

## **Chapter 809 - Child Care and Development Rules**

The Texas Workforce Commission adopts the repeal of 809.1-809.4, 809.21-809.33, 809.41-809.48, 809.61-809.77, 809.81-809.93, 809.101-809.111, 809.121-809.124, and 809.141-809.155, regarding the Child Care and Development Program without changes to the proposed text published in the November 13, 1998, issue of the *Texas Register* (23 TexReg 11573).

Because of the number of amendments recently proposed to the Child Care Program rules, these changes are better facilitated by the repeal of the majority of the current rules and adoption of new rules. The preamble to the new adopted rules is incorporated herein by reference as it contains comments, responses and additional information related to the repeal as well as the new rules. The preamble to the new adopted rules is published in this same issue of the *Texas Register*.

### **Subchapter A. General Provisions**

The repeals are adopted under Texas Labor Code §§301.061 and 302.002 which provides the Commission with the authority to adopt, amend or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs, and under Texas Human Resources Code §§31.010, 31.0035 and 44.002.

§809.1. Short Title and Purpose.

§809.2. Definitions.

§809.3. Board Planning, Oversight and Evaluation of Child Care Services.

§809.4. Board Procedures for Developing Additional Requirements for Child Care Services.

### **Subchapter B. Contractor Requirements**

The repeals are adopted under Texas Labor Code §§301.061 and 302.002 which provides the Commission with the authority to adopt, amend or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs, and under Texas Human Resources Code §§31.010, 31.0035 and 44.002.

§809.21. Child Care Management Services (CCMS) Contractor.

§809.22. Child Care Management Services (CCMS) Staff Requirements.

§809.23. Administrative Requirements for Child Care Management Services (CCMS).

§809.24. Funding for Child Care Management Services (CCMS).

§809.25. Assessing Needs and Resources.

§809.26. Child Care Management Services (CCMS) Recruitment of Vendors.

§809.27. Child Care Management Services (CCMS) Contractor's Provision of Training and Technical Assistance to Vendors.

- §809.28. Required Forms.
- §809.29. Child Care Management Services (CCMS) Child Care Advisory Council.
- §809.30. Special Projects.
- §809.31. Requirements for Child Care Management Services (CCMS) Subcontracts.
- §809.32. Child Care Training.
- §809.33. Waiver Requests.

### **Subchapter C. Child Care Provider Requirements**

The repeals are adopted under Texas Labor Code §§301.061 and 302.002 which provides the Commission with the authority to adopt, amend or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs, and under Texas Human Resources Code §§31.010, 31.0035 and 44.002.

- §809.41. Self-Arranged Child Care.
- §809.42. Vendor Requirements.
- §809.43. Child Care Management Services (CCMS) Vendor Agreements and Vendor Manuals.
- §809.44. Amendments and Renewal of Vendor Agreements.
- §809.45. Vendor Collection of Assessed Parent Fees and Child Care Subsidies.
- §809.46. Attendance Requirements.
- §809.47. Parent Advisory Groups.
- §809.48. Commission Voluntary Program Criteria for Child Care Providers.

### **Subchapter D. Client Eligibility Requirements**

The repeals are adopted under Texas Labor Code §§301.061 and 302.002 which provides the Commission with the authority to adopt, amend or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs, and under Texas Human Resources Code §§31.010, 31.0035 and 44.002.

- §809.61. Basic Requirements to Obtain Child Care Services from the Child Care Management Services (CCMS) System.
- §809.62. Evaluation of a Parent's Need for Child Care.
- §809.63. Citizenship and Residency Requirements To Receive Child Care Services.
- §809.64. Child Care for Abused and Neglected Children.
- §809.65. Eligibility Criteria for Commission Funded Child Care Services.
- §809.66. Additional Transitional Child Care Eligibility Criteria.
- §809.67. Income Limits for Child Care Services.
- §809.68. Income Inclusions for Child Care Eligibility Determination.
- §809.69. Exceptions to Eligibility.
- §809.70. Temporary Assistance for Needy Families (TANF) Employment Services

Related Child Care During On-the-Job Training (OJT).

§809.71. Temporary Assistance for Needy Families (TANF) Employment Services Related Child Care While Waiting To Enter an Approved Initial Component of the Commission's Employment Program for TANF Recipients.

§809.72. Child Care During Employment, Education or Training Interruptions.

§809.73. Time Limits for Education or Training-Related Child Care.

§809.74. Sanctions and Penalties.

§809.75. Rights Of People Applying For And Receiving Child Care Services Through The Child Care Management Services (CCMS) System.

§809.76. Responsibilities of People Applying for and Receiving Child Care Services Through the Child Care Management Services (CCMS) System.

§809.77. Return of Eligibility Documents From Parents or Caretakers.

### **Subchapter E. Client Eligibility Process Requirements**

The repeals are adopted under Texas Labor Code §§301.061 and 302.002 which provides the Commission with the authority to adopt, amend or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs, and under Texas Human Resources Code §§31.010, 31.0035 and 44.002.

§809.81. Intake.

§809.82. Priority for Intake Services.

§809.83. Waiting Lists.

§809.84. Verification and Determination of Client Eligibility for Child Care Services.

§809.85. Redetermination of Eligibility for Child Care Services.

§809.86. Termination of Enrollment Due to Excessive Absences.

§809.87. Authorization of Child Care Services.

§809.88. Client Registration.

§809.89. Assessing Required Parent Fees.

§809.90. Reduction of Assessed Parent Fees.

§809.91. Parent Payments of Assessed Parent Fees and Child Care Subsidies.

§809.92. Inclusion Plan Requirements for Children with Disabilities.

§809.93. Texas Workforce Commission Applicant Child Care.

### **Subchapter F. Billing and Payment Requirements**

The repeals are adopted under Texas Labor Code §§301.061 and 302.002 which provides the Commission with the authority to adopt, amend or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs, and under Texas Human Resources Code §§31.010, 31.0035 and 44.002.

- §809.101. Child Care Management Services (CCMS) Vendor Payments.
- §809.102. Vendor Billing Requirements.
- §809.103. Units of Service in Child Care.
- §809.104. Vendor Payment Based on Child Care Enrollment.
- §809.105. Establishment of Maximum Reimbursement Rates.
- §809.106. Establishment of Individual Child Care Management Services (CCMS) Vendor Reimbursement Rates.
- §809.107. Vendor Reimbursement for Transportation.
- §809.108. Deduction of Parent Fees and Child Care Subsidies from Child Care Management Services (CCMS) Vendor Reimbursements.
- §809.109. Payment for Child Care Arranged by Parents.
- §809.110. Basis of Payment for Child Care Management Services (CCMS) Contractor Operations Expense.
- §809.111. Billing by a Child Care Management Services (CCMS) Contractor.

### **Subchapter G. Program Monitoring and Compliance Requirements**

The repeals are adopted under Texas Labor Code §§301.061 and 302.002 which provides the Commission with the authority to adopt, amend or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs, and under Texas Human Resources Code §§31.010, 31.0035 and 44.002.

- §809.121. Monitoring Program Compliance.
- §809.122. Audits of Child Care Management Services (CCMS) Contractors.
- §809.123. Responsibility of the Commission for Establishing Procedures for Quality Assurance (QA) Monitoring of Child Care Management Services (CCMS) Contractors and Recoupment Based on Quality Assurance Monitoring Findings.
- §809.124. Quality Assurance (QA) Performance Indicators and Standards.

### **Subchapter H. Corrective and Adverse Actions**

The repeals are adopted under Texas Labor Code §§301.061 and 302.002 which provides the Commission with the authority to adopt, amend or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs, and under Texas Human Resources Code §§31.010, 31.0035 and 44.002.

- §809.141. Contract Violations and Service Improvement Agreements.
- §809.142. Vendor Agreement Violations and Service Improvement Agreements (SIA).
- §809.143. Non-Compliance with Other State or Federal Programs.
- §809.144. Vendors Violating Minimum Licensing Standards.
- §809.145. Attendance over Licensed Capacity.

§809.146. Reapplication for Vendor Status after Termination or Nonrenewal of the Vendor Agreement.

§809.147. Responsibilities of the Child Care Management Services (CCMS) Contractor for Recovery of Overpayment for Child Care Services.

§809.148. Recovery of Funds Paid to a Vendor or Parent.

§809.149. Recoupment Methodology for Administrative Costs Based on Quality Assurance (QA) Findings.

§809.150. Responsibilities of the Child Care Management Services (CCMS) Contractor for Handling Suspected Fraud.

§809.151. Parent or Caretaker Fraud.

§809.152. Provider or Vendor Fraud.

§809.153. Consequences of Parent, Caretaker, Provider, or Vendor Fraud.

§809.154. Provision of Child Care Services During an Appeal.

§809.155. Local Reviews and Hearings.

The Texas Workforce Commission (Commission) proposes new §§809.1, 809.2, 809.4, 809.11-809.20, 809.41-809.49, 809.61, 809.62, 809.71-809.77, 809.91-809.93, 809.101-809.105, 809.121-809.124, 809.221-809.235, 809.251-809.253, 809.271-809.273, and 809.281-809.288, regarding the Child Care and Development Program.

New §§809.1, 809.14, 809.15, 809.41-809.44, 809.48, 809.49, 809.61, 809.62, 809.73, 809.92, 809.101, 809.102, 809.105, 809.123, 809.124, 809.221, 809.223-809.225, 809.228, 809.229, 809.231, 809.235, 809.271, 809.285 and 809.288 are adopted with changes to the proposed text as published in the November 13, 1998, issue of the *Texas Register* (23 TexReg 11580).

New §§809.227, 809.230 and 809.234 are withdrawn.

New §§ 809.2, 809.4, 809.11-809.13, 809.16-809.20, 809.45-809.47, 809.71, 809.72, 809.74-809.77, 809.91, 809.93, 809.103, 809.104, 809.121, 809.122, 809.222, 809.226, 809.232, 809.233, 809.251-809.253, 809.272, 809.273, 809.281-809.284, 809.286 and 809.287 are adopted without changes and will not be republished.

**Purpose:** The purpose of the rules is to fully integrate child care for low-income families with the system of workforce training and services under the administration of the local workforce development boards (Boards). Child care services are subsidized for families seeking to become independent of or who are at risk of becoming eligible for public assistance, either while parents are working or participating in educational or training activities. The revisions to the rules incorporate changes necessitated by the recently adopted federal regulations set forth in 45

Federal Register Parts 98 and 99 at page 39936 and provide flexibility for the Boards to fulfill their responsibilities in meeting the needs of parents and children residing in the local workforce development areas.

**Description of changes from the repealed rules to the adopted rules:** The majority of the changes can be described as modifications to incorporate more explicitly and specifically the Boards' role in the management of child care delivery. The changes allow the Boards more flexibility in tailoring delivery to best meet the needs of the residents and employers in the local workforce development areas. The Commission has previously set prescribed methods for compliance with federal and state statutes. The changes make it feasible for the Boards to develop procedures for administering child care services that best fit the local needs.

**Flexibility:** The level of state median income for eligibility has been changed to match the criteria contained in the federal regulations at 45 Federal Register Parts 98 and 99. The federal regulations set the income limit as that which does not exceed 85% of the state median income for a family of the same size. The Commission encourages the Boards to use the funds in the most effective manner to assist people transitioning off of public assistance or who are at risk of becoming dependent on public assistance, and the Boards may set a lower percentage for eligibility.

**Unchanged Rules:** Because of the number of amendments, these changes are being facilitated by repeal of the majority of the current rules and being proposed as new rules. Furthermore, reorganization of the eligibility rules makes them easier to read. The unchanged program rules listed below required no technical or substantive changes and remain applicable to the program:

§809.5. Child Care State Advisory Committee;

§809.78. Parent Responsibility Agreement;

§809.79. Parent Responsibility Agreement, Sanctions and Exceptions;

§809.171 - 809.174. Regarding Subchapter I, Child Care Training Center Pilot Programs; and

§809.201 - 809.205. Regarding Subchapter J, School-Linked Child Care Program.

**Program Goals:** Child Care services are provided to low-income families to create and promote long-term self-sufficiency by enabling parents to work, attend skills training for work, or increase educational levels by offering affordable, accessible, and quality child care that supports the physical, social, emotional, and intellectual

development and safety of children. Recognizing that parents best understand the needs of their children, these services empower parents to make informed choices regarding child care that best suits the family's needs. The Commission also advocates improvements in the availability, affordability, and quality of child care while supporting health, safety, licensing, and regulatory standards for child care providers.

**Board Responsibilities and Policy Development:** As the Boards have become operational, the need to integrate child care more fully with other workforce support services has become apparent. The chief elected officials of the local workforce development areas are required, through state law, to appoint to the Board a permanent child care representative with expertise in child care to address child care issues consistently. To assist the Boards in adapting to the increased flexibility provided under state law and rules, the Commission offers continued training to the Board members regarding child care services. In addition, a child care services manual will be available to assist the Boards in implementing these rules and making informed local decisions. The Boards must assess the need for child care in their individual local workforce development areas, tailor a unique plan for service delivery, and oversee the delivery of this vital support service to ensure families' steady transition to self-sufficiency. Further, the Boards must evaluate services provided to help low-income families as they move toward self-sufficiency by providing child care subsidies to parents to support work, training, or education. The Boards will manage the delivery of child care subject to the provisions of Texas Government Code, Chapter 2308 as implemented by the Commission through 40 TAC Chapter 801 relating to Local Workforce Development Boards.

In designing their plans for service delivery, the Boards must ensure access to child care services in their networks of one-stop centers. The Boards may choose to integrate intake and eligibility with the services handled by career center operators. Alternatively, they may choose to obtain separate contractors to perform the activities associated with eligibility determination. Telephone access at the career centers to intake and eligibility contractors will meet the law's requirements. Similarly, child care training may be incorporated within other contractors' activities or separated to be performed by a different contracting entity.

These revisions to the rules are intended to provide the Boards with maximum flexibility, in accordance with state and federal law and regulation, to design a service mechanism that will assist the greatest number of families in accessing the most affordable, quality child care in each local workforce development area. The Boards must establish individual policies on several subjects, ranging from absence policies to reimbursement rates. In their role as policymakers, the Boards are subject to all the requirements of the Texas Open Meetings Act, thus ensuring that parents, providers, contractors and potential contractors, employers, and the public in general will have

ample opportunity to participate and comment on proposed child care administrative policies.

The enhanced flexibility afforded to the Boards ensures that policies maximize the use of funds by tailoring the management of child care delivery to meet the specific needs of each local workforce development area. The Boards must incorporate into their service delivery plan procedures for implementing policies for child care delivery. Matters that will need to be addressed include, but are not limited to: parent co-payments, absence policies, eligibility verification procedures, service priorities, provider reimbursement rates, and other methods to utilize the funds in a manner to address the needs of the local workforce development area efficiently and effectively. Where applicable, the Boards must also develop the consequences and the procedures for reducing or ending care should the parent fail to uphold the eligibility and participation requirements. Some methods of developing these policies involve examining the past practices of the Commission, examining recommended best practices, or independently tailoring policies to meet local needs.

In developing these policies and plans for delivery of child care services, the Boards will seek input from the local entities as indicated in 45 Federal Register Parts 98 and 99. They will also follow the procedures for making changes to the Boards' strategic and operational plans consistent with Texas Government Code, Chapter 2803 and 40 TAC Chapter 801 relating to Local Workforce Development Boards.

**Information Management:** To ensure compliance with state and federal reporting requirements, the Commission anticipates continued use of a statewide automated system to manage the functions of client services, vendor and provider management, and financial management until alternative methods of managing information are developed and approved by the Commission.

**Effective Date:** The effective date of the rules in this Chapter 809 relating to Child Care and Development shall be twenty days after the date of filing the adoption in the Office of the Secretary of State; however, until September 1, 1999, the Boards shall continue to comply with the rules in effect on January 1, 1999.

In the period between January and September 1, 1999, the Boards are expected to receive training, set local policies, and submit a revised local plan for child care to the Commission to prepare to implement the new rules on September 1, 1999. The Commission is required to submit the revised State Plan to the U.S. Department of Health and Human Services by July 1, 1999; therefore, local policies should be developed and set in order for the Board policies to be incorporated into the State Plan by approximately April 15, 1999. The Commission expects to hold a public hearing regarding the State Plan in early June, 1999. This will provide the Boards with time to



exercise local discretion to design procedures for administering the services, procure contractors, as needed, and transition to their unique plan for delivery of child care services in each local workforce development area.

**Description and Purpose of New Rules:** Subchapter A contains rules regarding the general provisions applicable to the chapter. The purposes of §§809.1-809.2 and 809.4 are, respectively, to set forth the provisions relating to the following: the short title and purpose of the chapter, definitions applicable to the chapter, and waiver request procedures.

Subchapter B contains the Board responsibilities regarding child care. The purposes of §§809.11-809.20 are, respectively, to set forth the provisions relating to the following: Board responsibilities, Board policies and plans for child care services, ensuring parent choice, promoting consumer education, quality improvement activities, procurement, management of finances, information management and reporting requirements, performance standards, and local donations.

Subchapter C contains the rules regarding the requirements to provide child care. The purposes of §§809.41-809.49 are, respectively, to set forth the provisions regarding the following: the general requirements applicable to providers of child care, the minimum requirements for providers, provider agreements, provider general liability insurance requirements, collection of parent fees and subsidies, assessing parent fees, reduction of assessed parent fees, attendance tracking, and provider advisory groups.

Subchapter D contains the rules regarding the requirements for persons or entities providing self-arranged care. The purposes of §§809.61 and 809.62 are, respectively, to set forth the provisions regarding the qualifications to provide self-arranged care and the provisions regarding reimbursement for self-arranged care.

Subchapter E contains the rules regarding the provisions on parent rights and responsibilities. The purposes of §§809.71-809.77 are, respectively, to set forth the provisions regarding the following: parental choice, general parent rights, responsibilities regarding eligibility documentation, rights and responsibilities regarding enrollment agreements, parent reporting requirements, parent appeal rights, and a parent's right to withdraw or refuse care.

Subchapter F contains the rules regarding the general eligibility requirements for child care. The purposes of §§809.91-809.93 are, respectively, to set forth the provisions regarding applicable definitions, general eligibility requirements, and calculating income for determining eligibility.

Subchapter G contains the rules regarding the provisions for child care for children of people transitioning off public assistance. The purposes of §§809.101-809.105 are, respectively, to set forth the requirements relating to transitional child care, children of parents participating in the Choices Program, Texas Workforce Commission applicant child care, children of parents participating in the Food Stamps Employment and Training Program, and children receiving or needing protective services.

Subchapter H contains the rules regarding the provision of child care to children of parents at risk of becoming dependent on public assistance. The purposes of §§809.121-809.124 are, respectively, to set forth the requirements relating to children living in families with very low incomes, children with disabilities, children of teen parents, and children served by special projects.

Subchapter K contains the rules regarding funds management. The purposes of §§809.221-809.226, 809.228-809.229, 809.231-809.233, and 809.235 are, respectively, to set forth the provisions relating to the following: general funds management, effective utilization of funds, eligibility verification, custody and visitation arrangements, continuity of care, provider billing requirements, units of services of child care, provider payment based on child care enrollment, provider reimbursement rates, provider reimbursements for transportation, reduction of parent fees and child care subsidies, and billing.

Subchapter L contains the rules regarding fraud investigation. The purposes of §§809.251-253 are, respectively, to set forth the provisions relating to the following: general fraud investigation procedures, suspected fraud, and action to prevent or correct suspected fraud.

Subchapter M contains the rules regarding the appeal procedure. The purposes of §§809.271-809.273 are, respectively, to set forth the provisions relating to the following: child care during appeal, Board review, and appeals to the Commission.

Subchapter N contains the rules regarding corrective and adverse actions. The purposes of §§809.281-809.288 are, respectively, to set forth the provisions relating to the following: contractor agreement violations, provider agreement violations, corrective and adverse actions, noncompliance with other state or federal programs, reapplication for provider status after termination or nonrenewal of the provider agreement, recovery of overpayment, recovery of overpayment to a provider or parent, and failure to meet performance standards.

**Public Hearing:** The Commission held a public hearing on the proposed rules at 1:30 p.m. on November 20, 1998, in Room 644 of the Texas Workforce Commission Building at 101 East 15th Street in Austin, Texas.

The Commission received comments throughout the comment period as well as during the public hearing. The public comments on the rules were from two Texas state legislators, Boards, state agencies, providers, contractors, a private attorney, and two members of The State Child Care Advisory Committee. Some comments supported the rules, some were against the rules and others did not state whether they were for or against the rules. Several commenters expressed concerns and questions about the rules as proposed, and suggested changes.

The names of interested groups or associations that offered comments on the rules were as follows:

two Texas state legislators;  
Amarillo, Lubbock, and Odessa areas and Concho Valley Workforce Development Board;  
Capital Area Workforce Development Board;  
Coastal Bend Workforce Development Board;  
East Texas Workforce Development Board;  
Gulf Coast Workforce Development Board;  
North Central Texas Workforce Development Board;  
Southeast Texas Workforce Development Board;  
Tarrant County Workforce Development Board;  
West Central Texas Workforce Development Board; and

two members of The State Child Care Advisory Committee.

Other groups or associations, which commented included:  
Catholic Charities Diocese of Beaumont;  
Child Care, Inc., Wichita Falls;  
El Paso YWCA;  
The Child Care Group;  
East Texas Career Center Operator;  
Neighborhood Centers, Inc., Houston;  
Southeast Texas Regional Planning Commission; and  
West Texas Opportunities, Inc.

The following state agencies commented:  
The Child Care Licensing Division and Child Protective Services Division of the Texas Department of Protective and Regulatory Services (TDPRS); and  
The Texas Department of Human Services.

**As a result of comments, the following changes were made to the proposed text.**

**New §809.1 Short Title and Purpose.** Add: "(c) The effective date of the rules in this Chapter 809 relating to Child Care and Development shall be twenty days after the date of filing the adoption in the Office of the Secretary of State; however, until September 1, 1999, the Boards shall continue to comply with the rules in effect on January 1, 1999."

**New §809.14 Promoting Consumer Education.** Replace the language in (a) with the following: "(a) A Board shall make available to parents a consumer guide to child care providers who have Provider Agreements to provide Commission-funded child care in the local workforce development area and shall represent the name, address, and phone number of each provider and shall represent whether each provider:" Delete (a)(3) and renumber the paragraphs accordingly. Replace the language in (b) with the following: "(b) The consumer guide shall set forth the requirements to be licensed and registered with the Texas Department of Protective and Regulatory Services as set forth in Texas Human Resources Code, Chapter 42 and applicable administrative rules and a description of the types of facilities or homes, which may be licensed or registered including, but not limited to, the following: day-care centers, group day-care homes, and family homes." In (c), replace "list of providers" with "consumer guide," add "obtain or" after "may," and add at the end of the sentence "and check compliance history." In (d), replace "list of providers" with "consumer guide."

**New §809.15 Quality Improvement Activities.** In (c), add at the end of the sentence, "except the Boards may not provide loans." In (d)(1), replace "is" with "are."

**New §809.42 Minimum Requirements for Providers.** Delete (a)(3) and renumber accordingly. In (b), delete (b)(2), add "and" at the end of (b)(1); and change "(3)" to "(2)." Replace the language in (c) with the following: "(c) When a Board or the Board's contractor, in the course of fulfilling its responsibilities, gains knowledge of any possible violation regarding regulatory standards, the Board or its contractor shall report the information to the appropriate regulatory agency."

**New §809.44 Provider General Liability Insurance Requirements.** Replace the language in the section with the following: "The Boards shall determine whether general liability insurance, including transportation insurance, will be required of providers in their areas and, if so, the amount."

**New §809.48 Attendance Tracking.** Replace the language in (a) with the following: "(a) A Board shall set the attendance standards for eligible children in the local workforce development area, including provisions consistent with §809.224 of this Chapter (relating to Custody and Visitation Arrangements). Providers and self-arranged providers shall document and maintain a record of each child's attendance

and submit such documents to the Board's designated contractor upon request." In (c), add "in" after "result."

**New §809.49 Provider Advisory Groups.** Add "that are licensed centers," after "Providers."

**New §809.61 Qualification to Provide Self-Arranged Care.** In (d), add after the first sentence, "Boards may choose to not allow "listed" providers as self-arranged providers."

**New §809.62 Reimbursement for Self-Arranged Care.** Replace the language in the section with the following wording:

(a) A Board shall ensure that reimbursement for self-arranged care is paid:

(1) to the self-arranged provider; and

(2) after the Board or its contractor receives a complete Declaration of Services Statement (Declaration) verifying that services were rendered.

(b) The Declaration shall contain:

(1) the name, age, and identifying information of the child;

(2) the amount of care provided in terms of units of care;

(3) the rate of payment;

(4) the dates services were provided;

(5) the name and identifying information of the self-arranged provider, including the location where care is provided;

(6) verification by the self-arranged provider that the information submitted in the Declaration is correct; and

(7) additional information as may be required by the Boards.

**New §809.73 Eligibility Documentation.** In (a), delete everything after the first sentence. Delete (c).

**New §809.92 General Eligibility Requirements.** Replace the language in (c), including (c)(1) and (2), with the following: "For purposes of this chapter, child care

is needed to support participation in education for a limited time as determined by the Board."

**New §809.101. Transitional Child Care.** Rename the section "Transitional Child Care" and replace with the following language:

(a) A Board shall ensure that transitional child care services will be provided for children of parents who have been denied TANF because of:

(1) employment and an increase in earnings which results in being ineligible for TANF payments, or

(2) expiration of TANF time limits.

(b) Transitional child care is available for a period of up to 12 months except in the case of an exempt TANF client who voluntarily participates in the Choices program. For these individuals, transitional child care is available for a period up to 18 months.

(c) TANF clients who are not employed when TANF expires may receive up to 4 weeks of transitional child care, in order to allow these individuals to search for work.

(d) TANF clients who are engaged in an education or training component that extends beyond the date that TANF expires may receive transitional child care in order to complete the component.

**New §809.102. Children of Parents Participating in the Choices Program.** Delete (e).

**New §809.105. Children Receiving or Needing Protective Services.** Replace the title with "Children Receiving or Needing Protective Services." In (b), add "and funded" after "authorized." Add: "(c) In cases where the Child Protective Services (CPS) case is closed and child care will no longer be funded by Texas Department of Protective and Regulatory Services, the Board shall continue the child care by using other funding for the child care slot for up to six months after they are no longer eligible for Texas Department of Protective and Regulatory Services funds if the CPS worker or other Texas Department of Protective and Regulatory Services staff states that the child needs to receive protective services and child care is an integral factor of those services.

**New §809.123 Children of Teen Parents.** Replace the title with "Children of Teen Parents" and replace the language in (a) with the following: "(a) A teen parent (teen

is an individual 18 years of age or younger, or 19 years of age and attending high school or the equivalent, who has a child."

**New §809.221 General Funds Management.** Add "(a)" before the first paragraph and add: "(b) Children referred by Child Protective Services (CPS) workers, for which care shall be provided through Texas Department of Protective and Regulatory Services funds, shall also receive priority for available child care openings. When Texas Department of Protective and Regulatory Services funding stops and the CPS worker indicates that the child continues to need protective services, the Boards shall continue the child care using the Child Care and Development funds up to six months after they are no longer eligible for Texas Department of Protective and Regulatory Services funds, so long as the provision of care to the child does not result in another child being removed from care."

**New §809.223 Eligibility Verification.** Replace the language in (b) with the following: "(b) Eligibility for child care shall be redetermined: (1) any time there is a change in family income or other information that could affect eligibility to receive child care, and (2) on an established frequency, at the Board's discretion."

**New §809.224 Custody and Visitation Arrangements.** Replace the language in (b) with the following: "(b) A Board may encourage parents of other children to temporarily utilize the space the child under court-ordered custody or visitation arrangement has vacated until the child returns so that he or she can return to the same provider."

**New §809.225 Continuity of Care.** At the end of (a), add: "Children who no longer receive Texas Department of Protective and Regulatory Services funded care shall also continue receiving child care funded through the Commission if eligible to receive care based on other eligibility criteria or if the Texas Department of Protective and Regulatory Services or its CPS worker indicates that the child is in need of protective services."

**New §809.227 Provider Payments.** Delete the entire section.

**New §809.228 Units of Service of Child Care.** In (a), add to the beginning of the first sentence, "Unless otherwise determined by the Board and approved by the Commission for automated reporting purposes," and replace "The" with "the."

**New §809.229 Provider Payment Based on Child Care Enrollment.** Replace the language in (a) with the following: "(a) Enrollment in child care begins the first day the child is scheduled to attend child care as authorized by the contractor." Replace the language in (b) with the following: "(b) A Board or its contractor shall ensure that

providers are not paid for holding spaces open except as consistent with attendance policies as established by the Boards."

**New§809.230 Inclusion Assistance Rates.** The proposed section is deleted and the language will be incorporated into 809.231.

**New§809.231 Provider Reimbursement Rates.** The provisions regarding Inclusion Assistance Rates are added as (c) as follows:

(c) A Board or its contractor shall ensure that providers who are reimbursed for additional staff needed to assist in the care of a child with disabilities are paid a rate up to 190% of the provider's reimbursement rate for a child of that same age.

(1) The higher rate, which may be called an inclusion assistance rate, is an increased provider reimbursement rate to provide for additional staff to assist in the care of a child with disabilities, which shall take into consideration the estimated cost of the additional staff needed by a child with disabilities.

(2) The Board shall ensure that a professional, who is familiar with assessing the needs of children with disabilities, certifies the need for the inclusion assistance rate.

**New §809.234 Payment for Operating Expenses.** Delete the section.

**New §809.235 Billing.** Delete all except the first sentence of (a) and remove the "(a)."

**New §809.271 Child Care During Appeal.** In (b)(5), move the "or" to (b)(6), add "(7) non-payment of parent fees" and punctuate accordingly.

**New §809.285 Reapplication for Provider Status after Termination or Nonrenewal of the Provider Agreement.** Replace the language in (a) with the following: "(a) If a Provider Agreement has not been renewed or has been terminated for violations of the terms of the Provider Agreement, the provider shall wait for a period of time, to be determined by the Board, after the termination or nonrenewal date of the Provider Agreement before reapplying."

**New §809.288 Failure to Meet Performance Standards.** Delete (b) and (c) and remove the "(a)."

**New§§809.41 General Requirements, 809.43 Provider Agreements, 809.61 Qualifications to Provide Self-Arranged Care, and 809.124 Children Served by Special Projects.** Change "*Federal Register*" to "*Code of Federal Regulations*" because the new citations are appropriate and incorporate the amendments to Parts 98



and 99 published in the July 24 1998, issue of the *Federal Register* (63 FedReg 39936).

**Following each comment or group of related comments is the Commission's response.**

### **809.2 Definitions.**

Comment: One commenter requested a definition of "vendor" since a vendor agreement has responsibilities that could be understood to create a subcontractor relationship with the contractor.

Response: The term "provider agreement" is used in these rules rather than "vendor agreement." The definition of "provider" is included in §809.2. For purposes of determining the status of "vendor," the relationship should not change, merely because of the name change.

Comment: One commenter asserted that the definitions of "parent" and "child" are too limiting and only give parents and legal guardians the ability to receive child care services for their children. The commenter recommended the definitions should include TANF and SSI caretakers.

Response: The Commission disagrees with extending the definition of parent to TANF and SSI caretakers because the Commission believes that the intent of the federal regulations is to strengthen the role of the family. The Commission believes that extending the definition beyond what was previously contained in the child care rules may result in parents who are by blood relationship, marriage, adoption, or legal guardianship not being the primary beneficiaries of the workforce support service.

### **809.11 Board Responsibilities.**

Comment: One commenter suggested that the rule needed to define career development centers or be changed to reflect that a Board shall provide services through full-service centers or at least one center. The commenter noted that the word "all" may impose unreasonable hardships on Boards with a large number of centers and recommended the word "all" be eliminated.

Response: As child care intake and eligibility information, as well as services, can be arranged via telephone, access to a telephone for this purpose would be in conformity with the rule; therefore, the Commission declines to revise the rule.

Comment: One commenter questioned if access to child care at career centers means eligibility determinations must be performed at career centers.

Response: Access to eligibility determination must be available at the career center. Eligibility determination by the child care contractor is often performed via telephone; therefore, access to the contractor via telephone at the career center would satisfy the access requirement.

Comment: Two commenters requested a definition of "access."

Response: Access means that services are available to the client.

### **809.12 Board Policies and Plans for Child Care Services.**

Comment: One commenter requested a definition of what entities are to be identified by the Board for coordination in development of the child care delivery plan and questioned if the Commission intends for the Board to have direct contact with the federal agency responsible for administering the child care and development fund. Another commenter questioned the requirement that the Board service delivery plan contain evidence of coordination with the federal level when the federal regulations state they will only interact with the lead agency.

Response: Coordination should include any entity in the local area that has a particular interest or expertise in regard to child care issues, such as those entities indicated in the federal regulations. As these differ by local area, the Commission declines to specify particular entities. The Board would not necessarily contact the federal agency responsible for administering the Child Care and Development Fund, but there may be federally funded organizations in the local area, such as Head Start, that would be relevant for coordination activities.

Comment: Two commenters requested clarification of "representatives of local governments."

Response: Local government may be a city, a county, or a multi-county area. The appropriate representative would be an individual designated through official channels of the city or county administration.

Comment: One commenter recommended that the Child Care Management Services Child Care Advisory Council be retained as a state requirement for child care contractors as referenced in §809.29 of the repealed rules.

Response: The Boards will establish policies for the delivery of child care services in the local areas and have the discretion to establish an advisory council or an ad hoc committee for input related to child care issues if the Boards so choose.

#### **809.14 Promoting Consumer Education.**

Comments and responses regarding persons or entities "listed" with the Texas Department of Protective and Regulatory Services (TDPRS) are addressed with comments to §809.42.

Comment: One commenter recommended adding a provision to the rule that the Boards shall make available to parents information on where to find the requirements to be licensed, registered, and listed with the TDPRS as well as information about the types of facilities or homes, which may be licensed, registered, or listed and whether or not the types of facilities and homes are inspected by TDPRS. The commenter also recommended referencing the Texas Administrative Code, §§720 and 725 in the rule.

Response: Information established by the Commission for the Boards to provide to parents will include this information. The Commission declines to include it in the rule because some of the information may be changed periodically by other agencies or laws, and the complete rule process would have to be followed to amend the rule.

#### **809.15 Quality Improvement Activities.**

Comment: One commenter asserted that the Designated Vendor criteria are too restrictive in rural areas and recommended that the Boards be allowed to set all of the criteria rather than being required to use Designated Vendor criteria established by the Commission.

Response: The Boards may establish their own criteria, which may be applicable to any provider. However, the Designated Vendor criteria established by the Commission will continue to be used, because the percentage of providers that reach Designated Vendor status, as defined by the Commission, is required to be reported to the Legislative Budget Board for fiscal years (FY) 2000 and 2001. The Commission urges Boards to consider alternate performance criteria that the Commission could suggest to the Legislative Budget Board and Governor's Office in subsequent bienniums.

Comment: One commenter questioned the ability of the state, or the Boards, to grant loans to child care providers as allowed as a quality improvement activity in federal regulations. Another commenter questioned whether state law allows loans to providers.

Response: Under the recently adopted federal regulations, loans are now approved as means of improving quality. Although the present State Plan does not provide for loans from the funds administered by the Commission and the rules are clarified to exclude loans from this rule, the Commission is reviewing this new concept for improving quality of care and strongly urges the Boards to submit suggestions and comments on the possible implementation of such a provision so that the appropriate changes may be incorporated into the State Plan. The Commission also encourages Boards, contractors, and providers to utilize other loan programs, such as the loans provided pursuant to Texas Government Code §491.191, regarding the linked-deposit program through the Texas Department of Economic Development to historically underutilized businesses, businesses located in an enterprise zone, and to child care providers for development of "child-care services provided by and activities engaged in this state by nonprofit organizations; and quality, affordable child-care services in this state."

Comment: One commenter recommended consideration for raising the Designated Vendor's maximum rate by 15% to offer an incentive for vendors to become Designated Vendors. The commenter further recommended allowing Designated Vendors who maintained status to receive their full-published rate.

Response: The Commission declines to establish a fixed amount of increased rate for Designated Vendors, because the Boards may determine additional incentives, including higher reimbursement rates, for vendors engaged in such quality improvement activities, consistent with the intent of the federal regulations at 45 Federal Register §98.51.

Comment: One commenter questioned if the Boards can change the Designated Vendor criteria or only make additions.

Response: The percentage of Designated Vendors is a measure that is reported to the Legislative Budget Board and the Governor's Office, which, therefore, must have a statewide definition. The provision of §809.15(d) enables the Boards to establish quality criteria at their discretion, but providers in this category would not be referred to as Designated Vendors. If all the Boards concurred on Designated Vendor criteria, the statewide definition could be changed. The Commission urges the Boards to submit their recommendations for this definition for the Commission to put forth during the next biennium budget process for FY 2002-2003.

Comment: Two commenters requested additional definition and explanation.

Response: Criteria established by the Commission to identify a provider as a Designated Vendor, when the provider exceeds the minimum standards established by

the Texas Department of Protective and Regulatory Services (TDPRS), will be provided to the Boards. The rule requires that the criteria and Designated Vendor status be maintained. The rule also provides for the Boards to establish other voluntary criteria for improving quality at their discretion and to recognize providers appropriately, although these would not be identified as Designated Vendors based on state criteria.

Comment: One commenter suggested that the proposed rule allows the Child Care Management System (CCMS) to step into the regulatory burdens of TDPRS Child Care Licensing Division by improving health and safety conditions.

Response: The rule does not give the contractor any regulatory authority related to health and safety conditions. The rule identifies improvement of health and safety conditions as one criterion that may be considered as a quality improvement activity.

Comment: One commenter recommended rewarding quality care and providing an incentive for other providers to increase the quality of care by paying a higher reimbursement rate to providers who meet Designated Vendor or National Association for the Education of Young Children standards and also negotiating with the State Board of Insurance to provide Designated Vendors a discount on their liability premiums.

Response: The rule authorizes the Boards to establish the reimbursement rate for providers and to plan and develop activities for the improvement of quality in child care services. The Boards could pay a higher rate for providers who meet higher standards if they so choose. The recommendation regarding a discount on liability insurance will be forwarded to the State Board of Insurance.

### **809.20 Local Donations.**

Comment: One commenter asserted the rule should identify who would be responsible for pursuing local donations.

Response: As stated in the rule, the Boards are responsible for ensuring that local donations are pursued. The Boards can designate the responsible party, or parties, for this activity. The Boards' members have knowledge of community organizations and community resources and are in a stronger position to plan an effective approach for optimizing local donations.

Comment: One commenter asserted that Texas does not appropriate enough general revenue funds to draw down all the federal child care money available for low-income working families and parents in job training programs and recommended that the

legislature appropriate enough money to draw down all of the available federal money for child care.

Response: The Commission recognizes the limitation on funding for this critical support service and has requested additional state funds to match the increased amount of federal child care funds available for Texas.

### **809.41 General Requirements.**

Comment: One commenter asserted the activity addressed in this rule is a Child Care Licensing Division and Health Department task and that, when possible non-compliance is noted, it is called in to both agencies.

Response: The Commission agrees and emphasizes that the Board or the contractors should report possible violations of health or safety standards to the appropriate regulatory agency.

**Comments Regarding Persons or Entities Listed With TDPRS ("listed") concerning §§809.14, 809.42, and §809.61.** Thirteen commenters recommended deleting "listed" because of one or more of the following: TDPRS does not have minimum health and safety requirements for "listed," TDPRS does not inspect unless there is an allegation of abuse or neglect, TDPRS is responsible for this task, TDPRS does not monitor or visit the "listed," there is no minimum age, it is unreasonable and dangerous to expect Boards to ensure compliance, adding "listed" would not be beneficial as the "listed" only care for three children and probably could not afford general liability insurance, adding "listed" may negatively impact the quality of care, the amount of resources to implement would cause concern, there may be no applicable local laws, the contractor or Boards would be liable for actions of the "listed," and the "listed" facility do not qualify to sign vendor agreements or to provide self-arranged care. If the rules include "listed," one commenter stated that Boards should determine whether "listed" meet the criteria, and, if not, that Board could decline the provider agreement. One or more of the commenters suggested adding the following: that there are no state regulatory standards and no inspections, the federal health and safety regulations, how the Commission or the Boards will ensure enforcement of local laws, a minimum age of at least 18, and that Child Protective Services children are not placed with "listed" family homes. Another commenter asserted that a plan needs to be developed to include "listed" in the consumer guide that considers input from the Commission, TDPRS, the Boards, contractors, and providers.

**Response Regarding §809.42, Minimum Qualifications for Providers, the following applies.** In response to the numerous comments received regarding the

"listed" providers, the Commission removes this category of providers, except as a self-arranged provider, from the list of options for child care which may be funded by Commission-allocated funds. The Commission sought to enlist the services of all available child care providers to handle the influx of parents into the workforce due to welfare-to-work requirements, recognizing that many entry-level jobs necessitate child care during the second or third shifts or on weekends when the traditional child care services are not available. The Commission also recognizes that federal laws and regulations on child care require that child care providers reimbursed with federal funds must meet health and safety standards established by state, local, or tribal law. The Commission, in its proposed rules, sought to provide the Boards with the opportunity to solicit local health and safety inspectors' assistance to ensure appropriate standards of care, if needed to meet the needs of families and demands of the labor market in their particular area for general providers and providers of self-arranged care. The Commission now believes that it may place too great a burden on the Boards for the Boards to ensure health and safety standards are met for "listed" facilities who are not chosen through self-arrangement by the parent, and removes from §809.42 the categories of eligible child care providers those facilities that are "listed" with TDPRS. The Commission, however, may choose to include these providers in the future, as capacity is needed to ensure parent choice.

**Response Regarding §809.61, Qualifications to Provide Self-Arranged Care, the Commission believes that "listed" providers should be included as a Board option in self-arranged care based on the following.** As the "listed" are recognized by state law to provide child care, and as parental choice is a basic tenet in the state's support of child care services, the Commission declines to remove the "listed" from the self-arranged providers to be considered. In accordance with the proposed rules, the "listed" cannot be used unless there are local laws regarding health and safety that apply to these providers. In areas with few providers for child care, and particularly for non-routine hours, the Boards may want to pursue implementation of local laws, if they do not exist, to benefit from the availability of these providers. This is not a requirement, but the Boards' option. The Commission appreciates the significance of this task and agrees that some of the Boards may not be able to ensure that there are in effect, under local law, requirements designed to protect the health and safety of children that are applicable to the "listed," as required by 45 Federal Register §98.41. Other boards may determine that such local laws do not exist. The Commission does not require that the Boards include "listed" providers as self-arranged providers or that Boards work to establish any new or additional local laws, but wants to provide the option for the Boards to do so if the Board deems it necessary in their areas. The Commission believes that the "listed" persons or entities may be a viable avenue for rural or other locations where licensed and registered providers are scarce or not accessible to parents, provided the Board ensures that local laws exist that meet the

requirements of the federal regulations. As part of required consumer education, the parent should be given information to ascertain what requirements/restrictions the providers are subject to so that these can be considered in making their selection of a child care provider. The Commission declines to impose requirements on the "listed" beyond those established by state or federal law or the regulatory agency. The Commission will include in the contract with the Boards any special provisions that TDPRS requests for use of their funds, insofar as the special provisions are not in conflict with federal or state law or regulations. The Commission agrees that collaboration is important in developing any part of the local plan for delivery of child care services.

Comment: One commenter asserted that this is a TDPRS Child Care Licensing Division and Health Department task and that, when possible noncompliance is noted, it is called in to both agencies. Another commenter requested clarification of "applicable regulatory standards" and, specifically, if this includes the regulatory standards that TDPRS enforces. The commenter suggested that the Board or its contractors should not be responsible for assuming or duplicating any licensing or regulatory enforcement responsibilities of TDPRS or other licensing agencies, including the health and safety of children.

Response: The Commission agrees that the rule is not stated as intended and deletes the provision in (2) from §809.42. Section 809.42 is further amended to include a new subsection to clarify that the Board or its contractor is responsible for reporting to the appropriate regulatory agency any possible violation that it gains knowledge of in the course of fulfilling its responsibilities.

#### **809.43 Provider Agreements.**

Comment: One commenter noted lack of provisions for renewing Provider Agreements and asserted that the rules should clearly define the parameters for initiating and renewing vendor agreements in order to minimize risk to all concerned parties. Another commenter questioned if there is a potential impact on quality if the Board is no longer required to renew a Provider Agreement at regular intervals.

Response: The boards are responsible for maintaining Provider Agreements which are in conformance with regulations and rules. As a part of this responsibility, the Boards may determine the time period for renewal.

#### **809.44 Provider General Liability Insurance Requirements.**



Comment: One commenter asserted the general liability should include the provision of transportation insurance and that, if the state is allowing payment for transportation, the provider should be adequately covered.

Response: In order to avoid misunderstanding, the Commission revises the rule to include the phrase "including transportation insurance" following "general liability insurance." The local board has the authority to determine reimbursement rates, as well as insurance requirements.

Comment: One commenter supported the rule that gives the Boards the ability to decide if general liability insurance will be required of the child care providers and, if so, how much.

Response: On the issue of general liability and commercial transportation insurance policies required of providers, the Commission notes the following: state law already imposes the requirements of \$300,000 in general liability insurance on the state's licensed child care centers, and places no specific liability requirements on providers transporting children. The Commission believes that these additional regulatory burdens should fall upon the appropriate regulatory bodies, the Texas Department of Protective and Regulatory Services as the state's child care regulatory agency, and the Texas Department of Transportation as the agency setting transportation requirements on commercial entities carrying certain numbers of passengers, and we strongly encourage those agencies to consider the need for imposing these requirements.

Comment: One commenter stated that the Texas Department of Protective and Regulatory Services (TDPRS) only requires that direct child care providers have general liability insurance and asserted that the group day homes and registered family homes would not have liability insurance unless required by the child care contractor. The commenter stated that a contractor cannot make another agency enforce insurance or give the contractor a copy.

Response: The Commission defers to the state agency responsible for establishing minimum standards. Any perceived violations should be reported to the appropriate agency. Failure to comply with provider eligibility requirements would be grounds for terminating a provider agreement.

Comment: One commenter recommended that the rule require that general liability insurance be required of providers at a standardized amount, such as \$300,000, to ensure statewide consistency.

Response: The Commission believes that statewide consistency has been established by the state law and rules of TDPRS, which is the agency invested with the authority

and responsibility for regulation of licensed child care centers. The rule enables the Boards to establish further standards at their discretion.

Comment: One commenter recommended insurance requirements in the rule for registered family homes and transportation in order to ensure that safeguards to protect the child care contractor, the Boards, and the state are being met.

Response: The Commission declines to impose requirements beyond state law and the state regulatory agency's requirements, but requires the Boards to review the issues and establish a policy to address local needs.

Comment: One commenter questioned if the authority of the Boards to establish liability insurance requirements for child care providers will be an exception to the requirements for liability insurance in the Financial Manual for Grants and Contracts.

Response: The Financial Manual provides general guidelines. A specific rule may be more or less specific. In this case, the rule requires the Boards to consider the issue of liability insurance and make a determination in regard to what the Boards require.

Comment: One commenter asserted general liability insurance should be required in an amount consistent with protecting the state, Boards, the employers, and the injured parties.

Response: Although the Commission agrees with the importance of insurance protection, any requirement beyond state law and state regulatory authority will be a policy of the Boards.

Comment: One commenter asserted that, if only certain vendors are required to have general liability insurance because of the areas in which they are located, this would be discriminatory to them.

Response: The state law establishes the statewide requirements for licensed centers. The Boards may impose greater requirements in this regard.

Comment: One commenter expressed appreciation for the flexibility of determining general liability insurance requirements for providers.

Comment: Two commenters asserted that \$300,000 liability and transportation insurance should be required, and further asserted that the Boards have the authority to authorize optional coverage amounts for group day homes and registered family homes. Two other commenters also stated that liability insurance should be required.

Response: State law requires \$300,000 liability insurance for licensed day care centers and does require that a specific commercial transportation insurance level be set for vehicles carrying fewer than 13 passengers. Beyond those requirements, the Boards may establish additional local requirements.

#### **809.45 Collection of Parent Fees and Subsidies.**

Comment: One commenter expressed support for the rule that gives the Boards the responsibility to establish policy regarding the consequences when a parent fails to pay the parent fee. The commenter further noted that the Boards, rather than the state, should set the minimum amount in the automated system.

Response: The Boards must establish a policy on parent fees, and the minimum accepted in the automation system can be changed. However, the current minimum provides for a parent fee of only \$1.00 per week. Federal regulations require the cost sharing structure, with certain exceptions, and a reasonable amount should be considered and encouraged.

Comment: One commenter recommended a revision to the rule to require contractors to compensate providers if a parent fails to pay the parent fee rather than giving the Boards the flexibility to make this decision. Another commenter questioned whether the Boards will be responsible for ensuring providers are paid in full if the parent does not pay.

Response: The Commission declines to mandate this payment and gives the Boards the authority to establish the policy for their local area. The Boards, in turn, will determine this policy in accordance with rules for establishing policy.

Comment: One commenter contended that it is not the contractor's responsibility to ensure that the parent fee is paid to the provider.

Response: This rule provides for the Boards to establish policies in regard to failure of the parent to pay the provider. Although action required of the contractor would be a local decision, the Commission believes it would be reasonable for the contractor to work with the parent to determine if there is a valid reason for a reduction in the fee or to develop a payment plan.

#### **809.46 Assessing Parent Fees.**

Comment: One commenter expressed support for the transfer of responsibility of setting parent fees to the Boards, but recommended deletion of the range for the fee that is established in the rule by the Commission.

Response: The range cited in the rule is a recommendation, not a requirement. The Commission further notes that federal regulations recommend 10% so as not to impose a burden on a low-income family's budget.

Comment: One commenter recommended limiting the cost of the parent's fee for child care to 10% of family income, regardless of family size.

Response: The rule gives the authority to the Boards to establish the policy for assessment of the parent fee.

Comment: Two commenters asserted that this statement contradicts §809.93 (Calculating Income #1).

Response: The provision in §809.46 relates to a teen parent with her own child; the provision in §809.93 relates to a child in the family who is between 14 and 18 years old and whose earnings count toward family income. As these address different circumstances, the Commission does not see a contradiction in these statements.

Comment: One commenter asserted that the option for the Boards to raise parent fees above the current 11% maximum would place an undue hardship on low income families struggling to maintain their independence and recommended the parent fees remain at 9% for one child and 11% for two or more children.

Response: The Boards are given the authority to establish parent fees because they can better address local needs. The reasoning for maintaining the current fee structure should be presented to the Board for its consideration.

Comment: One commenter suggested parent fees should be based on a sliding fee scale based on the parent's income.

Response: The rule requires the parent fee to be assessed based on the family's gross monthly income, which, in effect, becomes a sliding fee scale. The Boards have the ability to add more steps on the scale if they so desire.

### **809.48 Attendance Tracking.**

Comment: One commenter expressed support for the rule that gives the Boards responsibility to set attendance standards rather than setting an arbitrary statewide number.

Response: The Commission acknowledges the comment and believes that each Board should set forth its attendance policy. The Commission believes that the prior

statewide attendance policy was not arbitrary, but was based on criteria designed to be applicable statewide.

#### **809.49 Provider Advisory Groups.**

Comment: One commenter suggested that, based on the definition of provider in 809.2, it appears that registered homes would be required to establish Parent Advisory Groups which could impose a hardship on small providers and an additional requirement for monitoring by the Boards. The commenter also questioned what the penalties would be for failure to comply with this requirement. The commenter recommended revision to specify this requirement does not apply to registered homes.

Response: In accordance with Texas Human Resources Code §44.002, providers with greater than 30% of licensed capacity purchased with Commission funds are each required to establish a Parent Advisory Group. The statute only applies to licensed centers, and the rule will be revised to clarify this.

Comment: Two commenters recommended including the pertinent section of Chapter 44 of the Texas Human Resources Code.

Response: In the interest of not restating the law and, thus, lengthening the rule, the Commission prefers to reference, rather than repeat, other statutes and regulations that apply.

#### **809.61 Qualifications to Provide Self-Arranged Care.**

See comments regarding the "listed" addressed with comments regarding §809.42.

#### **809.62 Reimbursement for Self-Arranged Care.**

Comment: One commenter recommended that clients be required to provide written verification that providers of self-arranged care were paid in full for the previous month.

Response: The provision in (a)(2) of this section indicates that the declaration is made verifying that the services were rendered. The Board shall require that the verification referenced in (b)(6) of this section be written.

#### **809.71 Parental Choice.**

Comment: One commenter contended that the rule requires that the CCMS know how to do the Texas Department of Regulatory Services (TDPRS) Child Care Licensing

Division's job in order to assure CCMS clients are informed about the various licensing, registration, and health and safety standards that providers shall follow.

Response: This type of information is required by federal regulations in order to help parents make informed child care choices. The requirement is to provide factual consumer information to parents, not to expound on the licensing worker's duties.

Comment: One commenter asserted that the proposed rule states that the CCMS will give the parents assistance in choosing the initial or additional child care referrals and that the CCMS should not take on the liability of referring parents or children to particular facilities. The commenter recommended that the CCMS provide the parents with a vendor list, TDPRS Child Care Licensing Division's phone number, and encourage the parent to visit facilities and call the Child Care Licensing Division. The commenter further asserted that, if the CCMS begins to refer to particular facilities, this could also be considered discrimination.

Response: The rule does not give the contractor the responsibility or authority to refer to a particular facility. Parental choice is a basic premise of the child care services provided through Commission-allocated funds. The rule requires that a list of providers, with pertinent information, be provided to parents, as the commenter suggested. The rule also requires this list to include the telephone number of TDPRS and any other information that would assist parents in choosing a provider. As a part of parental choice, the rule states the right of parents to visit available child care facilities before making a choice, as well as when services are being provided, and the parents' right to receive assistance in choosing initial or additional referrals. This is to ensure parents have all the information they need to make an informed choice, but not to be directed to a particular facility.

Comment: One commenter noted a fine line between giving information regarding day care providers and recommending a provider. The commenter stated concern with liability issues if they do not encourage parent choice.

Response: The Commission fully concurs with the decision of a provider being the choice of the parent. The rule requires information to be given to the parent so that an informed choice may be made.

### **809.72 General Parent Rights.**

Comment: Two commenters recommended that the time period be 12 days to be uniform with other time frames.

Response: The Commission changes the notification period from 12 days in the previous rules to 10, 15, or 20 days as specified in the respective new rules.

### **809.73 Eligibility Documentation.**

Comment: One commenter recommended that Boards have maximum flexibility to design eligibility processes and procedures within federal regulations and state definitions of eligibility. The commenter recommended deleting all except the first sentence of §809.73 (a) and deleting all of (c).

Response: The Commission agrees, and the rule is revised accordingly.

### **809.75 Parent Reporting Requirements.**

Comment: One commenter recommended this section be deleted and the requirements addressed by local board procedures.

Response: Although the Commission agrees with operations based on local board-developed procedures, these provisions are stated because they would be minimally required.

Comment: One commenter recommended the time limit in which a client must report changes to the child care contractor be the decision of the Boards.

Response: The Commission believes it has a responsibility to establish a maximum time period in which changes can be reported to ensure that timely action can be taken in regard to eligibility issues.

Comment: Two commenters recommended that the time period be kept at 12 days for uniformity with other time frames.

Response: The Commission changes the notification periods from 12 days in the previous rules to 10, 15, or 20 days as specified in the respective new rules.

### **809.78 Parent Responsibility Agreement.**

Comment: Two commenters requested clarification of this rule and stated this is a source of confusion.

Response: This rule is not included in the proposed rules because it is unchanged from a previous rule publication. Although the commenter does not explain the issue(s) of confusion, a Workforce Development Letter is being issued to address questions that have been submitted to program staff.

## **809.91 Definitions.**

Comment: One commenter requested further clarification of "household dependent" and questioned how the contractor verifies that a child or other minor living in the household is the responsibility of the parents and what time period must the child have lived there in order for the parent(s) to qualify for child care payments.

Response: The responsibility is established by the child being born to the parents or being adopted by either or both parents, the parents being given legal responsibility for the child by a court, or otherwise being provided supervision and care by the parents. The contractor may establish the provision of supervision and care by declaration of the parent; this may be verified by collateral contacts if needed. There is not a duration related to the residence requirement.

Comment: One commenter recommended that these rules be streamlined and collapsed into a single section concerning eligibility with revisions to provide the Boards with more flexibility and to eliminate residual ties to past funding methods.

Response: The Commission agrees with simplification of rules insofar as possible and revises some of the rules in accordance with this commenter's specific suggestions. Others are not revised for reasons stated in response to the specific comments.

Comment: One commenter noted that the definition of "family" does not include the concept of non-traditional family such, as a legal guardian, and suggested that a broader definition would encompass children who are eligible to receive services.

Response: The definition of "family" includes the parents of a child eligible to receive child care services. The definition of "parent," in §809.2, includes legal guardian.

## **809.92 General Eligibility Requirements.**

Comment: One commenter asserted that the Boards should be allowed to establish time limits for training completion and recommended a revision to require the Boards to establish policies related to time limits. Another commenter asserted that the two-year time limit on students is an obstacle for parents who need extra time to learn English or to take remedial classes before completing a degree program. The commenter recommended changing the time limit to a progress standard so that as long as a parent shows satisfactory progress in a declared program he/she is entitled to receive child care. The commenter further suggested that satisfactory progress could be defined as maintaining a 2.0 grade point average while enrolled in at least 12 credit hours, not to exclude English as a second language and remedial classes.



Response: The Commission agrees and the rule is amended accordingly. The Commission agrees with the Board deciding what criteria to use to determine whether satisfactory progress is being made to justify continued funding for child care beyond the proposed two year limit. The Commission revises the rule to provide for the local board to establish a policy related to training limitations.

Comment: Two commenters recommended the additional requirement that the client must reside in the Board's service delivery area unless the Board approves an exception.

Response: The Board is responsible for the clientele and activities only in their local workforce development area. If a Board chooses to approve an exception and enter into agreements with another Board or contractor for reimbursement for incidental services, then that would be within the Board's discretion. However, contracting for more than infrequent or incidental reimbursement would likely be subject to procurement procedures. It is generally not expected that the Boards would be serving clients in other areas; therefore, the Commission does not see a need to include this provision in the rules.

Comment: One commenter asserted that applying the income limitation to transitional clients is a conflict with the intent of HB 1863 which was passed in 1995 when federal and state child care rules did not impose an income limit on transitional clients.

Response: Federal regulations now include income limits as a condition of eligibility, and, as the commenter noted, HB 1863 provides for transitional child care in accordance with department rules and federal law. Regardless of timing, federal law always supercedes state law.

Comment: One commenter questioned broadening the scope of the eligible population and setting income limits at 85% of state median income when waiting lists are long and funding is limited.

Response: The federal regulations which were effective in July 1998 authorized the income level for eligibility to be 85% or less of the state's median income for a family of the same size. The Commission understands this may increase the eligible population, but the Commission believes the Boards should be afforded the flexibility incorporated in the new federal regulations. It would be a Board's determination as to how to manage the funds to best meet the needs in the Board's local area.

Comment: One commenter asserted there is need to consider establishing a longer period of time for training and education and that this would be more cost effective because it would generally result in higher earnings, more taxes paid, higher

productivity, and higher return on the investment. The commenter further noted that disadvantaged participants have greater barriers to overcome and generally require more than two years to complete a training program or degree.

Response: The Commission agrees that the Boards should determine the best method of addressing local needs given the limited funding available and the need to support working families. Setting longer time limits for education may be an avenue in which the Boards wish to develop specific local policies to meet local needs; and thus, the rule is amended accordingly.

Comment: One commenter requested flexibility to allow people who are close to finishing a degree that will help them achieve self-sufficiency to complete their course with child care assistance even though they exceed the 65 hour limit.

Response: The Commission agrees and revises the rule to provide for the Boards to establish the policy for limitations on education.

Comment: One commenter expressed the opinion that parents should be allowed up to 130 semester hours in order to complete a four-year degree.

Note: The commenter referenced §809.92 (b)(1), but the comments relate to §809.92 (c)(1).

Response: The Commission revises the rule to provide for the Boards to establish a policy in regard to length of training allowed.

Comment: One commenter asserted that the limitation of 65 semester hours of college credit defeats the goal of self-sufficiency.

Response: The Commission agrees that this may be insufficient training time in some instances and revises the rule to give the local board the authority to establish training limitations.

Comment: Two commenters asserted that 150% of the federal poverty income level is appropriate with the Boards' option to increase to 85% of state median income.

Response: The Commission believes the Boards should have the discretion provided by federal regulations.

### **809.93 Calculating Income.**

Comment: One commenter questioned the method for calculating total gross income for eligibility purposes and questioned if overtime pay during the income determination period should be averaged.

Response: The Commission disagrees with the commenter that overtime should not be averaged because the income is estimated based on the person's history of receiving pay.

### **809.101 Children of Parents Eligible for Transitional Child Care.**

Comment: One commenter recommended revisions in the wording for this section, which would make it more understandable.

Response: The Commission agrees, and the rule is changed accordingly.

Comment: One commenter recommended adding two additional groups, those on transitional Medicaid programs who have been denied TANF due to new earnings or the removal of the earned income disregards.

Response: As this rule is based on state law, it reflects the provisions of HB 1863, and the Commission declines to expand on this requirement.

Comment: One commenter recommended a revision in wording to conform with a revision in HB 1863 which changes the word "volunteers" to "voluntarily participates."

Response: The Commission agrees, and the rule is revised accordingly.

Comment: One commenter asserted that the Boards should be allowed to establish time limits for transitional services and recommended a revision to require the Boards to establish policies related to time limits.

Response: The time limits in the proposed rule are statutorily provided in HB 1863. The Commission supports legislation that would revise the statute and give the Boards the authority to establish the time limits; but, unless and until the statute is revised, the time limits remain in the rule.

### **809.102 Children of Parents Participating in the Choices Program.**

Comment: One commenter recommended adding "and Board policies" to this rule.

Response: As this is a requirement of HB 1863, Board policies could not change the eligibility stated in this rule.

Comment: One commenter recommended deleting (d) from this rule.

Response: The Commission believes that the Boards should determine whether and in what instances child care services are needed to support Choices participants to those approved for Choices but waiting to enter an approved initial component of the program.

### **809.105 Children Receiving or Needing Protective Services.**

Comment: One commenter recommended requiring the assignment of priority status to children at risk of abuse and neglect. Another commenter noted that the proposed rules do not give priority status for children at risk of abuse and neglect.

Response: Children referred by CPS workers shall receive priority services for care provided by the Texas Department of Protective and Regulatory Services (TDPRS) funds, and §809.221 of the rule has been revised to clarify this. The Boards shall provide priority for child care services to a child needing to receive protective services if care for the child is no longer funded by TDPRS, the CPS worker indicates that the child needs to receive protective services, and the provision of care to the child does not result in another child being removed from care.

Comment: One commenter asserted child care is a needed service which provides families the support necessary to complete the transition to a safe, stable, and self-sufficient family unit and recommended the former CPS day care category be continued and included in the rules. One commenter recommended that the Commission continue to provide child care services for former CPS clients. One commenter referenced elimination of the provision to provide child care for an additional six months following closure of a protective service case and noted the federal regulations allow states to serve these children. One commenter asserted that the Commission currently or previously budgeted for care for former CPS clients and questioned if this will continue. One commenter noted that the program goals do not address the need to provide child care services for children who are or have been abused or neglected and recommended that services be provided to these children whether or not the parents are working.

Response: Children being served through a CPS worker will receive care as directed by the CPS worker and funded through the CPS allocation in accordance with the interagency contract between the Commission and TDPRS. When the child care is no longer being funded through the CPS allocation, the Commission agrees that the Boards shall provide child care for children who meet the federal requirements contained in 45 Federal Register §98.20 and revises the rule accordingly. Specifically, the rule is changed to require the Boards to provide Child Care and Development-

funded care to a child if TDPRS or the CPS worker determines that the child "needs to receive protective services and that the child resides with a parent or parents...if determined to be necessary on a case-by-case basis" by a CPS worker "or in consultation with, an appropriate protective services worker." Likewise, the rule name is modified to incorporate children needing to receive protective services.

Comment: One commenter referenced the current procedure of referring CPS clients to Designated Vendors unless a waiver is obtained by the Director of CPS and recommended that the designated day care vendor referral and waiver process be continued and reflected in the rules. Another commenter questioned if the child care contractor will continue to refer designated vendors to CPS staff who refer children for general protective day care and establish a waiver process if no designated vendors exist in the family's area.

Response: The Commission declines to impose rules in relation to TDPRS funded services. If TDPRS requests this requirement, it will be made a provision of the Commission's contract with the board in the allocation of TDPRS funds.

Comment: One commenter questioned if this provision is based on funding provided by CPS or another category of funding service.

Response: This provision relates to child care funded by TDPRS, except for the provisions of (c) added to the rule.

### **809.121 Children Living At Very Low Incomes.**

Comment: One commenter recommended deleting this section and adding the phrase "or are receiving federal Supplemental Security Income" to §809.92 (b)(1).

Response: The Commission agrees that this action would cover eligibility, but believes it is important to identify this category of eligibility along with others that are specified.

Comment: Two commenters referred to a previous comment recommending use of 150% of the federal poverty income level.

Response: The Commission believes the Boards should have the discretion provided by federal regulations.

### **809.122 Children with Disabilities.**

Comment: One commenter stated that the definition leaves out some developmental areas such as language and less severe disabilities that are not being covered and that there is no mention of medical conditions in this definition.

Response: The definition is consistent with federal regulations, and the Commission declines to be more or less restrictive than the federal regulations.

Comment: One commenter recommended deleting this section and adding this provision to §809.93.

Response: Although this would provide appropriate information regarding calculating income for eligibility, the Commission believes the provision should be included with the eligibility provisions for this specific group.

Comment: Two commenters referred to a previous comment recommending use of 150% of the federal poverty income level.

Response: The Commission believes the Boards should have the discretion provided by federal regulations.

### **809.123 Children of Teen Parents.**

Comment: One commenter asserted that parents are currently considered teen parents if the teen parent is under 20 years of age and completing high school or the equivalent and that this age should be retained as there are parents still in high school who are 19 years old.

Response: The Commission agrees that a parent who is 19 years of age should be encouraged to complete high school. The rule is revised accordingly.

Comment: Two commenters recommended staying with 20 years of age.

Response: The rule is revised to include individuals 19 years of age who are still in high school.

Comment: Two commenters referred to a previous comment recommending use of 150% of the federal poverty income level.

Response: The Commission believes the Boards should have the discretion provided by federal regulations.

Comment: One commenter recommended deleting this section and adding this provision to §809.93.

Response: Although this would provide appropriate information regarding calculating income for eligibility, the Commission believes the provision should be included with the eligibility provisions for this specific group.

### **809.124 Children Served by Special Projects.**

Comment: One commenter recommended the funding mechanism for children served by special projects be addressed since the money for these projects would potentially come from an already inadequate funding level for other programs needed to meet other federal standards. The commenter also suggested the amounts should be capped in order to prevent special projects from taking needed funds from other programs with federal standards that must be met or funded separately.

Response: Any funding relating to special projects, such as funds for use in infant and toddler care, will be made available to the Boards. The requirements will also be available to the Boards.

### **809.221 General Funds Management.**

Comment: One commenter requested clarification of the rule which requires priority for Transitional and Choices eligible children when other rules state that care for these children shall be provided.

Response: Child care services for Transitional and Choices eligible children are required by House Bill 1863. The rule questioned refers to managing resources so that this requirement can be met.

Comment: One commenter expressed support for the rule that gives the Boards the flexibility to set the priority of client groups who will receive child care services.

Response: The Commission acknowledges the comment and agrees, subject to the limitations in (a) and (b).

Comment: One commenter questioned what will happen if a Board spends all of its allotted money, if the Commission can transfer money between the Boards, and if there is additional money that the Commission can access.

Response: All of the available child care funds are allocated to the Boards, except for less than three percent retained for state administration. As stated in the rule, the Boards are responsible for ensuring that resources are proportionately allocated. As the Boards have experience and expertise in financial management of large and complex allocations, the Commission believes they will manage funds appropriately.

The Commission does have a rule for deobligation and reobligation of funds if a Board area cannot utilize funds effectively and another area could benefit from additional funds.

#### **809.222 Effective Utilization of Funds.**

Comment: One commenter asserted the rule requires changes to the waiting list documentation requirements, which will require enhancements to the automation system, and questioned if the Commission will fund the required enhancements. Another commenter questioned if there will be a cost associated with required changes to the waiting list document and who will pay the added costs.

Response: The Commission will work with the Boards to implement necessary revisions to the automation system and/or to assist in development of local systems. Additional funding is not available at this time for local system enhancements.

#### **809.223 Eligibility Verification.**

Comment: One commenter recommended the Boards be given the authority to set the standard for how often eligibility should be redetermined.

Response: The Commission agrees and revises the rule, but cautions that services provided for an ineligible client will result in disallowed costs.

Comment: One commenter recommended revision of the rule to read that eligibility for child care be redetermined no more than once a year and noted that eligibility redetermination is not a provision of federal regulations.

Response: The Commission revises the rule to give the Board the authority to determine frequency of redetermining eligibility, but emphasizes that services provided for ineligible clients will result in disallowed costs. Monitoring and redetermining eligibility is critical to ensuring that funds are not spent on ineligible clients, but are utilized for those eligible.

#### **809.224 Custody and Visitation Arrangements.**

Comment: One commenter asserted that assuring that a child who is absent from child care due to a court-ordered custody arrangement may receive care at the same provider site when the child returns is costly child care and requiring a child selected from the waiting list to temporarily fill a slot is contrary to parent choice. The commenter recommended that the child be guaranteed to return to care, although not



necessarily with the same provider. Another commenter recommended this provision be deleted because it is harmful to children and difficult to track.

Response: The Commission disagrees that the cost of the child care would outweigh the benefits of preserving continuity of care for the child subject to the court order. The rules do not require a parent selected from the waiting list to temporarily fill a slot, and the Commission also disagrees that the temporary filling of a slot is contrary to parent choice because a parent is not required to accept the temporary slot nor does the parent lose their place on the waiting list for declining a temporary slot. The Commission believes that providing a temporary slot for someone who, under the old rules, would not receive even the temporary slot while it remained empty is more supportive of parents in employment, training, or education than providing no support at all. Regarding the recommendation that the child be guaranteed to return to the same provider, the Commission revises the rule to allow, but not require, the Board to maintain the availability of the slot for the child returning from court-ordered visitation or custody if this can be accomplished without paying for the empty slot.

Comment: One commenter recommended deletion of the rule because the commenter believed it would be difficult for the contractor to find the right aged child in the same area, disruptive for the child taken from the waiting list to be moved to another provider for a short time period, and the time period would be over before the eligibility and enrollment process could be completed. A second commenter asserted that it is unfair to make a child care facility hold a spot for a child on court-ordered visits. The second commenter questioned why children referred by a child care contractor should be guaranteed return to care after they have been removed for a temporary period of time when private paying parents do not have this guarantee unless they put down a deposit. A third commenter disagreed with the rule and stated that most vendors will request payment for the slot. Another commenter cited a conflict between §§809.224 and 809.229 and questioned if custody spots must be held.

Response: The Commission requires the Boards to maintain the availability of the slot for the child returning from court-ordered visitation or custody if this can be accomplished without paying for the empty slot.

Comment: One commenter questioned whether this provision applies to children referred by the contractor or private paying parents, if the child is removed from child care when the original child returns, and how this relates to consistency of care.

Response: This provision applies to children referred by the contractor for Commission-funded or Texas Department of Protective and Regulatory Services-funded care, but does not apply to private paying parents, because neither the Boards

nor the contractors would have input regarding parents who are not receiving state assistance. The temporary care would be offered to a parent on that basis, temporarily until the original child returns. This action does not contradict the continuity of care requirement because the care for the second child in this instance is offered on a temporary basis. The long-term continuity of care of the child subject to the court-ordered visitation is the intent of this section.

Comment: One commenter recommended this be deleted as it is harmful to children and difficult to track.

Response: The Commission requires the Boards to maintain the availability of the slot for the child returning from court-ordered visitation or custody if this can be accomplished without paying for the empty slot.

Comment: One commenter questioned if the contractor is expected to go through the waiting list to find a parent who wants the particular vendor for a limited time and then is removed from care when the original child returns and questioned how this is keeping them from being at risk.

Response: With limited child care resources, the Commission believes that every opportunity to provide care should be explored.

Comment: One commenter agreed that children should not lose their space for child care by complying with court-ordered visits but questioned by what means Boards will be able to ensure that the space remains available. The commenter further asserted that the Boards need authority to arrange for payment for children who are affected by this arrangement and requested clarification of the provision that providers are not paid for holding spaces open.

Response: The Commission requires the Boards to maintain the availability of the slot for the child returning from court-ordered visitation or custody if this can be accomplished without paying for the empty slot.

### **809.225 Continuity of Care.**

Comment: One commenter expressed support for the rule that allows children to move between funding streams as long as their parent is eligible for care regardless of the waiting list.

Response: The Commission agrees that continuing children in care whenever feasible is in the best interest of child care and development. Stability provided by the child

care support service for families working, in training or education, or subject to the continuing need for protective services is the purpose behind this section.

Comment: One commenter asserted the child care contractor staff should determine if a child/family would meet another day care funded category before the Texas Department of Protective and Regulatory Services (TDPRS) or Commission-funded day care services are terminated and recommended that the rule include TDPRS funded child care.

Response: Enrolled children shall receive child care as long as the parent remains eligible for any available source of Commission-funded child care. Nothing in this chapter shall be interpreted in a manner as to result in a child being removed from care. Children who no longer receive TDPRS funded care shall also continue receiving child care funded through the Commission if eligible to receive care based on other eligibility criteria or if the TDPRS or its caseworker indicates that the child is in need of protective services.

Comment: One commenter questioned if the child care contractor will make efforts to determine if the child is eligible for another funding category of child care after being informed by a CPS worker that the child will no longer be eligible for general protective day care services.

Response: Enrolled children shall receive child care as long as the parent remains eligible for any available source of Commission-funded child care. Nothing in this chapter shall be interpreted in a manner as to result in a child being removed from care. Children who no longer receive TDPRS funded care shall also continue receiving child care funded through the Commission if eligible to receive care based on other eligibility criteria or if the TDPRS or its case worker indicates that the child is in need of protective services. The child care contractor would be responsible for determining if the child is eligible for care through another funding source consistent with the Board's policies.

### **809.227 Provider Billing Requirements.**

Comment: One commenter recommended deleting this section based on the requirement being contained in the Commission's policy manual on financial systems.

Response: The Commission agrees with deleting this section. These provisions should be contained in the contract between the Board and the child care contractor.

Comment: Two commenters recommended adding a provision for these requirements to also apply to self-arranged child care.

Response: The Commission agrees that self-arranged child care should be subject to the provisions contained in the contract between the Board and the child care contractor as applicable to provide the benefit to the parent who chooses to self-arranged care with someone who has not executed a provider agreement.

Comment: One commenter recommended changing the rule to read: "...later than 45 (or 30) days after the end of the month in which the child care has been delivered" to allow time for document turnaround.

Response: The Commission agrees with this recommendation, but will delete this section because the terms of payment will be contained in the applicable contracts.

### **809.228 Units of Service of Child Care.**

Comment: One commenter recommended allowing Boards to decide the definition of full-day and part-day and perhaps other designations of unit of service to avoid overpayments and underpayments in specific situations.

Response: The Commission agrees with the Boards defining full-day and part-day, and the rule is revised accordingly; however, the automated payment system currently in use will accept only one full-day and one part-day entry per day.

### **809.229 Provider Payment Based on Child Care Enrollment.**

Comment: One commenter recommended adding to the end of the sentence "as authorized by contractor."

Response: Although the Commission believes the rule is clear in its implication, the recommended statement is added in order to clarify the meaning.

One commenter requested a definition of "occasionally."

Response: As circumstances will vary, the Commission declines to impose a rigid definition. "Occasionally" would be defined as the dictionary definition as determined by the Board and generally indicates an infrequent occurrence. It would be within a Board's discretion to determine what would constitute "occasionally."

Comment: One commenter expressed disagreement with the rule based on the possibility that the provider may have to prepare an extra meal or pay a worker to stay later because the child was there full time. The commenter further suggested that the parent be required to contact the contractor for advance authorization to attend full time.

Response: As this addresses an occasional circumstance, the Commission does not consider it to impose a hardship on the provider and declines to revise the rule.

### **809.230 Inclusion Assistance Rates.**

Comment: One commenter asserted that the inclusion rate currently covers the cost of allowing a more skilled staff to work with the child on a one-on-one basis.

Response: The Commission agrees that the inclusion assistance rate may include additional skilled staff to work with the child but may not necessarily require a one-on-one basis. The Commission notes that the Boards have the authority to establish all reimbursement rates, including those needed for care for children with disabilities. Therefore, the rules are revised to delete §809.230, and an additional provision is included in §809.231 to clarify its relationship to provider reimbursement rates.

### **809.231 Provider Reimbursement Rates.**

Comment: One commenter expressed concern that reimbursement to child care providers is not keeping pace with the market. Another commenter questioned what measures are being, or will be, taken to raise reimbursement rates since provider reimbursement rates that are lower than the local market rate have deterred some child care programs from becoming vendors.

Response: The proposed rule gives the Boards the authority to establish reimbursement rates for purchased child care based on a market-rate study, which will be provided by the Commission. The Commission will monitor the Boards for compliance with this provision.

Comment: One commenter asserted local markets can be defined in various ways and recommended the addition of the option that the Boards may conduct their own market surveys.

Response: The Commission will continue to provide a market-rate survey for each area every two years, which is the time period required by federal regulations. If the Board wants a survey more frequently, the rule does not prohibit it from conducting additional surveys. The survey is considered essential for ensuring equal access, but is not the only factor to be used by the Board in its determination of reimbursement rates.

Comment: One commenter expressed support for the rule that allows the Boards to establish the reimbursement rates for child care using the market-rate survey provided by the Commission. Another commenter appreciates the flexibility for the Boards to

design the service delivery system and particularly to set child care reimbursement rates.

Response: The Commission believes that rates are best set at the local level, taking into consideration the state survey of local market rates and the federal requirements of providing equal access to child care. Based on the guidance provided in the preamble to the federal regulations in 45 Federal Register Part 98, regarding §98.43, Equal Access, at pages 39958 through 39960, the Commission believes that the Boards should have the flexibility at the local level for setting rates that provide equal access. In addition to other guidance, the preamble to the federal regulations states that "It must be presumed that a rate that provides access to at least three-quarters of all care does, in fact, provide equal access. "

Comment: One commenter requested clarification of the methodology for how access to at least three-fourths of all child care services in the local market will be determined, a timeline for when the first market-rate survey will be available to the Boards, and the frequency of subsequent surveys. Another commenter questioned if the survey will provide the rate amount that 75% of providers in the region will accept.

Response: A market-rate survey will be available to the Boards prior to the effective date of the rules, and a survey will be conducted every two years in accordance with federal requirements. A Board may conduct additional local surveys more frequently if it chooses to do so. The Commission notes that the cost of a local survey may be prohibitive, and the Commission does not require that such survey be performed. The survey will provide the data collected regarding rates charged by providers in the area for the different categories of care. From that data, the Board can establish the appropriate rate. The Commission will provide technical assistance if needed by the Boards to interpret survey data.

Comment: One commenter noted that reimbursement rates have not been increased by the state since 1992 with the exception of an adjustment due to the increase in minimum wage and contends that, as the reimbursement rate falls behind the actual cost of providing child care, not for-profit providers are forced to raise money to subsidize the amount being paid by the state or close their programs. The commenter further contends that setting the rates on any regional basis means that providers in some areas earn less than their counterparts in other areas. The commenter recommended an increase of the reimbursement ceiling by at least 10% in 2000 and 2001 and to continue to base regional surveys on the cost of providing care.

Response: The proposed rule gives the Boards the authority to establish reimbursement rates based on a market-rate survey that will be provided to the Boards

by the Commission. The survey will continue to be based on the actual cost of providing child care in the respective area.

Comment: Two commenters recommended the provision that the Boards have the option to provide higher reimbursement rates for providers on the Designated Vendor track.

Response: As a Board can establish reimbursement rates, a Board already has the authority to establish higher reimbursement rates for Designated Vendors if it so chooses.

Comment: One commenter asserted that the Boards should be allowed to conduct market-rate surveys as a basis for setting reimbursement rates, perhaps with Commission guidelines for survey requirements. The commenter recommended the phrase "provided by the Commission" be eliminated. Two other commenters recommended that the Boards be authorized to conduct the market rate study.

Response: The Commission will provide a survey every two years in accordance with federal guidelines. However, the rules do not preclude the Boards from conducting a survey more frequently. The Boards have the authority to establish the reimbursement rates using the results of the survey along with other criteria.

Comment: One commenter requested a revision to require that market-rate surveys be conducted every two years.

Response: The federal regulations require payment rates to be based on a local market-rate survey conducted no earlier than two years prior to the effective date of the State Plan. Therefore, the survey will be conducted no less than every two years. The Commission does not believe it is necessary to reiterate this requirement in the state rule.

Comment: One commenter noted that setting rates that allow access to at least three-fourths of all child care services in the local market, with no increase in funds, will result in a decrease in the number of children in care and will hinder the Welfare to Work efforts.

Response: The Commission understands this dilemma; however, the requirement to have payment rates that ensure equal access for children receiving Commission-funded child care is a federal regulation. The problem exists whether the Commission or the Boards establish the reimbursement rates. The Commission believes the Boards have more comprehensive information regarding the availability of services in the local area and, therefore, can better establish rates that meet the local need.

### **809.232 Provider Reimbursement for Transportation.**

Comment: One commenter requested that transportation be reimbursed separately and not subject to the limitations in §809.231 in order to encourage more providers to provide transportation. The commenter recommended a maximum transportation rate of \$2.00 per trip.

Response: The Commission believes this is a decision most appropriately made by the Boards based on local needs and circumstances. However, reimbursement rates should comply with the equal access regulations and the requirements in §809.231. The recommended maximum transportation rate may be too high or too low, depending on the local market and what is required for equal access.

### **809.234 Payment for Operating Expenses and 809.235 Billing.**

Comment: One commenter recommended deleting these sections based on the requirements being contained in the Commission's policy manual on financial systems.

Response: The Commission agrees with deleting §809.234 and revises §809.235 to retain only the provision that the Boards are responsible for ensuring that bills are processed and submitted to the Commission in a timely and efficient manner.

### **809.235 Billing.**

Comment: One commenter recommended the time limit for the Boards to bill the Commission, after obtaining billing from the contractors, be extended to 60 days to give consideration to small Boards who may not have a large accounting staff. Another commenter requested that the rule clarify that payment for services provided are made on a cost reimbursement basis. The commenter also recommended the rule include requirements for submittal of bills by providers.

Response: Fiscal procedures between the Commission and the Boards are included in the Board contracts and the fiscal management manual. Subject to those limitations, the Boards have the authority to establish procedures, and the Commission revises this section to reflect that the Boards have general responsibility for ensuring that bills are processed and submitted to the Commission in a timely and efficient manner. The Commission does not believe the rules should prescribe arrangements between a Board and its contractors.

### **809.251 General Fraud Investigation Procedures.**



Comment: One commenter expressed concern that the fraud investigations procedures will be difficult to implement, that staff are neither trained nor experienced in investigative procedures or legal processes, and that the Boards do not have adequate staff to carry out this requirement. Another commenter questioned who is accountable for investigating suspected fraud.

Response: The Commission does not expect the Board to pursue criminal investigations. As situations that may be fraudulent arise, the board is responsible for documenting the relevant facts and forwarding an incident report to the Commission. Commission staff will review the facts and determine the nature of the investigation required and, consequently, if it will be a state or local responsibility. Cases that need procedural follow-up will be returned for Board action. Those that may require prosecutorial action will be further investigated by the Commission. The Commission will provide training for Board staff to assist them in understanding the procedural issues and appropriate action. The Commission will also clarify the responsibilities of the Commission and the Boards in this process.

Comment: Two commenters stated an assumption that the United States Department of Health and Human Services (HHS) and the Department of Labor (DOL) policies are taken into account when developing fraud procedures.

Response: The Commission continually coordinates with federal agencies. Proposed rules are not in conflict with HHS or DOL policies.

Comment: Two commenters asserted that the Commission should be responsible for fraud investigation because the Boards do not have the resources to pursue investigations.

Response: A Board's responsibility concerning fraud investigations will be in relation to procedural activities for which the Board is responsible. The Board will have more knowledge and expertise regarding these issues than the state staff could obtain. Criminal investigations will be pursued by the Commission.

### **809.253 Action to Prevent or Correct Suspected Fraud.**

Comment: One commenter recommended deleting this statement.

Response: If there is a suspicion of fraud, temporarily withholding payment is a responsible and necessary action until the suspected violation has been investigated and determined to be true or false.

### **809.271 - 809.273 Subchapter M. Appeal Procedure.**

Comment: Two commenters asserted that a Board's review of adverse action will require additional costs of time and money for the Boards and customers and that the customer who elects to continue receiving child care services through the process, including appeal to the Commission, incurs a great debt to be repaid.

Response: As the Boards have administrative responsibility for delivery of child care services, the Commission believes they must be included in the process for review of adverse action.

### **809.271 Child Care During Appeal.**

Comment: One commenter asserted that parents should not be allowed to continue child care during the appeal process and cites money owed from parents who lost their appeal, which will not be repaid.

Response: The Commission believes that the maximum amount of due process would include delaying termination of services pending an appeal until a decision is reached.

Comment: Two commenters recommended adding non-payment of parent fees to the list of reasons for not continuing child care during an appeal.

Response: The Commission agrees and revises the rule because this is consistent with the intent of the section.

Comment: One commenter questioned how likely it is that the cost of providing services during the appeal process would be recovered from parents, if the Boards will be given technical assistance prior to implementing this sanction, and under what circumstances this would be deemed an appropriate sanction.

Response: The Commission will assist the Boards in understanding appropriate action in regard to this process, including efforts to recover overpayments. Services will continue during any appeal, except for the provisions of §809.271 (b), and would be considered an overpayment if the appeal decision is rendered against the parent. The likelihood of recouping the cost of services would depend on the circumstances of the appeal.

### **809.272 Board Review.**

Comment: One commenter asserted that adverse action as a result of a federal or state rule should be appealed direct to the Commission and does not need a Board's review.

Response: Although the Boards cannot overrule a federal or state requirement, the Board should review the issue to determine that appropriate action was taken in accordance with the federal or state requirement before an appeal is forwarded to the Commission. This procedure will allow the Boards to cure local errors and assist in ensuring that appropriate action is taken.

Comment: One commenter expressed support for the Boards being responsible for the first round of the appeals process but anticipates a financial burden as a result of staff time required. The commenter requested additional funds for this purpose.

Response: All child care funds have been contracted to the Boards with the exception of less than three percent retained for state administration.

Comment: Two commenters recommended that the appeals process should remain with the Commission and this section should be deleted. Another commenter questioned how a Board can also be the entity to hear appeals of parents and providers and if this will be the responsibility of their contractor.

Response: The Boards have administrative responsibility for delivery of child care services and is the first level of review of a situation involving adverse action. The Boards have an inherent advantage to resolving appeals at the local level and potentially modifying actions, educating parties, and implementing and monitoring procedures to improve communication and implementation at the local level. The local review is an integral part of improving local education of both parties and improving communication and dispute resolution methods to address matters that may arise at the local level. After the local review is performed, in which a Board may choose to reconsider the initial local action or support the local action, the party that disagrees with the Board action can then appeal to the Commission for a state level review. The Commission believes that the two-tiered appeal process benefits the Board in its implementation and understanding of all issues related to the local child care delivery system. The Board, not the contractor, is responsible for reviewing a case, upon request, to determine if appropriate action was taken. If any party does not agree with the determination made by the Board, the party may request a Commission hearing to appeal the results of the review.

### **809.273 Appeals to the Commission.**

Comment: Two commenters recommended changes in this process because of a previous recommendation to delete the provision for a Board to review adverse action.

Response: The Commission declines to delete the provision for a Board to review adverse action because changes in this provision are not appropriate. The Commission

believes that local consideration and responsibility make local review a means of improving quality and communication at the local level.

### **809.282 Provider Agreement Violations.**

Comment: One commenter noted that the proposed rule asks that the CCMS ensure corrective action is taken by CCMS when a vendor does not comply with licensing standards and contends that the CCMS should work in cooperation with the Texas Department of Protective and Regulatory Services (TDPRS) Child Care Licensing Division but should not initiate corrective action concerning another agency's regulatory burden.

Response: The Commission agrees that the corrective action regarding a licensing violation is under the purview of TDPRS. The corrective action referred to in the rule is corrective action on the part of the Board to ensure that children are not placed in care with a provider who is in violation of licensing standards.

Comment: One commenter objected to the rule that specifies the Boards shall ensure payments are not made to vendors on a day in which the attendance exceeds the state-licensed capacity and recommended that the Board be given discretion in this area to put more emphasis on the staff-child ratio.

Response: The Commission recognizes the importance of health and safety requirements and believes that the standards, particularly those relating to providers not exceeding capacity levels, should be adhered to by providers receiving Child Care Development Funds and, thus, the Commission disagrees with revising the rule.

### **809.283 Corrective and Adverse Action.**

Comment: One commenter recommended clarification that the Board or its child care contractor may terminate a Provider Agreement for failure to adhere to the requirements of the agreement itself.

Response: The Commission believes that §809.282 provides this clarification.

Comment: One commenter requested further definition of terms for termination of a Provider Agreement, specifically, the situation of repeated non-compliance with the agreement.

Response: §809.282 (f) authorizes a Board to take corrective action as a response to agreement violations including, but not limited to, those indicated under §809.283. This gives the Board the latitude to take the action it deems appropriate.

### **809.284 Noncompliance with Other State or Federal Programs.**

Comment: One commenter requested clarification concerning the state and federal laws for which the Boards are responsible for ensuring compliance of contractors and providers.

Response: The requirements contained in 45 Federal Register Parts 98 and 99 set forth requirements applicable to providers, particularly with regards to non-discrimination, and other compliance requirements.

### **809.285 Reapplication for Provider Status after Termination or Nonrenewal of the Provider Agreement.**

Comment: One commenter asserted that the reapplication process involves local processes and should be determined by the Boards.

Response: The Commission agrees and the rule is revised accordingly.

Comment: One commenter requested the words "or nonrenewal" be inserted after "termination" and before "date of the Provider Agreement...."

Response: The Commission agrees and the rule is revised to add this wording because it is consistent with the intent behind this section.

### **809.286 Recovery of Overpayment.**

Comment: One commenter concurred that the child care contractor should be responsible for overpayments, but recommended consideration be given for unusual circumstances that might arise that would be out of the contractor's control and that, in these cases, the Commission be responsible for the overpayment.

Response: The Commission does not have a contingency fund for these payments; the administrative responsibility is transferred to the Boards along with the authority to establish policies and procedures.

Comment: Two commenters asserted the Boards should not be liable for overpayments for which a reasonable effort has been made to collect.

Response: Child care funds have been contracted to the Boards along with administrative responsibility for the delivery of child care services. Thus, liability for overpayments is an administrative responsibility.

### **809.288 Failure to Meet Performance Standards.**

Comment: Two commenters asserted that it will be difficult and expensive for a Board or its contractor to recover payments made during the appeals process, which is lengthened by the new appeal procedures, and suggest that the additional costs of tracking and staffing may exceed the benefit of collection of the debt.

Response: Due process requires that benefits not be denied during an appeal process. Fiscal responsibility requires that recoupment be attempted for any payment for which it is later determined the recipient was not eligible.

Comment: One commenter asserted the principal parts of this section refer to process measures for eligibility determination and Provider Agreements rather than to performance standards. The commenter questioned if the process measurements need to continue, but, if so, recommended revised wording.

Response: In response to another comment, this rule has been revised. Although the process for reviewing eligibility determinations has been deleted from the rule, the Commission emphasizes the importance of ensuring accurate eligibility determinations.

Comment: One commenter asserted it should be a Board decision to determine how many cases should be monitored, the benchmarks for acceptable levels of service, and the penalties for non-compliance. The commenter further asserted the Boards have a plan and process for monitoring the contractor using a monitoring instrument that is more comprehensive and that it is more appropriate for the Commission to monitor the Board's monitoring schedule and instruments.

Response: The Commission agrees that the rule may provide more flexibility and modifies the rule by removing the provisions in subsection (b) and following. The Commission intends to provide the Boards with as much flexibility as feasible, while ensuring that appropriate monitoring is achieved. The rule is revised accordingly.

Comment: One commenter questioned the appropriateness of the Commission's authority to sanction the Board's contractors and also questioned what the authority is for the Board to sanction contractors. The commenter suggested that the Commission establish procedures for holding the Boards accountable for the failings of their contractors.

Response: In response to another comment, the section referencing sanctions of contractors has been deleted. The Boards will establish the procedures for contractor accountability.

Comment: Two commenters questioned if this refers to only the quality assurance standard and not Legislative Budget Board standards.

Response: The performance standards include references to all measures of quality, including Legislative Budget Board standards, quality assurance standards, performance measures, and other outcome measures. The proposed rule addresses standards for client eligibility. Additional performance standards will be developed with the assistance of a work group that includes representation from the Boards. The Commission intends to modify performance measures by working with local partners to determine appropriate standards and measures.

Comment: One commenter questioned under what circumstances the Commission would recoup administrative costs in response to a Board's failure to meet performance standards.

Response: In response to another comment, the provisions addressed by this commenter are deleted from the rule.

Comment: One commenter questioned the basis of determining a monitoring sample, consistently and fairly, and how frequently the Commission will monitor.

Response: The monitoring sample will be determined by a risk assessment study, including such factors as the results of prior reviews, size of the area and contract, and changes in management and staff. Several factors, including the risk assessment results, could impact the monitoring frequency, but each area can expect to be reviewed at least once each year.

Comment: One commenter requested clarification regarding what a Board and its contractor are supposed to monitor as opposed to what other agencies are monitoring so as to avoid duplication as well as to establish lines of responsibility. The commenter further questioned if the Board and its contractors need to be trained in the licensing standards used by the Texas Department of Protective and Regulatory Services (TDPRS).

Response: There will be variations between contracts and workforce development areas. Each Board is responsible for developing a monitoring plan based on the risks associated with each contract, as well as federal requirements for monitoring and oversight. A Board may determine that it has a high degree of reliance on the internal monitoring performed by a contractor or the contractor's monitoring of subcontractors and vendors. Overall responsibility for Board monitoring includes the provisions in the rules, as well as federal and state regulations cited in the rules. The Commission will monitor the Board in regard to fulfillment of its oversight role and will review

some contractor functions to verify adequate Board oversight. The Boards are not responsible for monitoring requirements established by other agencies not specified in the rules, but the Boards and the Boards' contractor(s) should be familiar with TDPRS requirements so that they will be able to report to TDPRS for further investigation any possible violations that the Board or its contractor become knowledgeable of in the course of fulfilling the responsibility.

### **General Comments.**

Comment: One commenter expressed concern with the repeal of Texas Education Code Chapter 9, which leaves CCMS without any legal basis, and how the legislature will view the necessity for funding child care when it is an option.

Response: Note: As there is no Texas Education Code Chapter 9, the response to this comment relates to the repeal of Texas Administrative Code Chapter 809 regarding the Child Care and Development Program. The majority of the current rules are repealed and proposed as new rules. The status of child care as a federal and state funded program does not change. The Child Care Management System was developed before the workforce system. With the passage of HB 1863, services were integrated with the Boards because child care is vital to working parents served by the Boards. Boards will continue to contract with service providers for intake, eligibility determinations, and training services.

Comment: One commenter expressed concern with issues of planning, strategy, quality control, and accountability as the state transitions from a unified system to numerous Boards and the ability to guarantee consistency and congruence. The commenter cites the automation system, federal guidelines, priority for abused children, the labor intensity of child care, and the importance of children as significant issues.

Response: The Commission agrees that child care services are critical to our state's workforce and recognizes that today's children will become the workforce of the future. We trust the Legislature's vision to integrate this significant support service with other services available to families through the local workforce delivery system. Further, the concept of local control enables the Boards to establish policies and develop plans for services that meet their residents' needs. All local plans will not be exactly the same, but all will be based on common state and federal requirements, while incorporating aspects unique to the particular area.

Comment: One commenter requested guidelines for the Boards in implementation of their child care management system.



Response: The Commission intends to provide training and written information for the Boards to use in designing and implementing their child care service delivery system.

Comment: One commenter commended the Commission for clear instructions to the Boards, a succinct list of assistance available to families transitioning off public assistance, recognition of the need to balance quality control by the state with flexibility at the local level, use of funds for quality enhancement and training, and the requirement for "listed" homes to fulfill health and safety requirements.

Response: The Commission appreciates this commenter's intensive analysis of the rules.

Comment: One commenter expressed concern in melding the child care industry with the workforce development system, particularly in regard to access to child care services in career centers. The commenter noted that these systems are mutually interdependent and there are numerous operational issues to be considered.

Response: The Commission agrees that these issues require careful consideration and believes the Boards are uniquely positioned to make these important decisions.

Comment: One commenter recommended that the rule be clear in regard to intent so that the responsibilities of the various parties are understood.

Response: The Commission concurs and has made every effort to minimize state requirements and give the Boards the authority to establish appropriate controls at the local level.

Comment: One commenter expressed concern that complying with the rules will be too great an expense for some child care centers to bear and that small centers will find it difficult to stay in business if they must pay someone to help bring them into compliance. The commenter suggested it may be necessary to provide partial funding for the compliance process in order to assure that child care spaces remain available.

Response: The Commission has eliminated many requirements from the rule other than those imposed by federal regulations. The Boards are given authority to establish policies that were previously imposed at the state level so that they can better address local circumstances. Providers are encouraged to work with the Boards and provide information relevant to their policy decisions.

Comment: One commenter recommended that the Boards be given more autonomy in their operations, which would enable them to tailor their use of funds to respond to the

particular needs of their geographical regions as well as to: 1) assure the Board has a permanent member who has expertise in current child care practices; 2) provide training to Board members on child care needs and services; and 3) assure fairness in contracting with service providers for child care training and other services.

Response: The Commission agrees with providing the Boards with as much autonomy as feasible to meet the needs of the local areas while balancing the various federal and state statutory and regulatory requirements, including, but not limited to, the eligibility, reporting, and funding requirements. The Commission has granted a great deal of autonomy to the Boards with the expectation that the Boards will plan service delivery to meet the needs of the local area. To the extent that further flexibility can possibly be incorporated, the Commission will strive to incorporate that flexibility as the Boards tailor the local child care delivery in coordination with other workforce support services. The Commission agrees with the first enumerated point and responds that the chief elected officials in the local workforce development areas are required, through state law, to appoint to the Boards a permanent representative with expertise in child care in accordance with Texas Government Code §2308.256(g). The Commission also agrees with the second and third points and is committed to ensuring that training to Board members on child care needs and services is accomplished, that available child care funds are contracted to the Boards, and that the Boards have the discretion to use funds for training as needed, including training for providers.

Comment: One commenter recommended that the Boards take advantage of the newly established ability to use local donations to apply for federal funds.

Response: Although local funds have traditionally been used to match federal funds, the Commission agrees that the Boards are in a unique position to be more effective in obtaining and utilizing local donations to match federal funds.

Comment: One commenter recommended the state continue to be diligent in pursuing federal money and noted that grants are needed to match state funds, as well as local funds.

Response: The Commission agrees with making all efforts to obtain the maximum amount of federal funds.

Comment: One commenter agreed with increased flexibility for the Boards but recommended continued state oversight, maintenance of the current service delivery and automation system, and provision by the state of a basic planning and service guide.

Response: The Commission plans to provide training, as well as written guidance, for the Boards' consideration in developing their policies and procedures. The Commission will also monitor local programs. The Commission will work with the Boards to transition to an automated system that meets their needs. The local service delivery system will be developed by the Boards in accordance with the concept of local control established by HB 1863.

Comment: One commenter recommended that, where federal regulations governing the Child Care and Development Fund do not require further regulation or explication, that there be no further definition in state rules.

Response: The Commission agrees with this in concept but believes there are some issues for which additional state guidance is prudent, particularly during the integration of the child care support service with other workforce services.

Comment: One commenter recommended that as much flexibility as possible should be provided to the Boards in determining who will be served through the local child care broker and how funds will be used to provide such services. The commenter further suggested that defining eligibility too narrowly or placing extraordinary requirements not in federal or state law or regulations on the expenditure of funds limits the ability of the Boards to meet the needs of their customers.

Response: The Commission agrees and believes that flexibility has been granted to the Boards.

Comment: Two commenters requested more definitive language in the rules to clarify responsibilities in regard to monitoring child care providers, specifically the responsibility of TDPRS to monitor compliance with licensing standards including those associated with the health and safety of children in care and the responsibility of the Board's child care contractor to ensure compliance with the terms of the provider agreement.

Response: Additional information regarding responsibilities is provided in §809.42 (c).

Comment: One commenter expressed support for the rules moving responsibility from the Commission to the Boards. Another commenter expressed support for the autonomy that is proposed for the Boards and noted that the flexibility provided will enable the Boards to address the needs and concerns of the local areas. Another commenter is supportive of the Commission's efforts to enhance local control of the child care management system. One commenter expressed support for the proposed rules that allow more flexibility in how the child care program is administered.

Response: The Commission acknowledges the comments and agrees that the changes will enable the Boards to be responsive to the local employment, education, and training needs of the local workforce areas through integrating services with the workforce system designed to support working families and move families off of public assistance.

Comment: One commenter noted that provisions in the proposed rules can positively impact the education and information available to parents, financial and programmatic support for improved quality in programs for children, and stability in the child care industry.

Response: The Commission agrees that additional steps to continually improve the quality of child care and child development is an integral part of providing the child care support service. The Commission believes the Consumer Guides will enhance parent choice through educating parents regarding various child care options specific to the local area.

Comment: One commenter requested the Commission set out clear parameters and expectations and provide extensive training, technical assistance, and support, in addition to assigning responsibility for decision-making to the Boards.

Response: The Commission understands these needs and intends to provide the necessary information to the Boards.

Comment: One commenter expressed concern that all clients in the state with the same or similar circumstances will not be treated equally as a result of the Boards being allowed to determine certain eligibility requirements and other policies. Examples cited are §809.46 and §809.92.

Response: As local circumstances vary, the Commission believes local control over policies and procedures, beyond requirements of federal or state statutes and regulations, results in a more effective service delivery system, as well as being in accordance with state law which promulgates local control. State law created the Boards as the method of delivery of workforce services including the child care workforce support service. State law contemplates local discretion to address the local needs of residents, employers, and persons transitioning into the workforce.

Comment: One commenter expressed support for Commission rules that purport a consistent statewide child care system and asserted that the rules should provide an orderly process for: 1) communication about regulatory policies, 2) services to Child Protective Services families, including former cases; 3) exchanges between TDPRS and local child care services contractors; and 4) adequate consumer information for

parents to make informed choices about child care. The commenter also suggested the rules should contribute to a consistent, ongoing automated data collection system to accumulate child care information which may be shared with other state and federal agencies and to record the cost and quality of care across the state.

Response: The Commission agrees with the importance of interagency communication at both the state and local levels, as well as comprehensive consumer education being provided to parents. The need to provide flexibility for Boards to integrate child care services with other workforce support services will result in local service delivery systems rather than a statewide system. The transition away from a rigid central control is intended to enable and empower local residents, employers, and communities to specifically address local needs. Nothing in the new rules is intended to change the federal reporting and state data collection to forecast and effectively support statewide workforce improvements and economic development. The federally required data collection and state data collection can be shared with other state and federal agencies, in addition to the Commission.

Comment: One commenter expressed concern that all interested parties may have not had the opportunity to respond to the proposed rules due to the relatively short public comment period and recommended that the public comment period be lengthened to allow all stakeholders to participate in the process. The commenter requested an extension of the comment period to approximately February 15 in order to read, understand, and prepare comments; to get input from other parties; and to assess quality versus quantity.

Response: The Commission believes it is important to finalize rules as quickly as possible so that the Boards can develop their plans and implement the plans on a timely basis. The comment period is in accordance with standard state procedures, and the Commission also mailed a copy of the proposed rules to Board chairs, Board executive directors, child care contractors, the Child Care Advisory Committee, other state agencies, and interested legislators prior to the Texas Register publication of the proposal. Further, a public hearing was held to obtain comment on the proposal. The Commission believes it has made a good faith effort to solicit public comment and declines to extend the comment period.

Comment: One commenter expressed concern that the contract language clearly define and clarify the role of the child care contractor vs. the role of other agencies established to work with child care issues. The concern is related to regulatory responsibilities of TDPRS and potential for litigation if the child care contractor assumes these roles.

Response: The rules do not redirect regulatory responsibilities from TDPRS to the child care contractor. The rules require the Boards to ensure that appropriate action is taken in regard to management of services funded through the Child Care and Development Fund.

Comment: One commenter urged that input from the child care contractors be considered in the transition of child care service delivery to the Boards and access to child care through career centers.

Response: The Commission supports this concept.

Comment: One commenter asserted that Texas places too great a burden on the current child care subsidy pool to meet the needs of parents in job training programs and recommended that the legislature include funds specifically for child care in all job retraining allocations.

Response: The commenter submitted this comment to the respective State Senator, and the Commission agrees that this was the appropriate action. The Commission has asked for general revenue funds to draw down additional federal matching funds.

Comment: One commenter opposed a plan that would dismantle the statewide system that handles all child care paperwork and urges the Commission to maintain systems that have proven to be effective tools in child care administration. The commenter recommended continuation of the current computer system.

Response: The current automated system will remain in place until a system that better meets local needs may be developed with Board input.

Comment: One commenter asserted there is confusion over which functions will remain with the Commission and which will be the responsibility of the Boards and recommended determining and publishing who has responsibility for these functions.

Response: The Commission believes that the rule specifies for which functions the Boards have responsibility.

Comment: One commenter recommended establishment of a loan program for workers who have been in child care for two years to enable them to advance in their formal child development education and, if the student stays in child care for three years after graduating, to forgive the loan.

Response: All child care funds are allocated to Boards except for state operational costs. The Boards may choose to implement innovative programs to improve the quality of child care.

Comment: One commenter questioned why the performance standards address only the accuracy and timeliness of eligibility determinations and redeterminations, considering that the Commission is advocating improvements in the availability, affordability, and quality of child care.

Response: The Commission intends to convene a work group, including Board representatives, in the near future to address comprehensive performance standards for the child care system.

Comment: One commenter questioned whether the Boards will have much flexibility in the design and implementation of a unique service delivery system, assuming there are separate allocations for Board administration and contractor operations which will not allow for much creativity regarding efficiencies and redesign. The commenter further stated there will be opportunity for redesign and improvements as operations move to the career centers, but there will be associated costs, and the Boards need to have the flexibility to determine the best use of operational funds.

Response: For FY 2000, there will be one allocation to the Boards for child care, which will include administration and operational costs. For FY 1999, a separate allocation was made for administration and operations; however, a recently adopted Commission amendment to the current allocation rule enables Boards to transfer funds between direct care categorical allocations. There is a requirement that the total amount of administration and operational costs not exceed the current allocation without a proportionate increase in the number of children receiving services.

Comment: One commenter expressed concern with the liability associated with the Boards or their subcontractors having the responsibility to oversee compliance with health and safety issues of providers.

Response: Neither the Boards nor the contractors are responsible for oversight regarding health and safety issues. In the course of monitoring operational activities, any knowledge of a possible violation should be reported to the cognizant agency.

Comment: One commenter agreed with the purpose of the rules, the program goals, input from local entities in developing policies and plans for service delivery, continued use of a statewide automated system until alternative methods of managing information are developed, the proposed effective date, the schedule for a public hearing, the general description of changes, and the description of Subchapter A

regarding general provisions. The commenter also agreed with §809.2, 809.4, 809.13, 809.16-20, 809.41, 809.43, 809.45, 809.47-48, 809.62, 809.71, 809.73-74, 809.76-77, 809.91, 809.93, 809.101-105, 809.124, 809.221-223, 809.225-226, 809.228-230, 809.232-235, 809.252-253, 809.281-285, and 809.282.

Response: The Commission appreciates the public comments and agrees.

Comment: One commenter questioned whose responsibility it is to ensure access to child care services through career centers and expressed concern with resource requirements for this connectivity. The commenter requested that the word "access" be fully defined and questioned if it means a presence or full intake and referral capabilities. The commenter further questioned how the Commission intends for the Boards to fund the connectivity if it is required. Another commenter questioned if the Boards will be expected to assume costs of co-locating child care services at one-stop centers.

Response: "Access" means having services available in the career center. This could include a staff presence or, since individuals may apply for child care services via telephone, telephone access to the child care contractor could suffice. The extent of access provided after, at least, a minimum amount of access is provided, is a Board decision, and the determining factor would be that the client has full access to child care services. Additional funding is not available for the connectivity required because all available funds have been contracted to the Boards. It is the responsibility of the Boards to ensure that access to child care services is provided through the career centers. All of the resources for this activity have been contracted to the Boards in those areas where a Board has a master contract with the Commission and would be included in the amount allocated. The efficiencies of reducing administrative costs at the local level through combining facilities and or similar functions would be to the benefit of the Boards and at the discretion of the Boards.

Comment: One commenter encouraged use of "child development" as a part of the process of creating the workforce system.

Response: The Commission concurs with the importance of child development as a part of child care.

Comment: One commenter contended that the issue of general liability should encompass the roles and responsibilities of the CCMS contractors and the multitude of regulatory agencies that carry specific regulatory burdens via state and federal laws.

Response: The Commission agrees that liability is a concern of all interested parties; however, the Commission believes it would be inappropriate to impose additional



requirements beyond those established by another state agency which is invested with this responsibility. The rule provides for additional requirements to be established, at the discretion of the Boards, because local decisions will best meet the needs of the residents of the local area.

Comment: One commenter disagreed that the burden of regulation for general liability and transportation should fall to the two agencies overseeing these areas of operation. The commenter asserted that PRS would not be able to enforce these regulations in the near future and that the regulations would have a major financial impact on registered and licensed facilities. The commenter also asserted it would be difficult to ensure that continued transportation insurance was carried once the registration was completed. The commenter believes that insurance is essential in advocating for the health and safety of children and recommended that the current requirement of general liability and transportation insurance be continued as a vendor requirement.

Response: The Commission believes that the requirements for insurance should be addressed by the agencies that have the knowledge and authority related to these issues. The Commission does not believe that the enforcement of regulations or financial impact is a greater or lesser issue depending on which agency establishes the regulation. The Commission supports diligence in ensuring the health and safety of children, but defers to the cognizant agencies for state requirements, as well as the Boards for local policies and procedures.

Comment: One commenter expressed support for access to child care services through the career centers and the options that will enable the Boards to best meet the needs of the local areas.

Response: The Commission appreciates the comment and agrees that "access" is a necessary component of the child care support service.

Comment: One commenter recommended retaining the current statewide automated system to establish eligibility for child care assistance.

Response: The statewide automated system will be continued until alternative methods of managing information are developed. This will enable the Boards to determine their needs and develop a management and payment system that meets those needs.

Comment: One commenter recommended adding "federal and state laws and regulations" as criteria for development of Board policies.

Response: The Commission believes it is fully understood that federal and state laws and regulations must be complied with as Board policies are developed and that it is unnecessary to make this statement.

Comment: One commenter recommended adding "while still complying with federal and state laws and regulations" to the statement that the Boards may develop procedures for administering child care services that best fit the local needs.

Response: The Commission believes the Boards will develop their procedures fully in compliance with federal and state laws and regulations and does not believe this qualifier is necessary.

Comment: One commenter referenced state law which requires licensed child care centers to maintain \$300,000 in general liability insurance and mandates coordination of inspections by eliminating redundant inspections. The commenter also referenced the Agreement of Joint Responsibility between the Commission and TDPRS which addresses monitoring of day care centers for liability insurance and asserted that funds will need to be provided to TDPRS if it assumes the Commission's responsibility for monitoring. The commenter further stated that TDPRS cannot legally monitor group day homes and registered family day homes because the group day homes and registered family day homes are not required by law to carry liability insurance. The commenter recommended continuation of the current rule requiring providers of purchased child care to maintain \$300,000 in general liability insurance and a requirement for child care services contractors to monitor the needed liability insurance.

Response: The Commission declines to impose insurance requirements beyond those established by state law and the regulatory agency. The Board or its contractor will continue to monitor child care providers to ensure that their insurance coverage complies with what is required for their type of facility.

Comment: Two commenters requested clarification of "child care expertise" in relation to the Board child care representative and questioned the meaning of "permanent child care representative." The commenters also questioned if all other Board member requirements apply.

Response: "Child care expertise" means special skill or knowledge on the subject of child care. "Permanent child care representative" means there will continue to be a child care representative on the Board. The individual is subject to other Board member requirements, such as representative of the private sector, or a representative of organized labor and community-based organizations. This individual would serve in a dual capacity. The 74th Legislature amended Texas Government Code §2308.256

regarding Board Membership to include that "(g) At least one of the members of a Board appointed under Subsection (a) must, *in addition to the qualifications required for the member under the subsection*, have expertise in child care or early childhood education. " [Emphasis added].

Comment: Two commenters inquired as to the status of the Child Care Services Manual.

Response: A new manual will be published after the final rules are adopted by the Commission and as soon as feasible to aid the Boards in exercising the new flexibility incorporated into the new rules.

### **Subchapter A. General Provisions**

The new rules are adopted under Texas Labor Code §301.061 and §302.002, which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs, and under Texas Human Resources Code §§31.010, 31.0035, and 44.002.

#### §809.1. Short Title and Purpose.

(a) The rules contained in this chapter may be cited as the Child Care and Development Rules. The purpose of these rules is to interpret and implement the requirements of state and federal statutes and regulations governing child care and quality improvement activities funded through the Commission, fully integrating child care services with other workforce training and services under the jurisdiction of local workforce development boards.

(b) For local workforce development areas where there is no certified local workforce development board with an approved plan and the Commission continues to administer the delivery of child care services, the rules contained in this chapter shall apply to the Commission, its contractors, and its providers of services.

(c) The effective date of the rules in this Chapter 809 relating to Child Care and Development shall be twenty days after the date of filing the adoption in the Office of the Secretary of State; however, until September 1, 1999, the Boards shall continue to comply with the rules in effect on January 1, 1999.

#### §809.171. Purpose

The purpose of the child care training center pilot programs is to establish pilot programs for providing training for recipients of public assistance in basic skills, child

care, child care vendor entrepreneurial training and early childhood education to enable the trainees to obtain employment in the child care field.

The provisions of this §809.171 adopted to be effective March 1, 1998, as published in the Texas Register, February 20, 1998, 23 TexReg 1640.

#### §809.172. Definitions

Commission-The Texas Workforce Commission.

Public Assistance-Financial assistance under Texas Human Resources Code Chapter 31.

Trainee-A recipient of public assistance who is receiving training under the child care training center pilot program.

Training center-A child care facility licensed under Texas Human Resources Code, Chapter 42, which provides both academic coursework and practicum hours. The training center must directly provide either the academic or practicum hours, and may subcontract the other function.

The provisions of this §809.172 adopted to be effective March 1, 1998, as published in the Texas Register, February 20, 1998, 23 TexReg 1640.

#### §809.173. Training Center Selection Criteria

(a) The child care training center pilot programs funded by the Texas Workforce Commission shall meet all requirements of Texas Labor Code, §302.003.

(b) Child care training center pilot programs will provide specific training and certification in a minimum of four geographic areas of the state, with at least one site in an urban area and at least one site in a rural area.

(c) The training center will be selected by the Commission through a Request for Proposal process. Evaluation of each proposal shall include consideration of:

(1) level of training of the staff employed by the training center and the training center's subcontractor;

(2) history of the child care facility offering practicum hours in delivering high quality care;

(3) ability to offer training which will result in academic credit which is accepted by colleges or universities in this state;

(4) ability to provide and maintain a mentor relationship with each trainee being trained by the training center;

(5) the provision of child care services to the children of trainees at the same discounted rate charged to other employees of the child care facility;

(6) experience and qualifications of proposed subcontractors; and

(7) utilization of all available resources to fund the program including private contributions as well as local, state and federal funds.

The provisions of this §809.173 adopted to be effective March 1, 1998, as published in the Texas Register, February 20, 1998, 23 TexReg 1640.

#### §809.174. Implementation Requirements

If the Commission determines that a proposal is appropriate for funding through the child care training center pilot programs, the Commission may enter into a contract with the training center. All contracts with training centers will include the following:

(1) the names of the entities referring public assistance recipients to the training center and the method of referral;

(2) the number of academic and practicum hours which will be provided to each trainee by the training center;

(3) the timeline for implementation of the child care training center pilot program;

(4) the reporting requirements; and

(5) the format for trainee evaluations.

The provisions of this §809.174 adopted to be effective March 1, 1998, as published in the Texas Register, February 20, 1998, 23 TexReg 1640.

#### §809.2. Definitions.

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

(1) Board -- A certified local workforce development board with an approved plan pursuant to The Workforce and Economic Competitiveness Act, Texas Government Code, Chapter 2308, as amended.

(2) Child Care -- Child Care services funded through the Commission.

(3) Commission -- The Texas Workforce Commission.

(4) Grant Recipient -- The entity approved by the Commission under Texas Government Code §2308.263.

(5) Local workforce development area -- The designated geographic area for which a Board provides services funded through the Commission, pursuant to Texas Government Code §2308.252.

(6) Parent -- An individual responsible for the care and supervision of the child identified as the child's natural parent, adoptive parent, stepparent, or legal guardian.

(7) Provider -- A person or entity that meets the minimum qualifications as set forth in this chapter for providing child care funded through the Commission. Unless specifically stated otherwise, the term "provider" does not refer to a self-arranged provider.

(8) Self-arranged provider -- A person or entity that meets the minimum qualifications for providing self-arranged child care as set forth in this chapter.

(9) TANF -- Temporary Assistance for Needy Families provided for under the federal Personal Responsibility and Work Opportunity Reconciliation Act and the Temporary Assistance for Needy Families block grant statutes and regulations, as amended.

#### §809.201. Purpose

The purpose of this subchapter is to set forth the criteria and procedures by which school districts may obtain funds from the Commission in order to provide child care for school-age children before school, after school, during school vacations, and on school holidays.

The provisions of this §809.201 adopted to be effective September 8, 1998, as published in the Texas Register, September 4, 1998, 23 TexReg 9072.

#### §809.202. Definitions

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

(1) School-age children-Children enrolled in pre-kindergarten through grade seven.

(2) School district-A public school district accredited under the applicable laws of the State of Texas.

The provisions of this §809.202 adopted to be effective September 8, 1998, as published in the Texas Register, September 4, 1998, 23 TexReg 9072.

#### §809.203. Request for Proposal

A response to a request for proposal issued by the Commission shall include the following information:

(1) description of the services to be provided;

(2) income level of the families to be served;

(3) amount and source of matching funds or in-kind match for funds received under this subchapter;

(4) prior experience of the school district in providing child care services;

(5) the school district's plan for coordinating its program with the local workforce development board and written acknowledgment from the chair person or executive committee of the local workforce development board that the board has reviewed and supports the plan;

(6) the school district's plan for coordinating its program with other child care resources, both public and private; and

(7) description of the need in the community for school-age child care and the resources available to meet that need.

The provisions of this §809.203 adopted to be effective September 8, 1998, as published in the Texas Register, September 4, 1998, 23 TexReg 9072.

#### §809.204. Criteria for Award

In addition to the information required in the response to a request for proposal in awarding funds to school districts under this subchapter, the Commission may consider the following:

(1) innovative uses of the proposed program;

- (2) prior success of the proposed program;
- (3) prior receipt by a school district of funds under this program; and
- (4) equitable allocation of funds between urban and rural areas of the state.

The provisions of this §809.204 adopted to be effective September 8, 1998, as published in the Texas Register, September 4, 1998, 23 TexReg 9072.

#### §809.205. Use of Award

Funds awarded to school districts under this subchapter may be used by the school district for the following purposes:

- (1) planning and developing child care services, including the implementation of research-based reading programs;
- (2) establishing a child care program in accordance with this subchapter;
- (3) expanding existing child care services; and
- (4) improving existing child care services.

The provisions of this §809.205 adopted to be effective September 8, 1998, as published in the Texas Register, September 4, 1998, 23 TexReg 9072.

#### §809.4. Waiver Request.

The Commission may waive child care rules upon request from a person directly affected by the rule, if it determines that the waiver benefits a parent, contractor, or provider, and the Commission determines that the waiver does not harm child care or violate other state or federal statutes or regulations.

### **Subchapter B. General Management Requirements**

The new rules are adopted under Texas Labor Code §301.061 and 302.002, which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs, and under Texas Human Resources Code §§31.010, 31.0035, and 44.002.

#### §809.11. Board Responsibilities.

- (a) A certified Board with a local plan approved by the Governor is responsible for the administration of child care in a manner consistent with Texas Government Code,



Chapter 2308, as amended, and related provisions under Chapter 801 of this title (relating to Local Workforce Development Boards).

(b) Access to child care shall be available through all career development centers within a local workforce development area where a Board has been certified and a local plan approved by the Governor.

(c) Child care services are part of workforce training and services under Texas Government Code, Chapter 2308 and Chapter 801 of this title.

(d) A Board shall provide the Commission with access to child care administration records and submit information related for review and monitoring, pursuant to Commission rules and policies.

#### §809.12. Board Policies and Plans for Child Care Services.

(a) A Board shall develop policies and prepare, as part of its workforce training and services plan (plan) and budget, a plan for the delivery of child care in accordance with Commission rules and guidelines. The child care delivery plan shall include evidence of coordination with federal, state, and local child care and early childhood development programs and representatives of local governments.

(b) A Board shall develop policies for child care consistent with the procedures for board plan amendments contained in §801.3 of this title (relating to Requirements for Submission of Local Workforce Training and Services Plans, Modifications and Amendments) and state and federal statutes and regulations.

(c) A Board shall submit additional requirements, which would require amending the Board's plan, as amendments to the Board's plan.

#### §809.13. Ensuring Parent Choice.

A Board shall ensure parental choice by recruiting, training, and maintaining a sufficient number of providers to offer parents a full range of categories of care and types of providers of child care.

#### §809.14. Promoting Consumer Education.

(a) A Board shall make available to parents a consumer guide to child care providers who have Provider Agreements to provide Commission-funded child care in the local workforce development area and shall represent the name, address, and phone number of each provider and shall represent whether each provider:

- (1) is licensed by the Texas Department of Protective and Regulatory Services;
- (2) is registered with the Texas Department of Protective and Regulatory Services;
- (3) has met the Designated Vendor standards of the Commission;
- (4) has submitted proof of general liability insurance; and
- (5) has submitted proof of appropriate commercial transportation insurance.

(b) The consumer guide shall set forth the requirements to be licensed and registered with the Texas Department of Protective and Regulatory Services as set forth in Texas Human Resources Code, Chapter 42 and applicable administrative rules and a description of the types of facilities or homes, which may be licensed or registered including, but not limited to, the following: day-care centers, group day-care homes, and family homes.

(c) A Board shall ensure that the consumer guide also includes the telephone number of the Texas Department of Protective and Regulatory Services or applicable regulating agency, so parents may obtain or verify the information regarding the providers and check compliance history.

(d) The consumer guide may include additional information including, but not limited to, the following:

- (1) information the Board determines would assist parents in choosing a provider; and
- (2) information as established by the Commission.

#### §809.15. Quality Improvement Activities.

(a) A Board shall ensure that providers receive orientation, technical assistance, and ongoing training to improve the quality of child care.

(b) A Board shall ensure that the quality of child care is improved by recognizing providers who voluntarily exceed the minimum standards for qualification set by the Texas Department of Protective and Regulatory Services by using the Designated Vendor criteria as established by the Commission.

(c) A Board shall ensure that the quality of child care is improved by using quality improvement activities including, but not limited to, the activities described in 45 Code of Federal Regulations §98.51, except the Boards may not provide loans.

(d) In addition to the Designated Vendor criteria, a Board may establish other voluntary criteria for improving quality and recognize providers that meet or exceed the voluntary standards for quality.

(1) The quality improvement criteria may include, but are not limited to one or more of the following activities:

(A) reducing group sizes;

(B) improving health and safety conditions;

(C) improving linkage to parents and community services; or

(D) improving teacher training.

(2) Boards may also choose to recognize professional center accreditation as a means to improve quality.

#### §809.16. Procurement.

A Board shall comply with federal and state statutes, regulations, and policies for competitive procurement and contract management.

#### §809.17. Management of Finances.

A Board shall ensure that fiscal and statistical tracking is performed as required by federal and state statutes, regulations, and policies applicable to the funding sources for child care including, but not limited to, forms required by the Office of Management and Budget Circulars, the United States Department of Health and Human Services, the Commission, and the Uniform Grant Contract Management Standards of the Office of the Governor.

#### §809.18. Information Management and Reporting Requirements.

(a) A Board shall ensure that federal and state-required data is collected, updated, maintained, and provided to the Commission in accordance with federal and state reporting requirements.

(b) A Board shall provide additional data upon the request of the Commission.

#### §809.19. Performance Standards.

A Board shall ensure that all performance standards as developed by the Commission are met.

#### §809.20. Local Donations.

- (a) Boards shall ensure that federal funds are maximized by pursuing reasonable efforts to obtain local donations to match federal funds as designated in the Board contract.
- (b) In a three-party contract signed by the Board, the donor, and the Commission, the Board and the donor will obligate local donations to the state. The local donation may be designated by the donor for use in the local workforce development area or as otherwise permitted by state or federal statutes and regulations.
- (c) The local donation may be a cash donation from a private entity.
- (d) The local donation may be a transfer of funds from a public entity or a certification by a contributing public agency as representing expenditures eligible for federal match.

#### **Subchapter C. Requirements to Provide Child Care**

The new rules are adopted under Texas Labor Code §301.061 and 302.002, which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs, and under Texas Human Resources Code §§31.010, 31.0035, and 44.002.

#### §809.41. General Requirements.

- (a) A Board shall ensure that child care is provided only by persons or entities chosen by the parents and who:
  - (1) meet provider requirements set forth in this chapter, or
  - (2) are eligible to provide self-arranged care.
- (b) A Board shall ensure that providers of child care comply with all appropriate health and safety provisions as required by federal regulations including, but not limited to, 45 Code of Federal Regulations Part 98 as may be amended.

#### §809.42. Minimum Requirements for Providers.

- (a) A Board shall ensure that providers are at a minimum:
  - (1) licensed by the Texas Department of Protective and Regulatory Services;
  - (2) registered with the Texas Department of Protective and Regulatory Services;

(3) licensed by the Texas Department of Health as a youth day camp; or

(4) operated and monitored by the United States military services.

(b) A Board shall ensure that the providers:

(1) provide child care in compliance with a Provider Agreement as specified in this subchapter; and

(2) are not the subject of corrective or adverse action with the Texas Department of Protective and Regulatory Services, the Texas Department of Health, the United States military services, or any other state or federal agency.

(c) When a Board or the Board's contractor, in the course of fulfilling its responsibilities, gains knowledge of any possible violation regarding regulatory standards, the Board or its contractor shall report the information to the appropriate regulatory agency.

#### §809.43. Provider Agreements.

(a) Provider Agreements are agreements between the Board or the Board's designee and the providers of child care, which:

(1) are in writing and signed by the provider and the Board or the Board's designee before child care services are rendered, and

(2) specify the roles and responsibilities of the parties.

(b) A Board shall ensure that the Provider Agreements include notices, statements, and terms that detail provider obligations for complying with federal and state statutes and regulations relating to child care including, but not limited to, statements to ensure that discrimination is prohibited as referenced in 45 Code of Federal Regulations §§98.20, 98.46, and 98.47, as may be amended.

(c) Failure to maintain a Provider Agreement shall result in disallowed costs by the Commission.

#### §809.44. Provider General Liability Insurance Requirements.

The Boards shall determine whether general liability insurance, including transportation insurance, will be required of providers in their areas and, if so, the amount.

#### §809.45. Collection of Parent Fees and Subsidies.

(a) For purposes of this chapter the following terms shall have the following meaning unless the context clearly indicates otherwise.

(1) Parent Fee -- The amount required to be paid to the provider by the parent of the child as a co-payment for child care services.

(2) Subsidy -- The amount required to be paid by the parent for costs of child care for the child.

(b) Providers shall collect assessed parent fees and subsidies before child care is delivered.

(c) It is the sole responsibility of the provider to collect assessed parent fees and subsidies.

(d) A Board shall establish a policy regarding reimbursement of providers to address consequences for providers in situations when parents fail to pay parent fees and subsidies.

#### § 809.46. Assessing Parent Fees.

(a) A Board shall assess parent fees to all parents or caretakers based on the family's gross monthly income, with the following exceptions.

(1) Parents or caretakers who receive TANF are assessed no fee.

(2) Parents or caretakers who receive Supplemental Security Income (SSI) are assessed no fee.

(3) Parents who participate in the Food Stamp Employment and Training program are assessed no fee. Children of parents or caretakers who receive protective services are assessed no fee unless the Texas Department of Protective and Regulatory Services assesses a fee to a parent.

(b) In families where the child is the only TANF or SSI recipient, the parent fee is assessed according to subsection (d) of this section.

(c) Teen parents who live with their parents and who are not covered under exceptions outlined under subsection (a) of this section shall be assessed a parent fee. The parent fee is based solely on the teen parent's income.

(d) Parent fees for all parents not covered under exceptions outlined under subsection (a) of this section are assessed using the following formulas:

(1) In areas where the Commission manages child care service delivery contracts, the parent fee shall be 9% of the family's gross monthly income if there is one child receiving Commission paid child care and 11% of the family's gross monthly income if there are two or more children receiving Commission paid child care.

(2) In areas where the Board directly manages child care service delivery contracts, it is recommended that the parent fee should be no less than 9% and no more than 15% of the family's gross monthly income. The Board shall set the actual fee policy in accordance with the requirements set forth in §809.12 of this chapter (relating to Board Policies and Plans for Child Care Services).

(e) The Board's contractor is not permitted to assess a parent fee that exceeds the cost of care.

(f) Parents who receive a child care subsidy from other state or federal programs such as the Job Training Partnership Act shall pay that amount in addition to the assessed parent fee. The Board's contractor shall request documentation of child care subsidies from the parent.

#### § 809.47. Reduction of Assessed Parent Fees.

(a) The Board or its contractor shall review the assessed parent fee for possible reduction if there are extenuating circumstances that jeopardize a family's self-sufficiency. The Board or its contractor may reduce the assessed parent fee if warranted by these circumstances.

(b) The Board or its contractor shall not waive parent fees under any circumstances.

#### §809.48. Attendance Tracking.

(a) A Board shall set the attendance standards for eligible children in the local workforce development area, including provisions consistent with §809.224 of this Chapter (relating to Custody and Visitation Arrangements). Providers and self-arranged providers shall document and maintain a record of each child's attendance and submit such documents to the Board's designated contractor upon request.

(b) When an enrolled child is absent, providers shall inform the Board's designated contractor and shall follow attendance reporting and tracking procedures required by the Commission, Board, or, if applicable, the Board's contractor.

(c) Failure by the provider to keep required attendance records may result in withholding payment or in termination of the Provider Agreement.

§809.49. Provider Advisory Groups.

Providers, that are licensed centers, are required to establish a Parent Advisory Group consistent with Chapter 44 of the Texas Human Resources Code.

§809.5. Child Care State Advisory Committee.

(a) The Commission appoints the State Advisory Committee on Child Care Programs.

(b) The advisory committee shall consist of 20 members, not including ex officio members.

(c) The advisory committee appointees will be a balanced representation of:

(1) parents, guardians, or custodians of children who use child care programs;

(2) child care advocacy groups;

(3) operators and providers of child care programs and services representing rural and urban communities;

(4) for profit and nonprofit providers of child care services representing rural and urban communities;

(5) experts in early childhood development and education;

(6) experts in child health and nutrition;

(7) other child care professionals;

(8) the general public; and

(9) ex officio representatives from each state agency, as determined by the Commission, that have an interest or role in state child care programs.

(d) At least one of the members of the committee, in addition to the qualifications required for that member, must represent a local workforce development board.

(e) The Commission shall provide staff support and other support necessary to the advisory committee to operate the committee.

(f) Subject to appropriations, the advisory committee may be reimbursed for travel expenses incurred while conducting the business of the board.



(g) The advisory committee shall advise the Commission in developing coordinated state policies for the use of federal and state funds in child care programs.

(h) The advisory committee shall review child care policies and programs for compliance with applicable guidelines and shall advise the Commission on the results of the review in accordance with the Texas Human Resources Code, Chapter 44, Subchapter C, as amended.

(i) The Commission with the assistance of the advisory committee shall hold biennial public hearings on state and federal child care programs to elicit public response and recommendations regarding the quality, accessibility, and affordability of child care services. The hearings must be held in at least three separate geographical regions of the state and may be held in conjunction with other public hearings on child care held by the Commission.

(j) The advisory committee shall annually report its findings and recommendations to the Commission, and the local workforce development boards will be sent a copy of this report.

The provisions of this §809.5 adopted to be effective September 10, 1998, as published in the Texas Register, September 4, 1998, 23 TexReg 9069.

#### **Subchapter D. Self-Arranged Care**

The new rules are adopted under Texas Labor Code §301.061 and 302.002, which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs, and under Texas Human Resources Code §§31.010, 31.0035, and 44.002.

##### §809.61. Qualifications to Provide Self-Arranged Care.

(a) A relative who is at least 18 years of age and is one of the following is eligible to provide self-arranged care:

(1) the child's grandparent;

(2) the child's great-grandparent;

(3) the child's aunt;

(4) the child's uncle; or

(5) the child's sibling, if the sibling does not reside in the same household as the eligible child.

(b) If chosen by the parent, a person or entity who has not signed a Provider Agreement is eligible to provide self-arranged care if:

- (1) licensed by the Texas Department of Protective and Regulatory Services;
- (2) registered with the Texas Department of Protective and Regulatory Services;
- (3) listed with the Texas Department of Protective and Regulatory Services;
- (4) licensed by the Texas Department of Health as a youth day camp; or
- (5) operated and monitored by the United States military services.

(c) A Board shall ensure that requests made by the Texas Department of Protective and Regulatory Services, for specific providers or persons eligible to provide self-arranged care, are enforced for children in protective services.

(d) Before authorizing a person or entity "listed" with the Texas Department of Protective and Regulatory Services to provide child care, a Board shall ensure that there are in effect, under local law, requirements designated to protect the health and safety of children that are applicable to the persons or entities "listed" with the Texas Department of Protective and Regulatory Services. Boards may choose to not allow "listed" providers as self-arranged providers. Pursuant to federal regulations at 45 Code of Federal Regulations §98.41, the requirements shall include:

- (1) the prevention and control of infectious diseases (including, immunizations);
- (2) building and physical premises safety; and
- (3) minimum health and safety training appropriate to the child care setting.

#### §809.62. Reimbursement for Self-Arranged Care.

(a) A Board shall ensure that reimbursement for self-arranged care is paid:

- (1) to the self-arranged provider; and
- (2) after the Board or its contractor receives a complete Declaration of Services Statement (Declaration) verifying that services were rendered.

(b) The Declaration shall contain:

- (1) the name, age, and identifying information of the child;

- (2) the amount of care provided in terms of units of care;
- (3) the rate of payment;
- (4) the dates services were provided;
- (5) the name and identifying information of the self-arranged provider, including the location where care is provided;
- (6) verification by the self-arranged provider that the information submitted in the Declaration is correct; and
- (7) additional information as may be required by the Boards.

### **Subchapter E. Parent Rights and Responsibilities**

The new rules are adopted under Texas Labor Code §301.061 and 302.002, which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs, and under Texas Human Resources Code §§31.010, 31.0035, and 44.002.

#### **§809.71. Parental Choice.**

(a) Parents have a right to choose the type of child care option that best suits their needs and to be informed of all child care options available to them including, the following:

- (1) the full range of categories of care and types of providers available; and
- (2) the various licensing, registration, and health and safety standards that providers shall follow.

(b) Included in parental choice is the right of parents to:

- (1) visit available child care facilities before making their choice of a child care option and visit the facility during child care services; and
- (2) receive assistance in choosing initial or additional child care referrals including information about the Board's policies regarding transferring children from one facility to another.

#### **§809.72. General Parent Rights. Parents have the right to:**

- (1) have persons represent them when applying for child care;

(2) notification of their eligibility to receive child care within 20 days from the day the Board's contractor receives all necessary documentation required to determine eligibility for child care;

(3) receive child care regardless of race, color, national origin, age, sex, disability, political beliefs, or religion;

(4) have the Board and the Board's contractor treat as confidential information that is used to determine eligibility for child care; and

(5) written notification by the Board's contractor at least 15 days before the denial, delay, reduction, or termination of child care unless the following exceptions apply:

(A) Notification of denial, delay, reduction, or termination in child care is not required when child care is authorized to cease immediately because either the parent is no longer participating in the Choices program; or child care is authorized to end immediately for children in protective services child care.

(B) The Choices program participants and children in protective services child care are notified, of denial, delay, reduction, or termination of child care and the effective date of such actions by the Choices case worker or the Texas Department of Protective and Regulatory Services.

#### §809.73. Eligibility Documentation.

(a) Parents shall provide the Board's contractor with all information necessary to determine eligibility according to the Board's administrative policies and procedures.

(b) Failure to submit documents may result in:

(1) denial or termination of child care services, or

(2) no payment for self-arranged care claims.

#### §809.74. Enrollment Agreements.

(a) The enrollment agreement is the agreement between the parents of the child and the provider of child care, which details the agreed upon terms of child care.

(b) A parent shall comply with the enrollment agreement terms as agreed upon in the enrollment agreement. Failure to comply will result in having child care denied or terminated.

#### §809.75. Parent Reporting Requirements.

(a) Parents shall report, within 10 days of the occurrence, the following:

(1) changes in income;

(2) changes in family size;

(3) loss of TANF or Supplemental Security Income assistance grants;

(4) changes in work, education, or training; or

(5) any other changes that might affect the parents' eligibility for services.

(b) Failure to report changes may result in:

(1) termination of services;

(2) recovery of payments by the Board, the Board's contractor, or the Commission;  
and

(3) investigation for suspected fraud.

(c) The receipt of services for which the parent is no longer eligible constitutes grounds on which to suspect fraud.

#### §809.76. Parent Appeal Rights.

(a) A parent may request a hearing pursuant to Subchapter M of this Chapter (relating to Appeal Procedure), unless the parent has a child in in-home protective services and the parent did not request the child care. A parent of a child in in-home protective services may not appeal under this proceeding but shall follow the procedures established by the Texas Department of Protective and Regulatory Services.

(b) The Board's contractor shall inform parents of the procedures in requesting a hearing. A parent may have an individual represent them during this process. Provisions for child care to continue while awaiting a hearing are found in Subchapter M of this Chapter (relating to Appeal Procedure).

#### §809.77. Parent's Right to Withdraw.

(a) A parent has a right to reject an offer of child care or voluntarily withdraw their child from child care unless the child is in in-home protective services.

(b) A parent has a right to be informed by the Board's contractor of the possible consequences of rejecting or ending child care that is offered.

#### §809.78. Parent Responsibility Agreement

(a) The parent or caretaker of a child receiving Commission-funded employment or training related child care services is required to sign a parent responsibility agreement as part of the child care enrollment process, unless covered by the provisions of Human Resources Code, §31.0031. The parent's compliance with the provisions of the agreement shall be reviewed at each eligibility re-determination.

(b) The parent responsibility agreement requires that:

(1) each parent shall cooperate with the Title IV-D agency if necessary to establish paternity of the parent's children or enforce child support;

(2) each parent shall not use, sell, or possess marijuana or a controlled substance in violation of Health and Safety Code, Chapter 481, or abuse alcohol;

(3) each child in the family younger than 18 years of age attend school regularly, unless the child has a high school diploma or a high school equivalency certificate or is specifically exempted from school attendance by Education Code, §21.033.

(c) Failure to comply with the provisions of the parent responsibility agreement may result in sanctions.

#### §809.79. Parent Responsibility Agreement, Sanctions and Exceptions

(a) The following shall apply to sanctions for non-compliance with the Parent Responsibility Agreement.

(1) Definitions. For purposes of this subsection, the following words and terms used in this subsection shall have the following meanings unless the context clearly indicates otherwise.

(A) Sufficient documentation of current participation in, or completion of, a drug or alcohol abuse treatment program-Verifiable, written documentation from a person licensed by the State of Texas and thereby permitted to furnish drug or alcohol treatment services independently, that the parent or caretaker is currently enrolled in a medically supervised and approved drug or alcohol abuse program and is participating in said program as directed; or that said parent or caretaker has participated in and acceptably completed such a program, post noncompliance.

(B) Documentation of the parent's or caretaker's cooperation-The written documentation signed by a judge, sheriff, sheriff's deputy, constable, or other sworn and licensed peace officer of the State of Texas; or a school principal or assistant

principal that such parent or caretaker is cooperating with appropriate authorities concerning the child's failure to attend school regularly.

(C) Appropriate authorities-The school principals, assistant principals, or school district counselors, of the school district or system in which the child is enrolled, as well as the other officials cited in subparagraph (B) of this paragraph.

(2) Sanctions. Failure by the parent or caretaker to comply with any of the provisions of §809.78 of this chapter may result in the sanctions provided as follows.

(A) Failure to comply with §809.78(b)(1) of this chapter relating to the Parent Responsibility Agreement may result in a sanction of an additional parent fee of \$25.00 per month until the parent or caretaker provides documentation of compliance.

(B) Failure to comply with §809.78(b)(2) of this chapter relating to the Parent Responsibility Agreement may result in a sanction of an additional parent fee of \$25.00 per month for a period of up to six months.

(C) Failure to comply with §809.78(b)(3) of this chapter relating to the Parent Responsibility Agreement may result in a sanction of an additional parent fee of \$25.00 per month until the first month following the next full month in which the child has no unexcused absences at the school the child attends.

(3) Exceptions from Sanctions. The penalties set out in paragraph (2) of this subsection shall not apply under the following circumstances.

(A) The sanction provided for under subsection 809.79(a)(2)(B) of this section shall not be applied if the parent or caretaker provides sufficient documentation of current participation in, or completion of, a drug or alcohol abuse treatment program.

(B) The sanction provided for under subsection 809.79(a)(2)(C) of this section shall not be applied if the parent provides documentation of the parent's or caretaker's cooperation with appropriate authorities concerning the child's failure to attend school.

(b) Exceptions From Parent Responsibility Agreement Requirements. (1) For purposes of this subsection, the following words and terms shall have the following meanings unless the context clearly indicates otherwise.

(A) Reasonable-Those efforts which a willing, committed person would make to establish paternity, including but not limited to, appropriate lawsuit in a court of competent jurisdiction to establish paternity.

(B) Incestuous-Sexual intercourse between persons as described in Texas Penal Code §25.02(a).

(C) Domestic Violence-Such mental or physical abuse committed against a person as would reasonably cause and did cause the injured person grievous bodily, emotional, or mental harm.

(2) Notwithstanding the requirements set forth in §809.78(b) of this chapter, the parent or caretaker is not required to comply with those requirements if one or more of the below situations exist.

(A) the paternity of the child cannot be established after a reasonable effort to do so;

(B) the child is the product of an incestuous relationship; or

(C) the parent of the child is a victim of domestic violence.

### **Subchapter F. General Eligibility for Child Care**

The new rules are adopted under Texas Labor Code §301.061 and 302.002, which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs, and under Texas Human Resources Code §§31.010, 31.0035, and 44.002.

#### §809.91. Definitions.

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

(1) Child -- An individual who meets the general eligibility requirements contained in this subchapter for receiving child care, who resides in the household, and who is the child of either or both parents. A child shall include persons born to the parents, persons adopted by either or both parents, the person for whom the parents have legal responsibility granted by the court, or persons provided supervision and care by the parents.

(2) Family -- The unit comprised of a child eligible to receive child care services, the parents of that child, and household dependents.

(3) Household Dependent -- An individual living in the household who is one of the following:

(A) an adult considered as a dependent for income tax purposes;



(B) a child of a teen parent; or

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

#### §809.92. General Eligibility Requirements.

(a) The eligibility criteria set forth in this chapter are based primarily on the federal and statute funding limitations. Nothing in this chapter shall be applied in a manner that conflicts with those limitations and the limitations contained in the use-of-funds provisions in the Commission's child care allocation rule contained in Subchapter B of Chapter 800 of this title (relating to Allocations and Funding).

(b) For a child to be eligible for child care services, the child's parents shall:

(1) have a total gross income that does not exceed 85% of the state median income for a family of the same size;

(2) require child care to participate in training, education, or employment activities; and

(3) need the child care for a child under thirteen years of age, unless a different age requirement is indicated in the applicable eligibility rule contained in this chapter.

(c) For purposes of this chapter, child care is needed to support participation in education for a limited time as determined by the Board.

#### §809.93. Calculating Income.

(a) Unless otherwise required by federal or state law, the "total gross income" of the family for purposes of determining eligibility means the monthly total of the following items listed.

(1) Total gross earnings before deductions are made for taxes. These earnings include money, earnings of a child between 14 and 18 years old who is not in school, wages, or salary the family member receives for work performed as an employee. Wages or salaries include armed forces pay (including allotments from any armed forces received by a family group from a person not living in the household), commissions, tips, piece-rate payments, and cash bonuses earned. Overtime pay is estimated based on the person's history of receiving this pay.

(2) Net income from non-farm self-employment. These earnings include gross receipts minus business-related expenses from a person's own business, professional

enterprise, or partnership, which result in the person's net income. Gross receipts include the value of all goods sold and services given. Expenses include costs of purchased goods, rent, heat, light, power, depreciation charges, wages and salaries paid, business taxes (not personal income taxes or self-employment Social Security tax), and similar costs. The value of salable merchandise used by the owners of retail stores is not included as part of net income.

(3) Net income from farm self-employment. These earnings include gross receipts minus operating expenses from operation of a farm by the client or the parent and his partners. Gross receipts include the value of products sold; governmental crop loans; and incidental receipts from the sale of wood, sand, mineral royalties, gravel, and similar items. Operating expenses include the cost of feed, fertilizer, seed and other farming supplies, cash wages paid to farm workers, depreciation, cash rent, interest on farm mortgages, repairs of farm buildings, farm-related taxes (not personal income taxes or self-employment Social Security tax), and similar expenses. The value of fuel, food, or other farm-related products used for the family's living expenses is not included as part of net income.

(4) Social security and railroad retirement benefits. These benefits include Social Security pensions and survivor's benefits, permanent disability insurance payments made by the Social Security Administration (before deductions for medical insurance), and railroad retirement insurance checks from the federal government. Gross benefits from these sources are the amounts before deductions for Medicare insurance.

(5) Dividends and interest. These earnings include dividends from stock holdings or membership in associations, interest on savings or bonds, periodic receipts from estates or trust funds, and net royalties. Such earnings are averaged for a 12-month period.

(6) Income from rental of a house, homestead, store, or other property, or rental income from boarders or lodgers. These earnings include net income from rental property, which is calculated by prorating and subtracting the following from gross receipts:

(A) prorated property taxes;

(B) insurance payments;

(C) bills for repair and upkeep of property; and

(D) interest on mortgage payments on the property. Capital expenditures and depreciation are not deductible.

(7) Interest income from mortgages or contracts. These payments include interest income the buyer promises to pay in fixed amounts over a period of time until the principal of the note is paid.

(8) Public assistance payments. These payments include Temporary Assistance for Needy Families (TANF), refugee assistance, Social Security Insurance, and general assistance (such as cash payments from a county or city).

(9) Pensions, annuities, and irrevocable trust funds. These payments include pensions or retirement benefits paid to a retired person or his survivors by a former employer or by a union, either directly or through an insurance company. Also included are periodic payments from annuities, insurance, or irrevocable trust funds. Gross benefits from civil service pensions are benefits before deductions for health insurance.

(10) Veteran's pensions, compensation checks, and G.I. benefits. These benefits include money paid periodically by the Veteran's Administration to disabled veterans of the armed forces or to survivors of deceased veterans, subsistence allowances paid to veterans for education and on-the-job training and refunds paid to ex-servicemen as G.I. insurance premiums. The Commission or the contracted provider includes only that part of the educational allowance that is used for current living costs.

(11) Educational loans and grants. These payments include money received by students as scholarships for educational purposes. The Commission includes only that portion of the money actually used for current living costs.

(12) Unemployment compensation. This includes unemployment payments from governmental unemployment insurance agencies or private companies and strike benefits from union funds paid to people while they are unemployed or on strike.

(13) Workers' compensation and disability payments. These payments include compensation received periodically from private or public insurance companies for on-the-job injuries.

(14) Spousal maintenance or alimony.

(15) Child support. These payments include court-ordered child support, any maintenance or allowance used for current living costs provided by parents to a minor child who is a student, or any informal child support payments made by an absent parent for the maintenance of a minor.

(16) Cash support payments. These payments are regular cash support payments from friends or relatives received on a periodic basis more than three times a year.

(17) Inheritance. This is net income from the parent's share of an inheritance.

(18) Foster care payments. The total payment made to a parent on behalf of a legally assigned foster child or foster adult is counted as income.

(19) Sale of property. This includes capital gains from sale of property.

(b) Income to the family that is not included in subsection (a) of this section is excluded in determining the total gross income. Income does not include food stamps.

### **Subchapter G. Child Care for People Transitioning off Public Assistance**

The new rules are adopted under Texas Labor Code §301.061 and 302.002, which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs, and under Texas Human Resources Code §§31.010, 31.0035, and 44.002.

#### **§809.101. Transitional Child Care.**

(a) A Board shall ensure that transitional child care services will be provided for children of parents who have been denied TANF because of:

(1) employment and an increase in earnings which results in being ineligible for TANF payments, or

(2) expiration of TANF time limits.

(b) Transitional child care is available for a period of up to 12 months except in the case of an exempt TANF client who voluntarily participates in the Choices program. For these individuals, transitional child care is available for a period up to 18 months.

(c) TANF clients who are not employed when TANF expires may receive up to 4 weeks of transitional child care in order to allow these individuals to search for work.

(d) TANF clients who are engaged in an education or training component that extends beyond the date that TANF expires, may receive transitional child care in order to complete the component.

#### **§809.102. Children of Parents Participating in the Choices Program.**

(a) Children eligible to receive Choices child care include children of TANF recipients participating in the Choices program, in accordance with the provisions of the Texas Human Resources Code, §§31.0035 and 31.012(c).

(b) Child care shall be provided to children of parents participating in the Choices program who need child care to accept employment and remain employed.

(c) Child care services for children of parents participating in the Choices program shall continue for parents to participate in on-the-job training unless the parents' on-the-job training earnings cause the denial of a TANF grant.

(d) Persons approved for Choices but waiting to enter an approved initial component of the program may receive up to two weeks of child care:

(1) when child care will prevent loss of the Choices placement, and

(2) if child care is available to meet the needs of the child and parent.

#### §809.103. Texas Workforce Commission Applicant Child Care.

(a) Children are eligible for Applicant Child Care if their parents meet the criteria for eligibility of children living at very low incomes, as detailed in §809.121 of this chapter, (relating to Children Living At Very Low Incomes), and meet all of the following criteria:

(1) need child care to accept employment;

(2) receive a referral from the Texas Department of Human Services to attend a Workforce Orientation for Applicants; and

(3) locate employment prior to TANF certification.

(b) To receive Applicant Child Care, parents shall not have voluntarily terminated paid employment of at least 30 hours a week within 30 days prior to receiving the referral from the Texas Department of Human Services to attend a Workforce Orientation for Applicants, unless the voluntary termination was for good cause connected with the parents' work.

(c) Subject to the availability of funds, Applicant Child Care shall be provided for up to one year.

#### §809.104. Children of Parents Participating in the Food Stamp Employment and Training Program.

Children are eligible to receive child care if their parents are participating in the Food Stamp Employment and Training program, in accordance with the provisions of 7 Federal Regulations, Part 273, and whose case plan remains open.

§809.105. Children Receiving or Needing Protective Services.

(a) A Board shall ensure that determinations of eligibility for children needing protective services are performed by the Texas Department of Protective and Regulatory Services.

(b) Child care continues as long as authorized and funded by the Texas Department of Protective and Regulatory Services.

(c) In cases where the Child Protective Services (CPS) case is closed and child care will no longer be funded by the Texas Department of Protective and Regulatory Services, the Board shall continue the child care by using other funding for the child care slot for up to six months after they are no longer eligible for Texas Department of Protective and Regulatory Services funds if the CPS worker or other Texas Department of Protective and Regulatory Services staff states that the child needs to receive protective services and child care is an integral factor of those services.

**Subchapter H. Children of Parents At Risk Of Becoming Dependent on Public Assistance**

The new rules are adopted under Texas Labor Code §301.061 and 302.002, which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs, and under Texas Human Resources Code §§31.010, 31.0035, and 44.002.

§809.121. Children Living At Very Low Incomes.

Children living at very low incomes are eligible for child care if:

(1) the family income does not exceed 85% of the state median income for a family of the same size; or

(2) the parents of the children are receiving TANF or Supplemental Security Income.

§809.122. Children with Disabilities.

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

Children with disabilities -- Individuals who meet the age requirements set forth in this subchapter and who are mentally or physically incapable of caring for themselves and meet the criteria set forth in this section.

(b) Children with disabilities are eligible for child care if residing with parents:

(1) whose income, after deducting the cost of the child's ongoing medical expenses, does not exceed 85% of the state median income for a family of the same size; and

(2) who are working, participating in training, or attending school.

(c) A Board may elect to provide extended child care to children with disabilities between the ages of 13 and 19, provided that the other provisions in this section are also met.

#### §809.123. Children of Teen Parents.

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

(b) A child of a teen may be eligible for child care if:

(1) the teen needs child care services to complete high school or the equivalent; and

(2) the family's total gross income does not exceed 85% of the state median income for a family of the same size.

(c) For purposes of determining whether the family's total gross income does not exceed 85% of the state median income for a family of the same size, the following applies.

(1) If residing with the teen's parent (the child's grandparent), the teen shall include in the family's total gross income, the income of the child's grandparent.

(2) The teen is not required to include the grandparent's income in the family's total gross income if the teen:

(A) does not reside with the child's grandparent; or

(B) is, or has been, married.

#### §809.124. Children Served by Special Projects.

(a) Special projects developed in federal and state statutes or regulations may add groups of children eligible to receive child care.

(b) The eligibility criteria as stated in the statutes or regulations shall control for the special project, unless otherwise indicated by the Commission in the Board Planning Guidelines.

(c) Special projects may include child care provided through match initiatives as described in 45 Code of Federal Regulations Part 98.

(d) The time limit for receiving child care for children served by special projects may be:

(1) specifically prescribed by federal or state statutes or regulations according to the particular project;

(2) otherwise set by the Commission depending on the purpose and goals of the special project; and

(3) limited to the availability of funds.

### **Subchapter K. Funds Management**

The new rules are adopted under Texas Labor Code §301.061 and 302.002, which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs, and under Texas Human Resources Code §§31.010, 31.0035, and 44.002.

#### **§809.221. General Funds Management.**

(a) Boards shall ensure that resources are proportionately allocated among eligibility groups so that priority for intake services is assured for Transitional and Choices eligible children.

(b) Children referred by Child Protective Services (CPS) workers, for which care shall be provided through Texas Department of Protective and Regulatory Services funds, shall also receive priority for available child care openings. When Texas Department of Protective and Regulatory Services funding stops and the CPS worker indicates that the child continues to need protective services, the Boards shall continue the child care using the Child Care and Development funds up to six months after they are no longer eligible for Texas Department of Protective and Regulatory Services funds, so



long as the provision of care to the child does not result in another child being removed from care.

#### §809.222. Effective Utilization of Funds.

A Board shall ensure that a list of parents waiting for child care due to lack of funding or lack of providers and self-arranged providers, is maintained and available to the Commission upon request. The list should indicate whether the reason for waiting is due to lack of funding or lack of providers and self-arranged providers.

#### §809.223. Eligibility Verification.

(a) A Board shall ensure that its contractor confirms eligibility before the contractor authorizes child care.

(b) Eligibility for child care shall be redetermined:

(1) any time there is a change in family income or other information that could affect eligibility to receive child care; and

(2) on an established frequency, at the Board's discretion.

#### §809.224. Custody and Visitation Arrangements.

(a) A Board shall ensure that a child who is required by a court-ordered custody or visitation arrangement to leave a provider's care is permitted to continue receiving child care by the same provider, or another provider if agreed to by the parent in advance of the leave, upon return from the court-ordered custody or visitation arrangement.

(b) A Board may encourage parents of other children to temporarily utilize the space the child under court-ordered custody or visitation arrangement has vacated until the child returns so that he or she can return to the same provider.

(c) A Board shall ensure that parents who choose to accept temporary child care to fill a position opened due to court-ordered custody or visitation shall not lose their place on the waiting list.

(d) A Board shall ensure that parents who choose not to accept temporary child care to fill a position opened due to court-ordered custody or visitation shall not lose their place on the waiting list.

#### §809.225. Continuity of Care.

(a) Enrolled children shall receive child care as long as the parent remains eligible for any available source of Commission-funded child care. Nothing in this chapter shall be interpreted in a manner as to result in a child being removed from care. Children who no longer receive Texas Department of Protective and Regulatory Services funded care shall also continue receiving child care funded through the Commission if eligible to receive care based on other eligibility criteria or if the Texas Department of Protective and Regulatory Services or its caseworker indicates that the child is in need of protective services.

(b) Children currently enrolled in child care shall remain in care when the Board assumes management of the child care services contract and shall remain eligible as long as eligibility criteria are met.

#### §809.226. Provider Payments.

A Board shall ensure that providers are reimbursed for child care according to the procedures and time frames specified in the master contract, the Provider Agreements, and as may be specified in the Commission's Grants and Contracts Manual.

#### §809.228. Units of Service of Child Care.

Unless otherwise determined by the Board and approved by the Commission for automated reporting purposes, the funding of child care is based on the unit of service delivered, as follows:

(1) a full day unit of service is six to 12 hours of care provided within a 24-hour period; and

(2) a part-day unit of service is less than six hours of care provided within a 24-hour period.

#### §809.229. Provider Payment Based on Child Care Enrollment.

(a) Enrollment in child care begins the first day the child is scheduled to attend child care as authorized by the contractor.

(b) A Board or its contractor shall ensure that providers are not paid for holding spaces open except as consistent with attendance policies as established by the Boards.

(c) If the child does not attend the first three days of scheduled care, the provider has until the close of the third day of scheduled attendance to contact the Board or the Board's contractor regarding the child's absence.

(d) A Board or the Board's contractor shall not pay providers:

- (1) less when a child enrolled full time attends occasionally for a part day; or
- (2) more when a child enrolled part time attends occasionally for a full day.

#### §809.231. Provider Reimbursement Rates.

(a) Based on a market rate survey provided by the Commission, a Board shall establish the reimbursement rates for purchased child care to ensure that the rates provide access to at least three-fourths of all child care services in the local market and in a manner consistent with state and federal statutes and regulations governing child care.

(b) The Board or its contractor shall not reimburse a provider retroactively for new reimbursement rates.

(c) A Board or its contractor shall ensure that providers who are reimbursed for additional staff needed to assist in the care of a child with disabilities are paid a rate up to 190% of the provider's reimbursement rate for a child of that same age.

(1) The higher rate, which may be called an inclusion assistance rate, is an increased provider reimbursement rate to provide for additional staff to assist in the care of a child with disabilities, which shall take into consideration the estimated cost of the additional staff needed by a child with disabilities.

(2) The Board shall ensure that a professional, who is familiar with assessing the needs of children with disabilities, certifies the need for the inclusion assistance rate.

#### §809.232. Provider Reimbursement for Transportation.

(a) The Board shall determine whether to reimburse providers who offer transportation.

(b) The combined total of the provider's published rate, plus the transportation rate, is subject to the limitations set forth in §809.231 of this chapter (relating to Provider Reimbursement Rates).

#### §809.233. Reduction of Parent Fees and Child Care Subsidies.

The reimbursement to the provider is reduced by an amount equal to:

- (1) the parent fees assessed and adjusted when the parent fees are reduced; and

(2) any child care subsidy received by the parent from other state or federal programs. The provider reports the amount of the subsidies collected to the Board's contractor.

#### §809.235. Billing.

A Board is responsible for ensuring that bills are processed and submitted to the Commission in a timely and efficient manner.

### **Subchapter L. Fraud Investigations**

The new rules are adopted under Texas Labor Code §301.061 and 302.002, which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs, and under Texas Human Resources Code §§31.010, 31.0035, and 44.002.

#### §809.251. General Fraud Investigation Procedures.

(a) A Board shall ensure that procedures for investigating fraud are developed and implemented to deter, detect, and refer for prosecution to the proper authorities suspected fraud for child care in the local workforce development area.

(b) A Board shall ensure that fraud investigation procedures are developed. These procedures shall include provisions that ensure that each case of suspected fraud is reported to the Commission in writing, including documentation of relevant facts.

(c) Upon review of suspected fraud reports, the Commission may either accept the case for investigation and action at the state level, or return the case to the Board or its contractor for action including, but not limited to, the following:

(1) further investigation;

(2) referral for prosecution under the Texas Penal Code or other state or federal laws;  
or

(3) other corrective action as provided in this chapter or as may be appropriate.

(d) The Board shall ensure that a final investigation closing report is submitted to the Commission after a case is returned to the Board or its contractor and all feasible avenues of investigation and corrective actions have been exhausted.

#### §809.252. Suspected Fraud.

A parent, provider, person providing self-arranged care, person applying to provide child care, or any other person in a position to commit fraud may be suspected of fraud if the person presents or causes to be presented to the Board or its contractor one or more of the following items:

(1) a request for reimbursement in excess of the amount charged by the provider for the child care; or

(2) a claim for child care if evidence indicates that the person may have:

(A) known, or should have known, that child care services were not provided as claimed;

(B) known, or should have known, that information provided is false or fraudulent;

(C) received child care during a period in which the child was not eligible for services;

(D) known, or should have known, that child care services were provided by a person not eligible to be a provider or not eligible to provide self-arranged care; or

(E) otherwise indicated that the person knew or should have known that the actions were in violation of this chapter or state or federal statute or regulations relating to child care.

#### §809.253. Action to Prevent or Correct Suspected Fraud.

The Commission, Board, or Board's contractor may take the following actions if a person is found to have committed fraud:

(1) suspension, nonrenewal, or termination of child care or a Provider Agreement;

(2) temporary withholding of payments to the parent or provider for child care delivered;

(3) nonpayment of child care delivered;

(4) recoupment of funds from the parent or provider; or

(5) any other action consistent with the intent of the governing statutes or regulations to investigate, prevent, or stop suspected fraud.

### **Subchapter M. Appeal Procedure**

The new rules are adopted under Texas Labor Code §301.061 and 302.002, which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs, and under Texas Human Resources Code §§31.010, 31.0035, and 44.002.

§809.271. Child Care During Appeal.

(a) A Board shall ensure that child care continues during the appeal process until a decision is reached, if the parent requests a hearing.

(b) A Board shall ensure that child care does not continue during the appeal process if the child's enrollment is denied, delayed, reduced, or terminated because of:

(1) excessive absences;

(2) voluntary withdrawal from child care;

(3) change in federal or state laws or regulations;

(4) lack of funding;

(5) a sanctions recommendation against the parent participating in the Choices program;

(6) voluntary withdrawal of a parent from the Choices program; or

(7) non-payment of parent fees.

(c) The cost of providing services during the appeal process is subject to recovery from the parent by the Board, if the appeal decision is rendered against the parent.

§809.272. Board Review.

(a) A parent, provider, or a Board's contractor against whom an adverse action is taken may request a review by the Board.

(b) A request for review shall be submitted in writing and delivered to the Board within 15 days of the date of written notification of the adverse action. The request shall also contain:

(1) a concise statement of the disputed adverse action;

(2) a recommended resolution; and

- (3) any supporting documentation the requester deems relevant to the dispute.
- (c) On receipt of a request for review, the Board shall coordinate a review by appropriate Board staff.
- (d) Additional information may be requested from the Board's contractor, provider, and parents. Such information shall be provided within 15 days of the request.
- (e) Within 30 days of the date the request for review is received or of the date that additional requested information is received by the reviewing Board staff member, the Board shall send the Board's contractor, provider, or parent written notification of the results of the review.

#### §809.273. Appeals to the Commission.

- (a) After results of a review have been issued, the Board's contractor, provider, or parent who disagrees with the outcome of the review may request a Commission hearing to appeal the results of the review.
- (b) The request for appeal to the Commission from a Board's review shall be filed in writing with the Appeals Department, Texas Workforce Commission, 101 East 15th Street, Room 410, Austin, Texas 78778-0001, within 15 days after receiving written notification of the results of the review.
- (c) The appeal to the Commission will include a hearing, which is limited to the issues and the information considered in the Board review.
- (d) The Commission hearing will be held in accordance with Commission policies and procedures applicable to the appeal as contained in Chapter 823 of this title (relating to General Hearings), or as otherwise provided by the Commission.

#### **Subchapter N. Corrective and Adverse Actions**

The new rules are adopted under Texas Labor Code §301.061 and 302.002, which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs, and under Texas Human Resources Code §§31.010, 31.0035, and 44.002.

#### §809.281. Contractor Agreement Violations.

- (a) The Board shall ensure that contractors and providers comply with all terms of applicable contracts and with Commission rules.

(b) The Commission may consider failure by a Board, Board's contractor, provider, provider of self-arranged care, or parent to comply with this chapter as an act which may warrant corrective and adverse action as detailed in §809.283 of this subchapter (relating to Corrective and Adverse Action). Failure by a Board, Board's contractor, provider, or parent to comply with this chapter shall also be considered as a breach of contract, which may also result in corrective action as detailed in this subchapter.

#### §809.282. Provider Agreement Violations.

(a) The provider shall comply with all terms of the Provider Agreement and Commission rules.

(b) A Board shall ensure that corrective actions and resolutions of agreement violations are pursued to cure any violations.

(c) A Board may consider acts of noncompliance with other federal or state regulatory provisions to be violations of the Provider Agreement.

(d) A Board shall ensure that corrective action is taken when a provider fails to comply with applicable licensing standards.

(e) The Board shall ensure that payments for child care are not made for any care on a day in which the attendance at the facility exceeds the state licensed capacity and that other appropriate corrective action is taken.

(f) The Board may take corrective action as a response to agreement violations including, but not limited to, those indicated in this subchapter (relating to Corrective and Adverse Action).

#### §809.283. Corrective and Adverse Action.

(a) Corrective and adverse action (corrective action) may include sanctions set forth in Chapter 800, Subchapter E of this title (relating to Sanctions) and may include, but not be limited to, the following:

(1) requirement that the Board's contractor enter into a Service Improvement Agreement (SIA);

(2) suspension, nonrenewal, or termination of the enrollment agreement, Provider Agreement, contract for service delivery, other Board subcontracts, or the Board contract;

(3) temporarily withholding of payments;



(4) nonpayment of costs incurred; and

(5) recoupment of funds.

(b) When determining which corrective actions are appropriate, the following shall be considered:

(1) the scope of the violation;

(2) the severity of the violation;

(3) the compliance history of the person or entity; and

(4) in the case of contractors, the contractor's failure to meet Commission performance standards.

(c) Corrective action may include, but is not limited to, the following:

(1) closing intake;

(2) moving children to another provider facility selected by the parent;

(3) holding provider payments; and

(4) terminating, suspending, or not renewing a Provider Agreement if the Texas Department of Protective and Regulatory Services has cited a provider for serious or continued noncompliance with the minimum licensing standards or placed the provider on some form of corrective or adverse action.

(d) When a Board's contractor or provider violates a contract or agreement, a written SIA may be negotiated between the Commission, Board, Board's contractor, or provider. At the least, the SIA shall include, the following:

(1) the basis for the 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 agreement.

(e) Failure to fully comply with the terms of the SIA may result in the imposition of one or more of the sanctions set forth in subsection (b) of this section and Chapter 800, Subchapter E of this title (relating to Sanctions).

§809.284. Noncompliance with Other State or Federal Programs.

(a) A Board shall ensure that the Board's contractors and providers have not been found to be in noncompliance with state or federal law. Noncompliance includes the following actions as defined by federal or state statutes or regulations:

- (1) serious noncompliance with,
- (2) seriously deficient by, or
- (3) debarment from other state or federal programs.

(b) A Board shall ensure that no agreements are initiated with persons who have been found to be in noncompliance. A Board shall ensure that any agreements with such persons or entities shall terminate within 30 days of the finding.

(c) A Board or its contractors shall not enter into a contract with an entity if that entity or staff have been found to be in serious noncompliance with, seriously deficient by, or debarred from other state or federal programs.

(d) A Board shall notify the Commission of instances of noncompliance as described in subsection (a) of this section and take appropriate corrective action.

§809.285. Reapplication for Provider Status after Termination or Nonrenewal of the Provider Agreement.

(a) If a Provider Agreement has not been renewed or has been terminated for violations of terms of the Provider Agreement, the provider shall wait for a period of time, to be determined by the Board, after the termination or nonrenewal date of the Provider Agreement before reapplying.

(b) The provider shall be informed at the time of the termination or nonrenewal of the Provider Agreement when they may reapply for provider status.

§809.286. Recovery of Overpayment.

(a) A Board shall attempt recovery of all overpayments. The Commission shall not pay for overpayments.

(b) Recovery of overpayment shall be managed in accordance with the Commission policies and procedures in the Commission guidelines.

§809.287. Recovery of Overpayment to a Provider or Parent.

(a) The provider shall repay overpayments for child care received in the following circumstances:

(1) instances involving fraud;

(2) instances when the provider did not have a Provider Agreement in compliance with this chapter;

(3) instances when the provider exceeded the licensed capacity;

(4) instances when the provider was paid for the child care from another source;

(5) instances when the provider did not deliver the child care;

(6) instances when referred children have been moved from one facility to another without authorization from the contractor;

(7) instances when the provider transferred the Provider Agreement to any other entity, facility, or location without notifying the contractor, or as otherwise required by the Board's contractor; or

(8) other instances when repayment is deemed an appropriate action.

(b) A parent shall repay overpayments for child care in the following circumstances:

(1) instances involving fraud as defined in this chapter;

(2) instances when the parent has received child care while awaiting an appeal and the determination is affirmed by the hearing officer; or

(3) other instances when repayment is deemed an appropriate corrective action.

#### §809.288. Failure to Meet Performance Standards.

A Board and its contractors are subject to recoupment of costs and other applicable corrective action as detailed in this chapter, and as set forth in Subchapter E of Chapter 800 of this title (relating to Sanctions), when they fail to meet performance standards specified by the Commission.