

Section 809.231 Provider Reimbursement Rates

The following amendment will be effective October 12, 2000.

The Texas Workforce Commission (Commission) adopts an amendment to §809.231, relating to access to child care services with changes to the proposed text as published in the July 28, 2000 issue of the *Texas Register* (25 TexReg 7132).

Purpose: The purpose of the amendment is to increase flexibility for local workforce boards (Boards) to implement child care services to low-income families. More specifically, the purpose of the amendment is to permit each Board to determine the rates that are appropriate for the local workforce development area (workforce area) that ensure equal access to child care services as described in the federal regulations. Because the federal regulations merely recommend a benchmark but not necessarily a required level of payment for providers, a Board may exercise local control by factoring additional criteria in setting provider rates.

The amendment to the rule is intended to provide Boards with maximum flexibility, in accordance with state and federal laws and regulations, to design a service mechanism that will assist the greatest number of families in accessing the most affordable, accessible, and quality child care in each workforce area. Boards have established policies on several child care subjects ranging from income eligibility to reimbursement rates. In their role as policy makers, Boards ensure that parents, providers, employers, contractors and potential contractors, and the public in general have the opportunity to participate and comment on proposed child care administrative policies through open meetings. The enhanced flexibility afforded to Boards ensures that the policies maximize the use of funds by tailoring the management of child care services to meet the specific needs of each workforce area.

Background: Child care services are provided to low-income families to create and promote long-term self-sufficiency, by enabling parents to work, attend skills training for work, or increase educational levels by offering affordable, accessible, and quality child care that supports the physical, social, emotional, and intellectual development and safety of children. Recognizing that parents best understand the needs of their children, these services empower parents to make informed choices regarding child care that best suits the family's needs. The Commission also advocates improvements in the affordability, accessibility, and quality of child care while supporting health, safety, licensing, and regulatory standards for child care providers.

Access to child care services that meets the needs of individual families is critically important to parents and children, to the workplace, to schools, and to other community institutions that interface with families. The Commission's intent is that

Boards comply with the federal requirement to provide parental choice in accessing child care services as expressed by the Administration for Children and Families (ACF) in the federal regulations 45 CFR §98.43 (63 FedReg 39935) Equal Access.

The federal statute relating to the Child Care and Development Fund (CCDF) (42 U.S.C.A. §9858 *et seq.*) requires that provider payment rates are sufficient to permit access by eligible families to child care services that are comparable to those services available to families that do not receive subsidies. The Child Care and Development Block Grant Act §658E(c)(4) (42 U.S.C.A. 9858(e)(4)) requires that a summary of the facts upon which the determination of the sufficiency of payment rates to ensure equal access are based. The applicable federal regulations provide that access to child care services is accomplished when Boards ensure the following:

- (1) access to the full range of child care providers,
- (2) adequate payment rates, and
- (3) affordable copayments.

A Board shall demonstrate in submitting copies of its policies to the Commission that it has considered these following three key elements in determining that its child care program provides equal access for eligible families to child care services.

The first element of equal access to child care services is choice from a broad array of categories and types of providers, e.g., the categories of center-based, group, family, in-home care (relative care), and types of providers such as for-profit and nonprofit providers, sectarian providers, and relative providers as already required by 45 CFR §98.30.

The second element of equal access to child care services is adequate payment rates, based on a local market survey conducted no earlier than two years prior to the effective date of the current Child Care Plan filed with the United States Department of Health and Human Services.

The payment rates established by a Board should be comparable to those paid by families who are not eligible for subsidies. In other words, the payment rates should reflect the child care market. Although the requirement for specified rate categories has changed, the reality remains that the market reflects differences along several dimensions.

A payment rate which provides for equal access does not necessarily provide access to every provider, irrespective of the provider's charge. There is no statutory basis for preventing a family from choosing a particular provider whose charges exceed the Board's payment rate. Nor is there an obligation on the part of the Board to pay an amount that is higher than the rate it determined is sufficient to provide equal access.

The third essential element of equal access is that any copayment, fee, or share of cost paid by the parent is affordable for the family and sliding fee scales should not be designed in a way that limits parental choice.

These elements must be addressed in the summary of facts submitted in a Board's integrated strategic and operational plan. Boards are free to include additional factors they used in determining rates that ensure equal access.

For purposes of this preamble, the term "Agency" refers to the daily operations of the Texas Workforce Commission under the direction of the executive director, and the term "Commission" refers to the three-member body of governance composed of Governor-appointed members.

Comments were received from the following entities: The North Central Texas Workforce Board and the Converse Christian School. One commenter was for the rule and the other commenter did not state whether the commenter was for or against the rule but provided general comments.

Comment: The commenter indicated the child care facility represented by the commenter has 25 Agency subsidized children enrolled. Eight of those children are also enrolled in the day school, and they are allowed to attend the day school even though the facility is only reimbursed the Board's part-day, before/after school rate for those eight children.

The commenter also noted that there appears to be some concern on the part of federal authorities that definite assurances are needed to ensure equal access for CCDF subsidized children.

The commenter further stated that affordable parents' share of cost is also an essential part of equal access and that access to a variety of child care arrangements is critical to enable low-income families to work.

The commenter urged the Commission to consider adjusting rates to allow low-income parents to choose from among the academically structured programs that are available to those who can afford them.

Response: The Commission applauds the charitable dimension of the provider's child care services and agrees that affordable parents' share of cost and access to a variety of child care arrangements are important elements in providing equal access to families receiving CCDF subsidized child care. The Commission also applauds the manner in which the academic curriculum is complemented with the provision of child care services to offer full-day services for low-income working families. The

increased flexibility in the proposed changes to the rule are not intended to compromise equal access to a variety of child care arrangements, but to enable Boards, in establishing reimbursement rates, to consider other relevant factors (in addition to market rates) as they continue to address providing affordable, quality child care to as many eligible families as possible. The Commission agrees that when setting local policies Boards should consider the parents' share of cost policy, provider rates policy, and other policies in a manner that strikes a balance between affordable quality child care, personal responsibility, and equal access. The Commission believes the rule affords the maximum flexibility for Boards to exercise local control to set the local policies in a manner that meets the child care needs of the workforce areas.

Tuition or other reimbursement rates charged for public and private kindergarten and elementary schools are not considered in setting the rates for CCDF child care services since the federal regulations at 45 CFR Part 98 do not include such services as allowable activities eligible for CCDF funding.

Comment: The commenter supported the proposed changes in the language of the rule and indicated the proposed changes would permit the Boards to tailor rates to best meet the needs of their respective workforce areas while ensuring equal access to child care services as described in the federal regulations. The commenter indicated that the increased flexibility would enable Boards to provide affordable, accessible, and quality child care to the greatest number of families possible.

Response: The Commission appreciates the commenter's support and agrees that the proposed changes to the language in the rule increase the flexibility of the Boards in meeting the needs of each local workforce area while maintaining equal access as defined in the federal regulations.

The amendment to the rule is adopted under Texas Labor Code §§301.061 and 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

§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) The Board or its contractor shall not reimburse a provider retroactively for new reimbursement rates.

(c) 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.