month eligibility redetermination.

Comment:

One commenter supported the change to the definition of a "child with disabilities" to include the language change from "incapable of performing" to "substantially limits." The commenter also supported expanding the definition to include children who may not have a formal diagnosis but are "regarded to have a disability," as there are many reasons why a child may not have a formal diagnosis (e.g., the family does not have access to regular medical care) but would certainly benefit from additional support services.

Response:

The Commission appreciates the comment.

Comment:

One commenter requested that acceptable forms of documentation to verify impairments listed in the definition of a child with disabilities (if required) be specified in the Child Care Services Guide.

Response:

The definition is based on §504 of the Rehabilitation Act of 1973. The Agency will review documentation related to this Act and update the Child Care Services Guide accordingly.

Comment:

Commenters requested that the definition of a "family" align more closely with the WIOA definition, specifically to include the statement that the individuals are "living in a single household," as this would clarify the current practice in child care and match the WIOA definition. Another commenter stated that aligning the definitions would increase opportunities to streamline Board eligibility determination processes.

Response:

The Commission agrees and has modified the definition of a "family" to mirror, but not replicate, the definition of a family in WIOA. Consistent with the current child care practice of including all household dependents in the family, the amended rule language modifies the WIOA definition to include all household dependents, not just the children, in the definition of a family.

Comment:

Several commenters requested clarification regarding the inclusion of payments "for services not received" in the definition of "improper payments." The commenters stated that this appears to be in conflict with §809.93(b), which states that providers are reimbursed on authorized enrollment, not attendance. The commenters stated that "services not delivered" may be read to include payments for absences, which is required under §809.93(b).

Response:

Payment for enrollment is a requirement in the rule, and payment for absences is allowed as long as the child remains enrolled under a valid authorization for care. The Commission clarifies that the term "services not received" in the definition of "improper payments" is intended to cover instances in which payment is made to a provider without a valid authorization and care was not provided. Further, the definition of improper payment is also intended to apply to quality improvement activities. It would be considered an improper payment if payment is made for a quality activity, such as professional development or equipment, and the services or equipment were not delivered.

Comment:

One commenter supported the new definition of "child experiencing homelessness."

Response:

The Commission appreciates the comment.

Comment:

Several commenters requested that the rule language for a "child experiencing homelessness" include the statutory language from the McKinney-Vento Act for the definition of a child experiencing homelessness. The commenters stated that this would ensure consistent implementation of the definition. One commenter also requested that acceptable forms of documentation to verify compliance with the definition should be included in the Child Care Services Guide.

Response:

The Child Care Services Guide will provide a link to the pertinent section of the McKinney-Vento Act, but actual language from that statute will not be included in rule. Doing so would require keeping the Texas Administrative Code (TAC) updated with any changes to the McKinney-Vento Act. Providing a link to the most current citation will ensure that the most current definition is used.

Additional guidance regarding the definition of homelessness and determining eligibility for children experiencing homelessness will be provided in the Child Care Services Guide.

Comment:

One commenter strongly supported the removal of youth day camp providers from the definition of a "regulated child care provider," and, therefore, being ineligible to serve

subsidized children. The commenter commends the state on providing additional support and an extended timeline for these providers to become licensed through DFPS.

The commenter stated that ensuring the safety of all children, regardless of age and placement, by requiring an FBI fingerprint criminal background check for youth day camp staff is a responsible state policy. The commenter urges the Commission to consider extending FBI fingerprint criminal background checks to all child care providers, regardless of whether they serve subsidized children.

Response:

The Commission appreciates the comment. The Commission also notes that the CCDBG Act of 2014 requires FBI fingerprint background checks for all licensed, regulated, or registered child care providers (excluding eligible relatives), not just providers serving subsidized children.

Comment:

One commenter recommended adding definitions for both "temporary" and "nontemporary" regarding parent status changes in work, training, and education activities.

Response:

The Commission declines to make this change. Temporary changes are listed in §809.51(a)(2) and conform to the requirements in the proposed CCDF regulations. Nontemporary changes are clarified in §809.51(b) to be "a loss of work or cessation of attendance at a job training or educational program *that does not constitute a temporary change* in accordance with §809.51(a)(2)." If the status change is not a temporary change listed in §809.51(a)(2), then it would be considered a nontemporary change.

Comment:

One commenter recommended adding a definition for a "job training program," which is part of the eligibility criteria defined in §809.41(a)(3)(B), but is not defined, while the other two criteria--educational programs and working--are defined.

Response:

The Commission points out that "job training program" is defined in §809.2(12).

SUBCHAPTER B. GENERAL MANAGEMENT

The Commission adopts the following amendments to Subchapter B:

§809.13. Board Policies for Child Care Services

Section 809.13 is amended to remove the requirement in subsection (c) for Boards to submit policy modifications, amendments, or new policies to the Commission within two weeks of adopting the policy. This section retains the requirement that Boards submit Board policies to the Commission upon request. The additional requirement to submit changes to policies within a specific time frame is redundant. The Commission makes this change to reduce administrative burden on both Board and Agency staff. Section 809.13 is amended to remove multiple Board policy requirements that no longer apply under the CCDBG Act.

Consistent with the CCDBG Act 12-month eligibility period requirement, §809.13 is amended to remove the requirement for Boards to have a policy on frequency of eligibility determinations, as the frequency is now established under federal law.

Section 809.13 is amended to remove the option for Boards to have a policy to include provider eligibility for nonrelative-listed family homes. CCDBG Act §658E(c)(2)(K) requires annual unannounced inspections of all CCDF-subsidized providers for compliance with health, safety, and fire standards. Relative providers are exempt from this requirement. By state statute, listed family homes are not inspected by DFPS child care licensing (unless there is a report of abuse or neglect at the facility). Therefore, under the CCDBG Act, nonrelative listed family homes are not eligible to provide CCDF-subsidized services.

Section 809.13 is amended to remove the requirement that Boards establish policies for attendance standards in order to be consistent with CCDBG Act §658E(c)(2)(S), which requires that provider reimbursement policies support the fixed costs of providing child care services by delinking provider payments from a child's occasional absences. Attendance standards are established in amended §809.78, and reimbursement policies based on enrollments are established in §809.93.

Section 809.13 is amended to remove the requirement that Boards have procedures for imposing sanctions when a parent fails to comply with the provisions of the parent responsibility agreement (PRA). As explained in the changes to Subchapter D, the PRA is no longer a requirement.

Section 809.13 is amended to remove the requirement that Boards have a policy regarding the mandatory waiting period for reapplying or being placed on the waiting list. As explained in the changes to Subchapter C, the mandatory waiting period is no longer required.

Comment:

One commenter recommended that all of the required Board policies for child care services be removed from the rules and that the Agency standardize all child care rules and provide clear intent and implementation direction. In order to ensure equitable services be available to all parents, regardless of where the parent resides within the state of Texas, the commenter stated that the rules must be standardized and applied consistently across all Board areas.

Response:

The Commission declines this recommendation. The Chapter 809 Child Care Services rules provide for Agency oversight of the program in order to comply with federal and state laws and regulations and to ensure that the rules are applied consistently throughout the state. However, state statute requires that child care services be administered by Boards and requires that the Agency provide Boards with flexibility in administering workforce programs, including child care.

Comment:

One commenter strongly recommended that the Commission retain the requirement that Boards submit policy modifications, amendments, or new policies to the Agency within two weeks of adopting the policy.

The commenter contended that receiving notice of policy modifications after their adoption effectively removes all authority from the Agency to establish consistent standards. Removing a timeline for providing Board policies means that the state may be completely unaware of requirements for regulated child care providers for an extended period of time, including new policies that may be contradictory to federal or state law. Relying on the initiative of an individual Board to report changes or waiting for Agency staff to proactively ask about new policies is an unreliable system for compliance. Contrary to the Commission's interpretation, requiring a two-week standing deadline is not redundant to offering information only upon request.

While the commenter acknowledged there is an administrative responsibility that may be challenging, the risk of allowing inappropriate or possibly noncompliant policies to be implemented on a local level is much greater.

Response:

The Commission disagrees that receiving notification of policy changes after their adoption removes all authority from the Agency to establish consistent standards.

The Agency and the Agency's Child Care Technical Assistance staff review all Board policies prior to conducting technical assistance site visits. Additionally, the Agency's Subrecipient Monitoring department also reviews Board policies prior to monitoring visits. Agency staff participates in Board meetings, is aware of changes to Board policies as they occur, and responds appropriately and timely if the policies do not comply with Agency rules and policies. These routine activities are sufficient to meet the Agency's oversight responsibilities.

§809.15. Promoting Consumer Education

Section 809.15(b) is amended to clarify that consumer education information includes consumer education information provided on the Board's website.

Section 809.15(b)(4) is amended to remove the requirement that Boards include in consumer education information for parents a description of the school readiness certification system, as the program has been discontinued.

Information on Resources for Developmental Screening

CCDBG Act §658E(c)(2)(E)(ii) requires that states provide eligible parents with information on existing resources and other services in the state that conduct developmental screening and provide referrals to services, when appropriate, for children eligible for subsidized child care regarding:

- the Medicaid Early and Periodic Screening, Diagnosis, and Treatment program; and
- Early Childhood Intervention (ECI) and Preschool Program for Children with Disabilities developmental screening services.

Information on developmental screenings must also include a description of how a family or eligible child care provider can use available resources and services to obtain developmental

screenings for children receiving assistance who may be at risk for cognitive or other developmental delays, which may include social, emotional, physical, or linguistic delays.

NPRM §98.33(c) clarifies that the developmental screening information should be made available to parents as part of the intake process and to providers through training and education.

Consistent with CCDBG Act §658E(c)(2)(E)(ii) and NPRM §98.33(c), §809.15(b) is amended to add the requirement, pursuant to CCDBG Act §658E(c)(2)(E)(ii), that Boards include:

--information on resources and services available in the workforce area for conducting developmental screenings and providing referrals to services when appropriate for children eligible for child care services, including the use of:

- the Early and Periodic Screening, Diagnosis, and Treatment program under 42 U.S.C. 1396 et seq.; and
- developmental screening services available under Part B and Part C of the Individuals with Disabilities Education Act (20 U.S.C. 1419, 1431 et seq.); and
- a link to the Agency's designated child care consumer education website.

The Commission clarifies that Boards are not required to make referrals or to ensure that developmental screenings are conducted. The only requirement is that Boards provide information to parents regarding available local resources and developmental screenings.

Additional information and guidance regarding the manner in which information on developmental screenings is made available will be provided by the Agency through updates to the Child Care Services Guide. Additionally, the Agency is working with statewide training partners regarding making training and education on developmental screenings available to providers.

The Commission also notes that this provision does not affect the rules, policies, and procedures currently in place regarding approval of the inclusion rate pursuant to §809.20(e).

Consumer Education

CCDBG Act §658E(c)(2)(E) and NPRM §98.33 require that states collect and disseminate consumer education information to parents of eligible children, the general public, and, where applicable, providers regarding:

- availability of the full diversity of child care services;
- quality of providers;
- state processes for licensing, conducting background checks, and monitoring child care providers;
- other programs for which families that receive child care services may be eligible;
- research and best practices concerning children's development; and
- state policies regarding social-emotional behavioral health of children.

Additional information and guidance regarding the manner in which consumer education information is made available will be provided by the Agency through updates to the Child Care Services Guide, including guidance on:

- providing licensing compliance information;
- making consumer education information available in printed form; and

--ensuring consumer education information is accessible to both individuals with disabilities and individuals with limited English proficiency.

Additionally, NPRM §98.33(d) requires that parent consumer education include information on:

- licensing compliance information of the provider selected by the parent;
- how to submit a complaint regarding a child care provider;
- how to contact community resources that assist parents in locating quality child care; and
- how CCDF subsidies are designed to promote equal access to the full range of child care providers.

All consumer education required by the final CCDF regulations is available on the Texas Child Care Solutions website at www.texaschildcaresolutions.org.

Section 809.15 is amended to require that Boards provide a link to the Agency's designated child care consumer education website as part of the consumer education information provided to parents.

Comment:

Commenters requested additional information on how referrals for developmental screenings will be made and if a referral to 2-1-1 Texas would be sufficient. One commenter inquired whether the Agency will be providing the Boards with information on existing resources and services available within the workforce area for developmental screenings.

Response:

The Commission clarifies that there is no requirement that a referral for developmental screening is made. The rule language only requires that information be included in consumer education materials regarding resources and services for conducting developmental screenings, and providing referrals is included in consumer education materials. The information provided to parents will state how the parent can connect with the resources.

The Agency will provide information to Boards in the Child Care Services Guide on procedures for providing information to parents regarding screenings, including links to state websites and the option to provide printed materials. Additional information specific to resources in the workforce area should be provided by the Board.

§809.16. Quality Improvement Activities

Section 809.16 is amended to remove outdated CCDF regulatory citations. The current CCDF regulations are being amended by the U.S. Department of Health and Human Services and the NPRM language has changed citations for quality improvement activities and the use of CCDF for construction. Further, the list of allowable quality activities in the CCDF regulations has been expanded to include quality activities listed in the CCDBG Act. Section 809.16 removes the specific citations list of quality activities, and replaces it with the general reference for CCDF in 45 C.F.R., Part 98.

§809.17. Leveraging Local Resources

Section 809.17 is amended with language moved, without changes, from Subchapter C §809.42(c) related to public entities certifying expenditures for direct child care, as the language is more relevant to the local match process described in §809.17 than to eligibility for child care services described in §809.42(c).

Comment:

One commenter requested additional information on the expectations of how the public entity shall verify that children meet eligibility requirements.

Response:

The Commission notes that there are no changes to the rule provisions. Guidance regarding the requirements for local match is provided in Section C-202-a of the Child Care Services Guide.

§809.19. Assessing the Parent Share of Cost

Parent Share of Cost during the 12-Month Eligibility Period

To support continued care throughout the 12-month eligibility period, NPRM §98.21(a)(3):

- prohibits states from increasing the parent share of cost during the 12-month eligibility period, regardless of increases in the family income; and
- requires that states act upon information provided by the parent that would result in a reduction in the parent share of cost.

Consistent with the NPRM, §809.19(a) is amended to add the requirement that the parent share of cost is assessed only at the following times:

- Initial eligibility determination;
- 12-month eligibility redetermination;
- The addition of a child in care;
- Upon a parent's report of a change in income, family size, or number of children in care that would result in a reduced parent share of cost assessment; and
- Upon resumption of work, job training, or education activities following temporary changes described in §809.51(a)(2) and during the three-month continuation of care period described in §809.51(c).

In order to ensure compliance with the requirement in the NPRM that prohibits states from increasing the parent share of cost during the 12-month eligibility period, regardless of increases in the family income, the Commission adds §809.19(a)(1)(D), requiring Boards to ensure that the parent share of cost amount does not increase above the amount assessed at initial eligibility or at the 12-month eligibility redetermination, except upon the addition of a child in care as described in §809.19(a)(1)(C)(iii).

Additionally, the Commission amends §809.19(a)(2)(A) - (B) to clarify that parents participating in Choices or Supplemental Nutrition and Assistance Program Employment and Training (SNAP E&T), as well as a parent in Choices child care at §809.45 or SNAP E&T child care at §809.47, are exempt from the parent share of cost for the 12-month eligibility period.

Basing the Parent Share of Cost on the Cost of Care or Subsidy Amount

NPRM §98.45(k)(2) requires that the parent share of cost be based on income and the size of the family and may be based on other factors as appropriate, but may not be based on the cost of care or amount of the subsidy payment.

Section 809.19 is amended to remove the provision that the assessed parent share of cost must not exceed the Board's maximum reimbursement rate or the provider's published rate, whichever is lower. This provision is contrary to the requirement in the NPRM that the assessed parent share of cost must not be based on the cost of care or the amount of the subsidy payment.

The parent share of cost must only be based on the following factors:

--the family's size and income; and

--may also consider the number of children in care and parent selection of a provider certified by the Texas Rising Star (TRS) program, as described in §809.19(a)(1)(B).

The Commission retains the rule language in §809.19(d) that allows Boards to review the assessed parent share of cost for possible reduction if there are extenuating circumstances that jeopardize a family's self-sufficiency. However, this reduction shall not be based on the Board's maximum reimbursement rate or the provider's published rate.

The Commission notes that the current rules at §809.19(d) allow Boards to review the assessed parent share of cost for possible reductions if there are extenuating circumstances that jeopardize a family's self-sufficiency. Extenuating circumstances include unexpected temporary costs such as medical expenses and work-related expenses that are not reimbursed by the employer. The Commission is aware that some Boards may allow a limited number of these reductions during the eligibility period. Such policies are still allowed, but Boards must ensure that the parent share of cost is reduced any time the parent reports a change in income, family size, or number of children in care that would result in a reduced parent share of cost.

The Commission further notes that amended §809.73 requires that parents report such changes within 14 calendar days of the change. Changes in the parent share of cost should be made at the beginning of the month following the reported change. If the parent does not report the change within that time period, the Board is not required to make the change retroactive from the actual date of the reduction.

The Commission is also aware that some Boards reduce the parent share of cost for a limited period of time during the initial eligibility period in order to assist the parent, particularly newly employed parents, with the parent share of cost. This remains an allowable practice under §809.19(d) regarding a reduction of the assessed parent share of cost. After this initial reduction, the parent share of cost may be regularly assessed based on the family size and income and number of children in care, as required by §809.19(a)(1)(B).

Exemptions for Parents of Children Experiencing Homelessness

CCDBG Act §650E(3)(B)(i) and NPRM §98.46(a)(3) and §98.51 require that states give priority for services to children experiencing homelessness. The NPRM preamble clarifies that Lead Agencies have flexibility as to how they offer priority to these populations, including by prioritizing enrollment, waiving copayments, paying higher rates for access to higher-quality care, or using grants or contracts to reserve slots for priority populations.

Section 809.19(a)(2) is amended to require that parents of a child receiving child care for children experiencing homelessness described in §809.52 be exempt from the parent share of cost.

The Commission emphasizes that pursuant to §809.19(e), the Board or its child care contractor shall not waive the assessed parent share of cost unless the parent is covered by an exemption specified in §809.19(a)(2).

Parent Share of Cost Incentives to Consider Selection of a TRS-Certified Provider

NPRM §98.30(h) includes provisions designed to provide parents with incentives that encourage the selection of high-quality child care without violating parental choice provisions. The NPRM provides states with flexibility in determining what types of incentives to use to encourage parents to choose high-quality providers, including the option to lower the parent share of cost for parents who choose a high-quality provider.

Consistent with NPRM §98.30(h) and to encourage parents to select a TRS-certified provider, and, thus, encourage greater provider participation in the TRS program, the Commission adds §809.19(g) to allow Boards to reduce the assessed parent share of cost amount based on the parent's selection of a TRS-certified provider.

If a Board elects to have such a policy, the policy must ensure that the parent continues to receive the reduction if:

- the TRS provider loses TRS certification; or
- the parent moves or changes employment within the workforce area and no TRS-certified providers are available to meet the needs of the parent's changed circumstances.

However, the policy must also ensure that the parent no longer receives the reduction if the parent voluntarily transfers the child from a TRS-certified provider to a non-TRS-certified provider.

Comment:

Several commenters requested clarification regarding the requirements surrounding reductions in the assessed parent share of cost amount.

Several Boards requested that the reduction of the parent share of cost during a three-month continuation of care period after the nontemporary employment loss be considered a temporary reduction and the parent share of cost be reassessed if the parent resumes activities during the three-month period.

Similarly, several Boards requested to reassess a parent share of cost when the parent resumes activities following a temporary loss of employment. This is not stated in the proposed rule change. Without the ability to reassess the parent share of cost upon gaining new employment or resuming the parent share of cost originally established, the parent share of cost would remain at the reduced amount through the remainder of the eligibility period.

Response:

The Commission has added clarification language at §809.19(a)(1)(C)(v) to allow for a reassessment of the parent share of cost upon the resumption of work, job training, or education activities following temporary changes described in §809.51(a)(2) and following nontemporary changes described in §809.51(c).

However, in order to ensure compliance with the requirement in NPRM that prohibits states from increasing the parent share of cost during the 12-month eligibility period, regardless of increases in the family income, the Commission adds §809.19(a)(1)(D) requiring Boards to ensure that the parent share of cost amount does not increase above the amount assessed at initial eligibility or at the 12-month eligibility redetermination, except upon the addition of a new child in care.

Comment:

Several commenters requested clarification regarding whether or not reductions made for extenuating circumstances are required to be permanent for the remainder of the eligibility period. The commenters recommended that reductions in parent share of cost due to extenuating circumstances in §809.19(d) be temporary and that the parent share of cost return to its previous rate once the extenuating circumstances no longer exist.

Response:

The Commission agrees and has modified the language in §809.19(d) to clarify that the reductions due to extenuating circumstances are temporary and that following the temporary reduction, the parent share of cost amount immediately prior to the temporary reduction shall be reinstated.

Comment:

One commenter suggested that the language in §809.19(a)(1)(C)(iii) regarding the amount added to the parent share of cost upon the addition of a child in care should read "an additional amount for the family" instead of an additional amount "for the child."

Response:

The Commission has modified the language in §809.19(a)(1)(C)(iii) to streamline the rules by stating that the reassessment is done upon the addition of a child in care.

Comment:

Several commenters requested clarification on the parent share of cost reduction based on the parent's selection of a TRS-certified provider. In light of the requirement that the assessed parent share of cost amount cannot increase during the eligibility period, the commenters asked if the reduction would continue if the parent transfers to a non-TRS-certified provider.

Response:

The Commission appreciates the comment and has made changes to the proposed rule language to add §809.19(g) to clarify the requirements for TRS parent share of cost reduction.

The Commission has removed the proposed language that the selection of a TRS provider is a factor in the parent share of cost assessment. Instead, the rule language in §809.19(g)

is intended to clarify that the selection of a TRS provider would be, at the Board's option, a reduction of the amount of the parent share of cost assessed in §809.19(a)(1).

The parent would continue to receive the applicable TRS reduction through the end of the eligibility period, if during the 12-month period, the TRS provider selected by the parent loses TRS certification, or the parent moves or changes employment and no TRS providers are available to meet the needs of the parent's changed circumstance.

However, if the parent voluntarily transfers the child from a quality provider to a non-quality provider, then the parent would no longer be eligible for the TRS reduction.

Comment:

As will be discussed in §809.45, regarding Choices child care, and §809.47, regarding SNAP E&T child care, several commenters requested clarification regarding the parent share of cost exemption for parents participating in Choices and SNAP E&T.

Commenters suggested ending the exemption from the parent share of cost once the parent stops participating in Choices or SNAP E&T.

Additionally, several commenters requested that the parent share of cost exemption for parents of children experiencing homelessness should end and a parent share of cost be assessed if the parent becomes employed or is otherwise eligible for At-Risk child care, following the initial three-month eligibility period for homeless children.

Response:

Consistent with the NPRM requirement §98.21(a)(3) that prohibits states from increasing the parent share of cost during the 12-month eligibility period, regardless of increases in the family income, the exemption from the parent share of cost for parents in Choices child care at §809.45 and SNAP E&T child care at §809.47 must continue during the 12-month eligibility period.

Accordingly, the Commission has modified §809.19(a)(2)(A) - (B) to clarify that parents participating in Choices or SNAP E&T, as well as parents in Choices child care at §809.45 or SNAP E&T child care at §809.47, are exempt from the parent share of cost. This change clarifies that the parent share of cost exemption is retained throughout the eligibility period, even if the parent's participation in these programs changes.

Similarly, the Commission has also modified §809.19(a)(2)(C) to state that parents with children receiving child care for children experiencing homelessness, as described in §809.52, are exempt from the parent share of cost. This change clarifies that the parent share of cost exemption is retained throughout the eligibility period, even if the child's homelessness status changes.

Comment:

One commenter strongly supported the option for Boards to consider the parent selection of a TRS-certified provider in assessing the parent share of cost. Reducing the parent share of cost, along with increasing the provider's payment rate for selection and participation in the TRS program, are effective strategies to encourage parents to select a TRS-certified provider and to encourage greater provider participation in the TRS

program. The commenter encouraged the Commission to consider extending this as a requirement for all Boards. The commenter also strongly urged the Commission to ensure Boards secure funding to set their TRS-certified provider reimbursement rate bonus at a level that accommodates any reduction in the parent share of cost without reducing eligibility or creating a waiting list.

Response:

The Commission appreciates the support. However, the Commission declines to require this of all Boards. The decision to include the TRS parent share of cost reduction should remain a local decision as determined by the Board--taking into consideration the need for such an incentive and the availability of funds at the local level.

Comment:

One commenter recommended that the Commission clarify in the rule language that the Board's consideration of parent selection of a TRS-certified provider result in the reduction of the parent share of cost, as intended by the Commission's rule explanation of NPRM §98.30(h). The current proposed rule language leaves the interpretation of "consider" too vague.

Response:

The Commission appreciates the comment and, as explained previously, the Commission has modified the language and added §809.19(g) to clarify that this is a reduction in the assessed parent share of cost, at the Board's discretion.

Comment:

One commenter disagreed that the selection of a TRS-certified provider as a consideration in the parent share of cost assessment will encourage providers to participate in the TRS program. Providers are required to collect the parent share of cost at the beginning of the month, and reducing the amount collected at the beginning of the month will not encourage providers to become TRS-certified. The commenter recommended that if the parent share of cost is reduced for selecting a TRS provider, then the TRS provider should be reimbursed at the beginning of the month based on the enrollment authorization.

Response:

The Commission's intent is for Boards, at their option, to provide incentives for parents to choose a TRS-certified provider, and, as a result, encourage more providers to become TRS certified in order for the parent to take advantage of this incentive.

The Commission understands the payment issue described by the commenter and notes that amendments to §809.93 change reimbursements from being based on daily attendance to being based on authorized monthly enrollments. The Commission declines to provide reimbursements prior to the delivery of services under that authorization to account for instances in which the authorization may change during the week or month. This is also consistent with the general principle that reimbursements using public funds occurs following the delivery of services.

Comment:

One commenter requested that the Commission allow Boards to waive the parent share of cost for families at or below 100 percent of the federal poverty guidelines, as allowed under the CCDF regulations. This would align with income limits for Early Head Start and Head Start and would help Boards coordinate with local partners in providing "wraparound care" for families.

Response:

Pursuant to §809.19(e), the Commission has waived the parent share of cost only to parents in an exempted group in §809.19(a)(2). However, the requirement that the parent share of cost be a sliding fee scale based on income and family size is intended to result in the parent share of cost amount starting at a low amount for families with very low incomes and gradually increase as the family moves to higher income ranges for the same family size. Families at or below 100 percent of poverty would have a lower parent share of cost than families at higher income ranges. Additionally, pursuant to §809.19(f), families whose income is calculated to be zero shall have a zero parent share of cost.

Comment:

One commenter did not agree with prohibiting increases in parent share of cost if a parent or family experiences an income increase during the eligibility period.

Response:

The Commission notes that the rule reflects requirements in the NPRM. The intent of the rule is described in the preamble to the NPRM as follows:

The limitation on raising copayments, by protecting the child's benefit level for the minimum 12-month eligibility period, is consistent with the statutory requirement that once deemed eligible, a child shall 'receive such assistance for not less than 12 months.' Raising copayments earlier than the 12-month period could potentially destabilize the child's access to assistance and has the unintended consequence of forcing working parents to choose between advancing in the workplace and child care assistance.

Comment:

Several commenters requested clarification regarding current Board policies that allow for reductions in the parent share of cost based on factors other than the selection of a TRS-certified provider. Specifically, the commenters inquired whether the Boards are allowed to reduce the assessed parent share of cost based on the level of care authorized (e.g., part-day or part-week).

Response:

Pursuant to §809.19(a)(1)(B), the amount of the parent share of cost, including any reduction pursuant to §809.19(a)(1)(C)(iv), due to changes during the eligibility period, is determined by a sliding fee scale based on the family's size and gross monthly income and may also take into consideration the number of children in care. Those are the only factors allowed to determine the amount of the parent share of cost.

Reductions to that assessed amount are only allowed if the reduction is:
--temporary due to extenuating circumstances (§809.19(d)); or

--based on the selection of a TRS-certified provider (§809.19(g)).

NPRM §98.45(k)(2) prohibits the parent share of cost from being based on the cost of care or the subsidy amount. Basing the parent share of cost on the level of services would be considered as basing the parent share of cost on the cost of care or the subsidy amount.

Reductions for "part-day" and "part-week" care do not meet the intent of the NPRM or §809.19(d) (regarding reductions due to extenuating circumstances), as these reductions are based on the level of services, and not based on family income, family size, number of children in care, temporary extenuating circumstances, or the selection of a TRS provider, as required in the rule. Therefore, these reductions are not allowable.

As mentioned in the explanation on the rule changes, the Commission amended §809.19 to remove the provision that the assessed parent share of cost must not exceed the Board's maximum reimbursement rate or the provider's published rate, whichever is lower. This provision is contrary to the requirement in the NPRM that the assessed parent share of cost must not be based on the cost of care or the amount of the subsidy payment.

The Commission acknowledges that this type of reduction was allowed previously; however, upon review of the rules that have been in place, these reductions do not conform to the requirements in the NPRM.

Comment:

Many commenters expressed concerns regarding parents who may fail to pay the parent share of cost as terminating care because the failure to pay the parent share of cost is no longer allowed during the eligibility period. Commenters inquired if Boards may continue to have a policy that limits transfers to another provider if the parent owes a parent share of cost at the current provider. The commenters expressed concerns that parents should be held responsible during the eligibility period for failure to pay the parent share of cost.

Commenters expressed concerns that the only option to enforce the parent share of cost would be to require Boards to have a policy that reimburses the provider, and the parent would not be allowed back into care at the 12-month eligibility redetermination until the amount is repaid.

One Board requested consideration to use a suspension process when parents do not pay their assigned parent share of cost, similar to the suspensions allowed for excessive absences. The Board does not want to pay the parent share of cost to the provider when the parent does not pay, as the Board believes this will be setting a negative precedent. The Board specifically requested to be allowed to withhold a transfer or suspend care until the parent has paid the parent share of cost to the provider in full.

Response:

Boards may prohibit transfers or allow a certain number of transfers if a parent is not current on the parent share of cost, as long as it does not have the effect of terminating

care during the 12-month period. A Board cannot terminate care during the eligibility period for a parent's failure to pay the parent share of cost.

Providers should report timely for failure to pay the parent share of cost, and Board child care contractors should work with parents to determine why the payments are not being made and possibly temporarily reduce the parent share of cost if necessary.

Pursuant to §809.13(c)(3), at their option, Boards may choose to have a policy to reimburse the provider when a parent fails to pay the parent share of cost. Where the Board has such a policy, pursuant to §809.117(d)(3), the Board must recoup the costs at the next eligible determination. Where a parent fails to fully repay the cost, the parent is not eligible until the repayment is made, pursuant to §809.117(e).

To ensure continuity of care for children and to assist working parents with child care, suspensions should only occur in instances in which the parent determines that care is not needed for a temporary amount of time (such as temporary interruptions in activities, or other reasons as determined by the parent that may affect the child's continued attendance). However, failure to pay the parent share of cost is not a reason for the child care contractor to suspend care, as it is not a factor in demonstrating that care is not needed for a temporary amount of time.

As explained in §809.51, regarding care during interruptions in activities, the preamble to the NPRM notes that, consistent with §658E(c)(2)(N)(i) of the CCDBG Act, "during the minimum 12-month eligibility period Lead Agencies also may not end or suspend child care authorization or provider payments due to a temporary change in a parent's work, training, or education status." Consistent with this guidance, a Board or a Board child care contractor cannot suspend a child's care for the parent's failure to pay the parent share of cost.

Comment:

One commenter inquired if a provider is allowed to end enrollment at the provider's facility if a parent fails to pay the parent share of cost and if those practices are in the provider's established policies.

Response:

Yes, a provider may discontinue care at the provider's facility, consistent with established policies related to parents who do not pay for the services provided. However, this must not result in the contractor's termination of the child's eligibility for the subsidy during the 12-month eligibility period.

Comment:

One commenter inquired if a new redetermination is conducted and a new parent share of cost assessed if the parents get married, have a baby, or add a sibling to care.

Response:

Pursuant to §809.42, family eligibility can only be redetermined at the 12-month eligibility period. Changes in family composition or the addition of a child in care are not factors in eligibility redetermination. If the changes result in a change in family size that would result in a reduced parent share of cost, then such reduction must be made.

However, the parent share of cost cannot be increased based on the increase in income during the 12-month period. The addition of a new baby or sibling to care would constitute a change to the number of children to which the parent share of cost is applied. Additional guidance on how to apply the parent share of cost for changes in family size amount added for the child will be provided in the Child Care Services Guide.

Comment:

One commenter requested clarification regarding the phrase in the preamble that the parent share of cost may be based on "other factors as appropriate."

Response:

This is CCDF regulatory language quoted in the preamble. In Chapter 809 rules, "other factors as appropriate" are set out in §809.19(a)(1)(B) regarding the number of children in care.

Comment:

One commenter inquired if parents with currently enrolled children will be able to request their parent share of cost to be reduced due to new exclusions of income sources in §809.44. The commenter suggested parents must wait until January 1, 2017, to request a parent share of cost to be reevaluated or until significant status change occurs or the case comes up for review. This will assist Board contractor staff in managing workload. Otherwise, there will be a significant need for overtime in order for all these cases to be processed timely due to the majority of parents who receive some other income besides income received from work.

Response:

The income calculation in §809.44 is used to determine family income at the following points:

- Initial eligibility determination;
- 12-month redetermination; and
- When a parent reports a change in income that would result in a lower parent share of cost or result in the family exceeding 85 percent of SMI.

Beginning on October 1, 2016, the new income calculation methodology for continued eligibility and the parent share of cost assessment will be used at the family's scheduled redetermination. Upon the effective date of the rules, parents with children currently enrolled in care may report a change in family income or family size that could result in a reduction of the parent share of cost, and the parent share of cost will be calculated under the new income calculation guidelines. At their discretion, Boards may determine whether to consider a reevaluation of family income or family size as a redetermination. If Boards choose to do so, the requirements of §809.42 apply.

Comment:

One commenter pointed out that the reference to §809.54(c)(1) in the proposed §809.19(a)(2)(D) is incorrect.

Response:

The Commission appreciates the comment and agrees. This was an error in the proposed rules. The reference should be to §809.54(c), as paragraph (1) has been removed from the final rules.

§809.20. Maximum Provider Reimbursement Rates

Section 809.20(b) is amended to remove the requirement that Boards establish enhanced reimbursement rates for preschool-age children at providers that obtain school readiness certification, as the school readiness certification system has been discontinued.

Section 809.20(c) is amended to remove the September 1, 2015, effective date for the TRS tiered reimbursement rates as these requirements are currently in effect.

Section 809.20(d) is amended to clarify in rule language the current requirement and practice that there must be a two percentage point difference between the TRS star levels.

Comment:

One commenter pointed out that the reference to §809.93(e) in the proposed §809.20(a) is incorrect.

Response:

The Commission appreciates the comment and agrees. This was an error in the proposed rules. The reference should be to §809.93(f), and this has been corrected in the final rules.

SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES

The Commission adopts the following amendments to Subchapter C:

§809.41. A Child's General Eligibility for Child Care Services

CCDBG Act §658E(c)(2)(N)(i) requires that each child who receives CCDF assistance be considered to meet all eligibility requirements and receive assistance for not less than 12 months before eligibility redetermination. NPRM §98.20 clarifies that general eligibility requirements are applicable "at the time of eligibility determination or redetermination."

Consistent with CCDBG Act §658E(c)(2)(N)(i) and NPRM §98.20, §809.41 is amended to add language clarifying that a child's general eligibility requirements--i.e., child's age, citizenship status, and residency, and the family's income, work status, and attendance in a job training or educational activity--are applied at the time of eligibility determination or redetermination. Changes to the child's age or residency, the family's income, participation in work, job training, or education activities that occur during the 12-month eligibility period and affect the child's continued care and eligibility are covered in §809.42.

The CCDBG Act revised the definition of eligibility at §658P(4)(B) so that, in addition to being at or below 85 percent of SMI for a family of the same size, the "family assets do not exceed \$1,000,000 (as certified by a member of such family)." This requirement is included in NPRM §98.20(a)(2)(ii).

Section 809.41(a)(3)(A) is amended to include this requirement and clarify that a family member must certify that the family assets do not exceed the \$1,000,000 threshold. This certification will

be based on the parent's self-attestation and will be included in the application for services. Boards are not required to verify this certification; however, if it is discovered that the family may exceed the \$1 million asset threshold, the parent may be subject to fraud fact-finding procedures, as described in Subchapter F. Additional guidance will be provided in the Child Care Services Guide.

As mentioned previously, CCDBG Act §650E(3)(B)(i) and NPRM §98.46(a)(3) and §98.51 require states to give priority for services to children experiencing homelessness. The NPRM preamble clarifies that Lead Agencies have flexibility as to how they offer priority to this population.

Consistent with this requirement, §809.41(a)(2)(A) is amended to include language that families meeting the definition of experiencing homelessness in §809.2 are considered as having income that does not exceed 85 percent of SMI. Therefore, Boards are not required to conduct income eligibility determinations for families with a child experiencing homelessness.

Section 809.41 is amended to remove subsection (d) related to job search limitations. Continued child care for job search is described in §809.51.

CCDBG Act §658E(c)(2)(N)(iv) requires Lead Agencies to have a "Graduated Phaseout of Eligibility" that includes policies and procedures to continue child care assistance at the time of redetermination for children of parents who are working or attending a job training or educational program and whose income has risen above the Lead Agency's initial income eligibility threshold to qualify for assistance but remains at or below 85 percent of SMI.

NPRM §98.21(b) provides two options for states to use for the CCDBG Act's graduated phaseout requirement. The phaseout can be accomplished either by:

- establishing a second tier of eligibility at 85 percent of SMI if the parents, at the time of redetermination, are working or attending a job training or educational program, even if their income exceeds the initial income limit; or
- using the approach specified above, but only for a limited period of not less than an additional 12 months.

Section 809.41 is amended to add language requiring that Boards that establish initial family income eligibility at a level less than 85 percent of the SMI must ensure that the family remains eligible for care after passing the Board's initial income eligibility limit, up to 85 percent of SMI.

This language is consistent with NPRM §98.21(b)(1)(i), which provides the option to require that the family remain income-eligible for care after passing the initial income eligibility limit, including at the family's scheduled 12-month eligibility redetermination, as long as the family income does not exceed 85 percent of SMI.

In determining whether the family exceeds 85 percent of SMI, the Board shall use income calculation methodology and guidance that take into consideration fluctuations of income pursuant to §809.44(a).

The Commission notes that Boards are not required to establish initial family income eligibility at a level less than 85 percent of the SMI. The graduated phaseout requirements only apply to Boards that have established income eligibility thresholds pursuant to §809.41(a) that are less than 85 percent of the SMI. Boards are reminded that the establishment of income eligibility thresholds must be done in accordance with requirements for Board approving policies in an Open Meeting.

Comment:

Two commenters inquired if there is a federal requirement that WIOA-funded child care follow requirements in the CCDBG Act and the NPRM. The comments stated that Boards should be allowed to use WIOA funds for child care services without requiring the 12-month eligibility if the WIOA customer ends WIOA participation.

Response:

The Commission appreciates the comment and has amended §809.41 to add paragraph (f) to state that Subchapter C applies only to child care services using CCDF allocated by the Agency pursuant to its allocation rules at Chapter 800 General Administration rule §800.58, and local public transferred funds and local private donated funds described in §809.17.

Comment:

One commenter requested clarification regarding the provision in §809.41(c) related to time limits for child care if the parent is enrolled in an associate's degree program that will prepare the parent for a job in a high-growth, high-demand occupation as determined by the Board. The commenter suggested that this language be changed to read a "postsecondary degree program" and not specify the degree, as there is no Agency definition for what constitutes a high-growth, high-demand occupation. Additionally, the commenter asked what happens to eligibility if a parent is meeting eligibility requirements in one workforce area with his or her enrollment in an educational program but moves to another area and no longer meets eligibility due to a program/occupation not being on the new Board's list, since high-growth, high-demand occupation lists can vary significantly across the state. The commenter also requested clarification to confirm that students' career fields no longer will need to be attached to a targeted or demand occupation list.

Response:

The Commission declines to make the requested changes. To clarify, there is no requirement in Chapter 809 that a student's career field must be attached to a target or demand occupation in order to be eligible for child care services. However, a Board may choose to have a local policy that places this restriction as a condition of eligibility pursuant to §809.41(b) and §809.41(c), which require four years of eligibility if the parent is enrolled in such a degree program.

Section 809.41(b) allows Boards to establish policies for the provision of child care, including time limits, for the provision of child care services while the parent is attending an educational program. Section 809.41(c) requires that the time limits must ensure child care for four years if the parent is enrolled in a high-growth, high-demand occupation as determined by the Board. However, the provisions in §809.41(b) - (c) do not require

parents to be in such a program leading to a high-growth, high-demand, or targeted occupation, absent a local policy placing this restriction.

Regarding the issue of a parent with an enrolled child moving to a workforce area that has a different educational requirement for eligibility, the educational eligibility requirement of the new Board can only be applied at the parent's scheduled 12-month redetermination.

§809.42. Eligibility Verification, Determination, and Redetermination

Section 809.42 is amended to include rule provisions related to eligibility verification, determination, and redetermination consistent with the CCDBG Act.

Section 809.42(a) is amended to emphasize that a Board shall ensure that all eligibility requirements for child care are verified prior to authorizing care. Due to the requirement in CCDBG Act §658E(c)(2)(N)(i) that each child who receives CCDF assistance will be considered to meet all eligibility requirements and will receive assistance for not less than 12 months before the eligibility is redetermined, it is critical that eligibility is properly and accurately verified prior to authorizing care.

Consistent with CCDBG Act §658E(c)(2)(N)(i) and NPRM §98.21, amended §809.42(b) requires that Boards ensure that eligibility for child care services shall be redetermined no sooner than 12 months following the initial determination or most recent redetermination.

Comment:

Several commenters strongly supported the establishment of a 12-month eligibility period. One commenter stated that this supports continuity of care for children while allowing for wage growth for families on a path toward economic stability.

Response:

The Commission appreciates the comment.

Comment:

One commenter expressed concern that the 12-month eligibility period in §809.42 will result in fewer children receiving child care services in Texas and across the nation unless there is additional funding for the child care portion of services. The result will be an increase in an already long waiting list for services. The commenter understands that this eligibility period is a requirement of the CCDBG Act; however, there may be unintended consequences that affect the ability to realistically move people back into the workforce.

Response:

The Agency agrees that the changes are required due to the changes in the CCDBG Act, and the Agency provided comments to the U.S. Department of Health and Human Services Administration for Children and Families (ACF) on the potential impact to the number of children in care. The Agency will very closely monitor the impact of the 12-month eligibility period on the number of children served and associated costs and any other unintended consequences.

Comment:

One commenter stated that leaving the recertification requirement open ended to occur not before 12 months, and not defining an absolute requirement for Board or contractor actions within a certain time period, Boards and contractors could be left open to an arbitrary assignment of improper payment based on failure to conduct due diligence.

Response:

The CCDBG Act and the NPRM clearly state that once a child is determined eligible, the child is assumed to be meeting the eligibility requirements for the 12-month eligibility period. Additionally, the NPRM clarifies that payments made during the eligibility period shall not be considered as improper payments due to a change in the family's circumstances. Agency rules further state that recoupments from the parents should only occur for instances in which eligibility was determined on information fraudulently reported or misreported.

With these guidelines in mind, it is important that the Board ensures that contractors continue to conduct due diligence for determining eligibility at the beginning of the eligibility period.

Additionally, the Agency will work with the Boards to develop data analysis tools and reports to assist Boards in identifying potential changes in a parent's ongoing eligibility during the 12-month period.

Comment:

Many commenters requested clarification regarding the language that eligibility for child care services shall be redetermined "no sooner than 12 months following the initial determination or most recent redetermination." Commenters stated that the language is unclear if eligibility redetermination needs to occur during the 12th month of care or the 13th month of care. One commenter acknowledged that this language matches the language used in the NPRM, however, recommended clarifying that the redetermination process occurs prior to the end of the 12th month with an effective redetermination date after the 12th month. Two commenters recommended that the contractors be allowed to initiate the eligibility redetermination process prior to the end of the 12th month of eligibility, with any changes effective the day following the end of the 12th month of eligibility.

Response:

The rule language is identical to the language in the proposed CCDF regulations and CCDBG Act. The Commission agrees that the process for redetermining eligibility should begin prior to the end of the 12-month period and the actual redetermination decision should be made prior to the end of the 12-month eligibility period. However, if the parent is determined ineligible prior to the end of the eligibility period, then care shall continue through the end of the 12-month eligibility period. The time frame for beginning the redetermination process is determined by the Board. However, the time frame and deadlines for parents should ensure that sufficient time is allowed for parents to complete the eligibility process, and allow for the required 15-day notification of

termination prior to the end of the current eligibility period (if the parent is determined ineligible).

The Commission also notes that CCDBG Act §658E(c)(2)(N)(ii) requires states to certify that parents ". . . are not required to unduly disrupt their employment in order to comply with the State's or designated local entity's requirements for redetermination."

Additional operational guidance regarding the redetermination process will be provided in the Child Care Services Guide.

§809.43. Priority for Child Care Services

Consistent with CCDBG Act §650E(3)(B)(i) and NPRM §98.46(a)(3) and §98.51, which require states to give priority for services to children experiencing homelessness, the Commission amends §809.43 to add children experiencing homelessness as a second priority group served, subject to the availability of funds. This priority group will follow the three priority groups in state statute--children in protective services, children of a qualified veteran or spouse, and children of foster youth.

Comment:

One commenter pointed out that the Sunset Review directs the Agency to study potential methods of providing incentives for parents participating in the child care subsidy program to choose providers with a TRS quality designation and include the results in its 2017 report to the legislature. The commenter recommended incentivizing parents to choose quality-rated programs by placing them on a priority wait list and when space is available at one of these programs, parents may choose a program with the commitment to keep their child in that program for at least six months. Program types would include TRS quality-rated programs and programs participating in the Early Head Start--Child Care Partnership grant.

Response:

The Commission thanks for the commenter for the suggestion. The Agency will take this under consideration as part of the study on providing incentives to parents to choose quality care.

Comment:

One Board recommended adding language to clarify that priority as defined in this section is applicable at initial enrollment. Otherwise, the language regarding service being subject to the availability of funds for the second priority group appears to contradict the 12-month eligibility period. The commenter inquired if "subject to the availability of funds" gives Boards the authority to terminate services for families in the second priority group during the 12-month eligibility period if funding is not available.

Response:

The Commission clarifies that the CCDBG Act requires that care shall continue through the 12-month eligibility period unless the family has a permanent end of employment, job training, or education participation of three months. Additionally, Continuity of Care rules at §809.54(b) state, "Nothing in this chapter shall be interpreted in a manner as to result in a child being removed from care." Boards should closely monitor funding levels

prior to opening enrollment to new initial eligibility determinations. Additionally, the Agency will work with the Boards to develop data analysis tools and reports to assist Boards in projecting enrollments and managing funds in order to ensure that care for enrolled children is not discontinued due to the unavailability of child care funds.

Comment:

The Board recommends that §809.43(a)(2) be reworded to read, "The second priority group is served subject to the availability of funds and includes, in the following order of priority..." in order to ensure clarity of the intent that the priority groups outlined in the second priority group Item 2 be served in the order listed in the rule.

Response:

The Commission declines to make the change in rule language; however, the Child Care Services Guide will clarify the order of the priority group.

Comment:

One commenter requested that The Workforce Information system of Texas (TWIST) be changed to track local priorities.

Response:

The Agency will review the feasibility of making this change in TWIST.

§809.44. Calculating Family Income

CCDBG Act §658E(c)(2)(N)(i)(II) and NPRM §98.21(c) require that states take into consideration irregular fluctuations of earnings when calculating income for eligibility. The NPRM further clarifies this requirement by adding that the calculation of income policies ensures that temporary increases in income, "including temporary increases that result in monthly income exceeding 85 percent of SMI (calculated on a monthly basis), do not affect eligibility or family co-payments."

Section 809.44(a) is amended to reflect these new requirements. The rule language requires that Boards ensure family income is calculated in accordance with Commission guidelines. Consistent with the CCDBG Act, rule language also requires that Commission guidelines: --take into account irregular fluctuations in earnings; and --ensure that temporary increases in income, including temporary increases that result in monthly income exceeding 85 percent SMI, do not affect eligibility or parent share of cost.

A standard and uniform methodology applied consistently across all 28 workforce areas is important to ensure that the state is meeting the requirements of the CCDBG Act regarding fluctuations of income. Moreover, statewide consistency is important because child care is also required to continue if a parent moves to another workforce area.

The Commission will be developing guidelines to align income calculation methodology with federal program guidance regarding fluctuations in earnings. The guidance will include, but not be limited to, the following:

- Income documentation requirements at initial eligibility that may differ from requirements at redetermination;
- Documentation requirements for gaps in income;

- Calculation of bonuses received during the 12-month eligibility period;
- The methodology and documentation used to determine family income for changes reported during the 12-month eligibility period; and
- The methodology and documentation used to determine family income for parents who resume work, training, or education during the three-month period of nontemporary cessation of activities.

Section 809.44(b) is amended to provide an updated itemized list of income sources that are specifically excluded from determining family income. This list includes income sources that are specifically excluded by various federal laws or regulations in determining eligibility for public assistance programs, including CCDF, as well as income sources that are excluded by the WIOA adult program.

The specific exclusions are:

- Medicare, Medicaid, SNAP benefits, school meals, and housing assistance;
- Monthly monetary allowances provided to or for children of Vietnam veterans born with certain birth defects;
- Needs-based educational scholarships, grants, and loans, including financial assistance under Title IV of the Higher Education Act--Pell Grants, Federal Supplemental Educational Opportunity grants, Federal Work Study Program, PLUS, Stafford loans, and Perkins loans;
- Individual Development Account (IDA) withdrawals for the purchase of a home, medical expenses, or educational expenses;
- Onetime cash payments, including tax refunds, Earned Income Tax Credit (EITC) and Advanced EITC, onetime insurance payments, gifts, and lump sum inheritances;
- VISTA and AmeriCorps living allowances and stipends;
- Noncash or in-kind benefits such as employer-paid fringe benefits, food, or housing received in lieu of wages;
- Foster care payments and adoption assistance;
- Special military pay or allowances, including subsistence allowances, housing allowances, family separation allowances, or special allowances for duty subject to hostile fire or imminent danger;
- Income from a child in the household between 14 and 19 years of age who is attending school;
- Early withdrawals from qualified retirement accounts specified as hardship withdrawals as classified by the Internal Revenue Service (IRS);
- Unemployment compensation;
- Child support payments;
- Cash assistance payments, including Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), Refugee Cash Assistance, general assistance, emergency assistance, and general relief;
- Onetime income received in lieu of TANF cash assistance;
- Income earned by a veteran while on active military duty and certain other veterans' benefits, such as compensation for service-connected death, vocational rehabilitation, and education assistance;
- Regular payments from Social Security, such as Old-Age, and Survivors Insurance Trust Fund;
- Lump sum payments received as assets in the sale of a house, in which the assets are to be reinvested in the purchase of a new home (consistent with IRS guidance);
- Payments received as the result of an automobile accident insurance settlement that are being applied to the repair or replacement of an automobile; and

--Any income sources specifically excluded by federal law or regulation.

The Commission understands that the new income calculation methodology and income exemptions may equate to lower parent share of cost assessments, thereby increasing the cost of care and reducing the number of children the Board may be able to serve. The Agency will continue to analyze Board costs, including parent share of cost, as part of the Agency's performance target methodology.

New §809.44(c) states that income that is not listed in §809.44(b) as excluded from income is included as income.

Comment:

One commenter supported a standard and uniform methodology that is applied consistently across all 28 Boards.

One commenter supported the amendment to require Boards to calculate family income by taking into account irregular fluctuations in earnings and to ensure that temporary increases in income do not affect eligibility or parent share of cost. The commenter commends the Commission on its recognition of and commitment to creating a standard and uniform methodology applied consistently across all 28 workforce areas in order to best meet the requirements of the CCDBG Act.

One commenter supported the Commission's amendment identifying income sources excluded from the calculation of family income, especially the exclusion of income earned by a veteran while on active military duty. The commenter has firsthand experience with the challenges military parents face and commends the state on recognizing the unique needs of military families. One commenter strongly supported the exclusion of child support payment, SSI, Social Security, and unemployment insurance (UI).

Response:

The Commission appreciates the comments.

Comment:

One commenter requested clarification regarding the exclusion of income earned by a veteran while on active military duty. The commenter requested confirmation that this means regular base pay of parents in the military is excluded and wondered whether special pay would continue to be excluded.

Response:

It is not the intent of the Commission that base pay of parents in the military be excluded as income. The rule language exempts income earned by a current veteran (a veteran at the time of eligibility determination or redetermination) during the time the individual was serving on active duty. It is also intended to exempt income earned by a current veteran who may have been called back on active duty. The base pay of parents on active military duty, however, is considered income. Further, special military pay would continue to be excluded, pursuant to §809.44(b)(9).

Comment:

One commenter requested clarification regarding the inclusion or exclusion of workers' compensation and alimony. The commenter suggested that workers' compensation, SSI, Social Security Disability Insurance (SSDI), UI, and alimony be included as income, as all of these sources are taxable.

Response:

The Commission clarifies that workers' compensation, SSDI, and alimony are not specifically excluded, and therefore, are included as income. However, the other payments (SSI and UI) are excluded from income, consistent with WIOA.

Comment:

One commenter requested clarification regarding payments from SSDI. The commenter noted that regular payments from Social Security (such as Old-Age and Survivors Insurance Trust Fund) are listed as excluded income; however, SSDI is not listed as being excluded. SSDI is very similar to regular payments from Social Security.

Response:

The Commission notes that recent guidance from the U.S. Department of Labor specifically requires that SSDI not be excluded from income for WIOA. Consistent with WIOA, SSDI is not listed as being excluded, and therefore, is included as income for child care eligibility and the parent share of cost assessment.

Comment:

Many commenters stated that a list of income that is excluded is difficult for frontline staff to operationalize, and, likewise, will be difficult for families to understand as well. The commenters recommended that the rules for calculating income include both an inclusion list as well as an exclusion list.

Response:

The income calculation guidelines in the Child Care Services Guide will clarify this issue. Similar to WIOA, it is expected that the parent will report all family income. When calculating income, the contractor should review the income reported and exclude from the calculation the sources that are excluded in rule. The Agency will work with Boards to provide ongoing technical assistance regarding this issue.

Comment:

Two commenters requested that the calculation methodology be made available for public comment prior to implementation.

Response:

The Agency is working with Boards to develop the income calculation methodology. The income calculation methodology will be available in the Child Care Services Guide, which is available to the public. The Agency welcomes input from the public on these operational guidelines.

Comment:

One commenter expressed appreciation for the efforts by the Agency to establish a standard and uniform methodology for calculating family income, but wishes to stress that it is imperative that this guidance be provided no later than September 1, 2016, in order for staff to employ the methodology when determining eligibility for customers whose eligibility redetermination is due at the beginning of October 2016.

In addition to establishing such a methodology, the Board would also recommend that the Agency provide forms and/or checklists that might be helpful in ensuring that the process is being followed accurately, and that all required documentation for calculating income has been ascertained.

Response:

The Agency will make the methodology, guidance, and technical assistance available at the earliest date possible upon the adoption of the final rules.

Comment:

In order to meet the requirement that the methodology take into consideration fluctuations of income, one commenter recommended that bonuses and incentive payments be excluded from income, as these sources fluctuate greatly. Additionally, as bonuses are considered to be a reward for high-performing employees, including these irregular amounts as countable income is believed to be contrary to the intent of the CCDBG Act of 2014.

Response:

The Commission appreciates the comments. The Commission's Chapter 809 rules include bonuses as part of the family income because the bonus may be a significant and stable source of family income. However, the calculation methodology will be designed to appropriately account for fluctuations in bonus amounts.

Comment:

One commenter recommended that the income calculation not follow the WIOA methodology requesting proof of income for the last six months, as this creates a barrier for most parents. Including income from a previous employment worked during the prior six months, but which has now ended, does not accurately reflect future wages. The commenter suggested three months of income as a more appropriate methodology. The commenter suggested that the methodology provide for multiple options for parents to report and document income, including the use of the year-to-date amounts and the most recent tax returns.

Response:

The Commission appreciates the comments and will take these suggestions into consideration in the income calculation methodology.

Comment:

Several commenters requested clarification on specific elements of the income calculation methodology, including:

- gaps in income;
- payments on commission-only;

- cash-only income;
- self-employment income;
- temporary increases that may be over 85 percent of SMI; and
- the methodology for calculating monthly income for individuals who are paid twice a month.

Response:

The Commission appreciates the comments. The income methodology will provide guidance on how these payments will be calculated.

§809.45. Choices Child Care

Section 809.45(b) is amended to clarify that for a parent receiving Choices child care who ceases participation in the Choices program during the 12-month eligibility period, Boards must ensure that Choices child care continues:

- for the three-month period pursuant to §809.51(b); and
- for the remainder of the eligibility period, if the parent resumes participation in Choices or begins participation in work or attendance in a job training or education program during the three-month period described in §809.51(c).

Comment:

One Board supported the Commission's efforts to stabilize child care for at-risk and vulnerable children whose parents are in the Choices, TANF Applicant, SNAP E&T, and child protective services child care programs. The commenter noted the September 2012 jointly funded brief by ACF's Office of Child Care and Office of Head Start Convened by the National Center on Child Care Professional Development Systems and Workforce Initiatives concluded that "Research has shown that babies who experience multiple disruptions in their early child care are more likely to show aggression and be less outgoing in the preschool years. Further, children's relationships with adult caregivers are vital for shaping the brain, early childhood development, and the foundations of school readiness."

Additionally, the commenter stated that the irrational and harmful practice of disrupting the care and education of young children whose parents are enrolled in these programs should end. The churning on and off of CCDF as parents lose assistance and later return fails to support CCDF's intentions to stabilize families, increase the quality of care for children, and support the child care industry.

Response:

The Commission appreciates the comment.

Comment:

Many Boards requested that the Commission consider the negative impact on Choices performance that can occur if Boards are required to provide child care for three months after a Choices participant ceases participation in the Choices program.

It is recommended that child care ceases when a Choices participant stops participating in the Choices program as required.

Customers participating in Choices may receive assistance with child care expenses. Eligibility is determined monthly. Unlike other customers who receive assistance with child care expenses when eligibility is determined for a 12-month period, Choices eligibility is a month-to-month issue. The Boards would support a rule that limits assistance with child care expenses to:

- (a) continued meeting participation requirements; and/or
- (b) continued receipt of TANF benefits.

Just as eligibility is redetermined on a 12-month basis, Choices eligibility is determined monthly. If the customer does not meet the criteria for continued eligibility for Choices, then we should take action to stop the assistance with child care expenses.

Response:

The Commission emphasizes that ending child care prior to three-month continuation of care period is expressly disallowed under the CCDBG Act and the proposed CCDF regulations.

The Agency will closely monitor the impact of the changes to cost and performance.

Comment:

Many commenters requested clarification regarding which funding source should be used during the three-month continuation of when the Choices parent stops participating in Choices.

Response:

The Commission appreciates the comments and has modified §809.45(b)(1) and (2) to clarify that the continued care will be funded as Choices child care.

Once initially determined eligible for Choices child care, the parent is eligible to receive Choices child care throughout the entire 12-month eligibility period. However, if the parent stops participating in Choices, then Choices child care will continue during the required three-month continuation of care period. Choices child care will cease at the end of the 12-month eligibility period or after three months of nonparticipation in either Choices or other work, education, or training activities.

Comment:

Many commenters recommended that the current practice of determining eligibility for income-eligible child care services, complete with the assignment of a parent share of cost, be continued once a Choices participant is no longer participating in Choices.

Response:

As stated previously, once determined eligible for Choices child care, Choices child care will continue through the 12-month period as long as the parent is participating in Choices *or* work, training, or education activities. Also, as stated in the discussion on the parent share of cost in §809.19, parents participating in Choices are exempt from the parent share of cost at initial eligibility and the amount cannot increase during the 12-month eligibility period, as this would be contrary to the intent of the CCDBG Act and the NPRM.

Comment:

Several commenters asked whether the parent is placed in a job search for the three months and what documentation is required during the three months.

Response:

The Commission clarifies that there is no requirement to document that the parent is engaged in job search or other activities during the three-month continuation of care. The preamble to the NPRM also states, "In fact, we strongly discourage such policies, as they would be an additional burden on families and be inconsistent with the purposes of CCDF and this proposed rule."

Comment:

Several commenters inquired if there had been any consideration given to the fact that continued care under the CCDBG Act might have a negative impact on Choices and SNAP E&T workforce performance. The commenters inquired if TWC will readjust each Board's target number of units due to the higher cost associated with Choices child care.

Response:

The Agency will monitor any impact to Choices performance and Boards' child care performance targets.

Comment:

One commenter inquired whether an individual owes recoupment from suspected fraud and whether they still receive three months once Choices ends.

Response:

For prospective fraud determinations, we refer the commenter to the discussion on suspected fraud and fraud determinations in Subchapter F.

As stated previously, once determined eligible for Choices child care, Choices child care will continue through the 12-month period as long as the parent is participating in Choices or work, training, or education activities. This would include parents who owe recoupments.

Section 809.117(e) states that a parent subject to repayment for a fraud determination shall be prohibited from future eligibility until the repayment is made "provided that the prohibition does not result in a Choices or SNAP E&T participant becoming ineligible for child care." Future eligibility is considered to be at the parent's 12-month redetermination or the next time the parent applies for child care services. If a parent owes recoupments, but is eligible for Choices child care or SNAP E&T child care at initial eligibility due to participation in those activities, then care must be authorized. However, if the parent is no longer participating in either of these programs at redetermination or the next time the parent applies, then the parent is not eligible for care until the debt is repaid.

Comment:

One commenter asked when a Choices customer becomes Transitional before the 12-month eligibility period ends, does this mean he or she will not be assessed a parent share of cost until the next eligibility period or will the eligibility characteristic remain the same until the next recertification period?

Response:

The Choices eligibility period will last the full 12 months (unless the parent ceases to participate in Choices or other work, training, or education activity for three months). At the parent's 12-month redetermination, the parent will be redetermined based on Transitional child care eligibility requirements in §809.48 or At-Risk Child Care eligibility requirements in §809.50.

Comment:

Several commenters inquired if TWIST will be updated to allow a *Child Care Program Detail* with the Choices eligibility characteristic while a *Choices Program Detail* is closed? This will be required if a Choices child care customer ceases participation in the Choices program as their *Choices Program Detail* will be closed as a result; however, Boards will still be required to continue child care for the three-month period.

Response:

TWIST does not require an open *Choices Program Detail* in order to open a *Choices Child Care Program Detail*.

§809.46. Temporary Assistance for Needy Families Applicant Child Care

Section 809.46 is amended to remove provisions that:

- duplicate the 12-month eligibility period specified in §809.42; or
- would end care prior to the end of the 12-month eligibility period.

§809.47. Supplemental Nutrition Assistance Program Employment and Training Child Care

Section 809.47 is amended to remove language stating that SNAP Employment and Training (SNAP E&T) care continues as long as the case remains open.

Section 809.47(b) is added to clarify that for a parent receiving SNAP E&T child care who ceases participation in the E&T program during the 12-month eligibility period, Boards must ensure that:

- child care continues for the three-month period pursuant to §809.51; and
- the provisions of §809.51 shall apply if the parent resumes participation in the E&T program or begins participation in work or attendance in a job training or education program during the three-month period.

Comment:

Many commenters requested clarification regarding which funding source should be used during the three-month continuation of when the SNAP E&T parent stops participating in SNAP E&T.

Response:

The Commission appreciates the comments and, consistent with Choices child care in §809.45, has modified §809.47(b)(1) and (2) to clarify that the continued care will be considered as SNAP E&T child care.

Once initially determined eligible for SNAP E&T child care, the parent is eligible to receive SNAP E&T child care throughout the entire 12-month eligibility period. However, if the parent stops participating in E&T, then SNAP E&T child care will continue during the required three-month continuation of care period. SNAP E&T child care will cease at the end of the 12-month eligibility period or after three months of nonparticipation in either SNAP E&T or other work, education, or training activities.

Comment:

Many commenters recommended that the current practice of determining eligibility for income-eligible child care services, complete with the assignment of a parent share of cost, be continued once a SNAP E&T participant is no longer participating in SNAP E&T.

Response:

As stated previously, once determined eligible for SNAP E&T child care, SNAP E&T child care will continue through the 12-month period as long as the parent is participating in SNAP E&T *or* work, training, or education activities. Also, as stated in the discussion on the parent share of cost in §809.19, parents participating in SNAP E&T are exempt from the parent share of cost at initial eligibility and the amount cannot increase during the 12-month eligibility period as this would be contrary to the intent of the CCDBG Act and the NPRM.

§809.48. Transitional Child Care

Section 809.48 is amended to remove provisions that would end care prior to the end of the 12-month eligibility period.

Comment:

One commenter requested confirmation that the only change to this section was to remove those individuals who were not employed when TANF expired from eligibility for Transitional child care. The commenter stated that the current practice is to have the parent come in and determine eligibility for transitional care, and asked if this would still be the process.

Response:

The only changes to the section involved removing the provisions that would end care prior to the end of the 12-month eligibility period for Transitional child care. Once Choices child care ends at the end of the 12-month eligibility period, the family would be redetermined for eligibility as Transitional, if the conditions of §809.48 are met, or At-Risk, if the conditions of §809.50 are met.

§809.49. Child Care for Children Receiving or Needing Protective Services

Section 809.49 is amended to clarify that child care discontinued by DFPS prior to the end of the 12-month eligibility period shall be subject to the Continuity of Care provisions in §809.54(c) regarding continued care for closed DFPS Child Protective Services (CPS) cases.

Section 809.49 is also amended to clarify that the requirements of §809.91(f)(1) do not apply to foster parents whose care is authorized by DFPS. The language clarifies that requests made by DFPS for specific eligible providers are enforced for children in protective services, including children of foster parents when the foster parent is the owner, director, assistant director, or other individual with an ownership interest in the provider.

A technical change to §809.49(a)(2) is made to clarify that DFPS may authorize care for a child under the age of 19.

Comment:

The Commission received many comments regarding the continuation of care through the end of the 12-month eligibility period for closed DFPS CPS cases as required in §809.54(c) and §809.49(a)(3). Commenters submitted that this provision would strain Board funding and would lead to many low-income customers not receiving care. One commenter suggested that the Commission make an exception to the continuity of care provision for DFPS customers. One commenter asked if there would be a minimum amount of time that the child will be required to be funded by DFPS before DFPS discontinues funding and the child is served using Board funds.

Response:

As mentioned regarding continued care for Choices and SNAP E&T, discontinuing care prior to the end of the 12-month period is not allowed under the CCDBG Act or the proposed CCDF regulations. The preamble to the CCDF regulations states:

Based on feedback from the States and various stakeholders, ACF has already considered possible exceptions to the minimum 12-month eligibility period for certain populations, such as children in families receiving TANF and children in protective services, but has decided that such special considerations would be in conflict with the CCDBG Act, which clearly provides 12-month eligibility for all children.

The Agency will closely monitor the impact of the changes to cost and performance.

Comment:

Several commenters requested clarification as to whether the eligibility requirements outlined in §809.41 apply to families receiving protective services child care once DFPS funding has ended. The commenters are aware that many parents receiving DFPS CPS funding for child care are not eligible under §809.41 because they are not meeting work, training, or educational requirements or they are earning over 85 percent of SMI. The commenters stated that families not meeting the eligibility requirements in §809.41 would need to be terminated once DFPS eligibility expires.

One commenter suggested that once CPS funding ends, children are allowed to be placed in CCDF funding for three months. At the end of the three months, the Board contractor

would determine if parents are meeting eligibility requirements. If the family is no longer eligible, the care should end.

Response:

As stated in §809.41(a), the eligibility requirements in that section do not apply to children authorized for care by DFPS under §809.49. The CCDBG Act and the NPRM require that during the period of time between redetermination, if the child met all of the requirements for eligibility on the date of the most recent eligibility determination or redetermination, the child shall be considered to be eligible and will receive services for the 12-month eligibility period.

DFPS determines that the child meets eligibility requirements for CPS child care pursuant to §98.20(a)(3)(ii) of the CCDF regulations, which allows for children in protective services to be eligible for care if the parent or caretaker is not working or if family income is over 85 percent of SMI.

Once DFPS makes that determination, pursuant to the CCDBG Act, the child is considered eligible for the 12 months. Once DFPS closes the child protective case, then DFPS-funded care will end and Agency-funded care will begin through the remainder of the eligibility period.

Comment:

Many commenters inquired if former DFPS children will be made a required priority group or will be subject to the availability of funds. Many commenters recommended that former CPS be included as a second priority group, subject to the availability of funds.

Response:

Once DFPS authorizes care for a child in protective services, the Boards must provide child care services to that child. As mentioned previously, care must continue through the end of the 12-month eligibility period. At the end of the 12-month eligibility period, the child's eligibility will be redetermined for continued care under any eligibility type in Subchapter C.

The Agency acknowledges that CPS cases must be served and not be subject to the availability of funds. The Agency will closely monitor the impact of the changes to cost and performance.

Comment:

Several commenters requested clarification on when the 12-month eligibility begins for DFPS cases. The commenter inquired if the 12-month period begins when DFPS case opened the authorization or when DFPS case is closed.

Response:

The 12-month eligibility period begins when DFPS first authorizes the care.

Comment:

Several commenters requested information on the process for continuing care for former CPS cases. One commenter asked if the DFPS cases will be closed and referred to the Board contractor as "Former DFPS," or will the child be considered as at-risk. Another commenter requested clarification on what information will be requested or required from the parent or guardian.

Response:

The DFPS program detail will be closed and a new "Former DFPS" program detail will be opened with an end date that is 12 months from the start of initial DFPS authorization. The Agency will work with DFPS to ensure that information necessary for the Board to continue care is provided to the Board. Additional information on the process for continuing the care will be addressed in the Child Care Services Guide.

§809.50. At-Risk Child Care

Section 809.50 is amended to clarify that eligibility requirements for At-Risk child care are applied at initial determination and at the 12-month eligibility redetermination, pursuant to §809.41 and §809.42.

Comment:

One commenter stated that with the rule that services must continue when there is a change in residency within the state, the allowance for the Board to set a higher number of hours per week may be difficult for parents at the point of redetermination. If the parent moves from a Board area that uses the 25 hours per week rule and is eligible and then moves into another Board area that requires a higher number of hours for each parent, the child would remain in care for the remainder of the 12 months, but at the point of redetermination, the parent would then have to meet the current Board's higher rule. The commenter recommended to remove the allowance of the Board to set a higher number of hours per week in order to ensure consistent eligibility across the state.

Response:

The Commission declines to make this change and will continue to allow Boards the local flexibility to have higher minimum work hours than the minimum Agency requirement. This is a local decision based on local needs and local factors as determined by the Board.

Comment:

One commenter pointed out that the proposed rules at §809.50(a)(1) made a reference to §809.41(a)(2)(A) instead of (a)(3)(A) in regards to income limits established by the Board.

Response:

The Commission appreciates the comment and has made the correction on the final rules.

§809.51. Child Care during Interruptions in Work, Education, or Job Training

Section 809.51 is amended to include CCDBG Act and NPRM requirements regarding the provision of child care during interruptions in work, education, or job training. The section contains the rules related to both temporary interruptions and permanent cessation of activities during the 12-month eligibility period.

Section 809.51(a) is amended to include the CCDBG Act requirement that if a child met all of the applicable eligibility requirements for any child care service in Subchapter C on the date of the most recent eligibility determination or redetermination, the child shall be considered to be eligible and will receive services during the 12-month eligibility period, regardless of any:

- change in family income, if that family income does not exceed 85 percent of SMI for a family of the same size; or
- temporary change in the ongoing status of the child's parent as working or attending a job training or education program.

Consistent with language in the NPRM, a temporary change shall include, at a minimum, any:

- time-limited absence from work for an employed parent for periods of family leave (including parental leave) or sick leave;
- interruption in work for a seasonal worker who is not working between regular industry work seasons;
- student holiday or breaks within a semester, between the fall and spring semesters, or between the spring and fall semesters, for a parent participating in training or education;
- reduction in work, training, or education hours, as long as the parent is still working or attending a training or education program;
- other cessation of work or attendance in a training or education program that does not exceed three months;
- change in age, including turning 13 years old or a child with disabilities turning 19 years old during the eligibility period; and
- change in residency within the state.

Section 809.51(b) is amended to require that during the period of time between eligibility redeterminations, a Board shall discontinue child care services due to a parent's loss of work or cessation of attendance at a job training or educational program that does not constitute a temporary change in accordance with paragraph (b)(2) of this subsection. However, Boards must ensure that care continues at the same level for a period of not less than three months after such loss of work or cessation of attendance at a job training or educational program.

Section 809.42(c) is amended to state that if a parent resumes work or attendance at a job training or education program at any level and at any time during the three months, Boards shall ensure that:

- care will continue to the end of the 12-month eligibility period at the same or greater level, depending upon any increase in the activity hours of the parent; and
- the parent share of cost will not be increased during the remainder of the 12-month eligibility period, including for parents who are exempt from the parent share of cost pursuant to §809.19.

This is consistent with NPRM §98.21(a)(3), which prohibits states from increasing the parent share of cost during the 12-month eligibility period, regardless of increases in the family income.

The rule language also clarifies that the Board child care contractor shall verify only:

- that the family income does not exceed 85 percent SMI; and
- the resumption of work or attendance at a job training or education program.

Section 809.51(d) is amended to state that the Board may suspend child care services during interruptions in the parent's work, job training, or education only with the concurrence of the parent.

School Holidays and Breaks

The Commission clarifies that student holidays such as spring break and breaks between the fall and spring semesters, or between the spring and fall semesters (including the summer break), are considered temporary changes, and care shall continue during those breaks. However, breaks of the full fall or the full spring semesters are considered nontemporary, and care ends if the parent does not resume attendance at an education or job training program, or does not participate in work within three months from the end of the previous enrollment.

Reductions in Work, Training, or Education for Dual-Parent Families

The Commission clarifies that in a dual-parent family, if both parents have a nontemporary loss of job (or end of training/education activities), then the family would be subject to the three-month job search period prior to termination. However, if one parent experiences a nontemporary change, then this would be considered a reduction in the dual-parent 50-hour participation requirements. Under the CCDBG Act, a reduction in work is not considered a permanent loss of job and is not subject to discontinuation of the child's care. Care would continue through the 12-month period without requiring care to end if one parent does not resume activities within three months. The child is still residing with at least one parent who is working and is still eligible under the CCDBG Act.

Continued Care for Children over the Age of 13 or the Age of 19 for a Child with Disabilities

The Commission notes that the DFPS Child Care Licensing allows children under the age of 14 (and under the age of 19 for children with disabilities) to receive care at a regulated facility. However, the Commission is aware that some child care facilities do not serve children over the age of 13 or 19 (for a child with disabilities). In such a case, the Board must ensure that eligibility does not end and work with parents and provider to continue care at a different provider selected by the parent until the end of the child's eligibility period, unless the parent voluntarily withdraws from child care services.

Continued Care for Children and Families Relocating to Another Workforce Area

Under the CCDBG Act, a change in the child's residence is not grounds for ending care in the state, regardless of the enrollment status of the workforce area to which the parent moved. The Commission understands that a Board at full enrollment would be required to enroll and fund children even if the Board enrollment of new children is closed at the time. The movement of children both into and out of workforce areas is anticipated to be balanced throughout the year. However, the Agency will track this movement and the fiscal impact on Boards to determine if funding amounts should be adjusted accordingly.

Additional policies, procedures, and documenting requirements regarding continuation of care for children and families who relocate to another workforce area will be provided through updates to the Child Care Services Guide.

The Commission clarifies that the Board that determined eligibility at the beginning of the 12-month period is responsible for any subsequent finding of improper eligibility determinations. However, the Board in the workforce area in which the family relocates is responsible for

verifying that the move did not result in a nontemporary loss of work, training, or education, and the family is not over 85 percent of the SMI.

The Commission clarifies that if the move to a different workforce area does not result in a change of provider (i.e., the child remains at the originating workforce area provider), then care would continue at that provider under the originating Board's agreement, rates, and funding through the remainder of the authorization for care and the end of the 12-month eligibility period. However, if the move to a different workforce area results in or is accompanied by a change in provider, then the receiving Board will establish and fund the authorization.

The Commission also clarifies that if a parent is participating in the three-month period of continued care and relocates to a different workforce area without resuming activities, then the parent would not receive a new three-month period, but is entitled to continue the three-month period that began in the previous workforce area.

Other Cessation of Work, Training, or Education Activities

The Commission recognizes that there are situations, such as parent incarcerations or other circumstances, that may not be clearly defined in the rules. The Commission will work with Boards to provide guidance on these situations. As a general rule, if the separation from activities is of a length that would allow the parent to continue participation within three months, then care would continue through the remainder of the 12-month eligibility period. If, however, the separation is expected to last over three months, then care would be discontinued three months after the cessation of work, training, or education.

Number of Three-Month Periods in a 12-Month Eligibility Period

The CCDBG Act requires that care continue for at least 12 months following the initial eligibility determination. Neither the CCDBG Act nor the NPRM allows states to put limits on the number of three-month periods of continued care that a parent may have during the 12-month eligibility period. Parents will be allowed a three-month period of continued care for each nontemporary cessation of activities within the 12-month eligibility period.

Parent Share of Cost during the Three-Month Period of Continued Care

As required in §809.19(a)(1)(c), the parent share of cost is reassessed if a parent reports a change in income that would result in a reduced parent share of cost. Accordingly, the parent share of cost should be reassessed during the three-month period due to the resulting reduction of family income. As mentioned in the discussion on calculating family income in §809.44, the Commission will provide guidance on the methodology used to calculate income during this period in order to take into consideration fluctuation in income. During this period, Boards may also reduce the parent share of cost based on the Board policies for reductions due to extenuating circumstances pursuant to §809.19(d).

Increases in the Level of Care following the Three-Month Period of Continued Care

Section 809.51(c) requires care to continue to the end of the 12-month eligibility period at the same or greater level, depending on any increase in the activity hours of the parent. The Commission expects that the parent should provide documentation to verify that such an increase is warranted.

Suspensions of Child Care during the 12-month Eligibility Period

The preamble to the NPRM notes that, consistent with §658E(c)(2)(N)(i) of the CCDBG Act, "during the minimum 12-month eligibility period Lead Agencies also may not end or suspend child care authorization or provider payments due to a temporary change in a parent's work, training, or education status." However, the preamble also notes that "despite the language that the child 'will receive such assistance,' the receipt of such services remains at the option of the family." The law does not require the family to continue receiving services, nor would it force the family to remain with a provider if the family no longer chooses to receive such services.

Therefore, the amended Commission rules require that any suspensions of care during the 12-month eligibility period shall only be upon concurrence from the parent. This provision is included in §809.51 regarding optional suspensions of care during interruptions in work, job training, or education. As will be discussed in §809.78 regarding attendance standards, the requirement that care can only be suspended at the concurrence of the parent is also included for suspensions of care under §809.78.

Implementation of the 12-Month Eligibility Period

The Commission clarifies that eligibility determinations under the new rules will go into effect at the family's first scheduled redetermination (under the Board's previous determination period) following October 1, 2016.

Comment:

Several commenters supported the requirements regarding continuation of care during interruptions of work, training, or education activities. One commenter strongly supported the proposed amendments stating that it will make it easier for parents to maintain employment or complete education programs, and supports both family financial stability and the relationship between children and their caregivers.

Another commenter supported the continuation of child care for the 12-month eligibility period if one parent in a dual-parent household experiences a permanent loss of job or end of training or education activities. The commenter supports efforts to decrease the churning on and off of subsidized care as parents lose assistance then later return. The commenter is aware of the harm this can cause children and understands that it runs counter to the CCDF's purpose to stabilize the care and education of low-income children.

Another commenter supported the changes to ensure the continuity of care and putting the welfare of the child first.

Response:

The Commission appreciates the comments.

Comment:

One commenter noted that some summer breaks slightly exceed the three-month period cited in the rule language as a temporary break. The commenter requested clarification as to whether summer breaks are included as a temporary break or a nontemporary break.

Response:

The Commission appreciates the comment and agrees that summer breaks should be considered as temporary breaks in education. The rule has been modified to state that breaks between the fall and spring semesters, or between the spring and fall semesters, are considered temporary changes. This would include summer breaks as meeting the standard in §809.51(a)(2)(C) as a temporary break in education.

Comment:

One commenter noted that parent-requested suspensions are not mentioned in the new rules. The commenter inquired if parents will continue to be allowed to suspend care during temporary breaks in work or training periods. The commenter noted that some parents prefer to have their children at home with them on breaks and not pay the parent share of cost while on the breaks, including suspensions for court-ordered visitations.

Response:

The Commission appreciates the comment and, as discussed previously, has added a provision in §809.51(d) that parents may suspend care during interruptions in work, training, or education. The rule requires that the suspension must be at the concurrence of the parent.

Comment:

One commenter inquired if a child with disabilities turns 19 during the 12-month eligibility period, does the child remain in care until the end of the eligibility period or would the child's care end from care the day before their 19th birthday.

Response:

The Commission appreciates the comment and has modified the rule to include that eligibility for children with disabilities continues through the end of the 12-month eligibility period if the child turns 19 during the eligibility period.

Comment:

Many commenters disagreed with the provision that allows for one parent in a dual-parent family to experience a permanent loss of a job and for the change to be considered a reduction in work. Commenters submitted that allowing such families to continue to receive care effectively held single-parent families to a higher participation standard than two-parent families.

Response:

The CCDBG Act and the CCDF regulations do not specifically address this issue of single or dual-parent families.

In the Act and the regulations, a child's eligibility requirement is to reside with "a parent or parents who are working or attending a job training or educational program" (CCDBG Act 658P(4)(C)(i); NPRM §98.20(a)(3)(i)). The language is unchanged in the reauthorization and proposed regulations.

Both the Act (658E(c)(2)(N)) and the NPRM (§98.21) require that the child remain eligible between eligibility periods regardless of a temporary change in "the parent's" (singular) status. Both use the singular "parent" regarding the *state option* to end care if a

"parent" has a nontemporary cessation of activities. Because this is a state option, there is no requirement in the Act or the regulations that the state must end care if one parent in a dual-parent family has a permanent cessation of activities.

In fact, the preamble states that the default is to continue care for 12 months in order to ensure that the goal of continuity of care is maintained and child care is available to assist the parent if he or she regains employment.

Therefore, in order to comply with the intent of the CCDBG Act that child care continue for 12 months, both parents must have a permanent cessation of activities in order to end care after the three-month continuation of care period. This would ensure that the goal of continuity of care for the child is maintained and ensure that child care is continued while one parent is working while the other parent reenters the workforce.

Comment:

One commenter asked if §809.51(a)(2)(D) means that the parent can be working less than 25 hours and if this would be considered temporary.

Response:

The minimum activity requirement of 25 hours per week (50 hours for a dual-parent family) is a state requirement. NPRM §98.21(a)(1)(ii)(D) includes reduction in hours, as long as the parent is working or in training or education, as a temporary status change, and the child will remain eligible for care through the 12-month eligibility period.

Comment:

One commenter requested clarification on how Boards "must ensure" eligibility continues at a different provider when a child turns 13. Boards do not have any control over providers or their policies regarding the age of the youth they serve.

Response:

The Commission understands that providers may discontinue a child's care when the child turns 13, pursuant to the provider policy. However, Boards must ensure that the eligibility is not ended. The Board must ensure that the child remains eligible during the eligibility period. Boards are strongly encouraged to assist parents in locating providers that care for 13-year-old children and should make a diligent effort to find and encourage local providers to care for children through the age of 13.

As provided in §809.51(d), parents may decide to have care suspended pending the choice of an acceptable provider.

Comment:

One commenter inquired if the three-month continuation of care is three calendar months or 90 calendar days. The commenter preferred to establish three calendar months as the benchmark. The commenter also requested this clarification regarding the three-month initial eligibility for children experiencing homelessness.

Response:

The Commission clarifies that the requirement is for three months, not 90 days. Therefore, the standard will be to use three calendar months.

Comment:

Many commenters requested clarification and guidance on specific scenarios that may occur during the 12-month eligibility period related to continuing care or ending care after the three-month period. The commenters also requested clarification on the process, documentation requirements, and handling provider payments when a child in care moves from one workforce area to another. One commenter requested that guidance be provided in the Child Care Services Guide.

Response:

The Commission appreciates the comments and will review each scenario and provide guidance in the Child Care Services Guide.

Comment:

One commenter inquired if care continues for the year of eligibility if a parent moves out of state after the child is determined eligible for care.

Response:

Agency child care funds cannot be used for customers who do not reside in Texas.

§809.52. Child Care for Children Experiencing Homelessness

New §809.52 is added to include initial eligibility for children experiencing homelessness. CCDBG Act §658E(c)(3) requires that state procedures permit enrollment (after an initial eligibility determination) of children experiencing homelessness while required documentation is obtained.

Consistent with this requirement, §809.52(a) requires that for a child experiencing homelessness, a Board shall ensure that the child is initially enrolled for a period not to exceed three months.

Section 809.52(b)(1) states that if, during the three-month enrollment period, the parent of a child experiencing homelessness is unable to provide documentation verifying that the child meets the age and citizenship status requirements under §809.41(a)(1) - (2), then care shall be discontinued following the three-month enrollment period. Consistent with NPRM §98.51, payments of child care services for this three-month period are not considered improper payments.

Section 809.52(b)(2) states that if, during the three-month enrollment period, a parent provides documentation verifying eligibility under §809.41(a) (regarding the child's age and citizenship status, and the parent's participation in work, job training, or education activities) then care shall continue through the end of the 12-month initial eligibility period (inclusive of the three-month initial enrollment period).

For parents of children experiencing homelessness, parent self-attestation of the eligibility requirements under §809.41(a)(1) - (2) will be allowed for the first three months for all eligibility

requirements, as long as the family meets the definition of homelessness. This can be verified through another entity such as a school district or housing authority, or by the Board contractor.

The Agency will work with Boards to provide guidance on determining initial and continuing eligibility for homeless families.

The Commission clarifies that parents of children experiencing homelessness must have appeal rights pursuant to §809.74.

Comment:

One commenter requested clarification as to whether or not initial eligibility includes verifying employment, training, and education activities for family members, and, if so, if verification documentation must be presented at that time or if self-attestation is adequate. The commenter understands that documentation related to age and citizenship does not have to be presented at initial eligibility but must be presented within three months for care to continue. The Board appreciates the Agency's stated commitment to providing guidance on determining initial and continuing eligibility for homeless families, and requests that this guidance be included in the Child Care Services Guide.

Response:

The Commission clarifies that initial eligibility for homeless children does not include the parent's participation in work, training, or education. However, verification of these requirements must be conducted in order for care to continue after the initial eligibility period.

Comment:

One commenter requested clarification regarding acceptable documentation to verify homelessness. For example, is self-attestation acceptable only at initial eligibility determination and is the initial certification period only for three months, with a zero parent share of cost assessed? Then, at the end of the three-month certification, must all required eligibility documents be provided in order to continue care through the remainder of the 12-month period? At that point, is the parent share of cost assessed based on the sliding fee scale?

Response:

The Commission clarifies that self-attestation is acceptable to verify homelessness at initial eligibility. All required documentation to verify eligibility under §809.41 is required at three months. Pursuant to §809.19(a)(2), parents of homeless children are exempt from the parent share of cost for the entire 12-month eligibility period.

§809.53. Child Care for Children Served by Special Projects

Section 809.53 is amended to clarify that the provisions related to child care for children serviced by special projects are only for special projects funded through non-CCDF sources.

Comment:

Two commenters inquired if there is a federal requirement that WIOA-funded Child Care follow requirements in the CCDBG Act and the NPRM. The comments stated that

Boards should be allowed to use WIOA funds for child care services without requiring the 12-month eligibility if the WIOA customer ends WIOA participation.

Response:

The Commission appreciates the comment and has amended §809.41 to add paragraph (f) to state that Subchapter C applies only to child care services using funds allocated by TWC pursuant to its allocation rules at §800.58, and local public transferred funds and local private donated funds described in §809.17.

§809.54. Continuity of Care

Section 809.54 is amended to clarify that for enrolled children, including children whose eligibility for Transitional child care has expired, care continues through the end of the applicable eligibility periods described in §809.42.

Rule language also clarifies that enrolled children of military parents in military deployment remain eligible for continued care, including parents in military deployment at the end of the 12-month eligibility redetermination period.

Section 809.54 also removes the temporary placement of a child if space is available due to another child's absence due to custody arrangements, as temporary placements are contrary to the CCDBG Act's 12-month eligibility requirements.

Comment:

Regarding §809.54(c), many commenters submitted identical or similar comments in §809.49 regarding continued care for closed DFPS Child Protective Services.

Response:

Responses to comments submitted in §809.54(c) are addressed in the discussion in §809.49.

Comment:

Many commenters requested clarification regarding the allowability of two providers being reimbursed for the same period when parents have joint custody and the child is cared for by two different providers every other week.

Response:

Section 809.93(b) requires that providers be reimbursed based on the child's monthly enrollment authorization, excluding periods of suspensions. Section 809.78(c) requires that absences due to court-ordered visitation are not included in the child's total absences for meeting attendance standards.

The monthly child care enrollments for joint-custody arrangements such as the one described in the comment should be consistent with the court order. If the court-ordered joint custody arrangement calls for a change in child care arrangements every other week, then the monthly enrollment must reflect that and the provider be reimbursed according to the monthly authorization.

Comment:

One commenter expressed appreciation for removing the temporary placement of a child in a slot made open during another child's court-ordered custody arrangements.

Response:

The Commission appreciates the comment.

Comment:

One commenter requested clarification regarding filling a slot temporarily for a child on court-ordered visitation since temporarily filling a slot is no longer allowed due to the 12-month eligibility period once a child is determined eligible for care. However, the commenter stated that the Board must ensure that a child can return to the same provider pursuant to §809.54(e). The commenter asked how the Board would pay for that child's enrollment during the time the child is away on court-ordered visitation. The commenter is concerned that the provider will not want to hold the spot unless the Board reimburses the provider. The commenter asked if the provider charges the client to hold the spot.

Another commenter requested guidance if child care during custody arrangements would be considered a suspension of care.

Response:

The Commission clarifies that §809.54(e) does not require that the child return to the same provider following a court-ordered visitation. The rule requires that the child return to care "at the same provider or a different provider if agreed to by the parent in advance of the leave." The enrollment during the court-ordered arrangement should continue during the court-ordered visitation. However, the parent will still be responsible for paying the parent share of cost for care during the court-ordered visitation. If the parent decides to suspend the authorization and not pay the parent share of cost, then the provider is not allowed to hold the spot open, as holding spots open without an enrollment authorization is not allowed under §809.93(g). The Commission clarifies that the suspension of care must be at the option of the parent.

Comment:

One commenter pointed out that the reference in §809.54(b) to §809.75(b) regarding care during appeals was removed.

Response:

The Commission appreciates the comment and has made the correction to the reference in the final rule at §809.48.

§809.55. Mandatory Waiting Period for Reapplication

Section 809.55, regarding a mandatory waiting period for reapplication if care is terminated for certain reasons, is repealed because the listed termination reasons for ending care are no longer applicable.

The Commission did not receive comments on the repeal of this section.

SUBCHAPTER D. PARENT RIGHTS AND RESPONSIBILITIES

The Commission adopts the following amendments to Subchapter D:

§809.71. Parent Rights

Section 809.71 is amended to clarify that the 20-day eligibility notification following receipt of eligibility documentation from the parent is applicable only at the initial eligibility determination.

Section 809.71(9) is amended to remove the exceptions to the 15-day notification of termination for instances in which care is to end immediately due to a parent no longer participating in Choices or SNAP E&T or due to a child being absent five consecutive days, as these are no longer eligible reasons to terminate care during the 12-month eligibility period.

Regarding the 15-day termination notice, the Commission clarifies that for parents with a nontemporary cessation of activities, at a minimum, notification must be provided at least 15 calendar days prior to the end of the three-month period of continued care. However, Boards should also clearly notify or provide clear instructions to parents at the beginning of the three-month period that care will end if the parent does not resume participation at any level within three months.

Section 809.71 is amended to remove the 30-day notification due to terminations to make room for a priority group member, as this is no longer an allowable reason to terminate care during the 12-month period.

Section 809.71 is also amended to remove the requirement that parents be informed of the Board's attendance policies. Notification of the attendance standards are located in amended §809.78.

Comment:

Two commenters disagreed that the 20-day notification of eligibility be applied at both the initial eligibility determination and the eligibility redetermination, as required in the proposed rules. The commenters stated that the notification within 20 days upon receipt of all necessary documentation is pertinent for initial determination. However, redeterminations must be completed with sufficient time in order to meet the 15-day termination notification prior to end of the 12-month period. Therefore, the same allowance to receive all necessary documentation and then determine and notify within 20 days is not applicable.

Since the child is already receiving care, and if the intent is not to have an interruption in services, the commenters recommend that the required documentation be received at least 30 days in advance of the end of the eligibility period, which will allow for processing time, and in the event the parent is not eligible for services to continue, the termination of services could be realized and care would not continue past the 12-month end date.

Response:

The Commission agrees with the commenters and has modified the rules to establish the 20-day notification of eligibility or denial only for initial eligibility determinations. The Commission also agrees with the commenters and clarifies that if the family is determined to not be eligible for care at the eligibility redetermination, then the family

must be notified of termination at least 15-days before the end of the current 12-month eligibility period.

The Commission believes that the timeline for parent submission of documentation is at a Board's discretion. However, a Board must ensure that the deadline for submitting redetermination documentation provides sufficient time for a Board child care contractor to accurately redetermine eligibility and to ensure that the Board child care contractor provide the 15-day notification of termination prior to the end of the 12-month eligibility period, if it is determined that the family is not eligible for care.

Comment:

Several commenters recommended that the 20-day notification of the eligibility determination be extended to allow for quality assurance. Since significant resources are being committed due to the 12-month eligibility period, the commenters stated that it is critical that accuracy is maintained and recommended additional time be allowed for review of case processing.

Response:

The Commission declines to extend the 20-day requirement for initial eligibility determinations. The Commission agrees that accuracy and quality assurance is vital, especially with the 12-month eligibility period; however, this quality assurance should be conducted within 20 days in order to ensure that parents who need child care do not have a delay in services.

Comment:

Many commenters requested clarification as to whether the 15-day notification of termination is provided during the period of care or at the end of the care. Several commenters recommended that the clarification provided in the preamble that the notification of termination notice be provided at least 15 days prior to the end of the three-month period of continued care be adopted in all instances in which this notification is required to be sent. To send the notification on the termination date requires the Board to pay for an additional 15 days of care and adds to the increased cost of care.

Response:

The Commission clarifies that the 15-day notification is required at least 15 days prior to ending care at the end of the eligibility period, if the parent is determined not to be eligible, or at the end of the three-month continuation of care period, if the parent has not resumed activities, and emphasizes that the 12-month eligibility period cannot be extended to allow for the 15-day notice of termination.

Comment:

Two commenters recommended that proposed language stating the customer has the right to receive written notification at least 15 days before termination of child care services be changed to say the customer has the right to be sent written notification at least 15 days before termination of child care services. The commenter questions how the Board or contractor would determine the customer received the written notification.

Response:

The Commission declines to make changes to this rule. This is a long-standing requirement with which Boards and Board contractors should be familiar. It is correct that there is no guarantee that the parent would actually receive the notification, particularly if the parent moves and did not notify the Board. However, the intent of the language is that the Board's contractor must send the notification to ensure, under normal circumstances, that the parent would receive the notification at least 15 days of termination.

Comment:

One commenter inquired if, during the redetermination process, the family income exceeds 85 percent of SMI, does the customer still have 15 days from the day the parent is notified of the termination of child care services.

Response:

The Commission clarifies that the parent must receive a notification at least 15 days prior to terminating care at the end of the 12-month eligibility period, including for cases determined ineligible due to family income exceeding 85 percent of SMI.

§809.72. Parent Eligibility Documentation Requirements

Section 809.72(a) is amended to clarify that child care cannot be determined or redetermined and care cannot be authorized until parents provide to the Board's child care contractor all the information necessary to determine eligibility.

Section 809.72(b) is amended to clarify that a parent's failure to submit required documentation shall result in initial denial of child care service or the termination of services at the 12-month redetermination period.

As mentioned in §809.42(a), due to the requirement in CCDBG Act §658E(c)(2)(N)(i) that each child who receives CCDF-funded child care will be considered to meet all eligibility requirements and will receive assistance for not less than 12 months before the eligibility is redetermined, it is critical that all eligibility documentation submitted is properly and accurately verified prior to authorizing care. As described in §809.42(c), an exception to this requirement exists for a child experiencing homelessness.

§809.73. Parent Reporting Requirements

CCDBG Act §658E(c)(2)(N)(ii) and NPRM §98.21(e)(2) state that any requirement for parents to provide notification of changes in circumstances shall not constitute an undue burden on families. Any such requirements shall:

- limit notification requirements to changes that impact a family's eligibility (e.g., only if income exceeds 85 percent of SMI, or there is a nontemporary change in the status of the child's parent as working or attending a job training or educational program) or changes that impact the Lead Agency's ability to contact the family or pay providers;
- not require an office visit to fulfill notification requirements; and
- offer a range of notification options (e.g., phone, e-mail, online forms, extended submission hours) to accommodate the needs of working parents.

Further NPRM language states that Lead Agencies must allow families the option to voluntarily report changes on an ongoing basis:

--Lead Agencies are required to act on the information provided by the family if it would reduce the family's copayment or increase the family's subsidy.

--Lead Agencies are prohibited from acting on information that would reduce the family's subsidy unless the information provided indicates that the family's income exceeds 85 percent of SMI for a family of the same size, taking into account irregular income fluctuations, or, at the option of the Lead Agency, if the family has experienced a nontemporary change in work, training, or educational status.

Section 809.73 related to parent reporting requirements is amended consistent with this guidance.

Section 809.73(a) is amended to require Boards to ensure that during the 12-month eligibility period, parents are only required to report items that impact a family's eligibility or that enable the Board or Board contractor to contact the family or pay the provider.

This is further clarified in §809.73(b), which is amended to state that parents shall report to the child care contractor, within 14 calendar days of the occurrence, the following:

--Changes in family income or family size that would cause the family to exceed 85 percent of SMI for a family of the same size;

--Changes in work or attendance at a job training or educational program not considered to be temporary changes, as described in §809.51; and

--Any change in family residence, primary phone number, or e-mail (if available).

The amendment extends the number of days to report from the current 10 calendar days to 14 calendar days. This will allow additional time for parents to report changes while also allowing sufficient time for Boards to make any requested changes in the parent share of cost or for other authorization changes to become effective, as well as sufficient time to adjust the parent's eligibility (if the reported change caused the family to exceed 85 percent SMI or constitutes a nontemporary change in activity status).

Because the CCDBG Act limits termination of eligibility for care to the parent's permanent cessation of work, training, or education activities, or the family exceeding 85 percent of SMI (taking into consideration fluctuations of income), §809.73 is also amended to remove the provision that care may be terminated and costs may be recovered due to a parent failure to report a change in §809.73(b). However, the provision that failure to report a change may result in fact-finding for suspected fraud as described in Subchapter F is retained.

Section 809.73 is also amended to require Boards to allow parents to report, and require the child care contractor to take appropriate action, regarding changes in:

--income and family size, which may result in a reduction in the parent share of cost pursuant to §809.19; and

--work, job training, or education program participation that may result in an increase in the level of child care services.

The CCDBG Act requires that reporting requirements during the 12-month period do not constitute an undue burden on working parents, and the NPRM clarifies that the reporting requirements must only be on information that affects eligibility or the ability to contact the parent and pay the provider. Therefore, the Commission emphasizes that Boards must not

require parents to report any changes during the 12-month period other than those specified in amended §809.73(a) - (b).

The Agency will work with Boards to provide technical assistance on establishing clear and family-friendly information for parents on when they are required to report income and family changes.

Additionally, the Agency will work with Boards to provide reports and tools, including tools associated with wage records and a child's attendance tracking, to assist Boards in identifying parents and families that:

- may have changes in income or family size that may have resulted in the family income exceeding 85 percent of the SMI; or
- may have experienced a nontemporary change in work, training, or education activities.

Implementation of the Reporting Requirements

The Commission clarifies that parents with children enrolled prior to the effective date of the rule amendments may be notified of the new parent reporting requirements at the parent's next scheduled redetermination. However, the standards for assessing any reported changes to the parent's eligibility as well as changes in the consequences for failure to report will be effective on the effective date of the amended rules. Therefore, the Board must ensure that if a parent fails to report a change that was required under the former rules, care shall not be terminated and recoupment is not required for this failure to report, subject to the requirements in Subchapter F regarding recoupments.

Comment:

Several commenters stated that the 14 calendar days to report changes seems irrelevant. While a reporting requirement is needed, since care will continue during the 12-month eligibility period, a time frame is not necessary. At whatever point the parent reports, fact-finding would have to occur to determine the start date of the change to determine eligibility. There is no adverse action that can occur if the parent does not report within 14 days.

One commenter recommended that the reporting requirement remain but remove the 14 days. The commenter also recommended that "parent shall" language be removed since there is no action (i.e., termination of services) that can be the result if the parent does not report.

Response:

The 14-day reporting requirement is to place the parent on notice that any changes that affect eligibility or that enable the Board or Board contractor to contact the family or pay the provider must be reported as soon as possible in order to allow appropriate time for the contractor to review and verify the documentation and to determine the appropriate action to take. If it is discovered, either upon eligibility redetermination or during the 12-month eligibility period, that a change affecting eligibility was not reported timely, then that failure to report may be grounds for fact-finding for suspected fraud.

Comment:

Several commenters suggested that parents report all changes and allow the contractor to determine whether or not that change impacts the family's eligibility. The commenters stated that it is easier for parents to remember to report all changes rather than tasking them with making the determination themselves as to whether a change may affect their eligibility. If the change reported does not constitute a change that impacts eligibility, no action will be taken by contractor staff. Encouraging parents to report all changes lowers their risk of receiving services for which they are not eligible. It could also impact the family positively because if they report a change that does not impact eligibility, it could still potentially reduce their parent share of cost or increase their level of subsidy. Since the preamble indicates that parents are required to report one type of change, and are encouraged to voluntarily report all other changes, it would benefit both the parent and contractor staff if given the flexibility to continue to ask (not require) parents to report all changes to the contractor.

Response:

The Commission declines to require that parents report all changes. The CCDBG Act states that any requirements for parents to provide notification of changes shall not constitute an undue burden on families. The Commission agrees that parents need clear instructions and guidelines on what information would rise to the level of a required report.

The Agency will work with Boards to provide clear income and family size levels that, if surpassed, would be over the 85 percent of the SMI eligibility requirement. Clear guidance should also be provided to parents regarding actions that would constitute a temporary change and not need to be reported. The Child Care Services Guide will include guidance for helping parents understand what is considered a temporary change.

Comment:

One commenter requested that Boards be allowed to sanction parents for any status changes that would affect eligibility that is not reported, such as changes in income, household size, and address.

Response:

The Commission notes that pursuant to §809.112, certain parental actions may be grounds for suspected fraud and cause for Boards to conduct fraud fact-finding or the Agency to initiate a fraud investigation. This will be discussed in greater detail in Subchapter F, Fraud Fact-Finding and Improper Payments.

Comment:

Two commenters asked if the various exception reports from Agency (UI Early Warning, Work & Training, Identity Mismatch, and Income Exceptions) will still be necessary.

One commenter also requested Board flexibility in continuing to contact parents when information available to the contractor (via TIERS, UI, or exception reports provided by the Agency) may indicate that the parent is facing an eligibility issue (such as loss of employment, a second job that puts them over the 85 percent of SMI guidelines, or has had a change in work, training, or education status).

Response:

The Commission agrees that these reports will continue to be very important tools that Boards should use to identify potential changes to the parent's work or income status that may have occurred during the 12-month eligibility period.

Additionally, the Commission agrees that parents must be contacted when information becomes available that may indicate that a family is no longer eligible. In fact, the Commission notes that the exception reports and data analysis tools should not be the sole source used to determine whether the parent has, in fact, experienced a change in income or a change in work, training, or education participation. The parent must be contacted and given the opportunity to explain the exception and submit documentation, if necessary, to demonstrate that the change did not result in the family exceeding 85 percent of SMI or did not result in a permanent cessation of work, training, or education activities.

Comment:

Several commenters inquired if the contractor receives information from a source other than the parent regarding potential eligibility issues, will the contractor be allowed to contact the parent to request additional information. Additionally, one commenter asked what consequences are allowed to be imposed for not responding to the inquiry within a set number of days.

Response:

The activities described in the comment are allowable. However, care cannot be terminated based solely on the reports or the parent's failure to respond to the request for information. The CCDBG Act and the NPRM state that once the child is determined eligible, the child is assumed to be eligible for the 12-month period.

If a parent does not respond to requests for information, then a Board may need to address this at either the 12-month redetermination or as part of a potential fraud fact-finding, or both. Additional guidance will be provided in the Child Care Services Guide.

Comment:

One commenter requested guidance on situations in which an individual on a temporary summer semester break intends to go back to school after the break, but then does not go back to school. Do they receive three months of continued care from the time school let out or from the time they decided not to go back to school? The commenter also asked what happens if a temporary break turns into a permanent end and is not reported.

Response:

The Commission has clarified in rule that a break between the spring and fall semesters would constitute a temporary break in activities. The three months of continued care would start from the date that the temporary break due to the summer semester change became a permanent change. In this example, the summer break is considered a temporary change, but the failure to return to school following this period would be the permanent change and child care would continue only for three months following the permanent change, namely, the failure to return to school. If the parent does not report

the permanent change in status and this is discovered at eligibility redetermination, then the failure to report is grounds for fraud fact-finding.

Comment:

Several commenters inquired if it is the continued expectation that parents enrolled in a training institution be monitored by each semester, as they are now. The preamble noted that the enrollment information should be obtained from the training or education institution, *instead of requiring the parent to submit this documentation*. The commenters indicated that most training institutions in their area will not produce this type of enrollment information for their students.

The commenters noted that the preamble states that "Boards may develop procedures for confirming continued enrollment and attendance *during* the 12-month eligibility period...." The commenters requested clarification of the intent behind verifying this information when temporary changes do not impact the required 12-month eligibility period.

The commenters requested clarification on the statement that Boards may request that educational institutions and training providers confirm enrollment and resumption of training classes. Are Boards limited to collecting this information directly from educational institutions or may the information be requested from parents? Educational institutions are unlikely to release such information directly to Boards.

This issue is causing some confusion, as it would seem that if parents do not report a nontemporary cessation of education or training activities, and if they are not monitored by semester, the possibility of fraud review may increase. However, this seems to go against the 12-month eligibility determination philosophy.

Response:

Section 809.73 requires parents to report a nontemporary (permanent) change in the education status during the 12-month period. Section 809.51(a)(2)(C) has been amended to clarify that student holidays or breaks within a semester or between the fall and spring semesters, or between the spring and fall semesters, are temporary and do not need to be reported.

However, for parents solely in education activities, parents must report breaks in these education activities that are longer than the breaks described in §809.51(a)(2)(C) (e.g., breaks between the fall and summer semester or breaks that include two full semesters). Therefore, Boards may develop procedures for confirming during the 12-month eligibility period, including requesting that education institutions and training providers confirm enrollment at each semester and the resumption of training classes in order to determine that the parent has not had a nontemporary cessation of education or training activities. The Commission understands that educational institutions may not be able to provide such information. However, this is an allowable Board procedure.

Also, the resumption of enrollment after the nontemporary break between semesters does not need to be reported by the parent for continuation of care through the end of the 12-

month period. The resumption of enrollment is only required at the 12-month redetermination period.

§809.74. Parent Appeal Rights

Section 809.74 is amended to clarify that parents may appeal the amount of any recoupment determined pursuant to Subchapter F of this chapter.

§809.75. Child Care during Appeal

Section 809.75 is amended to remove the provisions for not continuing care during a parent appeal as the reasons for terminating care provided in this section no longer apply.

Comment:

One commenter stated that his experience shows that parents who are ineligible choose to continue care regardless of the possibility of having to pay for child care. Commenters request that if a hearing officer affirms a determination of ineligibility that there be no recoupment owed by the parent.

Response:

The Commission declines to change the rule regarding repayment of child care provided during the appeal if the decision that the parent was ineligible for care is affirmed upon appeal. An affirmation of termination of care is a verification that the parent was not eligible to continue to receive services. The rule language at §809.71(13) also requires that parents be informed of the appeal rights, including that the cost of care during the appeal is subject to recovery. Failure to attempt recovery of payments for services for which the person was not eligible is not allowed.

Comment:

One commenter stated that the modified rule language implies that child care during an appeal is required and does not have to be requested by the parent. If the parent does request child care during an appeal, is it automatically approved? If the local review of the appeal process upholds the termination and the parent received child care during an appeal, how can we seek recoupment of these funds if the parent did not request child care during an appeal?

Response:

The Commission clarifies that the rule language has not changed regarding child care continuing during appeal. The language does not require that child care continue only if requested by the parent. The rule retains the statement that the cost of providing services during the appeal is subject to recovery if the decision is rendered against the parent. Rule language at §809.71(13) also requires that parents be informed of the appeal rights, including that the cost of care during the appeal is subject to recovery. Boards must inform parents of this and allow the parent the option of not continuing care during the appeal. If the parent agrees that child care should continue, then the rules require that care continue during the appeal.

Comment:

One commenter inquired if the Board can set local policy that states customers must pay this amount in full before they can apply to receive services again.

Response:

The Commission agrees and notes that §809.117, regarding recovery of improper payments, includes the requirement that payments made during the appeal in which the appeal is rendered against the parent are subject to full recovery in order for the parent to be eligible for future child care.

§809.76. Parent Responsibility Agreement

As stated previously, CCDBG Act §658E(c)(2)(N) states that each child who receives assistance will be considered to meet all eligibility requirements for such assistance and will receive such assistance for not less than 12 months before the state redetermines eligibility.

NPRM §98.20(b)(4) clarifies that the state may establish additional eligibility conditions, regarding the child's age, citizenship, residing in a family with an income that does not exceed 85 percent SMI, and residing with parents who are working or in job training or education, as long as the additional requirements do not impact eligibility other than at the time of eligibility determination or redetermination. Additionally, CCDBG Act §658E(c)(2)(N)(ii) and NPRM §98.21(d) require that Lead Agency eligibility redetermination requirements do not unduly disrupt parent work, training, or education activities.

The PRA in §809.76 requires that the parent shall:

--pursue child support by:

--cooperating with the Office of the Attorney General (OAG), if necessary, to establish paternity and to enforce child support on an ongoing basis by either:

--providing documentation that the parent has an open case with OAG and is cooperating with OAG; or

--opening a child support case with OAG and providing documentation that the parent is cooperating with OAG; or

--providing documentation that the parent has an arrangement with the absent parent for child support and is receiving child support on an ongoing basis;

--not use, sell, or possess marijuana or other controlled substances; and

--ensure that each family member younger than 18 years of age attend school regularly (unless exempt under state law).

Current §809.76(c) requires that the parent demonstrate compliance with these provisions within three months of initial eligibility. If the parent does not demonstrate compliance within three months, child care is required to end. Some Boards require parents to demonstrate compliance with the PRA at the time of initial eligibility.

Boards have reported that parents meet PRA requirements by opening an OAG case at initial determination, closing the case immediately following initial determination, and then reopening the case immediately prior to redetermination. This increases OAG's workload and requires Boards and Board contractors to track parent compliance with the PRA—without meeting the PRA's intent.

Therefore, §809.76 regarding the PRA is repealed, as the requirements of the provisions of the PRA:

- cannot be applied or enforced during the 12-month eligibility period;
- cause delays in determining eligibility; and
- cause errors in calculating income due to inconsistent receipt of child support.

Comment:

Several commenters expressed appreciation to the Commission for the Commission's willingness to review and accept the request to remove the PRA as a requirement for child care eligibility.

Response:

The Commission appreciates the comment.

Comment:

One commenter, although appreciative of the removal of the PRA, inquired if the Commission will take into consideration the impact of removal of PRA on performance since the removal of the PRA affects parent income, which could affect parent share of cost and the final amount the Board pays.

Response:

The Agency will monitor any impact to child care performance targets.

§809.77. Exemptions from the Parent Responsibility Agreement

Section 809.77 related to exemptions from the PRA is repealed.

§809.78. Attendance Standards and Reporting Requirements

CCDBG Act §658E(c)(2)(S) and NPRM §98.45(m) require implementation of provider payment practices that:

- align with generally accepted payment practices for children who do not receive CCDF funds; and
- support the fixed costs of providing child care services by delinking provider payments from a child's occasional absences.

NPRM §98.45(m)(2) included four options that states may consider to meet the statutory requirement to support the fixed costs of providing child care by delinking payments from a child's occasional absence. The options include:

- paying providers based on a child's enrollment, rather than attendance;
- providing full payment to providers as long as a child attends for at least 85 percent of the authorized time;
- providing full payment to providers as long as a child is absent for five or fewer days in a four-week period; and
- requiring states that do not choose one of these three approaches to describe their approach in the State Plan, including how the approach is not weaker than one of the three listed above.

Currently, Chapter 809 requires Boards to establish a policy on attendance standards and procedures regarding reimbursement to providers for absence days. Chapter 809 requires Boards

to terminate services if a child exceeds the Board-allowed number of paid absences during a year. If care is terminated due to excessive absences, then the parent must wait 30 days before reapplying for services.

Neither the CCDBG Act nor the NPRM grants states the authority to terminate care due to a child not meeting the state's attendance standards.

As described in §809.93, consistent with the requirements in the CCDBG Act and the NPRM, the Commission amends §809.93 to state that providers shall be reimbursed based on the child's enrollment, rather than daily attendance.

The Commission must ensure that authorizations for reimbursement based on enrollments do not result in underutilization of services, and must reduce the potential for waste, fraud, or abuse of public child care funds. The Commission establishes statewide attendance standards designed to encourage parents to fully use child care services. The rules also require that 12-month attendance standards must be met in order for the child to continue to be eligible at the 12-month recertification.

Section 809.78(a)(1) is amended to require that parents shall be notified that the eligible child shall attend on a regular basis consistent with the child's authorization for enrollment. Failure to meet monthly attendance standards may:

- result in suspension of care, at the concurrence of the parent; and
- be grounds for determining that a change in the parent's participation in work, job training, or an education program has occurred and care may be terminated pursuant to the requirements in §809.51(b).

Section 809.78(a)(2) establishes allowable attendance standards as fewer than:

- five consecutive absences during the month; or
- ten total absences during the month.

Section 809.78(a)(3) requires parents to be notified that if a child exceeds 65 total absences during the most recent 12-month period, then the child is not eligible for continued care at the 12-month eligibility redetermination period and shall not be eligible for a minimum of 12 months.

Section 809.78(a)(4) includes in the parent notification that child care providers may end a child's enrollment with the provider if the child does not meet the provider's established attendance policy. As will be discussed in Subchapter E, regarding provider reimbursement based on enrollment, a child's eligibility cannot end based on the number of absences. However, parents must be notified that a provider is allowed to discontinue enrollment of the child at the provider facility if the child does not meet attendance standards established by the provider.

Section 809.78(a) is also amended to remove the provisions that child care services may be terminated for absences or misuse of attendance automation policies. However, the rules at §809.78(a)(9) state that the parent or secondary cardholders giving the attendance card or personal identification number (PIN) to another person, including the provider, is grounds for a potential fraud determination pursuant to Subchapter F of this chapter.

Section 809.78(c) is added to state that Boards shall ensure that absences due to a child's documented chronic illness or disability or court-ordered visitation are not included in the number of absences in paragraphs (2) and (3) (related to monthly and the 12-month attendance standards).

Section 809.78(d) is added to state that when a child's enrollment has been ended by a provider in §809.78(d)(4), Boards shall work with the parent to place the otherwise eligible child in another eligible provider.

The Commission acknowledges that the rule amendments related to enrollments and absences will require substantial modifications to existing Board policies and procedures as well as changes to the Agency's information and attendance automation systems. The Agency will work with Boards regarding these changes and to develop necessary reports to assist Boards, parents, and providers in tracking attendance.

Comment:

Several commenters agreed that the goal of preventing potential waste, fraud, or abuse was to ensure that the child care authorizations are being used. The commenters also understood that the CCDBG Act and the NPRM absences are not listed as an allowable termination of care reason during the 12-month eligibility period. Several commenters supported the development of statewide attendance standards designed to encourage parents to fully use child care services. One commenter stated that encouraging parents to maintain regular attendance for their child in a high-quality early education program results in stronger outcomes for children and families. The commenter was pleased to see that the Commission has considered multiple opportunities to quantify absences, and interpreted this as a commitment to supporting the development of the whole family and their needs outside of child care.

Response:

The Commission appreciates the comment.

Comment:

Many commenters expressed concerns regarding the lack of enforcement of attendance standards. The commenters stated that the enforcement mechanisms (suspension, determining a change in parents' activity participation) are not efficient or effective to enforce compliance with attendance reporting requirements or attendance standards.

One commenter pointed out that the Agency commented to ACF that attendance should be considered an eligibility requirement. While TWC provided comment to ACF requesting the consideration of termination of services due to excessive absences, without being able to end services, the additional 10 in a month or 41 in a year are not needed.

Many commenters requested that Boards be allowed to set local policy for redeterminations that consider whether or not attendance standards were met during the previous eligibility period.

Response:

The Commission understands the commenters' concerns. As one of the commenters pointed out, the Commission provided comments to the NPRM recommending that the regulations to allow states the flexibility to end services during the 12-month eligibility period for children and families that do not meet state attendance standards. However, pending the final rules, there is no statement in the CCDBG Act or the NPRM that expressly gives states this flexibility.

Regarding the recommendation that Boards be allowed to set local policy for redeterminations that consider whether or not attendance standards were met during the previous eligibility period, the Commission agrees that a child's attendance during the previous eligibility period should be taken into consideration at eligibility redetermination. However, the Commission does not agree that this should be established by Board policy. The Commission believes it is important to have statewide attendance standards in order to ensure that families and providers are treated consistently across the state regarding payments for absences and consequences for failure to meet attendance standards and reporting requirements.

Therefore, the Commission modified the proposed rules at §809.98(a)(3) to require that parents be notified that if a child is absent more than 65 days during the 12-month eligibility period, then the child is not eligible for continued care at the 12-month eligibility redetermination period and shall not be eligible for a minimum of 12 months.

The 65 total absences number is based on 75 percent attendance during a typical 12-month eligibility period of 260 authorized days. However, the Commission clarifies that the attendance standard is not 75 percent of any individual authorized enrollment. The attendance standard is fewer than 65 absences on any authorizations, including authorizations in which care may be for more than five days a week based on a parent's flexible work schedule or fewer than five days a week based on the parent's needs.

The 65-day attendance standard should not be confused with a provider's own attendance policies. As stated previously, individual provider attendance standards are at the discretion of the provider's operational policies. A provider could end enrollment for a child that does not meet the provider's attendance standards. However, if a provider ends the care due to violations of the provider attendance standards, the child care contractor must work with the parent to place the otherwise eligible child in another eligible provider. The Commission has added §809.78(d) to emphasize this point.

Comment:

Several commenters inquired if absences due to extenuating circumstances such as illness or absences due to court-ordered visitations would be included in the absence totals for the attendance standards. One commenter provided specific suggestions regarding the circumstances in which these absences would or would not be counted, including partially counting particular absences over the course of a particular period.

Response:

In order to ensure that the attendance standards are consistently applied and enforced, the Commission believes that the treatment of these types of absences should be included in Commission rules. Therefore, the Commission has added §809.78(c) to state that Boards

shall ensure that absences due to a child's documented chronic illness or disability or court-ordered visitation are not included in the number of absences in §809.78(a)(2) - (3).

Comment:

Many commenters requested clarification regarding the use of suspensions during the 12-month authorization period as a method for enforcing attendance standards and requested guidance on how to implement suspensions. Several commenters requested that Boards be given local flexibility to define how the suspension process works in the workforce area since the proposed rules do not address this issue.

Response:

As noted earlier in the section entitled "Suspensions of Child Care during the 12-month Eligibility Period," the preamble to the NPRM notes that, consistent with §658E(c)(2)(N)(i) of the CCDBG Act, once determined eligible, the child "will receive such assistance" for the 12-month eligibility period, and "during the minimum 12-month eligibility period Lead Agencies also may not end or suspend child care authorization or provider payments due to a temporary change in a parent's work, training, or education status."

However, the preamble also notes that "despite the language that the child 'will receive such assistance,' the receipt of such services remains at the option of the family." The law does not require the family to continue receiving services nor would it force the family to remain with a provider if the family no longer chooses to receive such services.

Consistent with this guidance, the Commission modifies §809.78(a)(1) to require that the parent must concur with the suspension. The Board cannot suspend care without the agreement and concurrence of the parent. Suspension of care without the request or concurrence from the parent is not allowed during the 12-month eligibility period under the guidance provided by the NPRM.

Board child care contractors are encouraged to contact parents to determine the reason for the absences, including if the absences are due to a change in activity status.

Contractors should work with the parent, including sending letters to the parents, to encourage attendance, recommend potential suspensions or reduction in the authorization and remind the parent of potential consequences, including termination of care at the 12-month redetermination period with the child not being eligible for care for future child care services for 12 months. Boards and contractors are reminded that suspensions or reductions in the authorizations can only occur with the concurrence of the parent. This will also be clarified in the Child Care Services Guide.

Comment:

Several Boards pointed out that some Boards are not currently reimbursing providers for the parent's failure to report attendance and asked if these Boards would now be required to pay for the non-reported attendance.

Response:

As discussed in §809.93, provider reimbursement will be based on the child's monthly authorized enrollment, excluding periods of suspensions. Providers will be reimbursed for all authorized days, including absences and days in which the parent did not report attendance. Boards currently not reimbursing providers for non-reported attendance days must start reimbursing the providers under the new rules.

Comment:

Several commenters inquired if the parent's failure to report attendance using the child care attendance automation (CCAA) system would be counted as an absence. One commenter noted that often the five-day and 10-day consecutive absences are the result of the unavailability of the CCAA attendance card, as either the card has not been received by the parent or the card needs to be replaced.

Many commenters noted that the language in §809.78(a)(10) includes language that the failure to report attendance or the denial of the attendance report by the automated system "may" result in an absence counted toward the attendance standards. The commenters requested that Boards have the local flexibility to develop policy for how this will be counted; and, if so, that the guidance should be either added to the rule language or included in the Child Care Services Guide.

One commenter requested that if the intent is to include non-reported days as an absence, then language should be added to the rule stating that "absences and non-reported attendance" are counted as absences.

Response:

The Commission appreciates the comments, but declines to include rule language specifying that all non-reported attendance should be counted as an absence. As one commenter noted, the non-reported attendance could be the result of the inability to record attendance due to issues with the attendance card.

However, the Commission agrees that the procedures for including or excluding non-reported attendance as an absence should be included in the Child Care Services Guide. Currently, such guidance to Boards is provided in §E-804: "Board Absence Policies for Parent Failure to Report Attendance" of the Child Care Services Guide. The guidance requires Boards to ensure that the decision to include the non-reported day must take into consideration situations that are beyond the control of the parent. The guidance in the revised Child Care Services Guide will be consistent with this requirement.

Providers will also continue to be able to report attendance that the parent was unable to report due to the CCAA system.

The Commission will make modifications to §E-804 to reflect the new rules for Boards to ensure that their procedures for including non-reported days as an absence comply with the Child Care Services Guide.

Comment:

One commenter requested information regarding the methodology used for determining these allowable attendance standards, as the commenter believed the proposed 41

absences in a 12-month period seem excessive. The commenter stated that no employer would accept an employee being absent for 41 days. The commenter stated that this 12-month period absence limit seems too generous and wasteful of taxpayer funds, especially when other families will be on the child care services waiting list for services.

Response:

The proposed rule language allows for a total of 40 absences in 12-months. This equated to 85 percent attendance of the standard 260 annual child care days, which is approximately three days a month and is listed in the NPRM as the minimal acceptable annual attendance standard for providers to receive full payment.

Because the Commission has made a change as an enforcement mechanism of the attendance standards, the Commission believes it is necessary to increase the annual amount from 40 to 65 absences in a 12-month period. This is approximately five absences a month. Although this may not be an acceptable standard for adults in the workplace, the Commission believes that five absences over the course of a month is appropriate for children in a child care setting, particularly if the child's continued eligibility at the 12-month redetermination period is at stake if the annual amount is exceeded.

The Commission notes that rules specifically exclude absences due to a child's documented chronic illness and disability, but do not exclude all absences due to illnesses. Young children experience a higher rate of non-chronic illnesses, particularly during their early years, and the Commission believes it is important to account for the absences in the absence count, but allow for a reasonable threshold as to not jeopardize continued eligibility.

Additionally, the annual absence requirement takes into consideration authorizations in which care may be for more than five days a week based on a parent's flexible work schedule. The Commission recognizes that many parents have work schedules that may be seven days one week, three days another week, and four days in other weeks, and that these schedules are not established on a routine basis. The monthly authorization must reflect this variation and the provider must make the space available to the child. Some absences on many of those authorized, but non-working days, are to be expected and the 65 total absences during the year account for these variations.

Comment:

Several commenters requested clarification as to whether care is to be terminated if the child does not meet the attendance standards in the rules. One commenter stated that if care cannot be terminated during the eligibility period, and the absences are only to alert the contractor to check into the parent's status, then this would appear to be a burden. Another commenter asked how absence letters will work with these changes.

Response:

The Commission emphasizes that the CCDBG Act and the NPRM do not allow for care to be terminated during the 12-month period for absences. Contractors should work with the parent, including sending letters to the parents, to encourage attendance, recommend potential suspensions or reduction in the authorization, and remind the parent of potential

consequences, including termination of care at the 12-month redetermination period with the child not being eligible for care for future child care services for 12 months. Boards and contractors are reminded that suspensions or reductions in the authorizations can only occur with the concurrence of the parent. This will also be clarified in the Child Care Services Guide.

Comment:

Several commenters requested clarification regarding the rule language stating the parents must be notified that providers may end the child's enrollment with the provider if the child does not meet the provider's established policy regarding attendance. Several commenters inquired if the Board contractor is required to review all the provider attendance policies to ensure the provider is in compliance with this language.

One commenter asked if parents would be able to request a transfer if a provider ends child's enrollment due to absences.

Response:

The Board's child care contractor will not be responsible for maintaining copies of providers' attendance policies. If a provider policy is to require adherence to attendance standards, then the Board cannot require the provider to keep the child enrolled. It is not expected that Boards monitor provider policies to ensure the policies are equitably enforced. This notification to the parent is intended to ensure that, even though the child's eligibility cannot end due to absences, the parent must be notified that absences may result in the provider ending care if the child is not attending in accordance with the provider's attendance standards.

Parents will be able to transfer, and Boards should work with parents in finding placements for, the child. Boards should also work with the parent to determine the cause of the absences and recommend strategies to reduce absences.

Comment:

One commenter was appreciative of the statement in rule that providers may end care at the provider facility if absences exceed the provider policy.

Response:

The Commission appreciates the comment.

Comment:

One commenter requested clarification as to whether the attendance standards are based on one calendar month or 30 calendar days.

Response:

The time period specifies a month, not 30 days. This is to align with the monthly authorization.

Comment:

A commenter asked how Boards that pay providers weekly or biweekly should calculate the required attendance for payment to the providers. Rule states that providers are

reimbursed on enrollment; however, there is also an attendance requirement for the family to meet. Please clarify whether these are two separate items and whether parents not meeting attendance requirements would not affect full enrollment payment to providers.

Another commenter asked how the absences affect payments. It appears that the Agency is considering funding based solely on enrollment, but an absence policy based on a percentage of the enrollment may have a financial impact on providers.

Response:

The Commission clarifies that payments on enrollments and the attendance standards are two separate issues. Payments to providers will be based on authorized enrollment, not daily attendance. Attendance tracking will help ensure that services are being used by alerting contractor staff to provide additional case management in situations in which a child is not regularly attending. Further, the annual attendance standard is taken into consideration at the eligibility redetermination.

Comment:

Many commenters questioned the continued use of CCAA. The commenters stated that to be fully consistent with CCDBG changes, it is recommended that the Commission eliminate any attendance standards, and that the \$3 million currently budgeted for CCAA be reallocated to direct care and quality. Since providers are already required to track attendance as part of DFPS minimum standards, CCAA is a duplication. Furthermore, since using CCAA cannot be enforced during the 12-month eligibility period, it should be removed, like the PRA requirements. The change from paying providers based on authorized enrollment rather than attendance also supports the recommendation to stop using the CCAA system.

The commenters cited the policy brief on Attendance Policies and Systems authored by ACF Office of Child Care, which states, "Time and attendance systems should support program payment policies and goals, not drive them. IT systems should be flexible and cost-effective to maintain, and not act as impediments to change." The commenters stated that the CCAA system is neither flexible nor cost-effective. The commenters stated that there are other, more cost-effective attendance tracking systems available.

One commenter suggested that there may be a way to collaborate with Child Care Licensing at both the local and state levels to create a more robust provider fraud prevention program. The commenter pointed out that the entire public school system bases certain allocations on attendance, but the school administration is responsible for reporting 100 percent of its attendance, not parents.

Another commenter stated that child care centers located on military bases are having difficulty meeting the requirement for CCAA since the military will not allow a point-of-service machine to be connected to their system for security reasons.

Response:

Tracking and reporting attendance will continue to be important parts of child care services, and CCAA will continue to be used for this purpose. Particularly during the 12-

month eligibility period, it is very important for the Agency, Boards, and contractors to be aware of changes and trends in a child's attendance in order to contact the parent to determine why absences are occurring and if, with the concurrence of the parent, changes need to be made in the monthly authorization in order to reduce the number of absences for authorized days.

Timely attendance reporting and tracking is also an important tool in identifying potential nontemporary changes in the parent work, training, and education status.

However, the Commission will work with Boards to gather input on any future recommended changes to the automated attendance system resulting from the changes in the rules.

SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE

The Commission adopts the following amendments to Subchapter E:

§809.91. Minimum Requirements for Providers

CCDBG Act §658E(c)(2)(K) requires annual unannounced inspections of all CCDF providers for compliance with health, safety, and fire standards. Relative providers are exempt from this requirement. By state statute, listed family homes are not inspected by DFPS child care licensing (unless there is a report of abuse or neglect at the facility). Therefore, under the CCDBG Act, nonrelative listed family homes are not eligible to provide CCDF services. Therefore, the Commission amends §809.91(a)(3) and (b) to remove requirements for Boards choosing to allow nonrelative listed homes as eligible child care providers as these providers are no longer eligible to care for CCDF-subsidized children.

Section 809.91(f) is amended to clarify that foster parents who are also directors, assistant directors, or have an ownership in the child care center, may receive reimbursement if authorized by DFPS.

Comment:

One commenter strongly supported the amendment to remove nonrelative listed homes as eligible to care for CCDF-subsidized children. All of Texas' children deserve access to child care options that meet the standards of health and safety as confirmed through annual, unannounced site inspections. The commenter commended the state on recognizing the critical importance of DFPS licensing standards and monitoring. DFPS child care licensing establishes minimum standards and monitoring processes that ensure the health and safety of children in care. Investment of state and federal funds should be made in safe, quality early childhood programs that deliver educational outcomes.

Response:

The Commission appreciates the comment. The Commission also notes that the final rules have been modified from the proposed rules to include removing §809.91(a)(3), which gave Boards the option to allow nonrelative listed family homes. This provision was inadvertently retained in the proposed rules.

§809.92. Provider Responsibilities and Reporting Requirements

Section 809.92(b) is amended to remove the specific attendance reporting requirements for providers to:

- document and maintain a list of each child's attendance and submit the list upon request;
- inform the Board when an enrolled child is absent; and
- inform the Board that a child has not attended the first three days of scheduled care.

The implementation of the child care attendance automation system eliminates the need for providers to report this attendance to the Board. However, the Commission notes that removing the requirement from Chapter 809 that providers document and maintain a list of each child's attendance does not remove the DFPS child care licensing requirement for providers to maintain a daily sign-in sheet for all children enrolled at the facility.

Comment:

One commenter noted that the requirement to maintain attendance records is removed in the proposed rules. However, the commenter stated that the contractor uses the sign-in sheets required by Child Care Licensing as evidence in potential fraud cases and would like to continue to request the sign-in sheets that are required by Child Care Licensing.

Response:

The Commission clarifies that Boards may continue to request these sign-in sheets from providers as part of fraud fact-finding.

Comment:

One commenter requested clarification on the purpose of the requirement that providers report when the parent fails to pay the parent share of cost since Boards are not allowed to impose consequences to parents failing to comply. The only reason for providers, that we can see, is if Boards are required to pay the parent share of cost when parents fail to do so.

Response:

A Board may have a policy that prohibits transfers if a parent is not current on their parent share of cost (as long as this policy does not have the effect of terminating a child's care). A Board may also have a policy that reimburses the provider if the parent fails to pay the parent share of cost. Both of these policies depend on the provider's timely reporting to the child care contractor that the parent is not current on the parent share of cost pursuant to §809.93(b)(3).

The requirement that providers report this information to the contractor will be vital to ensuring that appropriate actions are taken with the parent, including potential temporary reductions in the parent share of cost. Boards will be able to better anticipate costs associated with "making the provider whole," and the contractor will be alerted to families that require outreach and case management.

The Child Care Services Guide will provide guidance on working with parents who are not paying their parent share of cost.

Comment:

While not stated in rule, there is a common understanding among the Board child care network representatives that the provider may end services with the parent if the parent does not pay the parent share of cost. This is not based on proposed rule. Should it actually be considered, the environment of "provider hopping" will occur. The parent will not pay provider A. Provider A ends the services. Parent transfers to provider B, and it starts again.

The Agency provided comment to ACF that allows for termination of services for nonpayment of parent share of cost. That request is fully supported. The termination of services for nonpayment of parent share of cost, if allowed, is the best solution to support the providers and to support the parent. If the provider reports the nonpayment of parent share of cost appropriately, then the parent share of cost could be paid to the provider. The parent would then have services terminated or would pay the parent share of cost to the Board to have services continued.

If it remains that services cannot be terminated due to nonpayment of parent share of cost, then recommend that the rule remain as it is that the provider must report and the child care contractor works with the parent to pay the parent share of cost to the provider before any consideration of a transfer is given.

Response:

Pursuant to the NPRM, a child's care may not be terminated within the 12-month eligibility period for any reason other than income exceeding 85 percent of SMI for a family of the same size, or a permanent cessation of work, training, or education has occurred and three months of continuing care have been provided to allow the parent to resume the work, training, or education activity.

A Board may establish a policy prohibiting transfers when a parent has failed to pay his or her share of cost, as long as the policy does not have the effect of terminating care during the 12-month eligibility period.

Boards may enact policies to pay providers when parents fail to pay their share of cost. The Child Care Services Guide will provide guidance for contractor staff regarding parents who may qualify for a temporary reduction in their parent share of cost.

Comment:

One commenter noted that the Agency commented to ACF disagreement that states or local areas cannot allow providers to charge parents above the copay for provider mandatory fees, preferring that the decision should be based on local needs and provider base. Yet, the Agency issued Workforce Development (WD) Letter 33-13 implementing a methodology on calculating a provider's published rates, stating that the intent is to ensure that provider's published daily rates are consistently calculated across the state. The calculation includes enrollment fees, supply fees, and activity fees. If indeed there are additional mandatory fees, then all mandatory fees should be included in the standardized method of calculating daily rate. This would negate Agency disagreement that states or local areas cannot allow providers to charge parents above the co-pay for provider mandatory fees.

Response:

The calculation in the referenced WD Letter concerns the methodology for calculating an individual provider's published rate, which does require the inclusion of provider mandatory fees. However, this is not the same as the Board maximum rate. Board maximum rates may be higher or lower than an individual provider's published rate. If the Board maximum rate is lower than the provider's published rate, then the current rules retain the provision that a Board may prohibit providers from charging parents the difference between the lower Board maximum rate and the higher provider published rate. However, this should be a local decision.

§809.93. Provider Reimbursement

As explained in §809.78 regarding a child's attendance standards, CCDBG Act §658E(c)(2)(S) and NPRM §98.45(m) require implementation of provider payment practices that:

- align with generally accepted payment practices for children who do not receive CCDF funds; and
- support the fixed costs of providing child care services by delinking provider payments from a child's occasional absences.

NPRM §98.45(m)(2) included four options that states may consider to meet the statutory requirement to support the fixed costs of providing child care by delinking payments from a child's occasional absence. The options include:

- paying providers based on a child's enrollment, rather than attendance;
- providing full payment to providers as long as a child attends for at least 85 percent of the authorized time;
- providing full payment to providers as long as a child is absent for five or fewer days in a four-week period; and
- requiring states that do not choose one of these three approaches to describe their approach in the State Plan, including how the approach is not weaker than one of the three listed above.

Currently, Chapter 809 requires Boards to establish a policy on attendance standards and procedures regarding reimbursement to providers for absence days. Chapter 809 requires Boards to terminate services if a child exceeds the Board-allowed number of paid absences during a year. If care is terminated due to excessive absences, then the parent must wait 30 days before reapplying for services.

Neither the CCDBG Act nor the NPRM grants states the authority to terminate care due to a child not meeting the state's attendance standards.

To ensure statewide consistency for families and statewide compliance to the requirements in CCDBG Act §658E(c)(2)(S) and NPRM §98.45(m), §809.93 is amended to implement a statewide policy that reimburses regulated providers based on the child's enrollment, rather than daily attendance. The rule language at §809.93(b) states that a Board or its contractor shall reimburse a regulated provider based on a child's monthly enrollment, excluding periods of suspension (at the concurrence of the parent).

Additionally, the Commission reletters §809.93(g) to §809.93(f) and amends the language to remove references to reimbursements based on the unit of services delivered. The amended

language states that the monthly enrollment authorization is based on the unit of service authorized (either as an authorized part-day unit or an authorized full-day unit).

The rules retain the requirement that relative child care providers are not reimbursed for days on which the child is absent. The Commission retains this provision based on the contention that unregulated relative providers do not have the same fixed costs as regulated providers do in order to meet regulatory standards.

Comment:

One commenter noted that §809.93(b) states that providers will be reimbursed based on "monthly enrollment." However, §809.93(f) states that "reimbursement for child care is based on the unit of service delivered," which is then defined on a daily basis. Monthly enrollment implies that providers are paid their monthly rate for the entire month; "unit of service delivered" defined on a daily basis implies that providers are reimbursed a daily amount (current practice), whether based on enrollment or attendance. The commenter recommended that §809.93 should be modified to be clear on which basis providers are reimbursed.

Response:

The Commission appreciates the comment and has modified the language in §809.93(f) accordingly.

Comment:

One commenter strongly supported the rule change to reimburse a regulated provider based on a child's monthly enrollment authorization. As the Commission noted, CCDBG Act §658E(c)(2)(S) and NPRM §98.45(m) require implementation of provider payment practices that align with generally accepted payment practices for children who do not receive CCDF funds and support the fixed costs of providing child care services by delinking provider payments from a child's occasional absences. This change will bring Texas into the forefront of states that are committed to ensuring equal access for children receiving subsidy.

The commenter would like to offer support, input, and feedback on any rules or guidelines needed to fully implement this payment structure. As this is a major change to existing practice that will greatly support currently participating providers and encourage new providers to participate in CCDF, the commenter also supports the Agency in any request for additional funding to comply with this requirement.

Response:

The Commission appreciates the comment.

Comment:

One commenter stated that with the 12-month eligibility period and care being paid based upon authorization, not on attendance, that greater consideration must be given to paying the early care and education providers at the beginning of each month based upon authorized days in the month. This would align the child care services with the early care and education industry. It would encourage more providers to participate, as the funds would be paid at the beginning of each month. This may also encourage providers to

expand their infant and toddler capacity and to provide care during nontraditional hours because they would have the funds at the beginning of each month. They would be incentivized to work with the parents and the children to deliver stable, consistent, quality care in order to maintain the children in care and the payment upfront.

Response:

The Commission declines to make this change. It is a matter of generally accepted practice that public funds be expended after the authorized services are delivered in order to ensure greater integrity of the public funds and to minimize the amount that may be required to be recovered if spent improperly. Additionally, the authorization may change during the month due to the parent requesting an increase in services from part-time to full-time, a requested parent suspension of care, or the family's eligibility period ending during the month and the family is not redetermined as eligible. The payments made prior to these changes would need to be recovered.

Comment:

One commenter recommended that the Commission add language to support child care providers in managing fixed costs to include that "A Board or its child care contractor shall reimburse a regulated provider based on a child's monthly enrollment authorization, regardless of whether eligibility changes during the month." This change is especially impactful since daily attendance is no longer reported and many fixed costs recur monthly, such as rent.

Response:

The Commission declines to make this change. If the family eligibility changes during the month and the family is no longer eligible, then the authorization must end and the provider cannot be reimbursed.

Comment:

One commenter noted that this section requires Boards to ensure that providers are not paid for holding spaces open and requested clarification on the difference between paying to hold spaces open and paying for authorized enrollment when a child is not attending.

Response:

The Commission clarifies that paying a provider without an authorized enrollment would be considered paying a provider for holding a space open.

With an enrollment authorization, the Board is not paying for an open slot because the enrolled child fills the slot.

Comment:

Several commenters stated that this section prohibits child care services from ending because of attendance, but proposes to only pay providers 85 percent of the rate if the children do not meet the standards of attendance. The commenters stated that this would not allow provider to cover its fixed costs. The commenters highly object to that burden being placed on providers. And in many cases already, the provider is not being paid the published rate, but is being paid below that.

Response:

The Commission clarifies that the amended rule requires that payment be based upon authorized enrollment, not daily attendance. The Commission anticipates that, consistent with the requirement in the CCDBG Act, this will assist providers in meeting the fixed costs of providing care. The rules do not limit the payments to 85 percent of the rate if the children do not meet attendance standards.

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

Section 809.94(c) is amended to remove language stating that a parent receiving notification of a provider's corrective action may choose to continue care with the provider if the parent signs the notification acknowledging that the parent is aware of the provider status. The effect of this language is to end the child's care unless the parent signs the notification and acknowledges that the parent chooses to continue care at the facility. Under the CCDBG Act, care cannot end during the 12-month period for a parent's failure to return the acknowledgement to continue care at the facility.

Therefore, §809.94(c) is amended to state that the parent may transfer the child to another provider without being subject to the Board's transfer policies if the parent requests the transfer within 14 calendar days of receiving the notification.

Comment:

One commenter pointed out that the parent must request the transfer within 14 business days of receiving the notification. The commenter stated that 14 business days is too long for the parent to pick another provider to transfer their children. It would be most beneficial if this rule were changed to 14 calendar days, which would align with the new parent reporting requirement.

Response:

This is an oversight in the proposed rules. The language should be 14 calendar days to align with the parent reporting requirements.

Comment:

One commenter expressed concern about removing the requirement that a parent must sign an acknowledgement that the parent is aware of the provider's licensing status. If something subsequently were to happen to the parent's child, then the Board would have no documentation to support the fact that the parent was informed of the provider status and chose to keep their child at the facility anyway.

One commenter asked if the case remains open if the contractor does not hear anything back from the parent after sending notice to the parent.

One commenter asked if a parent chooses to keep a child at a provider that is on corrective action would this be considered a voluntary withdrawal from child care services.

Response:

The Commission clarifies that care cannot be terminated due to the parent not returning the acknowledgement that the provider is on corrective action. The contractor should retain a copy of the notification sent to the parent, either on hard copy or electronic format, in order to document that the contractor provided notification to the parent. Additionally, parents may choose to continue care in a provider that is on corrective action as corrective action does not disqualify a provider from serving subsidized children.

§809.95. Provider Automated Attendance Agreement

Section 809.95 is amended to clarify that provider misuse of attendance reporting and violation of the requirements in this section are grounds for fraud determination pursuant to Subchapter F of this chapter.

Comment:

One commenter strongly recommended the Commission clarify the reporting requirement for providers, specifically with regards to "authorized days," and how that differs from attendance, which providers will no longer be required to report.

Response:

The Commission clarifies that the authorized days consist of the number of days, the days of the week, and the level of care (part-day or full-day) that will determine the monthly authorization. The attendance associated with the authorized enrollment will be reported by the parent through the automated attendance. Although the providers are no longer required to report individual attendance days in order to be reimbursed, providers are required to notify the contractor if the authorized days in the automated system are different than the authorization received by the provider and the parent, in order to ensure that the proper number of days for reimbursement is correct.

Comment:

Since payment for services will be based on authorized days and not on attendance, the rules associated with CCAA usage seem overly harsh and in most cases not necessary. The CCAA system will primarily be used for tracking absence and non-records of attendance as a tool for the child care contractor to determine which parents need to be contacted.

Response:

CCAA will be used to track absences to determine if parents should be contacted in regards to attendance. However, the attendance system will also be used to verify that the child's authorized enrollment is being used for continued provider payments. Instances in which the parent removed the child from the provider without informing the child care contractor, yet the child's attendance is still being recorded through automated attendance and the provider continues to receive payments on the enrollment, will be grounds for determination of fraud fact-finding.

SUBCHAPTER F. FRAUD FACT-FINDING AND IMPROPER PAYMENTS

The Commission adopts the following amendments to Subchapter F:

§809.111. General Fraud Fact-Finding Procedures

Under *Program Integrity* on page 80488, the NPRM preamble provided the following clarification regarding the Administration for Children and Families' (ACF) intent regarding fraud and recoupments:

ACF would like to clarify that there is no Federal requirement for Lead Agencies to recoup CCDF overpayments, except in instances of fraud. We also strongly discourage such policies as they may impose a financial burden on low-income families that is counter to CCDF's long-term goal of promoting family economic stability. The Act affirmatively states an eligible child "will be considered to meet all eligibility requirements" for a minimum of 12 months regardless of increases in income (as long as income remains at or below 85 percent of SMI) or temporary changes in parental employment or participation in education and training. Therefore, there are very limited circumstances in which a child would not be considered eligible after an initial eligibility determination.

When implementing their CCDF programs, Lead Agencies must balance ensuring compliance with eligibility requirements with other considerations, including administrative feasibility, program integrity, promoting continuity of care for children, and aligning child care with Head Start, Early Head Start, and other early childhood programs. These proposed changes are intended to remove any uncertainty regarding applicability of Federal eligibility requirements for CCDF and the threat of potential penalties or disallowances that otherwise may inhibit Lead Agencies ability to balance these priorities in a way that best meets the needs of children.

Existing regulations at §98.60 indicate that Lead Agencies shall recover child care payments that are the result of fraud from the responsible party. While ACF does not define the term fraud and leaves flexibility to Lead Agencies, fraud in this context typically involves knowing and willful misrepresentation of information to receive a benefit. We urge Lead Agencies to carefully consider what constitutes fraud, particularly in the case of individual families.

In accordance with this guidance, §809.111 is amended to provide a definition of fraud in relation to child care services. The amended rule states that a person commits fraud if, to obtain or increase a benefit or other payment, either for the person or another person, the person:
--makes a false statement or representation, knowing it to be false; or
--knowingly fails to disclose a material fact.

This definition is consistent with the definition of fraudulently obtaining benefits under Texas Labor Code §214.001.

§809.112. Suspected Fraud

Section 809.112 is amended to clarify specific parental actions that may be grounds for suspected fraud and cause the Board to conduct fact-finding or the Commission to initiate a fraud investigation. These actions include:

--not reporting or falsely reporting at initial eligibility or at eligibility redetermination:

- household composition, or income sources or amounts that would have resulted in ineligibility or a higher parent share of cost; or
- work, training, or education hours that would have resulted in ineligibility; or
- not reporting during the 12-month eligibility period:
 - changes in income or household composition that would cause the family income to exceed 85 percent of SMI (taking into consideration fluctuations of income);
 - a permanent loss of job or cessation of training or education that exceeds three months;
- or
- improper or inaccurate reporting of attendance.

Comment:

One commenter suggested that the "90-day" reference in §809.112(b)(2) regarding a permanent loss of job be changed to "three months" to align with the language in §809.51(a)(2)(E) regarding other temporary cessations of activities.

Response:

The Commission agrees and for consistency has modified the language as suggested.

Comment:

One commenter pointed out that the last two actions considered as grounds for suspected fraud in §809.112(b)(2) should be separated by an "or," not "and." Using the word "and" implies that both instances have to be true to suspect fraud.

Response:

The Commission agrees and has modified the language as suggested.

Comment:

One commenter requested that the rules clarify what actions should be taken at redetermination if the contractor needs to process fact-finding for suspected fraud due to the parent failure to report changes.

Response:

Section 809.112 specifies parent actions that would be grounds for suspected fraud, which includes not reporting or falsely reporting family size or income that would result in the family being over 85 percent of SMI for a family of the same size. Section 809.112 also includes failure to report a permanent change in work, education, or training.

The Agency is developing procedures regarding fact-finding actions to determine fraud and provide guidance through a WD Letter or in the Child Care Services Guide.

Comment:

One commenter recommended the household composition be defined based upon marriage certificates, public records, legal and financial records, and client admittance.

Response:

The definition of a family in §809.2 has been changed to include marriage, including common-law marriage.

Comment:

One commenter stated that further fact-finding may be initiated if the parent entered a legal union of matrimony during the 12-month eligibility period and fails to disclose a change in household composition at eligibility redetermination.

Response:

If the marriage increased the family size, then this would be considered a change of family size that must be reported. If two unmarried parents reported as residing together at eligibility, then both parents would be included in the family size. The couples getting married during the 12-month eligibility period would not change the family size. However, if the marriage increased the family size and income, then that must be reported and would be subject to fraud fact-finding.

Comment:

One commenter recommended that if a parent does not report a change in income or household composition that causes the family income to exceed 85 percent of SMI, this failure to report should not be considered grounds for fraud, as the family may not be aware of the SMI guidelines. It is the parent's responsibility to ensure such changes are reported at initial eligibility and eligibility redeterminations.

Response:

The Commission understands the concern that a parent may not be fully versed in the specific income calculation used to determine eligibility or if a change in activity status constitutes a nontemporary change. The Agency will work with Boards to provide clear information to parents regarding the family size and income amounts that must be reported if exceeded, and to provide clear guidance on changes that are considered temporary changes.

Comment:

One commenter requested clarification on what constitutes improper reporting of attendance described in §809.112(b)(2)(C).

Response:

Improper reporting of attendance includes misuse of the attendance automation system and reporting of attendance that did not occur.

§809.113. Action to Prevent or Correct Suspected Fraud

Section 809.113 is amended to remove the provision that a child care contractor may take certain actions if a provider or parent has committed fraud. Although a Board's child care contractor is expected to take these actions, the language implied that the contractor determines which action to take without the involvement of the Board or the Commission.

Amended language in §809.113 clarifies that actions taken against a provider or parent shall be consistent with and pursuant to Commission policy.

Further, §809.113 is amended to include the following options:

--A provider may be prohibited from future eligibility to provide Commission-funded child care services; and

--A parent's eligibility may be terminated during the 12-month eligibility period if eligibility was determined using fraudulent information provided by the parent.

Comment:

One commenter requested clarification on §809.113(b)(4) regarding termination of a parent's care during the 12-month eligibility period, if eligibility was determined using fraudulent information provided by the parent. The commenters asked if this would require the appeal or fraud review to take place first before terminating the parent's care. Would fraud have to be confirmed first before terminating the parent's care or can the parent be terminated for suspected fraud?

Another commenter asked if a parent is found to have committed fraud, is the Board required to give 15 days' notice of termination or is the care terminated immediately.

Response:

The language in §809.113(b) states that the actions are based on a finding of fraud. A finding of fraud would be a fraud determination. The required 15-day notification must be provided, and the parent must be allowed to appeal the decision as required in §809.74.

Comment:

One commenter recommended that to achieve the explanation in the preamble, it is recommended that the revision be, "The Commission, Board, or Board's child care contractor (with Board approval)..."

Another commenter recommended that the wording in §809.113 (a) and (b) be modified to read, "the Commission, Board, or Board's child care contractor at the direction of the Board..." in recognition of the fact that the contractor is expected to take these actions while addressing the concern that they should not be taken without the involvement of the Board or the Commission.

Response:

The Commission declines to make this change. The intent of the rule language in §809.113 is to list actions that may be taken against a provider or parent for a finding of fraud. The decision on the actions taken is the responsibility of the Board, not the Board contractor. The contractor may present the results of the fact-finding to the Board and recommend that the Board determine that fraud occurred. The Commission understands that the contractor will ultimately implement the action as determined by the Board regarding a finding of fraud, but the intent of the language is to establish that the Commission or the Board, not the contractor, will take action regarding fraud determinations.

Comment:

One commenter requested clarification on what is considered fraud and provided specific scenarios and inquired if those scenarios would be considered fraud and the funds subject to recovery.

Response:

The Agency will develop guidelines and criteria for fraud determinations. RID will continue to provide training to Boards and Board contractors on fact-finding.

§809.115. Corrective Adverse Actions

Section 809.115 is amended to remove §809.115(b)(4) to remove termination of child care services as a possible corrective action for parents' noncompliance with this chapter.

Comment:

One commenter requested that a list of corrective actions for parents be provided as was done for providers in §809.115(b). One commenter asked if giving a CCAA card or PIN to a provider are the only parent actions for which Boards may take corrective actions against parents.

Response:

The actions taken against a parent are included in §809.117(d) and involve recovery of improper payments for instances:

- involving fraud;
- in which the parent has received child care services while awaiting an appeal and the determination is affirmed by the hearing officer; and
- in which the parent fails to pay the parent share of cost and the Board's policy is to pay the provider.

Comment:

One commenter requested clarification on whether or not Boards have local flexibility to impose sanctions on parents for other reasons at the discretion of the Board.

Response:

Boards may only take corrective action as allowed under Subchapter F. Any termination of care within the 12 months must be in compliance with this subchapter.

Comment:

One commenter stated that the corrective actions for the CCAA card seem overly harsh and in most cases not necessary. The CCAA system will primarily be used for tracking absence and non-records of attendance as a tool for the child care services contractor to determine which parents need to be contacted. There are no corrective actions that can be taken against the parent for non-usage if the parent is and remains eligible for services.

Response:

In this subchapter, the definition of "fraud" includes knowingly making a false statement or declaration in order to obtain or increase payments either for the person or another person. Knowingly making false attendance reporting in order to bypass the attendance standards with the goal of continuing care at the next eligibility redetermination could be considered grounds for a finding of fraud.

§809.116. Recovery of Improper Payments

Section 809.116 is repealed and combined with §809.117.

§809.117. Recovery of Improper Payments to a Provider or Parent

Section 809.117 is amended to clarify the circumstances in which parents are required to repay improper payments. The language clarifies that a parent shall repay improper payments only in the following circumstances:

- Instances involving fraud;
- Instances in which the parent has received child care services awaiting an appeal and the determination is affirmed by the hearing officer; or
- Instances in which the parent fails to pay the parent share of cost and the Board's policy is to pay the provider for the parent's failure to pay the parent share of cost.

Section 809.117 is amended to prohibit a parent subject to the repayment provisions above from future child care eligibility until the repayment amount is recovered, provided that the prohibition does not result in a Choices or SNAP E&T participant becoming ineligible for child care.

A technical amendment to §809.117(e) is made to change the word "prepayment" to "repayment."

Comment:

One commenter asked if upon finding an eligibility error that resulted in the customer receiving services for which they were not eligible, whether contractors will be able to discontinue services or is the customer still entitled to receive a full 12 months of services. Additionally, the commenter asked who would be responsible for paying back the improper payment.

Response:

The actions taken and any possible recoupments will be included in Agency guidelines regarding fraud determinations and recoupments that are currently under development.

Comment:

One commenter stated that to align with the proposed change to not recoup overpayments from parents due to not timely reporting changes, it is recommended that contractors not be assessed disallowed costs from overpayments due to unintended errors.

The commenter stated that this is particularly true during this transition period of enacting major changes, including 12-month certifications, and enhanced quality assurance will need to be developed. To allow time for training and review processes to be fully implemented, it is recommended that contractors be exempt from disallowed cost charges so resources can be devoted to areas that benefit families. These include training staff on new rules that better adhere to the interests of the children and internally monitoring cases to ensure new rules are being administered accurately. Uniform statewide training is also recommended, given the significant changes being proposed to Chapter 809.

Response:

The Agency will provide training on the new requirements and new processes and will provide technical assistance to Boards and contractors on the new requirements. However, the Agency cannot exempt contractors from disallowed costs, even during the

implementation period. Any findings of disallowed costs due to contractor error will be handled in accordance with Agency policy.

Comment:

One commenter noted that §809.117(d)(2) states that improper payments should be repaid in "instances in which the parent has received child care services awaiting an appeal and the determination is affirmed by the hearing officer." One commenter asked if this refers to the first step of the appeal process--the local review--or the second step of the appeal process--the Board level hearing--or both.

Are parents required to repay the cost of child care during an appeal if the termination is upheld even with the first level of appeal as they do now?

Response:

The repayment amount will be based on the final appeal determination.

Comment:

Several commenters asked if the Board's current process of using repayment schedules (payments received over a period of time) and allowing parents to remain in care as long as they are paying on their repayment schedules will still be allowed.

The current proposed rule does not allow for parents who are complying with their recoupment payment plan to be eligible to receive services. Under the current proposed rule, if a Choices or SNAP E&T participant receives services and then becomes eligible for At-Risk child care services, the parent would have to be denied under current proposed rule because the recoupment amount has not been paid in full.

One commenter recommended to allow for eligibility for services if a parent is complying with recoupment payments.

One commenter asked for clarification if the language in §809.117(e) means the repayment must be paid in full prior to determination of eligibility.

Response:

Full payment must be made in order for the parent to be eligible for future child care at the eligibility redetermination or at the next time the parent applies for care. This is necessary due to the 12-month eligibility period and the requirement that care cannot be terminated during the eligibility period. There is a possibility that a parent may make one payment at the beginning the repayment plan in order to be determined eligible, then not make a payment for the remainder of the eligibility period.

Comment:

One commenter inquired as to whether Boards have local flexibility on how to handle recoupments owed under current rules. If Boards do not have flexibility, the commenter requested guidance on how to handle current recoupments effective October 1, 2016.

Response:

As stated previously in the discussion in §809.111 regarding general fraud fact-finding procedures, there is no federal requirement for Lead Agencies to recoup CCDF overpayments, except in instances of fraud. However, the Commission is obligated to ensure that child care funds are effectively and efficiently targeted toward eligible low-income families. As noted in the NPRM preamble, when implementing CCDF program, Lead Agencies must balance ensuring compliance with eligibility requirements with other considerations, including administrative feasibility and program integrity. The Commission has long had a strong focus on program integrity and a significant Rapid Process Improvement review is underway to streamline and standardize Boards' fraud fact-finding investigations and adverse action determination procedures. As Agency and Board procedures become more clear and efficient, recoupment efforts will become more focused on fraud detection.

To ensure that recoupment of amounts owed prior to the effective date of these rules are consistent with the revised Agency and Board fraud-related standards moving forward, the Commission proposes to limit consideration during eligibility determination and redetermination of prior recoupments solely to debts from court-ordered restitution. Therefore, amounts owed other than those that are court-ordered restitution cannot be considered during eligibility redetermination.

GENERAL COMMENTS

Comment:

The Commission received many comments from Boards as well as from the Board Child Care Network in support of the changes to ensure continuity of care. However, the commenters were also concerned that many of the changes resulting from the CCDBG reauthorization will make it even more difficult for Boards to accurately forecast expenditures in the first couple of years, such as reductions in parent share of cost, transfers between workforce areas, and the requirement to fund all former DFPS children with CCDF funds for the remainder of the eligibility period. Since DFPS families do not have a parent share of cost, it will be more expensive to serve these families compared to At-Risk families. Additionally, potential changes in the methodology for calculating income are likely to reduce parent shares of cost resulting in higher Board costs. Over half of the Boards currently do not reimburse providers for non-attendance days and the change to reimbursing providers based on authorized enrollment will further increase the amount of funds needed to provide care for these Boards. These factors, along with higher utilization rates, will present new challenges to Boards in managing funds. These factors may necessitate the need of Boards to terminate services rather than exceed their child care allocations.

One Board recommended that the Agency develop specialized technical assistance in this area and that adequate resources be made available to develop and run specialized or canned reports.

The child care network and several Boards recommended that the ability of Boards to end services in order to stay within budget be added to the Chapter 809 rules.

Response:

The Commission appreciates the comments and understands the concerns mentioned. The Agency will closely monitor the impact of the changes to cost and.

The Commission will also provide technical assistance and specialized data analysis as requested to Boards on an individual and group basis in order to develop strategies and identify best practices during the implementation of the rules.

Regarding the recommendation to end services in order to stay within budget, CCDBG Act 658E(c)(2)(N) states that the child will receive assistance for not less than 12 months "before the State or designated local entity redetermines the eligibility of the child under this subchapter." Additionally, the Act further states that there are procedures in place ". . . to ensure that working parents (especially parents in families receiving assistance under [TANF] are not required to unduly disrupt their employment in order to comply with the State's or designated local entity's requirement for redetermination of eligibility for assistance in accordance with this subchapter."

The CCDBG Act promotes continuity of services and does not provide for dropping an otherwise eligible child for continued care at redetermination.

The Agency's child care rules reflect this intent. Section 809.54(b) states that "nothing in this chapter shall be interpreted in a manner as to result in a child being removed from care." Additionally, §809.50 regarding At-Risk child care specifically states that a parent is eligible under this section "at eligibility determination *and* at eligibility redetermination," if the child and the family meet the eligibility requirements.

Comment:

One Board commented that it supports the concept of continuity of care; however, as the Agency has acknowledged in the preamble to §809.44 related to calculating family income, these changes, as well as changes to other rules (in particular, those related to assignment of parent share of cost and serving populations not required to pay parent share of cost), may result in increased costs of care and reduce the number of children the Board may be able to serve.

The Board is grateful to see that the Agency plans to perform ongoing analyses of these and other factors that may affect performance and be open to making adjustments accordingly, especially since remedies once available to Boards for managing over expenditures (such as termination policies) are no longer allowable and are, therefore, unavailable as an option for mitigating risk.

Response:

The Commission appreciates the comment.

Comment:

Commenters expressed concern about the deadline to implement the reauthorization and new state rules on October 1, 2016. The amended rules and the income calculation redesign constitute major operational changes that will require changes to processes, systems, customer and provider communications, and finally training for staff. In the meantime, customers needing to be recertified receive notices 20-45 days in advance,

depending on the region. In some cases this is well before final rules are even adopted. In order to ensure clear communication to customers and ensure that the rules are implemented appropriately, we would request that the rules be phased in starting on October 1, 2016, and that time be allowed to implement the changes required.

Response:

The Commission understands the concern and is planning to provide training webinars in September in preparation for the October 1, 2016, rule implementation. Training and technical assistance will also be provided throughout the 2017 Board contract year. Additionally, the Agency has issued guidance to Boards that the rules in effect prior to the effective date of these amendments allow Boards to establish their own eligibility periods. Therefore, Boards may extend the eligibility periods of children in care prior to the effective date of these rules in order to ensure minimum disruption to service delivery and to allow time for Board and Board contractors to receive training on the new rules and to modify processes and procedures.

Comment:

One commenter was "overwhelmingly excited" to see the changes coming and cannot wait until October 1, 2016. The commenter has used child care services for several years and thinks it is a great program.

Response:

The Commission appreciates the comment.

Comment:

Several commenters noted that scattered throughout the document are limitations or time frames when parents can report changes, request a transfer after the provider is placed on corrective action by DFPS, etc. However, these date limitations do not appear to be consistent and make the rules more challenging than necessary. Additionally, sometimes the term "calendar days" is used, while other times, the term "business days" is used. Using "calendar days" is our preferred method. Consistency with limitations and time frames among all of the sections of the proposed rules would be appreciated (if allowable).

Response:

The Commission appreciates the comment. Generally, the time frames in the rules are "calendar" days, and the rules will be modified to make this clarification, where applicable. However, to account for the weekend and to allow the greatest amount of time possible, deadlines of five days or fewer will remain "business days."

Comment:

One commenter appreciated the opportunity to provide comment on proposed rule changes. The commenter believes that 30 days is insufficient time to thoroughly review each proposed rule and suggests rules that address the intent and implementation of the Reauthorization Act of 2014. These 30 days have been the first opportunity for the public to provide comments. Given the sweeping changes that the Act allows, the commenter respectfully requests that the Commission and/or Boards host forums to receive input from parents, providers, private and public entities, and early care and

education associations. Guidelines may have to be issued in order to comply with an October 1, 2016, implementation date but after that, host public forums--gather the input from the public on how they see the future implementation of the CCDF rules in Texas.

Response:

The Commission appreciates the comment and thanks the commenter for reviewing the proposed rules and providing input. The Commission encourages input from all stakeholders regarding the Child Care Services program.

Comment:

One provider submitted that the provider has always been willing to be paid less for the sake of these families and children and over the years have seen families use the system and then get out of it, making room for others and being successful.

The provider reported seeing much abuse by parents who fail to record attendance, fail to turn in their paperwork and are then removed from the system, but get back on and the cycle continues. The commenter believes there should be some accountability for the parent to do what is required, and the penalty should not be placed on the provider who is already not being compensated at the rate they are charging. If an open child support case is no longer required, allowing parents to neglect the cost and care of their child, then the burden falls on the taxpayer.

The provider is supporting the current workforce by providing care for young children as well as educating the young children in care to become the workforce of tomorrow.

The commenter stated that parents should be required to attend education classes, parenting classes, budgeting classes, and self-improvement classes, if they are allowed to remain in the system. The provider is required to train staff and follow all the rules in order to care for children. Parents should have to do the same.

The commenter also stated that parents complain about having to pay their copay amounts. Many have an entitlement mentality. The commenter stated the understanding that many Child Care Services customers have little education or life skills, but wondered when the cycle will be broken if we continue to enable parents to remain in the cycle their parents were in.

There should be a limit of how long parents are allowed to stay in the system. If parents knew they would never receive funds after a certain amount of time, perhaps they would be more diligent in becoming self-sufficient.

Response:

The Commission appreciates the comments and appreciates the challenges faced by providers. The Commission has implemented several initiatives to assist child care providers with funding and professional development to improve the quality of child care services.

Additionally, the Agency strives to support the fixed costs of providing subsidized child care services by paying providers on enrollment rather than daily attendance.

The Commission appreciates the commenter's support for the current workforce and helping to develop and educate the future workforce. The 12-month eligibility period and the emphasis on continuity of care will assist children in obtaining stable and consistent care and early education opportunities. The consistent and stable care will also assist parents in obtaining and maintaining consistent and stable employment to lead to self-sufficiency.

COMMENTS WERE RECEIVED FROM:

Rachel Garcia, Senior Operations Manager, Lower Rio Grande Valley
Sharon Felderhoff, Workforce Texoma Board of Directors
Julie Craig, Child Care Contracts Manager, Texoma
Marsha Lindsey, Deputy Director/EO Officer, Workforce Solutions Texoma
Dr. Jeremy P. McMillen, President, Grayson College
Angela Magers, Director, Montessori Academy of North Texas
Kelly Langley
Tammy Flores
Debra English
Shannon Richter, Contract Manager, Workforce Solutions Rural Capital Area
Kelley Fontenot, Child Care Manager, North Central Texas Council of Governments, Workforce Solutions for North Central Texas
Shari Anderson, VP Child Care Assistance, ChildCareGroup
Shawn Garrison, Child Care Policy Analyst, Workforce Solutions Alamo
Rita Morris, Director of Child Care Management Services, Child Care Associates (Tarrant County)
Pam McPeak, Owner and Executive Director, Little People's Learning Center
Sandy Balk
Kerry Echard
Workforce Solutions Concho Valley
Workforce Solutions of West Central Texas
City of San Antonio, Workforce Solutions Alamo's child care contractor
Kathy Talbert, Owner/Director, Little Cougar, Inc.
September Jones, Government Relations Manager, KinderCare Education, LLC
Sharron Benson Powell, Houston-Galveston Area Council, Workforce Solutions Gulf Coast
Janet Bono, Workforce Services Program Administrator, Workforce Solutions Borderplex
YWCA El Paso
Workforce Solutions Northeast Texas
Rosa Hernandez, Workforce Solutions South Plains
Elaine Clark, Child Care Programs Manager, Workforce Solutions Capital Area
Julie Talbert, Manager of Child Care & Public Transportation, Workforce Solutions for the Heart of Texas
Marvin Albright, Nomah Albright, Alison Albright, Imelda Davila-Leon, Marissa Hudler, and Todd Hudler
Neil Hanson, Senior Director of Public Sector Solutions, Neighborhood Centers Inc.

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

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and Texas Human Resources Code §44.002, regarding Administrative Rules.

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

CHAPTER 809. CHILD CARE SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

§809.2. Definitions.

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

- (1) Attending a job training or educational program--An individual is ~~considered to be~~ attending a job training or educational program if the individual:
 - (A) is considered by the program to be officially enrolled;
 - (B) meets all attendance requirements established by the program; and
 - (C) is making progress toward successful completion of the program as determined by the Board upon eligibility redetermination as described in §809.42(b).
- (2) Child--An individual who meets the general eligibility requirements contained in this chapter for receiving child care services.
- (3) 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 subsidies, as well as contractors involved in the funding of quality improvement activities as described in §809.16.
- (4) Child care services--Child care subsidies and quality improvement activities funded by the Commission.
- (5) Child care subsidies--Commission-funded child care reimbursements to an eligible child care provider for the direct care of an eligible child.
- (6) Child experiencing homelessness--A child who is homeless as defined in the McKinney-Vento Act (42 U.S.C. 11434(a)), Subtitle VII-B, §725.
- ~~(7)~~(6) Child with disabilities--A child who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. ~~is mentally or physically incapable of performing routine activities of daily living within the child's typical chronological range of development. A child is considered mentally or physically incapable of performing routine activities of daily living if the child requires assistance in performing tasks (major life activity) that are within the~~

~~typical chronological range of development,~~ Major life activities include, including but are not limited to, caring for oneself; performing manual tasks; walking; hearing; seeing, speaking, or breathing; learning; and working.

~~(8)(7)~~ Educational program--A program that leads to:

- (A) a high school diploma;
- (B) a General Educational Development (GED) credential; or
- (C) a postsecondary degree from an institution of higher education.

~~(9)(8)~~ Family--~~The unit composed of a child eligible to receive child care services, the parents of that child, and household dependents~~ Two or more individuals related by blood, marriage, or decree of court, who are living in a single residence and are included in one or more of the following categories:

(A) Two individuals, married--including by common-law, and household dependents; or

(B) A parent and household dependents.

~~(10)(9)~~ Household dependent--An individual living in the household who is one of the following:

- (A) An adult considered as a dependent of the parent for income tax purposes;
- (B) A child of a teen parent; or
- (C) A child or other minor living in the household who is the responsibility of the parent.

~~(11)(10)~~ Improper payments--Any payment of CCDF grant funds that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements governing the administration of CCDF grant funds and includes payments:

(A) to an ineligible recipient;

(B) for an ineligible service;

(C) for any duplicate payment; and

(D) for services not received.

~~Payments to a provider or Board's child care contractor for goods or services that are not in compliance with federal or state requirements or applicable contracts.~~

(12)~~(11)~~ Job training program--A program that provides training or instruction leading to:

- (A) basic literacy;
- (B) English proficiency;
- (C) an occupational or professional certification or license; or
- (D) the acquisition of technical skills, knowledge, and abilities specific to an occupation.

(13)~~(12)~~ Listed family home--A family home, other than the eligible child's own residence, that is listed, but not licensed or registered with, the Texas Department of Family and Protective Services (DFPS) pursuant to Texas Human Resources Code §42.052(c).

(14)~~(13)~~ Military deployment--The temporary duty assignment away from the permanent military installation or place of residence for reserve components of the single military parent or the dual military parents. This includes deployed parents in the regular military, military reserves, or National Guard.

(15)~~(14)~~ Parent--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.

(16)~~(15)~~ Protective services--Services provided when:

- (A) a child is at risk of abuse or neglect in the immediate or short-term future and the child's family cannot or will not protect the child without DFPS Child Protective Services (CPS) intervention;
- (B) a child is in the managing conservatorship of DFPS and residing with a relative or a foster parent; or
- (C) a child has been provided with protective services by DFPS within the prior six months and requires services to ensure the stability of the family.

~~(17)(16)~~ Provider--A provider is defined as:

- (A) a regulated child care provider as defined in [§809.2\(18\)](#)
~~§809.2(17)~~;
- (B) a relative child care provider as defined in [§809.2\(19\)](#)~~§809.2(18)~~;
or
- (C) a listed family home as defined in [§809.2\(13\)](#)~~§809.2(12)~~, subject to
the requirements in §809.91(b).

~~(18)(17)~~ Regulated child care provider--A provider caring for an eligible child in a location other than the eligible child's own residence that is:

- (A) licensed by DFPS;
- (B) registered with DFPS; [or](#)
- ~~(C) licensed by the Texas Department of State Health Services as a youth day
camp; or~~
- ~~(C)(D)~~ operated and monitored by the United States military services.

~~(19)(18)~~ Relative child care provider--An individual who is at least 18 years of age, and is, by marriage, blood relationship, or court decree, one of the following:

- (A) The child's grandparent;
- (B) The child's great-grandparent;
- (C) The child's aunt;
- (D) The child's uncle; or
- (E) The child's sibling (if the sibling does not reside in the same household as the eligible child).

~~(20)(19)~~ Residing with--Unless otherwise stipulated in this chapter, a child is considered to be residing with the parent when the child is living with and physically present with the parent during the time period for which child care services are being requested or received.

~~(21)(20)~~ Teen parent--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.

~~(22)~~(21) Texas Rising Star program--A voluntary, quality-based rating system of child care providers participating in Commission-subsidized child care.

~~(23)~~(22) Texas Rising Star Provider--A provider certified as meeting the TRS program standards. TRS providers are certified as one of the following:

- (A) 2-Star Program Provider;
- (B) 3-Star Program Provider; or
- (C) 4-Star Program Provider.

~~(24)~~(23) Working--Working is defined as:

(A) activities for which one receives monetary compensation such as a salary, wages, tips, and commissions; or

~~(B) job search activities (subject to the requirements in §809.41(d)); or~~

~~(B)~~(C) participation in Choices or Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T) activities.

SUBCHAPTER B. GENERAL MANAGEMENT

§809.13. Board Policies for Child Care Services.

- (a) A Board shall develop, adopt, and modify its policies for the design and management of the delivery of child care services in a public process in accordance with Chapter 802 of this title.
- (b) A Board shall maintain written copies of the policies that are required by federal and state law, or as requested by the Commission, and make such policies available to the Commission and the public upon request.

~~(c) A Board shall also submit any modifications, amendments, or new policies to the Commission no later than two weeks after adoption of the policy by the Board.~~

~~(c)~~(d) At a minimum, a Board shall develop policies related to:

- (1) how the Board determines that the parent is making progress toward successful completion of a job training or educational program as described in §809.2(1);
- (2) maintenance of a waiting list as described in §809.18(b);
- (3) assessment of a parent share of cost as described in §809.19, including the reimbursement of providers when a parent fails to pay the parent share of cost;

- (4) maximum reimbursement rates as provided in §809.20, including policies related to reimbursement of providers that offer transportation;
- (5) family income limits as described in Subchapter C of this chapter (relating to Eligibility for Child Care Services);
- (6) provision of child care services to a child with disabilities ~~up to~~ under the age of 19 as described in §809.41(a)(1)(B);
- (7) minimum activity requirements for parents as described in §809.48 and §809.50;
- (8) time limits for the provision of child care while the parent is attending an educational program as described in §809.41(b);
- ~~(9) frequency of eligibility redetermination as described in §809.42(b)(2);~~
- (9)(10) Board priority groups as described in §809.43(a);
- (10)(11) transfer of a child from one provider to another as described in §809.71(3);
- ~~(12) provider eligibility for listed family homes as provided in §809.91(b), if the Board chooses to include listed family homes as eligible providers;~~
- ~~(13) attendance standards and procedures as provided in §809.92(b)(4), including provisions consistent with §809.54(f) (relating to Continuity of Care for custody and visitation arrangements);~~
- (11)(14) providers charging the difference between their published rate and the Board's reimbursement rate as provided in §809.92(d);
- (12)(15) procedures for fraud fact-finding as provided in §809.111;
- ~~(16) procedures for imposing sanctions when a parent fails to comply with the provisions of the parent responsibility agreement (PRA) as described in §809.76(e);~~
- ~~(17) mandatory waiting period for reapplying or being placed on the waiting list for child care services as described in §809.55; and~~
- (13)(18) policies and procedures to ensure that appropriate corrective actions are taken against a provider or parent for violations of the automated attendance requirements specified in §809.115(d) - (e).

§809.15. Promoting Consumer Education.

- (a) A Board shall promote informed child care choices by providing consumer education information to:
- (1) parents who are eligible for child care services;
 - (2) parents who are placed on a Board's waiting list;
 - (3) parents who are no longer eligible for child care services; and
 - (4) applicants who are not eligible for child care services.
- (b) The consumer education information, [including consumer education information provided through a Board's web-site](#), shall contain, at a minimum:
- (1) information about the Texas Information and Referral Network/2-1-1 Texas (2-1-1 Texas) information and referral system;
 - (2) the website and telephone number of DFPS, so parents may obtain health and safety requirements including information on:
 - (A) the prevention and control of infectious diseases (including immunizations);
 - (B) building and physical premises safety;
 - (C) minimum health and safety training appropriate to the provider setting; and
 - (D) the regulatory compliance history of child care providers;
 - (3) a description of the full range of eligible child care providers set forth in §809.91; and
 - (4) a description of programs available in the workforce area relating to school readiness and quality rating systems, including:
 - (A) Texas Rising Star (TRS) Provider criteria, pursuant to Texas Government Code §2308.315; [and](#)
 - ~~(B) the school readiness certification system, pursuant to Texas Education Code §29.161; and~~
 - [\(B\)C](#) integrated school readiness models, pursuant to Texas Education Code §29.160; ~~and~~

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

§809.16. Quality Improvement Activities.

- (a) Child care funds allocated by the Commission pursuant to its allocation rules (generally, Chapter 800, General Administration, Subchapter B, Allocation and Funding, and specifically §800.58, Child Care), including local public transferred funds and local private donated funds, as provided in §809.17, to the extent they are used for nondirect care quality improvement activities, may be expended on any quality improvement activity described in 45 CFR [Part 98 §98.51](#). ~~These activities may include, but are not limited to:~~
 - ~~(1) activities designed to provide comprehensive consumer education to parents and the public;~~
 - ~~(2) activities that increase parental choice; and~~
 - ~~(3) activities designed to improve the quality and availability of child care.~~
- (b) Boards must ensure compliance with 45 CFR [Part 98 §98.54\(b\)](#) regarding construction expenditures, as follows:
 - (1) State and local agencies and nonsectarian agencies or organizations.
 - (A) Funds shall not be expended for the purchase or improvement of land, or for the purchase, construction, or permanent improvement of any building or facility.

- (B) Funds may be expended for minor remodeling, and for upgrading child care facilities to ensure that providers meet state and local child care standards, including applicable health and safety requirements.
- (2) Sectarian agencies or organizations.
 - (A) The prohibitions in paragraph (1) of this subsection apply.
 - (B) Funds may be expended for minor remodeling only if necessary to bring the facility into compliance with the health and safety requirements established pursuant to 45 CFR [Part 98](#)~~§98.41~~.
- (c) Expenditures certified by a public entity, as provided in §809.17(b)(3), may include expenditures for any quality improvement activity described in 45 CFR [Part 98](#)~~§98.51~~.

§809.17. Leveraging Local Resources.

- (a) Leveraging Local Funds.
 - (1) The Commission encourages Boards to secure local public and private funds for the purpose of matching federal funds in order to maximize resources for child care needs in the community.
 - (2) A Board is encouraged to secure additional local funds in excess of the amount required to match federal funds allocated to the Board in order to maximize its potential to receive additional federal funds should they become available.
 - (3) A Board's performance in securing and leveraging local funds for match may make the Board eligible for incentive awards.
- (b) The Commission accepts the following as local match:
 - (1) Funds from a private entity that:
 - (A) are donated without restrictions that require their use for:
 - (i) a specific individual, organization, facility, or institution; or
 - (ii) an activity not included in the CCDF State Plan or allowed under this chapter;
 - (B) do not revert back to the donor's facility or use;
 - (C) are not used to match other federal funds; and

- (D) are certified by both the donor and the Commission as meeting the requirements of subparagraphs (A) - (C) of this paragraph.
- (2) Funds from a public entity that:
 - (A) are transferred without restrictions that would require their use for an activity not included in the CCDF State Plan or allowed under this chapter;
 - (B) are not used to match other federal funds; and
 - (C) are not federal funds, unless authorized by federal law to be used to match other federal funds.
- (3) Expenditures by a public entity certifying that the expenditures:
 - (A) are for an activity included in the CCDF State Plan or allowed under this chapter;
 - (B) are not used to match other federal funds; and
 - (C) are not federal funds, unless authorized by federal law to be used to match other federal funds.

(c) A Board shall ensure that a public entity certifying expenditures for direct child care as described in §809.17(b)(3) determines and verifies that the expenditures are for child care provided to an eligible child. At a minimum, the public entity shall verify that the child:

- (1) is under 13 years of age, or at the option of the Board, is a child with disabilities under 19 years of age; and
- (2) resides with:
 - (A) a family whose income does not exceed 85 percent of the state median income for a family of the same size; and
 - (B) a parent who requires child care in order to work or attend a job training or educational program.

~~(d)~~ (e) A Board shall submit private donations, public transfers, and public certifications to the Commission for acceptance, with sufficient information to determine that the funds meet the requirements of subsection (b) of this section.

~~(e)~~ (f) Completing Private Donations, Public Transfers, and Public Certifications.

- (1) A Board shall ensure that:

- (A) private donations of cash and public transfers of funds are paid to the Commission; and
 - (B) public certifications are submitted to the Commission.
- (2) Private donations and public transfers are considered complete when the funds have been received by the Commission.
 - (3) Public certifications are considered complete to the extent that a signed written instrument is delivered to the Commission that reflects that the public entity has expended a specific amount of funds on eligible activities described in subsection (b)(3) of this section.

~~(f)~~(e) A Board shall monitor the funds secured for match and the expenditure of any resulting funds to ensure that expenditures of federal matching funds available through the Commission do not exceed an amount that corresponds to the private donations, public transfers, and public certifications that are completed by the end of the program year.

§809.19. Assessing the Parent Share of Cost.

- (a) For child care funds allocated by the Commission pursuant to its allocation rules (generally, Chapter 800, General Administration, Subchapter B, Allocation and Funding, and specifically, §800.58, Child Care), including local public transferred funds and local private donated funds, as provided in §809.17, the following shall apply.
 - (1) A Board shall set a parent share of cost policy that assesses the parent share of cost in a manner that results in the parent share of cost:
 - (A) being assessed to all parents, except in instances when an exemption under paragraph (2) of this subsection applies;
 - (B) being an amount determined by a sliding fee scale based on the family's size and gross monthly income, and also may consider the:
 - ~~(i) number of children in care; and~~
 - ~~(ii) parent selection of a TRS-certified provider.~~
 - ~~(C) not exceeding the Board's maximum reimbursement rate or the provider's published rate, whichever is lower.~~
 - (C) being assessed only at the following times:
 - (i) Initial eligibility determination;
 - (ii) 12-month eligibility redetermination;

(iii) upon the addition of a child in care ~~that would result in an additional amount for the child;~~

(iv) upon a parent's report of a change in income, family size, or number of children in care that would result in a reduced parent share of cost assessment; and

(v) upon resumption of work, job training, or education activities following temporary changes described in §809.51(a)(2) and upon resumption of work, job training, or education activities during the three-month continuation of care period described in §809.51(c); and

(D) not increasing above the amount assessed at initial eligibility determination or at the 12-month eligibility redetermination based on the factor in subparagraph (B) of this paragraph, except upon the addition of a child in care as described in (a)(1)(C)(iii).

(2) Parents who are one or more of the following are exempt from paying the parent share of cost:

(A) Parents who are participating in Choices or who are in Choices child care described in §809.45;

(B) Parents who are participating in SNAP E&T services or who are in SNAP E&T child care described in §809.47;

(C) Parents of a child receiving Child Care for Children experiencing Experiencing Homelessness homelessness as defined in §809.2 described in §809.52; or

(D)(E) Parents who have children who are receiving protective services child care pursuant to §809.49 and §809.54(c)(~~1~~), unless DFPS assesses the parent share of cost.

(3) Teen parents who are not covered under exemptions listed in paragraph (2) of this subsection shall be assessed a parent share of cost. The teen parent's share of cost is based solely on the teen parent's income and size of the teen's family as defined in §809.2(~~8~~).

(b) For child care services funded from sources other than those specified in subsection (a) of this section, a Board shall set a parent share of cost policy based on a sliding fee scale. The sliding fee scale may be the same as or different from the provisions contained in subsection (a) of this section.

(c) A Board shall establish a policy regarding reimbursement of providers when parents fail to pay the parent share of cost.

- (d) The Board or its child care contractor may review the assessed parent share of cost for a possible temporary reduction if there are extenuating circumstances that jeopardize a family's self-sufficiency. The Board or its child care contractor may temporarily reduce the assessed parent share of cost if warranted by these circumstances. Following the temporary reduction, the parent share of cost amount immediately prior to the reduction shall be reinstated.
- (e) If the parent is not covered by an exemption as specified in subsection (a)(2) of this section, then the Board or its child care contractor shall not waive the assessed parent share of cost under any circumstances.
- (f) If the parent share of cost, based on family income and family size, is calculated to be zero, then the Board or its child care contractor shall not charge the parent a minimum share of cost amount.

(g) A Board may establish a policy to reduce the parent share of cost amount assessed pursuant to subparagraph (a)(1)(B) of this section upon the parent's selection of a TRS-certified provider. Such Board policy shall ensure:

(1) that the parent continue to receive the reduction if:

(A) the TRS provider loses TRS certification; or

(B) the parent moves or changes employment within the workforce area and no TRS-certified providers are available to meet the needs of the parent's changed circumstances; and

(2) that the parent no longer receives the reduction if the parent voluntarily transfers the child from a TRS-certified provider to a non-TRS-certified provider.

§809.20. Maximum Provider Reimbursement Rates.

- (a) Based on local factors, including a market rate survey provided by the Commission, a Board shall establish maximum reimbursement rates for child care subsidies to ensure that the rates provide equal access to child care in the local market and in a manner consistent with state and federal statutes and regulations governing child care. At a minimum, Boards shall establish reimbursement rates for full-day and part-day units of service, as described in §809.93(e), for the following:
 - (1) Provider types:
 - (A) Licensed child care centers, including before- or after-school programs and school-age programs, as defined by DFPS;
 - (B) Licensed child care homes as defined by DFPS;

(C) Registered child care homes as defined by DFPS; and

(D) Relative child care providers as defined in §809.2.

(2) Age groups in each provider type:

(A) Infants age 0 to 17 months;

(B) Toddlers age 18 to 35 months;

(C) Preschool age children from 36 to 71 months; and

(D) School age children 72 months and over.

(b) A Board shall establish enhanced reimbursement rates:

(1) for all age groups at TRS provider facilities;

~~(2) only for preschool-age children at child care providers that obtain school readiness certification pursuant to Texas Education Code §29.161; and~~

~~(2)~~(3) only for preschool-age children at child care providers that participate in integrated school readiness models pursuant to Texas Education Code §29.160.

(c) The minimum enhanced reimbursement rates established under subsection (b) of this section shall be greater than the maximum rate established for providers not meeting the requirements of subsection (b) of this section for the same category of care up to, but not to exceed, the provider's published rate. ~~Effective September 1, 2015, t~~The maximum rate must be at least:

(1) 5 percent greater for a:

(A) 2-Star Program Provider; or

(B) child care provider meeting the requirements of subsections (b)(2) ~~or (b)(3)~~ of this section;

(2) 7 percent greater for a 3-Star Program Provider; and

(3) 9 percent greater for a 4-Star Program Provider.

(d) Boards may establish a higher enhanced reimbursement rate than those specified in subsection (c) of this section for TRS providers, as long as there is a minimum 2 percent age point difference between each star level.

- (e) A Board or its child care contractor shall ensure that providers that are reimbursed for additional staff or equipment needed to assist in the care of a child with disabilities are paid a rate up to 190 percent of the provider's reimbursement rate for a child of that same age. The higher rate shall take into consideration the estimated cost of the additional staff or equipment needed by a child with disabilities. The Board shall ensure that a professional, who is familiar with assessing the needs of children with disabilities, certifies the need for the higher reimbursement rate described in this subsection.
- (f) The Board shall determine whether to reimburse providers that offer transportation as long as the combined total of the provider's published rate, plus the transportation rate, is subject to the maximum reimbursement rate established in subsection (a) of this section.

SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES

§809.41. A Child's General Eligibility for Child Care Services.

- (a) Except for a child receiving or needing protective services as described in §809.49, for a child to be eligible to receive child care services, at the time of eligibility determination or re-determination, a Board shall ensure that the child:
 - (1) meets one of the following age requirements:
 - (A) be under 13 years of age; or
 - (B) at the option of the Board, be a child with disabilities under 19 years of age;
 - (2) is a U.S. citizen or legal immigrant as determined under applicable federal laws, regulations, and guidelines; and
 - (3) resides with:
 - (A) a family within the Board's workforce area ~~whose~~:
 - (i) whose income does not exceed the income limit established by the Board, which income limit must not exceed ~~85%~~ percent of the state median income (SMI) for a family of the same size; and
 - (ii) whose assets do not exceed \$1,000,000 as certified by a family member; or
 - (iii) that meets the definition of experiencing homelessness as defined in §809.2.
 - (B) parents who require child care in order to work or attend a job training or educational program; or

- (C) a person standing in loco parentis for the child while the child's parent is on military deployment and the deployed military parent's income does not exceed the limits set forth in subparagraph (A) of this paragraph.
- (b) Notwithstanding the requirements set forth in subsection (c) of this section, a Board shall establish policies, including time limits, for the provision of child care services while the parent is attending an educational program.
- (c) Time limits pursuant to subsection (b) of this section shall ensure the provision of child care services for four years, if the eligible child's parent is enrolled in an associate's degree program that will prepare the parent for a job in a high-growth, high-demand occupation as determined by the Board.

~~(d) Unless otherwise subject to job search limitations as stipulated in this title, the following shall apply:~~

~~(1) For child care funds allocated by the Commission pursuant to its allocation rules (generally, Chapter 800, General Administration, Subchapter B, Allocation and Funding, and specifically, §800.58 Child Care), an enrolled child may be eligible for child care services for four weeks within a federal fiscal year in order for the child's parent to search for work because of interruptions in the parent's employment.~~

~~(2) For child care services funded by the Commission from sources other than those specified in paragraph (1) of this subsection, child care services during job search activities are limited to four weeks within a federal fiscal year.~~

~~(d)~~(e) A Board may establish a policy to allow parents attending a program that leads to a postsecondary degree from an institution of higher education to be exempt from residing with the child as defined in §809.2.

(e) Boards that establish initial family income eligibility at a level less than 85 percent of SMI must ensure that the family remains income-eligible for care after passing the Board's initial income eligibility limit.

(f) Unless otherwise specified, this subchapter applies only to child care services using funds allocated pursuant to §800.58 of this title, including local public transferred funds and local private donated funds described in §809.17.

§809.42. Eligibility Verification, Determination, and ~~Verification~~Redetermination.

- (a) ~~A~~a Board shall ensure that its child care contractor verifies all eligibility requirements for child care services prior to authorizing child care.
- (b) A Board shall ensure that Eeligibility for child care services shall be redetermined: no sooner than 12 months following the initial determination or most recent re-
determination.

~~(1) any time there is a change in family income or other information that could affect eligibility to receive child care services; and~~

~~(2) on an established frequency at the Board's discretion.~~

~~(c) A Board shall ensure that a public entity certifying expenditures for direct child care as described in §809.17(b)(3) determines and verifies that the expenditures are for child care provided to an eligible child. At a minimum, the public entity shall verify that the child:~~

~~(1) is under 13 years of age, or at the option of the Board, is a child with disabilities under 19 years of age; and~~

~~(2) resides with:~~

~~(A) a family whose income does not exceed 85% of the state median income for a family of the same size; and~~

~~(B) a parent who requires child care in order to work or attend a job training or educational program.~~

§809.43. Priority for Child Care Services.

(a) A Board shall ensure that child care services are prioritized among the following three priority groups:

(1) The first priority group is assured child care services and includes children of parents eligible for the following:

(A) Choices child care as referenced in §809.45;

(B) Temporary Assistance for Needy Families (TANF) Applicant child care as referenced in §809.46;

(C) SNAP E&T child care as referenced in §809.47; and

(D) Transitional child care as referenced in §809.48.

(2) The second priority group is served subject to the availability of funds and includes, in the order of priority:

(A) children who need to receive protective services child care as referenced in §809.49;

(B) children of a qualified veteran or qualified spouse as defined in §801.23 of this title;

(C) children of a foster youth as defined in §801.23 of this title;

(D) children experiencing homelessness as defined in §809.2 and described in §809.52;

(E)(D) children of parents on military deployment as defined in §809.2 whose parents are unable to enroll in military-funded child care assistance programs;

(F)(E) children of teen parents as defined in §809.2; and

(G)(F) children with disabilities as defined in §809.2.

(3) The third priority group includes any other priority adopted by the Board.

(b) A Board shall not establish a priority group under subsection (a)(3) of this section based on the parent's choice of an individual provider or provider type.

§809.44. Calculating Family Income.

(a) For the purposes of determining family income and assessing the parent share of cost, Boards shall ensure that family income is calculated in accordance with Commission guidelines that:

(1) take into account irregular fluctuations in earnings; and

(2) ensure that temporary increases in income, including temporary increases that result in monthly income exceeding 85 percent of SMI do not affect eligibility or parent share of cost.

~~Unless otherwise required by federal or state law, the family income for purposes of determining eligibility and the parent share of cost means the monthly total of the following items for each member of the family (as defined in §809.2(8)):~~

~~(1) Total gross earnings. These earnings include wages, salaries, commissions, tips, piece-rate payments, and cash bonuses earned.~~

~~(2) Net income from self-employment. Net income includes gross receipts minus business-related expenses from a person's own business, professional enterprise, or partnership, which result in the person's net income. Net income also includes gross receipts minus operating expenses from the operation of a farm.~~

~~(3) Pensions, annuities, life insurance, and retirement income, and early withdrawals from a 401(k) plan not rolled over within 60 days of withdrawal. This includes Social Security pensions, veteran's pensions and survivor's benefits and any cash benefit paid to retirees or their survivors by a former~~

~~employer, or by a union, either directly or through an insurance company. This also includes payments from annuities and life insurance.~~

- ~~(4) Taxable capital gains, dividends, and interest. These earnings include capital gains from the sale of property and earnings from dividends from stock holdings, and interest on savings or bonds.~~
- ~~(5) Rental income. This includes net income from rental of a house, homestead, store, or other property, or rental income from boarders or lodgers.~~
- ~~(6) Public assistance payments. These payments include TANF as authorized under Chapters 31 or 34 of the Texas Human Resources Code, refugee assistance, Social Security Disability Insurance, Supplemental Security Income, and general assistance (such as cash payments from a county or city).~~
- ~~(7) Income from estate and trust funds. These payments include income from estates, trust funds, inheritances, or royalties.~~
- ~~(8) Unemployment compensation. This includes unemployment payments from governmental unemployment insurance agencies or private companies and strike benefits while a person is unemployed or on strike.~~
- ~~(9) Workers' compensation income, death benefit payments and other disability payments. These payments include compensation received periodically from private or public sources for on-the-job injuries.~~
- ~~(10) Spousal maintenance or alimony. This includes any payment made to a spouse or former spouse under a separation or divorce agreement.~~
- ~~(11) 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 cash payments made by an absent parent for the maintenance of a minor.~~
- ~~(12) Court settlements or judgments. This includes awards for exemplary or punitive damages, noneconomic damages, and compensation for lost wages or profits, if the court settlement or judgment clearly allocates damages among these categories.~~
- ~~(13) Lottery payments of \$600 or greater.~~

(b) In accordance with Commission income calculation guidelines, Boards shall ensure that the following income sources are excluded from the family income: ~~Income to the family that is not included in subsection (a) of this section is excluded in determining the total family income. Specifically, family income does not include:~~

- (1) Medicare, Medicaid, SNAP benefits, school meals, and housing assistance;

- (2) Monthly monetary allowances provided to or for children of Vietnam veterans born with certain birth defects;
- (3) Needs-based Eeducational scholarships, grants, and loans; including financial assistance under Title IV of the Higher Education Act--Pell Grants, Federal Supplemental Educational Opportunity grants, Federal Work Study Program, PLUS, Stafford loans, and Perkins loans;
- ~~(4) Earned Income Tax Credit (EITC) and the Advanced EITC;~~
- ~~(4)(5)~~ Individual Development Account (IDA) withdrawals for the purchase of a home, medical expenses, or educational expenses;
- ~~(5)(6)~~ One-time cash payments, including Ttax refunds, ~~;~~ eEarned Income Tax Credit (EITC) and Advanced EITC, one-time insurance payments, gifts, and lump sum inheritances;
- ~~(6)(7)~~ VISTA and AmeriCorps living allowances and stipends;
- ~~(7)(8)~~ Noncash or in-kind benefits such as employer-paid fringe benefits, food, or housing received in lieu of wages;
- ~~(8)(9)~~ Foster care payments and adoption assistance;
- ~~(9)(10)~~ Special military pay or allowances, ~~which~~ including subsistence allowances, housing allowances, family separation allowances, or special allowances for duty subject to hostile fire or imminent danger;
- ~~(10)(11)~~ Income from a child in the household between 14 and 19 years of age who is attending school;
- ~~(11)(12)~~ Early ~~401(k)~~-withdrawals from qualified retirement accounts specified as hardship withdrawals as classified by the Internal Revenue Service (IRS);
- (12) Unemployment compensation;
- (13) Child support payments;
- (14) Cash assistance payments, including Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), Refugee Cash Assistance, general assistance, emergency assistance, and general relief;
- (15) One-time income received in lieu of TANF cash assistance;
- (16) Income earned by a veteran while on active military duty and certain other veterans' benefits, such as compensation for service-connected death, vocational rehabilitation, and education assistance;

- (17) Regular payments from Social Security, such as Old-Age, and Survivors Insurance Trust Fund;
- (18) Lump sum payments received as assets in the sale of a house, in which the assets are to be reinvested in the purchases of a new home (consistent with IRS guidance);
- (19) Payments received as the result of an automobile accident insurance settlement that are being applied to the repair or replacement of an automobile; and
- (20)(13) Any income sources specifically excluded by federal law or regulation.
- (c) Income that is not listed in subsection (b) of this section as excluded from income is included as income.

§809.45. Choices Child Care.

- (a) A parent is eligible for Choices child care if the parent is participating in the Choices program as stipulated in Chapter 811 of this title.
- (b) For a parent receiving Choices ~~child care~~ who ceases participation in the Choices program during the 12-month eligibility period, Boards must ensure that **Choices child care continues**:
 - (1) ~~child care continues~~ for the three-month period pursuant to §809.51(b); and
 - (2) ~~the provisions of §809.51 shall apply for the remainder of the eligibility period~~, if the parent resumes participation in Choices or begins participation in work or attendance in a job training or education program during the three-month period **described in §809.51(c)**.
- ~~(b) A parent who has been approved for Choices, but is waiting to enter an approved initial component of the program, may be eligible for up to two weeks of child care services if:~~
 - ~~(1) child care services will prevent loss of the Choices placement; and~~
 - ~~(2) child care is available to meet the needs of the child and parent.~~

§809.46. Temporary Assistance for Needy Families Applicant Child Care.

- (a) A parent is eligible for TANF Applicant child care if the parent:
 - (1) receives a referral from the Health and Human Services Commission (HHSC) to attend a Workforce Orientation for Applicants (WOA);
 - (2) locates employment or has increased earnings prior to TANF certification; and

- (3) needs child care to accept or retain employment.
- (b) To receive TANF Applicant child care, the parent shall be working and not have voluntarily terminated paid employment of at least 25 hours a week within 30 days prior to receiving the referral from HHSC to attend a WOA, unless the voluntary termination was for good cause connected with the parent's work.
- ~~(c) Subject to the continued employment of the parent, TANF Applicant child care shall be provided for up to 12 months or until the family reaches the Board's income limit for eligibility under any provision contained in §809.50, whichever occurs first.~~
- ~~(d) Parents who are employed fewer than 25 hours a week at the time they apply for temporary cash assistance are limited to 90 days of TANF Applicant child care. Applicant child care may be extended to a total of 12 months, inclusive of the 90 days, if before the end of the 90-day period, the applicant increases the hours of employment to a minimum of 25 hours a week.~~
- ~~(e) A parent whose time limit for TANF Applicant child care has expired may continue to be eligible for child care services provided the parent and child are otherwise eligible under any provision contained in §809.50.~~

§809.47. Supplemental Nutrition Assistance Program Employment and Training Child Care.

- (a) A parent is eligible to receive SNAP E&T child care services if the parent is participating in SNAP E&T services, in accordance with the provisions of 7 CFR Part 273, ~~as long as the case remains open.~~
- (b) For a parent receiving SNAP E&T child care services who ceases participation in the E&T program during the 12-month eligibility period, Boards must ensure that SNAP E&T child care continues:
 - (1) ~~child care continues~~ for the three-month period pursuant to §809.51(b); and
 - (2) ~~the provisions of §809.51 shall apply for the remainder of the eligibility period,~~ if the parent resumes participation in the SNAP E&T program or begins participation in work or attendance in a job training or education program during the three-month period described in §809.51(c).

§809.48. Transitional Child Care.

- (a) A parent is eligible for Transitional child care services if the parent:
 - (1) has been denied TANF and was employed at the time of TANF denial; or

- (2) has been denied TANF within 30 days because of expiration of TANF time limits; and
 - (3) requires child care to work or attend a job training or educational program for a combination of at least an average of 25 hours per week for a single-parent family or 50 hours per week for a two-parent family, or a higher number of hours per week as established by a Board.
- (b) Boards may establish an income eligibility limit for Transitional child care that is higher than the eligibility limit for At-Risk child care, pursuant to §809.50, provided that the higher income limit does not exceed 85% ~~percent~~ of the state median income for a family of the same size.
- (c) For former TANF recipients who are employed when TANF is denied, Transitional child care shall be available for:
- (1) a period of up to 12 months from the effective date of the TANF denial; or
 - (2) a period of up to 18 months from the effective date of the TANF denial in the case of a former TANF recipient who was eligible for child caretaker exemptions pursuant to Texas Human Resources Code §31.012(c) and voluntarily participates in the Choices program.

~~(d) Former TANF recipients who are not employed when TANF expires, including recipients who are engaged in a Choices activity except as provided under subsection (e) of this section, shall receive up to four weeks of Transitional child care in order to allow these individuals to search for work as needed.~~

~~(e) Former TANF recipients who are not employed when TANF is denied, are engaged in a Choices activity, are meeting the requirements of Chapter 811 of this title, and are denied TANF because of 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.~~

~~(d)~~^(f) A Board may allow a reduction to the requirement in subsection (a)(3) 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 work, education, or job training activities for the required hours per week.

~~(e)~~^(g) For purposes of meeting the education requirements stipulated in subsection (a)(3) of this section, the following shall apply:

- (1) each credit hour of postsecondary education counts as three hours of education activity per week; and
- (2) each credit hour of a condensed postsecondary education course counts as six education activity hours per week.

§809.49. Child Care for Children Receiving or Needing Protective Services.

- (a) A Board shall ensure that determinations of eligibility for children needing protective services are performed by DFPS.
 - (1) Child care will continue as long as authorized and funded by DFPS.
 - (2) DFPS may authorize child care for a child under court supervision ~~up to~~ under the age of 19.
 - (3) Child care discontinued by DFPS prior to the end of the 12-month eligibility period shall be subject to the Continuity of Care provisions in §809.54.
- (b) A Board shall ensure that requests made by DFPS for specific eligible providers are enforced for children in protective services, including children of foster parents when the foster parent is the owner, director, assistant director or other individual with an ownership interest in the provider.

§809.50. At-Risk Child Care.

- (a) A parent is eligible for child care services under this section if at initial eligibility determination and at eligibility re-determination as described in §809.42:
 - (1) the family income does not exceed the income limit established by the Board pursuant to §809.41(a)(~~2~~3)(A); and
 - (2) child care is required for the parent to work or attend a job training or educational program for a combination of at least an average of 25 hours per week for a single-parent family or 50 hours per week for a two-parent family, or a higher number of hours per week as established by the Board.
- (b) A Board may allow a reduction to the work, education, or job training activity requirements 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 these activities for the required hours per week.
- (c) For purposes of meeting the education requirements stipulated in subsection (a)(2) of this section, the following shall apply:
 - (1) each credit hour of postsecondary education counts as three hours of education activity per week;
 - (2) each credit hour of a condensed postsecondary education course counts as six education activity hours per week; and

- (3) teen parents attending high school or the equivalent shall be considered as meeting the education requirements in subsection (a)(2) of this section.
- (d) When calculating income eligibility for a child with disabilities, a Board shall deduct the cost of the child's ongoing medical expenses from the family income.
- (e) Boards may establish a higher income eligibility limit for teen parents than the eligibility limit established pursuant to §809.41(a)(~~23~~)(A) provided that the higher income limit does not exceed 85% percent of the state median income for a family of the same size.
- (f) A teen parent's family income is based solely on the teen parent's income and size of the teen's family as defined in §809.2(9) ~~§809.2(8)~~.
- (g) Boards may establish a higher income eligibility limit for families with a child who is enrolled in Head Start, Early Head Start, or public pre-K provided that the higher income limit does not exceed 85% percent of the state median income for a family of the same size.

§809.51. Child Care during ~~Temporary~~ Interruptions in Work, Education, or Job Training.

- (a) Except for a child experiencing homelessness, as described in §809.52, if the child met all of the applicable eligibility requirements for child care services in this subchapter on the date of the most recent eligibility determination or re-determination, the child shall be considered to be eligible and will receive services during the 12-month eligibility period described in §809.42, regardless of any:
 - (1) change in family income, if that family income does not exceed 85 percent of SMI for a family of the same size; or
 - (2) temporary change in the ongoing status of the child's parent as working or attending a job training or education program. A temporary change shall include, at a minimum, any:
 - (A) time-limited absence from work for an employed parent for periods of family leave (including parental leave) or sick leave;
 - (B) interruption in work for a seasonal worker who is not working between regular industry work seasons;
 - (C) student holiday or breaks **within a semester, between the fall and spring semesters, or between the spring and fall semesters**, for a parent participating in training or education;
 - (D) reduction in work, training, or education hours, as long as the parent is still working or attending a training or education program;

(E) other cessation of work or attendance in a training or education program that does not exceed three months;

(F) change in age, including turning 13 years old or a child with disabilities turning 19 years old during the eligibility period; and

(G) change in residency within the state.

(b) During the period of time between eligibility re-determinations, a Board shall discontinue child care services due to a parent's loss of work or cessation of attendance at a job training or educational program that does not constitute a temporary change in accordance with paragraph (a)(2) of this section. However, Boards must ensure that care continues at the same level for a period of not less than three months after such loss of work or cessation of attendance at a job training or educational program.

(c) If a parent resumes work or attendance at a job training or education program at any level and at any time during the period described in subsection (b), then the Board shall ensure that:

(1) care will continue to the end of the 12-month eligibility period at the same or greater level, depending upon any increase in the activity hours of the parent;

(2) the parent share of cost will not be increased during the remainder of the 12-month eligibility period, including for parents who are exempt from the parent share of cost pursuant to §809.19; and

(3) the Board's child care contractor verifies only:

(A) that the family income does not exceed 85 percent of the SMI; and

(B) the resumption of work or attendance at a job training or education program.

(d) The Board may suspend child care services during interruptions in the parent's work, job training, or education status only at the concurrence of the parent.

~~(a) If a parent has a temporary cessation of work, education, or job training activities and is unable to meet the requirements described in §809.50(a)(2), child care may be suspended for no more than 90 calendar days from the documented effective date of the cessation of these activities.~~

~~(b) If a parent has a documented temporary medical incapacitation and is unable to meet the work, education, or job training requirements described in §809.50(a)(2), the following shall apply:~~

~~(1) Child care may be allowed to continue for no more than 60 calendar days from the documented effective date of the temporary medical incapacitation; and~~

- ~~(2) Child care may be suspended for no more than 30 calendar days after the end of the 60-day calendar period following the documented temporary medical incapacitation, as described in subsection (b)(1) of this section.~~
- ~~(e) Upon the parent's return to work, education, or job training activities, a Board is not required to resume child care at the same provider used prior to the documented temporary cessation of these activities or medical incapacitation.~~
- ~~(d) Prior to any suspension of child care as described in this section, a parent must provide:
 - ~~(1) documentation from the employer or training provider stating that the parent will be returning to work or job training activities following the temporary cessation of these activities or medical incapacitation; or~~
 - ~~(2) written notification to the child care contractor of the parent's intent to enroll in an educational institution following the temporary cessation of educational activities.~~~~

§809.52. Child Care for Children Experiencing Homelessness.

- (a) For a child experiencing homelessness, as defined in §809.2, a Board shall ensure that the child is initially enrolled for a period of three months.
- (b) If, during the three-month initial enrollment period, the parent of a child experiencing homelessness:
 - (1) is unable to provide documentation verifying that the child is eligible under §809.41(a)(1)-(2) (regarding age and citizenship status), then care shall be discontinued following the three-month enrollment period; or
 - (2) provides documentation verifying eligibility under §809.41(a), then care shall continue through the end of the 12-month initial eligibility period (inclusive of the three-month initial enrollment period).

§809.53. Child Care for Children Served by Special Projects.

- (a) Special projects developed in federal and state statutes or regulations and funded using non-CCDF sources may add groups of children eligible to receive child care.
- (b) The eligibility criteria as stated in the statutes, ~~or~~ regulations, or funding sources shall control for the special project, unless otherwise indicated by the Commission.
- (c) The time limit for receiving child care for children served by special projects may be:

- (1) specifically prescribed by federal or state statutes or regulations according to the particular project;
- (2) otherwise set by the Commission depending on the purpose and goals of the special project; and
- (3) limited to the availability of funds.

§809.54. Continuity of Care.

- (a) Enrolled children, including children whose eligibility for Transitional child care has expired, shall receive child care through the end of the applicable eligibility periods described in §809.42~~as long as the family remains eligible for any available source of Commission funded child care except as otherwise provided under subsection (b) of this section.~~
- (b) Except as provided by §809.75~~(b)~~ relating to child care during appeal, 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 the first priority group as provided in §809.43.~~
- (c) In closed DFPS CPS cases (DFPS cases) where child care is no longer funded by DFPS, child care shall continue through the end of the applicable eligibility periods described in §809.42 using funds allocated to the Board by the Commission~~the following shall apply:~~
 - ~~(1) Former DFPS Children Needing Protective Services Child Care. Regardless of whether the family meets the income eligibility requirements of the Board or is working or attending a job training or educational program, if DFPS determines on a case-by-case basis that the child continues to need protective services and child care is integral to that need, then the Board shall continue the child care by using other funds, including funds received through the Commission, for child care services for up to six months after DFPS case is closed.~~
 - ~~(2) Former DFPS Children Not Needing Protective Services Child Care. If the family meets the income eligibility requirements of the Board and if DFPS does not state on a case-by-case basis that the child continues to need protective services or child care is not integral to that need, then the Board may provide care subject to the availability of funds. To receive care under this paragraph, the parents must be working or attending a job training or an educational program.~~
- (d) A Board shall ensure that no enrolled children of military parents in military deployment have a disruption of child care services or eligibility ~~because of~~ theduring military deployment, including parents in military deployment at the end of the 12-month eligibility redetermination period.
- (e) A Board shall ensure that a child who is required by a court-ordered custody or visitation arrangement to leave a provider's care is permitted to continue receiving

child care by the same provider, or another provider if agreed to by the parent in advance of the leave, upon return from the court-ordered custody or visitation arrangement.

- ~~(f) A Board may encourage parents of other children to temporarily utilize the space the child under court-ordered custody or visitation arrangement has vacated until the child returns so he or she can return to the same provider.~~
- ~~(g) A Board shall ensure that parents who choose to accept temporary child care to fill a position opened because of court-ordered custody or visitation shall not lose their place on the waiting list.~~
- ~~(h) A Board shall ensure that parents who choose not to accept temporary child care to fill a position opened because of court-ordered custody or visitation shall not lose their place on the waiting list.~~

~~§809.55. Mandatory Waiting Period for Reapplication.~~

- ~~(a) A parent is ineligible to reapply for child care services or to be placed on the waiting list for services for at least 30 days but not to exceed 90 days as determined by Board policy if the parent's eligibility or child's enrollment is denied, delayed, reduced, suspended, or terminated pursuant to established Board policies and procedures for any of the following:
 - ~~(1) Excessive absences;~~
 - ~~(2) Nonpayment of parent share of cost;~~
 - ~~(3) Five consecutive absences on authorized days of care with no parent contact with the child care provider or child care contractor; or~~
 - ~~(4) 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 care.~~~~
- ~~(b) A Board may allow the waiting period to extend beyond the 90 days for parents on a repayment schedule if Board policy requires that the parents fully repay the obligation prior to reapplying for child care services.~~

SUBCHAPTER D. PARENT RIGHTS AND RESPONSIBILITIES

§809.71. Parent Rights.

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

- (1) choose the type of child care provider that best suits their needs and to be informed of all child care options available to them as included in the consumer education information described in §809.15;
- (2) visit available child care providers before making their choice of a child care option;
- (3) receive assistance in choosing initial or additional child care referrals including information about the Board's policies regarding transferring children from one provider to another;
- (4) be informed of the Commission rules and Board policies related to providers charging parents the difference between the Board's reimbursement and the provider's published rate as described in §809.92(c) - (d);
- (5) be represented when applying for child care services;
- (6) be notified of their eligibility to receive child care services within 20 calendar days from the day the Board's child care contractor receives all necessary documentation required to initially determine ~~or redetermine~~ eligibility for child care;
- (7) receive child care services regardless of race, color, national origin, age, sex, disability, political beliefs, or religion;
- (8) have the Board and the Board's child care contractor treat information used to determine eligibility for child care services as confidential;
- (9) receive written notification, ~~except as provided by paragraph (10) of this section,~~ at least 15 calendar days before ~~the denial, delay, reduction, or termination of child care services unless:~~
 - ~~(A) the services are authorized to cease immediately because either the parent is no longer participating in the Choices or SNAP E&T program or services are authorized to end immediately for children in protective services child care; or~~
 - ~~(B) the services are authorized to cease immediately as required by Board policy because the child has been absent for five consecutive authorized days of care and the parent has failed to contact the child care provider or the child care contractor by the end of the fifth authorized day;~~
- ~~(10) receive 30-day written notification from the Board's child care contractor if child care is to be terminated in order to make room for a priority group described in §809.43(a)(1), as follows:~~
 - ~~(A) Written notification of denial, delay, reduction, or termination shall include information regarding other child care options for which the recipient may be eligible.~~

~~(B) 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 allocated to the Board, notice may be provided on the earliest date on which it is practicable for the Board to provide notice;~~

~~(10)~~(11) reject an offer of child care services or voluntarily withdraw their child from child care, unless the child is in protective services;

~~(11)~~(12) be informed of the possible consequences of rejecting or ending the child care that is offered;

~~(12)~~(13) be informed of the eligibility documentation and reporting requirements described in §809.72 and §809.73;

~~(13)~~(14) be informed of the parent appeal rights described in §809.74; and

~~(15) be informed of the Board's attendance policy as required in §809.13(d)(13) and the consequences for five consecutive absences without contact as described in paragraph (9)(B) of this section; and~~

~~(14)~~(16) be informed of required background and criminal history checks for relative child care providers through the listing process with DFPS, as described in §809.91(e), before the parent or guardian selects the relative child care provider.

§809.72. Parent Eligibility Documentation Requirements.

- (a) Except for a child experiencing homelessness pursuant to §809.52 at initial eligibility, before a child can be initially determined or redetermined eligible for child care services and care authorized, Parents shall provide the Board's child care contractor with all information necessary to determine eligibility according to the Board's administrative policies and procedures.
- (b) A parent's failure to submit eligibility documentation ~~may~~ shall result in initial denial or termination of child care services or termination of services at the 12-month eligibility redetermination period.

§809.73. Parent Reporting Requirements.

- (a) Boards shall ensure that during the 12-month eligibility period, parents are only required to report items that impact a family's eligibility or that enable the Board or Board contractor to contact the family or pay the provider.
- (b) Pursuant to subsection (a) of this section, Parents shall report to the child care contractor, within ~~10~~ 14 calendar days of the occurrence, the following:

(1) Changes in family income or family size that would cause the family to exceed 85 percent of SMI for a family of the same size;

~~(2) Changes in family size;~~

~~(2)(3)~~ Changes in work or attendance in at a job training or educational program not considered to be temporary changes, as described in §809.4251; and

(3) Any change in family residence, primary phone number, or e-mail (if available).

~~(4) The receipt or the awarding of any child care funds from other public or private entities; or~~

~~(5) Any other changes that may affect the child's eligibility or parent share of cost for child care.~~

~~(c)(b)~~ Failure to report changes described in subsection (a) of this section may result in :

~~(1) termination of child care;~~

~~(2) recovery of payments by the Board, the Board's child care contractor, or the Commission; or~~

~~(3) fact-finding for suspected fraud as described in Subchapter F of this chapter.~~

(d) A Board shall allow parents to report and the child care contractor shall take appropriate action regarding changes in:

(1) income and family size, which may result in -a reduction in the parent share of cost pursuant to §809.19; and

(2) work, job training, or education program participation that may result in an increase in the level of child care services.

~~(e) The receipt of child care services for which the parent is no longer eligible constitutes grounds on which to suspect fraud.~~

§809.74. Parent Appeal Rights.

(a) Unless otherwise stated in this section, a parent may request a hearing pursuant to Chapter 823 of this title:

(1) if the parent's eligibility or child's enrollment is denied, delayed, reduced, suspended, or terminated by the Board's child care contractor, Choices caseworker, or SNAP E&T caseworker; or

(2) regarding the amount of recoupment determined pursuant to Subchapter F of this Chapter.

- (b) A parent may have an individual represent him or her during this process.
- (c) A parent of a child in protective services may not appeal pursuant to Chapter 823 of this title, but shall follow the procedures established by DFPS.

§809.75. Child Care during Appeal.

- (a) For a child currently enrolled in child care, a Board shall ensure that child care services continue 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 parent's eligibility or child's enrollment is denied, delayed, reduced, suspended, or terminated because of:~~
 - ~~(1) excessive absences;~~
 - ~~(2) voluntary withdrawal from child care;~~
 - ~~(3) change in federal or state laws or regulations that affect the parent's eligibility;~~
 - ~~(4) lack of funding because of increases in the number of enrolled children in state and Board priority groups;~~
 - ~~(5) a sanctions finding against the parent participating in the Choices program;~~
 - ~~(6) voluntary withdrawal of a parent from the Choices program;~~
 - ~~(7) nonpayment of parent share of cost;~~
 - ~~(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;~~
 - ~~(9) a suspension of child care services pursuant to §809.51 (related to Child Care during Temporary Interruptions in Work, Education, or Training); or~~
 - ~~(10) five consecutive absences and the parent has failed to contact the child care provider or the child care contractor by the end of the fifth authorized day.~~

~~(b)(e)~~ 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.

~~§809.76. Parent Responsibility Agreement.~~

~~(a) The parent of a child receiving child care services is required to sign a parent PRA as part of the child care enrollment process, unless covered by the provisions of Texas Human Resources Code §31.0031. The parent's compliance with the provisions of the agreement shall be reviewed at each eligibility redetermination.~~

~~(b) The PRA requires that:~~

~~(1) the parent shall:~~

~~(A) cooperate with the Office of the Attorney General (OAG), if necessary, to establish paternity of the parent's children and to enforce child support on an ongoing basis by:~~

~~(i) providing documentation to the Board's child care contractor that the parent has an open child support case with OAG and is cooperating with OAG; or~~

~~(ii) opening a child support case with OAG and providing documentation to the Board's child care contractor that the parent is cooperating with OAG; or~~

~~(B) provide documentation as determined by Board policy to the Board's child care contractor that the parent has an arrangement with the absent parent for child support and is receiving child support on a regular basis. Such documentation shall include evidence of child support history, which may include:~~

~~(i) a Board established minimum amount of child support; and~~

~~(ii) in kind child support;~~

~~(2) each parent shall not use, sell, or possess marijuana or other controlled substances in violation of Texas Health and Safety Code, Chapter 481, and abstain from alcohol abuse; and~~

~~(3) each parent shall ensure that each family member younger than 18 years of age attends school regularly, unless the child has a high school diploma or a GED credential, or is specifically exempted from school attendance by Texas Education Code §25.086.~~

- ~~(c) Failure by the parent to comply with any of the provisions of the PRA within three months of initial eligibility shall result in termination of the family's child care services.~~
- ~~(d) Boards shall ensure that a parent whose child care services are terminated due to failure to comply with the requirements of the PRA, as set forth in this section, shall not be eligible for child care services until the parent demonstrates compliance.~~

~~§809.77. Exemptions from the Parent Responsibility Agreement.~~

~~Notwithstanding the requirements set forth in §809.76(b)(1), the parent is not required to comply with those requirements if one or more of the following situations exist:~~

- ~~(1) The paternity of the child cannot be established after a reasonable effort to do so;~~
- ~~(2) The child was conceived as a result of incest or rape;~~
- ~~(3) The parent of the child is a victim of domestic violence;~~
- ~~(4) Adoption proceedings for the child are pending;~~
- ~~(5) The parent of the child has been working with an agency for three months or less to decide whether to place the child for adoption;~~
- ~~(6) The child may be physically or emotionally harmed by cooperation;~~
- ~~(7) The parent may be physically or emotionally harmed by cooperation, to the extent of impairing the parent's ability to care for the child; or~~
- ~~(8) A person is standing in loco parentis for a child with a parent in military deployment.~~

~~§809.78. Parent Attendance Standards and Reporting Requirements.~~

- (a) A Board shall ensure that parents are notified of the following:
 - (1) Parents shall ensure that the eligible child attends on a regular basis consistent with the child's authorization for enrollment. Failure to meet **monthly** attendance standards described in paragraph (2) of this subsection may:
 - (A) result in suspension of care, at the concurrence of the parent; or
 - (B) be grounds for determining that a change in the parent's participation in work, job training, or an education program has occurred and care may be terminated pursuant to the requirements in §809.51(b).
 - (2) Meeting attendance standards for child care services consists of fewer than:

(A) five consecutive absences during the month;

(B) ten total absences during the month; ~~or~~

~~(C) forty-one total absences over a 12-month period.~~

(3) If a child exceeds 65 total absences during the most recent eligibility period, then the child is not eligible for care at the next eligibility determination and shall not be eligible for care for 12 months from the end of the most recent eligibility period.

(43) Notwithstanding paragraph (3) of this subsection, Cchild care providers may end a child's enrollment with the provider if the child does not meet the provider's established policy regarding attendance.

(54)(+) Parents shall use the attendance card to report daily attendance and absences.

~~(2) Child care services may be terminated and parents may be held responsible for paying the provider for attendance and absences that are not reimbursed by the Board.~~

(65)(3) Parents shall not designate anyone under age 16 as a secondary cardholder, unless the individual is a child's parent.

(76)(4) Parents shall not designate the owner, assistant director, or director of the child care facility as a secondary cardholder.

(87)(5) Parents shall:

(A) ensure the attendance card is not misused by secondary cardholders;

(B) inform secondary cardholders of the responsibilities for using the attendance card;

(C) ensure that secondary cardholders comply with these responsibilities; and

(D) ensure the protection of attendance cards issued to them or secondary cardholders.

(98)(6) ~~Child care services may be terminated if the~~ The parent or secondary cardholders giveing the attendance card or the personal identification number (PIN) to another person, including the child care provider, is grounds for a potential fraud determination pursuant to Subchapter F of this chapter.

~~(109)(7)~~ Parents shall report to the child care contractor instances in which a parent's attempt to record attendance in the child care automated attendance system is denied or rejected and cannot be corrected at the provider site. Failure to report such instances may result in an absence counted toward the ~~Board's maximum number of allowable absences or the parent being liable for the reimbursement to the provider~~ attendance standards described in paragraphs (2) and (3) of this subsection.

~~(8) Five consecutive absences on authorized days of care, with no contact from the parent with the child care provider or child care contractor, may result in termination of child care services. Additionally, the 15-day notice of termination is not required in this circumstance, and child care shall not continue during any appeal.~~

(b) Boards shall ensure that parents sign a written acknowledgment indicating their understanding of ~~the parent~~ attendance standards and reporting card responsibilities requirements; at each of the following stages:

(1) initial eligibility determination; and

(2) each eligibility redetermination, ~~conducted at a frequency determined by the Board,~~ as required in §809.42(b)~~(2)~~.

(c) Boards shall ensure that absences due to a child's documented chronic illness or disability or court-ordered visitation are not counted in the number of absences in paragraphs (a)(2) and (3) of this section.

(d) Where a child's enrollment has been ended by a provider in paragraph (4) of this section, Boards shall work with the parent to place the otherwise eligible child with another eligible provider.

SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE

§809.91. Minimum Requirements for Providers.

(a) A Board shall ensure that child care subsidies are paid only to:

(1) regulated child care providers as described in §809.2~~(17)~~;

(2) relative child care providers as described in §809.2~~(18)~~, subject to the requirements in subsection (e) of this section; or

~~(3) at the Board's option, listed family homes as defined in §809.2(12), subject to the requirements in subsection (b)(2) of this section; or~~

~~(34)~~ at the Board's option, child care providers licensed in a neighboring state, subject to the following requirements:

- (A) Boards shall ensure that the Board's child care contractor reviews the licensing status of the out-of-state provider every month, at a minimum, to confirm the provider is meeting the minimum licensing standards of the state;
- (B) Boards shall ensure that the out-of-state provider meets the requirements of the neighboring state to serve CCDF-subsidized children; and
- (C) The provider shall agree to comply with the requirements of this chapter and all Board policies and Board child care contractor procedures.

(b) ~~For providers listed with DFPS, the following applies:~~

~~(1) A Board shall not prohibit a relative child care provider who is listed with DFPS and who meets the minimum requirements of this section from being an eligible relative child care provider.~~

~~(2) If a Board chooses to include listed family homes, as defined in §809.2(12), that provide care for children unrelated to the provider, a Board shall ensure that there are in effect, under local law, requirements applicable to the listed family homes designated to protect the health and safety of children. Pursuant to 45 CFR §98.41, the requirements shall include:~~

~~(A) the prevention and control of infectious diseases (including immunizations);~~

~~(B) building and physical premises safety; and~~

~~(C) minimum health and safety training appropriate to the child care setting.~~

(c) Except as provided by the criteria for TRS Provider certification, a Board or the Board's child care contractor shall not place requirements on regulated providers that:

(1) exceed the state licensing requirements stipulated in Texas Human Resources Code, Chapter 42; or

(2) have the effect of monitoring the provider for compliance with state licensing requirements stipulated in Texas Human Resources Code, Chapter 42.

(d) When a Board or the Board's child care contractor, in the course of fulfilling its responsibilities, gains knowledge of any possible violation regarding regulatory standards, the Board or its child care contractor shall report the information to the appropriate regulatory agency.

(e) For relative child care providers to be eligible for reimbursement for Commission-funded child care services, the following applies:

- (1) Relative child care providers shall list with DFPS; however, pursuant to 45 CFR §98.41(e), relative child care providers listed with DFPS shall be exempt from the health and safety requirements of 45 CFR §98.41(a) and subsection (b)(2) of this section.
 - (2) A Board shall allow relative child care providers to care for a child in the child's home (in-home child care) only for the following:
 - (A) A child with disabilities as defined in §809.2~~(6)~~, and his or her siblings;
 - (B) A child under 18 months of age, and his or her siblings;
 - (C) A child of a teen parent; and
 - (D) When the parent's work schedule requires evening, overnight, or weekend child care in which taking the child outside of the child's home would be disruptive to the child.
 - (3) A Board may allow relative in-home child care for circumstances in which the Board's child care contractor determines and documents that other child care provider arrangements are not available in the community.
- (f) Boards shall ensure that subsidies are not paid for a child at the following child care providers:
- (1) [Except for foster parents authorized by DFPS pursuant to §809.49](#), ~~L~~icensed child care centers, including before- or after-school programs and school-age programs, in which the parent or his or her spouse, including the child's parent or stepparent, is the director or assistant director, or has an ownership interest; or
 - (2) Licensed, registered, or listed child care homes where the parent also works during the hours his or her child is in care.

§809.92. Provider Responsibilities and Reporting Requirements.

- (a) A Board shall ensure that providers are given written notice of and agree to their responsibilities, reporting requirements, and requirements for reimbursement under this subchapter prior to enrolling a child.
- (b) Providers shall:
 - (1) be responsible for collecting the parent share of cost as assessed under §809.19 before child care services are delivered;
 - (2) be responsible for collecting other child care funds received by the parent as described in §809.21~~(a)~~(2);

- (3) report to the Board or the Board's child care contractor instances in which the parent fails to pay the parent share of cost; and
 - (4) ~~follow attendance reporting and tracking procedures required by the Commission under §809.95, the Board, or, if applicable, the Board's child care contractor. **At a minimum, the provider shall:**~~
 - ~~(A) document and maintain a record of each child's attendance and submit attendance records to the Board's child care contractor upon request;~~
 - ~~(B) inform the Board's child care contractor when an enrolled child is absent; and~~
 - ~~(C) inform the Board's child care contractor that the child has not attended the first three days of scheduled care. The provider has until the close of the third day of scheduled attendance to contact the Board's child care contractor regarding the child's absence.~~
- (c) Providers shall not charge the difference between the provider's published rate and the amount of the Board's reimbursement rate as determined under §809.21 to parents:
 - (1) who are exempt from the parent share of cost assessment under §809.19(a)(2); or
 - (2) whose parent share of cost is calculated to be zero pursuant to §809.19(f).
 - (d) A Board may develop a policy that prohibits providers from charging the difference between the provider's published rate and the amount of the Board's reimbursement rate (including the assessed parent share of cost) to all parents eligible for child care services.
 - (e) Providers shall not deny a child care referral based on the parent's income status, receipt of public assistance, or the child's protective service status.
 - (f) Providers shall not charge fees to a parent receiving child care subsidies that are not charged to a parent who is not receiving subsidies.

§809.93. Provider Reimbursement.

- (a) A Board shall ensure that reimbursement for child care is paid only to the provider.
- (b) A Board or its child care contractor shall reimburse a regulated provider based on a child's monthly enrollment authorization, excluding periods of suspension at the concurrence of the parent as described in §809.51(d) and §809.78(a).

(c)~~b~~ A Board shall ensure that a relative child care provider is not reimbursed for days on which the child is absent.

(d)~~e~~ A relative child care provider shall not be reimbursed for more children than permitted by the DFPS minimum regulatory standards for Registered Child Care Homes. A Board may permit more children to be cared for by a relative child care provider on a case-by-case basis as determined by the Board.

(e)~~d~~ A Board shall not reimburse providers that are debarred from other state or federal programs unless and until the debarment is removed.

(f)~~e~~ Unless otherwise determined by the Board and approved by the Commission for automated reporting purposes, the monthly enrollment authorization described in paragraph (b) of this section~~reimbursement for child care~~ is based on the unit of service authorized~~delivered~~, as follows:

- (1) A full-day unit of service is 6 to 12 hours of care provided within a 24-hour period; and
- (2) A part-day unit of service is fewer than 6 hours of care provided within a 24-hour period.

(g)~~f~~ A Board or its child care contractor shall ensure that providers are not paid for holding spaces open ~~except as consistent with attendance policies as established by the Board.~~

(h)~~g~~ A Board or the Board's child care contractor shall not pay providers:

- (1) less, when a child enrolled full time occasionally attends for a part day; or
- (2) more, when a child enrolled part time occasionally attends for a full day.

(i)~~h~~ The Board or its child care contractor shall not reimburse a provider retroactively for new Board maximum reimbursement rates or new provider published rates.

(j)~~i~~ A Board or its child care contractor shall ensure that the parent's travel time to and from the child care facility and the parent's work, school, or job training site is included in determining whether to authorize reimbursement for full-day or part-day care under subsection (e)~~f~~ of this section.

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

(a) For a provider placed on evaluation corrective action (evaluation status) by DFPS, Boards shall ensure that:

- (1) parents with children enrolled in Commission-funded child care are notified in writing of the provider's evaluation status no later than five business days after

receiving notification from the Agency of DFPS' decision to place the provider on evaluation status; and

- (2) parents choosing to enroll children in Commission-funded child care with the provider are notified in writing of the provider's evaluation status prior to enrolling the children with the provider.
- (b) For a provider placed on probation corrective action (probationary status) by DFPS, Boards shall ensure that:
- (1) parents with children in Commission-funded child care are notified in writing of the provider's probationary status no later than five business days after receiving notification from the Agency of DFPS' decision to place the provider on probationary status; and
 - (2) no new referrals are made to the provider while on probationary status.
- (c) A parent receiving notification of a provider's evaluation or probationary status with DFPS pursuant to subsections (a) and (b) of this section may ~~choose to transfer the child to another eligible provider without being subject to the Board transfer policies described in §809.71(3)-continue the enrollment of a child with the provider~~ if the parent ~~signs and returns to the Board's child care contractor~~ requests the transfer within ~~10-14 business~~ calendar days of receiving such notification ~~a written acknowledgment that the parent is aware of the provider's status with DFPS, but chooses to enroll the child with the provider.~~
- (d) For a provider placed on evaluation or probationary status by DFPS, Boards shall ensure that the provider is not reimbursed at the Boards' enhanced reimbursement rates described in §809.20 while on evaluation or probationary status.
- (e) For a provider against whom DFPS is taking adverse action, Boards shall ensure that:
- (1) parents with children enrolled in Commission-funded child care are notified no later than two business days after receiving notification from the Agency that DFPS intends to take adverse action against the provider;
 - (2) children enrolled in Commission-funded child care with the provider are transferred to another eligible provider no later than five business days after receiving notification from the Agency that DFPS intends to take adverse action against the provider; and
 - (3) no new referrals for Commission-funded child care are made to the provider while DFPS is taking adverse action.
- (f) For adverse actions in which DFPS has determined that the provider poses an immediate risk to the health or safety of children and cannot operate pending appeal of the adverse action, but for which there is a valid court order that overturns DFPS'

determination and allows the provider to operate pending administrative review or appeal, Boards shall take action consistent with subsection (e) of this section.

§809.95. Provider Automated Attendance Agreement.

Boards shall notify providers of the following:

- (1) Employees of child care providers shall not:
 - (A) possess, have on the premises, or otherwise have access to the attendance card of a parent or secondary cardholder;
 - (B) accept or use the attendance card or PIN of a parent or secondary cardholder; or
 - (C) perform the attendance or absence reporting function on behalf of the parent;
- (2) The owner, director, or assistant director of a child care provider shall not be designated as the secondary cardholder by a parent with a child enrolled with the provider;
- (3) Providers shall report misuse of attendance cards and PINs to the Board or the Board's child care contractor; and
- (4) Providers shall report to the child care contractor authorized days that do not match the referral in the Agency's automated attendance system within five days of receiving the authorization. Failure to report the discrepancy may result in withholding payment to the provider.
- (5) [Misuse of attendance reporting and violation of the requirements in this section are grounds for a potential fraud determination pursuant to Subchapter F of this chapter.](#)

SUBCHAPTER F. FRAUD FACT-FINDING AND IMPROPER PAYMENTS

§809.111. General Fraud Fact-Finding Procedures.

- (a) This subchapter establishes authority for a Board to develop procedures for the prevention of fraud by a parent, provider, or any other person in a position to commit fraud consistent with fraud prevention provisions in the Agency-Board Agreement.

(b) In this subchapter, a person commits fraud if, to obtain or increase a benefit or other payment, either for the person or another person, the person:

(1) makes a false statement or representation, knowing it to be false; or

(2) knowingly fails to disclose a material fact.

~~(c)(b)~~ A Board shall ensure that procedures for researching and fact-finding for possible fraud are developed and implemented to deter and detect suspected fraud for child care services in the workforce area.

~~(d)(e)~~ These procedures shall include provisions that suspected fraud is reported to the Commission in accordance with Commission policies and procedures.

~~(e)(d)~~ Upon review of suspected fraud reports, the Commission may either accept the case for investigation and action at the state level, or return the case to the Board or its child care contractor for action including, but not limited to, the following:

(1) further fact-finding; or

(2) other corrective action as provided in this chapter or as may be appropriate.

~~(f)(e)~~ The Board shall ensure that a final fact-finding report is submitted to the Commission after a case is returned to the Board or its child care contractor and all feasible avenues of fact-finding and corrective actions have been exhausted.

§809.112. Suspected Fraud.

(a) A parent, provider, or any other person in a position to commit fraud may be suspected of fraud if the person presents or causes to be presented to the Board or its child care contractor one or more of the following items:

(1) A request for reimbursement in excess of the amount charged by the provider for the child care; or

(2) A claim for child care services if evidence indicates that the person may have:

(A) known, or should have known, that child care services were not provided as claimed;

(B) known, or should have known, that information provided is false or fraudulent;

(C) received child care services during a period in which the parent or child was not eligible for services;

- (D) known, or should have known, that child care subsidies were provided to a person not eligible to be a provider; or
- (E) otherwise indicated that the person knew or should have known that the actions were in violation of this chapter or state or federal statute or regulations relating to child care services.

(b) The following parental actions may be grounds for suspected fraud and cause for Boards to conduct fraud fact-finding or the Commission to initiate a fraud investigation:

(1) Not reporting or falsely reporting at initial eligibility or at eligibility redetermination:

- (A) household composition, or income sources or amounts that would have resulted in ineligibility or a higher parent share of cost; or
- (B) work, training, or education hours that would have resulted in ineligibility; or

(2) Not reporting during the 12-month eligibility period:

- (A) changes in income or household composition that would cause the family income to exceed 85 percent of SMI (taking into consideration fluctuations of income); or
- (B) a permanent loss of job or cessation of training or education that exceeds ~~90 days~~ three months; ~~and or~~
- (C) improper or inaccurate reporting of attendance.

§809.113. Action to Prevent or Correct Suspected Fraud.

- (a) The Commission; ~~Board,~~ or Boards ~~child care contractor~~ may take the following actions pursuant to Commission policy if the Commission or Board finds that a provider has committed fraud:
 - (1) Temporary withholding of payments to the provider for child care services delivered;
 - (2) Nonpayment of child care services delivered;
 - (3) Recoupment of funds from the provider;
 - (4) Stop authorizing care at the provider's facility or location;

(5) Prohibiting future eligibility to provide Commission-funded child care services; or

~~(6)(5)~~ Any other action consistent with the intent of the governing statutes or regulations to investigate, prevent, or stop suspected fraud.

(b) The Commission, ~~Board,~~ or Board's ~~child care contractor~~ may take the following actions pursuant to Commission policy if the Commission or Board finds that a parent has committed fraud:

(1) recouping funds from the parent;

(2) prohibiting future child care eligibility, provided that the prohibition does not result in a Choices or SNAP E&T participant becoming ineligible for child care;

(3) limiting the enrollment of the parent's child to a regulated child care provider;

(4) terminating care during the 12-month eligibility period if eligibility was determined using fraudulent information provided by the parent; or

~~(5)(4)~~ any other action consistent with the intent of the governing statutes or regulations to investigate, prevent, or stop suspected fraud.

§809.115. Corrective Adverse Actions.

(a) When determining appropriate corrective actions, the Board or Board's child care contractor shall consider:

(1) the scope of the violation;

(2) the severity of the violation; and

(3) the compliance history of the person or entity.

(b) Corrective actions for providers may include, but are not limited to, the following:

(1) Closing intake;

(2) Moving children to another provider selected by the parent;

(3) Withholding provider payments or reimbursement of costs incurred; and

~~(4) Termination of child care services; and~~

~~(4)(5)~~ Recoupment of funds.

- (c) When a provider violates a provision of Subchapter E of this chapter, a written Service Improvement Agreement may be negotiated between the provider and the Board or the Board's child care contractor. At the least, the Service Improvement Agreement shall include the following:
 - (1) The basis for the Service 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 Service Improvement Agreement.
- (d) The Board shall develop policies and procedures to ensure that the Board or the Board's child care contractor take corrective action consistent with subsections (a) - (c) of this section against a provider when a provider:
 - (1) possesses, or has on the premises, attendance cards without the parent being present at the provider site;
 - (2) accepts or uses an attendance card or PIN of a parent or secondary cardholder; or
 - (3) performs the attendance reporting function on behalf of a parent.
- (e) The Board shall develop policies and procedures to require the Board's child care contractor to take corrective action consistent with subsections (a) - (c) of this section against a parent when a parent or parent's secondary cardholder gives his or her:
 - (1) card to a provider; or
 - (2) PIN to a provider.

~~§809.116. Recovery of Improper Payments.~~

- ~~(a) A Board shall attempt recovery of all improper payments. The Commission shall not pay for improper payments.~~
- ~~(b) Recovery of improper payments shall be managed in accordance with Commission policies and procedures.~~

§809.117. Recovery of Improper Payments to a Provider or Parent.

- (a) A Board shall attempt recovery of all improper payments as defined in §809.2.

(b) Recovery of improper payments shall be managed in accordance with Commission policies and procedures.

(c)~~(a)~~ The provider shall repay improper payments for child care services received in the following circumstances:

- (1) Instances involving fraud;
- (2) Instances in which the provider did not meet the provider eligibility requirements in this chapter;
- (3) Instances in which the provider was paid for the child care services from another source;
- (4) Instances in which the provider did not deliver the child care services;
- (5) Instances in which referred children have been moved from one facility to another without authorization from the child care contractor; and
- (6) Other instances when repayment is deemed an appropriate action.

(d)~~(b)~~ A parent shall repay improper payments for child care only in the following circumstances:

- (1) Instances involving fraud as defined in this subchapter;
- (2) Instances in which the parent has received child care services while awaiting an appeal and the determination is affirmed by the hearing officer; or
- (3) Instances in which the parent fails to pay the parent share of cost and the Board's policy is to pay the provider for the parent's failure to pay the parent share of cost.~~Other instances in which repayment is deemed an appropriate corrective action.~~

(e) A Board shall ensure that a parent subject to the repayment provisions in subsection (d) of this section shall prohibit future child care eligibility until the ~~repayment prepayment~~ amount is recovered, provided that the prohibition does not result in a Choices or SNAP E&T participant becoming ineligible for child care.