

1 **CHAPTER 811. CHOICES**

2  
3 **ADOPTED RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS***  
4 ***REGISTER*. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS**  
5 **SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE *TEXAS REGISTER*.**

6  
7 **ON *DECEMBER 18, 2012*, THE TEXAS WORKFORCE COMMISSION ADOPTED THE**  
8 **BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.**

9  
10 Estimated date of publication in the *Texas Register*: **January 4, 2013**  
11 The rules will take effect: **January 8, 2013**

12  
13 The Texas Workforce Commission (Commission) adopts the following new sections to Chapter  
14 811, relating to Choices, *without* changes, as published in the August 31, 2012, issue of the  
15 *Texas Register* (37 TexReg 6889):

- 16 Subchapter C. Choices Services, §811.25
- 17 Subchapter D. Choices Activities, §811.41 and §811.52

18  
19  
20 The Commission adopts amendments to the following sections of Chapter 811, relating to  
21 Choices, *without* changes, as published in the August 31, 2012, issue of the *Texas Register* (37  
22 TexReg 6889):

- 23 Subchapter A. General Provisions, §§811.1, 811.2, 811.4, 811.5
- 24 Subchapter B. Choices Services Responsibilities, §§811.11 and 811.13 - 811.15
- 25 Subchapter C. Choices Services, §§811.23, 811.29, 811.32, and 811.34
- 26 Subchapter D. Choices Activities, §§811.42 - 811.44, 811.50, and 811.51
- 27 Subchapter E. Support Services and Other Initiatives, §811.61

28  
29  
30 The Commission adopts amendments to the following section of Chapter 811, relating to  
31 Choices, *with* changes, as published in the August 31, 2012, issue of the *Texas Register* (37  
32 TexReg 6889):

- 33 Subchapter C. Choices Services, §811.31

34  
35  
36 The Commission adopts the repeal of the following sections of Chapter 811, relating to Choices,  
37 *without* changes, as published in the August 31, 2012, issue of the *Texas Register* (37 TexReg  
38 6889):

- 39 Subchapter C. Choices Services, §§811.25 - 811.28 and 811.33
- 40 Subchapter D. Choices Activities, §§811.41, 811.45, 811.46, 811.48, and 811.49

41  
42  
43 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**  
44 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND**  
45 **RESPONSES**

1  
2 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

3 The purpose of the adopted Chapter 811 rule change is to:

- 4 --streamline Choices services to promote employment at the earliest opportunity;
- 5 --focus resources on outcome-based performance measures, such as entered employment,
- 6 employment retention, and earnings gains, which better reflect the success of the program; and
- 7 --incorporate technical changes for clarification and consistency throughout the chapter.

8  
9 The Deficit Reduction Act of 2005 (Public Law 109-171) reauthorized the Temporary Assistance  
10 for Needy Families (TANF) program and instituted several changes. One change dramatically  
11 altered the level of documentation and verification of all reportable activities, particularly job  
12 search and job readiness. The federal performance measure for TANF has always been process-  
13 driven, focusing on an individual's number of participation hours in a countable activity. Under  
14 45 Code of Federal Regulations (CFR) §261.10, a parent or caretaker receiving TANF benefits  
15 must engage in work when the state has determined that the individual is ready or after receipt of  
16 24 months of TANF benefits. However, §261.10 also allows states the flexibility to define what  
17 it means to engage in work, which can include participation in work activities as outlined in  
18 Social Security Act §407.

19  
20 The Commission is proposing new program parameters and a state service delivery design to  
21 give Boards the flexibility to design and deliver services that assist Choices customers in  
22 entering employment quickly by concentrating resources on the outcome-focused performance  
23 measures of entered employment, employment retention, and earnings gains.

24  
25 Board performance measures are being redesigned to ensure that the state is on target to meet  
26 federal performance measures. Statistical models have shown Texas is on track to meet its  
27 federal obligations using these new outcome-focused measures.

28  
29 For purposes of the work participation rate, Texas defines "work requirement" to mean that a  
30 Choices participant is considered engaged in work by participating in:

- 31 --unsubsidized employment;
- 32 --subsidized employment;
- 33 --on-the-job training (OJT); or
- 34 --educational services for Choices participants who are teen heads of household and have not  
35 completed secondary school or received a GED credential.

36  
37 All other Choices services remain intact and available for Boards to use in assisting Choices  
38 customers with gaining employment. However, these services are not counted toward the work  
39 participation rate. For purposes of determining program performance, Boards will have six  
40 weeks from the initial date that a Choices eligible begins receiving TANF benefits in which to  
41 work with the individual before participation requirements are expected through unsubsidized  
42 employment, subsidized employment, OJT, or educational services in the case of Choices  
43 eligibles who are teen heads of household and have not completed secondary school or received  
44 a GED credential.

1 However, it should be noted that engagement of Choices customers begins with the Workforce  
2 Orientation for Applicants (WOA), which occurs prior to TANF certification. At the WOA,  
3 individuals have the opportunity to take advantage of Workforce Solutions Office resources.  
4 Boards will not be limited in the provision of other activities, such as job search. For example, if  
5 a customer requires job search for more than six weeks in a year, Boards will have the flexibility  
6 to provide such services, which will not be counted toward the federal participation  
7 requirements.

8  
9 The intent of the Commission's outcome-driven paradigm shift and strategy is to promote long-  
10 term employment and independence from public assistance, and focus on helping Choices  
11 participants gain employment, then gain better employment, and, finally, retain employment.

## 12 13 14 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND** 15 **RESPONSES**

16 (Note: Minor editorial changes are made that do not change the meaning of the rules and,  
17 therefore, are not discussed in the Explanation of Individual Provisions.)

### 18 19 **SUBCHAPTER A. GENERAL PROVISIONS**

20 **The Commission adopts the following amendments to Subchapter A:**

#### 21 22 **§811.1. Purpose and Goal**

23 Section 811.1(c) adds the TANF Work Verification Plan as an additional source of guidance for  
24 the Choices program.

25  
26 Section 811.1(d) adds the TANF Work Verification Plan as an additional source of guidance for  
27 the Choices program.

28  
29 **Comment:** One commenter noted, in a public information request dated October 2, 2012,  
30 that the Commission admitted that it does not have a measure entitled "self-sufficiency  
31 through employment" and that this is a fundamental lack of information. The commenter  
32 pointed out that the Commission emphasizes self-sufficiency through employment in the  
33 Choices Guide, section B-306, which refers to a family employment plan (FEP) meant to  
34 "help individuals reach the goal of self-sufficiency through employment," and section B-307  
35 indicates that Boards must "ensure that FEPs include ... the goal of self-sufficiency through  
36 employment..."

37  
38 The commenter emphasized that having the stated goal of "self-sufficiency through  
39 employment" without a specific measure is an unrealistic goal. The commenter argued that it  
40 is not prudent to implement the new Chapter 811 rules until a specific statewide measure for  
41 self-sufficiency through employment is fully developed with input from members of the  
42 public.

43  
44 **Response:** The Commission notes that all states are bound by federal regulations at 45 CFR  
45 Parts 261, 262, 263, and 265. These rules outline work participation rate expectations for all  
46 states. The Administration for Children and Families (ACF) does not have the administrative

1 discretion to replace these expectations with alternative measures of program success,  
2 including measures related to poverty. The TANF Final Rules emphasize sufficient  
3 employment to end a family's dependence on public assistance.  
4

5 The Commission believes that measuring a Board's success on the rates of unsubsidized  
6 employment, on-the-job training, subsidized employment, and keeping teens enrolled in high  
7 school or a GED program, will allow Boards to refocus their resources to assist Choices  
8 participants to be "work-ready" and promptly enter into these employment activities and thus  
9 end their dependence on public assistance.  
10

11 Additionally, every year the Texas Workforce Investment Council conducts an analysis of  
12 public benefits and produces a wage and benefit chart demonstrating that individuals who  
13 obtain employment even at the minimum-wage level fare better overall than individuals who  
14 receive only public benefits.  
15

### 16 **§811.2. Definitions**

17 New §811.2(4) defines the term "community service" as a program that provides employment  
18 and training activities to Choices participants through unsalaried, work-based positions in the  
19 public or private nonprofit sectors. Community service programs contain structured, supervised  
20 activities that are a direct benefit to the community and are designed to improve the  
21 employability of Choices participants who have been unable to find employment.  
22

23 Section 811.2(5) amends the definition of "conditional applicant" by requiring that an adult or  
24 teen head of household who left TANF in a sanctioned status, but who is reapplying for TANF  
25 assistance, "must demonstrate cooperation with Choices program requirements for four  
26 consecutive weeks."  
27

28 New §811.2(7) defines the term "Employment Planning Session (EPS)" as a meeting with a  
29 TANF recipient to introduce Choices services.  
30

31 New §811.2(11) defines the term "job readiness" as short-term structured activities or a series of  
32 activities lasting less than six months designed to prepare a job seeker for unsubsidized  
33 employment and increase the job seeker's employability. Activities may include, but are not  
34 limited to: interviewing skills, job retention skills, personal maintenance skills, professional  
35 conduct skills, and introductory computer skills.  
36

37 New §811.2(12) defines the term "job search" as acts of seeking or obtaining employment, or  
38 preparing to seek or obtain employment, including life skills training, substance abuse treatment,  
39 mental health treatment, or rehabilitation activities. Activities may include: information on and  
40 referral to available jobs; occupational exploration, including information on local emerging and  
41 demand occupations; job fairs; applying or interviewing for job vacancies; and contacting  
42 potential employers.  
43

44 New §811.2(13) defines the term "job skills" as training or education for job skills required by an  
45 employer to provide a Choices participant with the ability to obtain employment or to advance or  
46 adapt to the changing demands of the workplace.

1  
2 New §811.2(20) defines "The Workforce Information System of Texas (TWIST)" as the  
3 Agency's automated data processing and case management system for the Texas workforce  
4 system.

5  
6 New §811.2(21) defines the term "vocational educational training" as organized educational  
7 programs directly related to preparing Choices participants for employment in current or  
8 emerging occupations.

9  
10 New §811.2(24) defines the term "work experience" as unpaid training in the public or private  
11 sector designed to improve the employability of Choices participants who have been unable to  
12 find employment.

13  
14 Section 811.2(26) amends the definition of "work requirement" by specifying that a Choices  
15 participant is deemed to be engaged in work by participating in:

- 16 (A) unsubsidized employment;  
17 (B) subsidized employment;  
18 (C) OJT; or  
19 (D) educational services for Choices participants who have not completed secondary school or  
20 received a GED credential as provided in §811.30.

21  
22 This change is made strictly for the purposes of determining the federal work participation rate  
23 and is not for determining if a Choices participant is meeting participation requirements.

24  
25 Certain paragraphs in this section have been renumbered to reflect additions or deletions.

26  
27 **Comment:** Regarding §811.2(5), the definition of conditional applicant, one commenter  
28 asked if a Choices customer can demonstrate cooperation based on the weeks of completed  
29 activity or does he or she have to meet the Choices program monthly participation  
30 requirements.

31  
32 **Response:** The Commission amended the definition of conditional applicant to specify that  
33 the conditional applicant must demonstrate cooperation with the Choices program  
34 requirements, which include participation requirements for four consecutive weeks as a  
35 condition of TANF eligibility after being sanctioned for noncompliance with this chapter.  
36 Good cause can be used if conditional applicants are unable to meet their participation  
37 requirements.

38  
39 **Comment:** Regarding §811.2(11), the definition of job readiness, one commenter suggested  
40 that the Commission add "personal financial literacy" and "budgeting" to this definition. The  
41 commenter stated that this will ensure that Choices participants have the tools and skills they  
42 need to manage their personal finances.

43  
44 The commenter also suggested adding information about careers and industry-recognized  
45 credentials to the definition because Choices participants should have the knowledge and  
46 understanding of the skills and credentials they need to put them on a path to a career.

1  
2 **Response:** The Commission agrees that budgeting and personal financial literacy are  
3 valuable tools for Choices participants to help end their need for public assistance. Although  
4 not explicitly stated in the Choices rules, the Commission has emphasized the importance of  
5 this need to Boards in several directives, including WD Letter 60-05, entitled "Implementation of  
6 Financial Literacy Training in Workforce Development Services," issued October 28, 2005.  
7 Additionally, Texas Labor Code §302.0027 requires the Agency and Boards to ensure that all  
8 workforce development programs include financial literacy training.  
9

10 The Commission believes that the FEP is the opportunity to discuss the goals of a path  
11 toward self-sufficiency through employment that meets the needs of the local labor market.  
12 It is important for FEP development to include a discussion about balancing the current skills  
13 of the Choices participant; opportunities in high-growth, high-demand areas; the needs of the  
14 local labor market; and reasonable time-limited steps that the participant and the Board can  
15 take to reach the FEP goals. Additionally, Chapter 801, the Commission's Local Workforce  
16 Development Boards rules, mandate Boards to identify local industry and local labor market  
17 needs and to develop strategies to meet those needs. This includes the identification of  
18 credentials needed to meet the needs of the local labor market.  
19

20 Additionally, the Choices rules currently require Boards to ensure their Choices service  
21 delivery design includes a labor market analysis to identify employment opportunities that  
22 include a potential for career advancement for Choices participants.  
23

24 **Comment:** Regarding §811.2(12), the definition of job search, one commenter suggested that  
25 the Commission add "personal financial literacy" and "budgeting" to the definition. The  
26 commenter further states that Choices participants should have the knowledge and  
27 understanding of the skills and credentials they need to put them on a path to a career.  
28

29 **Response:** The Commission agrees that budgeting and personal financial literacy are  
30 valuable tools for Choices participants to help end their need for public assistance. Although  
31 not stated explicitly in the Choices rules, the Commission has emphasized the importance of  
32 this need to Boards in several directives, including WD Letter 60-05, entitled  
33 "Implementation of Financial Literacy Training in Workforce Development Services," issued  
34 October 28, 2005. Additionally, Texas Labor Code §302.0027 requires the Agency and  
35 Boards to ensure that all workforce development programs include financial literacy training.  
36

37 Additionally, the Commission believes that the FEP is the opportunity to discuss the goals of  
38 a path toward self-sufficiency through employment that meets the needs of the local labor  
39 market. It is important for FEP development to include a discussion about balancing the  
40 current skills of the Choices participant; opportunities in high-growth, high-demand areas;  
41 the needs of the local labor market; and reasonable time-limited steps that the participant and  
42 the Board can take to reach the FEP goals. Additionally, Chapter 801, the Commission's  
43 Local Workforce Development Boards rules, mandates Boards to identify local industry and  
44 local labor market needs and to develop strategies to meet those needs. This includes the  
45 identification of credentials needed to meet the needs of the local labor market.  
46

1 The Choices rules currently require Boards to ensure their Choices service delivery design  
2 includes a labor market analysis to identify employment opportunities that include a potential  
3 for career advancement for Choices participants.

4  
5 Furthermore, the Commission now gives Boards the most flexibility to address skill deficits  
6 by removing all restrictions and limitations on the following activities:

7 --Job search and job readiness assistance

8 --Community service

9 --Work experience

10 --Vocational educational training

11 --Job skills training

12 --Postemployment services, as set forth in §811.51

13  
14 **Comment:** Regarding §811.2(21), the definition of vocational educational training, one  
15 commenter suggested that the Commission add a reference that states vocational educational  
16 training includes training that leads to an industry-recognized credential or certificate to  
17 further promote career pathways for Choices participants.

18  
19 **Response:** The Commission agrees that promoting industry-recognized credentials or  
20 certificates are valuable to the Choices job seeker and to local industry. However, the  
21 Commission points out that the suggested language is addressed in several other sections of  
22 Chapter 811 as well as in Chapters 803 and 835, the Commission's Skills Development Fund  
23 rules and Self-Sufficiency Fund rules, respectively. Further, it is important for FEP  
24 development to include a discussion about balancing the current skills of the Choices  
25 participant; opportunities in high-growth, high-demand areas; the needs of the local labor  
26 market; and reasonable time-limited steps that the participant and the Board can take to reach  
27 the FEP goals. This includes available vocational educational training that may lead to an  
28 industry-recognized credential or certificate.

29  
30 **Comment:** Regarding §811.2(26), the definition of "work requirement," one commenter  
31 expressed concern about the change in the definition regarding the limited number of hours  
32 in some employment activities due to part-time employment. The commenter stated that  
33 Choices customers are missing required participation hours in employment activity by just a  
34 few hours, but this is no reflection on the customer, but rather due to unavoidable changes in  
35 the employers' schedules. The commenter suggested that there should be an allowance to  
36 count a limited number of verified job search hours toward unsubsidized employment, which  
37 would positively affect the work participation measure and would not reflect on LBB-  
38 reported performance.

39  
40 **Response:** The Commission recognizes the challenges in finding some Choices participants  
41 full-time unsubsidized employment. However, the Commission believes that giving partial  
42 credit for verified "job search" activities toward the proposed outcome-focused work  
43 participation measures is regressive.

44  
45 The recently adopted interim performance measure, Choices Partial Work Rate, provides  
46 Boards the opportunity to identify those customers who are lacking full participation through

1 employment and gives Boards the tools and time to engage and link Choices participants to  
2 long-term, full-time employment with the intended outcome of being independent of public  
3 assistance. The removal of any restrictions regarding the use of all other Choices activities  
4 can be used to engage those Choices participants who are not in full-time unsubsidized  
5 employment through no fault of their own. The proposed outcome-focused measures are  
6 intended to align with full engagement in employment--one of the stated goals of the Choices  
7 program.  
8

9 **§811.4. Policies, Memoranda of Understanding, and Procedures**

10 Section 811.4(a)(2) requires Boards to adopt policies regarding limits on the amount of funds per  
11 Choices participant and the maximum duration of subsidized employment and OJT placements.  
12 This change is made to align with Workforce Investment Act policy, which imposes a limit on  
13 the duration and amount of funds provided.  
14

15 **§811.5. Documentation, Verification, and Supervision of Work Activities**

16 Section 811.5(c):

17 --removes the term "paid" from work activities to align with the changes in Choices work  
18 activities;

19 --removes the requirement that "If participation is projected as described in §811.34(3), current  
20 and verified participation must be documented in TWIST at least every six months." ACF issued  
21 guidance requiring a recalculation of average weekly projected hours of employment each time  
22 new information was received showing a change in a Choices participant's actual hours. The  
23 Commission believes that ACF's guidance negates the benefits of projecting hours, thus  
24 projection of hours was not implemented; and

25 --adds a reference to §811.50, a Choices work activity.  
26

27 Section 811.5(d) is removed. With the Commission's focus on outcome-based performance  
28 measures, only data entry of the Choices work activities set forth in §811.5(c) is required.  
29

30 New §811.5(d) states that for educational services for teen heads of households who have not  
31 completed secondary school or received a GED credential, Boards shall ensure that:

32 (1) good or satisfactory progress, as determined by the educational institution, is verified and  
33 documented in TWIST at least monthly;

34 (2) all participation is supervised daily; and

35 (3) all participation is verified and documented in TWIST at least monthly.  
36

37 Section 811.5(e) is removed. The limitations relating to unpaid activities no longer apply.  
38

39 **Comment:** Regarding revised §811.5(c), one commenter asked that since the projection of  
40 hours is no longer acceptable, how staff should handle the issue of keying in work hours in  
41 TWIST for Choices participants who are paid biweekly or on a monthly basis when it is the  
42 last day (deadline) for data entry. Another commenter stated that since performance will be  
43 based exclusively on participation hours in the three employment activities as well as the  
44 education component, Boards need the ability to project participation hours of the  
45 employment activities the last week of the month based upon previous paycheck stubs/  
46 payroll documents. The commenter added that employers have different payday schedules



1 that do not always coincide with the month-end data entry deadline and many Choices  
2 participants have part-time employment, which further complicates their actual pay date.  
3 Sometimes support documentation such as paystubs are not available until the following  
4 month. The commenter proposed that projected hours could be entered with a specific code  
5 in the daily time-tracking verification screen in TWIST that will immediately identify those  
6 hours as projected. Once actual verification documents have been received, the entry would  
7 be changed to reflect verification. This would enable Boards and Agency staff to monitor the  
8 entry of projected hours and ensure verification is received within two weeks of month end,  
9 and if needed, changed to reflect actual hours worked.

10  
11 **Response:** The Commission points out that the projection of hours was never implemented or  
12 allowed because ACF issued guidance requiring a recalculation of average weekly projected  
13 hours of employment each time new information was received that showed a Choices  
14 participant's actual hours had changed. The Commission believes that ACF's guidance  
15 negates the benefits of projecting hours, thus projection of hours was not implemented.

16  
17 While Boards can enter participation hours as they occur in TWIST, only verified  
18 participation hours count toward Choices participation when entered by the last day deadline  
19 for data entry. Boards have several opportunities to enter verified participation hours when  
20 participants are hindered from providing timely and acceptable documentation. WD Letter  
21 32-12, issued October 3, 2012, and entitled "Workforce Automated Systems' Data Entry  
22 Deadlines for Board Contract Year 2013" sets out the deadlines for Boards to receive credit  
23 for participants' verified hours in their end-of-year performance measure. The TANF Work  
24 Verification Plan lists acceptable alternative forms of documentation, other than pay stubs,  
25 that can be used to verify participation hours.

26  
27 **Comment:** Regarding §811.5(d), one commenter recommended that all educational services  
28 be open to all Choices participants, especially high school graduates of all ages who lack in-  
29 demand skills or an industry-recognized credential.

30  
31 **Response:** The Commission clarifies that the requirement that Boards supervise, on a daily  
32 basis, the participation in educational activities of Choices participants who have not attained  
33 a GED or high school diploma is a federal requirement. The federal requirement in 45 CFR  
34 §261.2(k) states that "Education directly related to employment, in the case of a recipient  
35 who has not received a high school diploma or a certificate of high school equivalency means  
36 education related to a specific occupation, job, or job offer. Education directly related to  
37 employment must be supervised on an ongoing basis no less frequently than once each day in  
38 which the work eligible individual is scheduled to participate."

39  
40 The daily supervision requirement does require face-to-face contact. Daily supervision can  
41 be accomplished by the workforce service provider or the provider's designated  
42 representative (e.g., a teacher, counselor, vice principal). Daily supervision means that case  
43 managers are accessible daily for Choices participants to discuss progress and obtain  
44 additional guidance; it does not mean daily contact with all Choices participants.

1 **Comment:** Regarding the removal of §811.5(e), one commenter requested that the  
2 Commission retain this section and allow for homework to be credited as a part of the 30  
3 hours a week of work participation required. The commenter further stated that participants  
4 should continue to have the flexibility to count unpaid activities, such as homework, toward  
5 their 30-hour work participation requirement. The commenter also stated that removing this  
6 provision will place an undue burden on participants, especially for those single parents with  
7 additional family obligations.

8  
9 **Response:** The Commission believes a high school diploma or GED is the foundation for  
10 further training and education. Therefore, under §811.2(26), the amended definition of work  
11 requirement, educational services for teen heads of households in high school or a GED  
12 program are considered to be meeting the work requirements for teen heads of households  
13 still in school. Under current §811.30, teen heads of households are considered to be meeting  
14 their work requirement if they are satisfactorily enrolled in educational activities, which  
15 means that teen heads of households in high school or a GED program who demonstrate  
16 acceptable progress will be given full credit as if meeting work or Choices program  
17 requirements. Therefore, under the provisions of §811.2(26) and §811.30, the allowance for  
18 homework is no longer necessary.

19  
20 For non-teens who have not completed a high school diploma or GED, as stated in §811.52  
21 Other Choices Activities, Boards may provide without restriction, Adult Basic Education or  
22 vocational education if the activities are reasonably expected to assist Choices participants in  
23 obtaining and retaining employment.

## 24 25 26 **SUBCHAPTER B. CHOICES SERVICES RESPONSIBILITIES**

### 27 **The Commission adopts the following amendments to Subchapter B:**

#### 28 29 **§811.11. Board Responsibilities**

30 Section 811.11(f) replaces the reference to "work" requirement with "Choices program  
31 requirements" to indicate that monitoring of Choices participants is ongoing and frequent as  
32 determined by the Board.

33  
34 Section 811.11(f)(2) requires that tracking and reporting of all support services shall be entered  
35 into TWIST at least monthly. This clarification is added to emphasize the expectation that the  
36 provision of support services to participants be documented in TWIST.

37  
38 Section 811.11(f)(3) specifies that tracking and reporting actual hours of participation is "in  
39 Choices work activities."

40  
41 Section 811.11(f)(4) replaces the reference to "work" requirements with "Choices program  
42 requirements" to indicate that determining and arranging for any intervention needed to assist the  
43 Choices participant in complying with Choices program requirements as expected.

44  
45 Section 811.11(f)(6) is removed. With the focus on four work activities, Workforce Solutions  
46 Office staff time is better spent assisting Choices participants in obtaining employment quickly

1 rather than monitoring all other Choices activities. In addition, the requirement is duplicative of  
2 monitoring the Choices participants' progression toward achieving the goals and objectives of  
3 their FEP.

4  
5 **Comment:** Regarding §811.11(f), one commenter recommended that the outcome-based  
6 performance measures be a reporting requirement for Boards, including reporting on the  
7 number who have entered employment, obtained credentials, retained employment, and have  
8 earnings gains. The commenter also stated that these measures will better reflect the success  
9 of the program.

10  
11 **Response:** The Commission agrees that outcome-based reporting requirements are a better  
12 measure of Choices participants' success and that of our workforce partners, which is why the  
13 Commission collects such information under common measures reporting. Under this  
14 rulemaking, the Commission sets forth new program parameters and a state service delivery  
15 design that gives Boards the flexibility to design and deliver services that assist Choices  
16 customers in entering employment quickly by concentrating resources on the outcome-  
17 focused performance measures of entered employment, employment retention, and earnings  
18 gains.

19  
20 **§811.13. Responsibilities of Choices Participants**

21 Section 811.13(c)(1) updates the references to align with new §811.25(a) - (c).

22  
23 Section 811.13(c)(2) is removed. With the new specification that work activities include only  
24 unsubsidized employment, subsidized employment, OJT, and educational services for Choices  
25 participants who have not completed secondary school or received a GED as specified in  
26 §811.50, the reference to core and non-core hours no longer applies.

27  
28 Section 811.13(d)(1) updates the references to align with new §811.25(a).

29  
30 Section 811.13(d)(2) is removed. With the Commission's emphasis on four employment  
31 activities, the references to core and non-core activities no longer apply.

32  
33 Certain paragraphs in §811.13 have been renumbered to accommodate additions or deletions.

34  
35 **§811.14. Noncooperation**

36 Section 811.14(a)(1) replaces the reference to "work" requirements with the term "Choices  
37 program requirements" to clarify that the FEP, as provided in §811.23, includes all Choices  
38 activities and is not limited to the four employment activities.

39  
40 Section 811.14(b) replaces the reference to "work" requirements with the term "Choices program  
41 requirements" to clarify that failure to comply without good cause with all activities provided in  
42 the FEP is subject to a penalty or termination of support services.

43  
44 Section 811.14(e) specifies that a Board shall ensure reasonable attempts to contact a mandatory  
45 Choices participant are documented "in TWIST." The change is made to emphasize the  
46 expectation that all contacts regarding noncooperation must be documented in TWIST.

1  
2 Section 811.14(f)(1) replaces the term "work requirement" with the term "Choices program  
3 requirements" to clarify that HHSC is notified of a mandatory Choices participant's failure to  
4 comply with Choices program requirements.

5  
6 **§811.15. Demonstrated Cooperation**

7 Section 811.15(a) states that conditional applicants are required to demonstrate four consecutive  
8 weeks of cooperation to be eligible for TANF cash assistance. The term "reinstatement of" is  
9 removed to clarify that if a conditional applicant left TANF in a sanction status, the individual  
10 must demonstrate cooperation in order to be reconsidered for eligibility for TANF cash  
11 assistance.

12  
13 Section 811.15(b) clarifies that sanctioned families are required to demonstrate one month of  
14 cooperation "to reinstate" TANF cash assistance. This change is made because by definition  
15 sanctioned families have not yet been denied TANF cash assistance and must demonstrate  
16 cooperation in the second month in order to continue receiving TANF cash assistance.

17  
18 Section 811.15(c)(1) replaces the reference to "work" requirements with the term "Choices  
19 program" requirements to clarify that a sanctioned family's demonstrated cooperation can be in  
20 all Choices activities and is not limited to the four employment activities.

21  
22 Section 811.15(c)(2) replaces the reference to "work" requirements with the term "Choices  
23 program" requirements to clarify that conditional applicants' demonstrated cooperation can be in  
24 all Choices activities and is not limited to the four employment activities.

25  
26 **SUBCHAPTER C. CHOICES SERVICES**

27 **The Commission adopts the following amendments to Subchapter C:**

28  
29 **§811.23. Family Employment Plan**

30 Section 811.23(d)(5) replaces the reference to "work" requirements with the term "Choices  
31 program" requirements to clarify that all Choices activities are included in the FEP and are not  
32 limited to the four employment activities.

33  
34 Section 811.23(e) clarifies that the FEP must be "regularly" evaluated and modified as  
35 appropriate to meet "job seeker and" employer needs in the local labor market. This change  
36 emphasizes that the FEP is a living document, not just a compliance document, and it must be  
37 regularly evaluated to guide both the job seeker and Workforce Solutions Office staff toward  
38 mutually agreed goals.

39  
40 **§811.25. TANF Core and TANF Non-Core Activities**

41 Section 811.25 is repealed. With the emphasis on the four work activities, the references to core  
42 and non-core activities no longer apply.

43  
44 **Comment:** Regarding §811.25, one commenter stated that past requirements for participation  
45 were 20 hours core for single parents, 30 hours core for two-parent families not receiving  
46 child care, and 50 hours core for those that receive child care. The commenter stated that if

1 requirements for the unsubsidized employment participation rate followed this rule, then the  
2 overall participation would be greater. The commenter surmised these lower participation  
3 expectations for unsubsidized employment would allow Boards to continue to provide  
4 services and skills training that would enhance customers' ability to obtain full-time  
5 employment to ensure an end result of a 40-hour workweek in a substantial employment  
6 position to ensure self-sufficiency.  
7

8 **Response:** The Commission clarifies that the 30-, 35-, and 55-hour work requirements are  
9 federal mandates. However, states have the flexibility to define "engaged in work." Under  
10 §811.2(26), the Commission's amended definition of "work requirement," a Choices  
11 participant is engaged in work when he or she participates in the more outcome-focused  
12 measures of unsubsidized employment, subsidized employment, OJT, or educational services  
13 for Choices participants who are teen heads of household and have not completed secondary  
14 school or received a GED credential.  
15

16 The amended definition of "work requirement" and the elimination of the restrictions on the  
17 use of any of the remaining activities set forth in Social Security Act §407, render the  
18 references to core versus non-core unnecessary.  
19

#### 20 **§811.25. TANF Participation Requirements**

21 New §811.25(a) requires Choices participants in a single-parent family to participate for at least  
22 a minimum weekly average of 30 hours.  
23

24 New §811.25(b) requires Choices participants in two-parent families who are not receiving  
25 Commission-funded child care to have one or both adults in the family participate for at least a  
26 minimum weekly average of 35 hours.  
27

28 New §811.25(c) requires Choices participants in two-parent families who are receiving  
29 Commission-funded child care to have one or both adults in the family participate for at least a  
30 minimum weekly average of 55 hours.  
31

32 **Comment:** Regarding §811.25(a), one commenter recommended that the Commission allows  
33 Boards the flexibility to require fewer than 30 hours per week when appropriate for family  
34 circumstances, such as a documented family illness.  
35

36 **Response:** The Commission notes that the TANF federal regulations at 45 CFR, Part 261,  
37 specifies that a single custodial parent with a child younger than six can participate for at  
38 least an average of 20 hours a week and all others can participate for at least an average of 30  
39 hours a week to count in the overall participation rate.  
40

41 The Commission agrees that some family circumstances merit a good cause reason that  
42 allows for reduced participation hours as documented by medical necessity; Boards currently  
43 have the ability to grant good cause, as specified in §811.16, Good Cause for Choices  
44 Participants.  
45  
46

1 **§811.26. Special Provisions Regarding Community Service**

2 Section 811.26 is repealed. With the change to counting only the four work activities in the  
3 work participation rate as specified in new §811.41(a), the provisions regarding community  
4 service no longer apply.

5  
6 **§811.27. Special Provisions Regarding Job Search and Job Readiness**

7 Section 811.27 is repealed. With the change to counting only the four work activities in the  
8 work participation rate as specified in new §811.41(a), the limitations on job search and job  
9 readiness no longer apply.

10  
11 **§811.28. Special Provisions Regarding Vocational Educational Training and Educational**  
12 **Services**

13 Section 811.28 is repealed. With the change to counting only the four work activities in the  
14 work participation rate as specified in new §811.41(a), the limitations regarding vocational  
15 educational training and education services no longer apply.

16  
17 **§811.29. Special Provisions Regarding the Fair Labor Standards Act**

18 Section 811.29(a)(1) removes the term "Food Stamp" benefits and replaces it with the current  
19 term "SNAP" benefits.

20  
21 Section 811.29(a)(2) removes the term "Food Stamp" benefits and replaces it with the current  
22 term "SNAP" benefits.

23  
24 Section 811.29(b) removes the reference to "core work activity" and replaces it with a reference  
25 to "participation" requirements. The term "core" also is removed. With the change to counting  
26 only the four work activities in the work participation rate as specified in new §811.41(a), the  
27 limitations on job search and job readiness no longer apply.

28  
29 Additionally, references to §811.25(b) - (d) are replaced with §811.25(a) - (c).

30  
31 **§811.31. Special Provisions for Choices Participants in Single-Parent Families with**  
32 **Children under Age Six**

33 Section 811.31(b) removes the reference to "core" activities and replaces it with the term  
34 "Choices" activities. With the change to counting only the four work activities in the work  
35 participation rate as specified in new §811.41(a), the limitations on job search and job readiness  
36 no longer apply.

37  
38 **Comment:** Regarding §811.31(b), one commenter recommended inserting a reference to  
39 §811.2(26).

40  
41 **Response:** The Commission agrees and removes "shall count as engaged in work" and  
42 replaces it with "as meeting participation requirements" in §811.31(b) to align with other  
43 sections

44  
45 The Deficit Reduction Act of 2005, signed into law by President Bush on February 8, 2006,  
46 mandates that a single custodial parent with a child younger than six must participate for at

1 least an average of 20 hours a week and is exempted from the normal 30 hour per week  
2 requirement.  
3

4 **§811.32. Special Provisions Regarding Exempt Choices Participants and Choices**  
5 **Participants with Reduced Work Requirements**

6 Section 811.32(a) specifies that Boards may provide Choices services or support services as set  
7 forth in Subchapter C of this chapter to exempt Choices participants who participate to the extent  
8 determined able, as supported by medical documentation, but less than the required participation  
9 hours. This change allows support services to be provided to exempt Choices participants if they  
10 cannot fully participate.

11  
12 Section 811.32(b)(2) updates the references to §811.25(b) - (d) to align with new  
13 §811.25(a) - (c).

14  
15 Section 811.32(b)(3) updates the references to §811.25(b) - (d) to align with new  
16 §811.25(a) - (c).

17  
18 **§811.33. Other Special Provisions**

19 Section 811.33 is repealed. Conditional applicants and sanctioned families can participate in all  
20 Choices activities and receive necessary support services during their demonstrated cooperation  
21 period. Therefore, these provisions no longer apply.  
22

23 **§811.34. Participation Provisions**

24 Section 811.34 replaces the reference to "TANF core and non-core" activities with "Choices  
25 work" activities. With the change to counting only the four work activities in the work  
26 participation rate as specified in new §811.41(a), the limitations on job search and job readiness  
27 no longer apply.  
28

29 Section 811.34(1) removes the term "paid" from work activities to align with the changes in  
30 Choices work activities.

31  
32 New §811.34(2) addresses self-employment and states that Boards shall not count more hours  
33 toward the work participation rate for a self-employed Choices participant than the number  
34 derived from dividing the participant's net self-employment income (gross self-employment  
35 earnings minus business expenses) by the federal minimum wage.  
36

37 Section 811.34(2) is removed. Under TANF federal regulations, short-term excused absences  
38 are not allowable for paid work activities.  
39

40 Section 811.34(3) is removed. ACF issued guidance requiring a recalculation of average weekly  
41 projected hours of employment each time new information was received that showed a Choices  
42 participant's actual hours had changed. The Commission believes that ACF's guidance negates  
43 the benefits of projecting hours, thus projection of hours was not implemented.  
44  
45  
46

1 **SUBCHAPTER D. CHOICES ACTIVITIES**

2 **The Commission adopts the following amendments to Subchapter D:**

3  
4 **§811.41. Job Search and Job Readiness Assistance**

5 Section 811.41, Job Search and Job Readiness Assistance, is repealed. Due to the change in  
6 activities included in the work participation rate, the following activities are consolidated in new  
7 §811.52, relating to Other Choices Activities. To give the Boards the most flexibility, all  
8 restrictions and limitations on these activities are removed:

- 9 --Job search and job readiness assistance  
10 --Community service  
11 --Work experience  
12 --Vocational educational training  
13 --Job skills training  
14 --Post-employment services, as set forth in §811.51  
15

16 **§811.41. Choices Work Activities**

17 New §811.41(a) specifies that, for purposes of the work participation rate, a Choices participant  
18 is considered to be engaged in work by participating in:

- 19 (1) unsubsidized employment, as specified in §811.42;  
20 (2) subsidized employment, as specified in §811.43;  
21 (3) OJT, as specified in §811.44; and  
22 (4) educational services for Choices participants who have not completed secondary school or  
23 received a GED, as specified in §811.50.

24  
25 New §811.41(b) provides that educational services, as specified in new §811.41(a)(4), are  
26 limited to teen heads of household, as specified in §811.30.  
27

28 New §811.41(c) provides the Boards the flexibility to use any other Choices activity set forth in  
29 new §811.52 that would reasonably be expected to assist Choices participants in obtaining and  
30 retaining employment.  
31

32 This change incorporates the Commission's goal of promoting employment at the earliest  
33 opportunity by focusing on outcome-driven measures rather than a process-driven measure that  
34 focuses solely on whether individuals are being kept busy for their required hours of  
35 participation.  
36

37 **Comment:** Regarding §811.41(b), one commenter recommended that educational services be  
38 open to all TANF Choices participants and not restricted to teen heads of households. The  
39 commenter also recommended that this should also apply to underskilled high school  
40 graduates of all ages.  
41

42 **Response:** The Commission notes that the non-teens who have not obtained a high school  
43 diploma or GED, as stated in §811.50(a), educational services as defined in §811.25(a)(2),  
44 are only available for Choices participants who have not completed secondary school or who  
45 have not received a GED credential. However, under this rulemaking, §811.28 has been  
46 repealed. Section 811.28 set limits on the percentage and limited total time to 12 months, of



1 Choices participants in vocational educational training. Section 811.52 Other Choices  
2 Activities, now states that Boards may provide any of the following activities, without  
3 restriction, if the activities are reasonably expected to assist Choices participants in obtaining  
4 and retaining employment: (1) Job readiness and job search assistance, as defined in  
5 §811.2(11) and (12), respectively; (2) Community service, as defined in §811.2(4); (3) Work  
6 experience, as defined in §811.2(24); (4) Vocational educational training, as defined in  
7 §811.2(21); (5) Job skills training, as defined in §811.2(13); and (6) Post-employment  
8 services, as set forth in §811.51.

9  
10 Although not explicitly stated, vocational education can include postsecondary education that  
11 is reasonably expected to assist Choices participants in obtaining and retaining employment.  
12 Boards will not, however, be given credit toward the proposed outcome-focused performance  
13 measures of unsubsidized employment, subsidized employment, OJT, and educational  
14 services for Choices participants who are teen heads of household and have not completed  
15 secondary school or received a GED credential.

16  
17 **§811.42. Unsubsidized Employment**

18 Section 811.42(a) is removed. With the emphasis on the four work activities, the references to  
19 core activities no longer apply.

20  
21 New §811.42(b) defines self-employment as an income-producing enterprise that is intended to  
22 lead an individual on a clear pathway to self-sufficiency by lessening the family's reliance on  
23 public benefits. This subsection is added to give clear direction that self-employment must  
24 generate revenue for the family and to eliminate the use of in-kind employment or bartering  
25 situations.

26  
27 Certain subparagraphs in this section have been relettered to reflect additions or deletions.

28  
29 **§811.43. Subsidized Employment**

30 Section 811.43(a) is removed. With the emphasis on the four work activities, the references to  
31 core activities no longer apply.

32  
33 Certain subsections in this section have been relettered to reflect additions or deletions.

34  
35 **§811.44. On-the-Job Training**

36 Section 811.44(a) is removed. With the emphasis on the four work activities, the references to  
37 core activities no longer apply.

38  
39 New §811.44(a) defines OJT as training in the public or private sector for a paid employee while  
40 he or she is engaged in productive work that provides knowledge and skills essential to the full  
41 and adequate performance of the job. The definition aligns with the federal definition of OJT in  
42 45 CFR §261.2(f).

43  
44 Section 811.44(c) removes the statement "Unsubsidized employment after satisfactory  
45 completion of the training is expected"; it is unnecessary because the Choices participant is  
46 already a paid employee.

1  
2 **§811.45. Work Experience**

3 Section 811.45 is repealed. Because of the change in activities included in the work participation  
4 rate, all other activities, such as work experience, are consolidated in new §811.52, Other  
5 Choices Activities. To give Boards the most flexibility in providing other Choices activities, all  
6 restrictions and limitations on these activities are removed.  
7

8 **§811.46. Community Service**

9 Section 811.46 is repealed. Because of the change in activities included in the work participation  
10 rate, all other activities, such as community service, are consolidated in new §811.52, Other  
11 Choices Activities. To give Boards the most flexibility in providing other Choices activities, all  
12 restrictions and limitations on these activities are removed.  
13

14 **§811.48. Vocational Educational Training**

15 Section 811.48 is repealed. Because of the change in activities included in the work participation  
16 rate, all other activities, such as vocational educational training, are consolidated in new §811.52,  
17 Other Choices Activities. To give Boards the most flexibility in providing other Choices  
18 activities, all restrictions and limitations on these activities are removed.  
19

20 **§811.49. Job Skills Training**

21 Section 811.49 is repealed. Because of the change in activities included in the work participation  
22 rate, all other activities, such as job skills training, are consolidated in new §811.52, Other  
23 Choices Activities. To give Boards the most flexibility in providing other Choices activities, all  
24 restrictions and limitations on these activities are removed.  
25

26 **§811.50. Educational Services for Choices Participants Who Have Not Completed**  
27 **Secondary School or Received a General Educational Development Credential**

28 Section 811.50 removes the reference to non-core activities. With the emphasis on the four work  
29 activities, the reference no longer applies.  
30

31 Section 811.50(b)(1) replaces the reference to §811.2(13) with §811.2(18), the renumbered  
32 definition of secondary school.  
33

34 **Comment:** Regarding §811.50, one commenter recommended the educational services be  
35 open to all TANF Choices participants and not be restricted to teen heads of households. The  
36 commenter also recommended that this should also apply to underskilled high school  
37 graduates of all ages.  
38

39 **Response:** The Commission notes that educational services are available to teen heads of  
40 households and, under §811.50, educational services are available to Choices participants,  
41 age 20 and older, who have not completed secondary school or who have not received a  
42 GED credential. In addition, new §811.52 allows Boards to provide any of the following  
43 activities, without restriction, if the activities are reasonably expected to assist Choices  
44 participants in obtaining and retaining employment:

- 45 (1) Job readiness and job search assistance, as defined in §811.2(11) and (12), respectively;  
46 (2) Community service, as defined in §811.2(4);

- 1 (3) Work experience, as defined in §811.2(24);
- 2 (4) Vocational educational training, as defined in §811.2(21);
- 3 (5) Job skills training, as defined in §811.2(13); and
- 4 (6) Post-employment services, as set forth in §811.51.

5  
6 While not explicitly stated, vocational education can include postsecondary education that is  
7 reasonably expected to assist Choices participants in obtaining and retaining employment.  
8 The Commission clarifies, however, that these activities will not be reflected in Boards'  
9 performance.

10  
11 **§811.51. Post-Employment Services**

12 Section 811.51(f)(2) replaces the term "food stamp" with the current term "SNAP."

13  
14 **§811.52. Other Choices Activities**

15 New §811.52 allows Boards to provide any of the following Choices activities, without  
16 restriction, if the activities are reasonably expected to assist Choices participants in obtaining and  
17 retaining employment:

- 18 (1) Job readiness and job search assistance, as defined in §811.2(11) and (12), respectively;
- 19 (2) Community service, as defined in §811.2(4);
- 20 (3) Work experience, as defined in §811.2(24);
- 21 (4) Vocational educational training, as defined in §811.2(21);
- 22 (5) Job skills training, as defined in §811.2(13); and
- 23 (6) Post-employment services, as set forth in §811.51.

24  
25 **Comment:** Regarding §811.52, one commenter recommended participation in ABE  
26 programs, such as GED attainment and GED/high school to college bridge programs and  
27 integrated education models, as an allowable activity in the TANF Choices program.

28  
29 **Response:** The Commission clarifies that new §811.52 allows Boards to provide any of the  
30 following activities, without restriction, if the activities are reasonably expected to assist  
31 Choices participants in obtaining and retaining employment:

- 32 (1) Job readiness and job search assistance, as defined in §811.2(11) and (12), respectively;
- 33 (2) Community service, as defined in §811.2(4);
- 34 (3) Work experience, as defined in §811.2(24);
- 35 (4) Vocational educational training, as defined in §811.2(21);
- 36 (5) Job skills training, as defined in §811.2(13); and
- 37 (6) Post-employment services, as set forth in §811.51.

38  
39 While not explicitly stated, vocational education can include GED/high school to college  
40 bridge programs, integrated education models, and postsecondary education that is  
41 reasonably expected to assist Choices participants in obtaining and retaining employment.  
42 The Commission clarifies, however, that these activities will not be reflected in Boards'  
43 performance.

1 **SUBCHAPTER E. SUPPORT SERVICES AND OTHER INITIATIVES**

2 **The Commission adopts the following amendments to Subchapter E:**

3  
4 **§811.61. Support Services**

5 Section 811.61(b) replaces the term "work" with "Choices program requirements." This change  
6 clarifies that Boards have flexibility for the provision of support services and acknowledges that  
7 a Choices participant can be meeting all Choices requirements set forth in Subchapter C of this  
8 chapter through activities other than the four work activities.

9  
10 Section 811.61(c)(1) - (3) replaces the term "work" with "Choices program requirements." This  
11 change clarifies that Boards have flexibility for the provision of support services and  
12 acknowledges that a Choices participant can be meeting all Choices requirements through  
13 activities other than the four work activities.

14  
15 **COMMENTS WERE RECEIVED FROM:**

16 Bruce P. Bower

17 Deloris J. Coleman, Southeast Texas Workforce Development Board

18 Leslie Helmcamp, Center for Public Policy Priorities, Austin, Texas

19 Kay O'Dell, Executive Director, Northeast Texas Workforce Development Board

20  
21 The Agency hereby certifies that the adoption has been reviewed by legal counsel and found to  
22 be within the Agency's legal authority to adopt.

23  
24 The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the  
25 Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it  
26 deems necessary for the effective administration of Agency services and activities.

27  
28 The adopted rules affect Texas Labor Code, Title 4 and Texas Human Resources Code, Chapters  
29 31 and 34.

1  
2  
3 **CHAPTER 811. CHOICES**

4  
5 **SUBCHAPTER A. GENERAL PROVISIONS**

6  
7 **§811.1. Purpose and Goal.**

- 8 (a) The purposes of Temporary Assistance for Needy Families (TANF), as set forth in  
9 Title IV, Social Security Act, §401 (42 USCA §601) are:  
10  
11 (1) provide assistance to needy families so that children may be cared for in their  
12 own homes or in the homes of relatives;  
13  
14 (2) end the dependence of needy parents on government benefits by promoting job  
15 preparation, work, and marriage;  
16  
17 (3) prevent and reduce the incidence of out-of-wedlock pregnancies; and  
18  
19 (4) encourage the formation and maintenance of two-parent families.  
20  
21 (b) The goal of Choices services is to end the dependence of needy parents on public  
22 assistance by promoting job preparation, work, and marriage. A Local Workforce  
23 Development Board (Board) may exercise flexibility in providing services to  
24 Choices eligibles to meet this Choices goal. A Board is also provided the flexibility  
25 and may engage in strategies that promote the prevention and reduction of out-of-  
26 wedlock pregnancies and encourage the formation and maintenance of two-parent  
27 families if those strategies support the primary goal of Choices services, which is  
28 employment and job retention.  
29  
30 (c) The goal of the Texas Workforce Commission (Commission) is to ensure delivery of  
31 the employment and training activities as described in the TANF State Plan and the  
32 TANF Work Verification Plan.  
33  
34 (d) Boards shall identify the workforce needs of local employers and design Choices  
35 services to ensure that local employer needs are met and that the services are  
36 consistent with the goals and purposes of Choices services as referenced in this  
37 section, and as authorized by PRWORA, the applicable federal regulations at 45  
38 CFR Parts 260 - 265, the TANF State Plan, the TANF Work Verification Plan, this  
39 chapter, and consistent with a Board's approved integrated workforce training and  
40 services plan as referenced in §801.17 of this title.

41 **§811.2. Definitions.**

42  
43 The following words and terms, when used in this chapter, shall have the following  
44 meanings unless the context clearly indicates otherwise.  
45

- 1 (1) Applicant--An adult, or teen head of household, in a family who applies for  
2 TANF cash assistance, who previously did not leave TANF in a sanctioned  
3 status.
- 4
- 5 (2) Choices eligible--An individual eligible to receive Choices services including  
6 an adult or teen head of household who is an applicant, conditional applicant,  
7 recipient, nonrecipient parent, former recipient, or sanctioned family as defined  
8 in this chapter.
- 9
- 10 (3) Choices participant--A Choices eligible participating in or outreached for  
11 Choices services, including:
- 12
- 13 (A) Exempt Choices participant--A Choices eligible who is not required  
14 under Texas Human Resources Code, Chapter 31 or Texas Health and  
15 Human Services Commission (HHSC) rules (1 TAC, Chapter 372,  
16 Temporary Assistance for Needy Families and Supplemental Nutrition  
17 Assistance Program) to participate in Choices services, but who may  
18 voluntarily participate in Choices services.
- 19
- 20 (B) Mandatory Choices participant--A Choices eligible who is required  
21 under Texas Human Resources Code, Chapter 31 or HHSC rules (1  
22 TAC, Chapter 372) to participate in Choices services.
- 23
- 24 (4) Community service--A program that provides employment and training  
25 activities to Choices participants through unsalaried, work-based positions in  
26 the public or private nonprofit sectors. Community service programs contain  
27 structured, supervised activities that are a direct benefit to the community and  
28 are designed to improve the employability of Choices participants who have  
29 been unable to find employment.
- 30
- 31 (5) Conditional applicant--An adult or teen head of household who left TANF in a  
32 sanctioned status, but who is reapplying for TANF cash assistance and must  
33 demonstrate cooperation with Choices program requirements for four  
34 consecutive weeks.
- 35
- 36 (6) Earned Income Deduction (EID)--A standard work-related and income  
37 deduction, available for four months through HHSC.
- 38
- 39 (7) Employment Planning Session (EPS)--A meeting with a TANF recipient to  
40 introduce Choices services.
- 41
- 42 (8) Extended TANF recipient--A recipient who receives TANF cash assistance  
43 past the 60-month federal time limit because of a hardship exemption as  
44 defined in Texas Human Resources Code, Chapter 31 and HHSC rules (1  
45 TAC, Chapter 372).
- 46

- 1 (9) Former recipient--An adult or teen head of household who no longer receives  
2 TANF cash assistance because of employment.  
3
- 4 (10) HHSC--Texas Health and Human Services Commission.  
5
- 6 (11) Job readiness--Short-term structured activities or a series of activities lasting  
7 less than six months designed to prepare a job seeker for unsubsidized  
8 employment and increase the job seeker's employability. Activities may  
9 include, but are not limited to: interviewing skills, job retention skills, personal  
10 maintenance skills, professional conduct skills, and introductory computer  
11 skills.  
12
- 13 (12) Job search--Acts of seeking or obtaining employment, or preparing to seek or  
14 obtain employment, including life skills training, substance abuse treatment,  
15 mental health treatment, or rehabilitation activities. Activities may include:  
16 information on and referral to available jobs; occupational exploration,  
17 including information on local emerging and demand occupations; job fairs;  
18 applying or interviewing for job vacancies; and contacting potential employers.  
19
- 20 (13) Job skills training--Training or education for job skills required by an employer  
21 to provide a Choices participant with the ability to obtain employment or to  
22 advance or adapt to the changing demands of the workplace.  
23
- 24 (14) Nonrecipient parent--Adults or minor heads of household not receiving TANF  
25 cash assistance, but living with their own children who are receiving TANF  
26 cash assistance. Nonrecipient parents include parents who are not eligible for  
27 TANF cash assistance:  
28
- 29 (A) due to a disqualification by the Texas Health and Human Services  
30 Commission. These disqualifications include parents who:  
31
- 32 (i) refuse to comply with Medicaid third-party resource requirements;  
33
- 34 (ii) do not comply with Social Security number requirements;  
35
- 36 (iii) are found guilty of an intentional program violation;  
37
- 38 (iv) fail to report the temporary absence of a certified child;  
39
- 40 (v) are fugitives fleeing to avoid prosecution of, or confinement for, a  
41 felony criminal conviction, or are found by a court to be violating  
42 federal or state probation or parole;  
43
- 44 (vi) are convicted of a felony drug offense (not deferred adjudication)  
45 committed on or after April 1, 2002; or  
46

- 1 (vii) refuse to cooperate with the program integrity assessment process;  
2  
3 (B) because they are receiving Supplemental Security Income (SSI) or  
4 Social Security Disability Insurance (SSDI); or  
5  
6 (C) because they have exhausted their TANF state time limit.  
7  
8 (15) PRWORA--The Personal Responsibility and Work Opportunity Reconciliation  
9 Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105, as amended.  
10  
11 (16) Recipient--An adult or teen head of household who receives TANF cash  
12 assistance.  
13  
14 (17) Sanctioned family--An adult or teen head of household who must demonstrate  
15 cooperation for one month in order to reinstate TANF cash assistance.  
16  
17 (18) Secondary school--Educational activities including middle school, high school  
18 leading to a high school diploma, or classes leading to the completion of a  
19 GED credential.  
20  
21 (19) TANF cash assistance--The cash grant provided through HHSC to individuals  
22 who meet certain residency, income, and resource criteria as provided under  
23 federal and state statutes and regulations, including the PRWORA, the TANF  
24 block grant statutes, the TANF State Plan, TANF cash assistance provided  
25 under Texas Human Resources Code, Chapters 31 and 34, and other related  
26 regulations.  
27  
28 (20) The Workforce Information System of Texas (TWIST)--the Agency's  
29 automated data processing and case management system for the Texas  
30 workforce system.  
31  
32 (21) Vocational educational training--Organized educational programs directly  
33 related to preparing Choices participants for employment in current or  
34 emerging occupations.  
35  
36 (22) Work-based services--Includes those employment programs defined in Texas  
37 Human Resources Code §31.0126.  
38  
39 (23) Work eligible individual--Work eligible individuals are adults or minor heads  
40 of household receiving TANF cash assistance, and nonrecipient parents--with  
41 the following exceptions:  
42  
43 (A) Noncitizens who are ineligible to receive cash assistance because of their  
44 immigration status;  
45



1 (B) Parents caring for a disabled family member who lives in the home  
2 (provided the need for such care is supported by medical  
3 documentation), on a case-by-case basis; and  
4

5 (C) Recipients of SSI or SSDI, on a case-by-case basis.  
6

7 (24) Work experience--Unpaid training in the public or private sector designed to  
8 improve the employability of Choices participants who have been unable to  
9 find employment.  
10

11 (25) Work ready--A Choices eligible is considered work ready if he or she has the  
12 skills that are required by employers in the local workforce development area.  
13 A Board must ensure immediate access to the labor market to determine  
14 whether the Choices eligible has those necessary skills to obtain employment.  
15

16 (26) Work requirement--For the purposes of 42 USC §607 and 45 CFR §261.10, a  
17 Choices participant is deemed to be engaged in work by participating in :

18 (A) unsubsidized employment;  
19

20 (B) subsidized employment;  
21

22 (C) on-the-job training (OJT); or  
23

24 (D) educational services for Choices participants who have not completed  
25 secondary school or received a GED credential as provided in §811.30.  
26  
27  
28

29 **§811.4. Policies, Memoranda of Understanding, and Procedures.**  
30

31 (a) A Board shall establish policies regarding the following:  
32

33 (1) A Choices service strategy, as defined in §811.3, that coordinates various  
34 service delivery approaches to:  
35

36 (A) assist applicants and conditional applicants in gaining employment as an  
37 alternative to public assistance;  
38

39 (B) use a work first design as referenced in §811.3(b)(2) to provide Choices  
40 participants access to the labor market; and  
41

42 (C) assist former recipients with job retention and career advancement in  
43 order to remain independent of TANF cash assistance;  
44

45 (2) Limits on the amount of funds per Choices participant and the maximum  
46 duration for subsidized employment and OJT placements; and  
47

- 1 (3) The methods and limitations for provision of work-related expenses.  
2  
3 (b) A Board may establish optional policies that:  
4  
5 (1) require the use of the Eligible Training Provider Certification System (ETPS)  
6 and Individual Training Account (ITA) systems as described in Chapter 841 of  
7 this title to provide for Choices services for Choices participants and paid for  
8 with TANF funds; and  
9  
10 (2) make post-employment services available to:  
11  
12 (A) former recipients who are denied TANF cash assistance because of  
13 earnings; and  
14  
15 (B) sanctioned families and conditional applicants who obtain employment  
16 during their demonstrated cooperation period.  
17  
18 (c) A Board shall ensure that the following Memoranda of Understanding (MOUs) and  
19 collaborative partnerships are developed:  
20  
21 (1) Local-level MOUs with the appropriate agencies to serve Choices eligibles  
22 with disabilities to maximize their potential for success in employment;  
23  
24 (2) A local-level MOU in cooperation with HHSC for coordinated case  
25 management that is consistent with the MOU between HHSC and the  
26 Commission;  
27  
28 (3) A local-level MOU with the Texas Department of State Health Services for  
29 providing mental health and substance abuse services to Choices participants;  
30 and  
31  
32 (4) A collaborative partnership with housing authorities and sponsors of local  
33 housing programs and services to address the unmet housing needs of  
34 recipients.  
35  
36 (d) A Board shall ensure that procedures are developed:  
37  
38 (1) to ensure that job development services are available to Choices participants.  
39 These services include:  
40  
41 (A) contacting local employers or industry associations to request that job  
42 openings be listed with Workforce Solutions Offices, and other entities  
43 in the One-Stop Service Delivery Network selected by the Board;  
44  
45 (B) identifying the hiring needs of employers;  
46

1 (C) assisting an employer in creating new positions for Choices participants  
2 based on the job developer's and employer's analysis of the employer's  
3 business needs; or

4  
5 (D) finding opportunities with an employer for a specific Choices participant  
6 or a group of Choices participants;

7  
8 (2) to ensure that job placement services are available to Choices participants. Job  
9 placement services shall include:

10  
11 (A) identifying employers' workforce needs;

12  
13 (B) identifying Choices participants who have sufficient skills and abilities  
14 to be successfully linked with employment; and

15  
16 (C) matching the skills of the Choices participant pool to the hiring needs of  
17 local employers;

18  
19 (3) to notify applicants and conditional applicants--in conjunction with HHSC--on  
20 the availability of regularly scheduled Workforce Orientations for Applicants  
21 (WOAs) and alternative WOAs;

22  
23 (4) to notify HHSC of applicants and conditional applicants who contacted a  
24 Workforce Solutions Office to request alternative WOAs;

25  
26 (5) to ensure that services are concentrated on Choices eligibles approaching their  
27 state or federal time limit, as identified in §811.3(b)(7)(A) and (B).  
28 Concentrated services may include targeted outreach, enhanced analysis of  
29 circumstances that may limit a Choices eligible's ability to participate, and  
30 targeted job development; and

31  
32 (6) to determine a family's inability to obtain child care.

33  
34 (e) If a Board elects to establish one or more of the optional policies described in  
35 subsection (b) of this section, the Board must ensure that corresponding procedures  
36 are developed for those policies.

37  
38 **§811.5. Documentation, Verification, and Supervision of Work Activities.**

39  
40 (a) A Board shall ensure that all required information related to the documentation and  
41 verification of participation in Choices work activities, as described in this section, is  
42 documented in The Workforce Information System of Texas (TWIST).

43  
44 (b) A Board shall ensure that all participation in Choices is verified and documented and  
45 that self-attestation is not allowed.

46

- 1 (c) For Choices work activities, as described in §§811.42, 811.43, 811.44, and 811.50,  
2 Boards shall ensure that all participation is verified and documented in TWIST at  
3 least monthly.  
4
- 5 (d) For educational services, as described in §811.50, for teen heads of household who  
6 have not completed secondary school or received a GED credential, Boards shall  
7 ensure that:  
8
- 9 (1) good or satisfactory progress, as determined by the educational institution, is  
10 verified and documented in TWIST at least monthly;  
11
- 12 (2) all participation is supervised daily; and  
13
- 14 (3) all participation is verified and documented in TWIST at least monthly.  
15

## 16 **SUBCHAPTER B. CHOICES SERVICES RESPONSIBILITIES**

### 17 **§811.11. Board Responsibilities.**

- 18 (a) A Board shall ensure that:  
19
- 20 (1) the WOA is offered frequently enough to allow applicants and conditional  
21 applicants to comply with the HHSC requirement that gives applicants and  
22 conditional applicants 10 calendar days from the date of their eligibility  
23 interview to attend a WOA;  
24
- 25 (2) during a regularly scheduled WOA or alternative WOA, applicants and  
26 conditional applicants are informed of:  
27
- 28 (A) employment services available through the One-Stop Service Delivery  
29 Network to assist applicants and conditional applicants in achieving self-  
30 sufficiency without the need for TANF cash assistance;  
31
- 32 (B) benefits of becoming employed;  
33
- 34 (C) impact of time-limited benefits;  
35
- 36 (D) individual and parental responsibilities; and  
37
- 38 (E) other services and activities, including education and training, available  
39 through the One-Stop Service Delivery Network, including services and  
40 referrals for services available to Choices eligibles with disabilities;  
41
- 42 (3) alternative WOAs are developed that allow applicants and conditional  
43 applicants with extraordinary circumstances to receive the information listed in  
44 paragraph (2) of this subsection;  
45  
46

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- (4) verification that applicants and conditional applicants attend a scheduled or alternative WOA is completed and HHSC is notified in accordance with HHSC rules (1 TAC, Chapter 372, Temporary Assistance for Needy Families and Supplemental Nutrition Assistance Program); and
  - (5) applicants and conditional applicants are provided with an appointment to develop a family employment plan (FEP).
- (b) A Board shall ensure that:
- (1) Choices services are offered to applicants who attend a WOA; and
  - (2) conditional applicants who attend a WOA are immediately scheduled to begin Choices services.
- (c) A Board shall ensure that a Choices participant's eligibility is verified monthly.
- (d) A Board shall ensure that all extended TANF recipients are outreached and offered the opportunity to participate in Choices activities.
- (e) A Board shall ensure that post-employment services, including job retention and career advancement services, are available to Choices eligibles including mandatory Choices participants coded by HHSC as working at least 30 hours per week, earning at least \$700 per month, and receiving EID.
- (f) A Board shall ensure that monitoring of Choices program requirements is ongoing and frequent, as determined by the Board, unless otherwise specified in this chapter, and consists of the following:
- (1) ensuring receipt of support services;
  - (2) tracking and reporting all support services and entering them into TWIST at least monthly;
  - (3) tracking and reporting actual hours of participation in Choices work activities, at least monthly, unless otherwise specified in this chapter;
  - (4) determining and arranging for any intervention needed to assist the Choices participant in complying with Choices program requirements; and
  - (5) ensuring that the Choices participant is progressing toward achieving the goals and objectives in the FEP.
- (g) A Board shall ensure that:

1 (1) no less than four hours of training regarding family violence is provided to  
2 staff who:

3  
4 (A) provide information to Choices eligibles;

5  
6 (B) request penalties or grant good cause; or

7  
8 (C) provide employment planning or employment retention services; and

9  
10 (2) Choices eligibles who are identified as being victims of family violence are  
11 referred to an individual or an agency that specializes in issues involving  
12 family violence.

13  
14 (h) A Board shall ensure that documentation is obtained and maintained regarding all  
15 contact with Choices participants, including verification of participation hours, and  
16 data is entered into TWIST.

17  
18 (i) A Board shall ensure that a referral program is developed to provide Choices  
19 eligibles facing higher than average barriers to employment, as described in this  
20 chapter, with referrals to pre-employment and post-employment services offered by  
21 community-based and other organizations.

22  
23 **§811.13. Responsibilities of Choices Participants.**

24  
25 (a) A Board shall ensure that Choices participants comply with the provisions contained  
26 in this section.

27  
28 (b) Choices participants shall:

29  
30 (1) accept a job offer at the earliest possible opportunity;

31  
32 (2) participate in or receive ancillary services necessary to enable Choices  
33 participants to work or participate in employment-related activities, including  
34 counseling, treatment, vocational or physical rehabilitation, and medical or  
35 health services;

36  
37 (3) report actual hours of participation in Choices work activities, including hours  
38 of employment; and

39  
40 (4) attend scheduled appointments.

41  
42 (c) Within two-parent families, Choices participants shall participate in assessment and  
43 family employment planning sessions and assigned employment and training  
44 activities as follows:  
45

- 1 (1) participate in Choices employment and training as specified in §811.25(b) -
- 2 (c);
- 3
- 4 (2) comply with all requirements specified in the FEP; and
- 5
- 6 (3) sign a form that contains all the information identified in the Commission's
- 7 Family Work Requirement form, as described in §811.24.
- 8
- 9 (d) Within single-parent families, Choices participants shall participate in assessment
- 10 and employment planning sessions and assigned employment and training activities
- 11 as follows:
- 12
- 13 (1) participate in Choices employment and training activities as specified in
- 14 §811.25(a); and
- 15
- 16 (2) comply with all requirements specified in the FEP.
- 17
- 18 (e) A Board shall ensure that mandatory Choices participants coded by HHSC as
- 19 working at least 30 hours per week, earning at least \$700 per month, and receiving
- 20 the EID:
- 21
- 22 (1) report to the Board actual hours of work, as defined in §811.34; and
- 23
- 24 (2) are provided with information on available post-employment services.
- 25

26 **§811.14. Noncooperation.**

- 27
- 28 (a) A Board shall ensure that cooperation by Choices participants is verified each month
- 29 to ensure that the Choices participants:
- 30
- 31 (1) comply with Choices program requirements as set forth in the FEP, as
- 32 specified in §811.23; or
- 33
- 34 (2) have good cause as described in this chapter.
- 35
- 36 (b) If Choices participants have not cooperated with Choices program requirements and
- 37 do not have good cause, a Board shall ensure that:
- 38
- 39 (1) a penalty is requested for mandatory Choices participants; or
- 40
- 41 (2) Choices services, including support services, are terminated for exempt
- 42 Choices participants.
- 43
- 44 (c) A Board shall ensure that timely and reasonable attempts, as defined by the Agency,
- 45 are made to contact a mandatory Choices participant prior to requesting a penalty to:
- 46

- 1 (1) determine the reason for noncooperation and whether good cause is applicable,  
2 as described in §811.16(c);  
3  
4 (2) inform the mandatory Choices participant of:  
5  
6 (A) the violation, if good cause has not been determined;  
7  
8 (B) the right to appeal; and  
9  
10 (C) the necessary procedures to demonstrate cooperation.  
11  
12 (d) A Board shall ensure that timely and reasonable attempts, as defined by the Agency,  
13 are made to contact a sanctioned family and conditional applicants upon discovery of  
14 noncooperation during their demonstrated cooperation period to determine if good  
15 cause exists.  
16  
17 (e) A Board shall ensure that the reasonable attempts to contact a mandatory Choices  
18 participant are documented in TWIST.  
19  
20 (f) A Board shall ensure that:  
21  
22 (1) HHSC is notified of a mandatory Choices participant's failure to comply with  
23 Choices program requirements; and  
24  
25 (2) the notification of noncooperation is submitted as early as possible in the same  
26 month in which the noncooperation occurs.  
27

28 **§811.15. Demonstrated Cooperation.**  
29

- 30 (a) Conditional applicants are required to demonstrate four consecutive weeks of  
31 cooperation to be eligible for TANF cash assistance.  
32  
33 (b) Sanctioned families are required to demonstrate one month of cooperation to  
34 reinstate TANF cash assistance.  
35  
36 (c) A Board shall ensure that HHSC is immediately notified if:  
37  
38 (1) a sanctioned family denied TANF cash assistance because of one month of  
39 noncooperation has demonstrated full cooperation with Choices program  
40 requirements for the program month immediately following the program  
41 month in which the family noncooperated;  
42  
43 (2) a conditional applicant whose TANF case is closed because of two or more  
44 months of noncooperation has demonstrated full cooperation with Choices  
45 program requirements for four consecutive weeks; or  
46



- 1 (3) a sanctioned family or conditional applicant has been granted good cause  
2 during the demonstrated cooperation period.  
3

4 **SUBCHAPTER C. CHOICES SERVICES**  
5

6 **§811.23. Family Employment Plan.**  
7

- 8 (a) Boards must ensure that prior to the development of an FEP Choices participants  
9 receive general information about services provided through the One-Stop Service  
10 Delivery Network that will assist them in obtaining employment, if the Choices  
11 participants did not receive this information during the WOA.  
12
- 13 (b) FEPs are required for all Choices participants.  
14
- 15 (c) FEPs shall be developed with applicants and former recipients who choose to  
16 participate in Choices services.  
17
- 18 (d) A Board shall ensure that an FEP is developed during the assessment and:  
19
- 20 (1) is based on assessments, as described in §811.22;  
21
- 22 (2) contains the goal of self-sufficiency through employment to meet the needs of  
23 the local labor market;  
24
- 25 (3) contains the steps and services to achieve the goal, including:  
26
- 27 (A) connecting the Choices participant immediately to the local labor market;  
28
- 29 (B) addressing potential barriers that limit the Choices participant's ability to  
30 work or participate in activities;  
31
- 32 (C) arranging support services for the Choices participant or the family to  
33 address circumstances that limit the Choices participant's ability to work  
34 or participate, including services for substance abuse, mental health,  
35 family violence, and disability-related issues;  
36
- 37 (D) developing specific post-employment service strategies with methods  
38 and time frames for reaching the goal of an identified self-sufficiency  
39 wage; and  
40
- 41 (E) requiring Choices participants to notify the Board's service provider of  
42 changes in family circumstances that may preclude participation in  
43 Choices services;  
44
- 45 (4) is signed by the Choices participant--unless the Choices participant is a  
46 mandatory Choices participant coded by HHSC as working at least 30 hours

1 per week, earning at least \$700 per month, and receiving the EID--and a  
2 Board's service provider;

3  
4 (5) assigns required hours and sets forth the participation agreement for  
5 compliance with Choices program requirements. FEPs for two-parent families  
6 must include a description of how the required hours of participation will be  
7 distributed between one or both adults in the two-parent household; and

8  
9 (6) provides information about the penalty process, good cause process, right of  
10 appeal, and the importance of immediately contacting a case manager should  
11 individual or family circumstances arise that prevent participation.

12  
13 (e) A Board shall regularly ensure that progress toward meeting the goals of the FEP is  
14 evaluated and the FEP is modified as appropriate to meet job seeker and employer  
15 needs in the local labor market.

16  
17 **§811.25. TANF Participation Requirements.**

18  
19 (a) Choices participants in a single-parent family are required to participate for at least a  
20 minimum weekly average of 30 hours.

21  
22 (b) Choices participants in two-parent families who are not receiving Commission-  
23 funded child care are required to have one or both adults in the family participate for  
24 at least a minimum weekly average of 35 hours.

25  
26 (c) Choices participants in two-parent families who are receiving Commission-funded  
27 child care are required to have one or both adults in the family participate for at least  
28 a minimum weekly average of 55 hours.

29  
30  
31 **§811.29. Special Provisions Regarding the Fair Labor Standards Act.**

32  
33 (a) A Board shall ensure that employment and training activities are conducted in  
34 compliance with FLSA as follows.

35  
36 (1) The amount of time per week that a Choices participant may be required to  
37 participate in activities that are not exempt from minimum wage and overtime  
38 under FLSA shall be determined by the TANF cash assistance and SNAP  
39 benefits amount being divided by the minimum wage, so that the amount paid  
40 to the Choices participant is equal to or more than the amount required for  
41 payment of wages, including minimum wage and overtime; or

42  
43 (2) The amount of time per week that a sanctioned family or conditional applic ant  
44 may be required to participate in activities that are not exempt from minimum  
45 wage and overtime under FLSA shall be determined by the SNAP benefits  
46 amount being divided by the minimum wage, so that the amount paid to the

1 sanctioned family is equal to or more than the amount required for payment of  
2 wages, including minimum wage and overtime; and  
3

4 (3) If a Board provides activities that meet all of the following categories, the  
5 activity is considered training under FLSA and minimum wage and overtime  
6 are not required:  
7

8 (A) The training is similar to that given in a vocational school;  
9

10 (B) The training is for the benefit of the trainees;  
11

12 (C) The trainees do not displace regular employees;  
13

14 (D) The employers derive no immediate advantage from trainees' activities;  
15

16 (E) The trainees are not entitled to a job after training is completed; and  
17

18 (F) The employers and trainees understand that trainees are not paid.  
19

20 (b) The number of hours that a Choices participant is required to participate in  
21 community service or another unpaid work activity shall be determined in  
22 compliance with FLSA as described in subsection (a) of this section. If a Choices  
23 participant's hours of community service or other unpaid work activity are not  
24 sufficient to meet the participation requirement as set forth in §811.25(a) - (c), the  
25 Choices participant shall be enrolled in additional non-FLSA-covered activities.  
26

27 **§811.31. Special Provisions for Choices Participants in Single-Parent Families with**  
28 **Children under Age Six.**  
29

30 (a) A Board shall ensure that Choices participants in single-parent families with children  
31 under age six are notified of the penalty exception to Choices participation as  
32 described in §811.16(d).  
33

34 (b) A Choices participant in a single-parent family with children under age six shall  
35 count as meeting participation requirements if he or she participates in Choices  
36 activities for at least an average of 20 hours per week.  
37

38 **§811.32. Special Provisions Regarding Exempt Choices Participants and Choices**  
39 **Participants with Reduced Work Requirements.**  
40

41 (a) A Board may provide Choices services or support services as set forth in this  
42 subchapter to exempt Choices participants who participate to the extent determined  
43 able, as supported by medical documentation, but less than the required participation  
44 hours.  
45

46 (b) A Board shall ensure that a penalty is not requested for:

- 1  
2 (1) exempt Choices participants;  
3  
4 (2) Choices participants with disabilities who participate to the extent determined  
5 able, as supported by medical documentation, but less than the required  
6 participation hours, as specified in §811.25(a) - (c) and §811.31(b); or  
7  
8 (3) Choices participants who are caring for a disabled family member, as  
9 supported by medical documentation, when the Choices participant participates  
10 to the extent determined able, but less than the required participation hours, as  
11 specified in §811.25(a) - (c) and §811.31(b).  
12

13 **§811.34. Participation Provisions.**

14  
15 A Board shall count only actual hours of participation in Choices work activities as  
16 allowable work participation hours with the following exceptions, unless otherwise  
17 specified in this chapter:  
18

- 19 (1) For work activities set forth in §§811.42 - 811.44, Boards may count paid  
20 holidays or other paid leave as actual participation hours.  
21  
22 (2) For self-employment, Boards shall not count more hours toward the work  
23 participation rate for a self-employed Choices participant than the number  
24 derived from dividing the participant's net self-employment income (gross self-  
25 employment earnings minus business expenses) by the federal minimum wage.  
26

27 **SUBCHAPTER D. CHOICES ACTIVITIES**

28  
29 **§811.41. Choices Work Activities.**

- 30  
31 (a) For purposes of the work participation rate, a Choices participant is considered to be  
32 engaged in work by participating in:  
33  
34 (1) unsubsidized employment, as specified in §811.42;  
35  
36 (2) subsidized employment, as specified in §811.43;  
37  
38 (3) OJT, as specified in §811.44; or  
39  
40 (4) educational services for Choices participants who have not completed  
41 secondary school or received a GED, as specified in §811.30.  
42  
43 (b) Educational services, as specified in subsection (a)(4) of this section, are limited to  
44 teen heads of household, as specified in §811.30.  
45

- 1 (c) Boards may use any other Choices activity set forth in §811.52 that would  
2 reasonably be expected to assist Choices participants in obtaining and retaining  
3 employment.  
4

5 **§811.42. Unsubsidized Employment.**  
6

- 7 (a) Unsubsidized employment includes the following:  
8  
9 (1) full-time or part-time employment, in which wages are paid in full by the  
10 employer;  
11  
12 (2) unsubsidized internship with wages paid by the internship employer; and  
13  
14 (3) self-employment.  
15  
16 (b) Self-employment is defined as an income-producing enterprise that will lead an  
17 individual on a clear pathway to self-sufficiency by lessening the family's reliance on  
18 public benefits.  
19

20 **§811.43. Subsidized Employment.**  
21

- 22 (a) Subsidized employment is full-time or part-time employment that is subsidized in  
23 full or in part and complies with this section. Subsidized employment may occur in  
24 either the private sector or public sector. A Board shall not be the employer of  
25 record for Choices participants enrolled in a subsidized employment activity.  
26 Subsidized employment includes but is not limited to the following:  
27  
28 (1) subsidized internship with a portion of the Choices participant's wages  
29 subsidized;  
30  
31 (2) subsidized employment with a staffing agency acting as the employer of  
32 record; and  
33  
34 (3) subsidized employment with the actual employer acting as the employer of  
35 record.  
36  
37 (b) Wages.  
38  
39 (1) Wages shall be at least federal or state minimum wage, whichever is higher.  
40  
41 (2) Employers must provide the same wages and benefits to subsidized employees  
42 as for unsubsidized employees with similar skills, experience, and position.  
43  
44 (c) Boards shall ensure subsidized employment placements prepare and move Choices  
45 participants into unsubsidized employment.

- 1  
2 (d) Boards shall ensure subsidized employment placements are allotted to employers  
3 who expect to retain Choices participants as regular unsubsidized employees once  
4 the subsidized placement has ended, unless successful completion of the placement  
5 is expected to result in unsubsidized employment with a different employer.  
6

7 **§811.44. On-the-Job Training.**  
8

- 9 (a) OJT is training in the public or private sector for a paid employee while he or she is  
10 engaged in productive work that provides knowledge and skills essential to the full  
11 and adequate performance of the job.  
12
- 13 (b) A Board shall ensure that a determination is made on a case-by-case basis whether to  
14 authorize, arrange, or refer a Choices participant for subsidized, time-limited training  
15 activities, to assist the Choices participant with obtaining knowledge and skills that  
16 are essential to the workplace while in a job setting. OJT is training by an employer  
17 that is provided to a Choices participant on or off the work site while engaged in  
18 productive work in a job that:  
19
- 20 (1) provides knowledge or skills essential to the full and adequate performance of  
21 the job;  
22
- 23 (2) provides reimbursement to the employer of a percent of the wage rate of the  
24 Choices participant for the extraordinary costs of providing the training and  
25 additional supervision related to the training;  
26
- 27 (3) is limited in duration as appropriate to the occupation for which the Choices  
28 participant is being trained, taking into account the content of the training, the  
29 prior work experience of the Choices participant, and the service strategy of  
30 the Choices participant, as appropriate; and  
31
- 32 (4) includes training specified by the employer.  
33
- 34 (c) A Board shall not contract with employers who have previously exhibited a pattern  
35 of failing to provide Choices participants in OJT with continued long-term  
36 employment, which provides wages, benefits, and working conditions that are equal  
37 to those that are provided to regular employees who have worked a similar length of  
38 time and are doing a similar type of work.  
39
- 40 (d) Boards shall ensure on-the-job training placements are allotted to employers who  
41 expect to retain Choices participants as regular unsubsidized employees once the  
42 OJT placement has ended, unless successful completion of the placement is expected  
43 to result in unsubsidized employment with a different employer.  
44  
45  
46

1           **§811.50. Educational Services for Choices Participants Who Have Not Completed**  
2           **Secondary School or Received a General Educational Development Credential.**

- 3
- 4           (a) Educational services are only available for Choices participants who have not  
5           completed secondary school or who have not received a GED credential.  
6
- 7           (b) A Board shall ensure that a determination is made, on a case-by-case basis, whether  
8           to authorize, arrange, or refer Choices participants who are age 20 and older for the  
9           following educational or other training services:  
10
- 11           (1) secondary school, as defined in §811.2(18), when required as a prerequisite for  
12           employment;  
13
- 14           (2) Adult Basic Education (ABE), language instruction, or literacy instruction; or  
15
- 16           (3) other educational activities which are directly related to employment.  
17
- 18           (c) A Board shall ensure educational services related to employment directly provide  
19           education, knowledge, and skills for specific occupations, work settings, jobs, or job  
20           offers.  
21

22           **§811.51. Post-Employment Services.**

- 23
- 24           (a) A Board shall ensure that post-employment services, which include job retention,  
25           career advancement, and reemployment services, are offered to Choices participants  
26           who are employed, and to applicants, conditional applicants, and former recipients  
27           who have obtained employment but require additional assistance in retaining  
28           employment and achieving self-sufficiency.  
29
- 30           (b) A Board shall ensure that post-employment services are monitored, and ensure that  
31           hours of employment are required and reported by Choices participants for at least  
32           the length of time the Choices participants receive TANF cash assistance.  
33
- 34           (c) A Board shall ensure that ongoing contact is established with Choices eligibles  
35           receiving post-employment services at least monthly.  
36
- 37           (d) A Board may include mentoring techniques as part of a post-employment strategy.  
38
- 39           (e) The post-employment services may include the following:  
40
- 41           (1) assistance and support for the transition into employment through direct  
42           services or referrals to resources available in the workforce area;  
43
- 44           (2) child care, if needed, as specified in rules at Chapter 809 of this title;  
45
- 46           (3) work-related expenses, including those identified in §811.64;

- 1  
2 (4) transportation, if needed;  
3  
4 (5) job search, job placement, and job development services to help a former  
5 recipient who loses a job to obtain employment;  
6  
7 (6) referrals to available education or training resources to increase an employed  
8 Choices eligible's skills or to help the individual qualify for advancement and  
9 long-term employment goals;  
10  
11 (7) additional career planning and counseling; or  
12  
13 (8) referral to support services available in the community.  
14  
15 (f) The maximum length of time a former recipient, conditional applicant, and  
16 sanctioned family may receive services under this section is dependent upon:  
17  
18 (1) family circumstances;  
19  
20 (2) the risk of returning to public assistance. A person is considered at risk of  
21 returning to TANF cash assistance if he or she is a SNAP recipient, or receives  
22 Commission-funded child care;  
23  
24 (3) the ongoing need for these services; and  
25  
26 (4) the availability of funds for these services.  
27  
28 (g) Post-employment service providers may include employers, community colleges,  
29 technical colleges, career schools and colleges, faith-based and community-based  
30 organizations.  
31

32 **§811.52. Other Choices Activities.**  
33

34 Boards may provide any of the following activities, without restriction, if the activities  
35 are reasonably expected to assist Choices participants in obtaining and retaining  
36 employment:  
37

- 38 (1) Job readiness and job search assistance, as defined in §811.2(11) and (12),  
39 respectively;  
40  
41 (2) Community service, as defined in §811.2(4);  
42  
43 (3) Work experience, as defined in §811.2(24);  
44  
45 (4) Vocational educational training, as defined in §811.2(21);  
46



1 (5) Job skills training, as defined in §811.2(13); and

2  
3 (6) Post-employment services, as set forth in §811.51.

4  
5 **SUBCHAPTER E. SUPPORT SERVICES AND OTHER INITIATIVES**

6  
7 **§811.61. Support Services.**

8  
9 (a) A Board shall ensure that support services as specified in this subchapter are  
10 provided, if needed, to Choices participants to address barriers to employment or  
11 participation in Choices services, subject to availability of resources and funding. A  
12 Board shall ensure that support services provided to Choices participants are  
13 coordinated with the employer, when appropriate.

14  
15 (b) A Board shall ensure that support services, including Commission-funded child care,  
16 are provided only to Choices participants who are meeting Choices program  
17 requirements set forth in §811.16, Subchapter B of this chapter, and as set forth in  
18 §809.45 of this title. In applying this provision, a Board shall ensure support  
19 services are provided to Choices participants if it is determined support services are  
20 needed to comply with Choices program requirements set forth in §811.16,  
21 Subchapter B of this chapter, and as set forth in §809.45 of this title.

22  
23 (c) A Board shall ensure that:

24  
25 (1) support services are terminated immediately upon a determination of failure to  
26 meet Choices program requirements by Choices participants unless otherwise  
27 determined by the Board's service provider as referenced in subsection (b) of  
28 this section;

29  
30 (2) the Board's child care contractor is notified immediately of the failure to meet  
31 Choices program requirements; and

32  
33 (3) upon notification, the Board's child care contractor immediately notifies the  
34 child care provider that services are terminating due to failure to meet Choices  
35 program requirements.

36  
37 (d) A Board shall ensure that support services, classified as cash assistance, for:

38  
39 (1) applicants and former recipients do not extend beyond four months for those  
40 who are unemployed and not receiving TANF cash assistance; and

1  
2  
3  
4  
5  
6  
7

- (2) unemployed conditional applicants and sanctioned families do not extend beyond their demonstrated cooperation period.