

## **Chapter 809. CHILD CARE AND DEVELOPMENT**

**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 DECEMBER 13, 2005, 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*: **December 30, 2005**  
Estimated End of Comment Period: **January 30, 2006**

The Texas Workforce Commission (Commission) proposes amendments to the following sections of Chapter 809 relating to the Child Care and Development:

Subchapter B. General Management, §809.14 and §809.15  
Subchapter C. Requirements to Provide Child Care, §§809.41–809.44 and §809.48  
Subchapter K. Provider Reimbursement Rates, §809.221 and §809.231

The Commission proposes the repeal of the following section of Chapter 809 relating to the Child Care and Development:

Subchapter C. Requirements to Provide Child Care, §809.49

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**

Purpose, Background, and Authority

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

The Commission proposes to repeal 40 TAC §809.49 relating to parent advisory groups. Among other changes, HB 2961 repealed Texas Human Resources Code §44.002(c), which required licensed child care centers to have a parent advisory committee if more than 30 percent of a center's licensed capacity was purchased through the child care subsidy system. The repeal became effective immediately upon signature of the Governor on May 27, 2005. As a result of the repeal, Commission rule §809.49, which requires licensed child care centers to have a Parent Advisory Group, is no longer necessary.

#### **Subchapter B. General Management and Subchapter K. Provider Reimbursement Rates**

The Commission proposes to amend 40 TAC §809.14 and §809.15, relating to promoting consumer education and other quality improvement activities, respectively, in order to describe the allowable consumer education and other quality improvement activities that Local Workforce Development Boards (Boards) may fund with Commission child care funds. The Commission also proposes to amend 40 TAC §809.231, relating to provider reimbursement rates, in order to include providers participating in certain school readiness models as eligible to receive a higher graduated reimbursement rate for the provision of direct child care services consistent with recent actions by the 79th Texas Legislature (2005).

The federal Child Care and Development Fund (CCDF) statute (42 U.S.C. §9858(e)) requires that at least four percent of the funds each state receives be expended on allowable quality activities as set forth in the CCDF regulations (45 C.F.R. §98.51(a)). These quality activities include:

- providing comprehensive consumer education to parents and the public;
- increasing parental choice; and
- improving the quality and availability of child care.

Until September 1, 2001, the Commission passed down the federal requirement for quality expenditures to each Local Workforce Development Board (Board). At that time, Commission rule §800.58 required that each Board use at least four percent of its total annual child care expenditures on quality activities. The intent of the rule was to ensure that the state would meet the federal four percent quality set-aside.

In 2001, the Legislature determined that much of the state's four percent quality expenditure requirement could be met through the child care licensing and monitoring activities conducted by the Texas Department of Family and Protective Services (DFPS), and appropriated CCDF dollars to DFPS for licensing and monitoring activities. This action signaled a strategic shift in responsibility for fulfilling the federal quality requirements from the Commission—whose subsidized child care activities typically are limited to about 12 percent of the total regulated child care market—to DFPS—whose licensing and monitoring activities affect the entire range of the regulated child care market. Since State Fiscal Year 2002 (SFY'02), the Legislature has continued to appropriate CCDF dollars to DFPS, and the state has relied primarily on those expenditures to meet the federal four percent quality requirement.

As a result of the Legislature's decision to rely primarily on DFPS licensing and monitoring activities to meet the federal quality requirement, the Commission's quality performance measures relating to professional development training and Texas Rising Star Provider (TRS) certification were reduced and eventually eliminated by the Legislature.

Based on the funding appropriated by the Legislature for each year beginning with SFY'02, and the corresponding annual targets for average number of children served per day assigned by the Legislative Budget Board, the Commission and the Boards have had to use the preponderance of CCDF funds appropriated to the Agency, including the quality earmarked funds, for direct child care subsidies. The Boards have also continued to fund direct quality child care through higher reimbursement rates for TRS providers. The Legislature clearly intended that the Commission

focus on providing direct subsidized child care as a support service for parents who are transitioning from welfare or who are at risk of becoming dependent on welfare, consistent with the federal direction at CCDF's creation in 1996. Only minimal amounts of child care funds have been available each year at the state and local levels for nondirect quality child care services.

To the extent that funds are available in excess of those required to meet legislative performance targets for direct child care services, the Legislature enacted several laws in 2003 and 2005 that focus those quality expenditures on certain activities that prepare children for school. Senate Bill (SB) 280, enacted by the 78th Texas Legislature, Regular Session (2003), amended Chapter 2308 of the Texas Government Code by adding §2308.319, which encourages Boards to use local funds for collaborative reading initiatives.

Also in 2003, the Legislature enacted SB 76, amending Chapter 29 of the Texas Education Code to encourage the coordination and integration of early childhood development and child care programs and the creation of a school readiness rating system. The law charges the State Center for Early Childhood Development (State Center) with establishing pilot sites where child care, prekindergarten, and Head Start entities may coordinate and share information, facilities, and resources. It also charged the State Center with designing a school readiness rating system that determines whether an early childhood program is preparing children for kindergarten. As a result of SB 76, the State Center established 11 Texas Early Education Model (TEEM) pilot sites across the state. In 2005, the Legislature increased funding for the State Center and expanded the TEEM pilots.

Article IX, Rider 14.36 of the General Appropriations Act, 79<sup>th</sup> Legislature (2005), states:

Out of funds appropriated to the Texas Workforce Commission in Strategies A.3.1, TANF Choices Child Care; A.3.2, Transitional Child Care; and A.3.3, At-risk Child Care, up to \$50 million for the biennium shall be made available to child care providers participating in integrated school readiness models developed by the State Center for Early Childhood Development at the University of Texas Health Science Center. This initiative shall be implemented in a way to avoid any decline in the number of children receiving child care during the 2006-07 biennium.

These legislative actions provide a framework for the legislative emphasis on preparing children for school.

Texas Government Code §531.0312 designates the Texas Information and Referral Network/2-1-1 Texas (2-1-1 Texas) operated by the Texas Health and Human Services Commission (HHSC) as the single point of coordination for statewide information and referral services. Because 2-1-1 Texas is the state's designated entity for information and referral services, the Commission contracts with HHSC to provide comprehensive child care information and referral services to parents and the general public through 2-1-1 Texas.

Additionally, the 79th Texas Legislature, Regular Session (2005), enacted HB 2048, which requires HHSC to expand its 2-1-1 Texas Web site to include information on all available public

and private child care and early education services in order to provide the public with an accessible online statewide database. HB 2048 amends §531.0312 of the Texas Government Code to require Boards, independent school districts, and the Texas Head Start Collaboration Office to provide 2-1-1 Texas with eligibility and availability information on their respective services.

Therefore, based on the actions of the Legislature, the Commission proposes to amend §809.15, relating to quality improvement activities, to provide that, to the extent that funds are available for quality improvement activities, the Boards may fund quality improvement activities designed to promote collaborative reading initiatives; school readiness, early learning and literacy; and support for child care consumer education through 2-1-1 Texas. The Commission also proposes to amend §809.14, relating to consumer education, to include provisions relating to recent actions of the 79th Texas Legislature regarding the Texas Information and Referral System and the 2-1-1 Texas system, as well as to provide consumer education relating to school readiness and early learning. Further, the Commission proposes to amend §809.231 in order to include child care providers participating in the State Center's school readiness models in the Commission's tiered reimbursement rates.

## **<p>PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

**(Note: Minor editorial changes are made throughout Chapter 809, Subchapters B, C, and K, that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)**

### **SUBCHAPTER C. REQUIREMENTS TO PROVIDE CHILD CARE**

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

The Commission proposes to repeal §809.49 requiring licensed child care centers to establish a Parent Advisory Group, as previously provided in §44.002(c) of the Texas Human Resources Code. HB 2961 repealed §44.002 of the Texas Human Resources Code, thereby removing the statutory requirement for parent advisory committees.

### **SUBCHAPTER B. GENERAL MANAGEMENT**

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

As provided by 42 U.S.C §9858(e) and further delineated in 45 C.F.R. §98.33(a), the Commission is required to certify that it collects and disseminates to parents and the general public consumer education information that promotes informed child care choices by parents. At a minimum, this information shall include information about the full range of child care providers available and health and safety requirements. Since December 2003, the Commission has contracted with HHSC to provide comprehensive child care information and referral services to parents and the general public through the statewide 2-1-1 Texas system. The proposed amendments to §809.14 are designed to enhance the 2-1-1 Texas system relating to child care by requiring Boards to refer parents—including those who are not eligible or are no longer eligible for subsidized child care—to the 2-1-1 Texas system for child care information. The proposed

rules also require Boards to include information concerning child care programs designed to improve school readiness, early learning, and literacy as part of the Boards' consumer education information.

The Commission proposes to amend §809.14(a) to require Boards to provide consumer education information to parents who are eligible for Commission-funded child care services; parents who are placed on a Board's waiting list; parents who are no longer eligible for Commission-funded child care services; and applicants who are not eligible for Commission-funded child care services. The Commission proposes this provision in order to ensure that the Boards' child care consumer education is provided to as broad a population as possible. Additionally, the Commission believes that the requirement to provide consumer education information to parents no longer eligible for Commission-funded child care services further reinforces the requirements of §302.0046(b) of the Texas Labor Code and §809.72(6)(A) of this chapter, which require Boards to provide information regarding other child care services to parents whose children have been removed from care in order to serve a child in a priority group.

The Commission proposes to amend §809.14(b) to describe what the consumer education information shall contain. Proposed §809.14(b)(1) states that the consumer information shall include information about the Texas Information and Referral Network/2-1-1 Texas information and referral system. This requirement is consistent with recent legislative direction that child care information and referral be provided by 2-1-1 Texas.

Proposed §809.14(b)(2) states that the consumer education information shall also contain the Web site and telephone number of the Texas Department of Family and Protective Services (DFPS), so parents may obtain health and safety requirements, including information on the prevention and control of infectious diseases (including immunizations), building and physical premises safety, minimum health and safety training appropriate to the provider setting, and the regulatory compliance history of child care providers. Because DFPS is the designated entity for the State of Texas to regulate child care providers, the Commission proposes that the consumer information shall direct parents to the DFPS Web site and phone number to obtain this information. The Agency has reviewed the DFPS Web site and has determined that it contains the information required by federal child care regulations regarding health and safety. Although not required by the proposed rules, the Commission encourages Boards to review periodically the information provided on the DFPS Web site and provide printed material from the Web site to parents.

Proposed §809.14(b)(3) requires that the consumer education information provide a description of the full range of eligible child care providers set forth in §809.41 of this chapter, including the option for parents to choose self-arranged care. The Commission includes this in order to implement the federal child care requirement in 45 C.F.R. 98.33(a), which states that parents be provided information on the full range of providers available to them.

Proposed §809.14(b)(4) requires that the consumer education information also include a description of programs available in the local workforce development area (workforce area) relating to school readiness and quality rating systems, including the school readiness models developed by the State Center, and the TRS criteria. The Commission includes this provision in

order to emphasize the direction of the Legislature, particularly Article IX, Rider 14.36 of the 2005 General Appropriations Act, relating to school readiness, early learning, and literacy. The Commission proposes to include a description of the TRS criteria because the TRS system is provided for in state law pursuant to Texas Government Code §2308.315.

Finally, the Commission proposes §809.14(c) requiring Boards to cooperate with the Texas Health and Human Services Commission to provide 2-1-1 Texas with information, as determined by HHSC, for inclusion in the 2-1-1 Texas statewide information and referral network. The Commission proposes this in order to implement the provisions of HB 2048 enacted by the 79th Texas Legislature (2005), which amends §531.0312 of the Texas Government Code to require Boards to provide 2-1-1 Texas with eligibility and availability information on their respective services.

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

The Commission proposes to amend §809.15, relating to quality improvement activities, in order to align the allowable quality child care activities with the legislative direction relating to collaborative reading initiatives; school readiness, early learning, and literacy; and support for 2-1-1 Texas. Proposed §809.15(a) states that local public transferred funds and local private donated funds, as well as child care funds allocated to the Boards under Chapter 800, Subchapter B of this title (including the CCDF quality earmarked funds), to the extent used for nondirect care quality activities, may only be used for:

- collaborative reading initiatives;
- school readiness, early learning, and literacy; and
- local-level support to promote child care consumer education provided by 2-1-1 Texas.

During the rule development process, several Boards requested clarification from the Commission concerning the types of activities that may be funded to support collaborative reading, school readiness, early learning, and literacy. The Boards noted that professional development and training, as well as the purchase of resource materials and curriculum for professional development, are key components in providing early learning and literacy activities for children. Therefore, the Commission proposes §809.15(b) to allow professional development and training for child care providers as well as the purchase of curriculum and curriculum-related resources, provided that the professional development and training and curriculum and related resources are designed to support collaborative reading initiatives, school readiness, early learning, and literacy.

In order to provide additional guidance to the Boards, the Commission offers the following guidelines and examples of the types of activities that may be funded to support the allowable quality initiatives. It is the Commission's intention that Boards be allowed to expend quality dollars for professional development and training using research-based curriculum as well as the purchase of resource materials that support a print-rich environment designed to aid in the early learning and literacy development of children. Activities to support collaborative reading initiatives, school readiness, early learning, and literacy may also include:

- professional development relating to early learning workshops;
- CIRCLE Train the Trainer training;
- literacy kits for child care providers;
- school readiness, early learning, and literacy awareness campaigns;
- scholarships for college courses relating to early reading, literacy, and school readiness; and
- training using research-based curriculum approved by the State Board of Education, Texas Education Agency, or recognized by the State Center.

It is not the intention of the Commission that Boards use quality dollars to purchase classroom consumable materials such as pencils, crayons, or art supplies. While the Commission recognizes that these materials are a supporting element that aid in a child's progress toward school readiness, the Commission believes that quality dollars should be targeted toward building the infrastructure necessary to provide early education professionals with the training, curriculum, and resources needed to promote school readiness, early learning, and literacy.

During the rule development process, several Boards expressed concern that the focus on school readiness, early learning, and literacy would lead Boards to direct quality dollars toward preschool children and away from infants and toddlers. The Commission emphasizes that Boards are not limited to funding quality activities only for preschool. The Commission believes that the proposed rules provide Boards with the flexibility to fund early learning and literacy activities for all age groups, including infants and toddlers.

The proposed §809.15(c) allows Boards to give priority in funding allowable nondirect child care quality activities to providers participating in or voluntarily pursuing participation in the integrated school readiness models developed by the State Center, and TRS Provider certification. The Commission includes proposed §809.15(c), relating to providers participating in, or wishing to participate in, the TEEM school readiness models and TRS Provider certification, in order to address concerns by the Boards that they will not be able to continue to provide appropriate professional development activities designed to promote the TEEM models or TRS certification. The Commission includes proposed §809.15(c) to encourage Boards to provide professional development training—as the training relates to school readiness, early learning, and literacy—to TRS providers and providers participating in the TEEM school readiness models.

Proposed §809.15(d) states that expenditures certified by a public entity may include expenditures for any quality improvement activity described in 45 C.F.R. §98.51. The Commission proposes this subsection to allow public entities and the Boards the flexibility to use the maximum amount of public expenditures allowed under federal regulations.

The Commission proposes to remove current §809.15(a) requiring Boards to ensure that providers receive orientation, technical assistance, and ongoing training to improve the quality of child care. The Legislative Budget Board has eliminated the Commission's quality performance measure relating to professional development training; therefore, the Commission finds this requirement is no longer necessary in Commission rules.

The Commission also proposes to remove current §809.15(b) requiring that Boards recognize TRS providers. However, the Commission clarifies that Boards are not prohibited from providing professional development and training to TRS providers. As mentioned previously, the Commission includes provisions in §809.15(b) and §809.15(c)(2) in order to include professional development training to TRS providers.

The Commission further proposes to remove current §809.15(c) requiring Boards to provide quality activities described in 45 C.F.R. §98.51 (with the exception of providing loans). This provision is removed in order to emphasize that child care funds, to the extent used for quality child care activities, shall be directed at activities described in proposed §809.15(a).

Finally, the Commission proposes to remove current §809.15(d), which allows Boards to establish other voluntary criteria for improving quality. The Commission removes this provision to emphasize that child care funds, to the extent used for quality child care activities, shall be directed at activities described in proposed §809.15(a).

## **SUBCHAPTER K. PROVIDER REIMBURSEMENT RATES**

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

The Commission proposes to amend §809.231(d) to require Boards to establish graduated reimbursement rates for child care providers participating in integrated school readiness models developed by the State Center. The Commission proposes this amendment to implement the direction of the Legislature as provided by Article IX, Rider 14.36 of the General Appropriations Act, 79<sup>th</sup> Legislature (2005), which requires the Commission to make available up to \$50 million in the 2006-07 biennium to child care providers participating in State Center school readiness models. By making more funds available, through higher reimbursement rates, to providers participating in the school readiness models, the Commission will be in a position to demonstrate its intention to implement the intent of Article IX, Rider 14.36, as required by the Legislature. The Commission also emphasizes that graduated reimbursement rates for TRS providers shall remain a direct care quality expenditure, as directed by Texas Government Code §2308.315.

The Commission proposes to amend §809.231(e) to provide that the minimum reimbursement rates established under §809.231(d) shall be at least five percent greater than the maximum rate established for providers not meeting the requirements of §809.231(d) for the same category of care up to, but not to exceed, the provider's published rate.

Finally, the Commission proposes to remove current §809.231(g), which allows Boards to provide incentives to providers to recognize other quality criteria in addition to those in §809.231(d). The Commission removes this provision to limit the use of graduated reimbursement rates to those programs recognized by state statute, such as programs participating in the integrated school readiness models (as provided in Article IX, Rider 14.36 of the General Appropriations Act, 79<sup>th</sup> Legislature); and the TRS providers (as provided in Texas Government Code §2308.315). The Commission emphasizes that it is not removing the ability of Boards to provide incentives to providers that voluntarily meet or attempt to meet quality

criteria. The Commission believes that proposed §809.15(b), which allows Boards to provide professional development and to purchase curriculum resources—as well as proposed §809.15(c), which allows Boards to prioritize nondirect quality funds for providers participating in or pursuing participation in school readiness models and TRS certification pursuant to Texas Government Code §2308.316—provide the Boards the opportunity to focus incentives on quality programs recognized by the Texas Legislature.

### **PART III. IMPACT STATEMENTS**

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

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

Mr. Townsend has determined that enforcing or administering the rules does not have foreseeable implications relating to the cost or revenue of the state or local governments.

Mr. Townsend has determined that there are no anticipated economic costs to persons required to comply with the rules.

Mr. Townsend made these determinations based on the following:

- Promoting consumer education has long been required in federal regulations, state statute, and Commission rules. The proposed rule amendments to require Boards to refer parents to 2-1-1 Texas for child care information; provide consumer education materials and information regarding programs in the workforce area relating to school readiness and quality rating systems; and cooperate with the Texas Health and Human Services Commission to provide appropriate information to the 2-1-1 Texas system do not indicate any increase in costs from current requirements.
- Aligning allowable quality child care activities with legislative direction relating to collaborative reading initiatives; school readiness, early learning and literacy; and support for Texas 2-1-1 does not indicate any increase in costs from current requirements.
- Requiring Boards to establish graduated reimbursement rates for child care providers participating in integrated school readiness models developed by the State Center does not indicate any increase in costs from current requirements.

Mr. Townsend also has determined that there is no anticipated adverse economic impact on small or microbusinesses as a result of enforcing or administering these rules because they are not regulated by this rule.

Mark Hughes, Director, Labor Market Information, has determined that there is no significant negative impact upon employment conditions in this state as a result of the proposed rules. Mr. Hughes does not expect any significant impact upon overall employment conditions in the state as a result of the proposed rules.

Luis M. Macias, Director, Workforce Development Division, has determined that the public benefit anticipated as a result of enforcing the proposed rules will be to ensure that child care funds are used primarily for direct child care services and, to the extent funds are available, to ensure that quality improvement activities are focused on school readiness, consumer education using 2-1-1 Texas, and graduated reimbursement rates for providers participating in school readiness models and TRS providers.

#### **PART IV. COORDINATION ACTIVITIES**

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. The Commission also conducted conference calls with Board executive directors and Board staff on September 30, 2005, and October 14, 2005, to discuss the concept paper. 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.

Comments on the proposed rules may be submitted to TWC Policy Comments, Policy and Development, 101 East 15<sup>th</sup> Street, Room 440T, Austin, Texas 78778; faxed to 512-475-3577; or e-mailed to [TWCPolicyComments@twc.state.tx.us](mailto:TWCPolicyComments@twc.state.tx.us). The Commission must receive comments 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 the Texas Human Resources Code §44.002, regarding Administrative Rules.

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

## Chapter 809. CHILD CARE AND DEVELOPMENT

### Subchapter B. General Management

#### §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 one-stop 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 related information for review and monitoring, pursuant to Commission rules and policies.

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

- (a) **Planning.** A Board shall, as part of its integrated workforce training and services plan, develop, amend and modify the plan to incorporate and coordinate the design and management of the delivery of child care services with the delivery of other workforce employment, training and educational services identified in Texas Government Code §2308.251 *et seq.*, as well as other training and services included in the One-Stop Service Delivery Network. The goal is to coordinate workforce training and services, to leverage private and public funds at the local level, and to fully integrate child care for low-income families with the network of workforce training and services under the administration of the Boards. Boards shall design and manage the integrated workforce training and services plan that maximizes the delivery and availability of quality child care services to assist families seeking to become independent from, or who are at risk of becoming dependent on, public assistance while parents are either working or participating in educational or training activities in accordance with state and federal statutes and regulations.
- (b) **Policies.** A Board shall develop, adopt, and modify its policies for the design and management of the delivery of child care services in a public process consistent with the methods required for compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551 *et seq.* A Board shall maintain written copies of the policies that are required by federal and state law or as requested by the Commission and make such policies available to the Commission and the public upon request. A

Board shall also submit any modifications, amendments, or new policies to the Commission no later than two weeks after adoption of the policy by the Board.

- (c) Coordinating Planning and Policies. A Board shall coordinate with federal, state and local child care and early development programs and representatives of local governments in developing its integrated plan and policies for the design and management of the delivery of child care services, and shall maintain written documentation of coordination efforts.

**§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 promote informed child care choices by providing consumer education information to:

- (1) parents who are eligible for Commission-funded child care services;
- (2) parents who are placed on a Board's waiting list;
- (3) parents who are no longer eligible for Commission-funded child care services;  
and
- (4) applicants who are not eligible for Commission-funded child care services.

(b) The consumer education information shall contain, at a minimum;

- (1) information about the Texas Information and Referral Network/2-1-1 Texas information and referral system;
- (2) the Web site and telephone number of the Texas Department of Family and Protective Services (DFPS), so parents may obtain health and safety requirements including information on:
  - (A) the prevention and control of infectious diseases (including immunizations);
  - (B) building and physical premises safety;
  - (C) minimum health and safety training appropriate to the provider setting;  
and

(D) the regulatory compliance history of child care providers;

(3) a description of the full range of eligible child care providers set forth in §809.41 of this chapter; and

(4) a description of programs available in the local workforce development area relating to school readiness and quality rating systems, including the:

(A) school readiness models developed by the State Center for Early Childhood Development at the University of Texas Health Science Center; and

(B) the Texas Rising Star Provider criteria.

(c) A Board shall cooperate with the Texas Health and Human Services Commission (HHSC) to provide the Texas Information and Referral Network/2-1-1 Texas with information, as determined by HHSC, for inclusion in the statewide information and referral network.

~~(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 or registered with the Texas Department of Protective and Regulatory Services;~~

~~(2) has met the Texas Rising Star criteria (formerly known as the Designated Vendor criteria) as established by the Commission;~~

~~(3) has submitted proof of general liability insurance; and~~

~~(4) 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) Local public transferred funds and local private donated funds, as provided in §809.20 of this subchapter, as well as child care funds allocated to the Boards in Chapter 800, Subchapter B of this title, to the extent used for nondirect care quality improvement activities, shall only be used for the following:

(1) Collaborative reading initiatives

(2) School readiness, early learning, and literacy

(3) Local-level support to promote child care consumer education provided by 2-1-1 Texas

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

(b) Allowable activities may include the following to support the quality improvement activities described in subsection (a) of this section:

(1) Professional development and training for child care providers

(2) Purchase of curriculum and curriculum-related support resources for child care providers

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

(c) In funding quality activities allowable under this section, a Board may give priority to providers participating in or voluntarily pursuing participation in:

(1) the integrated school readiness models developed by the State Center for Early Childhood Development at the University of Texas Health Science Center; and

(2) Texas Rising Star Provider certification, pursuant to Texas Government Code §2308.316.

~~(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) Expenditures certified by a public entity, as provided in §809.20 of this subchapter, may include expenditures for any quality improvement activity described in 45 C.F.R. §98.51.

~~(d) In addition to the Texas Rising Star Provider 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 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. Leveraging Local Resources.**

- (a) Leveraging Local Funds. The Commission encourages Boards to secure local public and private funds for match to the extent possible to leverage all available resources for child care needs in the community.
  - (1) A Board may secure local funds for match in the form of one or more of the methods in order to leverage (match) against federal funds available through the Commission:
    - (A) donations of funds from a private entity;
    - (B) certification of expenditures by a private entity that represent expenditures eligible for federal match and that were not restricted in their use for a specific individual, organization, facility or institution;
    - (C) transfers of funds from a public entity; or
    - (D) certifications of expenditures by a public entity that represent expenditures eligible for federal match.
  - (2) A Board's performance in securing and leveraging local funds for match may make the Board eligible for incentive awards.
- (b) Securing Local Funds to Access Federal Matching Funds from the Commission.
  - (1) A Board shall manage the securing of funds, including the selection of pledged and completed donations, transfers, and certifications that are used by the Board to receive federal matching funds through the Commission.
  - (2) A Board shall ensure that federal matching funds are maximized by securing local funds for match in an amount that may exceed the amount required to match available federal funds.
- (c) Documenting Pledged Donations, Transfers and Certifications. A Board shall maintain written documentation of pledged donations, transfers and certifications that contain, at a minimum, the following:
  - (1) the signature of the representative of the Board;
  - (2) the signature of the potential contributor;
  - (3) the potential contributor's commitment to fulfill the pledge of the donation, transfer or certification by paying or certifying the funds to the Commission for use in a specific workforce area on a set payment or certification schedule;

- (4) the Board's commitment to use the donated or transferred funds as requested by the contributor, as long as it is consistent with federal regulations at 45 CFR §98.53; and
  - (5) sufficient information to determine that the funds will be used in a manner consistent with 45 CFR §98.53.
- (d) Submitting Pledged Donations, Transfers and Certifications for Acceptance by the Commission. A Board shall submit pledged donations, transfers, and certifications to the Commission for acceptance.
- (e) Completing Donations, Transfers and Certifications.
- (1) A Board shall ensure that donations of cash and transfers of funds are paid to the Agency and that certifications are also submitted to the Agency.
  - (2) Donations and transfers are considered complete to the extent that the funds have been paid to the Agency.
  - (3) Certifications are considered complete to the extent that a signed written instrument is delivered to the Agency that reflects that the public entity has expended a specific amount of funds on eligible child care services.
- (f) Reporting. A Board shall report information relating to pledged and completed donations, transfers and certifications as referenced in subsections (d) and (e) of this section and §800.72. Reporting Requirements.
- (g) Monitoring. A Board shall monitor the funds secured for match and the expenditure of any resulting funds to ensure that expenditures of unmatched federal funds available through the Commission do not exceed an amount that corresponds to the donations, transfers, and certifications that are completed by the end of the program year.

## **SUBCHAPTER C. REQUIREMENTS TO PROVIDE CHILD CARE**

### **§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~~Family and Protective Services;
  - (2) registered with the Texas Department of ~~Protective and Regulatory Services~~Family and Protective Services;
  - (3) licensed by the Texas Department of State Health Services 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~~Family and Protective Services, the Texas Department of State Health Services, 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 may result in disallowed costs by the Commission.

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

- (a) Any liability insurance requirements placed on licensed child care centers by the Boards shall not exceed the state licensing requirements stipulated in Chapter 42 of the Texas Human Resources Code.
- (b) A licensed child care center provider must notify the Texas Department of Family and Protective Services (TDFPS), the parent, and the Board if the provider is unable to secure the required insurance due to financial reasons or for lack of availability of an underwriter willing to issue a policy, or if the provider's policy limits have been exhausted. The provider shall remain eligible to receive Commission-funded child care subsidies as long as the provider is licensed by the TDFPS.
- (c) Boards shall not require liability insurance for providers who are not required by state law to have liability insurance.

**§809.46. Assessing and Collecting Parent's Share of Cost.**

- (a) For child care funds allocated by the Commission pursuant to its allocation rules (Chapter 800. General Administration, Subchapter B. Allocation and Funding §800.58), the following shall apply.
  - (1) A Board shall set a parent's share of cost policy in accordance with the requirements set forth in §809.12 of this chapter (relating to Board Policies and Plans for Child Care Services) that shall assess parent's share of cost in a manner that results in parent's share of cost:
    - (A) being assessed to all parents or caretakers, except in instances when an exemption under paragraph (2) of this subsection applies;
    - (B) being based on the family's size and gross monthly income, and may also be based on the number of children in care; and
    - (C) not exceeding the cost of care.
  - (2) Parents that are one or more of the following are exempt from paying parent's share of cost:
    - (A) parents who are participating in Choices;

- (B) parents who participate in the Food Stamp Employment and Training; or
  - (C) parents who have children that are receiving protective services unless the Texas Department of Family and Protective Services assesses parent's share of cost.
- (3) Teen parents who live with their parents and who are not covered under exceptions outlined under paragraph (2) of this subsection shall be assessed parent's share of cost. The parent's share of cost is based solely on the teen parent's income.
- (b) For child care services funded from sources other than those sources for funds allocated by the Commission for Child Care Services pursuant to its allocation rules, a Board shall set a parent's share of cost policy based on a sliding fee scale that may be the same as or different from the provisions contained in subsection (a) of this section.
  - (c) Providers shall collect assessed parent's share of cost and subsidies before child care is delivered.
  - (d) It is the sole responsibility of the provider to collect assessed parent's share of cost and subsidies.
  - (e) A Board shall establish a policy regarding reimbursement of providers to address consequences for providers in situations when parents fail to pay parent's share of cost and subsidies.

**§809.47. Reduction of Assessed Parent's Share of Cost.**

- (a) The Board or its contractor shall review the assessed parent's share of cost 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's share of cost if warranted by these circumstances.
- (b) The Board or its contractor shall not waive parent's share of cost under any circumstances.

**§809.48. Attendance.**

- (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.~~

**SUBCHAPTER K. PROVIDER REIMBURSEMENT RATES**

**§809.221. General Funds Management.**

Boards shall ensure that resources are proportionately allocated among the following priority groups so that child care services are assured for the first priority group, and then subject to the availability of funds, the remaining priorities in descending order are served.

- (1) The first priority group includes children of parents eligible for the following:
  - (A) Choices Child Care as referenced in §809.102; and
  - (B) Transitional Child Care as referenced in §809.101.
- (2) The second priority group includes:
  - (A) children of parents eligible for Workforce Orientation Applicant Child Care; and
  - (B) children who need to receive protective services related child care as referenced in §809.105(b)(1) of this Chapter.
- (3) The third priority group includes any other priority adopted by the Board, which may include but is not limited to:
  - (A) teen parents;
  - (B) children with disabilities; or
  - (C) other persons at risk of becoming dependent on public assistance that meet the income eligibility level as determined by the Board.

**§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) General Principle. Enrolled children, including children whose eligibility for transitional child care has expired, shall receive child care as long as the family remains eligible for any available source of Commission-funded child care except as otherwise provided under subsection (b) of this section.

- (b) Exceptions. Nothing in this chapter shall be interpreted in a manner as to result in a child being removed from care, except when removal from care is required for child care to be provided to a child of parents eligible for one or more of the following types of priority child care:
  - (1) Choices Child Care under §809.102 of this Chapter,
  - (2) Transitional Child Care under §809.101 of this Chapter, or
  - (3) Workforce Orientation Applicant Child Care under §809.103 of this Chapter.
- (c) Former Texas Department of Family and Protective Services (TDFPS) children as referenced in §809.105(b)(1) of this Chapter shall also continue receiving child care funded through the Commission for the period chosen by TDFPS, which shall not exceed six months, so long as it does not result in another child being removed from care.
- (d) Former TDFPS children as referenced in §809.105(b)(2) of this Chapter may continue receiving child care funded through the Commission if it does not result in removing another child from care.

**§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 Agency-Board Agreement, 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 local factors, including a market rate survey provided by the Agency, a Board shall establish the reimbursement rates for purchased child care to ensure that the rates provide equal access to child care services in the local market and in a manner consistent with state and federal statutes and regulations governing child care.
- (b) A Board shall reimburse providers at the Board's maximum rate or the provider's published rate, whichever is lower.
- (c) A Board shall establish the same maximum reimbursement rate for all regulated providers, with or without signed agreements, for each category of care.
- (d) A Board shall establish ~~a~~ graduated reimbursement rates for:
  - (1) child care providers participating in integrated school readiness models developed by the State Center for Early Childhood Development at the University of Texas Health Science Center; and
  - (2) Texas Rising Star Providers (formerly known as Designated Vendors), pursuant to Texas Government Code §2308.315.
- (e) The minimum reimbursement rates established under subsection (d) of this section for Texas Rising Star Providers shall be at least five percent greater than the maximum rate established for providers not meeting the requirements of subsection (d) non-Texas Rising Star Providers -for the same category of care up to, but not to exceed, the provider's published rate. The Texas Rising Star Provider rate differential established in this section shall be funded with federal Child Care and Development funds dedicated to quality improvement activities.
- (fe) The Board or its contractor shall not reimburse a provider retroactively for new reimbursement rates.

(gf) 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.

~~(g) A Board may provide incentives to providers and self-arranged child care providers to recognize quality in addition to the provisions set forth in subsection (d) of this section.~~

#### **§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's Share of Costs and Child Care Subsidies.**

The reimbursement to the provider is reduced by an amount equal to:

- (1) the parent's share of costs assessed and adjusted when the parent's share of costs 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.