

CHAPTER 809. CHILD CARE SERVICES

PROPOSED 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 FEBRUARY 13, 2018, THE TEXAS WORKFORCE COMMISSION PROPOSED THE BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated Publication Date of the Proposal in the *Texas Register*: **March 2, 2018**

Estimated End of Comment Period: **April 2, 2018**

TWC proposes the following new section to Chapter 809, relating to Child Care Services:

Subchapter C. Eligibility for Child Care Services, §809.55

TWC proposes amendments to the following sections of Chapter 809, relating to Child Care Services:

Subchapter A. General Provisions, §809.2

Subchapter B. General Management, §809.13 and §809.19

Subchapter D. Parent Rights and Responsibilities, §809.71, §809.75, and §809.78

Subchapter E. Requirements to Provide Child Care, §809.93

- PART I. PURPOSE, BACKGROUND, AND AUTHORITY
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PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 809 amendments is to include changes resulting from the federal Child Care and Development Fund (CCDF) final rules published September 30, 2016, and the CCDF Final Rule Frequently Asked Questions (FAQ) published December 14, 2016, by the US Department of Health and Human Services Administration for Children and Families (ACF).

The federal Child Care and Development Block Grant (CCDBG) Act requires state lead agencies to ensure that once a child is determined eligible for CCDF-subsidized services, the child shall be considered eligible and shall receive services for a minimum of 12 months before eligibility can be re-determined. The December 15, 2015, Notice of Proposed Rule Making (NPRM) issued by ACF, the federal administrator of the CCDBG Act, allows terminating care before 12 months only in situations in which:

--a change in family income caused the family's income to exceed 85 percent state median income (SMI); or

--a parent experiences a loss of work or cessation of attendance at a job training or educational program that is not a temporary change as defined in NPRM §98.21(a)(1)(ii).

As the CCDBG Act and the guidance published in the NPRM required states to demonstrate compliance with the 12-month eligibility requirements by October 1, 2016, TWC adopted rules September 6, 2016, to be effective October 1, 2016. Subsequently, in the final rules, ACF revised its initial position in response to comments, adding new limited circumstances in which a lead agency may discontinue assistance before the next scheduled redetermination. Given that TWC's rules predated the CCDF final rules, ACF's additional factors were not included in current Chapter 809 rules; to be consistent with federal law and to ensure that Texas receives the benefit of any additional federal flexibility, TWC must add these new criteria into Chapter 809 rules. Specifically, care may be discontinued where there has been:

- excessive unexplained absences, which continue after sufficient notice to the parent and provider; or
- intentional program violations that invalidate prior determinations of eligibility, including nonpayment of the family co-payment.

Termination for Excessive Unexplained Absences

CCDF final rule §98.21(a)(5)(i) states that lead agencies may terminate care in circumstances in which there have been "excessive unexplained absences" as defined by the state. Section 98.21(a)(5)(i) also requires that before terminating care for excessive absences, multiple attempts must be made to contact the family and the provider, including notification of possible discontinuation of assistance. Additionally, the preamble to the CCDF final rules includes the following guidance:

Regarding termination due to excessive unexplained absences, we stress that every effort should be made to contact the family prior to terminating benefits. Such efforts should be made by the Lead Agency or designated entity, which may include coordinated efforts with the provider to contact the family.

If a State chooses to terminate for this reason, the Lead Agency must define how many unexplained absences would constitute an "excessive" amount and therefore grounds for early termination. The definition of excessive should not be used as a mechanism for prematurely terminating eligibility and must be sufficient to allow for a reasonable number of absences. It is ACF's view that unexplained absences should account for at least 15 percent of a child's planned attendance before such absences are considered excessive. This 15 percent aligns generally with Head Start's attendance policy and ACF will consider it as a benchmark when reviewing and monitoring this requirement.

Termination for Intentional Program Violations

CCDF final rule §98.21(a)(5)(iii) allows states to terminate care for "intentional program violations that invalidate prior determinations of eligibility." ACF further clarified in the CCDF FAQ that states have flexibility to define nonpayment of parent share of cost as an intentional program violation. Additionally, CCDF final rule §98.45(k)(3) states that a lead agency's sliding fee scale shall provide for "affordable family co-payments that are not a barrier to families receiving assistance under this part." Therefore, if lack of payment becomes a common occurrence, and lead agencies are frequently ending assistance to families for not making

copayment, the lead agency may want to reexamine its sliding fee scale to ensure that it is not in violation of this requirement by being a barrier to assistance.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(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

TWC proposes the following amendments to Subchapter A.

§809.2. Definitions

Consistent with CCDF final rules §98.21(a)(5)(i), TWC defines how many unexplained absences constitute an "excessive" amount, and would therefore be grounds for early termination, by proposing to amend §809.2 to define "excessive unexplained absences" as more than 40 unexplained absences in a 12-month eligibility period.

Paragraphs have been renumbered as needed.

SUBCHAPTER B. GENERAL MANAGEMENT

TWC proposes the following amendments to Subchapter B.

§809.13. Board Policies for Child Care Services

Based on ACF's clarification in the CCDF FAQ that states have flexibility to define nonpayment of parent share of cost as an intentional program violation, TWC proposes to amend §809.13(c)(3) to require Local Workforce Development Boards (Boards) to include in their parent share of cost policies an explanation that failure to pay the parent share of cost is a program violation that is subject to early termination of child care. The Board's policy also must include an assessment of what constitutes affordability when frequent terminations occur pursuant to §809.19(d) - (e).

§809.19. Assessing the Parent Share of Cost

ACF noted in the CCDF FAQ that §98.45(k)(3) of the CCDF final rules states that a lead agency's sliding fee scale shall provide for "affordable family co-payments that are not a barrier to families receiving assistance under this part." Therefore, if lack of payment becomes a common occurrence, and lead agencies are frequently ending assistance to families for not paying their copayment, the lead agency may want to reexamine its sliding fee scale to ensure that it is not in violation of this requirement by being a barrier to assistance.

Consistent with ACF guidance, §809.19(a)(1)(B) is amended to include a reexamination of the sliding fee scale if there is a pattern of frequent terminations due to lack of payments. Additionally, §809.19(a)(1) is amended to require Boards to set a parent share of cost that is affordable to all eligible families in the local workforce development area and not a barrier to families receiving assistance.

New §809.19(d) is added to provide necessary criteria to the process for terminating child care for failure to pay the parent share of cost, including requirements for:

- evaluating a family's financial circumstances for possible reduction of the parent share of cost before an early termination for nonpayment of parent share of cost;
- determining general affordability of the parent share of cost;
- maintenance of a list of all terminations due to failure to pay the parent share of cost;
- the Board's definition of what constitutes frequent terminations; and
- the Board's process for assessing the general affordability of its parent share of cost schedule.

New §809.19(e) is added to require Boards to reexamine their sliding fee scales if there are frequent terminations of care for lack of payment of the parent share of cost, and to adjust the fee schedule to ensure that fees are not a barrier to assistance for families at certain income levels.

New §809.19(f) is added to state that if a Board does not have a policy to reimburse providers when the parent fails to pay the parent share of cost, the Board has the option to require parents to repay the provider before being eligible for future child care services.

The current provision that prohibits a child's future eligibility when a parent owes a parent share of cost repayment to a Board if the Board has a policy in place that reimburses providers for parents' unpaid fees is retained. Given the ability to terminate care before 12 months when a parent fails to pay the parent share of cost, the financial risks associated with reimbursing providers will be substantially lower and more limited.

Subsections and paragraphs are relettered and renumbered as needed.

SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES

TWC proposes the following amendments to Subchapter C.

§809.55. Waiting Periods for Reapplication

Current rules at §809.78(a)(3) establish a 12-month waiting period for children who exceed 65 absences. However, to add clarity, the waiting period is being moved to this standalone section. Specifically, new §809.55 is added to require a mandatory waiting period of 60 calendar days before a family can reapply or be placed on a waiting list for child care services if care is terminated due to excessive unexplained absences, as described in §809.78(a)(1), or unpaid parent share of cost, as described in §809.19(d).

Further, to more closely align with ACF guidance, the standard of 65 absences set out in §809.78(a)(3) is changed to more than 40 unexplained absences in a 12-month eligibility period. Adding this clarification will prevent the immediate reapplication for services if care is terminated.

However, to ensure full alignment between Child Care Services rules and the Choices program requirements, the mandatory waiting period will not apply to individuals who, during the 60-calendar day waiting period:

- become Choices participants who require child care to participate in the Choices program; or
- are on Choices sanction status and require child care to demonstrate participation in Choices.

SUBCHAPTER D. PARENT RIGHTS AND RESPONSIBILITIES

TWC proposes the following amendments to Subchapter D.

§809.71. Parent Rights

Section 98.21(a)(5)(i) of the CCDF final rules states that lead agencies may terminate care in circumstances in which there have been "excessive unexplained absences," as defined by the state, and requires that before terminating care for excessive absences, multiple attempts must be made to contact the family and provider, including notification of possible discontinuation of assistance.

Based on this guidance within the CCDF final rules, §809.71 is amended by adding paragraphs (15) and (16) to require that a parent must receive written notification that child care services may be terminated within a 12-month eligibility period if:

- a child has excessive unexplained absences pursuant to §809.78(a)(1); or
- the family fails to pay the parent share of cost, pursuant to new §809.19(d).

§809.75. Child Care during Appeal

Section 809.75 is amended by adding new subsection (b) to not allow child care to continue during an appeal if child care is terminated due to excessive unexplained absences, pursuant to §809.78, or nonpayment of parent share of cost, pursuant to §809.19.

Subsections are relettered as needed.

§809.78. Attendance Standards and Notice and Reporting Requirements

CCDF final rules §98.21(a)(5)(i) states that lead agencies may terminate care within a 12-month eligibility period in circumstances in which there have been excessive unexplained absences as defined by the state. Additionally, the preamble to the final rules states:

The definition of excessive should not be used as a mechanism for prematurely terminating eligibility and must be sufficient to allow for a reasonable number of absences. It is ACF's view that unexplained absences should account for at least 15 percent of a child's planned attendance before such absences are considered excessive. This 15 percent aligns generally with Head Start's attendance policy and ACF will consider it as a benchmark when reviewing and monitoring this requirement.

Section 809.78(a)(1) is amended to require Boards to notify parents regarding attendance standards and possible termination of child care services during the 12-month eligibility period when there have been "excessive unexplained absences."

Consistent with federal guidance in the preamble and CCDF final rules §98.21(a)(5)(i) regarding the 15 percent attendance standard, §809.78(a)(1)(A) and (B) are removed, and §809.78(a)(2)(A) is amended to define acceptable attendance standards as no more than 40 unexplained absences within a 12-month eligibility period (which is 15 percent of a standard 260- to 262-calendar day child care year, as recommended in the preamble of the CCDF final rule).

Current §809.78(a)(2) is amended to align with new federal rules at 45 CFR Part 98 regarding excessive unexplained absences.

Current §809.78(a)(3) is amended because 65 absences in a 12-month period is no longer an applicable standard. Additionally, the current 12-month waiting period for children who exceed 65 absences within an eligibility period is eliminated. This rule will be superseded by the ability to terminate care immediately after 40 absences, as well as by the reinstatement of a mandatory waiting period set forth in §809.55.

Section 809.78(a)(3)(A) – (C) are added to define "unexplained absences."

Section 809.78(c) is amended to explain that absences due to court-order visitation, chronic illness or a disability do not count toward the definition of "excessive unexplained absences" as described in §809.78(a).

Although §98.21(a)(5)(i) of the CCDF final rules permits states to terminate care within a 12-month eligibility period for excessive unexplained absences, it also requires that before terminating care for excessive absences, multiple attempts must be made to contact the family and provider, including notification of the possible discontinuation of assistance.

Consistent with CCDF final rules §98.21(a)(5)(i) and preamble guidance, §809.78(d) is added to require Boards to develop procedures to ensure that before terminating care for excessive unexplained absences pursuant to §809.78, the child care contractor makes multiple attempts to contact the family and the child care provider to determine why the child is absent and to explain the importance of regular attendance. The Board's procedures also must include documented attempts to provide notice of each child's general absences and the potential for termination of services to the parent and the child care provider at reasonable times or through established communication channels at a minimum when a child has reached five consecutive absences, and when a child reaches 15 and 30 general absences cumulatively within a 12-month eligibility period.

Subsections have been relettered as needed.

SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE **TWC proposes the following amendments to Subchapter E.**

§809.93. Provider Reimbursement

Section 809.93(b) is amended to remove "and §809.78(a)."

PART III. IMPACT STATEMENTS

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

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

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

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

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code §2001.0045, does not apply to this rulemaking. Although no cost increases to regulated persons are anticipated as a result of this rulemaking, to the extent that any such costs should result, this rulemaking is necessary to comply with federal law. Therefore, the exception identified in §2001.0045(c)(4) would apply.

Government Growth Impact Statement

TWC has determined that during the first five years the amendment will be in effect:

- the proposed amendment will not create or eliminate a government program;
- implementation of the proposed amendment will not require the creation or elimination of employee positions;
- implementation of the proposed amendment will not require an increase or decrease in future legislative appropriations to the agency;
- the proposed amendment will not require an increase or decrease in fees paid to the agency;
- no new regulations are created by the proposed amendments;
- the proposed amendment expands the following regulations: §809.19 Assessing the Parent Share of Cost, §809.75 Child Care During Appeal and §809.78 Attendance Standards and Notice and Reporting Requirements, consistent with guidance by ACF;
- the proposed amendment will not limit or eliminate an existing regulation;
- the proposed amendment will not change the number of individuals subject to the rule; and
- the proposed amendment will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the proposed rules will not have an adverse economic impact on small businesses or rural communities, as these proposed rules place no requirements on small businesses, including child care providers, or rural communities.

Doyle Fuchs, Director of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Courtney Arbour, Director of Workforce Development, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to limit the financial risks associated with child care providers providing

services under CCDF, allow for more children to actively use child care services, and increase parents' responsible use of these funds.

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

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission sought the involvement of Texas' 28 Boards. TWC provided the concept paper regarding these rule amendments to the Boards for consideration and review on May 23, 2017. TWC also conducted a conference call with Board executive directors and Board staff on May 26, 2017, to discuss the concept paper. During the rulemaking process, TWC considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, Attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. Comments must be received or postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

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

The proposed 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 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) 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. Major life activities include, but are not limited to, caring for oneself; performing manual tasks; walking; hearing; seeing, speaking, or breathing; learning; and working.
- (8) 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) ~~Excessive unexplained absences--More than 40 unexplained absences within a 12-month eligibility period as described in §809.78(a)(3).~~

(10)~~(9)~~ Family--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.

(11)~~(10)~~ 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.

(12)~~(11)~~ 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.

(13)~~(12)~~ 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.

(14)~~(13)~~ 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).

(15)~~(14)~~ 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.

(16)~~(15)~~ 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.

(17)~~(16)~~ 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.

(18)~~(17)~~ Provider--A provider is defined as:

- (A) a regulated child care provider as defined in §809.2(18);
- (B) a relative child care provider as defined in §809.2(19); or

(C) a listed family home as defined in §809.2(13), subject to the requirements in §809.91(b).

(19)~~(18)~~ 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) operated and monitored by the United States military services.

(20)~~(19)~~ 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).

(21)~~(20)~~ 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.

(22)~~(21)~~ 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.

(23)~~(22)~~ Texas Rising Star program--A voluntary, quality-based rating system of child care providers participating in Commission-subsidized child care.

(24)~~(23)~~ 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.

~~(25)~~(24) Working--Working is defined as:

- (A) activities for which one receives monetary compensation such as a salary, wages, tips, and commissions; or
- (B) 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) 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(a)(1), including: (A)--provisions for a parent's failure to pay the parent share of cost, including the reimbursement of providers, ~~when a parent fails to pay the parent share of cost;~~ as a program violation that is subject to early termination of child care services within a 12-month eligibility period; and (B)--criteria for determining the affordability of the parent share of cost, as described in §809.19(d) - (e);
 - (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 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) Board priority groups as described in §809.43(a);
- (10) transfer of a child from one provider to another as described in §809.71(3);
- (11) providers charging the difference between their published rate and the Board's reimbursement rate as provided in §809.92(d);
- (12) procedures for fraud fact-finding as provided in §809.111; and
- (13) 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).

§809.19. 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, including a possible reexamination of the sliding fee scale if there are frequent terminations for lack of payment pursuant to subsection (e) of this section, and which also may consider the number of children in care;-
 - (C) being an amount that is affordable and does not result in a barrier to families receiving assistance;
 - (D)~~(E)~~ 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;
- (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

~~(E)~~ 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 subsection (a)(1)(C)(iii) of this section.

- (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 Homelessness as described in §809.52; or
 - (D) Parents who have children who are receiving protective services child care pursuant to §809.49 and §809.54(c), 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.
- (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) A Board shall establish a policy regarding termination of child care services within a 12-month eligibility period when a parent fails to pay the parent share of cost. The Board's policy must include:
- (1) a requirement to evaluate and document each family's financial situation for extenuating circumstances that may affect affordability of the assessed parent share of cost pursuant to paragraph (2) of this subsection, and a possible temporary reduction pursuant to subsection (g) of this section before the Board or its child care contractor may terminate care under this section;
 - (2) general criteria for determining affordability of a Board's parent share of cost, and a process to identify and assess the circumstances that may jeopardize a family's self-sufficiency under subsection (g) of this section;
 - (3) maintenance of a list of all terminations due to failure to pay the parent share of cost, including family size, income, family circumstances, and the reason for termination, for use when conducting evaluations of affordability, as required under paragraph (4) of this subsection; and
 - (4) the Board's definition of what constitutes frequent terminations and its process for assessing the general affordability of the Board's parent share of cost schedule, pursuant to subsection (e) of this section.
- (e) A Board with frequent terminations of care for lack of payment of the parent share of cost must reexamine its sliding fee scale and adjust it to ensure that fees are not a barrier to assistance for families at certain income levels.
- (f) A Board that does not have a policy to reimburse providers when parents fail to pay the parent share of cost may establish a policy to require the parent to pay the provider before the family can be redetermined eligible for future child care services.
- ~~(g)~~ (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.
- ~~(h)~~ (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.

- (i) 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.
- (j) A Board may establish a policy to reduce the parent share of cost amount assessed pursuant to subsection (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.

SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES

§809.55. 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 60 calendar days if the parent's eligibility or the child's enrollment is terminated due to:
- (1) excessive unexplained absences under §809.78(a); or
 - (2) nonpayment of parent share of cost pursuant to a Board's established policy under §809.19(d).
- (b) To ensure full alignment between Child Care Services rules and the Choices program requirements, the provisions of subsection (a) of this section will not apply to individuals who, during the 60-calendar day waiting period:
- (1) become Choices participants who require child care to participate in Choices;
or
 - (2) are on Choices sanction status and require child care to demonstrate participation in Choices.

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 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 at least 15 calendar days before termination of child care services;
- (10) reject an offer of child care services or voluntarily withdraw their child from child care, unless the child is in protective services;
- (11) be informed of the possible consequences of rejecting or ending the child care that is offered;
- (12) be informed of the eligibility documentation and reporting requirements described in §809.72 and §809.73;

- (13) be informed of the parent appeal rights described in §809.74; ~~and~~
- (14) 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; ~~;~~
- (15) receive written notification pursuant to §809.78(d) of the possible termination of child care services for excessive absences, as described in §809.78(a)(1); and
- (16) receive written notification of possible termination of child care services for failure to pay the parent share of cost, pursuant to §809.19(d).

§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 child's enrollment is terminated due to excessive unexplained absences, pursuant to §809.78(a), or nonpayment of parent share of cost, pursuant to §809.19(d).
- ~~(c)(b)~~ 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.

§809.78. Attendance Standards and Notice 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 and attendance standards described in paragraph (2) of this subsection. ~~Failure to meet monthly~~ attendance standards described in paragraph (2) of this subsection may result in termination of care for excessive unexplained absences pursuant to subsection (d) of this section.
 - ~~(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 no more than 40 total unexplained absences in a 12-month eligibility period.∴

~~(A) five consecutive absences during the month;~~

~~(B) ten total absences during the month.~~

(3) Unexplained absences may include: ~~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.~~

(A) Any absence that is not due to a child's documented illness or disability, or to a court-ordered custody or visitation agreement;

(B) Any missed attendance recording that cannot be explained, except if the attendance reporting system is not available through no fault of the parent or provider; or

(C) Any denied or rejected attendance recording in which the parent does not contact the Agency's Child Care Services unit to report the issue.

(4) Notwithstanding paragraph ~~(2)~~(3) of this subsection, child care providers may end a child's enrollment with the provider if the child does not meet the provider's established policy regarding attendance.

(5) Parents shall use the attendance card to report daily attendance and absences.

(6) Parents shall not designate anyone under age 16 as a secondary cardholder, unless the individual is a child's parent.

(7) Parents shall not designate the owner, assistant director, or director of the child care facility as a secondary cardholder.

(8) Parents shall:

(A) ensure that 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.

- (9) The parent or secondary cardholders giving 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.
 - (10) 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 unexplained absence counted toward the attendance standards described in paragraphs (2) and (3) of this subsection.
- (b) Boards shall ensure that parents sign a written acknowledgment indicating their understanding of the attendance standards and reporting requirements at each of the following stages:
- (1) initial eligibility determination; and
 - (2) each eligibility redetermination, as required in §809.42(b).
- (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 unexplained absences in subsection (a)(2) and (3) of this section.
- (d) Boards shall develop procedures to ensure that before terminating care pursuant to §809.78(a)(1), the child care contractor:
- (1) provides written notice to the parent and the child care provider at reasonable times through established communication channels of the child's absences and the potential termination of services, at a minimum when a child is absent for 5 consecutive days, and when a child reaches 15 and 30 general absences cumulatively within a 12-month eligibility period; and
 - (2) documents that multiple attempts were made, as described in paragraph (1) of this subsection, to determine why the child is absent and to explain the importance of regular attendance.
- (e)~~(d)~~ Where a child's enrollment has been ended by a provider in subsection (a)(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

§809.93. 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) A Board shall ensure that a relative child care provider is not reimbursed for days on which the child is absent.
- (d) 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) A Board shall not reimburse providers that are debarred from other state or federal programs unless and until the debarment is removed.
- (f) Unless otherwise determined by the Board and approved by the Commission for automated reporting purposes, the monthly enrollment authorization described in subsection (b) of this section is based on the unit of service authorized, 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) A Board or its child care contractor shall ensure that providers are not paid for holding spaces open.
- (h) 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) 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) 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 (f) of this section.