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## CHAPTER 809. CHILD CARE SERVICES

### SUBCHAPTER A. GENERAL PROVISIONS

#### §809.1. Short Title and Purpose.

- (a) The rules contained in this chapter may be cited as the Child Care Services rules.
- (b) The purpose of the rules contained in this chapter is to interpret and implement the requirements of state and federal statutes and regulations governing child care and quality improvement activities funded through the Texas Workforce Commission (Commission), to include the Child Care and Development Fund (CCDF), which includes:
  - (1) funds allocated to local workforce development areas (workforce areas) as provided in §800.58 of this title;
  - (2) private donated funds described in §809.17 of this chapter;
  - (3) public transferred funds described in §809.17 of this chapter;
  - (4) public certified expenditures described in §809.17 of this chapter; and
  - (5) funds used for children receiving protective services described in §809.49 of this chapter.
- (c) The rules contained in this chapter apply to other funds that are used for child care services allocated to workforce areas under Chapter 800 of this title, except for the following:
  - (1) Funds used for quality improvement activities described in §809.16 of this chapter;
  - (2) Assessing the parent share of cost described in §809.19 of this chapter; and
  - (3) Subchapter C of this chapter (relating to Eligibility for Child Care Services).
- (d) The rules contained in this chapter shall apply to the Commission, Local Workforce Development Boards (Boards), their child care contractors, child care providers, and parents applying for or eligible to receive child care services.

*The provisions of this §809.1 adopted to be effective January 29, 2007, 32 TexReg 336; amended to be effective October 3, 2022, 47 TexReg 6437*

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**§809.2. Definitions.**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Attending a job training or educational program--An individual is attending a job training or educational program if the individual:
  - (A) is considered by the program to be officially enrolled;
  - (B) meets all attendance requirements established by the program; and
  - (C) is making progress toward successful completion of the program as demonstrated through continued enrollment in the program upon eligibility redetermination as described in §809.42 of this chapter.
- (2) Child--An individual who meets the general eligibility requirements contained in this chapter for receiving child care services.
- (3) Child care contractor--The entity or entities under contract with the Board to manage child care services. This includes contractors involved in determining eligibility for child care services, contractors involved in the billing and provider payment process related to child care, as well as contractors involved in the funding of quality improvement activities as described in §809.16 of this chapter.
- (4) Child Care Desert--An area described in Texas Labor Code §302.0461 in which the number of children under age six with working parents is at least three times greater than the capacity of licensed child care providers in the area, based on data published annually by the Commission.
- (5) Child Care Regulation (CCR)--Division in the Texas Health and Human Services Commission responsible for protecting the health, safety, and well-being of children who attend or reside in regulated child care facilities and homes.
- (6) Child care services--Child care subsidies and quality improvement activities funded by the Commission.
- (7) Child care subsidies--Commission-funded child care payments to an eligible

child care provider for the direct care of an eligible child.

- (8) Child experiencing homelessness--A child who is homeless, as defined in the McKinney-Vento Act (42 USC 11434(a)), Subtitle VII-B, §725.
- (9) Child with disabilities--A child who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. Major life activities include, but are not limited to, caring for oneself; performing manual tasks; walking; hearing; seeing; speaking, or breathing; learning; and working.
- (10) Educational program--A program that leads to:
  - (A) a high school diploma;
  - (B) a Certificate of High School Equivalency; or
  - (C) an undergraduate degree from an institution of higher education.
- (11) Excessive unexplained absences--More than 40 unexplained absences within a 12-month eligibility period as described in §809.78 of this chapter.
- (12) Family--Two or more individuals related by blood, marriage, or decree of court, who are living in a single residence and are included in one or more of the following categories:
  - (A) Two individuals, married--including by common-law, and household dependents; or
  - (B) A parent and household dependents.
- (13) Household dependent--An individual living in the household who is:
  - (A) an adult considered a dependent of the parent for income tax purposes;
  - (B) a child of a teen parent; or
  - (C) a child or other minor living in the household who is the responsibility of the parent.
- (14) Improper payments--Any payment of Child Care Development Fund (CCDF) funds that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements governing the administration of CCDF grant funds and includes payments:

- (A) to an ineligible recipient;
  - (B) for an ineligible service;
  - (C) for any duplicate payment; and
  - (D) for services not received.
- (15) Job training program--A program that provides training or instruction leading to:
- (A) basic literacy;
  - (B) English proficiency;
  - (C) an occupational or professional certification or license; or
  - (D) the acquisition of technical skills, knowledge, and abilities specific to an occupation.
- (16) Listed family home--A family home, other than the eligible child's own residence, that is listed, but not licensed or registered with, CCR pursuant to Texas Human Resources Code §42.052(c).
- (17) Military deployment--The temporary duty assignment away from the permanent military installation or place of residence for reserve components of the single military parent or the dual military parents. This includes deployed parents in the regular military, military reserves, or National Guard.
- (18) Parent--An individual who is responsible for the care and supervision of a child and is identified as the child's natural parent, adoptive parent, stepparent, legal guardian, or person standing in loco parentis (as determined in accordance with Commission policies and procedures). Unless otherwise indicated, the term applies to a single parent or both parents.
- (19) Protective services--Services provided when a child:
- (A) is at risk of abuse or neglect in the immediate or short-term future and the child's family cannot or will not protect the child without Texas Department of Family and Protective Services (DFPS) Child Protective Services (CPS) intervention;
  - (B) is in the managing conservatorship of DFPS and residing with a relative or a foster parent; or
  - (C) has been provided with protective services by DFPS within the prior six

months and requires services to ensure the stability of the family.

- (20) Provider--A provider is defined as a:
  - (A) regulated child care provider;
  - (B) relative child care provider; or
  - (C) listed family home subject to the requirements in §809.91(e) of this chapter.
- (21) Regulated child care provider--A provider caring for an eligible child in a location other than the eligible child's own residence that is:
  - (A) licensed by CCR;
  - (B) registered with CCR; or
  - (C) operated and monitored by the United States military services.
- (22) Relative child care provider--An individual who is at least 18 years of age, and is, by marriage, blood relationship, or court decree, the child's:
  - (A) grandparent;
  - (B) great-grandparent;
  - (C) aunt;
  - (D) uncle; or
  - (E) sibling (if the sibling does not reside in the same household as the eligible child).
- (23) Residing with--Unless otherwise stipulated in this chapter, a child is considered to be residing with the parent when the child is living with, and physically present with, the parent during the time period for which child care services are being requested or received.
- (24) Teen parent--A teen parent (teen) is an individual 18 years of age or younger, or 19 years of age and attending high school or the equivalent, who has a child.
- (25) Texas Rising Star program--A quality-based rating system of child care providers participating in Commission-subsidized child care.
- (26) Texas Rising Star provider--A regulated child care provider meeting the Texas



Rising Star program standards. Texas Rising Star providers are:

- (A) designated as an Entry Level Provider;
- (B) certified as a Two-Star Provider;
- (C) certified as a Three-Star Provider; or
- (D) certified as a Four-Star Provider.

(27) Working--Working is defined as:

- (A) activities for which one receives monetary compensation such as a salary, wages, tips, and commissions;
- (B) participation in Choices or Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T) activities; or
- (C) engaging in job search at the time of eligibility determination or redetermination as described in §809.56 of this chapter.

*The provisions of this §809.2 adopted to be effective January 29, 2007, 32 TexReg 336; amended to be effective January 8, 2013, 38 TexReg 155; amended to be effective February 16, 2015, 40 TexReg 708; amended to be effective October 1, 2016, 41 TexReg 7529; amended to be effective August 1, 2018, 43 TexReg 4474; amended to be effective January 8, 2019, 44 TexReg 114; amended to be effective January 25, 2021, 46 TexReg 593; amended to be effective October 3, 2022, 47 TexReg 6437; amended to be effective July 29, 2024, 49 TexReg 5540*

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### **§809.3. Waiver Request.**

- (a) The Commission may waive child care rules upon request from a person directly affected by the rules, if it determines that the waiver benefits a parent, child care contractor, or provider, and the Commission determines that the waiver does not harm child care or violate state or federal statutes or regulations.
- (b) Prior to submitting a waiver request to the Commission, the child must have been determined by the Board's child care contractor to meet the minimum qualifications set forth in §809.41(a).

*The provisions of this §809.3 adopted to be effective January 29, 2007, 32 TexReg 336*

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## **SUBCHAPTER B. GENERAL MANAGEMENT**

### **§809.11. Board Responsibilities.**

- (a) A Board shall be responsible for the administration of child care in a manner consistent with Texas Government Code, Chapter 2308, as amended, and related provisions under Chapter 801 of this title (relating to Local Workforce Development Boards).
- (b) A Board shall ensure that access to child care services shall be available through all Texas Workforce Centers within a workforce area.
- (c) Child care services are support services for workforce employment, job training, and services under Texas Government Code, Chapter 2308 and Chapter 801 of this title.
- (d) Upon request, a Board shall provide the Commission with access to child care administration records and submit related information for review and monitoring, pursuant to Commission rules and policies.

*The provisions of this §809.11 adopted to be effective January 29, 2007, 32 TexReg 336*

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### **§809.12. Board Plan for Child Care Services.**

- (a) A Board shall, as part of its Texas Workforce Development Board Plan (Board plan), develop, amend, and modify the Board plan to incorporate and coordinate the design and management of the delivery of child care services with the delivery of other workforce employment, job training, and educational services identified in Texas Government Code, §2308.304, et seq., as well as other workforce training and services included in the One-Stop Service Delivery Network.
- (b) The goal of the Board plan is to coordinate workforce training and services, to leverage private and public funds at the local level, and to fully integrate child care services for low-income families with the network of workforce training and services under the administration of the Boards.
- (c) Boards shall design and manage the Board plan to maximize the delivery and availability of safe and stable child care services that assist families seeking to become independent from, or who are at risk of becoming dependent on, public assistance while parents are either working or attending a job training or an educational program.
- (d) A Board shall include in the Board plan any strategies to use contracted slots agreements, as described in §809.96 of this chapter, including any local priorities and

how contracted slots agreements will help increase access to high-quality care for targeted communities and population.

*The provisions of this §809.12 adopted to be effective January 29, 2007, 32 TexReg 336; amended to be effective January 25, 2021, 46 TexReg 593*

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**§809.13. Board Policies for Child Care Services.**

- (a) A Board shall develop, adopt, and modify its policies for the design and management of the delivery of child care services in a public process in accordance with Chapter 802 of this title.
- (b) A Board shall maintain written copies of the policies that are required by federal and state law, or as required under this chapter, and make such policies available to the Commission and the public upon request.

*The provisions of this §809.13 adopted to be effective January 29, 2007, 32 TexReg 336; amended to be effective September 8, 2008, 33 TexReg 7568; amended to be effective January 8, 2013, 38 TexReg 155; amended to be effective October 1, 2016, 41 TexReg 7529; amended to be effective August 1, 2018, 43 TexReg 4474; amended to be effective January 25, 2021, 46 TexReg 593; amended to be effective October 3, 2022, 47 TexReg 6437*

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**§809.14. Coordination of Child Care Services.**

- (a) A Board shall coordinate with federal, state, and local child care and early development programs and representatives of local governments in developing its Board plan and policies for the design and management of the delivery of child care services, and shall maintain written documentation of its coordination efforts.
- (b) Pursuant to Texas Education Code, §29.158, and in a manner consistent with federal law and regulations, a Board shall coordinate with school districts, Head Start, and Early Head Start program providers to ensure, to the greatest extent practicable, that full-day, full-year child care is available to meet the needs of low-income parents who are working or attending a job training or educational program.
- (c) Pursuant to Texas Labor Code, §302.00436, a Board shall inform the local school districts and open-enrollment charter schools in the Board's workforce area regarding opportunities to partner with child care providers in the Board's area to expand access to and provide facilities for prekindergarten (pre-K) programs.

*The provisions of this §809.14 adopted to be effective January 29, 2007, 32 TexReg 336; amended to be effective October 3, 2022, 47 TexReg 6437*

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**§809.15. Promoting Consumer Education.**

- (a) A Board shall promote informed child care choices by providing consumer education information to:
  - (1) parents who are eligible for child care services;
  - (2) parents who are placed on a Board's waiting list;
  - (3) parents who are no longer eligible for child care services; and
  - (4) applicants who are not eligible for child care services.
  
- (b) The consumer education information, including consumer education information provided through a Board's website, shall contain, at a minimum:
  - (1) information about the Texas Information and Referral Network/2-1-1 Texas (2-1-1 Texas) information and referral system;
  - (2) the website and telephone number of CCR so parents may obtain health and safety requirements including information on:
    - (A) the prevention and control of infectious diseases (including immunizations);
    - (B) building and physical premises safety;
    - (C) minimum health and safety training appropriate to the provider setting; and
    - (D) the regulatory compliance history of child care providers;
  - (3) a description of the full range of eligible child care providers set forth in §809.91 of this chapter; and
  - (4) a description of programs available in the workforce area relating to school readiness and quality rating systems, including:
    - (A) Texas Rising Star (TRS) Provider criteria, pursuant to Texas Government Code, §2308.315; and

- (B) integrated school readiness models, pursuant to Texas Education Code, §29.160;
- (5) a list of child care providers that meet quality indicators, pursuant to Texas Government Code, §2308.3171;
- (6) information on existing resources and services available in the workforce area for conducting developmental screenings and providing referrals to services when appropriate for children eligible for child care services, including the use of:
  - (A) the Early and Periodic Screening, Diagnosis, and Treatment program under 42 USC 1396 et seq.; and
  - (B) developmental screening services available under Part B and Part C of the Individuals with Disabilities Education Act (20 USC 1419, 1431 et seq.); and
- (7) a link to the Agency's designated child care consumer education website.
- (c) A Board shall cooperate with HHSC to provide 2-1-1 Texas with information, as determined by HHSC, for inclusion in the statewide information and referral network.

*The provisions of this §809.15 adopted to be effective January 29, 2007, 32 TexReg 336; amended to be effective January 8, 2013, 38 TexReg 155; amended to be effective October 1, 2016, 41 TexReg 7529; amended to be effective July 6, 2020, 45 TexReg 4528; amended to be effective October 3, 2022, 47 TexReg 6437*

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#### **§809.16. Quality Improvement Activities.**

- (a) Child care funds allocated by the Commission pursuant to its allocation rules (generally, Chapter 800, Subchapter B of this title (relating to Allocations), and specifically §800.58 of this title (relating to Child Care)), including local public transferred funds and local private donated funds, as provided in §809.17 of this subchapter, to the extent they are used for nondirect care quality improvement activities, shall be expended in accordance with the CCDF State Plan.
- (b) Boards must ensure compliance with 45 CFR Part 98 regarding construction expenditures, as follows:
  - (1) State and local agencies and nonsectarian agencies or organizations.

- (A) Funds shall not be expended for the purchase or improvement of land, or for the purchase, construction, or permanent improvement of any building or facility.
  - (B) Funds may be expended for minor remodeling, and for upgrading child care facilities to ensure that providers meet state and local child care standards, including applicable health and safety requirements.
- (2) Sectarian agencies or organizations.
- (A) The prohibitions in paragraph (1) of this subsection apply.
  - (B) Funds may be expended for minor remodeling only if necessary to bring the facility into compliance with the health and safety requirements established pursuant to 45 CFR Part 98.
- (c) Expenditures certified by a public entity, as provided in §809.17 of this subchapter, may include expenditures for any quality improvement activity described in 45 CFR Part 98.

*The provisions of this §809.16 adopted to be effective January 29, 2007, 32 TexReg 336; amended to be effective January 8, 2013, 38 TexReg 155; amended to be effective February 16, 2015, 40 TexReg 708; amended to be effective October 1, 2016, 41 TexReg 7529; amended to be effective January 25, 2021, 46 TexReg 593; amended to be effective October 3, 2022, 47 TexReg 6437*

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**§809.17. Leveraging Local Resources.**

- (a) Leveraging Local Funds.
  - (1) The Commission encourages Boards to secure local public and private funds for the purpose of matching federal funds in order to maximize resources for child care needs in the community.
  - (2) A Board is encouraged to secure additional local funds in excess of the amount required to match 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.
- (b) 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, unless 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, unless authorized by federal law to be used to match other federal funds.
- (c) A Board shall ensure that a public entity certifying expenditures for direct child care as described in §809.17(b)(3), determines and verifies that the expenditures are for child care provided to an eligible child. At a minimum, the public entity shall verify that the child:
- (1) is under 13 years of age, or at the option of the Board, is a child with disabilities under 19 years of age; and
  - (2) resides with:

- (A) a family whose income does not exceed 85 percent of the state median income for a family of the same size; and
  - (B) a parent who requires child care in order to work or attend a job training or educational program.
- (d) 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 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 Commission; and
    - (B) public certifications are submitted to the Commission.
  - (2) Private donations and public transfers are considered complete when the funds have been received by the Commission.
  - (3) Public certifications are considered complete to the extent that a signed written instrument is delivered to the Commission that reflects that the public entity has expended a specific amount of funds on eligible activities described in subsection (b)(3) of this section.
- (f) A Board shall monitor the funds secured for match and the expenditure of any resulting funds to ensure that expenditures of 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.

*The provisions of this §809.17 adopted to be effective January 29, 2007, 32 TexReg 336; amended to be effective October 1, 2016, 41 TexReg 7529*

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**§809.18. Maintenance of a Waiting List.**

- (a) A Board shall ensure that a list of parents and children waiting for child care services, because of the lack of funding or lack of providers, is maintained and available to the Commission upon request.
- (b) A Board shall ensure that the child is potentially eligible for child care services prior to placing the child on the waiting list.



- (c) A Board shall exempt children from the waiting list who are directly referred from a recognized pre-K or HS/EHS partnership, as described in §809.22 of this subchapter, to a child care provider to receive services in the contracted partnership program subject to the availability of funding and the availability of subsidized slots at the partnership site.
- (d) A Board shall contact the parent every three months and shall remove the child from the waiting list if the parent indicates that child care services are no longer required or does not respond to the Board regarding the continued need for child care services.

*The provisions of this §809.18 adopted to be effective January 29, 2007, 32 TexReg 336; amended to be effective January 25, 2021, 46 TexReg 593; amended to be effective October 3, 2022, 47 TexReg 6437; amended to be effective July 29, 2024, 49 TexReg 5540*

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**§809.19. Assessing the Parent Share of Cost.**

- (a) For child care funds allocated by the Commission pursuant to its allocation rules (generally, Chapter 800, Subchapter B of this title, and specifically §800.58 of this title), including local public transferred funds and local private donated funds, as provided in §809.17 of this subchapter, the following shall apply:
  - (1) The parent share of cost shall:
    - (A) be assessed to all parents, except in instances when an exemption under paragraph (3) of this subsection applies; and
    - (B) be established by the Commission and determined by a sliding fee scale based on the family's size and gross monthly income determined in §809.44 of this chapter and as represented by a percentage of the state median income (SMI) up to 85 percent SMI; and
    - (C) not exceed 7 percent of the family income, regardless of the number of children receiving child care services.
  - (2) A Board shall assess the parent share of cost in accordance with subsection (a)(1)(B) of this section and in a manner that results in the parent share of cost:
    - (A) being assessed only at the following times:
      - (i) initial eligibility determination;

- (ii) 12-month eligibility redetermination;
  - (iii) upon the addition of a child in care;
  - (iv) upon a parent's report of a change in income, family size, or number of children in care that would result in a reduced parent share of cost assessment; and
  - (v) upon resumption of work, job training, or education activities following temporary changes described in §809.51(a) of this chapter, and upon resumption of work, job training, or education activities during the three-month continuation of care period described in §809.51(c) of this chapter; and
- (B) not increasing above the amount assessed at initial eligibility determination or at the 12-month eligibility redetermination, except upon the addition of a child in care as described in clause (A)(iii) of this paragraph.
- (3) Parents who are one or more of the following are exempt from paying the parent share of cost:
- (A) Parents who are participating in Choices or who are in Choices child care described in §809.45 of this chapter;
  - (B) Parents who are participating in SNAP E&T services or who are in SNAP E&T child care described in §809.47 of this chapter;
  - (C) Parents of a child receiving Child Care for Children Experiencing Homelessness as described in §809.52 of this chapter; or
  - (D) Parents who have children who are receiving protective services child care pursuant to §809.49 and §809.54(c) of this chapter, unless DFPS assesses the parent share of cost.
- (4) Teen parents who are not covered under exemptions listed in paragraph (3) of this section shall be assessed a parent share of cost. The teen parent's share of cost is based solely on the teen parent's income and size of the teen's family as defined in §809.2 of this chapter.
- (b) A Board shall establish a policy stating whether or not the Board will pay providers when parents fail to pay the parent share of cost. If the Board does not pay providers under the adopted policy, the Board may establish a policy requiring the parent pay the provider before the family can be redetermined eligible for future child care services.

- (c) A Board shall establish a policy regarding termination of child care services within a 12-month eligibility period when a parent fails to pay the parent share of cost. The Board's policy must include:
- (1) a requirement to evaluate and document each family's financial situation for extenuating circumstances that may affect affordability of the assessed parent share of cost pursuant to paragraph (2) of this subsection, and a possible temporary reduction pursuant to subsection (d) of this section of this subsection before the Board or its child care contractor may terminate care under this section;
  - (2) a process to identify and assess the circumstances that may jeopardize a family's self-sufficiency under subsection (d) of this section; and
  - (3) maintenance of a list of all terminations due to failure to pay the parent share of cost.
- (d) The Board or its child care contractor may review the assessed parent share of cost for a possible temporary reduction if there are extenuating circumstances that jeopardize a family's self-sufficiency. The Board or its child care contractor may temporarily reduce the assessed parent share of cost if warranted by these circumstances. Following the temporary reduction, the parent share of cost amount immediately prior to the reduction shall be reinstated.
- (e) If the parent is not covered by an exemption as specified in subsection (a)(3) of this section, then the Board or its child care contractor shall not waive the assessed parent share of cost under any circumstances.
- (f) If the parent share of cost, based on family income and family size, is calculated to be zero, then the Board or its child care contractor shall not charge the parent a minimum share of cost amount.
- (g) A Board may establish a policy to reduce the parent share of cost amount assessed pursuant to subsection (a)(1) upon the child's referral for part-time or blended care. Such Board policy shall ensure that the parent no longer receives the reduction if the referral is changed to full-time care.

*The provisions of this §809.19 adopted to be effective January 29, 2007, 32 TexReg 336; amended to be effective September 8, 2008, 33 TexReg 7568; amended to be effective January 8, 2013, 38 TexReg 155; amended to be effective October 1, 2016, 41 TexReg 7529; amended to be effective August 1, 2018, 43 TexReg 4474; amended to be effective January 25, 2021, 46 TexReg 593; amended to be effective October 3, 2022, 47 TexReg 6437; amended to be effective July 29, 2024, 49 TexReg 5540*

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**§809.20. Maximum Provider Payment Rates.**

(a) Based on local factors, including a market rate survey provided by the Commission, a Board shall establish maximum provider payment rates for child care subsidies at or above a level established by the Commission to ensure that the rates provide equal access to child care in the local market and in a manner consistent with state and federal statutes and regulations governing child care. At a minimum, Boards shall establish provider payment rates for full-day and part-day units of service, as described in §809.93(f) of this chapter, for the following:

(1) Provider types:

- (A) Licensed child care centers, including before- or after-school programs and school-age programs, as defined by CCR;
- (B) Licensed child care homes as defined by CCR;
- (C) Registered child care homes as defined by CCR; and
- (D) Relative child care providers as defined in §809.2 of this chapter.

(2) Age groups in each provider type:

- (A) Infants ages 0 through 11 months;
- (B) Infants ages 12 through 17 months;
- (C) Toddlers ages 18 through 23 months;
- (D) Toddlers age 2 years;
- (E) Preschool age 3 years;
- (F) Preschool age 4 years;
- (G) Preschool age 5 years; and
- (H) School-age 6 years and older.

(b) A Board shall establish enhanced payment rates:

- (1) for all age groups at certified Texas Rising Star provider facilities; and
- (2) only for infant, toddler, and preschool-age children at child care providers that participate in integrated school readiness models for those age groups pursuant to Texas Education Code §29.160.

- (c) The minimum enhanced payment rates established under subsection (b) of this section shall be greater than the maximum rate established for providers not meeting the requirements of subsection (b) of this section for the same category of care up to, but not to exceed, the provider's published rate. The maximum rate must be at least:
  - (1) 5 percent greater for a:
    - (A) certified Two-Star Provider; or
    - (B) child care provider meeting the requirements of subsection (b)(2) of this section;
  - (2) 7 percent greater for a certified Three-Star Provider; and
  - (3) 9 percent greater for a certified Four-Star Provider.
- (d) Boards may establish a higher enhanced payment rate than those specified in subsection (c) of this section for certified Texas Rising Star providers, as long as there is a minimum 2 percentage point difference between each star level.
- (e) A Board or its child care contractor shall ensure that providers that are paid for additional staff or equipment needed to assist in the care of a child with disabilities are paid a rate up to 190 percent of the provider's payment rate for a child of that same age. The higher rate shall take into consideration the estimated cost of the additional staff or equipment needed by a child with disabilities. The Board shall ensure that a professional, who is familiar with assessing the needs of children with disabilities, certifies the need for the higher payment rate described in this subsection.
- (f) The Board shall determine whether to pay providers that offer transportation as long as the combined total of the provider's published rate, plus the transportation rate, is subject to the maximum payment rate established in subsection (a) of this section.
- (g) A Board may establish a higher enhanced payment rate for nontraditional hours, as defined by the Board.

*The provisions of this §809.20 adopted to be effective January 29, 2007, 32 TexReg 336; amended to be effective September 8, 2008, 33 TexReg 7568; amended to be effective January 8, 2013, 38 TexReg 155; amended to be effective February 16, 2015, 40 TexReg 708; amended to be effective October 1, 2016, 41 TexReg 7529; amended to be effective July 6, 2020, 45*

*TexReg 4528; amended to be effective October 3, 2022, 47 TexReg 6437; amended to be effective July 29, 2024, 49 TexReg 5540*

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**§809.21. Determining the Amount of the Provider Payment.**

- (a) The actual payment that the Board or the Board's child care contractor pays to the provider shall be the Board's maximum daily rate or the provider's published daily rate, whichever is lower, less the following amounts:
  - (1) The parent share of cost assessed and adjusted when the parent share of cost is reduced; and
  - (2) Any child care funds received by the parent from other public or private entities.
- (b) A Board or its child care contractor shall ensure that the provider's published daily rates are calculated according to Commission guidance and include the provider's enrollment fees, supply fees, and activity fees.

*The provisions of this §809.21 adopted to be effective January 29, 2007, 32 TexReg 336; amended to be effective January 8, 2013, 38 TexReg 155; amended to be effective July 29, 2024, 49 TexReg 5540*

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**§809.22. Direct Referrals to Recognized Partnerships.**

- (a) A recognized partnership is a partnership that:
  - (1) exists between a child care provider and one of the following:
    - (A) a public school prekindergarten provider;
    - (B) a local education agency; or
    - (C) a Head Start/Early Head Start program; and
  - (2) requires both parties to have entered into an agreement, such as a memorandum of understanding, and serves some number of children under age six who are dually enrolled in both programs.
- (b) A Board shall establish policies and procedures to enroll eligible children who are directly referred by a recognized partnership.

- (c) A Board's policy shall exempt children directly referred from a recognized partnership from the Board's waiting list, subject to the availability of funding and the availability of subsidized slots at the partnership site.

*The provisions of this §809.22 adopted to be effective January 25, 2021, 46 TexReg 593*

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**SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES**

**§809.41. A Child's General Eligibility for Child Care Services.**

- (a) Except for a child receiving or needing protective services as described in §809.49 of this chapter, for a child to be eligible to receive child care services, at the time of eligibility determination or redetermination, a Board shall ensure that the child:
  - (1) meets one of the following age requirements:
    - (A) be under 13 years of age; or
    - (B) be a child with disabilities under 19 years of age;
  - (2) is a United States citizen or legal immigrant as determined under applicable federal laws, regulations, and guidelines; and
  - (3) resides with:
    - (A) a family within the Board's workforce area:
      - (i) whose income does not exceed 85 percent of the state median income (SMI) for a family of the same size; and
      - (ii) whose assets do not exceed \$1,000,000 as certified by a family member; or
      - (iii) that meets the definition of experiencing homelessness as defined in §809.2 of this chapter.
    - (B) parents who require child care in order to work, including job search, or attend a job training or educational program; or
    - (C) a person standing in loco parentis for the child while the child's parent is on military deployment and the deployed military parent's income does not exceed the limits set forth in subparagraph (A) of this paragraph.
- (b) A Board shall ensure that child care services while the parent is enrolled full-time in

a postsecondary undergraduate educational program is provided for, but does not exceed, a cumulative total of 60 months.

- (c) A Board may establish a policy to allow parents attending a program that leads to an undergraduate degree from an institution of higher education to be exempt from residing with the child as defined in §809.2 of this chapter.

*The provisions of this §809.41 adopted to be effective January 29, 2007, 32 TexReg 336; amended to be effective June 22, 2009, 34 TexReg 4197; amended to be effective January 8, 2013, 38 TexReg 155; amended to be effective October 1, 2016, 41 TexReg 7529; amended to be effective October 3, 2022, 47 TexReg 6437*

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#### **§809.42. Eligibility Verification, Determination, and Redetermination.**

- (a) A Board shall ensure that its child care contractor verifies all eligibility requirements for child care services prior to authorizing child care.
- (b) A Board shall ensure that eligibility for child care services shall be redetermined no sooner than 12 months following the initial determination or most recent redetermination.

*The provisions of this §809.42 adopted to be effective January 29, 2007, 32 TexReg 336; amended to be effective October 1, 2016, 41 TexReg 7529; amended to be effective October 3, 2022, 47 TexReg 6437; amended to be effective July 29, 2024, 49 TexReg 5540*

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#### **§809.43. Priority for Child Care Services.**

- (a) A Board shall ensure that child care services are prioritized among the following three priority groups:
  - (1) The first priority group is assured child care services and includes children of parents eligible for the following:
    - (A) Choices child care as referenced in §809.45;
    - (B) Temporary Assistance for Needy Families (TANF) Applicant child care as referenced in §809.46;
    - (C) SNAP E&T child care as referenced in §809.47; and
    - (D) Transitional child care as referenced in §809.48.



- (2) The second priority group is served subject to the availability of funds and includes, in the order of priority:
    - (A) children who need to receive protective services child care as referenced in §809.49;
    - (B) children of a qualified veteran or qualified spouse as defined in §801.23 of this title;
    - (C) children of a foster youth as defined in §801.23 of this title;
    - (D) children experiencing homelessness as defined in §809.2 and described in §809.52;
    - (E) children of parents on military deployment as defined in §809.2 whose parents are unable to enroll in military-funded child care assistance programs;
    - (F) children of teen parents as defined in §809.2; and
    - (G) children with disabilities as defined in §809.2.
  - (3) The third priority group includes any other priority adopted by the Board.
- (b) A Board shall not establish a priority group under subsection (a)(3) of this section based on the parent's choice of an individual provider or provider type.

*The provisions of this §809.43 adopted to be effective January 29, 2007, 32 TexReg 336; amended to be effective September 8, 2008, 33 TexReg 7568; amended to be effective January 8, 2013, 38 TexReg 155; amended to be effective October 1, 2016, 41 TexReg 7529*

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**§809.44. Calculating Family Income.**

- (a) For the purposes of determining family income and assessing the parent share of cost, Boards shall ensure that family income is calculated in accordance with Commission guidelines that:
  - (1) take into account irregular fluctuations in earnings; and
  - (2) ensure that temporary increases in income, including temporary increases that result in monthly income exceeding 85 percent of SMI do not affect eligibility or parent share of cost.
- (b) In accordance with Commission income calculation guidelines, Boards shall ensure

that the following income sources are excluded from the family income:

- (1) Medicare, Medicaid, SNAP benefits, school meals, and housing assistance;
- (2) Monthly monetary allowances provided to or for children of Vietnam veterans born with certain birth defects;
- (3) Needs-based educational scholarships, grants, and loans; including financial assistance under Title IV of the Higher Education Act--Pell Grants, Federal Supplemental Educational Opportunity grants, Federal Work Study Program, PLUS, Stafford loans, and Perkins loans;
- (4) Individual Development Account (IDA) withdrawals for the purchase of a home, medical expenses, or educational expenses;
- (5) Tax refunds and tax credits;
- (6) VISTA and AmeriCorps living allowances and stipends;
- (7) Noncash or in-kind benefits such as employer-paid fringe benefits, food, or housing received in lieu of wages;
- (8) Foster care payments and adoption assistance;
- (9) Special military pay or allowances, including subsistence allowances, housing allowances, family separation allowances, or special allowances for duty subject to hostile fire or imminent danger;
- (10) Income from a child in the household between 14 and 19 years of age who is attending school;
- (11) Early withdrawals from qualified retirement accounts specified as hardship withdrawals as classified by the Internal Revenue Service (IRS);
- (12) Unemployment compensation;
- (13) Child support payments;
- (14) Cash assistance payments, including Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), Refugee Cash Assistance, general assistance, emergency assistance, and general relief;
- (15) Onetime income received in lieu of TANF cash assistance;
- (16) Income earned by a veteran while on active military duty and certain other veterans' benefits, such as compensation for service-connected death,

vocational rehabilitation, and education assistance;

- (17) Regular payments from Social Security, such as Old-Age, and Survivors Insurance Trust Fund;
  - (18) Lump sum payments received as assets in the sale of a house, in which the assets are to be reinvested in the purchases of a new home (consistent with IRS guidance);
  - (19) Payments received as the result of an automobile accident insurance settlement that are being applied to the repair or replacement of an automobile;
  - (20) One-time cash payments, including insurance payments, gifts, and lump sum inheritances; and
  - (21) Any income sources specifically excluded by federal law or regulation.
- (c) Income that is not listed in subsection (b) of this section as excluded from income is included as income.

*The provisions of this §809.44 adopted to be effective January 29, 2007, 32 TexReg 336; amended to be effective September 8, 2008, 33 TexReg 7568; amended to be effective January 8, 2013, 38 TexReg 155; amended to be effective October 1, 2016, 41 TexReg 7529; amended to be effective October 3, 2022, 47 TexReg 6437*

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#### **§809.45. Choices Child Care.**

- (a) A parent is eligible for Choices child care if the parent is participating in the Choices program as stipulated in Chapter 811 of this title.
- (b) For a parent receiving Choices child care who ceases participation in the Choices program during the 12-month eligibility period, Boards must ensure that Choices child care continues:
  - (1) for the three-month period pursuant to §809.51(b); and
  - (2) for the remainder of the eligibility period, if the parent resumes participation in Choices or begins participation in work or attendance in a job training or education program during the three-month period described in §809.51(c).

*The provisions of this §809.45 adopted to be effective January 29, 2007, 32 TexReg 336; amended to be effective October 1, 2016, 41 TexReg 7529*

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**§809.46. Temporary Assistance for Needy Families Applicant Child Care.**

- (a) A parent is eligible for TANF Applicant child care if the parent:
  - (1) receives a referral from the Health and Human Services Commission (HHSC) to attend a Workforce Orientation for Applicants (WOA);
  - (2) locates employment or has increased earnings prior to TANF certification; and
  - (3) needs child care to accept or retain employment.
- (b) To receive TANF Applicant child care, the parent shall be working and not have voluntarily terminated paid employment of at least 25 hours a week within 30 days prior to receiving the referral from HHSC to attend a WOA, unless the voluntary termination was for good cause connected with the parent's work.

*The provisions of this §809.46 adopted to be effective January 29, 2007, 32 TexReg 336; amended to be effective September 8, 2008, 33 TexReg 7568; amended to be effective January 8, 2013, 38 TexReg 155; amended to be effective October 1, 2016, 41 TexReg 7529*

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**§809.47. Supplemental Nutrition Assistance Program Employment and Training Child Care.**

- (a) A parent is eligible to receive SNAP E&T child care services if the parent is participating in SNAP E&T services, in accordance with the provisions of 7 CFR Part 273.
- (b) For a parent receiving SNAP E&T child care services who ceases participation in the E&T program during the 12-month eligibility period, Boards must ensure that SNAP E&T child care continues:
  - (1) for the three-month period pursuant to §809.51(b); and
  - (2) for the remainder of the eligibility period, if the parent resumes participation in the SNAP E&T program or begins participation in work or attendance in a job

training or education program during the three-month period described in §809.51(c).

*The provisions of this §809.47 adopted to be effective January 29, 2007, 32 TexReg 336; amended to be effective January 8, 2013, 38 TexReg 155; amended to be effective October 1, 2016, 41 TexReg 7529*

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**§809.48. Transitional Child Care.**

- (a) A parent is eligible for Transitional child care services if the parent:
  - (1) has been denied TANF and was employed at the time of TANF denial; or
  - (2) has been denied TANF within 30 days because of expiration of TANF time limits; and
  - (3) requires child care to work or attend a job training or educational program for a combination of at least an average of 25 hours per week for a single-parent family or a total combined 50 hours per week for a dual-parent family.
- (b) For former TANF recipients who are employed when TANF is denied, Transitional child care shall be available for:
  - (1) a period of up to 12 months from the effective date of the TANF denial; or
  - (2) a period of up to 18 months from the effective date of the TANF denial in the case of a former TANF recipient who was eligible for child caretaker exemptions pursuant to Texas Human Resources Code, §31.012(c) and voluntarily participates in the Choices program.
- (c) A Board may allow a reduction to the requirement in subsection (a)(3) of this section if a parent's documented medical disability or need to care for a physically or mentally disabled family member prevents the parent from participating in work, education, or job training activities for the required hours per week.
- (d) For purposes of meeting the education requirements stipulated in subsection (a)(3) of this section, the following shall apply:
  - (1) each credit hour of undergraduate education counts as three hours of education activity per week; and
  - (2) each credit hour of a condensed undergraduate education course counts as six education activity hours per week.

*The provisions of this §809.48 adopted to be effective January 29, 2007, 32 TexReg 336; amended to be effective September 8, 2008, 33 TexReg 7568; amended to be effective January 8, 2013, 38 TexReg 155; amended to be effective October 1, 2016, 41 TexReg 7529; amended to be effective October 3, 2022, 47 TexReg 6437*

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**§809.49. Child Care for Children Receiving or Needing Protective Services.**

- (a) A Board shall ensure that determinations of eligibility for children needing protective services are performed by DFPS.
  - (1) Child care will continue as long as authorized and funded by DFPS.
  - (2) DFPS may authorize child care for a child under court supervision under the age of 19.
  - (3) Child care discontinued by DFPS prior to the end of the 12-month eligibility period shall be subject to the Continuity of Care provisions in §809.54.
- (b) A Board shall ensure that requests made by DFPS for specific eligible providers are enforced for children in protective services, including children of foster parents when the foster parent is the owner, director, assistant director or other individual with an ownership interest in the provider.

*The provisions of this §809.49 adopted to be effective January 29, 2007, 32 TexReg 336; amended to be effective October 1, 2016, 41 TexReg 7529*

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**§809.50. At-Risk Child Care.**

- (a) A parent is eligible for child care services under this section if at initial eligibility determination and at eligibility redetermination as described in §809.42 of this chapter:
  - (1) the family income does not exceed the income limit pursuant to §809.41 of this chapter; and
  - (2) child care is required for the parent to work or attend a job training or educational program for a combination of at least an average of 25 hours per week for a single-parent family or a total combined 50 hours per week for a dual-parent family.
- (b) A Board may allow a reduction to the work, education, or job training activity requirements in subsection (a)(2) of this section if a parent's documented medical

disability or need to care for a physically or mentally disabled family member prevents the parent from participating in these activities for the required hours per week.

- (c) For purposes of meeting the education requirements stipulated in subsection (a)(2) of this section, the following shall apply:
  - (1) each credit hour of undergraduate education counts as three hours of education activity per week;
  - (2) each credit hour of a condensed undergraduate education course counts as six education activity hours per week; and
  - (3) teen parents attending high school or the equivalent shall be considered as meeting the education requirements in subsection (a)(2) of this section.
- (d) When calculating income eligibility for a child with disabilities, a Board shall deduct the cost of the child's ongoing medical expenses from the family income.
- (e) A teen parent's family income is based solely on the teen parent's income and size of the teen's family as defined in §809.2 of this chapter.

*The provisions of this §809.50 adopted to be effective September 8, 2008, 33 TexReg 7568; amended to be effective January 8, 2013, 38 TexReg 155; amended to be effective October 1, 2016, 41 TexReg 7529; amended to be effective October 3, 2022, 47 TexReg 6437*

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#### **§809.51. Child Care during Interruptions in Work, Education, or Job Training.**

- (a) A child meeting all of the applicable eligibility requirements for child care services in this subchapter on the date of the most recent eligibility determination or redetermination, the child shall be considered to be eligible and will receive services during the 12-month eligibility period described in §809.42 of this subchapter, regardless of any:
  - (1) change in family income, if that family income does not exceed 85 percent of SMI for a family of the same size; or
  - (2) temporary change in the ongoing status of the child's parent as working or attending a job training or education program. A temporary change shall include, at a minimum, any:
    - (A) time-limited absence from work for an employed parent for periods of family leave (including parental leave) or sick leave;

- (B) interruption in work for a seasonal worker who is not working between regular industry work seasons;
  - (C) student holiday or breaks within a semester, between the fall and spring semesters, or between the spring and fall semesters, for a parent participating in training or education;
  - (D) reduction in work, training, or education hours, as long as the parent is still working or attending a training or education program;
  - (E) other cessation of work or attendance in a training or education program that does not exceed three months;
  - (F) change in age, including turning 13 years old or a child with disabilities turning 19 years old during the eligibility period; and
  - (G) change in residency within the state.
- (b) During the period of time between eligibility redeterminations, a Board shall discontinue child care services due to a parent's loss of work or cessation of attendance at a job training or educational program that does not constitute a temporary change in accordance with subsection (a)(2) of this section. However, Boards must ensure that care continues at the same level for a period of not less than three months after such loss of work or cessation of attendance at a job training or educational program.
- (c) If a parent resumes work or attendance at a job training or education program at any level and at any time during the period described in subsection (b) of this section, then the Board shall ensure that:
- (1) care will continue to the end of the 12-month eligibility period at the same or greater level, depending upon any increase in the activity hours of the parent;
  - (2) the parent share of cost will not be increased during the remainder of the 12-month eligibility period, including for parents who are exempt from the parent share of cost pursuant to §809.19 of this chapter; and
  - (3) the Board's child care contractor verifies only:
    - (A) that the family income does not exceed 85 percent of SMI; and
    - (B) the resumption of work or attendance at a job training or education program.
- (d) The Board may suspend child care services during interruptions in the parent's work, job training, or education status only at the concurrence of the parent.



*The provisions of this §809.51 adopted to be effective October 1, 2016, 41 TexReg 7529; amended to be effective October 3, 2022, 47 TexReg 6437; amended to be effective July 29, 2024, 49 TexReg 5540*

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**§809.52. Child Care for Children Experiencing Homelessness.**

- (a) For a child experiencing homelessness, as defined in §809.2, a Board shall ensure that the child is initially enrolled for a period of three months.
- (b) If, during the three-month initial enrollment period, the parent of a child experiencing homelessness:
  - (1) is unable to provide documentation verifying that the child is eligible under §809.41(a)(1) - (2) (regarding age and citizenship status), then care shall be discontinued following the three-month enrollment period; or
  - (2) provides documentation verifying eligibility under §809.41(a), then care shall continue through the end of the 12-month initial eligibility period (inclusive of the three-month initial enrollment period).

*The provisions of this §809.52 adopted to be effective September 8, 2008, 33 TexReg 7568; amended to be effective October 1, 2016, 41 TexReg 7529*

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**§809.53. Child Care for Children Served by Special Projects.**

- (a) Special projects developed in federal and state statutes or regulations and funded using non-CCDF sources may add groups of children eligible to receive child care.
- (b) The eligibility criteria as stated in the statutes, regulations, or funding sources shall control for the special project, unless otherwise indicated by the Commission.
- (c) The time limit for receiving child care for children served by special projects may be:
  - (1) specifically prescribed by federal or state statutes or regulations according to the particular project;
  - (2) otherwise set by the Commission depending on the purpose and goals of the special project; and

- (3) limited to the availability of funds.

*The provisions of this §809.53 adopted to be effective January 29, 2007, 32 TexReg 336; amended to be effective October 1, 2016, 41 TexReg 7529*

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**§809.54. Continuity of Care.**

- (a) Enrolled children, including children whose eligibility for Transitional child care has expired, shall receive child care through the end of the applicable eligibility periods described in §809.42.
- (b) Except as provided by §809.75 relating to child care during appeal, nothing in this chapter shall be interpreted in a manner as to result in a child being removed from care.
- (c) In closed DFPS CPS cases (DFPS cases) where child care is no longer funded by DFPS, child care shall continue through the end of the applicable eligibility periods described in §809.42 using funds allocated to the Board by the Commission.
- (d) A Board shall ensure that no enrolled children of military parents in military deployment have a disruption of child care services or eligibility during military deployment, including parents in military deployment at the end of the 12-month eligibility redetermination period.
- (e) A Board shall ensure that a child who is required by a court-ordered custody or visitation arrangement to leave a provider's care is permitted to continue receiving child care by the same provider, or another provider if agreed to by the parent in advance of the leave, upon return from the court-ordered custody or visitation arrangement.

*The provisions of this §809.54 adopted to be effective January 29, 2007, 32 TexReg 336; amended to be effective January 8, 2013, 38 TexReg 155; amended to be effective October 1, 2016, 41 TexReg 7529*

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**§809.55. Waiting Period for Reapplication.**

- (a) A parent is ineligible to reapply for child care services or to be placed on the waiting list for services for 60 calendar days if the parent's eligibility or the child's enrollment is terminated due to:
  - (1) excessive unexplained absences under §809.78 of this chapter; or

- (2) nonpayment of parent share of cost pursuant to a Board's established policy under §809.19 of this chapter.
- (b) To ensure full alignment between Child Care Services rules and the Choices program requirements, the provisions of subsection (a) of this section will not apply to individuals who, during the 60-calendar day waiting period:
  - (1) become Choices participants who require child care to participate in Choices; or
  - (2) are on Choices sanction status and require child care to demonstrate participation in Choices.

*The provisions of this §809.55 adopted to be effective August 1, 2018, 43 TexReg 4744; amended to be effective October 3, 2022, 47 TexReg 6437*

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**§809.56. Child Care during Initial Job Search.**

- (a) A parent, including a parent in a dual-parent family, is eligible for child care services under this section if at initial eligibility determination the family does not meet the minimum participation requirements for At-Risk Child Care as described in §809.50 of this subchapter.
- (b) A Board shall allow parents to self-attest that the:
  - (1) family meets the requirements of subsection (a) of this section; and
  - (2) family income does not exceed 85 percent of the state median income.
- (c) The 12-month eligibility period for child care under this section consists of an initial three-month job search period. If total activity participation of at least 25 hours for a single-parent family or a total combined 50 hours per week for dual-parent families, which must include a minimum of 12 hours in employment for a single-parent family and a total combined 25 hours in employment for a dual-parent family, are met within the initial three months, eligibility will continue for the remainder of the 12-month eligibility period, provided that the family income does not exceed 85 percent of the state median income. If the family does not meet minimum activity requirements under this subsection within three months, care must be terminated.
- (d) For child care during the initial three-month job search period, the follow applies regarding the parent share of cost:
  - (1) A Board shall initially assess the parent share of cost at the highest amount

based on the family size and number of children in care.

- (2) The initially assessed amount will immediately be temporarily reduced to zero. This provision also applies to dual-parent families in which one parent is employed but the family meets the requirements in subsection (a) of this section for child care during initial job search.
  - (3) If the parent begins to meet participation requirements of subsection (c) of this section within or by the end of the three-month job search period, the parent share of cost shall be reinstated at the initially assessed amount or the amount based on the actual family income, whichever is lower.
- (e) Eligibility for child care under this section is limited to one initial three-month job search period per family within a 12-month period.
- (f) A Board shall ensure that the parent in child care for job search is registered with the state's labor exchange system and has access to appropriate services available through the one-stop delivery network described in §801.28 of this title.

*The provisions of this §809.56 adopted to be effective October 3, 2022, 47 TexReg 6437; amended to be effective July 29, 2024, 49 TexReg 5540*

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## **SUBCHAPTER D. PARENT RIGHTS AND RESPONSIBILITIES**

### **§809.71. Parent Rights.**

A Board shall ensure that the Board's child care contractor informs the parent in writing that the parent has the right to:

- (1) choose the type of child care provider that best suits their needs and to be informed of all child care options available to them as included in the consumer education information described in §809.15 of this chapter;
- (2) visit available child care providers before making their choice of a child care option;
- (3) receive assistance in choosing initial or additional child care referrals including information about the Board's policies regarding transferring children from one provider to another, which shall include a waiting period of two weeks before the effective date of a transfer, except in cases in which the provider is subject to a CCR action, as described in §809.94 of this chapter; when the transfer is authorized by CPS for a child in protective services; or on a case-by-case basis determined by the Board;

- (4) be informed of the Commission rules and Board policies related to providers charging parents amounts above the assessed parent share of cost" as described in §809.92 of this chapter;
- (5) be represented when applying for child care services;
- (6) be notified of their eligibility to receive child care services within 20 calendar days from the day the Board's child care contractor receives all necessary documentation required to initially determine eligibility for child care;
- (7) receive child care services regardless of race, color, national origin, age, sex, disability, political beliefs, or religion;
- (8) have the Board and the Board's child care contractor treat information used to determine eligibility for child care services as confidential;
- (9) receive written notification at least 15 calendar days before termination of child care services;
- (10) reject an offer of child care services or voluntarily withdraw their child from child care, unless the child is in protective services;
- (11) be informed of the possible consequences of rejecting or ending the child care that is offered;
- (12) be informed of the eligibility documentation and reporting requirements described in §809.72 and §809.73 of this chapter;
- (13) be informed of the parent appeal rights described in §809.74 of this chapter;
- (14) be informed of required background and criminal history checks for relative child care providers through the listing process with CCR as described in §809.91 of this chapter before the parent or guardian selects the relative child care provider;
- (15) receive written notification pursuant to §809.78 of this chapter of the possible termination of child care services for excessive absences, as described in §809.78 of this chapter; and
- (16) receive written notification of possible termination of child care services for failure to pay the parent share of cost, pursuant to §809.19 of this chapter.

*The provisions of this §809.71 adopted to be effective January 29, 2007, 32 TexReg 336; amended to be effective November 14, 2011, 36 TexReg 7675; amended to be effective January 8, 2013, 38 TexReg 155; amended to be effective October 1, 2016, 41 TexReg 7529;*

*amended to be effective August 1, 2018, 43 TexReg 4744; amended to be effective July 6, 2020, 45 TexReg 4528; amended to be effective October 3, 2022, 47 TexReg 6437*

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**§809.72. Parent Eligibility Documentation Requirements.**

- (a) Parents shall provide the Board's child care contractor with all information necessary to determine initial eligibility according to the Board's administrative policies and procedures before a child can be initially determined or redetermined eligible for child care services and care authorized, unless the child is experiencing homelessness pursuant to §809.52 of this chapter or receiving child care during initial job search pursuant to §809.56 of this chapter.
- (b) A parent's failure to submit eligibility documentation shall result in initial denial of child care services or termination of services at the 12-month eligibility redetermination period.

*The provisions of this §809.72 adopted to be effective January 29, 2007, 32 TexReg 336; amended to be effective October 1, 2016, 41 TexReg 7529; amended to be effective October 3, 2022, 47 TexReg 6437*

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**§809.73. Parent Reporting Requirements.**

- (a) Boards shall ensure that during the 12-month eligibility period described in §809.41 of this chapter parents are only required to report items that impact a family's eligibility or that enable the Board or Board contractor to contact the family or pay the provider.
- (b) Pursuant to subsection (a) of this section, parents shall report to the child care contractor, within 14 calendar days of the occurrence, the following:
  - (1) Changes in family income or family size that would cause the family to exceed 85 percent of SMI for a family of the same size;
  - (2) Changes in work or attendance at a job training or educational program not considered to be temporary changes, as described in §809.51 of this chapter; and
  - (3) Any change in family residence, primary phone number, or e-mail (if available).
- (c) Failure to report changes described in subsection (a) of this section may result in fact-finding for suspected fraud as described in Subchapter F of this chapter.

- (d) A Board shall allow parents to report, and the child care contractor shall take appropriate action, regarding changes in:
  - (1) income and family size, which may result in a reduction in the parent share of cost pursuant to §809.19 of this chapter; and
  - (2) work, job training, or education program participation that may result in an increase in the level of child care services.

*The provisions of this §809.73 adopted to be effective January 29, 2007, 32 TexReg 336; amended to be effective October 1, 2016, 41 TexReg 7529; amended to be effective October 3, 2022, 47 TexReg 6437; amended to be effective July 29, 2024, 49 TexReg 5540*

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**§809.74. Parent Appeal Rights.**

- (a) Unless otherwise stated in this section, a parent may request a hearing pursuant to Chapter 823 of this title:
  - (1) if the parent's eligibility or child's enrollment is denied, delayed, reduced, suspended, or terminated by the Board's child care contractor, Choices caseworker, or SNAP E&T caseworker; or
  - (2) regarding the amount of recoupment determined pursuant to Subchapter F of this chapter.
- (b) A parent may have an individual represent him or her during this process.
- (c) A parent of a child in protective services may not appeal pursuant to Chapter 823 of this title, but shall follow the procedures established by DFPS.

*The provisions of this §809.74 adopted to be effective January 29, 2007, 32 TexReg 336; amended to be effective November 26, 2007, 32 TexReg 8543; amended to be effective September 8, 2008, 33 TexReg 7568; amended to be effective January 8, 2013, 38 TexReg 155; amended to be effective October 1, 2016, 41 TexReg 7529*

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**§809.75. Child Care during Appeal.**

- (a) For a child currently enrolled in child care, a Board shall ensure that child care services continue during the appeal process until a decision is reached, if the parent requests a hearing.

- (b) A Board shall ensure that child care does not continue during the appeal process if the child's enrollment is terminated due to excessive unexplained absences, pursuant to §809.78(a) of this chapter, or nonpayment of parent share of cost, pursuant to §809.19 of this chapter.
- (c) The cost of providing services during the appeal process is subject to recovery from the parent by the Board if the appeal decision is rendered against the parent.

*The provisions of this §809.75 adopted to be effective January 29, 2007, 32 TexReg 336; amended to be effective September 8, 2008, 33 TexReg 7568; amended to be effective January 8, 2013, 38 TexReg 155; amended to be effective October 1, 2016, 41 TexReg 7529; amended to be effective August 1, 2018, 43 TexReg 4744; amended to be effective October 3, 2022, 47 TexReg 6437*

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**§809.78. Attendance Standards and Notice and Reporting Requirements.**

- (a) A Board shall ensure that parents are notified of the following:
  - (1) Parents shall ensure that the eligible child attends on a regular basis consistent with the child's authorization for enrollment and attendance standards described in paragraph (2) of this subsection. Failure to meet attendance standards described in paragraph (2) of this subsection may result in termination for the child due to excessive unexplained absences pursuant to subsection (d) of this section.
  - (2) Meeting attendance standards for child care services consists of no more than 40 total unexplained absences in a 12-month eligibility period.
  - (3) Unexplained absences may include:
    - (A) Any absence that is not due to a child's documented chronic illness or disability, or to a court-ordered custody or visitation agreement; or
    - (B) Any missed attendance recording that cannot be explained, except if the attendance reporting system is not available through no fault of the parent or provider.
  - (4) Notwithstanding paragraph (2) of this subsection, child care providers may end a child's enrollment with the provider if the child does not meet the provider's established policy regarding attendance.
  - (5) Parents shall report attendance and absences and adhere to Agency procedures for reporting attendance and absences, including the use of the Agency's attendance reporting system.



- (b) Boards shall ensure that parents sign a written acknowledgment indicating their understanding of the attendance standards and reporting requirements at each of the following stages:
  - (1) initial eligibility determination; and
  - (2) each eligibility redetermination, as required in §809.42 of this chapter.
- (c) Boards shall ensure that absences due to a child's documented chronic illness or disability or court-ordered visitation are not counted in the number of unexplained absences in subsection (a)(2) and (3) of this section.
- (d) Boards shall ensure that before terminating care pursuant to subsection (a)(1) of this section, the child care contractor:
  - (1) provides written notice to the parent and the child care provider at reasonable times through established communication channels of the child's absences and the potential termination of services, at a minimum as soon as practicable after child reaches 15, and 30 general absences cumulatively within a 12-month eligibility period; and
  - (2) documents that multiple attempts were made, as described in paragraph (1) of this subsection, to determine why the child is absent and to explain the importance of regular attendance.
- (e) Where a child's enrollment has been ended by a provider in subsection (a)(4) of this section, Boards shall work with the parent to place the otherwise eligible child with another eligible provider.

*The provisions of this §809.78 adopted to be effective January 8, 2013, 38 TexReg 155; amended to be effective October 1, 2016, 41 TexReg 7529; amended to be effective August 1, 2018, 43 TexReg 4744; amended to be effective October 3, 2022, 47 TexReg 6437*

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**SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE**

**§809.91. Minimum Requirements for Providers.**

- (a) A Board shall ensure that child care subsidies are paid only to:
  - (1) regulated child care providers as described in §809.2 of this chapter meeting the Texas Rising Star requirements as a certified provider, or designated as an Entry Level provider for the prescribed time periods as described in §809.131 of this chapter;

- (2) relative child care providers, as described in §809.2 of this chapter, subject to the requirements in subsection (e) of this section; or
- (3) at the Board's option, child care providers licensed in a neighboring state, subject to the following requirements:
  - (A) Boards shall ensure that the Board's child care contractor reviews the licensing status of the out-of-state provider every month, at a minimum, to confirm the provider is meeting the minimum licensing standards of the state.
  - (B) Boards shall ensure that the out-of-state provider meets the requirements of the neighboring state to serve CCDF-subsidized children.
  - (C) The provider shall agree to comply with the requirements of this chapter and all Board policies and Board child care contractor procedures.
- (b) A Board shall not prohibit a relative child care provider that is listed with CCR and meets the minimum requirements of this section from being an eligible relative child care provider.
- (c) Except as provided by the criteria for Texas Rising Star Provider certification or designation, a Board or the Board's child care contractor shall not place requirements on regulated providers that:
  - (1) exceed Entry Level designation requirements or the state licensing requirements stipulated in Texas Human Resources Code, Chapter 42; or
  - (2) have the effect of monitoring the provider for compliance with state licensing requirements stipulated in Texas Human Resources Code, Chapter 42.
- (d) When a Board or the Board's child care contractor, in the course of fulfilling its responsibilities, gains knowledge of any possible violation regarding regulatory standards, the Board or its child care contractor shall report the information to the appropriate regulatory agency.
- (e) For relative child care providers to be eligible for reimbursement for Commission-funded child care services, the following applies:
  - (1) Relative child care providers shall list with CCR; however, pursuant to 45 CFR §98.41(e), relative child care providers listed with CCR shall be exempt from the health and safety requirements of 45 CFR §98.41(a).
  - (2) A Board shall allow relative child care providers to care for a child in the child's home (in-home child care) only for the following:

- (A) A child with disabilities as defined in §809.2 of this chapter, and his or her siblings;
  - (B) A child under 18 months of age and his or her siblings;
  - (C) A child of a teen parent; and
  - (D) When the parent's work schedule requires evening, overnight, or weekend child care in which taking the child outside of the child's home would be disruptive to the child.
- (3) A Board may allow relative in-home child care for circumstances in which the Board's child care contractor determines and documents that other child care provider arrangements are not available in the community.
- (f) Boards shall ensure that subsidies are not paid for a child at the following child care providers:
- (1) Except for foster parents authorized by DFPS pursuant to §809.49 of this chapter, licensed child care centers, including before- or after-school programs and school-age programs, in which the parent or his or her spouse, including the child's parent or stepparent, is the director or assistant director, or has an ownership interest; or
  - (2) Licensed, registered, or listed child care homes where the parent also works during the hours his or her child is in care.

*The provisions of this §809.91 adopted to be effective January 29, 2007, 32 TexReg 336; amended to be effective June 24, 2007, 32 TexReg 3698; amended to be effective October 18, 2010, 35 TexReg 9359; amended to be effective November 14, 2011, 36 TexReg 7675; amended to be effective January 8, 2013, 39 TexReg 155; amended to be effective October 1, 2016, 41 TexReg 7529; amended to be effective July 6, 2020, 45 TexReg 4528; amended to be effective January 25, 2021, 46 TexReg 593; amended to be effective October 3, 2022, 47 TexReg 6437*

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**§809.92. Provider Responsibilities and Reporting Requirements.**

- (a) A Board shall ensure that providers are given written notice of and agree to their responsibilities, reporting requirements, and requirements for payment under this subchapter prior to enrolling a child.
- (b) Providers shall:

- (1) be responsible for collecting the parent share of cost as assessed under §809.19 of this chapter before child care services are delivered;
  - (2) be responsible for collecting other child care funds received by the parent as described in §809.21 of this chapter;
  - (3) report to the Board or the Board's child care contractor instances in which the parent fails to pay the parent share of cost; and
  - (4) follow attendance reporting and tracking procedures required by the Commission under §809.95 of this chapter, the Board, or, if applicable, the Board's child care contractor.
- (c) Providers shall not charge more than the Board's payment rate as determined under §809.21 of this chapter to parents:
- (1) who are exempt from the parent share of cost assessment under §809.19 of this chapter;
  - (2) whose parent share of cost is calculated to be zero pursuant to §809.19 of this chapter; or
  - (3) parents in Child Care during Initial Job Search under §809.56 of this chapter during the initial three-month period.
- (d) A Board may develop a policy that allows providers to charge parents more than the assessed parent share of cost in instances where the provider's published rate exceeds the Board's payment rate (including the assessed parent share of cost) to all parents not included in subsection (c) of this section.
- (e) For Boards that allow providers to charge additional amounts pursuant to subsection (d) of this section, the Board must ensure the provider reports to the Board each month:
- (1) the specific families that were charged an additional amount above the assessed amount;
  - (2) the frequency with which each family was charged; and
  - (3) the amount of each additional charge.
- (f) Boards that develop a policy under subsection (d) of this section must:
- (1) provide the rationale for the Board's policy to allow providers to charge families additional amounts above the required copayment, including a demonstration of how the policy promotes affordability and access for

families; and

- (2) describe the Board's analysis of the interaction between the additional amounts charged to families with the required parent share of cost and the ability of current payment rates to provide access to care without additional fees.
- (g) Providers shall not deny a child care referral based on the parent's income status, receipt of public assistance, or the child's protective service status.
- (h) Providers shall not charge fees to a parent receiving child care subsidies that are not charged to a parent who is not receiving subsidies.

*The provisions of this §809.92 adopted to be effective January 29, 2007, 32 TexReg 336; amended to be effective January 8, 2013, 38 TexReg 155; amended to be effective October 1, 2016, 41 TexReg 7529; amended to be effective October 3, 2022, 47 TexReg 6437; amended to be effective July 29, 2024, 49 TexReg 5540*

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#### **§809.93. Provider Payment.**

- (a) A Board shall ensure that payment for child care is made only to the provider.
- (b) A Board or its child care contractor shall pay a regulated provider based on a child's monthly enrollment authorization, excluding periods of suspension at the concurrence of the parent, as described in §809.51(d) of this chapter.
- (c) A Board shall ensure that a relative child care provider is not reimbursed for days on which the child is absent.
- (d) A relative child care provider shall not be reimbursed for more children than permitted by the CCR minimum regulatory standards for Registered Child Care Homes. A Board may permit more children to be cared for by a relative child care provider on a case-by-case basis as determined by the Board.
- (e) A Board shall not pay providers that are debarred from other state or federal programs unless and until the debarment is removed.
- (f) Unless otherwise determined by the Board and approved by the Commission for automated reporting purposes, the monthly enrollment authorization described in subsection (b) of this section is based on the unit of service authorized, as follows:
  - (1) A full-day unit of service is 6 to 12 hours of care provided within a 24-hour period;
  - (2) A part-day unit of service is fewer than 6 hours of care provided within a 24-

hour period; and

- (3) A blended-day unit of service is for a child enrolled in a school program, pre-K, HS, or EHS in which child care is part-day with care provided occasionally on a full-day basis.
- (g) A Board or its child care contractor shall ensure that providers are not paid for holding spaces open without a valid contracted slots agreement, as described in §809.96 of this chapter.
- (h) The Board or its child care contractor shall not pay a provider retroactively for new Board maximum payment rates or new provider published rates.
- (i) A Board or its child care contractor shall ensure that the parent's travel time to and from the child care facility and the parent's work, school, or job training site is included in determining the enrollment authorized under subsection (f) of this section.
- (j) A Board shall pay regulated child care providers prospectively every two weeks based on the enrollment authorization described in subsection (b) of this section.

*The provisions of this §809.93 adopted to be effective January 29, 2007, 32 TexReg 336; amended to be effective January 8, 2013, 38 TexReg 155; amended to be effective October 1, 2016, 41 TexReg 7529; amended to be effective August 1, 2018, 43 TexReg 4774; amended to be effective July 6, 2020, 45 TexReg 4528; amended to be effective January 25, 2021, 46 TexReg 593; amended to be effective October 3, 2022, 47 TexReg 6437; amended to be effective July 29, 2024, 49 TexReg 5540*

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#### **§809.94. Providers Placed on Corrective or Adverse Action by Child Care Regulation.**

- (a) For a provider placed on probation corrective action (probationary status) by CCR, Boards shall ensure that:
  - (1) parents with children in Commission-funded child care are notified in writing of the provider's probationary status no later than five business days after receiving notification from the Agency of CCR's decision to place the provider on probationary status; and
  - (2) no new referrals are made to the provider while on probationary status.
- (b) A parent receiving notification of a provider's probationary status with CCR pursuant to subsection (a) of this section may transfer the child to another eligible provider without being subject to the Board transfer policies described in §809.71 of this chapter if the parent requests the transfer within 14 calendar days of receiving

such notification.

- (c) For a provider placed on probationary status by CCR, Boards shall ensure that the provider is not paid at the Boards' enhanced payment rates described in §809.20 while on probationary status.
- (d) For a provider against whom CCR is taking adverse action, Boards shall ensure that:
  - (1) parents with children enrolled in Commission-funded child care are notified no later than two business days after receiving notification from the Agency that CCR intends to take adverse action against the provider;
  - (2) children enrolled in Commission-funded child care with the provider are transferred to another eligible provider no later than five business days after receiving notification from the Agency that CCR intends to take adverse action against the provider; and
  - (3) no new referrals for Commission-funded child care are made to the provider while CCR is taking adverse action.

*The provisions of this §809.94 adopted to be effective June 22, 2009, 34 TexReg 4201; amended to be effective October 1, 2016, 41 TexReg 7529; amended to be effective July 6, 2020, 45 TexReg 4528; amended to be effective October 3, 2022, 47 TexReg 6437; amended to be effective July 29, 2024, 49 TexReg 5540*

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**§809.95. Provider Automated Attendance Agreement.**

Boards shall notify providers of the following:

- (1) The owner, director, assistant director, or other employees of child care providers shall not:
  - (A) possess, have on the premises, or otherwise have access to a parent's information to access the Agency's attendance system; or
  - (B) perform the attendance or absence reporting function on behalf of the parent;
- (2) Providers shall report misuse of the Agency's automated attendance system to the Board or the Board's child care contractor;
- (3) Providers shall report to the child care contractor authorized days that do not match the referral in the Agency's automated attendance system within five days of receiving the authorization. Failure to report the discrepancy may

result in withholding payment to the provider; and

- (4) Misuse of attendance reporting and violation of the requirements in this section are grounds for a potential fraud determination pursuant to Subchapter F of this chapter.

*The provisions of this §809.95 adopted to be effective January 8, 2013, 38 TexReg 155; amended to be effective October 1, 2016, 41 TexReg 7529; amended to be effective October 3, 2022, 47 TexReg 6437*

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#### **§809.96. Contracted Slots Agreements.**

- (a) In this section, the term "contracted slots agreement" is defined as a Board entering into a contract with a child care provider to reserve a specific number of places, or slots, for children participating in the child care subsidy program. This contract shall:
  - (1) define the number of slots to be reserved by age group (infant, toddler, preschool, or school-age); and
  - (2) meet the eligibility requirements as described in subsection (e) of this section.
- (b) Boards may enter into a contracted slots agreement with providers that agree to provide subsidized child care services to eligible children residing in the Board's workforce area.
- (c) A Board that enters into a contracted slots agreement shall include this strategy in the Board Plan, as described in §809.12 of this chapter.
- (d) Each contract between a Board and a provider must identify the number of places (slots) to be reserved for children participating in the child care subsidy program.
- (e) To be eligible for a contract, a child care provider must be a Texas Rising Star Three-Star or Four-Star provider and meet one of the following priorities:
  - (1) Be located in:
    - (A) a child care desert; or
    - (B) an underserved area that has been identified by a Board as having an inadequate supply of child care in accordance with the parameters described in the CCDF State Plan.
  - (2) Have a recognized partnership with local school districts to provide pre-K services;



- (3) Have a recognized partnership with EHS or HS;
  - (4) Increase the number of places reserved for infants and toddlers by high-quality child care providers;
  - (5) Increase the number of places reserved for children with disabilities; or
  - (6) Satisfy a priority identified in the Board's plan, as described in §809.12 of this chapter.
- (f) A Board that enters into a contracted slots agreement may continue payment for reserved slots during times of transition between the time that one child leaves the program and another child is placed in the slot. The period of continued payment shall adhere to the Board's policy for contracted slots agreements and may not exceed one month following the month of the vacancy.
- (g) Except for children directly referred from recognized partnerships, as described in §809.22 of this chapter, to fill open reserved slots, Boards shall contact families in order of the Board's waiting list:
- (1) that requested care in the ZIP code where the provider with the open reserved slot is located; and
  - (2) whose child is in the age group for which a slot is available.
- (h) In accordance with Commission guidelines, Boards that enter into contracted slots agreements shall submit a report to the Commission within six months of entering into a contract, determining the contract's effect on the:
- (1) financial stability of providers participating in the contract;
  - (2) availability of high-quality child care options available to participants in the Commission's subsidy program;
  - (3) number of high-quality providers in any part of the workforce area with a high concentration of families that need child care;
  - (4) percentage of children participating in the Commission's subsidized child care program at each Texas Rising Star provider in the workforce area; and
  - (5) additional information as requested by the Commission.
- (i) A Board shall resubmit the report every 12 months from the due date of the Board's initial report to the Commission.

*The provisions of this §809.96 adopted to be effective January 25, 2021, 46 TexReg 593; amended to be effective October 3, 2022, 47 TexReg 6437; amended to be effective July 29, 2024, 49 TexReg 5540*

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**SUBCHAPTER F. FRAUD FACT-FINDING AND IMPROPER PAYMENTS**

**§809.111. General Fraud Fact-Finding Procedures.**

- (a) This subchapter establishes authority for a Board to develop procedures for the prevention of fraud by a parent, provider, or any other person in a position to commit fraud consistent with fraud prevention provisions in the Agency-Board Agreement.
- (b) In this subchapter, a person commits fraud if, to obtain or increase a benefit or other payment, either for the person or another person, the person:
  - (1) makes a false statement or representation, knowing it to be false; or
  - (2) knowingly fails to disclose a material fact.
- (c) A Board shall ensure that procedures for researching and fact-finding for possible fraud are developed and implemented to deter and detect suspected fraud for child care services in the workforce area.
- (d) These procedures shall include provisions that suspected fraud is reported to the Commission in accordance with Commission policies and procedures.
- (e) Upon review of suspected fraud reports, the Commission may either accept the case for investigation and action at the state level, or return the case to the Board or its child care contractor for action including, but not limited to, the following:
  - (1) further fact-finding; or
  - (2) other corrective action as provided in this chapter or as may be appropriate.

- (f) The Board shall ensure that a final fact-finding report is submitted to the Commission after a case is returned to the Board or its child care contractor and all feasible avenues of fact-finding and corrective actions have been exhausted.

*The provisions of this §809.111 adopted to be effective January 29, 2007, 32 TexReg 336; amended to be effective October 1, 2016, 41 TexReg 7529*

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**§809.112. Suspected Fraud.**

- (a) A parent, provider, or any other person in a position to commit fraud may be suspected of fraud if the person presents or causes to be presented to the Board or its child care contractor one or more of the following items:
  - (1) A request for reimbursement in excess of the amount charged by the provider for the child care; or
  - (2) A claim for child care services if evidence indicates that the person may have:
    - (A) known, or should have known, that child care services were not provided as claimed;
    - (B) known, or should have known, that information provided is false or fraudulent;
    - (C) received child care services during a period in which the parent or child was not eligible for services;
    - (D) known, or should have known, that child care subsidies were provided to a person not eligible to be a provider; or
    - (E) otherwise indicated that the person knew or should have known that the actions were in violation of this chapter or state or federal statute or regulations relating to child care services.
- (b) The following parental actions may be grounds for suspected fraud and cause for Boards to conduct fraud fact-finding or the Commission to initiate a fraud investigation:
  - (1) Not reporting or falsely reporting at initial eligibility or at eligibility redetermination:
    - (A) household composition, or income sources or amounts that would have resulted in ineligibility or a higher parent share of cost; or

- (B) work, training, or education hours that would have resulted in ineligibility; or
- (2) Not reporting during the 12-month eligibility period inclusive of the three-month initial job search period, if applicable:
  - (A) changes in income or household composition that would cause the family income to exceed 85 percent of SMI (taking into consideration fluctuations of income); or
  - (B) a permanent loss of job or cessation of training or education that exceeds three months; or
  - (C) improper or inaccurate reporting of attendance.

*The provisions of this §809.112 adopted to be effective January 29, 2007, 32 TexReg 336; amended to be effective October 1, 2016, 41 TexReg 7529; amended to be effective October 3, 2022, 47 TexReg 6437*

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**§809.113. Action to Prevent or Correct Suspected Fraud.**

- (a) The Commission or Board may take the following actions pursuant to Commission policy if the Commission or Board finds that a provider has committed fraud:
  - (1) Temporary withholding of payments to the provider for child care services delivered;
  - (2) Nonpayment of child care services delivered;
  - (3) Recoupment of funds from the provider;
  - (4) Stop authorizing care at the provider's facility or location;
  - (5) Prohibiting future eligibility to provide Commission-funded child care services; or
  - (6) Any other action consistent with the intent of the governing statutes or regulations to investigate, prevent, or stop suspected fraud.
- (b) The Commission or Board may take the following actions pursuant to Commission policy if the Commission or Board finds that a parent has committed fraud:
  - (1) recouping funds from the parent;

- (2) prohibiting future child care eligibility, provided that the prohibition does not result in a Choices or SNAP E&T participant becoming ineligible for child care;
- (3) limiting the enrollment of the parent's child to a regulated child care provider;
- (4) terminating care during the 12-month eligibility period if eligibility was determined using fraudulent information provided by the parent; or
- (5) any other action consistent with the intent of the governing statutes or regulations to investigate, prevent, or stop suspected fraud.

*The provisions of this §809.113 adopted to be effective January 29, 2007, 32 TexReg 336; amended to be effective January 8, 2013, 38 TexReg 155; amended to be effective October 1, 2016, 41 TexReg 7529*

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**§809.114. Failure to Comply with Commission Rules and Board Policies.**

- (a) The Board shall ensure that parents and providers comply with Commission rules.
- (b) The Commission, Board or Board's child care contractor may consider failure by a provider or parent to comply with this chapter as an act that may warrant corrective and adverse action as detailed in §809.115 (relating to Corrective Adverse Actions).
- (c) Failure by a provider or parent to comply with this chapter shall also be considered a breach of contract, which may also result in corrective action as detailed in this subchapter.

*The provisions of this §809.114 adopted to be effective January 29, 2007, 32 TexReg 336*

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**§809.115. Corrective Adverse Actions.**

- (a) When determining appropriate corrective actions, the Board or Board's child care contractor shall consider:
  - (1) the scope of the violation;
  - (2) the severity of the violation; and
  - (3) the compliance history of the person or entity.
- (b) Corrective actions for providers may include, but are not limited to, the following:

- (1) Closing intake;
  - (2) Moving children to another provider selected by the parent;
  - (3) Withholding provider payments or reimbursement of costs incurred; and
  - (4) Recoupment of funds.
- (c) When a provider violates a provision of Subchapter E of this chapter, a written Service Improvement Agreement may be negotiated between the provider and the Board or the Board's child care contractor. At the least, the Service Improvement Agreement shall include the following:
- (1) The basis for the Service Improvement Agreement;
  - (2) The steps required to reach compliance including, if applicable, technical assistance;
  - (3) The time limits for implementing the improvements; and
  - (4) The consequences of noncompliance with the Service Improvement Agreement.
- (d) The Board shall develop policies and procedures to ensure that the Board or the Board's child care contractor take corrective action consistent with subsections (a) - (c) of this section against a provider when a provider performs the attendance reporting function on behalf of a parent.
- (e) The Board shall develop policies and procedures to require the Board's child care contractor to take corrective action consistent with subsections (a) - (c) of this section against a parent when a parent violates the Commission rules and procedures related to attendance reporting.

*The provisions of this §809.115 adopted to be effective January 29, 2007, 32 TexReg 336; amended to be effective January 8, 2013, 38 TexReg 155; amended to be effective October 1, 2016, 41 TexReg 7529; amended to be effective October 3, 2022, 47 TexReg 6437*

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**§809.117. Recovery of Improper Payments to a Provider or Parent.**

- (a) A Board shall attempt recovery of all improper payments as defined in §809.2.
- (b) Recovery of improper payments shall be managed in accordance with Commission policies and procedures.

- (c) The provider shall repay improper payments for child care services received in the following circumstances:
  - (1) Instances involving fraud;
  - (2) Instances in which the provider did not meet the provider eligibility requirements in this chapter;
  - (3) Instances in which the provider was paid for the child care services from another source;
  - (4) Instances in which the provider did not deliver the child care services;
  - (5) Instances in which referred children have been moved from one facility to another without authorization from the child care contractor; and
  - (6) Other instances when repayment is deemed an appropriate action.
- (d) A parent shall repay improper payments for child care only in the following circumstances:
  - (1) Instances involving fraud as defined in this subchapter;
  - (2) Instances in which the parent has received child care services while awaiting an appeal and the determination is affirmed by the hearing officer; or
  - (3) Instances in which the parent fails to pay the parent share of cost and the Board's policy is to pay the provider for the parent's failure to pay the parent share of cost.
- (e) A Board shall ensure that a parent subject to the repayment provisions in subsection (d) of this section shall prohibit future child care eligibility until the repayment amount is recovered, provided that the prohibition does not result in a Choices or SNAP E&T participant becoming ineligible for child care.

*The provisions of this §809.117 adopted to be effective January 29, 2007, 32 TexReg 336; amended to be effective October 1, 2016, 41 TexReg 7529*

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## **SUBCHAPTER G. TEXAS RISING STAR PROGRAM**

### **§809.130. Short Title and Purpose.**

- (a) The rules contained in this subchapter may be cited as the Texas Rising Star Program

rules.

- (b) The purpose of the Texas Rising Star Program rules is to interpret and implement Texas Government Code §2308.3155, which requires the Commission to establish rules to administer the Texas Rising Star program, including guidelines for rating a child care provider for Texas Rising Star certification and designation of an Entry Level child care provider.
- (c) The Texas Rising Star Program rules identify the organizational structure and categories of, and the scoring factors that shall be included in, the Texas Rising Star guidelines.
- (d) The Texas Rising Star guidelines shall:
  - (1) describe measures for Texas Rising Star certification that contain, at a minimum, measures for child care providers regarding:
    - (A) director and staff qualifications and training;
    - (B) teacher-child interactions;
    - (C) program administration; and
    - (D) indoor/outdoor environments;
  - (2) specify measures that:
    - (A) must be met in order for a provider to be certified at each star level; and
    - (B) are observed and have points awarded through on-site assessments;
  - (3) specify the scoring methodology and scoring thresholds for each certified star level;
  - (4) describe the high and medium-high CCR deficiencies points threshold pursuant to §809.131 and §809.132 of this chapter; and
  - (5) the process for designating providers at the Entry Level.
- (e) The Texas Rising Star guidelines:
  - (1) shall be reviewed and updated by the Commission at a minimum of every four years in conjunction with the rule review of this chapter, conducted pursuant to Texas Government Code §2001.039 and the Texas Rising Star guidelines review shall:



- (A) consider input from stakeholders; and
- (B) include at least one public hearing held prior to submitting the stakeholder input to the Commission;
- (2) shall be adopted by the Commission subject to the requirements of the Texas Open Meetings Act; and
- (3) may be reviewed and amended as determined necessary by the Commission in accordance with the requirements of the Texas Open Meetings Act.

*The provisions of this §809.130 adopted to be effective February 16, 2015, 40 TexReg 708; amended to be effective March 14, 2016, 41 TexReg 1975; amended to be effective January 25, 2021, 46 TexReg 593; amended to be effective October 3, 2022, 47 TexReg 6437; amended to be effective July 29, 2024, 49 TexReg 5540*

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**§809.131. Requirements for the Texas Rising Star Program.**

- (a) A regulated child care provider is eligible for initial certification under the Texas Rising Star program if the provider has a current agreement to serve Commission-subsidized children and:
  - (1) has a permanent (nonexpiring) license or registration from CCR;
  - (2) has at least 12 months of licensing history with CCR and does not exceed the points threshold for high and medium-high CCR deficiencies within the most recent 6-month period as established in the Texas Rising Star guidelines pursuant to §809.130(d)(4), and is not on:
    - (A) corrective action with a Board pursuant to Subchapter F of this chapter;
    - (B) a "Notice of Freeze" with the Commission pursuant to Texas Labor Code, Chapter 213 (Enforcement of the Texas Unemployment Compensation Act) or Chapter 61 (Payment of Wages); or
    - (C) corrective or adverse action with CCR;
  - (3) meets the criteria for star-level certification in the Texas Rising Star guidelines pursuant to §809.130(d) of this subchapter; and
  - (4) has at minimum, a center director account registered in the Texas Early Childhood Professional Development System Workforce Registry; or
  - (5) is regulated by and in good standing with the United States Military.

- (b) Regulated child care providers not meeting the Texas Rising Star certification requirements described in this subchapter and established in the Texas Rising Star guidelines shall be initially designated as Entry Level if the child care provider:
  - (1) is not on corrective or adverse action with CCR; and
  - (2) does not exceed the points threshold for high and medium-high CCR deficiencies within the most recent 6-month period as established in the Texas Rising Star guidelines pursuant to §809.130(d)(4).
- (c) A provider initially meeting the requirements in subsection (b) of this section is eligible for mentoring services through the Texas Rising Star program during the time periods described in subsections (d) - (f) of this section.
- (d) A provider shall be initially designated as Entry Level for no more than 24 months unless approved for a waiver under subsection (f) of this section.
- (e) An Entry Level provider will be reviewed for Texas Rising Star certification no later than the end of the 12th month of the 24-month period. Beginning on the 18th month, an Entry Level provider will be reviewed monthly for Texas Rising Star certification, and if it is determined that they will not be eligible by the end of their 24-month timeframe based on the 6-month licensing review time period (as described in subsection (a)(2) of this section), the provider shall not receive referrals for new families as an Entry Level provider, unless the provider is located in a child care desert or serves an underserved population and is approved by the Agency to accept new family referrals.
- (f) The Agency may approve a waiver to extend the time limit under subsection (d) of this section if the provider is:
  - (1) located in a child care desert or serves an underserved population as determined by the Agency;
  - (2) unable to meet the certification requirements due to a federal or state declared emergency/disaster; or
  - (3) unable to meet the certification requirements due to conditions that the Agency determines are outside the provider's control.
- (g) Waivers approved under subsection (f) of this section shall not exceed a total of 36 months.

*The provisions of this §809.131 adopted to be effective February 16, 2015, 40 TexReg 708; amended to be effective January 8, 2019, 44 TexReg 114; amended to be effective January*

25, 2021, 46 TexReg 593; amended to be effective October 3, 2022, 47 TexReg 6437; amended to be effective July 29, 2024, 49 TexReg 5540

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**§809.132. Impacts on Texas Rising Star Certification.**

- (a) A Texas Rising Star-certified provider shall be placed on suspension status if the provider:
  - (1) is placed on corrective action with a Board pursuant to Subchapter F of this chapter;
  - (2) is under a "Notice of Freeze" with the Commission pursuant to Texas Labor Code, Chapter 213 (Enforcement of the Texas Unemployment Compensation Act) or Chapter 61 (Payment of Wages);
  - (3) is placed on corrective or adverse action by CCR
  - (4) exceeds the probationary status points threshold as described in the Texas Rising Star guidelines pursuant to §809.130(d)(4);
  - (5) had more than four probationary impacts during its three-year certification period;
  - (6) had a consecutive third probationary impact;
  - (7) is cited for specified CCR minimum standards regarding weapons and ammunition; or
  - (8) is not meeting at least the Two-Star level due to noncompliance with Texas Rising Star guidelines at the most recent assessment of certification.
  
- (b) Texas Rising Star-certified providers with any of the specified "star level drop" licensing deficiencies listed in the Texas Rising Star guidelines during the most recent 6-month CCR licensing history shall be placed on a six-month Texas Rising Star probationary period. Furthermore:
  - (1) reduction of one star level for each deficiency cited, so a Four-Star certified provider is reduced to a Three-Star provider, a Three-Star provider is reduced to a Two-Star provider, and a Two-Star provider is placed on suspension status; and/or
  - (2) if CCR does not cite any additional specified star-level drop deficiencies during the 6-month probationary period the provider shall be reinstated at the former star level.

- (c) Texas Rising Star-certified providers with any of the specified "probationary" licensing deficiencies listed in the Texas Rising Star guidelines during the most recent 6-month CCR licensing history shall be placed on a six-month Texas Rising Star probationary period. Furthermore:
  - (1) Texas Rising Star-certified providers on a six-month probationary period that are cited by CCR within the probationary period for any additional specified probationary deficiencies within the probationary period shall be placed on a second, consecutive probation and lose a star level, with a Two-Star certified provider being placed on suspension status;
  - (2) if CCR does not cite any additional specified probationary deficiencies during the probationary period, the provider can be removed from probation status and shall be reinstated at the former star level, if applicable; and
  - (3) if any additional specified probationary deficiencies are cited by CCR during the second six-month probationary period, the provider shall be placed on suspension status.
  
- (d) Texas Rising Star-certified providers whose total points for high or medium-high deficiencies received during the most recent 6-month CCR licensing history fall within the prescribed points threshold range as described in the Texas Rising Star guidelines pursuant to §809.130(d)(4), shall be placed on a six-month Texas Rising Star program probationary period. Furthermore:
  - (1) Texas Rising Star-certified providers on a six-month probationary period that are cited by CCR within the probationary period for any additional high or medium-high weighted deficiencies within the probationary period shall be placed on a second, consecutive probation and lose a star level, with a Two-Star certified provider being placed on suspension status;
  - (2) if CCR does not cite any additional high or medium-high weighted deficiencies during the probationary period, the provider can be removed from probation status and shall be reinstated at the former star level, if applicable; and
  - (3) if any additional high or medium-high weighted deficiencies are cited by CCR during the second six-month probationary period, the provider shall be placed on suspension status.
  
- (e) Certified providers in suspension status shall be eligible for a reassessment after six months following the suspension date, as long as no deficiencies described in subsections (b) - (c) of this section are cited during the previous six months.
  
- (f) Certified providers in suspension status shall achieve at least a Two-Star certification

no later than 15 months following the suspension date. Failure to achieve at least a Two-Star certification within the 15-month period will result in the provider's ineligibility to provide child care services under this chapter.

- (g) Certified providers on suspension status:
  - (1) shall be eligible to provide child care services under this chapter as long as the provider meets at least the Entry Level criteria described in §809.131(b) of this chapter;
  - (2) shall not be eligible for the enhanced payment rate and shall be paid at the Board's Entry Level rate; and
  - (3) shall not be able to receive referrals from a new family during the last six months of the 15-month period, unless the provider is located in a child care desert or serves an underserved population and is approved by the Agency to accept new family referrals.
  
- (h) Certified providers in suspension status that fail to achieve at least a Two-Star certification by the end the 15-month suspension period:
  - (1) are not eligible to provide child care services under this chapter;
  - (2) are not eligible for the Entry Level designation time frame described in §809.131(e) of this chapter;
  - (3) are not eligible for the extension waiver described in §809.131(f) of this chapter; and
  - (4) must subsequently meet at least a Two-Star certification eligibility and screening requirements to provide child care services under this subchapter.

*The provisions of this §809.132 adopted to be effective February 16, 2015, 40 TexReg 708; amended to be effective January 8, 2019, 44 TexReg 114; amended to be effective July 6, 2020, 45 TexReg 4528; amended to be effective January 25, 2021, 46 TexReg 593; amended to be effective October 3, 2022, 47 TexReg 6437; amended to be effective July 29, 2024, 49 TexReg 5540*

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**§809.133. Application and Assessments for Texas Rising Star Certification.**

- (a) Texas Rising Star certification applicants must complete:
  - (1) an orientation on the Texas Rising Star guidelines, including an overview of the:

- (A) Texas Rising Star program application process;
  - (B) Texas Rising Star program measures; and
  - (C) Texas Rising Star program assessment process;
- (2) the creation of a continuous quality improvement plan; and
  - (3) a Texas Rising Star program self-assessment tool.
- (b) The Agency's designated Texas Rising Star assessment entity shall ensure that:
- (1) written acknowledgment of receipt of the application and self-assessment is sent to the provider;
  - (2) within 20 days of receipt of the application, the provider is sent an estimated time frame for scheduling the initial assessment;
  - (3) an assessment is conducted for any provider that meets the eligibility requirements in §809.131 of this subchapter and requests certification under the Texas Rising Star program; and
  - (4) Texas Rising Star certification is granted for any provider that is assessed and verified as meeting the Texas Rising Star provider certification criteria set forth in the Texas Rising Star guidelines.
- (c) The Agency's designated Texas Rising Star assessment entity shall ensure that Texas Rising Star certification assessments are conducted as follows:
- (1) On-site assessment of 100 percent of the provider classrooms at the initial assessment for Texas Rising Star certification and at each scheduled recertification; and
  - (2) Recertification of all certified Texas Rising Star providers every three years.
- (d) The Agency's designated Texas Rising Star assessment entity shall ensure that certified Texas Rising Star providers are monitored on an annual basis and the monitoring includes:
- (1) at least one unannounced on-site visit; and
  - (2) a review of the provider's licensing compliance as described in §809.132 of this chapter.
- (e) The Agency's designated Texas Rising Star assessment entity shall ensure

compliance with the process and procedures in the Texas Rising Star guidelines for conducting assessments of nationally accredited child care facilities and child care facilities regulated by the United States Military.

- (f) The Agency's designated Texas Rising Star assessment entity shall ensure compliance with the process and procedures in the Texas Rising Star guidelines for conducting assessments of certified Texas Rising Star providers that have a change of ownership, move, or expand locations.
- (g) Boards shall ensure compliance with the process and procedures in the Texas Rising Star guidelines for implementing and supporting a continuous quality improvement framework.

*The provisions of this §809.133 adopted to be effective February 16, 2015, 40 TexReg 708; amended to be effective January 25, 2021, 46 TexReg 593; amended to be effective October 3, 2022, 47 TexReg 6437; amended to be effective July 29, 2024, 49 TexReg 5540*

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#### **§809.134. Minimum Qualifications for Texas Rising Star Staff.**

- (a) Boards and the Agency's designated Texas Rising Star assessment entity shall:
  - (1) conduct a background check on each Texas Rising Star staff member prior to hiring and again every five years; and
  - (2) ensure that each Texas Rising Star staff completes the Texas Rising Star standards training, as described in the Texas Rising Star guidelines.
- (b) Boards shall ensure that Texas Rising Star mentor staff meets the minimum requirements in subsections (c) - (f) of this section.
- (c) Texas Rising Star mentor staff shall meet the minimum education requirements as follows:
  - (1) Bachelor's degree from an accredited four-year college or university in early childhood education, child development, special education, child psychology, educational psychology, elementary education, or family consumer science;
  - (2) Bachelor's degree from an accredited four-year college or university with at least 18 credit hours in early childhood education, child development, special education, child psychology, educational psychology, elementary education, or family consumer science with at least 12 credit hours in child development; or
  - (3) Associate's degree in early childhood education, child development, special education, child psychology, educational psychology, elementary education, or

family consumer science, and two years of suitable experience in early childhood education as determined by the Board.

- (d) The Agency may grant a waiver of no more than two years to obtain the minimum education requirements in subsection (c) of this section if a Board can demonstrate that no applicants in its workforce area meet the minimum education requirements.
- (e) Texas Rising Star mentor staff shall meet the minimum work experience requirements of one year of full-time early childhood classroom experience in a child care, EHS, HS, or pre-K through third-grade school program.
- (f) All mentors must attain mentor microcredentialing, as described in the Texas Rising Star Guidelines.
- (g) The Agency's designated Texas Rising Star assessment entity shall ensure that Texas Rising Star assessor staff shall attain and maintain the Texas Rising Star Assessor Certification, as described in the Texas Rising Star Guidelines.

*The provisions of this §809.134 adopted to be effective February 16, 2015, 40 TexReg 708; amended to be effective January 8, 2019, 44 TexReg 114; amended to be effective January 25, 2021, 46 TexReg 593; amended to be effective October 3, 2022, 47 TexReg 6437; amended to be effective July 29, 2024, 49 TexReg 5540*

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#### **§809.135. Texas Rising Star Process for Reconsideration.**

The Agency's designated Texas Rising Star assessment entity shall ensure a process for reconsideration of facility assessment for Texas Rising Star certification. Texas Rising Star assessments are not subject to Chapter 823 of this title (relating to Integrated Complaints, Hearings, and Appeals).

*The provisions of this §809.135 adopted to be effective February 16, 2015, 40 TexReg 708; amended to be effective October 3, 2022, 47 TexReg 6437*

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#### **§809.136. Roles and Responsibilities of Texas Rising Star Staff.**

Boards and the Agency's designated Texas Rising Star assessment entity shall ensure that Texas Rising Star staff members comply with their assigned responsibilities, as applicable.

- (1) A mentor is defined as a Board or Board contract staff member who helps providers obtain, maintain, or achieve higher star levels of certification.



- (2) An assessor is defined as a staff member or contractor of the Agency's designated Texas Rising Star assessment entity who assesses and monitors providers that obtain, maintain, and achieve higher levels of quality.
- (3) Texas Rising Star staff members are required to complete annual professional development and continuing education consistent with the Texas Rising Star annual minimum training hours requirement for a Texas Rising Star-certified child care center director.
- (4) Pursuant to Texas Family Code §261.101, Texas Rising Star staff members are mandated reporters when observing serious incidents as described in the Texas Rising Star guidelines.

*The provisions of this §809.136 adopted to be effective January 25, 2021, 46 TexReg 593; amended to be effective October 3, 2022, 47 TexReg 6437; amended to be effective July 29, 2024, 49 TexReg 5540*

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