

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 **SEPTEMBER 22, 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*: **October 7, 2005**

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

Subchapter B. General Management Requirements, §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 Commission proposes to amend 40 TAC §809.20 relating to leveraging local resources for use as match for federal Child Care and Development Funds (CCDF). The purpose of the proposed amendments is to clarify requirements that private donations, public transfers of funds, and certification of public expenditures must meet in order to be used as match for CCDF. Additionally, the proposed amendments clarify that it is the responsibility of the Commission, rather than the Boards, to accept and certify donations from private entities.

The Social Security Act (42 U.S.C. 618) provides the federal requirements for states to secure federal matching funds for child care services. Child Care and Development Fund Final Rules, 45 C.F.R. §98.53 further delineates the matching fund provisions by requiring that the funds used as match be for allowable services or activities as described in the CCDF State Plan. Additionally, 45 C.F.R. §98.53 allows states to use funds from both public and private sources in order to secure federal matching funds. However, the federal regulations place different requirements on these two sources of funds in order for the funds to be used as match for CCDF.

Regulations in 45 C.F.R. §98.53(e)(1) specify that public funds used as CCDF match must be:

- appropriated directly to the Lead Agency, or
- transferred from another public agency to the Lead Agency and under its administrative control; or
- certified by the contributing public agency as representing expenditures on CCDF allowable activities eligible for federal match.

In addition, the regulations specify that public funds must:

- not be used to match other federal funds; and
- not be federal funds, or are federal funds authorized by federal law to be used to match other federal funds.

Regulations in 45 C.F.R. §98.53(e)(2) specify that the use of private funds as CCDF match must:

- be donated from private sources;
- be donated without restrictions that would require their use for a specific individual, organization, facility, or institution;
- not revert to the donor's use or facility; and
- not be used to match other federal funds.

In Fiscal Year 2004, the Commission authorized Local Workforce Development Boards (Boards) to secure local match by certifying expenditures on allowable CCDF activities from private sources. Additionally, in January 2004, the Commission amended §809.20 of its Child Care and Development rules to allow for the use of certified expenditures from private sources.

In written guidance to the Texas Workforce Commission issued June 2, 2005, the United States Department of Health and Human Services, Administration for Children and Families (ACF), determined that the state's rules promulgated on January 23, 2004, relating to the child care program [40 TAC §809.20(a)(1)(B)] do not comport with CCDF regulations at 45 C.F.R. §98.53(e) and (f). ACF further stated that in order for private donated funds to be considered for federal match, such funds must be donated to the Commission as the Lead Agency for CCDF and are subject to its administrative control. Private donated funds remaining in the hands of private organizations or under the administrative control of those organizations cannot be considered "donated" for purposes of CCDF matching requirements.

The proposed amendments to Chapter 809 clarify that the only allowable sources of local match are:

- funds donated from a private entity to the Commission;
- funds transferred from a public entity to the Commission; or
- public expenditures on allowable CCDF activities certified by a public entity as expenditures eligible for federal match.

Further, the proposed amendments clarify that the local matching funds must be for activities that are included in the CCDF State Plan and allowable under this chapter.

Additionally, the proposed amendments clearly distinguish between the Boards' responsibility for securing and managing local matching funds and the Boards' responsibility for providing necessary information to the Commission in order for the Commission to receive and certify private donations, and accept certifications of public expenditures and public transfers of funds.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

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

SUBCHAPTER B. GENERAL MANAGEMENT

§809.20. Leveraging Local Resources

The Commission proposes to amend §809.20(a) to emphasize that it is the Boards' responsibility to leverage federal matching funds by securing available local resources. The proposed amendment to §809.20(a) will move the types of local funds that are allowable as match from the current §809.20(a) to a new §809.20(b). The purpose of this amendment is to clarify the roles and responsibilities regarding securing and accepting local match. Proposed §809.20(a) states that it is the Boards' responsibility to secure local match, while proposed §809.20(b) provides that it is the Commission's role to accept the local match funds.

Additionally, the Commission proposes to remove the provision, currently in §809.20(a)(1)(B), relating to the certification of private expenditures by a private entity as an allowable source of local match. The elimination of this language implements the guidance the Commission received from ACF clarifying the meaning of 45 C.F.R. §98.53(e)(2), by no longer allowing private certification of expenditures as a source of local match.

Proposed new §809.20(b) describes the types of local funds that the Commission may accept as match for federal child care funds. The section provides that the Commission may accept private donated funds, public transferred funds, and public certifications of expenditures.

Proposed §809.20(b)(1) provides the requirements that must be met for the Commission to accept donations of funds from private entities. The proposed §809.20(b)(1) reflects the requirements under CCDF as specified in the Social Security Act and further delineated in the federal regulations in 45 C.F.R. §98.53(e). Proposed §809.20(b)(1) states that private donated funds must:

- be donated without restrictions that would require their use for a specific individual, organization, facility, or institution, or for an activity not included in the CCDF State Plan or allowed under this chapter;
- not revert to the donor's facility or use;
- not be used to match other federal funds; and
- be certified by both the donor and the Commission as meeting the foregoing requirements.

Proposed §809.20(b)(2) specifies the requirements for transfers of funds from public entities and emulates federal regulations in 45 C.F.R. §98.53(e)(1). The proposed language allows the Commission to accept the transfer of public funds as a source of local match when the public funds are:

- transferred without restrictions that would require their use for an activity not included in the CCDF State Plan or allowed under this chapter;
- not used to match other federal funds; and

—not federal funds or are federal funds authorized by federal law to be used to match other federal funds.

Proposed §809.20(b)(3) sets forth the requirements for the Commission to accept the certifications of expenditures from public entities. Proposed §809.20(b)(3), which emulates federal regulations in 45 C.F.R. §98.53(e)(1), states that expenditures by a public entity may be eligible for federal matching funds when the public entity certifies that the expenditures are: —for activities included in the CCDF State Plan or allowed under this chapter; —not used to match other federal funds; and —not federal funds, or are federal funds authorized by federal law to be used to match other federal funds.

The Commission proposes to renumber current §809.20(b)(1) as §809.20(c)(1) and to modify language to clarify Boards' responsibilities with regard to securing local funds in order to receive federal matching funds in their local workforce development areas (workforce areas). Those responsibilities include the identification of available local funds, securing those funds, and the completion of agreements. Boards have the responsibility to identify available local funds through the use of private donated funds, transfers of funds by public entities, and certification of expenditures by public entities. Boards have further responsibility to secure those identified local funds by obtaining an agreement with the identified contributor and submitting those agreements to the Commission for acceptance by the Commission. Finally, Boards have the responsibility to ensure that the agreements are completed and fulfilled in accordance with the terms specified in the agreement.

The Commission also proposes to renumber §809.20(b)(2) as §809.20(c)(2) and modify language to state that Boards are encouraged to secure additional local funds that exceed the amount required to match federal funds allocated to the Board to maximize its potential to receive additional federal funds—should they become available—rather than requiring the Board to secure additional local funds. The current language implies that the Boards are required to secure more local matching funds than are actually needed to draw down the federal funds allocated to the Boards. The Commission recognizes that requiring Boards to secure additional local match could lead to a situation in which a Board cannot assure contributors that there will be available federal matching dollars to match their donation. This amendment reflects the Commission's intent to encourage Boards to secure extra local matching funds in case pledges are not completed in full, or to position Boards to be able to utilize reallocated additional federal matching funds should they become available.

Further, the Commission proposes to move the current language in §809.20(a)(2), which states that a Board's performance in securing local funds may make the Board eligible for incentive awards, to §809.20(c)(3). The Commission proposes this change in order to place the provisions related to the Board responsibilities regarding the securing of local resources into §809.20(c).

The Commission proposes to remove §809.20(c) that sets forth the process of submitting and documenting local match agreements. Administrative processes are more appropriate in other documents such as Workforce Development Letters or contract start-up instructions. In conjunction with removing the specific procedures for submitting and documenting local match

agreements, the Commission also adds language in §809.20(d) to specify that a Board shall submit private donations, public transfers, and public certifications to the Commission for acceptance, with sufficient information to determine that the funds meet the necessary requirements.

The Commission proposes to amend §809.20(e), regarding completing private donations, public transfers, and public certifications, to specify the three types of sources for local match. The Commission proposes to remove current §809.20(f), regarding Board reporting requirements related to local match. The Board local match reporting requirements are stipulated in proposed §809.20(c) regarding the submission of local match agreements, and proposed §809.20(d) regarding the completion of local match agreements. Further, Boards are required to submit monthly expenditure reports, including expenditures related to child care local match agreements, in accordance with §800.72 of this title, relating to Reporting Requirements.

Further, the Commission proposes to renumber current §809.20(g) as §809.20(f), and clarifies the types of local match that Boards must monitor.

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.

Mr. Townsend has determined that there are no foreseeable implications relating to costs of the state or local governments as a result of enforcing or administering the rules however, and he estimates the possible loss to local governments (workforce boards, on behalf of their workforce areas) of revenue, which is utilized to satisfy their local federal child care matching targets. Based on the experience during FY 2002 and FY 2003 (during which time certification of eligible expenditures by private entities as a method for securing local child care match was not allowed under TWC rules) and FY 2004 and FY 2005 (during which time certification of eligible expenditures by private entities as a method for securing local child care match was allowed by TWC rules), estimates that for each year during the first five years the rule will be in effect, \$2,559,565 less in local child care match may be achieved. In turn, this corresponds to \$4,933,376 less in federal CCDF matching funds expended each year. This would represent an 11.5 percent reduction in local match achieved and an 11.5 percent reduction in federal child care matching funds contingent on meeting local match targets expended.

Mr. Townsend has determined that enforcing or administering the rule does not have foreseeable implications relating to the cost of the state or local governments; however, that there may be foreseeable implications to the revenues of local governments (i.e., workforce boards, on behalf of workforce areas), as noted above. There are no foreseeable implications to the revenues of the state, as the Texas Workforce Commission will act to maximize all federal CCDF matching funds available to the state in each grant year available.

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

Mr. Townsend has also 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 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 ensure that local match funds for child care are secured in a manner consistent with federal guidance in order for the state to receive its full federal allocation from the Child Care and Development Fund and provide necessary child care services for low-income working families.

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission sought the involvement of Texas' 28 Boards and the Texas Association of Workforce Boards (TAWB). The Commission provided the concept papers regarding these rule amendments to the Boards and TAWB for consideration and review. The Commission also conducted conference calls with Board executive directors and Board staff on June 10, 2005, and August 5, 2005, to discuss the concept papers. Additionally, during the June 14, 2005, Commission meeting, a representative of TAWB and a representative of the Executive Directors' Council provided input to the Commission regarding the impact of this rule change. 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 proposal may be submitted to TWC Rules Comments, Policy and Development, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to 512-475-3577; or e-mailed to TWCRulesComments@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 amendments 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, the Texas Human Resources Code §44.002, regarding Administrative Rules, and the Texas Labor Code §301.021, which authorizes the Commission to accept donations in an open meeting by a majority of the voting members of the Commission.

Chapter 809. CHILD CARE AND DEVELOPMENT

SUBCHAPTER B. GENERAL MANAGEMENT

§809.20. Leveraging Local Resources

- (a) Leveraging Local Funds. The Commission encourages Boards to secure local public and private funds for the purpose of matching federal funds in order to maximize 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) Local Funds Accepted by the Commission. The Commission accepts the following as local match:
- (1) Funds from a private entity that:
- (A) are donated without restrictions that require their use for:
- (i) a specific individual, organization, facility, or institution; or
- (ii) an activity not included in the CCDF State Plan or allowed under this chapter;
- (B) do not revert back to the donor's facility or use;
- (C) are not used to match other federal funds; and
- (D) are certified by both the donor and the Commission as meeting the requirements of subparagraphs (A)–(C) of this paragraph.
- (2) Funds from a public entity that:

(A) are transferred without restrictions that would require their use for an activity not included in the CCDF State Plan or allowed under this chapter;

(B) are not used to match other federal funds; and

(C) are not federal funds, or are federal funds authorized by federal law to be used to match other federal funds.

(3) Expenditures by a public entity certifying that the expenditures:

(A) are for an activity included in the CCDF State Plan or allowed under this chapter;

(B) are not used to match other federal funds; and

(C) are not federal funds, or are federal funds authorized by federal law to be used to match other federal funds.

~~(c)~~ 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 private donations, public transfers, and public certifications that are used by the Board to receive federal matching funds through the Commission.

~~(2)~~ A Board is encouraged to secure additional local matching funds in excess of the amount required to are maximized by securing local funds for match in an amount that may exceed the amount required to match available federal funds allocated to the Board in order to maximize its potential to receive additional federal funds should they become available.

~~(3)~~ A Board's performance in securing and leveraging local funds for match may make the Board eligible for incentive awards.

~~(e)~~ 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 contributors 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 Private Pledged Donations, Public Transfers, and Public Certifications to for Acceptance by the Commission.

A Board shall submit private pledged donations, public transfers, and public certifications to the Commission for acceptance, with sufficient information to determine that the funds meet the requirements of subsection (b) of this section.

- (e) Completing Private Donations, Public Transfers, and Public Certifications.
 - (1) A Board shall ensure that:
 - (A) private donations of cash and public transfers of funds are paid to the Agency; and ~~that~~
 - (B) public certifications are ~~also~~ submitted to the Agency.
 - (2) Private dDonations and public transfers are considered complete to the extent that the funds have been paid to the Agency.
 - (3) Public cCertifications 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.~~
- ~~(f)(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 matching funds available through the Commission do not exceed an amount that corresponds to the private donations, public transfers, and public certifications that are completed by the end of the program year.