

Chapter 809. CHILD CARE AND DEVELOPMENT

Subchapter C. REQUIREMENTS TO PROVIDE CHILD CARE

The Texas Workforce Commission (Commission) proposes the repeal of §809.45 and §809.46, new §809.46, and amendments to §809.47, relating to assessing parents' share of cost for child care services.

Purpose: The purpose of the new and amended rules is to increase the flexibility of local workforce development boards (Boards) in setting parents' share of cost for child care services. The range of recommended fees will be determined by the Boards taking into account a parent's ability to share in the cost of child care.

Background: To better facilitate self-sufficiency, the Commission asserts that it is important that parents take responsibility for sharing the cost of care for their own children. For that reason, the new and amended rules remove the recommendation of the 9% to 15% parents' share of cost range. However, the Commission suggests that Boards set a minimum of 9% as the parents' share of cost to encourage personal responsibility. By setting policies that incorporate a progressive increase as parents' earnings increase, Boards will help support families and prepare them to pay the full cost of child care as they move toward self-sufficiency. A progressive increase in parents' share of cost will also make limited child care dollars go farther, thus allowing for services to more children who need care. The new and amended rules no longer contain the provisions relating to the circumstances in which the Agency manages child care services. Since the Boards are now operational, the Boards manage child care services in all workforce areas. In the event that the Agency manages child care services in the future in the place of a Board, the Agency may utilize the Board's parents' share of cost policy or set a different parents' share of cost policy if the Agency determines it is necessary for the management of child care services in the workforce area. 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.

The new §809.46 also no longer contain subsection (f), which required that subsidies used for child care from other funding sources were required to follow the same policy as that which applied to funds allocated by the Commission for child care services. The new rules allow the Boards to set local parents' share of cost policies relating to funds not allocated by the Commission for child care services such as Welfare-to-Work (WtW) and Workforce Investment Act (WIA) funds. The new and amended rules will enable Boards to set integrated or service-specific parent share of cost provisions to coordinate parents' share of cost policies in a manner as determined by the Board to best meet the needs of the population being served in the workforce area.

Randy Townsend, Director of Finance, 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 losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules;

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

There are anticipated economic costs to persons required to comply with the rules in that the Boards may set a parents' share of cost policy at a higher amount. A parents' share of cost is required by the Child Care and Development Fund federal regulations at 42 CFR §98.42.

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 or required to do anything by the rules.

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 rules.

Barbara Cigainero, Director of Workforce and Development, 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 rules 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 Nancy Hard, Texas Workforce Commission Building, 101 East 15th Street, Room 130T, Austin, Texas, 78778, (512) 936-0474. Comments may also be submitted via fax to (512) 463-5067 or e-mailed to: Nancy.Hard@twc.state.tx.us. Comments must be received by the Agency within 30 days from the date of the publication in the *Texas Register*.

40 TAC §809.45, §809.46

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed 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.

The repeals affect Texas Labor Code, Chapter 302, and Texas Human Resources Code, Chapters 31 and 44.

§809.45. Collection of Parent Fees and Subsidies.

§809.46. Assessing Parent Fees

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 August 24, 2000.

TRD-200005949

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: October 8, 2000

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

40 TAC §809.46, §809.47

The amendments and new section are proposed 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.

The rules affect Texas Labor Code, Chapter 302, and Texas Human Resources Code, Chapters 31 and 44.

§809.46. Assessing and Collecting Parents' 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 parents' 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 parents' share of cost in a manner that results in the parents' 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 a parents' share of cost:

(A) parents who receive TANF;

(B) parents who receive Supplemental Security Income (SSI);

(C) parents who participate in the Food Stamp Employment and Training; or

(D) parents who have children that are receiving protective services unless the Texas Department of Protective and Regulatory Services assesses a parents' 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 a parents' share of cost. The parents' share of cost is based solely on the teen parent's income.

(4) A parents' share of cost shall be assessed to families in which the child is the only TANF or SSI recipient.

(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 parents' 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 parents' share of cost and subsidies before child care is delivered.

(d) It is the sole responsibility of the provider to collect assessed parents' 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 parents' share of cost and subsidies.

§809.47 Reduction of Assessed Parents' Share of Cost [Parent Fees].

(a) The Board or its contractor shall review the assessed parents' share of cost [parent fee-] for possible reduction if there are extenuating circumstances that jeopardize a family's self-sufficiency. The Board or its contractor may reduce the assessed parents' share of cost [parent fee-] if warranted by these circumstances.

(b) The Board or its contractor shall not waive parents' share of cost [~~parent fees~~] under any circumstances. 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 August 24, 2000.

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Texas Workforce Commission

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

40 TAC §§809.221, 809.225

The Texas Workforce Commission (Commission) proposes amendments to §§809.221 and 809.225, relating to General Funds Management and Continuity of Care for child care services and priorities for Choices, Transitional and Texas Workforce Applicant Child Care services.

Purpose: The purpose of the rule amendments is to reinforce the statutory and regulatory priorities on Child Care services and provide guidance regarding the objectives of affording continuity of care for families receiving Commission-funded child care services.

Generally, the rule amendments continue to require placing an eligible Choices, Transitional or Texas Workforce Applicant's children into care. However, the rules makes clear that if necessary, due to limitation of funds, a child's care may be discontinued to ensure that the statutory and regulatory priority clients receive child care services. In other words, a Board shall set policies for discontinuing child care services for families that are other than Choices, Transitional or Texas Workforce Applicant families in order to make services available for a Choices, Transitional or Texas Workforce Applicant child care family if there is limited funding. The amendments ensure that funds are used for families that are striving for but have not achieved self-sufficiency and who are required to receive child care services to assist them in becoming self-sufficient.

The amendments require Boards to develop policies that reinforce the priorities set forth in the rules and state law and inform families that are not within the statutory and regulatory categories (Choices, Transitional or Texas Workforce Applicant) that the provision of child care services is subject to the limitation of funds and may be terminated at a specified time, but not less than 15 days, after written notice of the termination of child care services. The Child Care rules at 40 TAC §809.72(5) provide that parents have the right to "(5) written notification by the Board's contractor at least 15 days before the denial, delay, reduction, or termination of child care" Boards must ensure that the provision of a notice period of not less than 15 days is incorporated into the policy designed to implement the amended continuity of care provisions that reinforce the priority clients needing Choices, Transitional or Texas Workforce Applicant child care.

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.

Randy Townsend, Director of Finance, 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 losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules;

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

There are no anticipated economic costs to persons required to comply with the rules; however, some persons that are receiving a child care subsidy may no longer be able to utilize the cost savings resulting from having the Child Care and Development Fund subsidize the child care of the family.

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

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 rules.

Barbara Cigainero, Director of Workforce and Development, 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 rules 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 Nancy Pechacek Hard, Texas Workforce Commission Building, 101 East 15th Street, Room 442T, Austin, Texas 78778, (512) 936-0474. Comments may also be submitted via fax to (512) 463-5067 or e-mailed to: Nancy.Hard@twc.state.tx.us. Comments must be received by the Agency within thirty days from the date of the publication in the *Texas Register*.

The amended rules are proposed 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.

The rules affect Texas Labor Code, Chapter 302, and Texas Human Resources Code, Chapters 31 and 44.

§809.221. General Funds Management.

(a) Boards shall ensure that resources are proportionately allocated among eligibility groups so that child care services are ~~[priority for intake services is]~~ assured for Choices, Transitional and ~~[Choices]~~ Texas Workforce Applicant eligible children.

(b) Children referred by Child Protective Services (CPS) workers, for which care shall be provided through Texas Department of Protective and Regulatory Services funds, shall also receive priority for available child care openings. When Texas Department of Protective and Regulatory Services funding stops and the CPS worker indicates that the child continues to need protective services, the Boards shall continue the child care using the Child Care and Development funds up to six months after they are no longer eligible for Texas Department of Protective and Regulatory Services funds, so long as the provision of care to the child does not result in another child being removed from care.

§809.225. Continuity of Care.

(a) General Principle. Enrolled children shall receive child care as long as the parent 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) Texas Workforce Commission Applicant Child Care under §809.103 of this Chapter.

(c) Children who no longer receive Texas Department of Protective and Regulatory Services funded care shall also continue receiving child care funded through the Commission if eligible to receive care based on other eligibility criteria or if the Texas Department of Protective and Regulatory Services or its caseworker indicates that the child is in need of protective services.

(d) ~~[(b)]~~ Children currently enrolled in child care shall remain in care when the Board assumes management of the child care services contract and shall remain eligible as long as eligibility criteria are met unless otherwise required on a case-by-case basis to provide priority child care as referenced in subsection (b) of this section.

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.

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