

## **Adoption of Amendments to §809.92 and §809.102 Child Care and Development**

**ADOPTED RULE WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*. THIS DOCUMENT WILL NOT HAVE ANY SUBSTANTIVE CHANGES BUT IS SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE *TEXAS REGISTER*.**

The Texas Workforce Commission (Commission) adopts amendments to §809.92 with changes and §809.102 without changes to the text as proposed in the February 22, 2002 issue of the *Texas Register* (27 TexReg 1292) relating to Child Care and Development rules.

The purpose of the amendments is to conform with the changes to the Choices rules contained in 40 TAC Chapter 811. Changes to the Choices rules are proposed concurrent with these amendments to the child care rule. The preamble to the Choices rules is incorporated herein by reference.

Specifically, changes were made to §809.92 to correspond with the provisions contained in §811.61 of the Choices rules that require that support services, including subsidized child care, are provided only to recipients who are meeting the requirements outlined in §811.14, §811.23, and §§811.25-811.28 of this title, and as outlined in §809.102 of this title.

Comments were received from two Local Workforce Development Boards: Gulf Coast Workforce Development Board, Capital Area Workforce Board, and the following entities: Welfare Law Center, Now Legal Defense and Education Fund, Child Care Law Center, Texas Welfare Reform Organization, the Center for Public Policy Priorities. Some commenters were for the rules, some disagreed with the changes and some made recommendations for changes to the adopted language. The comment summaries and responses are as follows.

Comment: Three entities commented on §809.72, “General Parent Rights,” of the child care rules. The commenters indicated that the rule should require each Board to establish policies regarding the termination of child care services due to the unavailability of funds, or for other reasons not within the control of the parent. The commenters indicated that those policies should include the criteria for determining the priorities for such terminations among the children receiving child care services. The commenters further recommended that the Boards be required to provide parents written notice 90 days prior to the effective date of the termination of the child care services.

Response: Section 809.72 was not open for public comment since no changes to those provisions were proposed. The Commission would state, however, that the Boards have provided the policies to the Commission, and the Commission has reviewed those policies. The Commission does not see a need to propose changes to §809.72 at this time because the 15-day notice period relating to termination of services addresses the needs

for expediting the processes for ensuring the effective use of funds while addressing concerns regarding the need to locate child care services.

Comment: Two commenters indicated that the addition of §809.92(b)(4) was confusing because that section deals with “General Eligibility Requirements” and mirrors the federal eligibility requirements, but proposed subsection (b)(4) is not a general eligibility requirement. Rather, it deals specifically with children whose parents are TANF recipients. If the intent of this subsection is to limit mandatory TANF recipients’ eligibility for any form of subsidized child care only to recipients that are meeting the Choices work requirements, then this language should be added to §809.121 which deals with “Children Living at Low Incomes.” That section makes specific reference to children living at low incomes whose parents are TANF recipients.

Response: The Commission appreciates the observation made by these commenters and agrees that this provision would be more appropriately positioned in §809.121, “Children Living at Low Incomes.” Accordingly, a new amendment is being published separately for public comment which repeals §809.92(b)(4) and adds the appropriate language in §809.121. In the meantime, §809.92(b)(4), as adopted, is published as Final in order to implement the provision. The Commission's intent in §809.92(b)(4) is to ensure that only TANF recipients who are demonstrating personal responsibility in meeting the Choices requirements outlined in Chapter 811 receive Commission subsidized child care in order to ensure the efficient and effective use of limited funds to assist families to transition from welfare to work.

Comment: Regarding proposed amendment §809.92(b)(4), one commenter indicated that as currently written the proposed language does not seem to allow for TANF recipients who are not required to participate in Choices to be eligible for child care subsidies.

Response: The Commission agrees with the commenter’s observation. The intent of §809.92(b)(4) is to limit Commission subsidized child care assistance to TANF recipients who are subject to and meeting the Choices requirements in Chapter 811. In order to clarify the intent, the Commission has added language that clarifies that this provision applies to TANF recipients who are subject to the Choices requirements in Chapter 811. The Commission also wishes to clarify that the only TANF recipients who are a priority for Commission-funded child care are those that are participating in Choices and meeting the requirements stipulated in Chapter 811.

The changes to §809.92(b)(4) are to add the following: "have met the Choices requirements as specified in Chapter 811, if the child’s parent is a TANF recipient 'subject to those requirements.'"

Comment: Regarding §809.92(b)(4), one commenter suggested that the rules not be amended to require families to meet Choices work requirements in order to receive child care subsidies because this is inconsistent with other Commission Child Care rules that make it clear that individuals are eligible for child care subsidies if they are transitioning off TANF and TANF applicants who find work during the TANF application process.

In addition, the commenter stated that §809.92(b)(4) is also unnecessary, as the rules make clear elsewhere that some individuals who are eligible for child care subsidies will not get them because of funding constraints and the priority given to families in the Choices program.

Response: The Commission disagrees with the commenter that §809.92(b)(4) conflicts with other Child Care rules. This section does not address a TANF applicant's eligibility to receive child care, nor does it address transitional child care for former TANF recipients. This section only applies to TANF recipients who are subject to the Choices requirements as stipulated in Chapter 811.

The Commission also disagrees with the commenter that §809.92(b)(4) conflicts and is unnecessary because it reiterates other Commission rule language on prioritization for child care services. Section 809.92(b)(4) does not address prioritization of services; rather, and is necessary as it addresses eligibility for child care services for TANF recipients who are subject to the requirements in Chapter 811.

Comment: What is the impact of the addition of §809.92(b)(4)?

Response: The intent of §809.92(b)(4) is to limit Commission-funded child care for TANF recipients to those who are subject to and meeting the requirements in Chapter 811. This provision promotes an efficient use of the Commission's child care funds by assisting recipients who are working or fully engaged in Choices activities to meet their obligation to support their families.

Comment: Regarding §809.92(b)(4), how frequently will participation by Choices parents be monitored?

Response: Boards are responsible for establishing procedures regarding the frequency of monitoring Choices participants. See § 811.11(d). At a minimum, a Choices recipient's activities must be monitored monthly.

Comment: One commenter had questions regarding the procedures for implementing §809.92(b)(4), stating that child care services may be provided in a given month before a determination is made regarding the recipient's compliance with Choices requirements. The commenter asked if the cost of care provided in advance of the determination of a failure to meet Choices requirements will be recouped from a recipient or if recipients will be required to pay for care in advance and then be reimbursed if Choices requirements are met.

Response: Prior to the addition of §809.92(b)(4), children of Choices recipients who did not comply with the requirements in Chapter 811 in a given month were not prohibited from receiving at-risk child care. To ensure efficient use of funds, §809.92(b)(4) limits Commission subsidized child care to TANF recipients who are meeting the Choices requirements as specified in Chapter 811. Boards' child care contractors place eligible

children in Choices child care at the request of the Boards' Choices service providers. The Choices service provider must terminate child care services upon determination that a recipient has failed to meet Choices requirements in Chapter 811 until such time as the recipient is once again fully engaged in Choices activities. The resumption and continuation of child care services is contingent upon the recipient's willingness to engage in Choices activities and to meet the requirements of Chapter 811 as determined by the Choices service provider.

Comment: One commenter indicated support for the proposed addition of §809.92(b)(4) which requires mandatory TANF recipients to meet the Choices work requirements in order to be eligible for child care services. The commenter suggested that the proposed amendment reinforces the Choices work-first philosophy and will encourage Choices clients to fully participate or risk losing their Commission subsidized child care.

Response: The Commission appreciates the commenter's support and agrees that the addition of §809.92(b)(4) reinforces the Work-First design and encourages TANF recipients to work or become fully engaged in Choices activities that will assist them to meet their obligations to support their families.

Comment: Regarding §809.102, one commenter requested that the rules not be amended to eliminate child care for parents in on-the-job training.

Another commenter expressed an understanding that the provision of child care to parents participating in on-the-job training is authorized under Chapter 811.61, Support Services. The same commenter indicated that the Commission's response should explicitly confirm that child care for parents participating in on-the-job training is authorized under Chapter 811.61.

Response: The rules were amended to remove the reference to on-the-job training because on-the-job training is only one of many allowable activities for which child care services are available. Therefore, a specific reference to on-the-job training is unnecessary.

The Commission confirms that child care services are available for Choices individuals in all allowable work activities, including on-the-job training, as authorized in the Choices Rules at § 811.61.

Comment: One commenter expressed support for the removal of §809.102(c) because §809.102(b) states that child care will be provided to children of parents participating in the Choices program who need child care to accept employment and remain employed.

Response: The commenter has identified precisely why §809.102(c) was removed from the rule. The Commission appreciates the commenter's support.

Comment: Regarding §809.103, one commenter requested clarification on the language contained in §809.103(a)(1) that limits applicant child care to applicants who need child

care to accept employment. Does this also include those applicants who need child care in order to retain employment, for instance, applicants who were already employed at the time of TANF eligibility determination, but whose incomes are low enough to remain eligible for TANF?

Response: Section 809.103 was not subject to public comment since no changes to those provisions were proposed. However, several Boards have recently requested clarification regarding this issue. To clarify the Commission's intent, a new amendment to §809.103 is being proposed and published separately for public comment. That proposed amendment stipulates the conditions under which individuals may receive Applicant Child Care in order to retain employment.

Comment: Three commenters indicated that §809.103, Workforce Orientation Applicant Child Care, should be amended to require the Boards to provide child care services for TANF applicants who need it to attend the Workforce Orientation for Applicants.

Response: Section 809.103 was not subject to public comment since no changes to those provisions were proposed.

The amendments are adopted under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The amendments affect Texas Labor Code, Title 4, Texas Human Resources Code Chapters 31 and 34, as well as Texas Government Code Chapter 2308.

### **§809.92. General Eligibility Requirements**

- (a) The eligibility criteria set forth in this chapter are based primarily on the federal and state 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 work or participate in training or education 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; and

- (4) have met the Choices ~~work~~ requirements as specified in Chapter 811, **or be determined by the Board to need child care to comply with those requirements,** if the child's parent is a TANF recipient **subject to those requirements.**
- (c) For purposes of this chapter, child care is needed to support participation in education for a limited time as determined by the Board.

**§809.102. Choices Child Care**

- (a) Children eligible to receive Choices child care include children of TANF recipients participating in the Choices program as stipulated in 40 TAC Chapter 811.
- (b) Child care shall be provided to children of parents participating in the Choices program as stipulated in 40 TAC Chapter 811, who need child care to accept employment and remain employed.
- (c) 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.