

CHAPTER 809. CHILD CARE SERVICES

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

ON OCTOBER 7, 2014, THE TEXAS WORKFORCE COMMISSION PROPOSED THE BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated Publication Date of the Proposal in the *Texas Register*: **October 24, 2014**
Estimated End of Comment Period: **November 24, 2014**

The Texas Workforce Commission (Commission) proposes the following new subchapter to Chapter 809, relating to Child Care Services:

Subchapter G. Texas Rising Star Program, §§809.130 - 809.135

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

Subchapter A. General Provisions, §809.2

Subchapter B. General Management, §809.16 and §809.20

- PART I. PURPOSE, BACKGROUND, AND AUTHORITY
- PART II. EXPLANATION OF INDIVIDUAL PROVISIONS
- PART III. IMPACT STATEMENTS
- PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 809 rule change is to establish rules to administer the Texas Rising Star (TRS) Program pursuant to Texas Government Code §2308.3155.

Texas Government Code §2308.3155 defines the TRS program as "a voluntary, quality-based child care rating system of child care providers participating in the Texas Workforce Commission's subsidized child care program."

Effective September 1, 2013, House Bill 376, 83rd Texas Legislature (Regular Session), amended Chapter 2308 of the Texas Government Code relating to the TRS program. As amended, Chapter 2308 required the Commission to:

- create a TRS program review workgroup to recommend revisions to the TRS program;
- propose rules that incorporate the TRS workgroup's recommended revisions;
- establish graduated reimbursement rates for TRS providers;
- require Local Workforce Development Boards (Boards) to use at least 2 percent of their annual allocations for quality child care initiatives; and
- make funds available for Boards to hire TRS assessors and mentors to provide TRS program technical assistance to child care providers.

TRS Program Review Workgroup

As required by Texas Government Code §2308.321, the TRS workgroup was appointed by the Agency's executive director and, as required, included representatives from the following:

- Texas Workforce Commission (one representative)
- Texas Department of Family and Protective Services (DFPS) (one representative)
- Texas Education Agency (one representative)
- Texas Early Learning Council (TELC) (one representative)
- TRS program providers (four representatives)
- Texas School Ready! (TSR!) project participant (one representative)
- Boards (one representative)
- Board staff (three representatives)

The TRS workgroup invited stakeholders from around the state of Texas to participate in workgroup discussions and provide input into proposed TRS program revisions. Stakeholders included individuals from the following entities:

- Boards
- Board child care contractors
- Child care providers
- Children's Learning Institute
- Texas Head Start Collaboration Office
- Texans Care for Children
- Texas Association for the Education of Young Children
- Texas Association for Infant Mental Health
- Texas Licensed Child Care Association
- Texas Partnership for Out of School Time
- Texas Department of State Health Services

Pursuant to Texas Government Code §2308.321, the TRS workgroup was required to take the following into consideration when making recommendations:

- Professional development standards for child care directors and employees, including training and annual professional development requirements;
- Education and experience requirements for assessors and mentors;
- Early learning and school readiness standards;
- Guidelines for infants and toddlers in child care;
- Training hours for providers;
- Playground standards;
- Best practices guidelines based on standards adopted by nationally recognized organizations, including Head Start Program Performance Standards, National Health and Safety Performance Standards, National Association for the Education of Young Children program standards and accreditation criteria, National Association for Family Child Care standards, US Department of Defense standards, national accreditation standards, and TSR! certification standards;
- Research on infant and toddler brain development; and
- Strategies for long-term financing of the TRS program, including financing the payment of:
 - incentives to child care providers participating in the TRS program; and
 - grants and rewards to child care providers that achieve and maintain high levels of service.

The TRS workgroup also considered the work of TELC, specifically its:

- Texas Quality Rating and Improvement System recommendations;
- Infant, Toddler, and Three-Year-Old Early Learning Guidelines; and
- Texas Core Competencies for Early Practitioners and Administrators.

The TRS workgroup addressed the following topics:

- Minimum licensing requirements for TRS providers;
- Structure and scoring of TRS program standards;
- Minimum requirements for assessing and monitoring providers on the TRS program standards, including TRS providers that move or expand locations;
- Assessments and monitoring for nationally accredited facilities and facilities regulated by the US Military;
- Process for providers to request reconsiderations of their TRS program assessment; and
- Recommendations regarding long-term financing of the TRS program.

Graduated Reimbursement Rates for TRS Program Providers

Texas Government Code §2308.315 requires that the minimum reimbursement rate for a TRS provider must be greater than the maximum rate established for a provider that is not TRS certified for the same category of care, i.e., at least:

- 5 percent higher for a provider with a 2-star rating;
- 7 percent higher for a provider with a 3-star rating; and
- 9 percent higher for a provider with a 4-star rating.

Funding for Quality Child Care Initiatives and TRS Program Assessors and Mentors

Texas Government Code, Chapter 2308, further requires that:

- Boards use at least 2 percent of their annual allocations for quality child care initiatives, as set forth in §2308.317(c); and
- the Commission makes funds available for Boards to hire TRS assessors and mentors to provide TRS program technical assistance to child care providers, per §2308.3155(c).

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

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

SUBCHAPTER A. GENERAL PROVISIONS

The Commission proposes the following amendments to Subchapter A:

§809.2. Definitions

New §809.2(21) adds the definition of the TRS program as a voluntary, quality-based child care rating system for child care providers participating in Commission-subsidized child care, as provided in Texas Government Code §2308.3155.

New §809.2(22) adds the definition of a TRS provider as a provider certified as meeting TRS program standards. The definition specifies that TRS providers are certified as one of the following:

- (A) 2-Star Program Provider;
- (B) 3-Star Program Provider; or
- (C) 4-Star Program Provider.

The two definitions are provided to distinguish between the TRS program and a TRS provider as these terms are used throughout the rule. The levels of certification are consistent with levels of reimbursement specified in Texas Government Code §2308.315.

Certain paragraphs have been renumbered to reflect additions.

SUBCHAPTER B. GENERAL MANAGEMENT

The Commission proposes the following amendments to Subchapter B:

§809.16. Quality Improvement Activities

Section 809.16 removes subsections (d) and (e) relating to assessments for providers requesting to participate in the TRS program. These provisions have been modified and moved to new §809.133(b) relating to application and assessments for the TRS program.

§809.20. Maximum Provider Reimbursement Rates

Section 809.20(b)(1) relating to enhanced reimbursement rates for TRS providers is amended to align the language with the new definition in §809.2(22).

Section 809.20(c) adds the Texas Government Code §2308.315 requirement that TRS providers will receive reimbursements that are higher than the maximum rates for non-TRS providers and that these rates shall be at least:

- (A) 5 percent greater for a 2-Star Program Provider or a child care provider meeting the requirements of §809.20(b)(2) or (b)(3);
- (B) 7 percent greater for a 3-Star Program Provider; and
- (C) 9 percent greater for a 4-Star Program Provider.

Texas Government Code §2308.315 requires that graduated reimbursement rates not go into effect before the Commission adopts revisions to the TRS Program rules. However, following the adoption of the TRS Program rules, time will be required to:

- train TRS assessors and mentors on the new TRS guidelines; and
- conduct assessments of current TRS providers to ensure they meet the requirements necessary to be reimbursed at the levels prescribed in Texas Government Code §2308.315.

The Agency surveyed Boards and a majority indicated that they would be able to conduct all assessments of current TRS providers within five months or less following the adoption of the TRS Program rules. Additionally, based on stakeholder input, the Agency has determined that the training of new TRS assessors can occur concurrently with assessments of current TRS providers, but will require an additional two to three months training time.

Therefore, to ensure that the TRS program can be administered as set forth in Texas Government Code, Chapter 2308, including required technical assistance and incorporation of higher quality-based standards, the new graduated reimbursement rates in §809.20(c) will be implemented effective September 1, 2015.

Further, to expand local flexibility, the Commission adds new §809.20(d) to allow Boards to establish a higher enhanced reimbursement rate for TRS providers than those provided in §809.20(c)(1) - (3), so long as a minimum 2 percent difference between each star level is maintained, consistent with Texas Government Code §2308.315.

Certain subsections have been relettered to reflect additions.

SUBCHAPTER G. TEXAS RISING STAR PROGRAM

The Commission proposes new Subchapter G, as follows:

§809.130. Short Title and Purpose

New §809.130(a) identifies rules contained in this subchapter as the TRS Program rules.

New §809.130(b) sets forth the purpose of the TRS Program rules. Specifically, the purpose of the TRS Program rules is to interpret and implement Texas Government Code §2308.3155(b) requiring the Commission to establish rules to administer the TRS program, including guidelines for rating a child care provider for TRS program certification.

New §809.130(c) states that the TRS Program rules identify the organizational structure and categories of, and the scoring factors that shall be included in, the TRS guidelines.

Pursuant to §2308.3155(b) of the Texas Government Code, new §809.130(d) establishes that the guidelines for rating a child care provider are included in the TRS guidelines.

New §809.130(d) outlines the topics to be covered in the TRS guidelines, requiring the TRS guidelines to:

- (1) describe measures for the TRS program that contain, at a minimum, measures for child care providers regarding:
 - (A) director and staff qualifications and training;
 - (B) caregiver-child interactions;
 - (C) curriculum;
 - (D) nutrition and indoor and outdoor activities; and
 - (E) parent involvement and education;
- (2) specify measures that:
 - (A) must be met in order for a provider to be certified at each star level; and
 - (B) are observed and have points awarded through on-site assessments; and
- (3) specify the scoring methodology and scoring thresholds for each star level.

New §809.130(e) requires:

- (1) the Commission to adopt the TRS guidelines per the requirements of the Texas Open Meetings Act; and
- (2) any amendments to the TRS guidelines made by the Commission, to be subject to the requirements of the Texas Open Meetings Act.

The TRS guidelines take into consideration the recommendations of the TRS workgroup and will be made available for public comment in fall 2014, prior to final adoption by the Commission.

§809.131. Eligibility for the TRS Program

As provided in Texas Government Code §2308.3155, the TRS program is a voluntary, quality-based child care rating system of child care providers participating in the Commission-subsidized child care program. As set forth in new §809.131, to be eligible to participate in the TRS program, a child care provider must agree to accept Commission-subsidized children.

Additionally, TRS providers must demonstrate consistent compliance with minimum state licensing requirements. DFPS is the child care licensing and regulatory agency for the state of Texas. DFPS regulations establish minimum licensing requirements that all child care providers must follow. If a child care provider has repeated licensing deficiencies, DFPS may place the provider on corrective action. DFPS may initiate an adverse action to include a revocation or suspension of a license if:

- deficiencies are not corrected timely;
- there are repeat deficiencies; or
- there is an incident or single deficiency that poses an immediate risk to children.

The TRS program is a voluntary rating system for providers choosing to meet standards above minimum DFPS licensing standards. In order for a provider to meet and maintain TRS program standards, the provider must demonstrate consistent compliance with minimum DFPS licensing standards. Accordingly, as set forth in new §809.131, providers placed on corrective or adverse action by DFPS are automatically found not to have demonstrated consistent compliance with minimum licensing standards and, therefore, are not eligible to participate in the TRS program.

New §809.131(a) incorporates the TRS workgroup's recommendation establishing the eligibility requirements for a child care provider to apply to participate in the TRS Program. A child care provider is eligible to apply for TRS certification if the provider has a current agreement to serve Commission-subsidized children and the provider:

- (1) has a permanent (nonexpiring) license or registration from DFPS;
- (2) has at least 12 months of licensing history with DFPS; and
- (3) is not on corrective or adverse action with DFPS; or
- (4) is regulated by and in good standing with the US Military.

New §809.131(b) incorporates the TRS workgroup's recommendation that a child care facility is not eligible to apply for TRS certification if, during the most recent 12-month DFPS licensing history, the provider had:

- (1) any critical licensing deficiencies, as listed in the TRS guidelines;
- (2) five or more high or medium-high licensing deficiencies, as listed in the TRS guidelines; or

(3) 10 or more total licensing deficiencies of any type.

When reviewing TRS program eligibility, the Commission also takes into consideration the total number of DFPS-cited deficiencies. In determining the maximum number of total DFPS-cited deficiencies allowed for participation in the TRS program, the Commission concurs with the recommendations of the TRS workgroup. The TRS workgroup consulted with DFPS to determine the average number of DFPS licensing deficiencies per provider cited during a 12-month period. In State Fiscal Year 2013 (September 1, 2012 to August 31, 2013), there were an average of 5.81 deficiencies cited per child care center. The average number of deficiencies did not vary significantly based on the size of the center. The smallest centers--a capacity of less than 50 children--had an average of 6.4 deficiencies, while the largest centers--a capacity of over 300 children--had an average of 6.22 deficiencies. Medium-sized centers--a capacity between 50 and 300--had an average of 5.75 deficiencies.

As a result of this analysis, the Commission believes that any provider with 10 or more total licensing deficiencies--well above the state average--has not demonstrated consistent compliance with minimum licensing requirements and should not be eligible to participate in the TRS program.

Additionally, the TRS workgroup worked closely with DFPS to identify:

- what critical licensing deficiencies preclude a provider from participating in the TRS program; and
- the maximum number of high or medium high risk licensing deficiencies preclude a provider from participating in the TRS program.

§809.132. Impact of DFPS Deficiencies

New §809.132 describes the minimum standards necessary for TRS providers to maintain program eligibility and outlines the specific consequences for TRS providers that:

- are placed on corrective or adverse action by DFPS;
- exceed a maximum number of DFPS child care licensing deficiencies of any type; or
- exceed a maximum number of critical, high, or medium-high DFPS child care licensing deficiencies as listed in the TRS guidelines.

In the development of these minimum standards, the Commission consulted closely with the TRS workgroup and accepted its recommendations.

New §809.132(a) mandates that a TRS provider shall lose TRS certification if the provider:

- (1) is placed on corrective or adverse action by DFPS; or
- (2) has 15 or more total licensing deficiencies of any type during the most recent 12-month licensing history.

Under new §809.132(b), a TRS provider with any of the critical licensing deficiencies listed in the TRS guidelines during the most recent 12-month DFPS licensing history shall have the following consequences:

- (1) reduction of a 4-Star Program Provider or 3-Star Program Provider to a 2-Star Program Provider; or

(2) a 2-Star Program Provider will lose certification.

Likewise, as set forth in new §809.132(c), TRS providers with five or more of the high or medium-high deficiencies listed in the TRS guidelines during the most recent 12-month DFPS licensing history shall lose a star level with a 2-Star Program Provider losing certification.

New §809.132(d) provides that TRS providers with 10 to 14 total licensing deficiencies of any type during the most recent 12-month DFPS licensing history shall be placed on a six-month TRS program probationary period.

Additionally, new §809.132(d)(1) - (3) explains that:

- (1) TRS providers on a six-month probationary period that are re-cited by DFPS for any of the same deficiencies within the probationary period shall lose a star level with a 2-Star Program Provider losing certification;
- (2) if any new deficiencies—not to exceed 14 total deficiencies—are cited by DFPS during the first probationary period, a second six-month probationary period shall be established effective upon the date of final DFPS determination; and
- (3) if any new deficiencies—not to exceed 14 total deficiencies—are cited by DFPS during the second six-month probationary period, the provider shall lose TRS certification.

Under new §809.132(e), providers that lose a star level due to licensing deficiencies shall be eligible for reinstatement at the former level if the deficiency is not re-cited by DFPS within the next six months.

New §809.132(f) explains that providers losing TRS certification due to licensing deficiencies will be eligible to reapply for certification no sooner than 12 months following the loss of the certification.

DFPS citations, deficiencies, and actions are effective on the date DFPS makes the final determination following any appeal by the provider to DFPS.

§809.133. Application and Assessments for the TRS Program

New §809.133 sets forth the rules for applying for the TRS Program:

- conducting assessments, including:
 - initial assessments for TRS program applicants; and
 - recertification assessments for TRS-certified providers; and
- ongoing monitoring of TRS providers.

As recommended by the TRS workgroup, new §809.133(a)(1) requires TRS program applicants to complete an orientation on TRS guidelines, including an overview of the:

- (A) TRS program application process;
- (B) TRS program measures; and
- (C) TRS program assessment process.

New §809.133(a)(2) incorporates the TRS workgroup's recommendations requiring an applicant to complete a TRS program self-assessment tool.

New §809.133(b) states that Boards must ensure that:

- (1) written acknowledgment of receipt of the application and self-assessment is sent to the provider;
- (2) within 20 days of receipt of the application the provider receives an estimated time frame for scheduling the initial assessment;
- (3) an assessment is conducted of any child care provider that meets the eligibility requirements in new §809.131 and requests to participate in the TRS program; and
- (4) TRS certification is granted to any provider assessed as meeting the TRS provider certification criteria set forth in the TRS guidelines.

New §809.133(c) incorporates the TRS workgroup's recommendations requiring Boards to ensure that TRS assessments include:

- (1) on-site assessment of 100 percent of provider classrooms at the initial assessment for TRS certification and at each scheduled recertification; and
- (2) recertification of all TRS providers every three years.

New §809.133(d) incorporates the TRS workgroup's recommendations requiring Boards to ensure that certified TRS providers are monitored on an annual basis and the monitoring includes:

- (1) at least one unannounced on-site visit; and
- (2) a review of the provider's licensing compliance as described in new §809.132.

New §809.133(e) requires Boards to ensure compliance with the process and procedures in the TRS guidelines for conducting assessments of nationally accredited child care facilities and facilities regulated by the US Military.

New §809.133(f) requires Boards to ensure compliance with the process and procedures in the TRS guidelines for conducting assessments of certified TRS providers that move or expand locations.

§809.134. Minimum Qualifications for TRS Assessors and Mentors

Section 2308.321(e)(2) of the Texas Government Code requires the TRS workgroup to submit recommendations to the Agency proposing revisions to Agency rules relating to the education and experience requirements for mentors and evaluators.

New §809.134(a)(1) - (3) incorporates the TRS workgroup's recommendations, requiring Boards to ensure TRS assessors and mentors meet the minimum education requirements, as follows:

- (1) Bachelor's degree from an accredited four-year college or university in early childhood education, child development, special education, child psychology, educational psychology, elementary education, or family consumer science;
- (2) Bachelor's degree from an accredited four-year college or university with at least 18 credit hours in early childhood education, child development, special education, child psychology, educational psychology, elementary education, or family consumer science with at least 12 credit hours in child development; or
- (3) Associate's degree in early childhood education, child development, special education, child

psychology, educational psychology, elementary education, or family consumer science with two years of experience as a director in an early childhood program, with preference given to experience with a provider that is accredited or TRS certified.

New §809.134(b) incorporates the TRS workgroup's recommendation that a Board may request a waiver from the Commission of the minimum education requirements in subsection (a) if the Board can demonstrate that no applicants in its local workforce development area meet the minimum education requirements.

The rule language also stipulates that a waiver, if granted by the Commission, is effective for no more than two years. The Commission's expectation is that assessors and mentors obtain the required education during the two-year period.

New §809.134(c) incorporates the TRS workgroup's recommendation requiring Boards to ensure that TRS assessors and mentors meet the minimum work experience requirements of one year of full-time early childhood classroom experience in a child care, Early Head Start, Head Start, or prekindergarten through third-grade school program.

New §809.134(d) incorporates the TRS workgroup's recommendation requiring Boards to ensure that if an individual performs the duties of both an assessor and a mentor, the individual providing TRS mentoring services to a provider does not act as the assessor of that same provider when determining TRS certification.

New §809.134(e) incorporates the TRS workgroup's recommendation requiring TRS assessors and mentors to complete annual professional development and continuing education consistent with child care licensing minimum training requirements for a center director.

New §809.134(f) incorporates the TRS workgroup's recommendation requiring TRS assessors and mentors to meet the background check requirement consistent with 40 TAC, Chapter 745.

New §809.134(g) incorporates the TRS workgroup's recommendation requiring TRS assessors and mentors to demonstrate:

- (1) knowledge of best practices in early childhood education; and
- (2) understanding of early childhood evaluations, observations, and assessment tools for both teachers and children.

§809.135. TRS Process for Reconsideration

New §809.135 requires Boards to ensure a process for reconsideration of facility assessment at the Board level. The TRS program is not subject to Chapter 823 of this title, the Integrated Complaints, Hearings, and Appeals rules.

PART III. IMPACT STATEMENTS

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

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

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

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

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

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

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

Economic Impact Statement and Regulatory Flexibility Analysis

The Agency has determined that the proposed rules will not have an adverse economic impact on small businesses as these proposed rules place no requirements on small businesses, including child care providers. The TRS program is a voluntary quality certification program and child care providers are not required to participate in the TRS program in order to provide child care services to the general public. Further, child care providers are not required to participate in the TRS program in order to provide Commission-funded child care services. The Agency acknowledges that child care providers that want to participate in the voluntary TRS program may incur additional costs to comply with the TRS standards. Possible additional costs must be considered by the provider relative to the increased reimbursement rates specified in these rules that the provider would receive.

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

Reagan Miller, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to improve the quality of child care services funded by the Commission.

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

PART IV. COORDINATION ACTIVITIES

As required by Texas Government Code §2308.321, the Commission based these rules on the recommendations of the TRS workgroup. The TRS workgroup was appointed by the Agency's executive director and, as required, included representatives from the following:

- the Agency
- DFPS

- Texas Education Agency
- TELC
- TRS program providers
- TSR! project participant
- Board
- Board staff

The TRS workgroup invited stakeholders from around the state of Texas to participate in workgroup discussions and provide input into proposed TRS program revisions. Stakeholders included individuals from the following entities:

- Boards
- Board child care contractors
- Child care providers
- Children's Learning Institute
- Texas Head Start Collaboration Office
- Texans Care for Children
- Texas Association for the Education of Young Children
- Texas Association for Infant Mental Health
- Texas Licensed Child Care Association
- Texas Partnership for Out of School Time
- Texas Department of State Health Services

The TRS workgroup held 20 meetings from September 2013 to June 2014, including three public meetings to receive public comments and input on the TRS program revisions. Additionally, members of the TRS workgroup participated in weekly conference calls with stakeholders to discuss specific areas of the TRS program.

The TRS workgroup posted meeting materials and draft recommendations at <http://www.twc.state.tx.us/svcs/childcare/texas-rising-star-workgroup.html>. The TRS workgroup also solicited written comments from the public to trsworkgroup376@twc.state.tx.us.

Additionally, in the development of these rules for publication and public comment, the Commission sought the involvement of Texas' 28 Boards. The Commission provided the concept paper regarding these rule amendments to the Boards for consideration and review on August 21, 2014. The Commission also conducted a conference call with Board executive directors and Board staff on August 22, 2014, to discuss the concept paper. The Commission also provided the policy concept to the TRS workgroup, stakeholders, and child care providers. During the rulemaking process, the Commission considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved. The Commission also received comments on the TRS workgroup's recommendations regarding the TRS guidelines. The comments will be reviewed during the Commission's consideration of the proposed TRS guidelines and do not need to be resubmitted.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us.

Comments must be received or postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

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

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

CHAPTER 809. CHILD CARE SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

§809.2. Definitions.

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

- (1) Attending a job training or educational program--An individual is considered to be attending a job training or educational program if the individual:
 - (A) is considered by the program to be officially enrolled;
 - (B) meets all attendance requirements established by the program; and
 - (C) is making progress toward successful completion of the program as determined by the Board.
- (2) Child--An individual who meets the general eligibility requirements contained in this chapter for receiving child care services.
- (3) Child care contractor--The entity or entities under contract with the Board to manage child care services. This includes contractors involved in determining eligibility for child care services, contractors involved in the billing and reimbursement process related to child care subsidies, as well as contractors involved in the funding of quality improvement activities as described in §809.16.
- (4) Child care services--Child care subsidies and quality improvement activities funded by the Commission.
- (5) Child care subsidies--Commission-funded child care reimbursements to an eligible child care provider for the direct care of an eligible child.
- (6) Child with disabilities--A child who is mentally or physically incapable of performing routine activities of daily living within the child's typical chronological range of development. A child is considered mentally or physically incapable of performing routine activities of daily living if the child requires assistance in performing tasks (major life activity) that are within the typical chronological range of development, including but not limited to, caring for oneself; performing manual tasks; walking; hearing; seeing, speaking, breathing; learning; and working.
- (7) Educational program--A program that leads to:

- (A) a high school diploma;
 - (B) a General Educational Development (GED) credential; or
 - (C) a postsecondary degree from an institution of higher education.
- (8) Family--The unit composed of a child eligible to receive child care services, the parents of that child, and household dependents.
- (9) Household dependent--An individual living in the household who is one of the following:
- (A) An adult considered as a dependent of the parent for income tax purposes;
 - (B) A child of a teen parent; or
 - (C) A child or other minor living in the household who is the responsibility of the parent.
- (10) Improper payments--Payments to a provider or Board's child care contractor for goods or services that are not in compliance with federal or state requirements or applicable contracts.
- (11) Job training program--A program that provides training or instruction leading to:
- (A) basic literacy;
 - (B) English proficiency;
 - (C) an occupational or professional certification or license; or
 - (D) the acquisition of technical skills, knowledge, and abilities specific to an occupation.
- (12) Listed family home--A family home, other than the eligible child's own residence, that is listed, but not licensed or registered with, the Texas Department of Family and Protective Services (DFPS) pursuant to Texas Human Resources Code §42.052(c).
- (13) Military deployment--The temporary duty assignment away from the permanent military installation or place of residence for reserve components of the single military parent or the dual military parents. This includes deployed parents in the regular military, military reserves, or National Guard.

- (14) Parent--An individual who is responsible for the care and supervision of a child and is identified as the child's natural parent, adoptive parent, stepparent, legal guardian, or person standing in loco parentis (as determined in accordance with Commission policies and procedures). Unless otherwise indicated, the term applies to a single parent or both parents.
- (15) Protective services--Services provided when:
- (A) a child is at risk of abuse or neglect in the immediate or short-term future and the child's family cannot or will not protect the child without DFPS Child Protective Services (CPS) intervention;
 - (B) a child is in the managing conservatorship of DFPS and residing with a relative or a foster parent; or
 - (C) a child has been provided with protective services by DFPS within the prior six months and requires services to ensure the stability of the family.
- (16) Provider--A provider is defined as:
- (A) a regulated child care provider as defined in §809.2(17);
 - (B) a relative child care provider as defined in §809.2(18); or
 - (C) a listed family home as defined in §809.2(12), subject to the requirements in §809.91(b).
- (17) Regulated child care provider--A provider caring for an eligible child in a location other than the eligible child's own residence that is:
- (A) licensed by DFPS;
 - (B) registered with DFPS;
 - (C) licensed by the Texas Department of State Health Services as a youth day camp; or
 - (D) operated and monitored by the United States military services.
- (18) Relative child care provider--An individual who is at least 18 years of age, and is, by marriage, blood relationship, or court decree, one of the following:
- (A) The child's grandparent;
 - (B) The child's great-grandparent;

- (C) The child's aunt;
 - (D) The child's uncle; or
 - (E) The child's sibling (if the sibling does not reside in the same household as the eligible child).
- (19) Residing with--Unless otherwise stipulated in this chapter, a child is considered to be residing with the parent when the child is living with and physically present with the parent during the time period for which child care services are being requested or received.
- (20) Teen parent--A teen parent (teen) is an individual 18 years of age or younger, or 19 years of age and attending high school or the equivalent, who has a child.
- (21) Texas Rising Star Program--A voluntary, quality-based rating system of child care providers participating in Commission-subsidized child care.
- (22) Texas Rising Star Provider--A provider certified as meeting the TRS program standards. TRS providers are certified as one of the following:
- (A) 2-Star Program Provider;
 - (B) 3-Star Program Provider; or
 - (C) 4-Star Program Provider.
- (23)~~(24)~~ Working--Working is defined as:
- (A) activities for which one receives monetary compensation such as a salary, wages, tips, and commissions;
 - (B) job search activities (subject to the requirements in §809.41(d)); or
 - (C) participation in Choices or Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T) activities.

SUBCHAPTER B. GENERAL MANAGEMENT

§809.16. Quality Improvement Activities.

- (a) Child care funds allocated by the Commission pursuant to its allocation rules (generally, Chapter 800, General Administration, Subchapter B, Allocation and Funding, and specifically §800.58, Child Care), including local public transferred funds and local private donated funds, as provided in §809.17, to the extent they are

used for nondirect care quality improvement activities, may be expended on any quality improvement activity described in 45 CFR §98.51. These activities may include, but are not limited to:

- (1) activities designed to provide comprehensive consumer education to parents and the public;
 - (2) activities that increase parental choice; and
 - (3) activities designed to improve the quality and availability of child care.
- (b) Boards must ensure compliance with 45 CFR §98.54(b) regarding construction expenditures, as follows:
- (1) State and local agencies and nonsectarian agencies or organizations.
 - (A) Funds shall not be expended for the purchase or improvement of land, or for the purchase, construction, or permanent improvement of any building or facility.
 - (B) Funds may be expended for minor remodeling, and for upgrading child care facilities to ensure that providers meet state and local child care standards, including applicable health and safety requirements.
 - (2) Sectarian agencies or organizations.
 - (A) The prohibitions in paragraph (1) of this subsection apply.
 - (B) Funds may be expended for minor remodeling only if necessary to bring the facility into compliance with the health and safety requirements established pursuant to 45 CFR §98.41.
- (c) Expenditures certified by a public entity, as provided in §809.17(b)(3), may include expenditures for any quality improvement activity described in 45 CFR §98.51.
- ~~(d) Boards shall ensure that an assessment is conducted for any provider requesting TRS Provider certification pursuant to Texas Government Code §2308.316. Prior to conducting the assessment, Boards shall ensure that the provider has a current agreement to serve Commission-funded children; and~~
- ~~(1) has the appropriate permanent license or registration from, and is not on corrective or adverse action with, DFPS; or~~
 - ~~(2) is regulated by the military.~~

~~(e) Boards shall ensure that TRS Provider certification is granted for any provider that is assessed and verified as meeting the TRS Provider certification criteria.~~

§809.20. Maximum Provider Reimbursement Rates.

- (a) Based on local factors, including a market rate survey provided by the Commission, a Board shall establish maximum reimbursement rates for child care subsidies to ensure that the rates provide equal access to child care in the local market and in a manner consistent with state and federal statutes and regulations governing child care. At a minimum, Boards shall establish reimbursement rates for full-day and part-day units of service, as described in §809.93(e), for the following:
- (1) Provider types:
 - (A) Licensed child care centers, including before- or after-school programs and school-age programs, as defined by DFPS;
 - (B) Licensed child care homes as defined by DFPS;
 - (C) Registered child care homes as defined by DFPS; and
 - (D) Relative child care providers as defined in §809.2.
 - (2) Age groups in each provider type:
 - (A) Infants age 0 to 17 months;
 - (B) Toddlers age 18 to 35 months;
 - (C) Preschool age children from 36 to 71 months; and
 - (D) School age children 72 months and over.
- (b) A Board shall establish enhanced reimbursement rates:
- (1) for all age groups at ~~child care providers that obtain~~ TRS P ~~provider facilities criteria pursuant to Texas Government Code §2308.315;~~ provider facilities
 - (2) only for preschool-age children at child care providers that obtain school readiness certification pursuant to Texas Education Code §29.161; and
 - (3) only for preschool-age children at child care providers that participate in integrated school readiness models pursuant to Texas Education Code §29.160.
- (c) The minimum enhanced reimbursement rates established under subsection (b) of this section shall be ~~at least 5%~~ greater than the maximum rate established for providers

not meeting the requirements of subsection (b) of this section for the same category of care up to, but not to exceed, the provider's published rate. Effective September 1, 2015, the maximum rate must be at least:

(1) 5 percent greater for a:

(A) 2-Star Program Provider; or

(B) child care provider meeting the requirements of subsections (b)(2) or (b)(3) of this section;

(2) 7 percent greater for a 3-Star Program Provider; and

(3) 9 percent greater for a 4-Star Program Provider.

(d) Boards may establish a higher enhanced reimbursement rate than those specified in subsection (c) of this section for TRS providers, as long as there is a minimum 2 percent difference between each star level.

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

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

SUBCHAPTER G. TEXAS RISING STAR PROGRAM

§809.130. Short Title and Purpose.

(a) The rules contained in this subchapter may be cited as the TRS Program rules.

(b) The purpose of the TRS Program rules is to interpret and implement Texas Government Code §2308.3155(b) requiring the Commission to establish rules to administer the TRS program, including guidelines for rating a child care provider for TRS certification.

(c) The TRS Program rules identify the organizational structure and categories of, and the scoring factors that shall be included in, the TRS guidelines.

(d) The TRS guidelines for rating a child care provider shall:

(1) describe measures for the TRS program that contain, at a minimum, measures for child care providers regarding:

(A) director and staff qualifications and training;

(B) caregiver-child interactions;

(C) curriculum;

(D) nutrition and indoor and outdoor activities; and

(E) parent involvement and education;

(2) specify measures that:

(A) must be met in order for a provider to be certified at each star level; and

(B) are observed and have points awarded through on-site assessments; and

(3) specify the scoring methodology and scoring thresholds for each star level.

(e) The TRS guidelines:

(1) shall be adopted by the Commission subject to the requirements of the Texas Open Meetings Act; and

(2) may be amended by the Commission, provided that the amendments are adopted subject to the requirements of the Texas Open Meetings Act.

§809.131. Eligibility for the TRS Program.

(a) A child care provider is eligible to apply for the TRS program if the provider has a current agreement to serve Commission-subsidized children and:

(1) has a permanent (nonexpiring) license or registration from DFPS;

(2) has at least 12 months of licensing history with DFPS; and

(3) is not on corrective or adverse action with DFPS; or

(4) is regulated by and in good standing with the US Military.

(b) A child care facility is not eligible to apply for the TRS program if, during the most recent 12-month DFPS licensing history, the provider had:

- (1) any of the critical licensing deficiencies listed in the TRS guidelines;
- (2) five or more of the high or medium-high licensing deficiencies listed in the TRS guidelines; or
- (3) 10 or more total licensing deficiencies of any type.

§809.132. Impact of DFPS Deficiencies.

(a) A TRS provider shall lose TRS certification if the provider:

- (1) is placed on corrective or adverse action by DFPS; or
- (2) had 15 or more total licensing deficiencies of any type during the most recent 12-month licensing history.

(b) TRS providers with any of the critical licensing deficiencies listed in the TRS guidelines during the most recent 12-month DFPS licensing history shall have the following consequences:

- (1) reduction of a 4-Star Program Provider or 3-Star Program Provider to a 2-Star Program Provider; or
- (2) a 2-Star Program Provider shall lose certification.

(c) TRS providers with five or more of the high or medium-high deficiencies listed in the TRS guidelines during the most recent 12-month DFPS licensing history shall lose a star level with a 2-Star Program Provider losing certification.

(d) TRS providers with 10 to 14 total licensing deficiencies of any type during the most recent 12-month DFPS licensing history shall be placed on a six-month TRS program probationary period. Further:

- (1) TRS providers on a six-month probationary period that are re-cited by DFPS within the probationary period for any of the same deficiencies shall lose a star level with a 2-Star Program Provider losing certification;
- (2) if any new deficiencies—not to exceed 14 total deficiencies—are cited by DFPS during the first probationary period, a second six-month probationary period shall be established effective upon the date of final DFPS determination of the deficiencies; and

- (3) if any new deficiencies—not to exceed 14 total deficiencies—are cited by DFPS during the second six-month probationary period, a provider shall lose TRS certification.
- (e) Providers losing a star level due to licensing deficiencies shall be reinstated at the former star level if the deficiency is not re-cited by DFPS within the next six months.
- (f) Providers losing TRS certification due to licensing deficiencies shall not be eligible to reapply for certification sooner than 12 months following the loss of the certification.

§809.133. Application and Assessments for the TRS Program.

- (a) TRS program applicants must complete:
 - (1) an orientation on the TRS guidelines, including an overview of the:
 - (A) TRS program application process;
 - (B) TRS program measures; and
 - (C) TRS program assessment process; and
 - (2) a TRS program self-assessment tool.
- (b) Boards shall ensure that:
 - (1) written acknowledgment of receipt of the application and self-assessment is sent to the provider;
 - (2) within 20 days of receipt of the application, the provider is sent an estimated time frame for scheduling the initial assessment;
 - (3) an assessment is conducted for any provider that meets the eligibility requirements in §809.131 and requests to participate in the TRS program; and
 - (4) TRS certification is granted for any provider that is assessed and verified as meeting the TRS provider certification criteria set forth in the TRS guidelines.
- (c) Boards shall ensure that TRS assessments are conducted as follows:
 - (1) On-site assessment of 100 percent of the provider classrooms at the initial assessment for TRS certification and at each scheduled recertification; and

- (2) Recertification of all TRS providers every three years.
- (d) Boards shall ensure that certified TRS providers are monitored on an annual basis and the monitoring includes:
 - (1) at least one unannounced on-site visit; and
 - (2) a review of the provider's licensing compliance as described in new §809.132.
- (e) Boards shall ensure compliance with the process and procedures in the TRS guidelines for conducting assessments of nationally accredited child care facilities and child care facilities regulated by the US Military.
- (f) Boards shall ensure compliance with the process and procedures in the TRS guidelines for conducting assessments of certified TRS providers that move or expand locations.

§809.134. Minimum Qualifications for TRS Assessors and Mentors.

- (a) Boards shall ensure that TRS assessors and mentors meet the minimum education requirements as follows:
 - (1) Bachelor's degree from an accredited four-year college or university in early childhood education, child development, special education, child psychology, educational psychology, elementary education, or family consumer science;
 - (2) Bachelor's degree from an accredited four-year college or university with at least 18 credit hours in early childhood education, child development, special education, child psychology, educational psychology, elementary education, or family consumer science with at least 12 credit hours in child development; or
 - (3) Associate's degree in early childhood education, child development, special education, child psychology, educational psychology, elementary education, or family consumer science with two years of experience as a director in an early childhood program, with preference given to experience with a provider that is accredited or TRS certified.
- (b) The Commission may grant a waiver of no more than two years of the minimum education requirements in subsection (a) if a Board can demonstrate that no applicants in its local workforce development area meet the minimum education requirements.
- (c) Boards shall ensure that TRS assessors and mentors meet the minimum work experience requirements of one year of full-time early childhood classroom experience in a child care, Early Head Start, Head Start, or prekindergarten through third-grade school program.

- (d) Boards shall ensure that if an individual performs the duties of both an assessor and a mentor, the individual providing TRS mentoring services to a provider does not act as the assessor of that same provider when determining TRS certification.
- (e) Boards shall ensure that TRS assessors and mentors are required to complete annual professional development and continuing education consistent with child care licensing minimum training requirements for a center director.
- (f) Boards shall ensure that TRS assessors and mentors meet the background check requirement consistent with 40 TAC, Chapter 745.
- (g) Boards shall ensure that TRS assessors and mentors demonstrate:
 - (1) knowledge of best practices in early childhood education; and
 - (2) understanding of early childhood evaluations, observations, and assessment tools for both teachers and children.

§809.135. TRS Process for Reconsideration.

Boards shall ensure a process for reconsideration of facility assessment at the Board level for the TRS program. The TRS program is not subject to Chapter 823 of this title, the Integrated Complaints, Hearings, and Appeals rules.