

Subchapter B. ALLOCATIONS AND FUNDING

40 TAC §800.58

The Texas Workforce Commission (Commission) proposes an amendment to §800.58, concerning allocation of child care funds to local workforce development areas (workforce areas). Concurrent with this amendment is the withdrawal of the amendment to §800.58 as proposed in the August 13, 1999, issue of the *Texas Register* (24 TexReg 6263).

The purpose of the amendment is to give local workforce development boards (Boards) flexibility in the use of child care funds at the local level. It is the Commission's intent to assist the greatest number of families working or transitioning to the workforce through participation in education or training activities by providing affordable, accessible, and quality child care services.

The amendment revises the method of determining the maximum amount of funds in the workforce area that may be expended to administer child care. The amendment will also maximize the amount of funds expended on direct child care services, instead of administrative and related activities. This amendment does not relieve the Boards from meeting Commission-approved performance targets.

Background: The Commission has been examining expenditures related to child care to find a balance which will promote compliance with the federal 5% administrative cap on child care funds and also meet the needs of Boards and their contractors in administering and delivering services. The previously proposed amendment, which is, concurrent with this proposal, being withdrawn, would provide Boards with spending authority for administration using a base amount plus a percentage of funds. In response to comments on the proposed rule amendment, the Commission now proposes an alternative methodology.

Similar to funding mechanisms used at the federal level to ensure that small states have adequate funding to carry out program functions, the Commission is proposing methodology that will ensure that the basic administrative functions of the small workforce areas can be accomplished without unnecessarily limiting the larger areas. The Commission has been working with all of the Boards to assist them in appropriate classification of their expenditures under the 1998 federal regulations and has seen significant reductions in budgets for administrative expenditures in several of the small and midsize workforce areas. The Commission has also consulted with the financial officers for the Boards, to discuss administrative cost issues and receive feedback on the concepts relating to this proposal.

The Commission believes that a flat maximum amount of \$250,000 for administrative expenditures within the small workforce areas, which have total expenditures of less than \$5,000,000 each, is appropriate. The \$250,000 figure for administrative expenditures represents 5% of a workforce area child care budget of \$5,000,000 and is supported by recent information provided by the Boards as a reasonable base amount for required administrative expenditures related to child care services at the local level. Other Boards would be allowed to spend up to 5% of their child care expenditures for administration.

The Commission has been working with Boards to determine which activities are subject to the applicable administrative cap. Although the administrative expenditure limit is set at these maximum amounts, the Commission anticipates that Boards will make every effort to minimize administrative expenditures to increase funds available for direct care.

The Commission believes the new amendment recognizes that the existing rule setting a 5% administrative cap generally meets the needs of workforce areas except for a small group that receives small allocations of child care dollars.

The total amount of child care funds available for allocation to individual workforce areas will be determined during the Commission's budgetary process. The amendment to the rule is designed to be responsive to the needs of workforce areas. The proposed amendment specifies the method the Commission will employ in carrying out the allocation of funds to the workforce areas and the use of those funds for certain child care services. Child care services are provided under Texas Human Resources Code, Chapter 44.

If a Board fails to comply with the provisions contained in the rule, the Board shall be subject to the sanctions as detailed in Chapter 800, Subchapter E of this Title relating to Sanctions.

Randy Townsend, Director of Finance, has determined that for each year of the first five years the amendment 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 amendment;

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the amendment;

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

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

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

Mr. Townsend has also determined that there is no anticipated adverse impact on small businesses as a result of enforcing or administering the rule because small businesses are not regulated by or required to do anything by the amendment.

Mark Hughes, Director of Labor Market Information, has determined that there is no significant negative impact upon employment conditions in this state as a result of the proposed amendment.

Jean Mitchell, Director of Workforce and Development, has determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of enforcing the amendments will be to help ensure a more effective use of child care funds to assist Boards in supporting employment, training, and education.

Comments on the proposal may be submitted to Gary Frederick, Texas Workforce Commission Building, 101 East 15th Street, Room 434T, Austin, Texas 78778, (512) 305-9672. Comments may also be submitted via fax to (512) 463-7379 or e-mailed to: Gary.Frederick@twc.state.tx.us. Comments must be received by the Commission within 30 days from the date of the publication in the Texas Register .

The amendment to the rule is proposed under Texas Labor Code, Title 4, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission programs.

The amendment to the rule affects Texas Labor Code, Chapter 302, particularly §302.002, and Texas Human Resources Code, Chapters 31 and 44.

§800.58. Child Care Allocations.

(a) Funds available to the Commission for child care services will be allocated to the workforce areas using need-based formulas, as set forth in this section.

(b) Child Care and Development Fund (CCDF) Mandatory Funds authorized under the Social Security Act §418(a)(1), as amended, together with state general revenue Maintenance of Effort (MOE) Funds, Social Services Block Grant funds, and TANF funds appropriated for child care (excluding any amounts withheld for state-level responsibilities) will be allocated on the following basis:

(1) fifty percent will be based on the relative proportion of the total number of children under the age of five years old residing within the workforce area to the statewide total number of children under the age of five years old, and
(2) fifty percent will be based on the relative proportion of the total number of people residing within the workforce area whose income does not exceed 100% of the poverty level to the statewide total number of people whose income does not exceed 100% of the poverty level.

(c) Child Care and Development Fund (CCDF) Matching Funds authorized under the Social Security Act §418(a)(2), as amended, together with state general revenue matching funds and estimated appropriated receipts of donated funds, will be allocated according to the relative proportion of children under the age of 13 years old residing within the workforce area to the statewide total number of children under the age of 13 years old.

(d) Child Care and Development Fund (CCDF) Discretionary Funds authorized under the Child Care and Development Block Grant Act of 1990 §658B, as amended, will be allocated according to the relative proportion of the total number of children under the age of 13 years old in families whose income does not exceed 150% of the poverty level residing within the workforce area to the statewide total number of children under the age of 13 years old in families whose income does not exceed 150% of the poverty level.

(e) For Food Stamp Employment and Training child care, funds will be allocated among workforce areas on the basis of the relative proportion of the total number of children aged 6-12 years in households of mandatory food stamp work registrants residing within the workforce area to the statewide total number of children aged 6-12 years in households of mandatory food stamp work registrants.

(f) The following provisions apply to the funds allocated in subsections (b) - (e) [~~(d)~~] of this section:

(1) No more than 5% of the total expenditure of funds may be used for administrative expenditures [~~costs~~] as defined in federal regulations contained in 45 Code of Federal Regulations §98.52, as may be amended unless the total expenditures for a workforce area are less than \$5,000,000. If a workforce area has total expenditures of less than \$5,000,000, then no more than \$250,000 may be used for administrative expenditures.

(2) At least 4% of the total expenditure of funds must be used for activities to improve the quality of child care as defined in federal regulations contained in 45 Code of Federal Regulations §98.51, as may be amended. At the local workforce development board's (Board) discretion, more than 4% of the expenditures may be used for these activities.

(3) Transitional clients who are eligible for child care for their children and Choices clients who are eligible for child care for their children shall be served on a priority basis to enable parents to participate in work, education, or training activities.

(4) Sufficient funds must be used for direct child care services to ensure Commission-approved performance targets are met. [~~The percentage of the total expenditure of the funds allocated for child care that is expended in direct child care services in fiscal year 2000 and all succeeding fiscal years, shall equal, or exceed, the percentage of the total expenditure of funds allocated for child care that was expended for direct child care services in fiscal year 1999.~~]

(5) The Board shall comply with any additional requirements adopted by the Commission or contained in the Board contract.

(g) The provisions in this section shall be applicable to allocations for child care beginning in fiscal year 2000. This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on October 22, 1999.

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J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: December 5, 1999

For further information, please call: (512) 463-8812