

Section 800.58 Child Care Allocations

The following rule amendment will be effective January 3, 2000:

The Texas Workforce Commission (Commission) adopts an amendment to §800.58, concerning allocation of child care funds to local workforce development areas (workforce areas), without changes to the proposed text as published in the November 5, 1999, issue of the *Texas Register* (24 TexReg 9815).

The purpose of the amendment is to give local workforce development boards (Boards) additional flexibility in the use of child care funds at the local level. It is the Commission's intent to assist the greatest number of Texas families who are working or transitioning into 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 that may be expended to administer child care in workforce areas with small child care allocations. The amendment also maximizes the amount of funds expended on direct child care services, instead of administrative and related activities. Further, this amendment does not relieve the Boards from meeting Commission-approved performance targets.

Comments were received from the Concho Valley Local Workforce Development Board (LWDB), Golden Crescent LWDB, North Texas LWDB, Texoma LWDB, Brazos Valley LWDB, and Houston Welfare Rights Organization. Four of the commenters supported the amendment to the rule, one expressed concerns about the current rule, and one objected to the amendment and suggested changes.

Comment: Four commenters from workforce areas with small allocations supported the proposed rule amendment. One commenter stated that the amendment provided adequate administrative dollars to enable the Boards and their contractors to continue operating a quality child care program. Another commenter indicated that this amendment would assure that children received quality care. The commenter stated that this amendment would allow Boards in rural areas to have adequate funding to support quality child care. Still another commenter from a workforce area with a small child care allocation stated that this amendment would help support quality staff in their daily operations. The commenter also stated that Boards in rural areas appreciate the Commission's efforts to make additional administrative dollars available to those Boards. Finally, another commenter stated that smaller service delivery areas face different situations than larger areas. The commenter strongly supports the proposed rule and believes this amendment would allow all Boards to operate quality programs.

Response: The Commission agrees with these comments and believes that they indicate that this rule language will provide the minimum level of support necessary to plan, monitor, and oversee child care services in the workforce areas with small child care allocations. The Commission appreciates the comments and the Boards' commitment to quality and efficiency in delivering child care services.

Comment: One commenter from a workforce area with a small child care allocation indicated that the activities necessary to ensure quality in child care service delivery are not possible under the current 5% cap on administrative costs, given the limited amount of the allocation.

Response: The Commission appreciates the commenter's concern and believes that this amendment addresses the special need of areas with small allocations.

Comment: One commenter expressed concern that every dollar spent on administration is one less dollar that actually provides day care and suggested that if a small workforce area is likely to exceed the 5% threshold due to legitimate administrative expenses, the Commission should secure supplemental administrative funds, so that actual child care will not be reduced.

Response: The Commission shares the concern that funding for direct care should be maximized, but also recognizes the requirements of state and federal law in terms of planning, reporting, monitoring, evaluating, auditing, and other necessary administrative activities. As a result, the Commission disagrees with the commenter and asserts that the Commission amendment would allow workforce areas with small allocations to cover required administrative expenditures as well as maximize funding for direct care services for children. Similar to mechanisms established at the federal level for allotting funds to small states, the alternative methodology in the amendment will enable necessary administrative functions to be performed in workforce areas with small allocations and still provides those areas with sufficient direct care funds to meet the state-approved performance targets.

Background: The Commission has examined expenditures related to child care to find a balance which will promote compliance with the 5% administrative cap on federal child care funds and will also meet the needs of Boards and their contractors in administering and delivering services. In response to comments on the proposed rule amendment, the Commission now adopts without changes the methodology in the proposed amendment.

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 adopting 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 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 amendment.

The Commission believes that a flat maximum amount of \$250,000 is appropriate for administrative expenditures within the small workforce areas which have total expenditures of less than \$5,000,000 each. 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 funds 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 the stipulated amounts, the Commission expects that Boards will make every effort to minimize administrative expenditures and to maximize the dollars available for direct services.

The Commission believes the new amendment recognizes that the existing rule setting a 5% administrative cap meets the needs of most workforce areas except for a limited number of areas that receive small child care allocations.

The total amount of child care funds available for allocation to individual workforce areas is determined during the Commission's budgetary process. The 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 Title 40, Texas Administrative Code, Chapter 800, Subchapter E, Sanctions.

The amendment to the rule is adopted 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.

§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) of this section:

(1) No more than 5% of the total expenditure of funds may be used for administrative expenditures 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.

(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.