

1 **CHAPTER 809. CHILD CARE SERVICES**

2  
3 **PROPOSED RULES TO BE PUBLISHED IN THE *TEXAS REGISTER*. THIS**  
4 **DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT TO**  
5 **FORMATTING CHANGES AS REQUIRED BY THE OFFICE OF THE SECRETARY**  
6 **OF STATE.**

7  
8 **ON APRIL 12, 2022, THE TEXAS WORKFORCE COMMISSION PROPOSED THE RULES**  
9 **BELOW WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.**

10  
11 Publication Date of the Proposal in the *Texas Register*: **April 29, 2022**

12 End of Comment Period: **May 31, 2022**

13  
14 The Texas Workforce Commission (TWC) proposes amendments to the following sections of  
15 Chapter 809, relating to Child Care Services:

16  
17 Subchapter A. General Provisions, §809.1 and 809.2

18 Subchapter B. General Management, §§809.13 - 809.16 and §§809.18 - 809.20

19 Subchapter C. Eligibility for Child Care Services, §§809.41, 809.42, 809.44, 809.48,  
20 809.50, 809.51, and 809.55

21 Subchapter D. Parent Rights and Responsibilities, §§809.71 - 809.73, 809.75, and 809.78

22 Subchapter E. Requirements to Provide Child Care, §§809.91 - 809.96

23 Subchapter F. Fraud Fact-Finding and Improper Payments, §809.112 and §809.115

24 Subchapter G. Texas Rising Star Program, §§809.130 - 809.136

25  
26 TWC proposes the following new section to Chapter 809, relating to Child Care Services:

27  
28 Subchapter C. Eligibility for Child Care Services, §809.56

29  
30 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

31 The purpose of the proposed amendments to Chapter 809 is to implement House Bill (HB) 2607,  
32 HB 1792, Senate Bill (SB) 1555, 87th Texas Legislature, Regular Session (2021), and improve  
33 TWC's Child Care Services (CCS) program.

34  
35 **House Bill 2607**

36  
37 *Texas Rising Star Entry Level Rating*

38 HB 2607 amended Texas Government Code, §2308.3155 to require all regulated providers of  
39 TWC-funded CCS be included in the Texas Rising Star program and to require TWC to amend  
40 its Texas Rising Star program rules to include an Entry Level rating and a maximum length of  
41 time that a child care provider can participate at the Entry Level rating. Amended Texas  
42 Government Code, §2308.3155(b-2) requires TWC to develop a process to allow a child care  
43 provider to request a waiver to extend the length of time, which cannot exceed 36 months, that  
44 the child care provider may participate at the Entry Level rating. Amended Texas Government  
45 Code, §2308.3155(b-1) specifies that an Entry Level child care provider is not eligible for  
46 enhanced reimbursement rates available to Two-, Three-, and Four-Star certified child care

1 providers.

2  
3 Prior to the enactment of HB 2607, TWC's three-member Commission (Commission) amended  
4 Chapter 809 in January 2021 to adopt a Pre-Star child care provider designation and a  
5 requirement that all regulated CCS child care providers achieve that designation. The  
6 Commission is repealing the Pre-Star designation and replacing it with the legislatively  
7 mandated Texas Rising Star Entry Level designation.

8  
9 *Mandatory Texas Rising Star Participation and Enhanced Reimbursement Rates*

10  
11 Because amended Texas Government Code, §2308.3155(a) makes Texas Rising Star mandatory  
12 for regulated CCS providers, the new statutory language requires the definition of Texas Rising  
13 Star in §809.2 be amended to remove "voluntary" and to reflect that the program is required for  
14 CCS providers; and §809.91 be amended to require all regulated CCS providers participate in  
15 Texas Rising Star. Relative providers are not required to participate in Texas Rising Star and will  
16 continue to operate under the current rules for relative providers set forth in §809.91.

17  
18 Additionally, because the Entry Level rating is intended to be a temporary designation and not  
19 eligible for enhanced reimbursement rates, the definition of a Texas Rising Star provider in  
20 §809.2 is amended to distinguish Entry Level child care providers from "certified" child care  
21 providers, reserving Texas Rising Star "certification" only for certifications at the Two-, Three-,  
22 and Four-Star level.

23  
24 Also, amended Texas Government Code, §2308.3155(b-1) clarifies that providers at the Entry  
25 Level designation are not eligible for the enhanced rate, thus requiring that §809.20 be amended  
26 to include that only "certified" Texas Rising Star providers receive the enhanced reimbursement  
27 rate.

28  
29 To implement the requirements of HB 2607, Subchapter G, Texas Rising Star Program is  
30 amended to include an Entry Level designation within the Texas Rising Star program. Amended  
31 Subchapter G includes the requirements to be considered for Entry Level designation based upon  
32 a child care provider's demonstration that it does not have excessive licensing findings.

33  
34 *Eligibility to be Considered for Entry Level Rating*

35  
36 Amended Texas Government Code, §2308.3155(b-1) stipulates that to qualify for the Entry  
37 Level rating, a child care provider must meet the minimum quality standards that qualify the  
38 child care provider to receive technical assistance and support under the Texas Rising Star  
39 program.

40  
41 Subchapter G, §809.31(b) defines the basic requirements for Entry Level designation. A  
42 regulated provider, that is, providers licensed or registered with the Texas Health and Human  
43 Services Commission's Child Care Regulation (CCR) department (including an initial permit) or  
44 regulated by the US Military, are eligible to be considered for Entry Level Eligibility. This is the  
45 same basic criteria that was used in the former Pre-Star designation, which is now being  
46 repealed. If the child care provider is eligible to be considered for the Entry Level rating, the

1 child care provider will then need to meet the new proposed points threshold for high and  
2 medium-high CCR deficiencies required for the Entry Level designation; and once designated as  
3 Entry Level, will be eligible for technical assistance as required by Texas Government Code,  
4 §2308.3155(b-1).

5  
6 *Points Threshold for Meeting Entry Level Rating*  
7

8 The Commission-established criteria for Entry Level designation described below will be set  
9 forth in the Texas Rising Star Guidelines.

10  
11 To be designated as Entry Level, the Commission establishes a points threshold of 75 based on:  
12 --points being assigned to CCR-weighted high and medium-high deficiencies received; and  
13 --high-weighted deficiencies receiving a higher number of points (5 points each) than medium-  
14 high--weighted deficiencies (3 points each).

15  
16 A child care provider's most recent 12-month CCR licensing history will be reviewed. Providers  
17 with initial permits or providers with fewer than 12 months of licensing history will be reviewed  
18 based on all available CCR licensing history.

19  
20 *Time Limits for Entry Level Rating*  
21

22 Amended Texas Government Code, §2308.3155(b-1) requires the Commission to establish, by  
23 rule, the maximum length of time a CCS provider can be at the Entry Level rating. The  
24 Commission amends Chapter 809 to establish a 24-month maximum time frame a CCS provider  
25 could be at the Entry Level designation. The CCS provider must achieve Texas Rising Star  
26 certification of at least the Two-Star level within the 24-month period, unless the provider  
27 requests, and TWC approves, a waiver extension as allowed by amended Texas Government  
28 Code, §2308.3155(b-2).

29  
30 All CCS providers must meet Entry Level requirements, and once designated as Entry Level,  
31 will have a maximum of 24 months to attain star-level certification in Texas Rising Star. Entry  
32 Level providers will be reviewed for Texas Rising Star certification after their first 12 months. If  
33 an Entry Level provider is not certified as Texas Rising Star at that time, the provider will  
34 receive up to two six-month extensions as follows:

- 35 --During the first six months, providers will continue to receive CCS referrals.
- 36 --If a provider requires a second six-month extension, the provider may not receive any new  
37 family CCS referrals.

38  
39 The intent of not allowing new family referrals during the last six months of the 24-month  
40 period is to minimize the likelihood that children are placed in a facility that ultimately fails to  
41 meet Texas Rising Star certification. This approach recognizes the importance of stable child  
42 care to children's healthy development. Children who were previously referred may continue to  
43 be served during the last six-month extension period.

44  
45 The Commission notes that Entry Level providers can be assessed for certification at any time if  
46 they meet eligibility and screening requirements. At minimum, each Entry Level provider will

1 be screened at 12 months to determine eligibility for assessment.

2  
3 *Entry-Level for Current CCS Providers*

4  
5 For providers that have existing agreements with Local Workforce Development Boards  
6 (Boards) to provide child care services, but do not meet the points threshold for Entry Level  
7 designation upon implementation of these rules, TWC will provide a period of six months in  
8 order for these providers to meet Entry Level requirements. If a current CCS provider fails to  
9 attain at least Entry Level status after six months, the provider will no longer be an eligible CCS  
10 provider and may apply for Entry Level designation at a later date.

11  
12 *Criteria for the Entry-Level Extension Waiver*

13  
14 Texas Government Code, §2308.3155(b-2) allows for up to an additional 36 months for a  
15 provider to remain at Entry Level and directs the Commission to establish the criteria for  
16 approving this Entry Level extension waiver. Amended Texas Government Code, §2308.3155(b-  
17 2) requires that the rules specify that approved waivers must not exceed 36 months.

18  
19 The Commission amends Chapter 809 and establishes the following criteria for an Entry Level  
20 extension waiver. The provider must be:

21 --located in a child care desert (as defined in Texas Labor Code, §302.0461(b)(2)(A)(i), and in  
22 amended §809.2); or serving an underserved population as determined by the Agency;  
23 --unable to meet the certification requirements due to a declared emergency/disaster; or  
24 --unable to meet the certification requirements due to conditions that are outside the provider's  
25 control.

26  
27 An underserved population could include limited availability of infant capacity or care for  
28 children with disabilities.

29  
30 *Texas Rising Star Providers on Suspension Status*

31  
32 Under the current rules, there is no requirement that a Texas Rising Star provider become  
33 recertified following the loss of certification. However, amended Texas Government Code,  
34 §2308.3155(b-1) requires that CCS providers must meet Texas Rising Star certification.

35  
36 Because state statute requires providers participating in the CCS program to be certified as Texas  
37 Rising Star, a provider that has CCR screening or noncompliance issues may temporarily drop  
38 below a Two-Star level and fall into a new category of being a certified provider, but with a  
39 suspended certification status.

40  
41 Providers placed on suspension status must continue to meet Entry Level requirements and be  
42 recertified within 12 months of being placed on suspension status. The provider will not be able  
43 to receive enhanced rates while on suspension status or be eligible for Entry Level designation.

44  
45 Providers on suspension status will be eligible to request a reassessment after six months  
46 following the start of the suspension status if they meet certification eligibility and screening

1 requirements. If the provider is not eligible to request a reassessment or is not certified at least at  
2 the Two-Star level by the sixth month of the suspension, the provider will not receive new  
3 family referrals during the remainder of the suspension period. However, TWC may approve the  
4 provider to accept new family referrals if the provider is located in a child care desert or serves  
5 an underserved population. The Commission notes that providers on suspension status can be  
6 assessed for certification at any time after the initial six months of suspension status in which  
7 they meet certification eligibility and screening requirements.

8  
9 Texas Rising Star providers on suspension status and not achieving recertification by the end of  
10 the 12-month period are not eligible to provide TWC-funded child care services, are not eligible  
11 for Entry Level designation, and must subsequently meet Texas Rising Star certification  
12 eligibility and screening requirements in order to provide CCS.

### 13 14 Prekindergarten Partnerships

15  
16 HB 2607 also amended Texas Labor Code, §302.00436 to require Boards to inform the local  
17 school districts and open-enrollment charter schools in the local workforce development area  
18 (workforce area) regarding opportunities to partner with child care providers in the Boards'  
19 workforce areas to expand access to and provide facilities for prekindergarten (pre-K) programs.

20  
21 Pursuant to Texas Labor Code, §302.00436 the Commission amends §809.14 (Coordination of  
22 Child Care Services) to require Boards to inform the local school districts/open-enrollment  
23 charter schools of opportunities to partner with child care providers to expand access to and  
24 provide facilities for pre-K programs.

25  
26 The Commission also approved, with one-time stimulus funding, the hiring of local TWC staff to  
27 serve as a resource to support, expand, and enhance pre-K partnership settings that will focus on  
28 informing and engaging potential partners, and supporting and navigating the formalization of  
29 partnerships. During the time of this stimulus-funded TWC pre-K partnership initiative, this will  
30 allow for a collaborative approach, with the Boards, in meeting the requirements of HB 2607 and  
31 the needs of the community.

### 32 33 Contracted Slots Reporting Requirements

34  
35 Finally, HB 2607 amended Texas Labor Code, §302.0461(d) to change the Board reporting  
36 requirements for contracted providers from every six months to every 12 months. On September  
37 9, 2021, TWC issued Workforce Development (WD) Letter 19-21, which included the new 12-  
38 month reporting requirement. The Commission amends §809.96 (Contracted Slots Agreements)  
39 to change the Board reporting requirements for contracted providers from every six months to  
40 every 12 months.

## 41 42 **House Bill 1792**

### 43 44 Statewide Texas Rising Star Assessors

45  
46 HB 1792 amended Texas Government Code, §2308.3155 to require TWC to competitively

1 procure a single entity to oversee a statewide roster of qualified assessors to evaluate child care  
2 providers participating in the Texas Rising Star program during the initial certification process  
3 and at any other time during the child care provider's participation in the program.

4  
5 Amended Texas Government Code, §2308.3155(d) requires amendments to Chapter 809,  
6 Subchapter G to separate the roles and responsibilities of Texas Rising Star assessments  
7 provided by the single statewide entity and mentoring services provided by Boards, as well as  
8 qualifications specific to assessors and mentors.

9  
10 Specifically, §809.134 is amended to specify that both the Boards and TWC's designated  
11 assessment entity shall ensure that Texas Rising Star staff:

12 --meet the background check requirements; and  
13 --complete the Texas Rising Star standards training, as described in the Texas Rising Star  
14 Guidelines.

15  
16 The amended rules also specify that Boards ensure mentoring staff meet requirements for:

17 --minimum education;  
18 --work experience requirements; and  
19 --attaining mentor microcredentialing, as described in the Texas Rising Star Guidelines.

20  
21 The amended rules specify that TWC's designated Texas Rising Star assessment entity ensure  
22 that assessors attain and maintain the Texas Rising Star Assessor Certification, which will  
23 replace the former minimum education and experience requirements for assessors.

24  
25 Under current rules, Boards are allowed to have staff members who act as both mentors and  
26 assessors, as long as the staff does not mentor and assess the same child care provider. With the  
27 separation of assessors into a single entity, the amended rules continue this separation of duties  
28 to address situations in which an individual may be under contract with or be employed by a  
29 Board for mentoring services as well as under contract or employed by the single entity to  
30 conduct Texas Rising Star assessments, to ensure that no conflict of interest exists during the  
31 assessment process.

32  
33 However, the Commission expects that communication and coordination among mentors and  
34 assessors continue. The contract with TWC's designated Texas Rising Star assessment entity will  
35 include specifications for communication with mentors, and TWC's contract with Boards will  
36 include requirements for coordination with assessors.

37  
38 Additionally, current rule language places the responsibility regarding child care provider  
39 requests for a reconsideration of the child care provider's Texas Rising Star assessment on  
40 Boards. The amended rules continue the reconsideration practice but will require TWC's  
41 designated Texas Rising Star assessment entity, rather than the Boards, have a procedure for  
42 child care providers that request a reconsideration of their certification based on an assessment.

43  
44 **Senate Bill 1555**

45  
46 Age Groups for Reimbursement

1  
2 SB 1555 amended Texas Government Code, §2308.315 to require Boards to establish graduated  
3 reimbursement rates that align TWC's age groups with CCR ratios and group sizes and to require  
4 higher rates in age groups with the lowest child-to-caregiver ratios. SB 1555 stipulates that the  
5 reimbursement rates must be in place no later than December 1, 2023.

6  
7 The former §809.20 requires Boards to have maximum reimbursement rates for the following  
8 age groups:

- 9 --Infants ages 0 through 17 months;
- 10 --Toddlers ages 18 through 35 months;
- 11 --Preschool ages 36 through 71 months; and
- 12 --School ages 72 months and older.

13  
14 The Commission amends §809.20 (Maximum Provider Reimbursement Rates) to require Boards  
15 to have maximum reimbursement rates that align with the CCR age groups for a Licensed Child  
16 Care Center (LCCC), as defined in 40 TAC §746.1601 and §746.1609. The new age groups will  
17 also be applied to licensed and registered homes. The new age groups are as follows:

- 18 --Infants ages 0 through 11 months;
- 19 --Infants ages 12 through 17 months;
- 20 --Toddlers ages 18 through 23 months;
- 21 --Toddlers age 2 years;
- 22 --Preschool age 3 years;
- 23 --Preschool age 4 years;
- 24 --Preschool age 5 years; and
- 25 --School ages 6 through 13 years.

26  
27 In accordance with §809.20(a), which requires Boards to establish maximum reimbursement  
28 rates at or above a level established by the Commission and in accordance with state regulations,  
29 TWC will issue guidance requiring Boards to establish rates that are graduated to provide higher  
30 rates for the age groups with the lowest child-to-caregiver ratios as established in CCR  
31 regulations, pursuant to amended Texas Government Code, §2308.315.

32  
33 Amended Texas Government Code, §2308.315 requires TWC to supply any demographic data  
34 needed by the Board to establish the rates. TWC supplies market rates, through the annual  
35 Market Rate Survey (MRS), for the previously defined age groups as a benchmark to assist  
36 Boards in establishing maximum reimbursement rates. TWC is working with the MRS contractor  
37 to ensure that the contractor can collect and analyze market rates based on the CCR age groups,  
38 and these rates will be included in the next MRS due in June 2022.

39  
40 Additionally, implementing SB 1555 will require TWC's child care information system to align  
41 with the new age groups.

42  
43 TWC is planning to replace the child care information system, The Workforce Information  
44 System of Texas (TWIST), with a new Child Care Case Management System (CCCMS). TWC  
45 will include the changes to implement SB 1555 in the requirements for the new CCCMS,  
46 scheduled to be completed in 2023.

1  
2 The authors of SB 1555 recognized that implementation would require time for TWC to collect  
3 and analyze market rates data and make necessary information technology changes. As such, SB  
4 1555 stipulates that implementation of the bill should be no later than December 1, 2023.

5  
6 The Commission makes the provisions of the amended rules regarding age-group reimbursement  
7 rates effective on October 1, 2023, to align with the Board Contract Year 2024.

## 8 9 **Rule Amendments for Program Improvements**

10  
11 Additionally, the Commission, with input from stakeholders, identified potential amendments to  
12 Chapter 809 for program improvements that will:

- 13 --standardize statewide policies for service delivery consistency;
- 14 --streamline the list of Board policy requirements;
- 15 --codify the current TWC waiver to allow job search at initial eligibility;
- 16 --update language regarding automated attendance reporting;
- 17 --strengthen child care provider payment requirements to align with the industry practice of  
18 prospective payments;
- 19 --include federal reporting requirements for providers charging parents above the parent share of  
20 cost (PSoC), if allowed by the Board; and
- 21 --make technical changes and clarifications.

### 22 23 Statewide Policies for Service Delivery Consistency

24  
25 Chapter 809 allows Boards to establish policies for various aspects of the Child Care Services  
26 program, and those policies vary greatly among the 28 Boards.

27  
28 To provide greater consistency in child care service delivery throughout the state, particularly for  
29 the management of waiting lists, assessing the PSoC, and general eligibility requirements, the  
30 Commission is amending Chapter 809 to provide standard eligibility requirements statewide and  
31 ensure greater efficiency in service delivery for the following policy areas.

### 32 33 Statewide Waiting List Management

34  
35 Section 809.18 requires Boards to maintain a list of parents waiting for child care services due to  
36 the lack of funding or lack of providers. The section requires Boards to have a policy that sets the  
37 frequency in which the parent information is updated and maintained on the waiting list. Board  
38 policies for requiring a parent to contact the Board to keep the child on the waiting list vary by  
39 Board and range from 30 to 180 days. This wide range in waiting list maintenance policies  
40 creates statewide inconsistencies in the accuracy of the number of children waiting for child care  
41 services.

42  
43 The Commission amends §809.18 to require Boards to contact parents with children on the  
44 waiting list every three months and to remove the child from the waiting list if the parents  
45 indicate that child care services are no longer required or if they do not respond to the Board  
46 regarding the continued need for child care services.

1  
2 As mentioned previously, TWC is planning to replace the child care information system in  
3 TWIST with a new CCCMS. The new CCCMS, scheduled to be completed in 2023, will have  
4 the ability to automate the process for contacting parents regarding the waitlist status. The  
5 Commission makes the provisions of the amended rules regarding contacting parents with  
6 children on the waiting list effective on October 1, 2023.

7  
8 *Statewide Parent Share of Cost Assessment*  
9

10 Federal Child Care Development Fund (CCDF) regulations at 45 CFR §98.45(k) require Lead  
11 Agencies to "establish, and periodically revise, by rule, a sliding fee scale(s) for families that  
12 receive CCDF." Regulations also require that the sliding fee scales must be based on income and  
13 family size, affordable, and not be a barrier to a family receiving assistance. The sliding fee scale  
14 should be designed in a manner that gradually increases the percent of family income the parent  
15 pays as the income increases. Although not a regulatory requirement, federal guidance suggests  
16 that the sliding fee scale not exceed 7 percent of the family income.

17  
18 Current §809.19 requires Boards to establish PSoC amounts based on the federal requirements.  
19 The PSoC is established based upon family income and family size.

20  
21 Board sliding fee scales vary greatly among the workforce areas. For example:

22 --For a family at the lowest income range (10 percent state median income (SMI)/33 percent  
23 federal poverty guidelines (FPG)) with a family size of three and \$600 monthly income, Board  
24 sliding scales range from 1.6 percent to 8.2 percent of the family income.

25 --For a family in the mid-income range (55 percent SMI/150 FPG) with a family size of three  
26 and \$3,288 monthly income, Board scales range from 4.3 percent to 9.5 percent.

27 --For a family at the highest income range (85 percent SMI) with a family size of three and  
28 \$5,081 monthly income, Board scales range of 2.3 percent to 9.8 percent.

29  
30 Board policies also vary greatly on additional amounts that may be added to the PSoC for each  
31 additional child in care.

32  
33 Additionally, TWC's former standard sliding scale requires Boards to have a static PSoC amount  
34 within nine established income ranges. If the family income changes, but remains within the  
35 income range, then the PSoC will not change. This methodology was established prior to the  
36 requirement for the PSoC to remain stable within the 12-month eligibility period and was  
37 designed to minimize the impact on the PSoC of relatively small changes in income.

38  
39 However, the disadvantage of this methodology is that once the family income crosses an  
40 income range, the increased PSoC could be greater than the income amount increase, resulting  
41 "mini-cliffs" that create relatively substantial increases in the percent of income a family pays if  
42 a family experiences small increases in income.

43  
44 The Commission amends Chapter 809 to create a consistent statewide policy on PSoC  
45 assessments that would allow for greater consistency in ensuring that the PSoC amount is  
46 affordable and would be aligned more closely with the percentage of the family income. The

1 policy:  
2 --standardizes the PSoC assessment to provide a sliding-fee scale that could start from 2 percent  
3 to 3.5 percent of family income and gradually increase as the family income increases, but does  
4 not exceed 7 percent of the family income for one child in care; and  
5 --allows for a lower incremental increased percentage of the family income for families and for  
6 each additional child in care.

7  
8 The former PSoC assessments led to variances in the amount charged to parents among  
9 workforce areas, including among workforce areas with similar demographics, income levels,  
10 and cost of living levels. The new statewide policy for PSoC assessments will standardize the  
11 percentage of income a parent pays, limited to 7 percent of the family income, and will create  
12 greater consistency in PSoC.

13  
14 The Commission acknowledges that the new statewide PSoC standard will require substantial  
15 changes to the child care automated system. As mentioned previously, TWC is planning to  
16 replace the child care information system in TWIST with the new CCCMS. TWC will include  
17 the changes to the PSoC in the requirements for the new CCCMS, scheduled to be completed in  
18 2023.

19  
20 The Commission makes the provisions of the amended rules regarding the statewide PSoC  
21 effective on October 1, 2023, to align with the Board Contract Year 2024.

### 22 23 *Statewide Income and Activity Eligibility Requirements*

24  
25 Chapter 809, Subchapter C (Eligibility for Child Care Services) establishes general statewide  
26 eligibility requirements that reflect the eligibility requirements in the CCDF regulations.  
27 However, within the general requirements, Boards have some flexibility to place additional  
28 requirements for eligibility. For example, the rules require that family income cannot exceed the  
29 federal income limits of 85 percent of the SMI. However, the rules also allow Boards to have  
30 lower income limits. Currently, five Boards have income limits lower than 85 percent of the  
31 SMI. Similarly, TWC rules require that parents must participate in work, job training, or  
32 education activities for 25 hours a week (50 hours for a dual-parent family), but Boards are  
33 allowed to place higher hourly activity requirements on families. Currently, only one Board has  
34 activity requirements greater than the minimum requirements in rule.

35  
36 The Commission amends Chapter 809 to create a consistent statewide policy to:  
37 --implement a standard income eligibility limit of 85 percent of the SMI; and  
38 --require that parents must participate in work, job training, or education activities for 25 hours a  
39 week (50 hours for a dual-parent family).

### 40 41 *Statewide Policy on Child Care during Education*

42  
43 Boards place varying restrictions on providing child care for parents pursuing certain types of  
44 education and degrees, and how Boards determine a parent is making progress in achieving  
45 education and job training completions. For example, five Boards specifically allow child care  
46 services while a parent is pursuing postgraduate degrees, while five other Boards do not specify

1 if advanced degrees are allowed, and 16 Boards specifically state that child care services while  
2 pursuing a postgraduate degree are not allowed.

3  
4 Additionally, the time limits for receiving child care services while participating in education  
5 activities vary greatly by Board. Time limits range from 48 months to a maximum of 96 months  
6 for all postsecondary education. Time limits also vary according to the type of education  
7 pursued. For example, Boards allow from 60 months to 72 months for a bachelor's degree, and  
8 from 24 months to 48 months for a certification program.

9  
10 The Commission amends Chapter 809 to create a consistent statewide policy regarding child care  
11 while the parent is in education activities. The rules establish a cumulative total of 60 months for  
12 parents to participate in CCS while enrolled full-time in:  
13 --high school;  
14 --a Certificate of High School Equivalency program; or  
15 --an undergraduate degree program.

16  
17 The Commission notes that this limit applies to parents enrolled full-time in the education  
18 programs and are meeting the participation requirements only through education hours. The  
19 Commission also notes that the cumulative 60-month limit does not need to be consecutive  
20 months, but it does include cumulative months enrolled in any of the education programs above.

21  
22 The Commission also notes that the amended rules remove postgraduate degrees from the  
23 definition of an educational program, thus, removing the inclusion of postgraduate enrollment in  
24 counting education activity hours for child care services eligibility. This creates a consistent  
25 policy followed by a majority of Boards. As mentioned previously, 16 Boards specifically state  
26 in policy that child care services while pursuing a postgraduate degree are not allowed.

27  
28 Finally, §809.2(1) currently requires Boards to establish a policy to determine how a parent is  
29 making progress toward successful completion of an education program or job training program.  
30 Currently, Board policies vary widely regarding attendance requirements, GPA, and  
31 consideration for an education or training program's requirements specific requirements.

32  
33 The Commission amends the definition of attending a job training or educational program to  
34 establish a statewide policy that "making progress toward successful completion" of a job  
35 training or education program is demonstrated through continued enrollment in the training or  
36 educational program. This policy is intended to streamline and standardize the verification that  
37 the parent is making progress toward completion of the program.

### 38 39 *Statewide Policies on Children with Disabilities*

40  
41 CCDF regulations at 45 CFR §98.20(a)(1)(ii) allows Lead Agencies to serve children with  
42 disabilities up to the age of 19 and §809.41(a)(1)(B) gives this flexibility to Boards. Currently,  
43 27 Boards provide child care services for children with disabilities up to age 19.

44  
45 The Commission amends Chapter 809 to create a consistent statewide policy to have children  
46 with disabilities up to age 19 eligible for child care services.

1  
2 Streamline Rules on Board-Required Policies, and Remove Operational Procedures  
3

4 The Commission amends §809.13 to remove the list in subsection (c) of required Board policies  
5 as the required Board policies are described in other Chapter 809 sections, as well as in the Child  
6 Care Services Guide. Section 809.13(c) was created to assist Boards in identifying in one place  
7 their required policies. However, the section predated the issuance of the Child Care Services  
8 Guide, which also provides the same comprehensive list of required Board policies.  
9

10 The Commission notes that the requirement that Boards have policies formerly listed in  
11 §809.13(c) has not changed in other sections of the rules. This change simply removes repeating  
12 these requirements in §809.13(c).  
13

14 Allowing Job Search for Initial Eligibility  
15

16 The Commission proposes new §809.56, Child Care during Initial Job Search. Under federal  
17 Child Care Development Block Grant (CCDBG) regulation 45 CFR §98.21(a)(2)(iii), states may  
18 initially qualify a family for assistance if the parent is seeking employment or engaging in job  
19 search and may end assistance after a minimum of three months if the parent has not found  
20 employment.  
21

22 However, unemployed parents who are looking for work are not initially eligible for CCS under  
23 the former §809.41(a)(3)(B). On June 15, 2021, the Commission approved a temporary waiver  
24 for §809.41(a)(3)(B) to provide additional flexibility, allowable under federal CCDBG law and  
25 regulations, to support parents who do not meet the activity requirements when eligibility is  
26 determined. This waiver allows up to three months of child care for parents to search for work.  
27 The waiver expires on October 1, 2022.  
28

29 On June 30, 2021, TWC issued guidance to the Boards in WD Letter 13-21, regarding eligibility  
30 for child care during the initial job search period.  
31

32 The Commission amends §809.2 to include job search in the definition of working and adds new  
33 §809.56 in Subchapter C (Eligibility for Child Care Services) for job search child care with  
34 provisions consistent with the guidance issued in WD Letter 13-21, specifically:  
35

36 --A parent, including a parent in a dual-parent family, is eligible for child care services if at  
37 initial eligibility determination the family does not meet the minimum participation requirements  
38 for At-Risk Child Care. (Note: Parents in the CCS program who are unemployed at the time of  
39 eligibility redetermination are provided three months of continued care under §809.51(b)  
40 regarding child care during interruptions in work.)  
41

42 --Boards must allow parents to self-attest that the family meets the requirements for job search  
43 child care, and that the family income does not exceed 85 percent of the state median income.  
44

45 --Child care for job search at initial eligibility is limited to three months (with the clarification in  
46 guidance that a Board may extend an initial job search period for a maximum of 30 calendar

1 days to ensure continuity of care in order to verify and determine eligibility requirements for  
2 continued care).

3  
4 --Total activity participation by the end of the three months must be at least 25 hours for a single-  
5 parent family or 50 hours per week for a dual-parent family, and must consist of a minimum of  
6 12 hours in employment for a single-parent family and 25 hours in employment for a dual-parent  
7 family.

8  
9 --If the family meets the participation requirements above, within, or by the end of the three  
10 months, child care services will continue for a total of 12 months, inclusive of the months in  
11 initial job search.

12  
13 --If the family does not meet minimum activity requirements by the end of the three months, care  
14 must be terminated.

15  
16 --The PSoC is initially assessed at the highest amount based on the family size and number of  
17 children in care.

18  
19 --The initially assessed amount will immediately be reduced to zero, which includes dual-parent  
20 families in which one parent is working but the participation requirements are not met.

21  
22 --If the parent begins to meet participation requirements within or by the end of the job search  
23 period, the PSoC must be reinstated at the initially assessed amount or the amount based on the  
24 actual family income, whichever is lower.

25  
26 Proposed §809.56 also requires that eligibility for job search child care be limited to one three-  
27 month job search period within a 12-month period.

28  
29 The Commission notes the intent of requiring the 12/25 minimum number of activity hours in  
30 employment is to emphasize employment outcomes during job search, while also allowing  
31 families to meet the full 25/50 hourly requirement through a combination of employment,  
32 education, and training. This policy strikes a balance between requiring job search individuals to  
33 meet the activity through 100 percent employment and allowing the family to meet the full 25/50  
34 requirement through a combination of employment, education, and training hours.

35  
36 TWC currently has a Board Incentive Award that provides an incentive for Boards to assist  
37 parents in child care job search to obtain employment. To emphasize this connection with the  
38 workforce delivery network, the Commission is including a requirement that a Board ensures  
39 that the parent in child care for job search is registered in the state's labor exchange system and  
40 has access to appropriate services available through the one-stop service delivery network.

41  
42 Automated Attendance and Attendance Standards

43  
44 TWC is conducting a procurement for a new automated attendance system. However, Chapter  
45 809 rules include several requirements that are specific to the previous automated system,  
46 particularly regarding the use of attendance cards for point-of-service devices. The type of

1 automated system and the process for recording attendance, including the use of attendance  
2 cards, has not been determined.

3  
4 The Commission is amending the attendance reporting language in §809.78 (regarding parent  
5 reporting requirements), §809.95 (regarding provider reporting requirements), and §809.115  
6 (regarding corrective actions) related to using attendance cards or other language specific to the  
7 previous system, which would allow flexibility for future automated attendance systems.

8  
9 Provider Payments

10  
11 CCDF regulations at 45 CFR §98.45(l) requires Lead Agencies to establish payment practices  
12 that ensure timeliness of payment and reflect generally accepted payment practices of child care  
13 providers that do receive CCDF. The regulations cite paying based on a child's enrollment rather  
14 than attendance and paying prospectively prior to the delivery of services.

15  
16 Section 809.93(b) requires Boards to reimburse providers based on the child's enrollment rather  
17 than attendance; however, former rules do not allow for providers to be paid prospectively.  
18 Because payments are based on the enrollment authorization and not attendance, the  
19 Commission amends §809.93 to require Boards to pay providers on that enrollment every two  
20 weeks prior to the delivery of services, pursuant to 45 CFR §98.45(l).

21  
22 Currently, 24 Boards reimburse providers either weekly or every two weeks. Additionally, the  
23 two-week prospective payment aligns with current Commission policy regarding transfers that  
24 includes a waiting period of two weeks before the effective date of a transfer, except in cases in  
25 which the provider is subject to a CCL corrective action, when the transfer is authorized by Child  
26 Protective Services (CPS) for a child in protective services, or on a case-by-case basis as  
27 determined by the Board.

28  
29 The Commission acknowledges this change will require detailed operational guidance to Boards  
30 regarding reconciling payments, payment estimations, and child transfers. Additionally, paying  
31 prospectively will also require changes to the child care information systems. In order to work  
32 with Boards on operational details of this new policy and to include this change in the new  
33 CCCMS, the Commission makes the provisions of the amended rules effective on October 1,  
34 2023, to align with Board Contract Year 2024.

35  
36 Providers Charging Parents the Difference between the Board Rate and the Provider Published  
37 Rate

38  
39 TWC rules at §809.92(c) prohibit providers from charging the difference to parents who are  
40 exempt from the PSoC (parents participating in Choices, Supplemental Nutrition Assistance  
41 Program Employment and Training, parents of children experiencing homelessness, and parents  
42 of children in protective services) and whose PSoC is calculated to be zero. However, §809.92(d)  
43 allows Boards to prohibit providers from charging the difference to all parents. Currently eight  
44 Boards allow providers to charge the difference to parents not exempt from the PSoC.

45  
46 CCDF regulations at 45 CFR §98.45(b) requires Lead Agencies to ensure that their payment

1 rates ensure equal access to the full range of providers that are available to parents not receiving  
2 CCDF services, and that the rates are adequate without additional amounts above the assessed  
3 PSoC for instances in which the provider's published rate exceeds the subsidy amount.

4  
5 CCDF regulations at 45 CFR §98.45(b)(5) requires a rationale for the policy on whether child  
6 care providers may charge additional amounts to families above the PSoC, including:  
7 --a demonstration that the policy promotes affordability and access; and  
8 --an analysis of the interaction between any such additional amounts with the required family  
9 copayments, and of the ability of subsidy payment rates to provide access to care without  
10 additional fees.

11  
12 Additionally, 45 CFR §98.45(d)(2) requires Lead Agencies to track the extent to which "CCDF  
13 child care providers charge amounts to families more than the required family co-payment...in  
14 instances where the provider's price exceeds the subsidy payment, including data on the size and  
15 frequency of any such payments."

16  
17 To align with federal CCDF requirements, the Commission amends §809.92 to require Boards  
18 that allow providers to charge parents amounts above the assessed PSoC to:  
19 --require that each month, any provider that charges a family an amount above the PSoC reports  
20 the following:

21 ----the specific families that were charged an additional amount above the PSoC;  
22 ----the frequency with which each family was charged; and  
23 ----the amount of each additional charge;  
24 --provide the rationale for the Board's policy to allow providers to charge families additional  
25 amounts above the required copayment, including a demonstration of how the policy promotes  
26 affordability and access for families;  
27 --describe the Board's analysis of the interaction between the additional amounts charged to  
28 families with the required PSoC and the ability of subsidy payment rates to provide access to  
29 care without additional fees; and  
30

31 According to the most recent Market Rate Survey, 5.2 percent of centers and 6.5 percent of  
32 homes charge parents the difference between the reimbursement rate and the provider published  
33 rate. Further, on August 31, 2021, the Commission approved substantial rate increases for all  
34 providers designed to ensure that the payment rates ensure equal access required by 45 CFR  
35 §98.45. This rate action could also reduce instances in which the provider's published rates are  
36 higher than Board reimbursement rates.

### 37 Rule Clarifications and Technical Amendments

38  
39  
40 The Commission also amends the following sections of Chapter 809 to provide clarifications of  
41 the rule provisions and technical changes:

42  
43 --Throughout Chapter 809 - Change Child Care Licensing (CCL) to Child Care Regulation  
44 (CCR).

45 --§809.1 - Specify which sections of Chapter 809 do not apply to Board child care services  
46 funded through non-CCDF sources.

- 1 --§809.16 - Clarify that Board quality activities must be in accordance with the CCDF State Plan.  
2 Remove language regarding compliance with federal and state regulations as these requirements  
3 are reflected in the CCDF State Plan.  
4 --§809.20 - Include enhanced rate for infants and toddlers at a Texas School Ready provider  
5 participating in the Texas School Ready infant/toddler program.  
6 --§809.20 - Codify the current practice of Boards establishing a higher enhanced reimbursement  
7 rate for nontraditional hours, as defined by the Board.  
8 --§809.44 - Separate exclusions for one-time cash payments from tax credits and refunds from  
9 the income calculation.  
10 --§809.48 and §809.50 - Specify that dual-parent activity hours include a combination of work,  
11 training, or education.  
12 --§809.78 - Clarify the process regarding the 15- and 30-day thresholds for Boards notifying  
13 parents of potential excessive absences.  
14 --§809.93 - Include "blended-day" as an enrollment type.  
15 --§809.93 - Revise outdated language regarding payments for "occasional" part-day/full-day  
16 attendance.  
17 --§809.94 - Remove the language prohibiting subsidy eligibility for providers that are on  
18 Adverse Action with CCR but are appealing the action as this language is not necessary, due to  
19 SB 764 (87th Texas Legislature, Regular Session (2021)), which prohibited these providers from  
20 operating.  
21 --§809.131 - Clarify that at minimum, a center director account is required to be created within  
22 the Texas Early Childhood Professional Development System's Workforce Registry to meet  
23 Texas Rising Star eligibility requirements.  
24 --§809.134 - Revise that Texas Rising Star mentor staff with allowable associate degrees have  
25 two years of suitable experience in early childhood education as determined by the Board to  
26 allow Boards to determine suitable experience.

27

## 28 Chapter 809 Rule Review

29

30 Texas Government Code, §2001.039 requires that every four years each state agency review and  
31 consider for readoption, revision, or repeal each rule adopted by that agency. TWC conducted a  
32 rule review of Chapter 809, Child Care Services, and the amendments described in this document  
33 are the result of the rule review.

34

## 35 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

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

38

### 39 **SUBCHAPTER A. GENERAL PROVISIONS**

40 TWC proposes the following amendments to Subchapter A:

41

#### 42 **§809.1. Short Title and Purpose**

43 Section 809.1 is amended to clarify the following sections of Chapter 809 do not apply to child  
44 care services that use non-Child Care and Development Fund sources allocated to workforce  
45 areas:

46 --Funds used for quality improvement activities described in §809.16;

1 --Assessing the parent share of cost described in §809.19; and  
2 --Subchapter C, relating to Eligibility for Child Care Services.

3  
4 **§809.2. Definitions**

5 Section 809.2(1)(C) is amended to establish a statewide policy that "making progress toward  
6 successful completion" of a job training or education program is demonstrated through continued  
7 enrollment in the training or educational program. This policy is intended to streamline and  
8 standardize the verification that the parent is making progress toward completion of the program,  
9 aligning with the policies currently in place at a majority of Boards.

10  
11 Section 809.2 is amended to add the definition of a Child Care Desert in paragraph (4). A child  
12 care desert is defined as an area described in Texas Labor Code, §302.0461 in which the number  
13 of children under age six with working parents is at least three times greater than the capacity of  
14 licensed child care providers in the area, based on data published annually by the Commission.

15  
16 Section 809.2(5), as renumbered, is amended to change the name of the child care licensing  
17 entity from "Child Care Licensing (CCL)" to current "Child Care Regulation (CCR)." This  
18 change is also made throughout the chapter.

19  
20 Section 809.2(10)(C), as renumbered, is amended to state that an education program at an  
21 institution of higher education must lead to an undergraduate degree. The change is made to  
22 create a statewide standard that postgraduate degrees are not included in the definition of an  
23 educational program for CCS eligibility activity hours. The Commission emphasizes that  
24 enrollment in postgraduate degree programs does not in and of itself disqualify a parent from  
25 CCS eligibility. The intent is that postgraduate hours are not included in the parent's or family's  
26 activity hours for eligibility.

27  
28 Section 809.2 is amended to remove the definition of a "Pre-Star provider." The Commission is  
29 creating a new "Entry Level" designation as part of the definition of a Texas Rising Star provider  
30 pursuant to Texas Government Code, §2308.3155 that requires all providers of TWC-funded  
31 CCS be included in the Texas Rising Star program.

32  
33 Section 809.2(25) is amended to remove "voluntary" from the definition of the Texas Rising Star  
34 program, as this program is now a statutory requirement for CCS providers.

35  
36 Section 809.2(26) is amended to include "Entry Level" provider designation in the definition of a  
37 Texas Rising Star provider. Additionally, §809.2(26) is amended to clarify that star-level (Two-  
38 Star, Three-Star, and Four-Star) Texas Rising Star providers are considered to be "certified"  
39 providers throughout the rule language and "Entry Level" is considered to be a "designation."

40  
41 Section 809.2(27) is amended to include job search in the definition of working.

42  
43 **SUBCHAPTER B. GENERAL MANAGEMENT**

44 TWC proposes the following amendments to Subchapter B:

45  
46 **§809.13. Board Policies for Child Care Services**

1 Section 809.13 is amended to remove the list of required Board procedures and policies in  
2 subsection (c) as the required Board policies are described in other Chapter 809 sections. A  
3 comprehensive list of policies required in Chapter 809 as well as procedural requirements for  
4 Boards will be included in TWC's Child Care Services Guide and updated with any subsequent  
5 rule amendments that require Board policies.

6  
7 **§809.14. Coordination of Child Care Services**

8 Section 809.14 is amended to add subsection (c) pursuant to Texas Labor Code, §302.00436,  
9 requiring Boards to inform local school districts and open-enrollment charter schools of  
10 opportunities to partner with child care providers to expand access to and provide facilities for  
11 pre-K programs.

12  
13 **§809.15. Promoting Consumer Education**

14 Section 809.15(b)(2) is amended to change "CCL" to "CCR" as described in §809.2.

15  
16 **§809.16. Quality Improvement Activities**

17 Section 809.16(a) is amended to clarify that Board quality activities must be in accordance with  
18 the CCDF State Plan and to remove language regarding compliance with federal and state  
19 regulations as these requirements are reflected in the CCDF State Plan.

20  
21 **§809.18. Maintenance of a Waiting List**

22 Section 809.18 is amended to establish two new subsections. New subsection (a) will be  
23 effective October 1, 2023, and contains the waiting list maintenance provisions that are currently  
24 in rule with the following changes:

25 --New §809.18(a)(1) clarifies that the waiting list includes children, as well as parents.

26 --New §809.18(a)(3) clarifies, pursuant to §809.22, that children who are directly referred from a  
27 recognized pre-K or Head Start/Early Head Start partnership are exempted from the waiting list.

28  
29 New §809.18(b) will be effective October 1, 2023, and contains the amended provisions in new  
30 §809.18(a) and is further amended to remove the Board-determined process for determining the  
31 child is potentially eligible for services and the frequency in which parent information is updated  
32 and maintained. New §809.18(b)(4) creates a statewide policy to require that Boards contact the  
33 parent every three months and remove the child from the waiting list if the parent indicates that  
34 child care services are no longer required or does not respond to the Board regarding the  
35 continued need for child care services.

36  
37 **§809.19. Assessing the Parent Share of Cost**

38 Section 809.19 is amended to establish two new subsections. New subsection (a) will be  
39 effective October 1, 2023, and contains the PSoC provisions that are currently in rule with the  
40 following changes:

41 --New §809.19(a) removes the requirement that child care funded through non-CCDF sources  
42 must be assessed a PSoC.

43 --New §809.19(a)(2) clarifies that the Board policy regarding reimbursing providers if a parent  
44 fails to pay the parent share of cost must state whether or not the Board will reimburse the  
45 provider if the parent fails to pay. The new §809.19(a)(2) also combines the language in the  
46 current rule that if the Board policy does not reimburse the provider, then the Board may have a

1 policy that requires the parent to pay the provider prior to being redetermined for future TWC-  
2 funded child care services;  
3 --New §809.19(a)(10) adds blended care referrals as eligible for a PSoC reduction by Board  
4 policy.

5  
6 New subsection (b) will be effective October 1, 2023, and establishes a statewide PSoC policy.

7  
8 New §809.19(b) states that the PSoC must be assessed to all parents, except those parents  
9 exempted from the PSoC, and the amount is established by the Commission and determined on a  
10 sliding fee scale based on the family size and gross monthly income and represented by a  
11 percentage of the SMI.

12  
13 The Commission notes that the actual percentage of income to be used will be established,  
14 reviewed, and, if necessary, modified by the Commission on an annual basis as the annual SMI  
15 amounts are released.

16  
17 New §809.19(b) requires Boards to assess the PSoC in accordance with the amount established  
18 by the Commission.

19  
20 New §809.19(b) removes the requirement that Board policy include the general criteria for  
21 determining affordability of the Board's PSoC, as the PSoC is no longer determined or  
22 established by the Board. The amended rules remove the requirement that Boards have a  
23 definition of what constitutes frequent terminations and its process for assessing PSoC  
24 affordability.

25  
26 Similarly, because the Board no longer determines the PSoC, new §809.19(b) removes the  
27 requirement that Boards with frequent terminations for parent failure to pay the PSoC must  
28 reexamine its PSoC and adjust it to ensure the PSoC is not a barrier to assistance.

29  
30 The Commission notes that TWC will monitor and analyze terminations due to failure to pay the  
31 PSoC and evaluate the state PSoC policy to determine if changes are needed to ensure the  
32 amounts charged are a barrier to access.

### 33 34 **§809.20. Maximum Provider Reimbursement Rates**

35 Section 809.20(a)(2) is amended to be effective until October 1, 2023, and contains the  
36 reimbursement age groups currently in rule.

37  
38 Section 809.20(a) is amended to add new paragraph (3) to be effective October 1, 2023, and  
39 aligns the age groups for reimbursement with the age groups defined by CCR as required by  
40 amended Texas Government Code, §2308.315. The amended language adds new Board rates for  
41 Infants ages 12 through 17 months, Toddlers age 2 years, Preschool age 4 years, Preschool age 5  
42 years, and redefines school-age rates to start at six years (from the previous five years of age).

43  
44 Sections 809.20(b)(1), (c), and (d) are amended to state that the enhanced reimbursement rates  
45 are required for certified Texas Rising Star providers (Two-, Three- and Four-Star providers),  
46 which aligns with Texas Government Code, §2308.315(b-1) prohibiting providers at the Entry

1 Level designation from being eligible for the enhanced rate.

2  
3 Section 809.20(b)(2) is amended to include infants and toddlers for enhanced rates for providers  
4 participating in the Texas School Ready program for those age groups.

5  
6 New §809.20(g) is added to include in rule the current practice that Boards may establish a  
7 higher enhanced reimbursement rate for nontraditional hours, as defined by the Board.

8  
9 **SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES**

10 TWC proposes the following amendments to Subchapter C:

11  
12 **§809.41. A Child's General Eligibility for Child Care Services**

13 Section 809.41(a)(1)(B) is amended to establish a statewide policy that a child with disabilities  
14 under 19 years of age meets age eligibility for child care services. Currently, 27 of the 28 Boards  
15 allow eligibility for children with disabilities up to age 19.

16  
17 Section 809.41(a)(3)(A)(i) is amended to establish a statewide income limit of 85 percent of the  
18 state median income (SMI), which is the federal income limit. Accordingly, §809.41(e),  
19 regarding Boards that have initial income limits lower than 85 percent SMI, is removed.

20  
21 Section 809.41(a)(3)(B) is amended to allow job search as an allowable activity for child care  
22 services eligibility.

23  
24 Section 809.41(b) is amended to establish a statewide policy for parents enrolled in an  
25 educational program, which allows them to participate in CCS for a cumulative total of 60  
26 months. The limit applies only to parents enrolled in a full-time (as defined by the educational  
27 institution) education program. Accordingly, with the new 60-month requirement, §809.41(c)  
28 requiring four years of child care services for parents enrolled in a program leading to a high-  
29 growth, high-demand occupation is removed.

30  
31 Renumbered §809.41(c) is amended to change "postsecondary" to "undergraduate" degree to  
32 align with the new definition of an educational program in §809.2.

33  
34 Section 809.41(f), specifying that Subchapter C only applies to child care services using funds  
35 allocated to the Boards pursuant to §800.58 (Child Care and Development Fund), is removed.  
36 This provision is now included in §809.1.

37  
38 **§809.42. Eligibility Verification, Determination, and Redetermination**

39 Section 809.42(b) is amended to include the three-month initial job search eligibility period in  
40 new §809.56 as an exception to the 12-month eligibility period.

41  
42 **§809.44. Calculating Family Income**

43 Section 809.44(b)(5) is amended to include tax-related exemptions from the family income  
44 calculation and to clarify that all tax credits, not just the specified Earned Income Tax Credit  
45 (EITC) and the Advanced EITC, are exempted from the family income calculation. Section  
46 809.44(b)(5) is also amended to move onetime payments from this paragraph to new

1 §809.44(b)(20) related to one-time payments.

2  
3 **§809.48. Transitional Child Care**

4 Section 809.48(a)(3) is amended to clarify that the minimum weekly activity requirement of 50  
5 hours per week for a dual-parent family is a combined total from both parents. The Commission  
6 clarifies that there is no minimum activity requirement for each parent.

7  
8 Section 809.48 is amended to remove subsection (b) allowing Boards to establish a higher  
9 income limit for Transitional Child Care. This paragraph is no longer needed with the statewide  
10 income eligibility limit of 85 percent SMI established in §809.41.

11  
12 Relettered §809.48(d) is amended to change postsecondary to undergraduate to reflect the  
13 amended definition of an educational program in §809.2.

14  
15 **§809.50. At-Risk Child Care**

16 Section 809.50(a)(1) is amended to establish a statewide income limit of 85 percent SMI for At-  
17 Risk Child Care.

18  
19 Section 809.50(a)(2) is amended to clarify that the minimum weekly activity requirement of 50  
20 hours per week for a dual-parent family is a combined total from both parents. The Commission  
21 clarifies that there is no minimum activity requirement for each parent.

22  
23 Section 809.50(c) is amended to change postsecondary to undergraduate to reflect the amended  
24 definition of an educational program in §809.2.

25  
26 Section 809.50 is amended to remove subsection (e) which allows Boards to establish a higher  
27 income limit for teen parents and subsection (g) which allows Boards to establish a higher  
28 income limit for families with children enrolled in Head Start, Early Head Start, or public pre-K.  
29 These provisions are no longer needed with the statewide income eligibility limit of 85 percent  
30 SMI established in §809.41.

31  
32 Subsections are relettered accordingly.

33  
34 **§809.51. Child Care during Temporary Interruptions in Work, Education, or Job Training**

35 Section 809.51(a) is amended to include the three-month initial job search eligibility period in  
36 new §809.56 as an exception to the 12-month eligibility period.

37  
38 **§809.55. Waiting Period for Reapplication**

39 Section 809.55(a) is amended to remove specific paragraph citations in other sections of the  
40 rules.

41  
42 **§809.56. Child Care during Initial Job Search**

43 New §809.56 sets forth the requirements for child care during a parent's initial job search  
44 activities. Section 809.56(a) states that a parent, including a parent in a dual-parent family, is  
45 eligible for child care services at initial eligibility if the family does not meet the minimum  
46 participation requirements for At-Risk Child Care. Section 809.56(b) allows parents to self-attest

1 that the parent does not meet the At-Risk participation requirements.

2  
3 New §809.56(c) limits child care for job search to three months. Child care services will  
4 continue following this three-month period, if, by the end of the three months, the family meets  
5 the following activity requirements:

6 --25 hours for a single parent, with at least 12 hours in employment; or

7 --50 hours combined for dual-parent families, with at least 25 combined hours in employment.

8  
9 If the above participation requirements are met within or by the end of the three-month period,  
10 care will continue for 12 months, inclusive of the care provided during the initial job search  
11 period.

12  
13 New §809.56(d) sets forth the requirements for the PSoC during the initial job search period.  
14 Boards will initially assess the PSoC at the highest amount based on the family size and number  
15 of children in care. However, this assessed amount will immediately be temporarily reduced to  
16 zero. This reduction also applies to dual-parent families in which one parent is employed, but the  
17 family meets the requirements for job search child care (that is, the family is not meeting the At-  
18 Risk participation requirements). If the parent begins to meet the participation requirements  
19 described in §809.56(c), the PSoC will be reinstated at the initially assessed amount or the  
20 amount based on the actual family income, whichever is lower.

21  
22 New §809.56(e) limits child care during the initial job search period to one such period within a  
23 12-month period.

24  
25 New §809.56(f) requires Boards to ensure that the parent in child care job search:

26 --registers with the state's labor exchange system (currently, WorkInTexas.com); and

27 --has access the appropriate services available through the one-stop delivery network described  
28 in 40 TAC §801.28.

## 29 30 **SUBCHAPTER D. PARENT RIGHTS AND RESPONSIBILITIES**

31 TWC proposes the following amendments to Subchapter D:

### 32 33 **§809.71. Parent Rights**

34 Section 809.71(3) is amended to require that the information about transfer policies include the  
35 two-week waiting period before the effective date of a transfer, except in cases in which the  
36 provider is placed on corrective action by CCR, when the transfer is authorized by CPS for a  
37 child in protective services, or on a case-by-case basis as determined by the Board.

38  
39 Section 809.71(4), related to information on Board policies regarding providers charging parents  
40 additional amounts above the PSoC, is amended to clarify that the information must include  
41 providers charging any amounts above the assessed PSoC, not just an amount that makes up the  
42 full difference between the PSoC and the provider's published rate.

### 43 44 **§809.72. Parent Eligibility Documentation Requirements**

45 Section 809.72 is amended to allow a child whose parents are conducting an initial job search  
46 under the respective rule provisions for these conditions to receive child care services without the

1 parent first providing the Board's child care contractor with all information necessary to  
2 determine initial eligibility.

3  
4 **§809.73. Parent Reporting Requirements**

5 Section 809.73(a) is amended to clarify that parents in initial job search are only required to  
6 report items that impact a family's eligibility or that enable the Board or contractor to contact the  
7 family or pay the provider.

8  
9 **§809.75. Child Care during Appeal**

10 Section 809.75 is amended to correct a reference in §809.19 related to nonpayment of the PSoC  
11 as it relates to a parent appeal.

12  
13 **§809.78. Attendance Standards and Notice and Reporting Requirements**

14 Section 809.78 is amended to remove or clarify requirements for attendance tracking that are  
15 specific to the former automated attendance tracking or would be specific to a particular future  
16 automated attendance system.

17  
18 Section 809.78(a)(3) is amended to remove from unexplained absences any denied or rejected  
19 attendance recording in which the parent does not contact TWC's Child Care Services unit to  
20 report the issue.

21  
22 Section 809.78(a)(5) is amended to remove language related to using attendance cards and to  
23 include language stating that parents shall adhere to TWC procedures for reporting attendance  
24 and absences, including the use of the attendance reporting system.

25  
26 Section 809.78(a) is also amended to remove paragraphs (6) - (10) as these provisions apply  
27 specifically to the previous system's use of attendance cards or use of the previous automated  
28 attendance system.

29  
30 Section 809.78(d)(1) clarifies that the written notification of potential termination due to the  
31 failure to meet attendance standards should be provided "as soon as practicable" after the child  
32 reaches the 15- or 30-day cumulative absence threshold.

33  
34 **SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE**

35 TWC proposes the following amendments to Subchapter E:

36  
37 **§809.91. Minimum Requirements for Providers**

38 Section 809.91 is amended to include Texas Rising Star certification or Entry Level designation  
39 as a requirement to provide child care services. This section is also amended to remove  
40 references to the Pre-Star designation.

41  
42 **§809.92. Provider Responsibilities and Reporting Requirements**

43 Section 809.92(c) is amended to clarify that providers must not charge any amounts over the  
44 PSoC, not just the full difference between the PSoC and the provider's published rates, to parents  
45 who are exempt from the PSoC or have a zero PSoC assessment. This subsection is also  
46 amended to add parents in initial job search child care during the initial job search period.

1  
2 Section 809.92(d) is amended to also state that Boards may have a policy that allows providers to  
3 charge amounts above the PSoC to parents not included in the subsection (c) exemptions.

4  
5 New §809.92(e) requires Boards that allow providers to charge additional amounts pursuant to  
6 §809.92(d) to ensure that the provider reports to the Board each month the:  
7 --specific families that were charged an additional amount above the assessed amount;  
8 --frequency with which each family was charged; and  
9 --amount of each additional charge.

10  
11 New §809.92(f) is added to include the federal reporting requirements regarding polices allowing  
12 providers to charge parents above the PSoC amount. The new rule language requires Boards that  
13 have a policy allowing providers to charge such amounts to:  
14 --provide the rationale for the Board's policy, including a demonstration of how the policy  
15 promotes affordability and access for families; and  
16 --describe the Board's analysis of the interaction between the additional amounts charged to  
17 families with the required PSoC and the ability of current reimbursement rates to provide access  
18 to care without additional fees.

19  
20 **§809.93. Provider Reimbursement**

21 Section 809.93(f) is amended to add in rule the current practice of blended-day enrollment  
22 authorizations. The rule language clarifies that the blended-day referrals are for children enrolled  
23 in a school program, pre-K, Head Start, or Early Head Start, in which child care is part-time with  
24 care provided occasionally on a full-day basis. The Commission clarifies that there is not a  
25 requirement in rules that providers accept part-day care as a prerequisite to receive blended-day  
26 referrals. The part-day rate, however, is used in the calculation for the blended-day rate.

27  
28 Accordingly, the amendment removes §809.93(h) prohibiting providers from being paid less  
29 with a child enrolled in full-day care who occasionally attends part-day, or more when a part-day  
30 child occasionally attends full-day. These occasional days should be reviewed and changed to a  
31 blended-day referral if applicable.

32  
33 New §809.93(j) is added to require Boards to pay providers prospectively every two weeks based  
34 on the monthly enrollment authorization. The Commission notes that this provision is effective  
35 October 1, 2023.

36  
37 **§809.94. Providers Placed on Corrective or Adverse Action by Child Care Regulation**

38 Section 809.94 is amended to update the change of the child care licensing entity to Child Care  
39 Regulation.

40  
41 Section 809.94(e), regarding providers appealing an Adverse Action by CCR but remain open  
42 under a court order, is removed as providers appealing an Adverse Action are prohibited from  
43 continuing operations by SB 764.

44  
45 **§809.95. Provider Automated Attendance Agreement**

46 Section 809.95 is amended to remove references specific to the former automated attendance

1 system. The amended language states that owners, directors, assistant directors, or other provider  
2 employees must not have access to a parent's information to access TWC's automated attendance  
3 system. The language is general and does not specify any specific type of future automated  
4 attendance system.

5  
6 **§809.96. Contracted Slots Agreements**

7 Section 809.96(e)(1)(A) is amended to reference a child care desert, which is now defined in new  
8 §809.2(4). The definition of a child care desert in new §809.2(4) includes the language  
9 previously specified in §809.96(e)(1)(A). Section 809.96(e)(2) and (3) are amended to clarify  
10 that eligibility for contracted slots include "recognized" pre-K, Early Head Start, and Head Start  
11 partnerships, which are defined in §809.22.

12  
13 Section 809.96(f) is amended to remove the reference to Board policies in §809.13(c) as that  
14 subsection is removed.

15  
16 Section 809.96(i) is amended to change the Board contracted slots reporting requirement from  
17 six to 12 months pursuant to amended Texas Labor Code, §302.0461(d).

18  
19 **SUBCHAPTER F. FRAUD FACT-FINDING AND IMPROPER PAYMENTS**

20 TWC proposes the following amendments to Subchapter F:

21  
22 **§809.112. Suspected Fraud**

23 Section 809.112(b)(2) is amended to include reporting requirements during the three-month  
24 initial job search period.

25  
26 **§809.115. Corrective Adverse Actions**

27 Section 809.115(d) is amended to remove language specific to the former automated attendance  
28 system.

29  
30 **SUBCHAPTER G. TEXAS RISING STAR PROGRAM**

31 TWC proposes the following amendments to Subchapter G:

32  
33 **§809.130. Short Title and Purpose**

34 Section 809.130(b) is amended to include Entry Level providers in the purpose of Subchapter G.

35  
36 Section 809.130(d) is amended to add language that the Texas Rising Star guidelines distinguish  
37 certified Texas Rising Star providers (Two-, Three-, and Four-Star providers) from designated  
38 Entry Level providers.

39  
40 **§809.131. Requirements for the Texas Rising Star Program**

41 Section 809.131 is amended to change the section name from "Eligibility for the Texas Rising  
42 Star Program" to "Requirements for the Texas Rising Star Program." This change is made to  
43 emphasize that Texas Rising Star is a mandatory program for child care services providers that  
44 meet the requirements of Subchapter G and the Texas Rising Star guidelines.

45  
46 New §809.131(a) outlines the requirements for Texas Rising Star certification. The new

1 subsection retains the previous requirements for application to the Texas Rising Star program,  
2 namely, that the provider:  
3 --has a permanent (nonexpiring) license or registration from CCR;  
4 --has at least 12 months of licensing history with CCR, and is not on:  
5 ----corrective action with a Board;  
6 ----a "Notice of Freeze" with the Commission pursuant to Texas Labor Code, Chapter 213  
7 (Enforcement of the Texas Unemployment Compensation Act) or Chapter 61 (Payment of  
8 Wages); or  
9 ----corrective or adverse action with CCR; or  
10 --is regulated by and in good standing with the United States Military.

11  
12 New §809.131(a) removes the former requirements that the provider must meet the Pre-Star  
13 designation and adds that the provider must meet the criteria for star-level (Two-, Three- or  
14 Four-Star) certification in the Texas Rising Star guidelines.

15  
16 New §809.131(a) requires that Texas Rising Star-certified provider's center director is registered  
17 in the Texas Early Childhood Professional Development System Workforce Registry (workforce  
18 registry). The new rule language removes the former requirement that teaching staff are also  
19 registered in the workforce registry.

20  
21 New §809.131(b) contains the requirements for Entry Level designation.

22  
23 Regulated child care providers not meeting the Texas Rising Star certification requirements in  
24 §809.131 shall be initially designated as Entry Level if the child care provider:  
25 --is not on corrective or adverse action with CCR; and  
26 --does not exceed the points threshold for high and medium-high CCR deficiencies within the  
27 most recent 12-month period as established in the guidelines.

28  
29 New §809.131(c) states that providers meeting the Entry Level designation is eligible for  
30 mentoring services.

31  
32 New §809.131(d) states that the Entry Level designation is limited to an initial 24 months, unless  
33 approved for a waiver.

34  
35 New §809.131(e) sets forth the time periods for Entry Level--designated providers to be  
36 reviewed for Texas Rising Star certification. The rule language states that Entry Level providers  
37 will be reviewed for Texas Rising Star certification after the first 12 months of the 24-month  
38 period. If an Entry Level provider is not certified after the first 12 months, the provider may  
39 receive up to two six-month extensions and:  
40 --shall continue to receive new family referrals during the first six-month extension; and  
41 --if a provider requires a second six-month extension, shall not receive new family referrals  
42 during the second six-month extension.

43  
44 New §809.131(f) and (g) sets forth the criteria for an Entry Level extension waiver. Section  
45 809.131(f) allows TWC to approve a waiver of the 24-month Entry Level time limit, if the  
46 provider is:

1 --located in a "child care desert" or an "underserved" area described in §809.96(e)(1);  
2 --unable to meet the certification requirements due to a federal- or state-declared  
3 emergency/disaster; or  
4 --unable to meet the certification requirements due to conditions that TWC determines are  
5 outside of the provider's control.

6  
7 **§809.132. Impacts on Texas Rising Star Certification**

8 Because state statute requires providers participating in the CCS program to be certified as Texas  
9 Rising Star, a certified program that drops below a Two-Star level due to licensing deficiencies  
10 or non-compliance with Texas Rising Star standards, falls into a unique category of being a  
11 certified provider, but with suspended certification and not eligible for enhanced reimbursement  
12 or Entry Level designation.

13  
14 Section 809.132(a) is amended to state that certified Texas Rising Star providers will be placed  
15 on a "suspension status" for certain deficiencies, namely, if the provider:

- 16 --is placed on corrective action with a Board;
- 17 --is under a "Notice of Freeze" with the Commission pursuant to Texas Labor Code, Chapter 213  
18 (Enforcement of the Texas Unemployment Compensation Act) or Chapter 61 (Payment of  
19 Wages);
- 20 --is placed on corrective or adverse action by CCR;
- 21 --had 15 or more total high or medium-high weighted licensing deficiencies during the most  
22 recent 12-month licensing history;
- 23 --had more than four probationary impacts during its three-year certification period;
- 24 --had a consecutive third probationary impact;
- 25 --is cited for specified CCR minimum standards regarding weapons and ammunition; or
- 26 --is not meeting at least the Two-Star level due to noncompliance with Texas Rising Star  
27 guidelines at the most recent assessment of certification.

28  
29 Section 809.132(b) regarding licensing deficiencies listed in the Texas Rising Star guidelines  
30 that result in a "star-level drop" is amended to reflect the change that a Two-Star certified  
31 provider will be placed on suspension status for the applicable licensing deficiencies.

32  
33 Section 809.132(c) and (d) regarding licensing deficiencies listed in the Texas Rising Star  
34 guidelines that result in a second probation period are amended to reflect the change that a Two-  
35 Star certified provider will be placed on suspension status.

36  
37 Section 809.132(e) relating to reinstatement at the former star level is amended to clarify that this  
38 provision is for certified providers that are not on suspension status. This primarily relates to  
39 Three- or Four-Star providers that have a star-level drop to Two- or Three-Star respectively, as  
40 these providers are not placed on suspension status.

41  
42 New §809.132(f) - (i) set forth the conditions for certified providers on suspension status.

43  
44 Amended §809.132(f) states that providers on suspension status are eligible to request a  
45 reassessment after six months following the suspension date, as long as no deficiencies in  
46 subsections (b) - (d) are cited during the previous six months. The six months is to allow

1 sufficient time to demonstrate that the provider's licensing history will not preclude the provider  
2 from eligibility. This is similar to the former requirement that providers dropping below a Two-  
3 Star level must wait six months before reapplying for the Texas Rising Star program. The  
4 Commission notes that providers can be assessed for certification at any time after the six  
5 months in which they meet eligibility and screening requirements.

6  
7 New §809.132(g) states that providers on suspension status must achieve at least a Two-Star  
8 certification no later than 12 months following the suspension and failure to achieve at least a  
9 Two-Star certification will result in the provider's ineligibility to provide subsidized child care  
10 services.

11  
12 New §809.132(h) states that providers on suspension status are:

13 --eligible to provide subsidized child care services as long as the provider meets the Entry Level  
14 criteria;

15 --not eligible for the enhanced reimburse rate and will be reimbursed at the Board's Entry Level  
16 reimbursement rate; and

17 --not able to receive referrals from a new family during the last six months of the 12-month  
18 period unless the provider is located in a child care desert or serves an underserved population  
19 and is approved by TWC to accept new family referrals.

20  
21 New §809.132(i) states that providers on suspension status and not achieving recertification by  
22 the end of the 12-month period are not eligible to provide TWC-funded child care services, are  
23 not eligible for Entry Level designation, and must subsequently meet Texas Rising Star  
24 certification eligibility and screening requirements to provide CCS.

25  
26 **§809.133. Application and Assessments for the Texas Rising Star Certification**

27 Section 809.133 is amended to describe the separate roles of the Boards for mentoring and the  
28 new TWC-designated statewide entity for conducting assessments. The following sections are  
29 amended to move responsibility from the Board to the statewide entity.

30  
31 Section 809.133(b) is amended to clarify that TWC's designated assessment entity is responsible  
32 for the following application and certification requirements:

33 --Written acknowledgment of receipt of the application and self-assessment is sent to the  
34 provider;

35 --Within 20 days of receipt of the application, the provider is sent an estimated time frame for  
36 scheduling the initial assessment;

37 --An assessment is conducted for any provider that meets the eligibility requirements in  
38 §809.131 and requests certification to participate in the Texas Rising Star program; and

39 --Texas Rising Star certification is granted for any provider that is assessed and verified as  
40 meeting the Texas Rising Star provider certification criteria set forth in the Texas Rising Star  
41 guidelines.

42  
43 Section 809.133(c) is amended to clarify that TWC's designated assessment entity is responsible  
44 for the following assessment requirements:

45 --On-site assessment of 100 percent of the provider classrooms at the initial assessment for  
46 certification and at each scheduled recertification; and

1 --Recertification of all certified providers every three years.

2  
3 Section 809.133(d) is amended to clarify that TWC's designated assessment entity is responsible  
4 for the following monitoring requirements:

5 --At least one unannounced on-site visit; and

6 --A review of the provider's licensing compliance as described in §809.132.

7  
8 Sections 809.133(e) and (f) are amended to clarify that TWC's designated assessment entity is  
9 responsible for complying with the process and procedures in the Texas Rising Star guidelines  
10 for:

11 --conducting assessment of nationally accredited facilities and facilities operated by the United  
12 States Military; and

13 --conducting assessments of certified Texas Rising Star providers that have a change of  
14 ownership, move, or expand locations.

15  
16 **§809.134. Minimum Qualifications for Texas Rising Star Staff**

17 Section 809.134 is amended to clarify the minimum qualifications specific to Board mentor staff,  
18 qualifications specific to the statewide entity assessor staff, and qualifications applying to both  
19 mentors and assessors.

20  
21 New §809.134(a) states that Boards and the statewide assessment entity are responsible for  
22 ensuring that Texas Rising Star staff:

23 --meet the CCR background check requirement consistent with Chapter 745 (formerly in  
24 §809.134(e)); and

25 --complete the Texas Rising Star standards training, as described in the Texas Rising Star  
26 guidelines (formerly in §809.134(g)(1)).

27  
28 Relettered §809.134(b) is amended to clarify that mentor staff must meet the minimum  
29 education, experience, and microcredentialing requirements in relettered §809.134(c) - (f).

30  
31 Renumbered §809.134(c)(3), relating to the requirements for mentors with associate degrees, is  
32 amended to state that the mentor must also have two years of "suitable" experience in early  
33 childhood education, as determined by the Board. The former language required that mentors  
34 with associate degrees be required to have two years of experience as a director in an early  
35 childhood program.

36  
37 New §809.134(f) requires that all mentors must attain mentor microcredentialing as described in  
38 the Texas Rising Star guidelines (formerly in §809.134(g)(3)).

39  
40 Section 809.134(g) is amended to retain only the requirement that assessors attain and maintain  
41 the Texas Rising Star Assessor Certification, as described in the guidelines.

42  
43 Section 809.134(f), regarding all Texas Rising Star staff to demonstrate early childhood  
44 education knowledge and best practices and an understanding of early childhood evaluations,  
45 observations, and assessment tools for both teachers and children, is removed, as these practices  
46 are demonstrated through the mentor microcredentialing and assessor certifications.

1  
2 **§809.135. Texas Rising Star Process for Reconsideration**

3 Section 809.135 is amended to clarify that the statewide assessment entity is responsible for  
4 ensuring that there is a process for reconsiderations of a facility assessment.  
5

6 **§809.136. Roles and Responsibilities of Texas Rising Star Staff**

7 Section 809.136 is amended to clarify and separate the roles of mentor and assessor staff.  
8

9 Section 809.136(1) is amended to specify that a mentor is a Board or Board contractor staff  
10 member.  
11

12 Section 809.136(2) is amended to specify that an assessor is a staff member or contractor of the  
13 statewide assessment entity.  
14

15 Section 809.136(3) is amended to clarify that a "dual-role" staff member is an individual who  
16 meets the definition of both mentor and assessor staff.  
17

18 Section 809.136(4) is amended to state that both the Board and the statewide assessment entity  
19 are responsible for ensuring that "dual-role" mentoring staff members do not perform the  
20 assessment function of the same provider, and that assessment staff members do not perform  
21 mentoring for the same provider.  
22

23 **PART III. IMPACT STATEMENTS**

24 Chris Nelson, Chief Financial Officer, determined that for each year of the first five years the  
25 rules will be in effect, the following statements will apply:  
26

27 There are no additional estimated costs to the state and to local governments expected as a result  
28 of enforcing or administering the rules.  
29

30 There are no estimated cost reductions to the state and to local governments as a result of  
31 enforcing or administering the rules.  
32

33 There are no estimated losses or increases in revenue to the state or to local governments as a  
34 result of enforcing or administering the rules.  
35

36 There are no foreseeable implications relating to costs or revenue of the state or local  
37 governments as a result of enforcing or administering the rules.  
38

39 There are no anticipated economic costs to individuals required to comply with the rules.  
40

41 There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural  
42 communities as a result of enforcing or administering the rules.  
43

44 Based on the analyses required by Texas Government Code, §2001.024, TWC has determined  
45 that the requirement to repeal or amend a rule, as required by Texas Government Code,  
46 §2001.0045, does not apply to this rulemaking.

1  
2 Takings Impact Assessment

3 Under Texas Government Code, §2007.002(5), "taking" means a governmental action that  
4 affects private real property, in whole or in part or temporarily or permanently, in a manner that  
5 requires the governmental entity to compensate the private real property owner as provided by  
6 the Fifth and Fourteenth Amendments to the United States Constitution or the Texas  
7 Constitution, Article I, §17 or §19, or restricts or limits the owner's right to the property that  
8 would otherwise exist in the absence of the governmental action, and is the producing cause of a  
9 reduction of at least 25 percent in the market value of the affected private real property,  
10 determined by comparing the market value of the property as if the governmental action is not in  
11 effect and the market value of the property determined as if the governmental action is in effect.  
12 TWC completed a Takings Impact Analysis for the proposed rulemaking action under Texas  
13 Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as  
14 discussed elsewhere in this preamble, is to comply with statutory changes resulting from the 87th  
15 Texas Legislature, Regular Session (2021), and to provide program improvements and  
16 operational consistency.

17  
18 The proposed rulemaking action will not create any additional burden on private real property or  
19 affect private real property in a manner that would require compensation to private real property  
20 owners under the United States Constitution or the Texas Constitution. The proposal also will  
21 not affect private real property in a manner that restricts or limits an owner's right to the property  
22 that would otherwise exist in the absence of the governmental action. Therefore, the proposed  
23 rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

24  
25 Government Growth Impact Statement

26 TWC determined that during the first five years the rules will be in effect, they:  
27 --will not create or eliminate a government program;  
28 --will not require the creation or elimination of employee positions;  
29 --will not require an increase or decrease in future legislative appropriations to TWC;  
30 --will not require an increase or decrease in fees paid to TWC;  
31 --will create a new regulation;  
32 --will not expand, limit, or eliminate an existing regulation;  
33 --will not change the number of individuals subject to the rules; and  
34 --will not positively or adversely affect the state's economy.

35  
36 Economic Impact Statement and Regulatory Flexibility Analysis

37 TWC determined that the rules will not have an adverse economic impact on small businesses or  
38 rural communities, as the proposed rules place no requirements on small businesses or rural  
39 communities. The rules govern child care providers that voluntarily participate in TWC-funded  
40 child care services.

41  
42 Mariana Vega, Director, Labor Market Information, determined that there is not a significant  
43 negative impact upon employment conditions in the state as a result of the rules.

44  
45 Reagan Miller, Director, Child Care and Early Learning, determined that for each year of the  
46 first five years the rules are in effect, the public benefit anticipated as a result of enforcing the

1 proposed rules will be to improve program quality, efficiency, and operational consistency.

2  
3 TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be  
4 within TWC's legal authority to adopt.

5  
6 **PART IV. COORDINATION ACTIVITIES**

7 In the development of these rules for publication and public comment, TWC sought the  
8 involvement of Texas' 28 Boards and stakeholders. TWC conducted several calls with Boards  
9 and stakeholders prior to the development of the policy concept. TWC provided the policy  
10 concept regarding these rule amendments to the Boards and stakeholders for consideration and  
11 review on December 21, 2021. TWC also conducted a conference call with Board executive  
12 directors and Board staff on January 14, 2022, to discuss the policy concept. During the  
13 rulemaking process, TWC considered all information gathered in order to develop rules that  
14 provide clear and concise direction to all parties involved.

15  
16 **PART V. PUBLIC COMMENT**

17 Comments on the proposed rules may be submitted to [TWCPolicyComments@twc.texas.gov](mailto:TWCPolicyComments@twc.texas.gov)  
18 and must be received no later than May 30, 2022.

19  
20 **PART VI. STATUTORY AUTHORITY**

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

24  
25 The proposed rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well  
26 as Texas Government Code, Chapter 2308.

1 CHAPTER 809. CHILD CARE SERVICES

2  
3 SUBCHAPTER A. GENERAL PROVISIONS

4  
5 §809.1. Short Title and Purpose.

6  
7 (a) The rules contained in this chapter may be cited as the Child Care Services  
8 rules~~Rules~~.

9  
10 (b) The purpose of the rules contained in this chapter~~these rules~~ is to interpret and  
11 implement the requirements of state and federal statutes and regulations governing  
12 child care and quality improvement activities funded through the Texas Workforce  
13 Commission (Commission), to include the Child Care and Development Fund  
14 (CCDF), which includes:

15  
16 ~~(1) the Child Care and Development Fund (CCDF), which includes:~~

17  
18 (1)(A) funds allocated to local workforce development areas (workforce areas) as  
19 provided in §800.58 of this title;

20  
21 (2)(B) private donated funds described in §809.17 of this chapter~~§809.17(b)(1)~~;

22  
23 (3)(C) public transferred funds described in §809.17 of this chapter~~§809.17(b)(2)~~;

24  
25 (4)(D) public certified expenditures described in §809.17 of this  
26 chapter~~§809.17(b)(3)~~; and

27  
28 (5)(E) funds used for children receiving protective services described in §809.49  
29 of this chapter.

30  
31 ~~(2) other funds that are used for child care services allocated to workforce areas~~  
32 ~~under Chapter 800 of this title.~~

33  
34 (c) The rules contained in this chapter apply to other funds that are used for child care  
35 services allocated to workforce areas under Chapter 800 of this title, except for the  
36 following:

37  
38 (1) Funds used for quality improvement activities described in §809.16 of this  
39 chapter;

40  
41 (2) Assessing the parent share of cost described in §809.19 of this chapter; and

42  
43 (3) Subchapter C of this chapter (relating to Eligibility for Child Care Services).

44  
45  
46 (d)(e) The rules contained in this chapter shall apply to the Commission, Local Workforce

1 Development Boards (Boards), their child care contractors, child care providers, and  
2 parents applying for or eligible to receive child care services.

3  
4 **§809.2. Definitions.**

5  
6 The following words and terms, when used in this chapter, shall have the following  
7 meanings, unless the context clearly indicates otherwise.

- 8  
9 (1) Attending a job training or educational program--An individual is attending a  
10 job training or educational program if the individual:  
11  
12 (A) is considered by the program to be officially enrolled;  
13  
14 (B) meets all attendance requirements established by the program; and  
15  
16 (C) is making progress toward successful completion of the program as  
17 demonstrated through continued enrollment in the program~~determined~~  
18 ~~by the Board~~ upon eligibility redetermination as described in §809.42  
19 ~~§809.42(b)~~ of this chapter.  
20  
21 (2) Child--An individual who meets the general eligibility requirements contained  
22 in this chapter for receiving child care services.  
23  
24 (3) Child care contractor--The entity or entities under contract with the Board to  
25 manage child care services. This includes contractors involved in determining  
26 eligibility for child care services, contractors involved in the billing and  
27 reimbursement process related to child care ~~subsidies~~, as well as contractors  
28 involved in the funding of quality improvement activities as described in  
29 §809.16 of this chapter.  
30  
31 (4) Child Care Desert--An area described in Texas Labor Code, §302.0461 in  
32 which the number of children under age six with working parents is at least  
33 three times greater than the capacity of licensed child care providers in the  
34 area, based on data published annually by the Commission.  
35  
36 (5)(4) Child Care Regulation (CCR)~~Licensing (CCL)~~--Division in the Texas Health  
37 and Human Services Commission responsible for protecting the health, safety,  
38 and well-being of children who attend or reside in regulated child care  
39 facilities and homes. ~~Previously a division of the Texas Department of Family~~  
40 ~~and Protective Services (DFPS), CCL is now part of the Texas Health and~~  
41 ~~Human Services Commission (HHSC).~~  
42  
43 (6)(5) Child care services--Child care subsidies and quality improvement activities  
44 funded by the Commission.  
45  
46 (7)(6) Child care subsidies--Commission-funded child care reimbursements to an

1 eligible child care provider for the direct care of an eligible child.

2  
3 ~~(8)(7)~~ Child experiencing homelessness--A child who is homeless, as defined in the  
4 McKinney-Vento Act (42 USC 11434(a)), Subtitle VII-B, §725.

5  
6 ~~(9)(8)~~ Child with disabilities--A child who has a physical or mental impairment that  
7 substantially limits one or more major life activities, has a record of such an  
8 impairment, or is regarded as having such an impairment. Major life activities  
9 include, but are not limited to, caring for oneself; performing manual tasks;  
10 walking; hearing; seeing, speaking, or breathing; learning; and working.

11  
12 ~~(10)(9)~~ Educational program--A program that leads to:

13 (A) a high school diploma;

14 (B) a Certificate of High School Equivalency; or

15  
16 (C) an undergraduate~~postsecondary~~ degree from an institution of higher  
17 education.

18  
19  
20  
21 ~~(11)(10)~~ Excessive unexplained absences--More than 40 unexplained absences  
22 within a 12-month eligibility period as described in §809.78~~§809.78(a)(3)~~ of  
23 this chapter.

24  
25 ~~(12)(11)~~ Family--Two or more individuals related by blood, marriage, or decree of  
26 court, who are living in a single residence and are included in one or more of  
27 the following categories:

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

30 (B) A parent and household dependents.

31  
32  
33  
34 ~~(13)(12)~~ Household dependent--An individual living in the household who is:

35 (A) an adult considered a dependent of the parent for income tax purposes;

36 (B) a child of a teen parent; or

37 (C) a child or other minor living in the household who is the responsibility of  
38 the parent.

39  
40  
41  
42  
43 ~~(14)(13)~~ Improper payments--Any payment of Child Care Development Fund  
44 (CCDF) grant funds that should not have been made or that was made in an  
45 incorrect amount (including overpayments and underpayments) under  
46 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.

~~(15)~~<sup>(14)</sup> 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.

~~(16)~~<sup>(15)</sup> Listed family home--A family home, other than the eligible child's own residence, that is listed, but not licensed or registered with, ~~CCRECL~~ pursuant to Texas Human Resources Code, §42.052(c).

~~(17)~~<sup>(16)</sup> 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.

~~(18)~~<sup>(17)</sup> 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.

~~(18) Pre-Star provider--A designation for subsidy providers licensed or registered by CCL, based on meeting the Screening Criteria for Subsidized Child Care, which is further defined in the CCDF State Plan.~~

(19) Protective services--Services provided when a child:

- (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 Texas Department of Family and Protective Services (DFPS) Child Protective

1 Services (CPS) intervention;

2  
3 (B) ~~a child~~ is in the managing conservatorship of DFPS and residing with a  
4 relative or a foster parent; or

5  
6 (C) ~~a child~~ has been provided with protective services by DFPS within the  
7 prior six months and requires services to ensure the stability of the  
8 family.

9  
10 (20) Provider--A provider is defined as a:

11  
12 (A) ~~a regulated child care provider as defined in paragraph (21) of this~~  
13 ~~section~~;

14  
15 (B) ~~a relative child care provider as defined in paragraph (22) of this section~~;  
16 or

17  
18 (C) ~~a listed family home as defined in paragraph (15) of this section~~, subject  
19 to the requirements in §809.91(e)~~§809.91(b)~~ of this chapter.

20  
21 (21) Regulated child care provider--A provider caring for an eligible child in a  
22 location other than the eligible child's own residence that is:

23  
24 (A) licensed by CCRECL;

25  
26 (B) registered with CCRECL; or

27  
28 (C) operated and monitored by the United States military services.

29  
30 (22) Relative child care provider--An individual who is at least 18 years of age, and  
31 is, by marriage, blood relationship, or court decree, the child's:

32  
33 (A) grandparent;

34  
35 (B) great-grandparent;

36  
37 (C) aunt;

38  
39 (D) uncle; or

40  
41 (E) sibling (if the sibling does not reside in the same household as the  
42 eligible child).

43  
44 (23) Residing with--Unless otherwise stipulated in this chapter, a child is  
45 considered to be residing with the parent when the child is living with, and  
46 physically present with, the parent during the time period for which child care

1 services are being requested or received.

2  
3 (24) Teen parent--A teen parent (teen) is an individual 18 years of age or younger,  
4 or 19 years of age and attending high school or the equivalent, who has a child.

5  
6 (25) Texas Rising Star program--A ~~voluntary~~, quality-based rating system of child  
7 care providers participating in Commission-subsidized child care.

8  
9 (26) Texas Rising Star provider--A regulated child care provider ~~certified as~~  
10 meeting the Texas Rising Star program standards. Texas Rising Star providers  
11 are ~~certified as a~~:

12  
13 (A) designated as an Entry Level Provider;

14  
15 (B)(A) certified as a Two-Star~~2-Star Program~~ Provider;

16  
17 (C)(B) certified as a Three-Star~~3-Star Program~~ Provider; or

18  
19 (D)(C) certified as a Four-Star~~4-Star Program~~ Provider.

20  
21 (27) Working--Working is defined as:

22  
23 (A) activities for which one receives monetary compensation such as a  
24 salary, wages, tips, and commissions; ~~or~~

25  
26 (B) participation in Choices or Supplemental Nutrition Assistance Program  
27 Employment and Training (SNAP E&T) activities; or

28  
29 (C) engaging in job search at the time of eligibility determination or  
30 redetermination as described in §809.56 of this chapter.

31  
32 **SUBCHAPTER B. GENERAL MANAGEMENT**

33  
34 **§809.13. Board Policies for Child Care Services.**

35  
36 (a) A Board shall develop, adopt, and modify its policies for the design and management  
37 of the delivery of child care services in a public process in accordance with Chapter  
38 802 of this title.

39  
40 (b) A Board shall maintain written copies of the policies that are required by federal and  
41 state law, or as required under this chapter~~requested by the Commission~~, and make  
42 such policies available to the Commission and the public upon request.

43  
44 ~~(c) At a minimum, a Board shall develop policies related to:~~

45  
46 ~~(1) how the Board determines that the parent is making progress toward successful~~

1 ~~completion of a job training or educational program, as described in §809.2(1)~~  
2 ~~of this chapter;~~

3  
4 ~~(2) maintenance of a waiting list, as described in §809.18(b) of this subchapter;~~

5  
6 ~~(3) assessment of a parent share of cost, as described in §809.19(a)(1) of this~~  
7 ~~subchapter, including:~~

8  
9 ~~(A) provisions for a parent's failure to pay the parent share of cost, including~~  
10 ~~the reimbursement of providers, as a program violation that is subject to~~  
11 ~~early termination of child care services within a 12-month eligibility~~  
12 ~~period; and~~

13  
14 ~~(B) criteria for determining the affordability of the parent share of cost, as~~  
15 ~~described in §809.19(d) and (e) of this subchapter;~~

16  
17 ~~(4) maximum reimbursement rates, as provided in §809.20 of this subchapter,~~  
18 ~~including policies related to reimbursement of providers that offer~~  
19 ~~transportation;~~

20  
21 ~~(5) family income limits, as described in Subchapter C of this chapter (relating to~~  
22 ~~Eligibility for Child Care Services);~~

23  
24 ~~(6) provision of child care services to a child with disabilities under the age of 19,~~  
25 ~~as described in §809.41(a)(1)(B) of this chapter;~~

26  
27 ~~(7) minimum activity requirements for parents, as described in §809.48 and~~  
28 ~~§809.50 of this chapter;~~

29  
30 ~~(8) time limits for the provision of child care while the parent is attending an~~  
31 ~~educational program, as described in §809.41(b) of this chapter;~~

32  
33 ~~(9) Board priority groups, as described in §809.43(a) of this chapter;~~

34  
35 ~~(10) transfer of a child from one provider to another, as described in §809.71(3) of~~  
36 ~~this chapter, including a waiting period of two weeks before the effective date~~  
37 ~~of a transfer, except in cases in which the provider is subject to a CCL action,~~  
38 ~~as described in §809.94 of this chapter, or on a case-by-case basis by the~~  
39 ~~Board;~~

40  
41 ~~(11) providers charging the difference between their published rate and the Board's~~  
42 ~~reimbursement rate as provided in §809.92(d) of this chapter;~~

43  
44 ~~(12) procedures for fraud fact finding as provided in §809.111 of this chapter;~~

45  
46 ~~(13) policies and procedures to ensure that appropriate corrective actions are taken~~

1 ~~against a provider or parent for violations of the automated attendance~~  
2 ~~requirements specified in §809.115(d) and (e) of this chapter;~~

3  
4 ~~(14) policies and procedures for contracted slots agreements as described in~~  
5 ~~§809.96 of this chapter, if the Board opts to enter into such agreements; and~~

6  
7 ~~(15) supporting direct referrals from recognized pre-K or HS/EHS partnerships, as~~  
8 ~~described in §809.22 of this subchapter.~~

9  
10 **§809.14. Coordination of Child Care Services.**

11  
12 (a) A Board shall coordinate with federal, state, and local child care and early  
13 development programs and representatives of local governments in developing its  
14 Board plan and policies for the design and management of the delivery of child care  
15 services, and shall maintain written documentation of its coordination efforts.

16  
17 (b) Pursuant to Texas Education Code, §29.158, and in a manner consistent with federal  
18 law and regulations, a Board shall coordinate with school districts, Head Start, and  
19 Early Head Start program providers to ensure, to the greatest extent practicable, that  
20 full-day, full-year child care is available to meet the needs of low-income parents  
21 who are working or attending a job training or educational program.

22  
23 (c) Pursuant to Texas Labor Code, §302.00436, a Board shall inform the local school  
24 districts and open-enrollment charter schools in the Board's workforce area regarding  
25 opportunities to partner with child care providers in the Board's area to expand  
26 access to and provide facilities for prekindergarten (pre-K) programs.

27  
28 **§809.15. Promoting Consumer Education.**

29  
30 (a) A Board shall promote informed child care choices by providing consumer education  
31 information to:

- 32  
33 (1) parents who are eligible for child care services;  
34  
35 (2) parents who are placed on a Board's waiting list;  
36  
37 (3) parents who are no longer eligible for child care services; and  
38  
39 (4) applicants who are not eligible for child care services.

40  
41 (b) The consumer education information, including consumer education information  
42 provided through a Board's website, shall contain, at a minimum:

- 43  
44 (1) information about the Texas Information and Referral Network/2-1-1 Texas  
45 (2-1-1 Texas) information and referral system;

- 1 (2) the website and telephone number of ~~CCRECL~~ so parents may obtain health  
2 and safety requirements including information on:  
3  
4 (A) the prevention and control of infectious diseases (including  
5 immunizations);  
6  
7 (B) building and physical premises safety;  
8  
9 (C) minimum health and safety training appropriate to the provider setting;  
10 and  
11  
12 (D) the regulatory compliance history of child care providers;  
13  
14 (3) a description of the full range of eligible child care providers set forth in  
15 §809.91 [of this chapter](#); and  
16  
17 (4) a description of programs available in the workforce area relating to school  
18 readiness and quality rating systems, including:  
19  
20 (A) Texas Rising Star (TRS) Provider criteria, pursuant to Texas  
21 Government Code, §2308.315; and  
22  
23 (B) integrated school readiness models, pursuant to Texas Education Code,  
24 §29.160;  
25  
26 (5) a list of child care providers that meet quality indicators, pursuant to Texas  
27 Government Code, §2308.3171;  
28  
29 (6) information on existing resources and services available in the workforce area  
30 for conducting developmental screenings and providing referrals to services  
31 when appropriate for children eligible for child care services, including the use  
32 of:  
33  
34 (A) the Early and Periodic Screening, Diagnosis, and Treatment program  
35 under 42 USC 1396 et seq.; and  
36  
37 (B) developmental screening services available under Part B and Part C of  
38 the Individuals with Disabilities Education Act (20 USC 1419, 1431 et  
39 seq.; and  
40  
41 (7) a link to the Agency's designated child care consumer education website.  
42  
43 (c) A Board shall cooperate with HHSC to provide 2-1-1 Texas with information, as  
44 determined by HHSC, for inclusion in the statewide information and referral  
45 network.  
46

1       **§809.16. Quality Improvement Activities.**  
2

3       (a) Child care funds allocated by the Commission pursuant to its allocation rules  
4       (generally, Chapter 800, Subchapter B of this title (relating to Allocations), and  
5       specifically §800.58 of this title (relating to Child Care)), including local public  
6       transferred funds and local private donated funds, as provided in §809.17 of this  
7       subchapter, to the extent they are used for nondirect care quality improvement  
8       activities, ~~shall~~ may be expended in accordance with ~~45 CFR Part 98, §98.53, any~~  
9       ~~applicable state laws, and~~ the CCDF State Plan.

10  
11       (b) Boards must ensure compliance with 45 CFR Part 98 regarding construction  
12       expenditures, as follows:

13  
14       (1) State and local agencies and nonsectarian agencies or organizations.

15  
16               (A) Funds shall not be expended for the purchase or improvement of land, or  
17               for the purchase, construction, or permanent improvement of any  
18               building or facility.

19  
20               (B) Funds may be expended for minor remodeling, and for upgrading child  
21               care facilities to ensure that providers meet state and local child care  
22               standards, including applicable health and safety requirements.

23  
24       (2) Sectarian agencies or organizations.

25  
26               (A) The prohibitions in paragraph (1) of this subsection apply.

27  
28               (B) Funds may be expended for minor remodeling only if necessary to bring  
29               the facility into compliance with the health and safety requirements  
30               established pursuant to 45 CFR Part 98.

31  
32       (c) Expenditures certified by a public entity, as provided in ~~§809.17~~ ~~§809.17(b)(3)~~ of this  
33       subchapter, may include expenditures for any quality improvement activity described  
34       in 45 CFR Part 98.  
35

36       **§809.18. Maintenance of a Waiting List.**  
37

38       (a) The following provisions are effective prior to October 1, 2023:  
39

40       (1)(a) A Board shall ensure that a list of parents and children waiting for child care  
41       services, because of the lack of funding or lack of providers, is maintained and  
42       available to the Commission upon request.

43  
44       (2)(b) A Board shall establish a policy for the maintenance of a waiting list that  
45       includes, at a minimum:  
46

1           (A)(1) the process for determining that the parent is potentially eligible for  
2           child care services before placing the parent on the waiting list; and  
3

4           (B)(2) the frequency in which the parent information is updated and  
5           maintained on the waiting list.  
6

7           (3)(e) A Board ~~shall~~ may exempt children from the waiting list who are directly  
8           referred from a recognized pre-K or Head Start/Early Head Start (HS/EHS)  
9           partnership as described in §809.22 of this ~~chapter~~ subchapter to a child care  
10          provider to receive services in the contracted partnership program, ~~which is~~  
11          subject to the availability of funding and the availability of subsidized slots at  
12          the partnership site.  
13

14          **(b) The following provisions are effective October 1, 2023:**

15  
16          (1) A Board shall ensure that a list of parents and children waiting for child care  
17          services, because of the lack of funding or lack of providers, is maintained and  
18          available to the Commission upon request.  
19

20          (2) A Board shall ensure that the child is potentially eligible for child care services  
21          prior to placing the child on the waiting list.  
22

23          (3) A Board shall exempt children from the waiting list who are directly referred  
24          from a recognized pre-K or HS/EHS partnership, as described in §809.22 of this  
25          chapter, to a child care provider to receive services in the contracted partnership  
26          program subject to the availability of funding and the availability of subsidized  
27          slots at the partnership site.  
28

29          (4) A Board shall contact the parent every three months and shall remove the child  
30          from the waiting list if the parent indicates that child care services are no longer  
31          required or does not respond to the Board regarding the continued need for child  
32          care services.  
33

34          **§809.19. Assessing the Parent Share of Cost.**

35  
36          **(a) The following provisions are effective prior to October 1, 2023:**

37  
38          (1)(a) For child care funds allocated by the Commission pursuant to its allocation  
39          rules (generally, Chapter 800, Subchapter B of this title (relating to  
40          Allocations), and specifically, §800.58 of this title (relating to Child Care)),  
41          including local public transferred funds and local private donated funds, as  
42          provided in §809.17 of this subchapter, the following shall apply:=-  
43

44          (A)(1) A Board shall set a parent share of cost policy that assesses the parent  
45          share of cost in a manner that results in the parent share of cost:  
46

1 (i)(A) being assessed to all parents, except in instances when an  
2 exemption under subparagraph (B) of this paragraph ~~(2) of this~~  
3 ~~subsection~~ applies;

4  
5 (ii)(B) being an amount determined by a sliding fee scale based on the  
6 family's size and gross monthly income, including a possible  
7 reexamination of the sliding fee scale if there are frequent  
8 terminations for lack of payment pursuant to paragraph (4) of this  
9 subsection ~~(e) of this section~~, which also may consider the number  
10 of children in care;

11  
12 (iii)(C) being an amount that is affordable and does not result in a  
13 barrier to families receiving assistance;

14  
15 (iv)(D) being assessed only at the following times:

16  
17 (I)(i) initial eligibility determination;

18  
19 (II)(ii) 12-month eligibility redetermination;

20  
21 (III)(iii) upon the addition of a child in care;

22  
23 (IV)(iv) upon a parent's report of a change in income, family  
24 size, or number of children in care that would result in a  
25 reduced parent share of cost assessment; and

26  
27 (V)(v) upon resumption of work, job training, or education  
28 activities following temporary changes described in  
29 §809.51(a)(2) of this chapter, and upon resumption of  
30 work, job training, or education activities during the three-  
31 month continuation of care period described in §809.51(c)  
32 of this chapter; and

33  
34 (v)(E) not increasing above the amount assessed at initial eligibility  
35 determination or at the 12-month eligibility redetermination based  
36 on the factor in clause (ii) of this subparagraph ~~(B) of this~~  
37 ~~paragraph~~, except upon the addition of a child in care as described  
38 in subclause (iv)(III) of this subparagraph ~~(D)(iii) of this~~  
39 ~~paragraph~~.

40  
41 (B)(2) Parents who are one or more of the following are exempt from paying  
42 the parent share of cost:

43  
44 (i)(A) Parents who are participating in Choices or who are in Choices  
45 child care described in §809.45 of this chapter;

1 (ii)(B) Parents who are participating in SNAP E&T services or who are  
2 in SNAP E&T child care described in §809.47 of this chapter;

3  
4 (iii)(C) Parents of a child receiving Child Care for Children  
5 Experiencing Homelessness as described in §809.52 of this  
6 chapter; or

7  
8 (iv)(D) Parents who have children who are receiving protective services  
9 child care pursuant to §809.49 and §809.54(c) of this chapter,  
10 unless DFPS assesses the parent share of cost.

11  
12 (C)(3) Teen parents who are not covered under exemptions listed in  
13 subparagraph (B) of this paragraph ~~(2) of this subsection~~ shall be  
14 assessed a parent share of cost. The teen parent's share of cost is based  
15 solely on the teen parent's income and size of the teen's family as defined  
16 in §809.2 of this chapter.

17  
18 ~~(b) For child care services funded from sources other than those specified in subsection~~  
19 ~~(a) of this section, a Board shall set a parent share of cost policy based on a sliding~~  
20 ~~fee scale. The sliding fee scale may be the same as or different from the provisions~~  
21 ~~contained in subsection (a) of this section.~~

22  
23 (2)(e) A Board shall establish a policy stating whether or not the Board will  
24 reimburse ~~regarding reimbursement of~~ providers when parents fail to pay the  
25 parent share of cost. If the Board does not reimburse providers under the  
26 adopted policy, the Board may establish a policy requiring the parent pay the  
27 provider before the family can be redetermined eligible for future child care  
28 services.

29  
30 (3)(d) A Board shall establish a policy regarding termination of child care services  
31 within a 12-month eligibility period when a parent fails to pay the parent share  
32 of cost. The Board's policy must include:

33  
34 (A)(1) a requirement to evaluate and document each family's financial  
35 situation for extenuating circumstances that may affect affordability of  
36 the assessed parent share of cost pursuant to subparagraph (B) of this  
37 paragraph ~~(2) of this subsection~~, and a possible temporary reduction  
38 pursuant to paragraph (5) of this subsection ~~(g) of this section~~ before the  
39 Board or its child care contractor may terminate care under this section;

40  
41 (B)(2) general criteria for determining affordability of a Board's parent share  
42 of cost, and a process to identify and assess the circumstances that may  
43 jeopardize a family's self-sufficiency under paragraph (5) of this  
44 subsection ~~(g) of this section~~;

45  
46 (C)(3) maintenance of a list of all terminations due to failure to pay the parent

1 share of cost, ~~including family size, income, family circumstances, and~~  
2 ~~the reason for termination~~, for use when conducting evaluations of  
3 affordability, as required under subparagraph (D) of this paragraph ~~(4) of~~  
4 ~~this subsection~~; and

5  
6 ~~(D)(4)~~ the Board's definition of what constitutes frequent terminations and its  
7 process for assessing the general affordability of the Board's parent share  
8 of cost schedule, pursuant to paragraph (4) of this subsection ~~(e) of this~~  
9 ~~section~~.

10  
11 ~~(4)(e)~~ A Board with frequent terminations of care for lack of payment of the parent  
12 share of cost must reexamine its sliding fee scale and adjust it to ensure that fees  
13 are not a barrier to assistance for families at certain income levels.

14  
15 ~~(f) A Board that does not have a policy to reimburse providers when parents fail to~~  
16 ~~pay the parent share of cost may establish a policy to require the parent to pay~~  
17 ~~the provider before the family can be redetermined eligible for future child care~~  
18 ~~services.~~

19  
20 ~~(5)(g)~~ The Board or its child care contractor may review the assessed parent share  
21 of cost for a possible temporary reduction if there are extenuating circumstances  
22 that jeopardize a family's self-sufficiency. The Board or its child care contractor  
23 may temporarily reduce the assessed parent share of cost if warranted by these  
24 circumstances. Following the temporary reduction, the parent share of cost  
25 amount immediately prior to the reduction shall be reinstated.

26  
27 ~~(6)(h)~~ If the parent is not covered by an exemption as specified in paragraph (1)(B)  
28 of this subsection ~~(a)(2) of this section~~, then the Board or its child care  
29 contractor shall not waive the assessed parent share of cost under any  
30 circumstances.

31  
32 ~~(7)(i)~~ If the parent share of cost, based on family income and family size, is  
33 calculated to be zero, then the Board or its child care contractor shall not charge  
34 the parent a minimum share of cost amount.

35  
36 ~~(8)(j)~~ A Board may establish a policy to reduce the parent share of cost amount  
37 assessed pursuant to paragraph (1)(A)(ii) of this subsection ~~(a)(1)(B) of this~~  
38 ~~section~~ upon the parent's selection of a Texas Rising Star--certified provider.  
39 Such Board policy shall ensure:

40  
41 ~~(A)(1)~~ that the parent continues~~continue~~ to receive the reduction if:

42  
43 ~~(i)(A)~~ the Texas Rising Star provider loses Texas Rising Star  
44 certification; or

45  
46 ~~(ii)(B)~~ the parent moves or changes employment within the workforce

1 area and no Texas Rising Star--certified providers are available  
2 to meet the needs of the parent's changed circumstances; and  
3

4 (B)(2) ~~that~~ the parent no longer receives the reduction if the parent  
5 voluntarily transfers the child from a Texas Rising Star--certified  
6 provider to a non-Texas Rising Star--certified provider.  
7

8 (9)(k) A Board may establish a policy to reduce the parent share of cost amount  
9 assessed pursuant to paragraph (1)(A)(ii) of this subsection ~~(a)(1)(B) of this~~  
10 ~~section~~ upon the child's referral for part-time or blended care. Such Board  
11 policy shall ensure that:  
12

13 (A)(1) the parent no longer receives the reduction if the referral is changed to  
14 full-time care; and  
15

16 (B)(2) a parent who qualifies for a reduction in parent share of cost for both  
17 selecting a Texas Rising Star--certified provider (as defined in paragraph  
18 (8) of this subsection ~~(j) of this section~~) and a child's part-time or blended  
19 care referral will receive the greater of the two discounts.  
20

21 (b) The following provisions are effective on October 1, 2023:  
22

23 (1) For child care funds allocated by the Commission pursuant to its allocation  
24 rules (generally, Chapter 800, Subchapter B of this title (relating to  
25 Allocations), and specifically, §800.58 of this title (relating to Child Care)),  
26 including local public transferred funds and local private donated funds, as  
27 provided in §809.17 of this subchapter, the following shall apply:  
28

29 (A) The parent share of cost shall be:  
30

31 (i) assessed to all parents, except in instances when an exemption under  
32 subparagraph (C) of this paragraph applies; and  
33

34 (ii) established by the Commission and determined by a sliding fee scale  
35 based on the family's size and gross monthly income determined in  
36 §809.44 of this chapter and as represented by a percentage of the  
37 state median income (SMI) up to 85 percent SMI.  
38

39 (B) A Board shall assess the parent share of cost in accordance with  
40 subparagraph (A)(ii) of this paragraph and in a manner that results in the  
41 parent share of cost:  
42

43 (i) being assessed only at the following times:  
44

45 (I) initial eligibility determination;  
46

1 (II) 12-month eligibility redetermination;

2  
3 (III) upon the addition of a child in care;

4  
5 (IV) upon a parent's report of a change in income, family size, or  
6 number of children in care that would result in a reduced parent  
7 share of cost assessment; and

8  
9 (V) upon resumption of work, job training, or education activities  
10 following temporary changes described in §809.51(a) of this  
11 chapter, and upon resumption of work, job training, or  
12 education activities during the three-month continuation of care  
13 period described in §809.51(c) of this chapter; and

14  
15 (ii) not increasing above the amount assessed at initial eligibility  
16 determination or at the 12-month eligibility redetermination, except  
17 upon the addition of a child in care as described in subclause (i)(III)  
18 of this subparagraph.

19  
20 (C) Parents who are one or more of the following are exempt from paying the  
21 parent share of cost:

22  
23 (i) Parents who are participating in Choices or who are in Choices child  
24 care described in §809.45 of this chapter;

25  
26 (ii) Parents who are participating in SNAP E&T services or who are in  
27 SNAP E&T child care described in §809.47 of this chapter;

28  
29 (iii) Parents of a child receiving Child Care for Children Experiencing  
30 Homelessness as described in §809.52 of this chapter; or

31  
32 (iv) Parents who have children who are receiving protective services  
33 child care pursuant to §809.49 and §809.54(c) of this chapter, unless  
34 DFPS assesses the parent share of cost.

35  
36 (D) Teen parents who are not covered under exemptions listed in subparagraph  
37 (C) of this paragraph shall be assessed a parent share of cost. The teen  
38 parent's share of cost is based solely on the teen parent's income and size  
39 of the teen's family as defined in §809.2 of this chapter.

40  
41 (2) A Board shall establish a policy stating whether or not the Board will  
42 reimburse providers when parents fail to pay the parent share of cost. If the  
43 Board does not reimburse providers under the adopted policy, the Board may  
44 establish a policy requiring the parent pay the provider before the family can  
45 be redetermined eligible for future child care services.

1 (3) A Board shall establish a policy regarding termination of child care services  
2 within a 12-month eligibility period when a parent fails to pay the parent share  
3 of cost. The Board's policy must include:

4  
5 (A) a requirement to evaluate and document each family's financial situation  
6 for extenuating circumstances that may affect affordability of the assessed  
7 parent share of cost pursuant to subparagraph (B) of this paragraph, and a  
8 possible temporary reduction pursuant to paragraph (4) of this subsection  
9 before the Board or its child care contractor may terminate care under this  
10 section;

11  
12 (B) a process to identify and assess the circumstances that may jeopardize a  
13 family's self-sufficiency under paragraph (4) of this subsection; and

14  
15 (C) maintenance of a list of all terminations due to failure to pay the parent  
16 share of cost.

17  
18 (4) The Board or its child care contractor may review the assessed parent share of  
19 cost for a possible temporary reduction if there are extenuating circumstances  
20 that jeopardize a family's self-sufficiency. The Board or its child care  
21 contractor may temporarily reduce the assessed parent share of cost if  
22 warranted by these circumstances. Following the temporary reduction, the  
23 parent share of cost amount immediately prior to the reduction shall be  
24 reinstated.

25  
26 (5) If the parent is not covered by an exemption as specified in paragraph (1)(C) of  
27 this subsection, then the Board or its child care contractor shall not waive the  
28 assessed parent share of cost under any circumstances.

29  
30 (6) If the parent share of cost, based on family income and family size, is  
31 calculated to be zero, then the Board or its child care contractor shall not  
32 charge the parent a minimum share of cost amount.

33  
34 (7) A Board may establish a policy to reduce the parent share of cost amount  
35 assessed pursuant to paragraph (1)(A) of this subsection upon the parent's  
36 selection of a Texas Rising Star--certified provider. Such Board policy shall  
37 ensure:

38  
39 (A) that the parent continues to receive the reduction if:

40  
41 (i) the Texas Rising Star provider loses Texas Rising Star certification;  
42 or

43  
44 (ii) the parent moves or changes employment within the workforce area  
45 and no Texas Rising Star--certified providers are available to meet  
46 the needs of the parent's changed circumstances; and

1  
2 (B) the parent no longer receives the reduction if the parent voluntarily  
3 transfers the child from a Texas Rising Star--certified provider to a non-  
4 Texas Rising Star--certified provider.

5  
6 (8) A Board may establish a policy to reduce the parent share of cost amount  
7 assessed pursuant to paragraph (1)(A) of this subsection upon the child's  
8 referral for part-time or blended care. Such Board policy shall ensure that:

9  
10 (A) the parent no longer receives the reduction if the referral is changed to  
11 full-time care; and

12  
13 (B) a parent who qualifies for a reduction in parent share of cost for both  
14 selecting a Texas Rising Star--certified provider (as defined in paragraph  
15 (7) of this subsection) and a child's part-time or blended care referral will  
16 receive the greater of the two discounts.

17  
18 **§809.20. Maximum Provider Reimbursement Rates.**

19  
20 (a) Based on local factors, including a market rate survey provided by the Commission,  
21 a Board shall establish maximum reimbursement rates for child care subsidies at or  
22 above a level established by the Commission to ensure that the rates provide equal  
23 access to child care in the local market and in a manner consistent with state and  
24 federal statutes and regulations governing child care. At a minimum, Boards shall  
25 establish reimbursement rates for full-day and part-day units of service, as described  
26 in §809.93(f) of this chapter, for the following:

27  
28 (1) Provider types:

29  
30 (A) Licensed child care centers, including before- or after-school programs  
31 and school-age programs, as defined by CCRCCL;

32  
33 (B) Licensed child care homes as defined by CCRCCL;

34  
35 (C) Registered child care homes as defined by CCRCCL; and

36  
37 (D) Relative child care providers as defined in §809.2 of this chapter.

38  
39 (2) Age groups in each provider type effective prior to October 1, 2023:

40  
41 (A) Infants age 0 to 17 months;

42  
43 (B) Toddlers age 18 to 35 months;

44  
45 (C) Preschool age children from 36 to 71 months; and  
46

1 (D) School-age children 72 months and older.

2  
3 (3) Age groups in each provider type effective October 1, 2023:

4  
5 (A) Infants ages 0 through 11 months;

6  
7 (B) Infants ages 12 through 17 months;

8  
9 (C) Toddlers ages 18 through 23 months;

10  
11 (D) Toddlers age 2 years;

12  
13 (E) Preschool age 3 years;

14  
15 (F) Preschool age 4 years;

16  
17 (G) Preschool age 5 years; and

18  
19 (H) School-age 6 years and older.

20  
21 (b) A Board shall establish enhanced reimbursement rates:

22  
23 (1) for all age groups at certified Texas Rising Star~~TRS~~ provider facilities; and

24  
25 (2) only for infant, toddler, and preschool-age children at child care providers that  
26 participate in integrated school readiness models for those age groups pursuant  
27 to Texas Education Code, §29.160.

28  
29 (c) The minimum enhanced reimbursement rates established under subsection (b) of this  
30 section shall be greater than the maximum rate established for providers not meeting  
31 the requirements of subsection (b) of this section for the same category of care up to,  
32 but not to exceed, the provider's published rate. The maximum rate must be at least:

33  
34 (1) 5 percent greater for a:

35  
36 (A) certified Two-Star~~2-Star Program~~ Provider; or

37  
38 (B) child care provider meeting the requirements of subsection (b)(2) of this  
39 section;

40  
41 (2) 7 percent greater for a certified Three-Star~~3-Star Program~~ Provider; and

42  
43 (3) 9 percent greater for a certified Four-Star~~4-Star Program~~ Provider.

44  
45 (d) Boards may establish a higher enhanced reimbursement rate than those specified in  
46 subsection (c) of this section for certified Texas Rising Star~~TRS~~ providers, as long as

1 there is a minimum 2 percentage point difference between each star level.

2  
3 (e) A Board or its child care contractor shall ensure that providers that are reimbursed  
4 for additional staff or equipment needed to assist in the care of a child with  
5 disabilities are paid a rate up to 190 percent of the provider's reimbursement rate for  
6 a child of that same age. The higher rate shall take into consideration the estimated  
7 cost of the additional staff or equipment needed by a child with disabilities. The  
8 Board shall ensure that a professional, who is familiar with assessing the needs of  
9 children with disabilities, certifies the need for the higher reimbursement rate  
10 described in this subsection.

11  
12 (f) The Board shall determine whether to reimburse providers that offer transportation as  
13 long as the combined total of the provider's published rate, plus the transportation  
14 rate, is subject to the maximum reimbursement rate established in subsection (a) of  
15 this section.

16  
17 (g) A Board may establish a higher enhanced reimbursement rate for nontraditional  
18 hours, as defined by the Board.

19  
20 **SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES**

21  
22 **§809.41. A Child's General Eligibility for Child Care Services.**

23  
24 (a) Except for a child receiving or needing protective services as described in §809.49 of  
25 this chapter, for a child to be eligible to receive child care services, at the time of  
26 eligibility determination or redetermination, a Board shall ensure that the child:

27  
28 (1) meets one of the following age requirements:

29  
30 (A) be under 13 years of age; or

31  
32 (B) ~~at the option of the Board,~~ be a child with disabilities under 19 years of  
33 age;

34  
35 (2) is a United States ~~U.S.~~ citizen or legal immigrant as determined under  
36 applicable federal laws, regulations, and guidelines; and

37  
38 (3) resides with:

39  
40 (A) a family within the Board's workforce area:

41  
42 (i) whose income does not exceed ~~the income limit established by the~~  
43 ~~Board, which income limit must not exceed~~ 85 percent of the state  
44 median income (SMI) for a family of the same size; and

45  
46 (ii) whose assets do not exceed \$1,000,000 as certified by a family

1 member; or

2  
3 (iii) that meets the definition of experiencing homelessness as defined in  
4 §809.2 of this chapter.

5  
6 (B) parents who require child care in order to work, including job search, or  
7 attend a job training or educational program; or

8  
9 (C) a person standing in loco parentis for the child while the child's parent is  
10 on military deployment and the deployed military parent's income does  
11 not exceed the limits set forth in subparagraph (A) of this paragraph.

12  
13 (b) ~~A. Notwithstanding the requirements set forth in subsection (c) of this section, a~~ Board  
14 shall ensure that ~~establish policies, including time limits, for the provision of~~ child  
15 care services while the parent is enrolled full-time in ~~attending~~ an educational  
16 program is provided for, but does not exceed, a cumulative total of 60 months.

17  
18 ~~(c) Time limits pursuant to subsection (b) of this section shall ensure the provision of~~  
19 ~~child care services for four years, if the eligible child's parent is enrolled in an~~  
20 ~~associate's degree program that will prepare the parent for a job in a high-growth,~~  
21 ~~high-demand occupation as determined by the Board.~~

22  
23 ~~(c)(d)~~ A Board may establish a policy to allow parents attending a program that leads to  
24 an undergraduate ~~a postsecondary~~ degree from an institution of higher education to be  
25 exempt from residing with the child as defined in §809.2 of this chapter.

26  
27 ~~(e) Boards that establish initial family income eligibility at a level less than 85 percent of~~  
28 ~~SMI must ensure that the family remains income-eligible for care after passing the~~  
29 ~~Board's initial income-eligibility limit.~~

30  
31 ~~(f) Unless otherwise specified, this subchapter applies only to child care services using~~  
32 ~~funds allocated pursuant to §800.58 of this title, including local public transferred~~  
33 ~~funds and local private-donated funds described in §809.17.~~

34  
35 **§809.42. Eligibility Verification, Determination, and Redetermination.**

36  
37 (a) A Board shall ensure that its child care contractor verifies all eligibility requirements  
38 for child care services prior to authorizing child care.

39  
40 (b) A Board shall ensure that eligibility for child care services shall be redetermined no  
41 sooner than 12 months following the initial determination or most recent  
42 redetermination, except for Child Care during Job Search as described in §809.56 of  
43 this chapter.

44  
45 **§809.44. Calculating Family Income.**

- 1 (a) For the purposes of determining family income and assessing the parent share of cost,  
2 Boards shall ensure that family income is calculated in accordance with Commission  
3 guidelines that:  
4
- 5 (1) take into account irregular fluctuations in earnings; and
  - 6
  - 7 (2) ensure that temporary increases in income, including temporary increases that  
8 result in monthly income exceeding 85 percent of SMI do not affect eligibility  
9 or parent share of cost.
- 10
- 11 (b) In accordance with Commission income calculation guidelines, Boards shall ensure  
12 that the following income sources are excluded from the family income:  
13
- 14 (1) Medicare, Medicaid, SNAP benefits, school meals, and housing assistance;
  - 15
  - 16 (2) Monthly monetary allowances provided to or for children of Vietnam veterans  
17 born with certain birth defects;
  - 18
  - 19 (3) Needs-based educational scholarships, grants, and loans; including financial  
20 assistance under Title IV of the Higher Education Act--Pell Grants, Federal  
21 Supplemental Educational Opportunity grants, Federal Work Study Program,  
22 PLUS, Stafford loans, and Perkins loans;
  - 23
  - 24 (4) Individual Development Account (IDA) withdrawals for the purchase of a  
25 home, medical expenses, or educational expenses;
  - 26
  - 27 (5) Tax refunds and tax credits ~~Onetime cash payments, including tax refunds,  
28 Earned Income Tax Credit (EITC) and Advanced EITC, onetime insurance  
29 payments, gifts, and lump sum inheritances;~~
  - 30
  - 31 (6) VISTA and AmeriCorps living allowances and stipends;
  - 32
  - 33 (7) Noncash or in-kind benefits such as employer-paid fringe benefits, food, or  
34 housing received in lieu of wages;
  - 35
  - 36 (8) Foster care payments and adoption assistance;
  - 37
  - 38 (9) Special military pay or allowances, including subsistence allowances, housing  
39 allowances, family separation allowances, or special allowances for duty  
40 subject to hostile fire or imminent danger;
  - 41
  - 42 (10) Income from a child in the household between 14 and 19 years of age who is  
43 attending school;
  - 44
  - 45 (11) Early withdrawals from qualified retirement accounts specified as hardship  
46 withdrawals as classified by the Internal Revenue Service (IRS);

- 1
- 2 (12) Unemployment compensation;
- 3
- 4 (13) Child support payments;
- 5
- 6 (14) Cash assistance payments, including Temporary Assistance for Needy
- 7 Families (TANF), Supplemental Security Income (SSI), Refugee Cash
- 8 Assistance, general assistance, emergency assistance, and general relief;
- 9
- 10 (15) Onetime income received in lieu of TANF cash assistance;
- 11
- 12 (16) Income earned by a veteran while on active military duty and certain other
- 13 veterans' benefits, such as compensation for service-connected death,
- 14 vocational rehabilitation, and education assistance;
- 15
- 16 (17) Regular payments from Social Security, such as Old-Age, and Survivors
- 17 Insurance Trust Fund;
- 18
- 19 (18) Lump sum payments received as assets in the sale of a house, in which the
- 20 assets are to be reinvested in the purchases of a new home (consistent with IRS
- 21 guidance);
- 22
- 23 (19) Payments received as the result of an automobile accident insurance settlement
- 24 that are being applied to the repair or replacement of an automobile; ~~and~~
- 25
- 26 (20) One-time cash payments, including insurance payments, gifts, and lump sum
- 27 inheritances; and
- 28
- 29 (21)~~(20)~~ Any income sources specifically excluded by federal law or regulation.
- 30
- 31 (c) Income that is not listed in subsection (b) of this section as excluded from income is
- 32 included as income.
- 33

#### 34 **§809.48. Transitional Child Care.**

- 35
- 36 (a) A parent is eligible for Transitional child care services if the parent:
- 37
- 38 (1) has been denied TANF and was employed at the time of TANF denial; or
- 39
- 40 (2) has been denied TANF within 30 days because of expiration of TANF time
- 41 limits; and
- 42
- 43 (3) requires child care to work or attend a job training or educational program for a
- 44 combination of at least an average of 25 hours per week for a single-parent
- 45 family or a total combined 50 hours per week for a dual~~two~~-parent family, ~~or a~~
- 46 ~~higher number of hours per week as established by a Board.~~

1  
2 ~~(b) Boards may establish an income eligibility limit for Transitional child care that is~~  
3 ~~higher than the eligibility limit for At Risk child care, pursuant to §809.50, provided~~  
4 ~~that the higher income limit does not exceed 85 percent of the state median income~~  
5 ~~for a family of the same size.~~

6  
7 ~~(b)(e)~~ For former TANF recipients who are employed when TANF is denied,  
8 Transitional child care shall be available for:

- 9  
10 (1) a period of up to 12 months from the effective date of the TANF denial; or  
11  
12 (2) a period of up to 18 months from the effective date of the TANF denial in the  
13 case of a former TANF recipient who was eligible for child caretaker  
14 exemptions pursuant to Texas Human Resources Code, §31.012(c) and  
15 voluntarily participates in the Choices program.

16  
17 ~~(c)(d)~~ A Board may allow a reduction to the requirement in subsection (a)(3) of this  
18 section if a parent's documented medical disability or need to care for a physically or  
19 mentally disabled family member prevents the parent from participating in work,  
20 education, or job training activities for the required hours per week.

21  
22 ~~(d)(e)~~ For purposes of meeting the education requirements stipulated in subsection  
23 (a)(3) of this section, the following shall apply:

- 24  
25 (1) each credit hour of ~~undergraduate~~~~postsecondary~~ education counts as three  
26 hours of education activity per week; and  
27  
28 (2) each credit hour of a condensed ~~undergraduate~~~~postsecondary~~ education course  
29 counts as six education activity hours per week.

30  
31 **§809.50. At-Risk Child Care.**

32  
33 (a) A parent is eligible for child care services under this section if at initial eligibility  
34 determination and at eligibility redetermination as described in §809.42 of this  
35 chapter:

- 36  
37 (1) the family income does not exceed the income limit ~~established by the Board~~  
38 ~~pursuant to §809.41 of this chapter~~~~§809.41(a)(3)(A)~~; and  
39  
40 (2) child care is required for the parent to work or attend a job training or  
41 educational program for a combination of at least an average of 25 hours per  
42 week for a single-parent family or a total combined 50 hours per week for a  
43 dual~~two~~-parent family, ~~or a higher number of hours per week as established by~~  
44 ~~the Board.~~

45  
46 (b) A Board may allow a reduction to the work, education, or job training activity

1 requirements in subsection (a)(2) of this section if a parent's documented medical  
2 disability or need to care for a physically or mentally disabled family member  
3 prevents the parent from participating in these activities for the required hours per  
4 week.

5  
6 (c) For purposes of meeting the education requirements stipulated in subsection (a)(2) of  
7 this section, the following shall apply:

8  
9 (1) each credit hour of ~~undergraduate~~~~postsecondary~~ education counts as three  
10 hours of education activity per week;

11  
12 (2) each credit hour of a condensed ~~undergraduate~~~~postsecondary~~ education course  
13 counts as six education activity hours per week; and

14  
15 (3) teen parents attending high school or the equivalent shall be considered as  
16 meeting the education requirements in subsection (a)(2) of this section.

17  
18 (d) When calculating income eligibility for a child with disabilities, a Board shall deduct  
19 the cost of the child's ongoing medical expenses from the family income.

20  
21 ~~(e) Boards may establish a higher income eligibility limit for teen parents than the~~  
22 ~~eligibility limit established pursuant to §809.41(a)(3)(A) provided that the higher~~  
23 ~~income limit does not exceed 85 percent of the state median income for a family of~~  
24 ~~the same size.~~

25  
26 ~~(e)(f)~~ A teen parent's family income is based solely on the teen parent's income and size  
27 of the teen's family as defined in §809.2 of this chapter~~§809.2(9)~~.

28  
29 ~~(g) Boards may establish a higher income eligibility limit for families with a child who is~~  
30 ~~enrolled in Head Start, Early Head Start, or public pre-K provided that the higher~~  
31 ~~income limit does not exceed 85 percent of the state median income for a family of~~  
32 ~~the same size.~~

33  
34 **§809.51. Child Care during Interruptions in Work, Education, or Job Training.**

35  
36 (a) Except for a child experiencing homelessness, as described in §809.52 of this  
37 chapter, and for child care during job search, as described in §809.56 of this chapter,  
38 if the child met all of the applicable eligibility requirements for child care services in  
39 this subchapter on the date of the most recent eligibility determination or  
40 redetermination, the child shall be considered to be eligible and will receive services  
41 during the 12-month eligibility period described in §809.42 of this chapter,  
42 regardless of any:

43  
44 (1) change in family income, if that family income does not exceed 85 percent of  
45 SMI for a family of the same size; or  
46

- 1 (2) temporary change in the ongoing status of the child's parent as working or  
2 attending a job training or education program. A temporary change shall  
3 include, at a minimum, any:  
4  
5 (A) time-limited absence from work for an employed parent for periods of  
6 family leave (including parental leave) or sick leave;  
7  
8 (B) interruption in work for a seasonal worker who is not working between  
9 regular industry work seasons;  
10  
11 (C) student holiday or breaks within a semester, between the fall and spring  
12 semesters, or between the spring and fall semesters, for a parent  
13 participating in training or education;  
14  
15 (D) reduction in work, training, or education hours, as long as the parent is  
16 still working or attending a training or education program;  
17  
18 (E) other cessation of work or attendance in a training or education program  
19 that does not exceed three months;  
20  
21 (F) change in age, including turning 13 years old or a child with disabilities  
22 turning 19 years old during the eligibility period; and  
23  
24 (G) change in residency within the state.

25  
26 (b) During the period of time between eligibility redeterminations, a Board shall  
27 discontinue child care services due to a parent's loss of work or cessation of  
28 attendance at a job training or educational program that does not constitute a  
29 temporary change in accordance with subsection (a)(2) of this section. However,  
30 Boards must ensure that care continues at the same level for a period of not less than  
31 three months after such loss of work or cessation of attendance at a job training or  
32 educational program.  
33

34 (c) If a parent resumes work or attendance at a job training or education program at any  
35 level and at any time during the period described in subsection (b) of this section,  
36 then the Board shall ensure that:  
37

- 38 (1) care will continue to the end of the 12-month eligibility period at the same or  
39 greater level, depending upon any increase in the activity hours of the parent;  
40  
41 (2) the parent share of cost will not be increased during the remainder of the 12-  
42 month eligibility period, including for parents who are exempt from the parent  
43 share of cost pursuant to §809.19 [of this chapter](#); and  
44  
45 (3) the Board's child care contractor verifies only:  
46

- (A) that the family income does not exceed 85 percent of 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.

**§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 of this chapter](#)~~§809.78(a)~~; or
- (2) nonpayment of parent share of cost pursuant to a Board's established policy under [§809.19 of this chapter](#)~~§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.

**§809.56. Child Care during Initial Job Search.**

(a) A parent, including a parent in a dual-parent family, is eligible for child care services under this section if at initial eligibility determination the family does not meet the minimum participation requirements for At-Risk Child Care as described in §809.50 of this chapter.

(b) A Board shall allow parents to self-attest that the:

- (1) family meets the requirements of subsection (a) of this section; and
- (2) family income does not exceed 85 percent of the state median income.

(c) Child care under this section is limited to an initial three-month job search period. If total activity participation of at least 25 hours for a single-parent family or a total combined 50 hours per week for dual-parent families, which must include at minimum of 12 hours in employment for a single-parent family and a total combined

1 25 hours in employment for a dual-parent family, are met within the initial three  
2 months, eligibility will continue for a total of 12 months, inclusive of the care  
3 provided during the initial job search period. If the family does not meet minimum  
4 activity requirements under this subsection within three months, care must be  
5 terminated.

6  
7 (d) For child care during the initial three-month job search period, the follow applies  
8 regarding the parent share of cost:

9  
10 (1) A Board shall initially assess the parent share of cost at the highest amount  
11 based on the family size and number of children in care.

12  
13 (2) The initially assessed amount will immediately be temporarily reduced to zero.  
14 This provision also applies to dual-parent families in which one parent is  
15 employed but the family meets the requirements in subsection (a) of this  
16 section for child care during initial job search.

17  
18 (3) If the parent begins to meet participation requirements of subsection (c) of this  
19 section within or by the end of the three-month job search period, the parent  
20 share of cost shall be reinstated at the initially assessed amount or the amount  
21 based on the actual family income, whichever is lower.

22  
23 (e) Eligibility for child care under this section is limited to one initial three-month job  
24 search period per family within a 12-month period.

25  
26 (f) A Board shall ensure that the parent in child care for job search is registered with the  
27 state's labor exchange system and has access to appropriate services available  
28 through the one-stop delivery network described in §801.28 of this title.

29  
30 **SUBCHAPTER D. PARENT RIGHTS AND RESPONSIBILITIES**

31  
32 **§809.71. Parent Rights.**

33  
34 A Board shall ensure that the Board's child care contractor informs the parent in writing  
35 that the parent has the right to:

- 36  
37 (1) choose the type of child care provider that best suits their needs and to be  
38 informed of all child care options available to them as included in the  
39 consumer education information described in §809.15 of this chapter;  
40  
41 (2) visit available child care providers before making their choice of a child care  
42 option;  
43  
44 (3) receive assistance in choosing initial or additional child care referrals including  
45 information about the Board's policies regarding transferring children from one  
46 provider to another, which shall include a waiting period of two weeks before

1 [the effective date of a transfer, except in cases in which the provider is subject](#)  
2 [to a CCR action, as described in §809.94 of this chapter; when the transfer is](#)  
3 [authorized by CPS for a child in protective services; or on a case-by-case basis](#)  
4 [determined by the Board;](#)

- 5
- 6 (4) be informed of the Commission rules and Board policies related to providers  
7 charging parents [amounts above the assessed parent share of cost](#)~~the difference~~  
8 ~~between the Board's reimbursement and the provider's published rate~~ as  
9 described in [§809.92 of this chapter](#)~~§809.92(e)-(d)~~;
- 10
- 11 (5) be represented when applying for child care services;
- 12
- 13 (6) be notified of their eligibility to receive child care services within 20 calendar  
14 days from the day the Board's child care contractor receives all necessary  
15 documentation required to initially determine eligibility for child care;
- 16
- 17 (7) receive child care services regardless of race, color, national origin, age, sex,  
18 disability, political beliefs, or religion;
- 19
- 20 (8) have the Board and the Board's child care contractor treat information used to  
21 determine eligibility for child care services as confidential;
- 22
- 23 (9) receive written notification at least 15 calendar days before termination of  
24 child care services;
- 25
- 26 (10) reject an offer of child care services or voluntarily withdraw their child from  
27 child care, unless the child is in protective services;
- 28
- 29 (11) be informed of the possible consequences of rejecting or ending the child care  
30 that is offered;
- 31
- 32 (12) be informed of the eligibility documentation and reporting requirements  
33 described in §809.72 and §809.73 [of this chapter](#);
- 34
- 35 (13) be informed of the parent appeal rights described in §809.74 [of this chapter](#);
- 36
- 37 (14) be informed of required background and criminal history checks for relative  
38 child care providers through the listing process with [CCRECL](#) as described in  
39 [§809.91 of this chapter](#)~~§809.91(e)~~ before the parent or guardian selects the  
40 relative child care provider;
- 41
- 42 (15) receive written notification pursuant to [§809.78 of this chapter](#)~~§809.78(d)~~ of  
43 the possible termination of child care services for excessive absences, as  
44 described in [§809.78 of this chapter](#)~~§809.78(a)(1)~~; and
- 45
- 46 (16) receive written notification of possible termination of child care services for

1 failure to pay the parent share of cost, pursuant to [§809.19 of this](#)  
2 [chapter](#) ~~§809.19(d)~~.

3  
4 **§809.72. Parent Eligibility Documentation Requirements.**  
5

- 6 (a) [Parents shall provide the Board's child care contractor with all information necessary](#)  
7 [to determine initial eligibility according to the Board's administrative policies and](#)  
8 [procedures](#) ~~Except for a child experiencing homelessness pursuant to §809.52 at~~  
9 ~~initial eligibility~~, before a child can be initially determined or redetermined eligible  
10 for child care services and care authorized, [unless the child is experiencing](#)  
11 [homelessness pursuant to §809.52 of this chapter or receiving child care during](#)  
12 [initial job search pursuant to §809.56 of this chapter](#) ~~parents shall provide the Board's~~  
13 ~~child care contractor with all information necessary to determine eligibility~~  
14 ~~according to the Board's administrative policies and procedures.~~  
15  
16 (b) A parent's failure to submit eligibility documentation shall result in initial denial of  
17 child care services or termination of services at the 12-month eligibility  
18 redetermination period.  
19

20 **§809.73. Parent Reporting Requirements.**  
21

- 22 (a) Boards shall ensure that during the 12-month eligibility period [described in §809.41](#)  
23 [of this chapter, or during the three-month initial job search period and the subsequent](#)  
24 [eligibility period described in §809.56 of this chapter](#), parents are only required to  
25 report items that impact a family's eligibility or that enable the Board or Board  
26 contractor to contact the family or pay the provider.  
27  
28 (b) Pursuant to subsection (a) of this section, parents shall report to the child care  
29 contractor, within 14 calendar days of the occurrence, the following:  
30  
31 (1) Changes in family income or family size that would cause the family to exceed  
32 85 percent of SMI for a family of the same size;  
33  
34 (2) Changes in work or attendance at a job training or educational program not  
35 considered to be temporary changes, as described in §809.51 [of this chapter](#);  
36 and  
37  
38 (3) Any change in family residence, primary phone number, or e-mail (if  
39 available).  
40  
41 (c) Failure to report changes described in subsection (a) of this section may result in  
42 fact-finding for suspected fraud as described in Subchapter F of this chapter.  
43  
44 (d) A Board shall allow parents to report, and the child care contractor shall take  
45 appropriate action, regarding changes in:  
46

- 1 (1) income and family size, which may result in a reduction in the parent share of  
2 cost pursuant to §809.19 of this chapter; and  
3  
4 (2) work, job training, or education program participation that may result in an  
5 increase in the level of child care services.  
6

7 **§809.75. Child Care during Appeal.**

- 8  
9 (a) For a child currently enrolled in child care, a Board shall ensure that child care  
10 services continue during the appeal process until a decision is reached, if the parent  
11 requests a hearing.  
12  
13 (b) A Board shall ensure that child care does not continue during the appeal process if  
14 the child's enrollment is terminated due to excessive unexplained absences, pursuant  
15 to §809.78(a) of this chapter, or nonpayment of parent share of cost, pursuant to  
16 §809.19 of this chapter ~~§809.19(d)~~.  
17  
18 (c) The cost of providing services during the appeal process is subject to recovery from  
19 the parent by the Board; if the appeal decision is rendered against the parent.  
20

21 **§809.78. Attendance Standards and Notice and Reporting Requirements.**

- 22  
23 (a) A Board shall ensure that parents are notified of the following:  
24  
25 (1) Parents shall ensure that the eligible child attends on a regular basis consistent  
26 with the child's authorization for enrollment and attendance standards  
27 described in paragraph (2) of this subsection. Failure to meet attendance  
28 standards described in paragraph (2) of this subsection may result in  
29 termination for the child due to excessive unexplained absences pursuant to  
30 subsection (d) of this section.  
31  
32 (2) Meeting attendance standards for child care services consists of no more than  
33 40 total unexplained absences in a 12-month eligibility period.  
34  
35 (3) Unexplained absences may include:  
36  
37 (A) Any absence that is not due to a child's documented chronic illness or  
38 disability, or to a court-ordered custody or visitation agreement; or  
39  
40 (B) Any missed attendance recording that cannot be explained, except if the  
41 attendance reporting system is not available through no fault of the  
42 parent or provider. ~~or~~  
43  
44 ~~(C) Any denied or rejected attendance recording in which the parent does not~~  
45 ~~contact the Agency's Child Care Services unit to report the issue.~~  
46

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

4  
5 (5) Parents shall report attendance and absences and adhere to Agency procedures  
6 for reporting attendance and absences, including the use of the Agency's  
7 attendance reporting system ~~use the attendance card to report daily attendance~~  
8 ~~and absences.~~

9  
10 ~~(6) Parents shall not designate anyone under age 16 as a secondary cardholder,~~  
11 ~~unless the individual is a child's parent.~~

12  
13 ~~(7) Parents shall not designate the owner, assistant director, or director of the child~~  
14 ~~care facility as a secondary cardholder.~~

15  
16 ~~(8) Parents shall:~~

17  
18 ~~(A) ensure that the attendance card is not misused by secondary cardholders;~~

19  
20 ~~(B) inform secondary cardholders of the responsibilities for using the attendance~~  
21 ~~card;~~

22  
23 ~~(C) ensure that secondary cardholders comply with these responsibilities; and~~

24  
25 ~~(D) ensure the protection of attendance cards issued to them or secondary~~  
26 ~~cardholders.~~

27  
28 ~~(9) The parent or secondary cardholders giving the attendance card or the personal~~  
29 ~~identification number (PIN) to another person, including the child care~~  
30 ~~provider, is grounds for a potential fraud determination pursuant to Subchapter~~  
31 ~~F of this chapter.~~

32  
33 ~~(10) Parents shall report to the child care contractor instances in which a parent's~~  
34 ~~attempt to record attendance in the child care automated attendance system is~~  
35 ~~denied or rejected and cannot be corrected at the provider site. Failure to report~~  
36 ~~such instances may result in an unexplained absence counted toward the~~  
37 ~~attendance standards described in paragraphs (2) and (3) of this subsection.~~

38  
39 (b) Boards shall ensure that parents sign a written acknowledgment indicating their  
40 understanding of the attendance standards and reporting requirements at each of the  
41 following stages:

42  
43 (1) initial eligibility determination; and

44  
45 (2) each eligibility redetermination, as required in §809.42 of this chapter  
46 §809.42(b).

- 1  
2 (c) Boards shall ensure that absences due to a child's documented chronic illness or  
3 disability or court-ordered visitation are not counted in the number of unexplained  
4 absences in subsection (a)(2) and (3) of this section.  
5  
6 (d) Boards shall ensure that before terminating care pursuant to [subsection \(a\)\(1\) of this](#)  
7 [section §809.78\(a\)\(1\)](#), the child care contractor:  
8  
9 (1) provides written notice to the parent and the child care provider at reasonable  
10 times through established communication channels of the child's absences and  
11 the potential termination of services, at a minimum [as soon as practicable](#)  
12 ~~after when a~~ child reaches 15, and 30 general absences cumulatively within a  
13 12-month eligibility period; and  
14  
15 (2) documents that multiple attempts were made, as described in paragraph (1) of  
16 this subsection, to determine why the child is absent and to explain the  
17 importance of regular attendance.  
18  
19 (e) Where a child's enrollment has been ended by a provider in subsection (a)(4) of this  
20 section, Boards shall work with the parent to place the otherwise eligible child with  
21 another eligible provider.  
22

## 23 **SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE**

### 24 **§809.91. Minimum Requirements for Providers.**

- 25  
26 (a) A Board shall ensure that child care subsidies are paid only to:  
27  
28 (1) regulated child care providers as described in §809.2 of this chapter [meeting](#)  
29 [the Texas Rising Star requirements as a certified provider, or designated as an](#)  
30 [Entry Level provider for the prescribed time periods as described in §809.131](#)  
31 [of this chapter](#), ~~subject to the requirements in subsection (g) of this section~~;  
32  
33 (2) relative child care providers, as described in §809.2 of this chapter, subject to  
34 the requirements in subsection (e) of this section; or  
35  
36 (3) at the Board's option, child care providers licensed in a neighboring state,  
37 subject to the following requirements:  
38  
39 (A) Boards shall ensure that the Board's child care contractor reviews the  
40 licensing status of the out-of-state provider every month, at a minimum,  
41 to confirm the provider is meeting the minimum licensing standards of  
42 the state.  
43  
44 (B) Boards shall ensure that the out-of-state provider meets the requirements  
45 of the neighboring state to serve CCDF-subsidized children.  
46

1  
2 (C) The provider shall agree to comply with the requirements of this chapter  
3 and all Board policies and Board child care contractor procedures.  
4

5 (b) A Board shall not prohibit a relative child care provider that is listed with ~~CCRCCL~~  
6 and meets the minimum requirements of this section from being an eligible relative  
7 child care provider.  
8

9 (c) Except as provided by the criteria for Texas Rising Star Provider certification or  
10 designation, a Board or the Board's child care contractor shall not place requirements  
11 on regulated providers that:  
12

13 (1) exceed Entry Level~~Pre-Star~~ designation requirements or the state licensing  
14 requirements stipulated in Texas Human Resources Code, Chapter 42; or  
15

16 (2) have the effect of monitoring the provider for compliance with state licensing  
17 requirements stipulated in Texas Human Resources Code, Chapter 42.  
18

19 (d) When a Board or the Board's child care contractor, in the course of fulfilling its  
20 responsibilities, gains knowledge of any possible violation regarding regulatory  
21 standards, the Board or its child care contractor shall report the information to the  
22 appropriate regulatory agency.  
23

24 (e) For relative child care providers to be eligible for reimbursement for Commission-  
25 funded child care services, the following applies:  
26

27 (1) Relative child care providers shall list with ~~CCRCCL~~; however, pursuant to 45  
28 CFR §98.41(e), relative child care providers listed with ~~CCRCCL~~ shall be  
29 exempt from the health and safety requirements of 45 CFR §98.41(a).  
30

31 (2) A Board shall allow relative child care providers to care for a child in the  
32 child's home (in-home child care) only for the following:  
33

34 (A) A child with disabilities as defined in §809.2 of this chapter, and his or  
35 her siblings;  
36

37 (B) A child under 18 months of age and his or her siblings;  
38

39 (C) A child of a teen parent; and  
40

41 (D) When the parent's work schedule requires evening, overnight, or  
42 weekend child care in which taking the child outside of the child's home  
43 would be disruptive to the child.  
44

45 (3) A Board may allow relative in-home child care for circumstances in which the  
46 Board's child care contractor determines and documents that other child care

1 provider arrangements are not available in the community.

2  
3 (f) Boards shall ensure that subsidies are not paid for a child at the following child care  
4 providers:

5  
6 (1) Except for foster parents authorized by DFPS pursuant to §809.49 of this  
7 chapter, licensed child care centers, including before- or after-school programs  
8 and school-age programs, in which the parent or his or her spouse, including  
9 the child's parent or stepparent, is the director or assistant director, or has an  
10 ownership interest; or

11  
12 (2) Licensed, registered, or listed child care homes where the parent also works  
13 during the hours his or her child is in care.

14  
15 ~~(g) Regulated child care providers, except those operated and monitored by the US~~  
16 ~~military, must meet Pre-Star provider designation unless exempted under~~  
17 ~~requirements of subsection (h)(3) of this section.~~

18  
19 ~~(h) Pre-Star provider designations and exemptions are defined in the Commission-~~  
20 ~~approved CCDF State Plan and include:~~

21  
22 ~~(1) minimum Pre-Star criteria required for each provider type;~~

23  
24 ~~(2) a progressive statewide roll out plan to require Pre-Star designation for receipt~~  
25 ~~of subsidies; and~~

26  
27 ~~(3) limited provider exemption criteria to ensure parent choice is not negatively~~  
28 ~~impacted by the Pre-Star requirements.~~

29  
30 **§809.92. Provider Responsibilities and Reporting Requirements.**

31  
32 (a) A Board shall ensure that providers are given written notice of and agree to their  
33 responsibilities, reporting requirements, and requirements for reimbursement under  
34 this subchapter prior to enrolling a child.

35  
36 (b) Providers shall:

37  
38 (1) be responsible for collecting the parent share of cost as assessed under §809.19  
39 [of this chapter](#) before child care services are delivered;

40  
41 (2) be responsible for collecting other child care funds received by the parent as  
42 described in [§809.21 of this chapter](#) ~~§809.21(a)(2)~~;

43  
44 (3) report to the Board or the Board's child care contractor instances in which the  
45 parent fails to pay the parent share of cost; and  
46

1 (4) follow attendance reporting and tracking procedures required by the  
2 Commission under §809.95 of this chapter, the Board, or, if applicable, the  
3 Board's child care contractor.

4  
5 (c) Providers shall not charge more than~~the difference between the provider's published~~  
6 ~~rate and the amount of~~ the Board's reimbursement rate as determined under §809.21  
7 of this chapter to parents:

8  
9 (1) who are exempt from the parent share of cost assessment under §809.19 of this  
10 chapter; ~~§809.19(a)(2); or~~

11  
12 (2) whose parent share of cost is calculated to be zero pursuant to §809.19 of this  
13 chapter; ~~or §809.19(f).~~

14  
15 (3) parents in Child Care during Initial Job Search under §809.56 of this chapter  
16 during the initial three-month period.

17  
18 (d) A Board may develop a policy that allows~~prohibits~~ providers to charge parents more  
19 than the assessed parent share of cost in instances where ~~from charging the difference~~  
20 ~~between~~ the provider's published rate exceeds~~and the amount of~~ the Board's  
21 reimbursement rate (including the assessed parent share of cost) to all parents not  
22 included in subsection (c) of this section ~~eligible for child care services.~~

23  
24 (e) For Boards that allow providers to charge additional amounts pursuant to subsection  
25 (d) of this section, the Board must ensure the provider reports to the Board each  
26 month:

27  
28 (1) the specific families that were charged an additional amount above the assessed  
29 amount;

30  
31 (2) the frequency with which each family was charged; and

32  
33 (3) the amount of each additional charge.

34  
35 (f) Boards that develop a policy under subsection (d) of this section must:

36  
37 (1) provide the rationale for the Board's policy to allow providers to charge  
38 families additional amounts above the required copayment, including a  
39 demonstration of how the policy promotes affordability and access for  
40 families; and

41  
42 (2) describe the Board's analysis of the interaction between the additional amounts  
43 charged to families with the required parent share of cost and the ability of  
44 current reimbursement rates to provide access to care without additional fees.

45  
46 (g)~~(e)~~ Providers shall not deny a child care referral based on the parent's income status,

1 receipt of public assistance, or the child's protective service status.

2  
3 ~~(h)(f)~~ Providers shall not charge fees to a parent receiving child care subsidies that are  
4 not charged to a parent who is not receiving subsidies.

5  
6 **§809.93. Provider Reimbursement.**

- 7  
8 (a) A Board shall ensure that reimbursement for child care is paid only to the provider.  
9  
10 (b) A Board or its child care contractor shall reimburse a regulated provider based on a  
11 child's monthly enrollment authorization, excluding periods of suspension at the  
12 concurrence of the parent, as described in §809.51(d) of this chapter.  
13  
14 (c) A Board shall ensure that a relative child care provider is not reimbursed for days on  
15 which the child is absent.  
16  
17 (d) A relative child care provider shall not be reimbursed for more children than  
18 permitted by the ~~CCRCCL~~ minimum regulatory standards for Registered Child Care  
19 Homes. A Board may permit more children to be cared for by a relative child care  
20 provider on a case-by-case basis as determined by the Board.  
21  
22 (e) A Board shall not reimburse providers that are debarred from other state or federal  
23 programs unless and until the debarment is removed.  
24  
25 (f) Unless otherwise determined by the Board and approved by the Commission for  
26 automated reporting purposes, the monthly enrollment authorization described in  
27 subsection (b) of this section is based on the unit of service authorized, as follows:  
28  
29 (1) A full-day unit of service is 6 to 12 hours of care provided within a 24-hour  
30 period; ~~and~~  
31  
32 (2) A part-day unit of service is fewer than 6 hours of care provided within a 24-  
33 hour period; ~~and~~;  
34  
35 (3) A blended-day unit of service is for a child enrolled in a school program, pre-  
36 K, HS, or EHS in which child care is part-day with care provided occasionally  
37 on a full-day basis.  
38  
39 (g) A Board or its child care contractor shall ensure that providers are not paid for  
40 holding spaces open without a valid contracted slots agreement, as described in  
41 §809.96 of this ~~chapter~~subchapter.

42  
43 ~~(h) A Board or the Board's child care contractor shall not pay providers:~~

44  
45 ~~(1) less, when a child enrolled full time occasionally attends for a part day; or~~  
46

1 ~~(2) more, when a child enrolled part time occasionally attends for a full day.~~

2  
3 ~~(h)(+)~~ The Board or its child care contractor shall not reimburse a provider retroactively  
4 for new Board maximum reimbursement rates or new provider published rates.

5  
6 ~~(i)(+)~~ A Board or its child care contractor shall ensure that the parent's travel time to and  
7 from the child care facility and the parent's work, school, or job training site is  
8 included in determining the enrollment authorized ~~whether to authorize~~  
9 ~~reimbursement for full day or part day care~~ under subsection (f) of this section.

10  
11 (j) Effective October 1, 2023, a Board shall pay providers prospectively every two  
12 weeks based on the enrollment authorization described in subsection (b) of this  
13 section.

14  
15 **§809.94. Providers Placed on Corrective or Adverse Action by Child Care Regulation**  
16 **~~the Texas Department of Family and Protective Services.~~**

17  
18 (a) For a provider placed on probation corrective action (probationary status) by  
19 CCR ~~ECL~~, Boards shall ensure that:

20  
21 (1) parents with children in Commission-funded child care are notified in writing of  
22 the provider's probationary status no later than five business days after  
23 receiving notification from the Agency of CCR's ~~ECL's~~ decision to place the  
24 provider on probationary status; and

25  
26 (2) no new referrals are made to the provider while on probationary status.

27  
28 (b) A parent receiving notification of a provider's probationary status with CCR ~~ECL~~  
29 pursuant to subsection (a) of this section may transfer the child to another eligible  
30 provider without being subject to the Board transfer policies described in §809.71 of  
31 this chapter ~~§809.71(3)~~ if the parent requests the transfer within 14 calendar days of  
32 receiving such notification.

33  
34 (c) For a provider placed on probationary status by CCR ~~ECL~~, Boards shall ensure that  
35 the provider is not reimbursed at the Boards' enhanced reimbursement rates  
36 described in §809.20 while on probationary status.

37  
38 (d) For a provider against whom CCR ~~ECL~~ is taking adverse action, Boards shall ensure  
39 that:

40  
41 (1) parents with children enrolled in Commission-funded child care are notified no  
42 later than two business days after receiving notification from the Agency that  
43 CCR ~~ECL~~ intends to take adverse action against the provider;

44  
45 (2) children enrolled in Commission-funded child care with the provider are  
46 transferred to another eligible provider no later than five business days after

1 receiving notification from the Agency that ~~CCR~~CCL intends to take adverse  
2 action against the provider; and

- 3  
4 (3) no new referrals for Commission-funded child care are made to the provider  
5 while ~~CCR~~CCL is taking adverse action.  
6

7 ~~(e) For adverse actions in which CCL has determined that the provider poses an  
8 immediate risk to the health or safety of children and cannot operate pending appeal  
9 of the adverse action, but for which there is a valid court order that overturns CCL's  
10 determination and allows the provider to operate pending administrative review or  
11 appeal, Boards shall take action consistent with subsection (d) of this section.~~

12  
13 **§809.95. Provider Automated Attendance Agreement.**  
14

15 Boards shall notify providers of the following:

- 16  
17 (1) ~~The owner, director, assistant director, or other employees~~Employees of child  
18 care providers shall not:  
19

20 (A) possess, have on the premises, or otherwise have access to a parent's  
21 information to access the Agency's attendance system; ~~or the attendance~~  
22 ~~card of a parent or secondary cardholder;~~  
23

24 ~~(B) accept or use the attendance card or PIN of a parent or secondary~~  
25 ~~cardholder; or~~  
26

27 ~~(B)~~(C) perform the attendance or absence reporting function on behalf of the  
28 parent;  
29

30 ~~(2) The owner, director, or assistant director of a child care provider shall not be~~  
31 ~~designated as the secondary cardholder by a parent with a child enrolled with~~  
32 ~~the provider;~~  
33

34 ~~(2)~~(3) Providers shall report misuse of the Agency's automated attendance  
35 system~~attendance cards and PINs~~ to the Board or the Board's child care  
36 contractor; ~~and~~  
37

38 ~~(3)~~(4) Providers shall report to the child care contractor authorized days that do not  
39 match the referral in the Agency's automated attendance system within five  
40 days of receiving the authorization. Failure to report the discrepancy may  
41 result in withholding payment to the provider; ~~and~~;  
42

43 ~~(4)~~(5) Misuse of attendance reporting and violation of the requirements in this section  
44 are grounds for a potential fraud determination pursuant to Subchapter F of this  
45 chapter.  
46

1       **§809.96. Contracted Slots Agreements.**  
2

- 3       (a) In this section, the term "contracted slots agreement" is defined as a Board entering  
4           into a contract with a child care provider to reserve a specific number of places, or  
5           slots, for children participating in the child care subsidy program. This contract shall:  
6  
7           (1)   define the number of slots to be reserved by age group (infant, toddler,  
8               preschool, or school-age); and  
9  
10          (2)   meet the eligibility requirements as described in subsection (e) of this section.  
11  
12       (b) Boards may enter into a contracted slots agreement with providers that agree to  
13           provide subsidized child care services to eligible children residing in the Board's  
14           workforce area.  
15  
16       (c) A Board that enters into a contracted slots agreement shall include this strategy in  
17           the Board Plan, as described in §809.12 of this chapter.  
18  
19       (d) Each contract between a Board and a provider must identify the number of places  
20           (slots) to be reserved for children participating in the child care subsidy program.  
21  
22       (e) To be eligible for a contract, a child care provider must be a Texas Rising Star  
23           Three-Star or Four-Star~~3-star or 4-star~~ provider and meet one of the following  
24           priorities:  
25  
26           (1)   Be located in:  
27  
28               (A) a child care desert; or~~where the number of children under age six with~~  
29                 ~~working parents is at least three times greater than the capacity of~~  
30                 ~~licensed child care providers in the area, based on data published~~  
31                 ~~annually by the Commission; or~~  
32  
33               (B) ~~in~~ an underserved area that has been identified by a Board as having an  
34                 inadequate supply of child care in accordance with the parameters  
35                 described in the CCDF State Plan.  
36  
37           (2)   Have a recognized partnership with local school districts to provide pre-K  
38                 services;  
39  
40           (3)   Have a recognized partnership with EHS or HS;  
41  
42           (4)   Increase the number of places reserved for infants and toddlers by high-quality  
43                 child care providers; or  
44  
45           (5)   Satisfy a priority identified in the Board's plan, as described in §809.12 of this  
46                 chapter.

- 1
- 2 (f) A Board that enters into a contracted slots agreement may continue payment for
- 3 reserved slots during times of transition between the time that one child leaves the
- 4 program and another child is placed in the slot. The period of continued payment
- 5 shall adhere to the Board's policy for contracted slots agreements, ~~as described in~~
- 6 ~~§809.13(e)(14) of this chapter~~, and may not exceed one month following the month
- 7 of the vacancy.
- 8
- 9 (g) Except for children directly referred from recognized partnerships, as described in
- 10 §809.22 of this chapter, to fill open reserved slots, Boards shall contact families in
- 11 order of the Board's waiting list:
- 12
- 13 (1) that requested care in the ZIP code where the provider with the open reserved
- 14 slot is located; and
- 15
- 16 (2) whose child is in the age group for which a slot is available.
- 17
- 18 (h) In accordance with Commission guidelines, Boards that enter into contracted slots
- 19 agreements shall submit a report to the Commission within six months of entering
- 20 into a contract, determining the contract's effect on the:
- 21
- 22 (1) financial stability of providers participating in the contract;
- 23
- 24 (2) availability of high-quality child care options available to participants in the
- 25 Commission's subsidy program;
- 26
- 27 (3) number of high-quality providers in any part of the workforce area with a high
- 28 concentration of families that need child care;
- 29
- 30 (4) percentage of children participating in the Commission's subsidized child care
- 31 program at each Texas Rising Star provider in the workforce area; and
- 32
- 33 (5) additional information as requested by the Commission.
- 34
- 35 (i) A Board shall resubmit the report every ~~12~~<sup>12</sup> months from the due date of the
- 36 Board's initial report to the Commission.
- 37

38 **SUBCHAPTER F. FRAUD FACT-FINDING AND IMPROPER PAYMENTS**

39

40 **§809.112. Suspected Fraud.**

41

- 42 (a) A parent, provider, or any other person in a position to commit fraud may be
- 43 suspected of fraud if the person presents or causes to be presented to the Board or its
- 44 child care contractor one or more of the following items:
- 45
- 46 (1) A request for reimbursement in excess of the amount charged by the provider

1 for the child care; or

- 2
- 3 (2) A claim for child care services if evidence indicates that the person may have:
- 4
- 5 (A) known, or should have known, that child care services were not provided
- 6 as claimed;
- 7
- 8 (B) known, or should have known, that information provided is false or
- 9 fraudulent;
- 10
- 11 (C) received child care services during a period in which the parent or child
- 12 was not eligible for services;
- 13
- 14 (D) known, or should have known, that child care subsidies were provided to
- 15 a person not eligible to be a provider; or
- 16
- 17 (E) otherwise indicated that the person knew or should have known that the
- 18 actions were in violation of this chapter or state or federal statute or
- 19 regulations relating to child care services.
- 20

21 (b) The following parental actions may be grounds for suspected fraud and cause for

22 Boards to conduct fraud fact-finding or the Commission to initiate a fraud

23 investigation:

24

- 25 (1) Not reporting or falsely reporting at initial eligibility or at eligibility
- 26 redetermination:
- 27
- 28 (A) household composition, or income sources or amounts that would have
- 29 resulted in ineligibility or a higher parent share of cost; or
- 30
- 31 (B) work, training, or education hours that would have resulted in
- 32 ineligibility; or
- 33
- 34 (2) Not reporting during the 12-month eligibility period inclusive of the three-
- 35 month initial job search period, if applicable:
- 36
- 37 (A) changes in income or household composition that would cause the family
- 38 income to exceed 85 percent of SMI (taking into consideration
- 39 fluctuations of income); or
- 40
- 41 (B) a permanent loss of job or cessation of training or education that exceeds
- 42 three months; or
- 43
- 44 (C) improper or inaccurate reporting of attendance.
- 45

46 **§809.115. Corrective Adverse Actions.**

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46

- (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) 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 performs the attendance reporting function on behalf of a parent.
  - ~~(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~~

1 ~~(3) performs the attendance reporting function on behalf of a parent.~~

- 2  
3 (e) The Board shall develop policies and procedures to require the Board's child care  
4 contractor to take corrective action consistent with subsections (a) - (c) of this  
5 section against a parent when a parent violates the Commission rules and procedures  
6 related to attendance reporting. ~~or parent's secondary cardholder gives his or her:~~

7  
8 ~~(1) card to a provider; or~~

9  
10 ~~(2) PIN to a provider.~~

11  
12 **SUBCHAPTER G. TEXAS RISING STAR PROGRAM**

13  
14 **§809.130. Short Title and Purpose.**

- 15  
16 (a) The rules contained in this subchapter may be cited as the Texas Rising Star Program  
17 rules.
- 18  
19 (b) The purpose of the Texas Rising Star Program rules is to interpret and implement  
20 Texas Government Code, §2308.3155 ~~§2308.3155(b)~~, which requires the  
21 Commission to establish rules to administer the Texas Rising Star program,  
22 including guidelines for rating a child care provider for Texas Rising Star  
23 certification and designation of an Entry Level child care provider.
- 24  
25 (c) The Texas Rising Star Program rules identify the organizational structure and  
26 categories of, and the scoring factors that shall be included in, the Texas Rising Star  
27 guidelines.
- 28  
29 (d) The Texas Rising Star guidelines ~~for rating a child care provider~~ shall:
- 30  
31 (1) describe measures for ~~the~~ Texas Rising Star certification program that contain,  
32 at a minimum, measures for child care providers regarding:
- 33  
34 (A) director and staff qualifications and training;
- 35  
36 (B) teacher-child interactions;
- 37  
38 (C) program administration; and
- 39  
40 (D) indoor/outdoor environments;
- 41  
42 (2) specify measures that:
- 43  
44 (A) must be met in order for a provider to be certified at each star level; and
- 45  
46 (B) are observed and have points awarded through on-site assessments; ~~and~~

1  
2 (3) specify the scoring methodology and scoring thresholds for each certified star  
3 level; ~~and-~~

4  
5 (4) describe the high and medium-high CCR deficiencies points threshold pursuant  
6 to §809.131 of this chapter and the process for designating providers at the  
7 Entry Level.

8  
9 (e) The Texas Rising Star guidelines:

10  
11 (1) shall be reviewed and updated by the Commission at a minimum of every four  
12 years in conjunction with the rule review of ~~this chapter~~ ~~Chapter 809~~,  
13 conducted pursuant to Texas Government Code, §2001.039, and the Texas  
14 Rising Star guidelines review shall:

15  
16 (A) consider input from stakeholders; and

17  
18 (B) include at least one public hearing held prior to submitting the  
19 stakeholder input to the Commission;

20  
21 (2) shall be adopted by the Commission subject to the requirements of the Texas  
22 Open Meetings Act; and

23  
24 (3) may be reviewed and amended as determined necessary by the Commission in  
25 accordance with the requirements of the Texas Open Meetings Act.  
26

27 **§809.131. Requirements ~~Eligibility~~ for the Texas Rising Star Program.**

28  
29 (a) A regulated child care provider is eligible ~~to apply~~ for certification under the Texas  
30 Rising Star program if the provider has a current agreement to serve Commission-  
31 subsidized children and:

32  
33 (1) has a permanent (nonexpiring) license or registration from ~~CCRECL~~;

34  
35 (2) has at least 12 months of licensing history with ~~CCRECL~~, and is not on:

36  
37 (A) corrective action with a Board pursuant to Subchapter F of this chapter;

38  
39 (B) a "Notice of Freeze" with the Commission pursuant to Texas Labor  
40 Code, Chapter 213 (Enforcement of the Texas Unemployment  
41 Compensation Act) or Chapter 61 (Payment of Wages); or

42  
43 (C) corrective or adverse action with ~~CCRECL~~; and

44  
45 (3) meets the criteria for star-level certification in the Texas Rising Star guidelines  
46 pursuant to §809.130(d) of this subchapter ~~requirements to be designated as a~~

~~Pre-Star provider as specified in §802.2(18) of this chapter.~~

(4) has at minimum, a center director account~~and teaching staff~~ registered in the Texas Early Childhood Professional Development System Workforce Registry; or

(5) is regulated by and in good standing with the United States~~US~~ Military.

(b) Regulated child care providers not meeting the Texas Rising Star certification requirements described in this subchapter and established in the Texas Rising Star guidelines shall be initially designated as Entry Level if the child care provider:

(1) is not on corrective or adverse action with CCR; and

(2) does not exceed the points threshold for high and medium-high CCR deficiencies within the most recent 12-month period as established in the guidelines.

(c) A provider initially meeting the requirements in subsection (b) of this section is eligible for mentoring services through the Texas Rising Star program during the time periods described in subsections (d) - (f) of this section.

(d) A provider shall be initially designated as Entry Level for no more than 24 months unless approved for a waiver under subsection (f) of this section.

(e) An Entry Level provider will be reviewed for Texas Rising Star certification after the first 12 months of the 24-month period. If an Entry Level provider is not certified as Texas Rising Star after the first 12 months, the provider may receive up to two six-month extensions and:

(1) shall continue to receive new family referrals during the first six-month extension; and

(2) if a provider requires and receives a second six-month extension, shall not receive new family referrals during the second six-month extension.

(f) The Agency may approve a waiver of the time limit under subsection (d) of this section if the provider is:

(1) located in a child care desert or serves an underserved population as determined by the Agency;

(2) unable to meet the certification requirements due to a federal or state declared emergency/disaster; or

(3) unable to meet the certification requirements due to conditions that the Agency

determines are outside the provider's control.

(g) Waivers approved under subsection (f) of this section shall not exceed a total of 36 months.

**§809.132. Impacts~~Impact of Certain Deficiencies~~ on Texas Rising Star Certification.**

(a) A Texas Rising Star-certified~~Texas Rising Star~~ provider shall be placed on suspension status ~~lose Texas Rising Star certification~~ if the provider:

- (1) is placed on corrective action with a Board pursuant to Subchapter F of this chapter;
- (2) is under a "Notice of Freeze" with the Commission pursuant to Texas Labor Code, Chapter 213 ~~of the Texas Labor Code~~ (Enforcement of the Texas Unemployment Compensation Act) or Chapter 61 ~~of the Texas Labor Code~~ (Payment of Wages);
- (3) is placed on corrective or adverse action by CCRCCL ~~CCRCCL~~;
- (4) had 15 or more total high or medium-high weighted licensing deficiencies during the most recent 12-month licensing history;
- (5) had more than four probationary impacts during its three-year certification period;
- (6) had a consecutive third probationary impact; ~~or~~
- (7) is cited for specified CCRCCL ~~CCRCCL~~ minimum standards regarding weapons and ammunition; or

(8) is not meeting at least the Two-Star level due to non-compliance with Texas Rising Star guidelines at the most recent assessment of certification.

(b) Texas Rising Star-certified~~Texas Rising Star~~ providers with any of the specified "star level drop" licensing deficiencies listed in the Texas Rising Star guidelines during the most recent 12-month CCRCCL ~~CCRCCL~~ licensing history shall be placed on a six-month Texas Rising Star ~~program~~-probationary period. Furthermore:

- (1) reduction of one star level for each deficiency cited, so a Four-Star~~4-star~~ certified provider is reduced to a Three-Star~~3-star~~ provider-, a Three-Star~~3-star~~ provider is reduced to a Two-Star~~2-star~~ provider; or
- (2) a Two-Star~~2-star~~ provider is placed on suspension status~~loses certification~~.

(c) Texas Rising Star certified providers with any of the specified "probationary"

1 licensing deficiencies listed in the Texas Rising Star guidelines during the most  
2 recent 12-month ~~CCR~~~~ECL~~ licensing history shall be placed on a six-month Texas  
3 Rising Star probationary period. Furthermore:

4  
5 (1) Texas Rising Star providers on a six-month Texas Rising Star probationary  
6 period that are cited by ~~CCR~~~~ECL~~ for any additional specified probationary  
7 deficiencies within the probationary period shall be placed on a second,  
8 consecutive probation and lose a star level, with a ~~Two-Star~~~~2-star~~ certified  
9 provider ~~being placed on suspension status~~~~losing certification~~;

10  
11 (2) if ~~CCR~~~~ECL~~ does not cite any additional specified probationary deficiencies  
12 during the probationary period, the provider can be removed from probation  
13 status; and

14  
15 (3) if any additional specified probationary deficiencies are cited by ~~CCR~~~~ECL~~  
16 during the second probationary period, the Texas Rising Star provider shall ~~be~~  
17 ~~placed on suspension status~~~~lose certification~~.

18  
19 (d) ~~Texas Rising Star-certified~~~~Texas Rising Star~~ providers with 10 to 14 total high or  
20 medium-high weighted licensing deficiencies during the most recent 12-month  
21 ~~CCR~~~~ECL~~ licensing history shall be placed on a six-month Texas Rising Star  
22 program probationary period. Furthermore:

23  
24 (1) ~~Texas Rising Star-certified~~~~Texas Rising Star~~ providers on a six-month  
25 probationary period that are cited by ~~CCR~~~~ECL~~ within the probationary period  
26 for any additional high or medium-high weighted deficiencies shall be placed  
27 on a second, consecutive probation and lose a star level, with a ~~Two-Star~~~~2-star~~  
28 provider ~~being placed on suspension status~~~~losing certification~~;

29  
30 (2) if no additional high or medium-high weighted deficiencies are cited by  
31 ~~CCR~~~~ECL~~ during the probationary period, the provider can be removed from  
32 probation status; and

33  
34 (3) if any new high or medium-high weighted deficiencies--not to exceed 14 total  
35 deficiencies--are cited by ~~CCR~~~~ECL~~ during the second six-month probationary  
36 period, a provider shall ~~be placed on suspension status~~~~lose Texas Rising Star~~  
37 ~~certification~~.

38  
39 (e) ~~Certified providers not on suspension status~~~~Providers~~ losing a star level due to  
40 licensing deficiencies shall be reinstated at the former star level if no citations  
41 described in subsections (b) - (d) of this section occur within the six-month reduction  
42 time frame.

43  
44 (f) ~~Certified providers in suspension status~~~~Providers losing Texas Rising Star~~  
45 ~~certification~~ shall be eligible to ~~request a reassessment~~~~reapply for certification~~ after  
46 six months following the ~~suspension date~~~~loss of the certification~~, as long as no

1 deficiencies described in subsections (b) - (d) of this section are cited during the  
2 previous six months~~disqualification period~~.

3  
4 (g) Certified providers in suspension status shall achieve at least a Two-Star certification  
5 no later than 12 months following the suspension. Failure to achieve at least a Two-  
6 Star certification within the 12-month period will result in the provider's ineligibility  
7 to provide child care services under this chapter.

8  
9 (h) Certified providers on suspension status:

10  
11 (1) shall be eligible to provide child care services under this chapter as long as the  
12 provider meets at least the Entry Level criteria described in §809.131(b) of this  
13 chapter;

14  
15 (2) shall not be eligible for the enhanced reimbursement rate and shall be  
16 reimbursed at the Board's Entry Level reimbursement rate; and

17  
18 (3) the provider shall not be able to receive referrals from a new family during the  
19 last six months of the 12-month period, unless the provider is located in a child  
20 care desert or serves an underserved population, and is approved by the  
21 Agency to accept new family referrals.

22  
23 (i) Certified providers in suspension status that fail to achieve at least a Two-Star  
24 certification by the end the 12-month suspension period:

25  
26 (1) are not eligible to provide child care services under this chapter;

27  
28 (2) are not eligible for the Entry Level designation time frame described in  
29 §809.131(e) of this chapter;

30  
31 (3) are not eligible for the extension waiver described in §809.131(f) of this  
32 chapter; and

33  
34 (4) must subsequently meet at least a Two-Star certification eligibility and  
35 screening requirements to provide child care services under this subchapter.

36  
37  
38 **§809.133. Application and Assessments for ~~the~~ Texas Rising Star Certification~~Program~~.**

39  
40 (a) Texas Rising Star certification applicants must complete:

41  
42 (1) an orientation on the Texas Rising Star guidelines, including an overview of  
43 the:

44  
45 (A) Texas Rising Star program application process;

1 (B) Texas Rising Star program measures; and

2 (C) Texas Rising Star program assessment process;

3  
4  
5 (2) the creation of a continuous quality improvement plan; and

6  
7 (3) a Texas Rising Star program self-assessment tool.

8  
9 (b) The Agency's designated Texas Rising Star assessment entity ~~Boards~~ shall ensure  
10 that:

11  
12 (1) written acknowledgment of receipt of the application and self-assessment is  
13 sent to the provider;

14  
15 (2) within 20 days of receipt of the application, the provider is sent an estimated  
16 time frame for scheduling the initial assessment;

17  
18 (3) an assessment is conducted for any provider that meets the eligibility  
19 requirements in §809.131 of this subchapter and requests certification under~~to~~  
20 ~~participate in~~ the Texas Rising Star program; and

21  
22 (4) Texas Rising Star certification is granted for any provider that is assessed and  
23 verified as meeting the Texas Rising Star provider certification criteria set  
24 forth in the Texas Rising Star guidelines.

25  
26 (c) The Agency's designated Texas Rising Star assessment entity ~~Boards~~ shall ensure that  
27 Texas Rising Star certification assessments are conducted as follows:

28  
29 (1) On-site assessment of 100 percent of the provider classrooms at the initial  
30 assessment for Texas Rising Star certification and at each scheduled  
31 recertification; and

32  
33 (2) Recertification of all certified Texas Rising Star providers every three years.

34  
35 (d) The Agency's designated Texas Rising Star assessment entity ~~Boards~~ shall ensure that  
36 certified Texas Rising Star providers are monitored on an annual basis and the  
37 monitoring includes:

38  
39 (1) at least one unannounced on-site visit; and

40  
41 (2) a review of the provider's licensing compliance as described in §809.132 of  
42 this chapter~~subchapter~~.

43  
44 (e) The Agency's designated Texas Rising Star assessment entity ~~Boards~~ shall ensure  
45 compliance with the process and procedures in the Texas Rising Star guidelines for  
46 conducting assessments of nationally accredited child care facilities and child care

1 facilities regulated by the United States~~US~~ Military.

- 2
- 3 (f) The Agency's designated Texas Rising Star assessment entity~~Boards~~ shall ensure  
4 compliance with the process and procedures in the Texas Rising Star guidelines for  
5 conducting assessments of certified Texas Rising Star providers that have a change  
6 of ownership, move, or expand locations.
- 7
- 8 (g) Boards shall ensure compliance with the process and procedures in the Texas Rising  
9 Star guidelines for implementing and supporting a continuous quality improvement  
10 framework.

11

12 **§809.134. Minimum Qualifications for Texas Rising Star Staff.**

13

14 (a) Boards and the Agency's designated Texas Rising Star assessment entity shall ensure  
15 that Texas Rising Star staff:

16

17 (1) meets the background check requirement consistent with Chapter 745 of this  
18 title; and

19

20 (2) completes the Texas Rising Star standards training, as described in the Texas  
21 Rising Star guidelines.

22

23 ~~(b)(a)~~ Boards shall ensure that Texas Rising Star mentor staff ~~meets~~meet the minimum  
24 requirements in subsections (c) - (f)~~(b) - (e)~~ of this section.

25

26 ~~(c)(b)~~ Texas Rising Star mentor staff shall meet the minimum education requirements as  
27 follows:

28

29 (1) Bachelor's degree from an accredited four-year college or university in early  
30 childhood education, child development, special education, child psychology,  
31 educational psychology, elementary education, or family consumer science;

32

33 (2) Bachelor's degree from an accredited four-year college or university with at  
34 least 18 credit hours in early childhood education, child development, special  
35 education, child psychology, educational psychology, elementary education, or  
36 family consumer science with at least 12 credit hours in child development; or

37

38 (3) Associate's degree in early childhood education, child development, special  
39 education, child psychology, educational psychology, elementary education, or  
40 family consumer science, and with two years of suitable experience ~~as a~~  
41 ~~director in an early childhood education as determined by the Board program,~~  
42 ~~with preference given to experience with a provider that is accredited or Texas~~  
43 ~~Rising Star certified.~~

44

45 ~~(d)(e)~~ The Commission may grant a waiver of no more than two years to obtain the  
46 minimum education requirements in subsection (c)~~(b)~~ of this section if a Board can

1 demonstrate that no applicants in its workforce area meet the minimum education  
2 requirements.

3  
4 ~~(e)(d)~~ Texas Rising Star mentor staff shall meet the minimum work experience  
5 requirements of one year of full-time early childhood classroom experience in a child  
6 care, EHS, HS, or pre-K through third-grade school program.

7  
8 (f) All mentors must attain mentor microcredentialing, as described in the Texas Rising  
9 Star Guidelines.

10  
11 ~~(e) Texas Rising Star staff shall meet the background check requirement consistent with~~  
12 ~~Chapter 745 of this title.~~

13  
14 ~~(f) Texas Rising Star staff shall demonstrate:~~

15  
16 ~~(1) knowledge of best practices in early childhood education; and~~

17  
18 ~~(2) understanding of early childhood evaluations, observations, and assessment~~  
19 ~~tools for both teachers and children.~~

20  
21 (g) Agency's designated Texas Rising Star assessment entity shall ensure that Texas  
22 Rising Star staff shall attain and maintain the Texas Rising Star Assessor  
23 Certification, as described in the Texas Rising Star Guidelines~~meet the following~~  
24 ~~training and certification criteria:~~

25  
26 ~~(1) All staff must complete the Texas Rising Star standards training, as described~~  
27 ~~in the Texas Rising Star guidelines.~~

28  
29 ~~(2) All assessors must attain and maintain the Texas Rising Star Assessor~~  
30 ~~Certification, as described in the Texas Rising Star guidelines.~~

31  
32 ~~(3) All mentors must attain mentor micro-credentialing, as described in the Texas~~  
33 ~~Rising Star guidelines.~~

34  
35 **§809.135. Texas Rising Star ~~TRS~~ Process for Reconsideration.**

36  
37 The Agency's designated Texas Rising Star assessment entity ~~Boards~~ shall ensure a  
38 process for reconsideration of facility assessment ~~at the Board level~~ for Texas Rising Star  
39 certification ~~the TRS program~~. Texas Rising Star assessments are ~~The TRS program is~~ not  
40 subject to Chapter 823 of this title (relating to, ~~the~~ Integrated Complaints, Hearings, and  
41 Appeals) ~~rules~~.

42  
43 **§809.136. Roles and Responsibilities of Texas Rising Star Staff.**

44  
45 Boards and the Agency's designated Texas Rising Star assessment entity shall ensure that  
46 Texas Rising Star staff members comply with their assigned responsibilities, as

1 applicable.

- 2
- 3 (1) A mentor is defined as a Board or Board contract~~designated~~ staff member who  
4 helps providers obtain, maintain, or achieve higher star levels of certification.
- 5
- 6 (2) An assessor is defined as a ~~designated~~ staff member or contractor of the  
7 Agency's designated Texas Rising Star assessment entity who assesses and  
8 monitors providers that obtain, maintain, and achieve higher levels of quality.
- 9
- 10 (3) Dual-role staff is defined as an individual meeting the definitions of a mentor  
11 and assessor under this section~~designated staff members who assume the role~~  
12 ~~of the assessor and mentor.~~
- 13
- 14 (4) For dual-role staff~~If an individual performs the duties of both an assessor and a~~  
15 ~~mentor,~~ the Board and the Agency's designated Texas Rising Star assessment  
16 entity shall ensure that the individual providing Texas Rising Star mentoring  
17 services to a provider does not act as the assessor of that same provider when  
18 determining Texas Rising Star certification.
- 19
- 20 (5) Texas Rising Star staff members are required to complete annual professional  
21 development and continuing education consistent with the Texas Rising Star  
22 annual minimum training hours requirement for a Texas Rising Star--certified  
23 child care center director.
- 24
- 25 (6) Pursuant to~~Per the~~ Texas Family Code, §261.101, Texas Rising Star staff  
26 members are mandated reporters when observing serious incidents as described  
27 in the Texas Rising Star guidelines.