

## TEXAS WORKFORCE COMMISSION LETTER

**ID/No:** WD 14-04

**Date:** February 13, 2004

**Key Word:** Child Care

**To:** Local Workforce Development Board Executive Directors  
Commission Executive Staff  
Integrated Service Area Managers  
Commission Local Offices

**From:** Luis M. Macias, Director, Workforce Development Division

**Subject:** Implementation of New Child Care and Development Rules

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### **PURPOSE:**

To provide Local Workforce Development Boards (Boards) with procedures and time frames for implementing new Child Care and Development rules.

### **REFERENCE:**

Texas Human Resources Code, Title 2, §42.049  
Texas Department of Family and Protective Services Rules: 40 TAC §§746 and 747  
Texas Workforce Commission Child Care and Development Rules: 40 TAC §§809.44, 809.121, 809.122, 809.123, and 809.231

### **FLEXIBILITY RATINGS:**

**No Local Flexibility (NLF):** This rating indicates that Boards must comply with the federal and State laws, rules, policies, and required procedures set forth in this WD Letter and have no local flexibility in determining whether and/or how to comply. Federal and State laws, rules, policies, and required procedures with a “No Local Flexibility” rating are indicated by the acronym, **NLF**, in the margin to the right of the applicable paragraph. Additionally, all information with a “No Local Flexibility” rating is indicated by “must” or “shall.”

Failure to comply with the federal and State laws, rules, policies, and required procedures with a “No Local Flexibility” rating may result in corrective action, up to and including sanction and penalty.

**Local Flexibility (LF):** This rating indicates that Boards have local flexibility in determining whether and/or how to implement guidance or recommended practices set forth in this WD Letter. All guidance or recommended practices with a “Local Flexibility” rating are indicated by the acronym, **LF**, located in the margin to the right of the applicable paragraph. Additionally, guidance or recommended practices with a “Local Flexibility” rating are indicated by “may” or “recommended.”

**BACKGROUND:**

On January 6, 2004, the Texas Workforce Commission (Commission) adopted new Child Care and Development rules, which became effective January 29, 2004.

Among other changes, the Commission adopted rules regarding:

- provider liability insurance;
- maximum reimbursement rates for regulated providers;
- minimum activity hours for at-risk families; and
- income inclusion for children of teen parents.

The new Child Care and Development rules may be accessed at <http://www.twc.state.tx.us/twcinfo/rules/ch809.doc>.

**PROCEDURES:**

Boards must ensure that appropriate staff are aware of and adhere to the new requirements set forth in the Child Care and Development rules and in this WD Letter.

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**Provider Liability Insurance**

**Effective immediately**, Boards must notify all providers with agreements to provide Commission-subsidized child care of the following changes to the Commission’s Child Care and Development rules.

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**Licensed Child Care Centers**

State law and Texas Department of Family and Protective Services (TDFPS) rules require only licensed child care centers to carry liability insurance in order to be licensed by the State. Pursuant to Commission rule §809.44, Boards must be aware that a licensed child care center must notify TDFPS, the parent, and the Boards if it is unable to obtain liability insurance.

NLF

Commission rule §809.44 mandates that “any liability insurance requirements placed on licensed child care centers by the Boards shall not exceed the state licensing requirements.”

Boards must not:

- require licensed child care centers to carry liability insurance in excess of \$300,000 per occurrence;
- require licensed child care centers to list the Board or child care contractor as the “additional insured”; or
- require licensed child care centers to indemnify the Board or child care contractor in the licensed child care centers’ liability insurance policies (these provisions would exceed the liability insurance requirements of TDFPS).

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If a licensed child care center's liability insurance expires or is canceled and not renewed, Boards must not withhold reimbursement until:

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- TDFPS takes action against the licensed child care center; and
- the licensed child care center no longer meets the minimum requirements to be considered a provider as defined in Commission rule §809.42.

### **Home-Based Providers**

Boards must not require home-based providers, or any other child care provider not required by law, to have liability insurance.

NLF

If a home-based provider's liability insurance is cancelled or lapses after **January 29, 2004**, but before the provider agreement is amended, Boards must not withhold reimbursement from the provider.

NLF

### **Amending Current Provider Agreements**

Boards must:

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- amend all existing agreements to comply with the provisions of Commission rule §809.44 before **July 1, 2004**; and
- ensure that all provider agreements signed after **January 29, 2004**, comply with the provisions of Commission rule §809.44.

Boards must notify all providers with agreements that if their liability insurance is scheduled for renewal after **January 29, 2004**, but before their provider agreement is amended, the new rules take precedence over the current agreement.

NLF

Additionally, if any conflict arises between the provisions of Commission rule §809.44 and the terms of a provider's agreement before the agreement has been amended, the new rules will take precedence over the current agreement.

If a Board has imposed a sanction on a provider for failing to comply with the liability insurance terms of the provider's agreement, the Board must immediately lift the sanction.

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### **Maximum Reimbursement Rates for Regulated Providers**

In accordance with Commission rule §809.231(c), Boards must establish the same maximum reimbursement rates for all regulated providers, with or without signed agreements, for each category of care.

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Once implemented, this provision may cause reimbursement rates to increase or decrease. Mid-year implementation of this new rule could adversely affect the Boards' ability to meet their performance targets for Fiscal Year 2004; therefore, Boards are not required to implement the revised maximum reimbursement rates

until **September 1, 2004**. However, Boards must submit their revised maximum reimbursement rates to [childcare.programassistance@twc.state.tx.us](mailto:childcare.programassistance@twc.state.tx.us) by **July 1, 2004**.

NLF

### **Minimum Activity Hours for At-Risk Families**

#### **New At-Risk Applicants (Parents Enrolled on or after January 29, 2004)**

Effective **January 29, 2004**, Boards must be aware that all **new** applicants for at-risk child care are subject to a 25- or 50-hour minimum activity requirement.

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However, Boards may require additional activity hours.

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If a Board enacts a policy after **January 29, 2004**, requiring a greater number of activity hours, the Board must provide parents with the following information:

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- The date the new requirements become effective
- The Board-specified deadline for parents to submit required documentation
- Notification that parents have until the Board-specified deadline to comply with Board policy regarding activity hours
- Notification that parents may be eligible for a reduced activity requirement if they document that:
  - they have a medical disability; or
  - they care for a physically or mentally disabled family member.

#### **Currently Enrolled At-Risk Parents (Parents Enrolled Prior to January 29, 2004)**

Boards must ensure that parents of children currently enrolled in at-risk child care submit documentation verifying that they are meeting the Board's minimum activity requirement by **July 1, 2004** (or an earlier deadline determined by the Board).

NLF

**Effective immediately**, Boards must provide all parents of children currently enrolled in at-risk child care with the following information:

NLF

- Minimum activity requirements
- The date the new minimum activity requirements become effective
- Notification that parents may be eligible for a reduced activity requirement if they document that:
  - they have a medical disability; or
  - they care for a physically or mentally disabled family member.

### **Postsecondary Credit Hours**

Postsecondary education credit hours are credit hours that count toward an associate's degree or higher from an institution of higher education. Each credit

hour, as determined by the college or university, counts as three hours of educational activity per week.

**Income Inclusion for Children of Teen Parents**

Boards must ensure that appropriate staff include the income of a child's grandparent(s) when determining family income if the teen parent resides with his or her parent(s). If the teen parent does not reside with his or her parent(s), then the income of the child's grandparent(s) must not be included when determining income. However, appropriate staff must include any monetary contribution the teen parent receives from the child's grandparent(s) when determining income.

**NLF**

Boards must be aware that the new income inclusion rules apply at recertification for currently enrolled teen parents and immediately for newly enrolled teen parents.

**NLF**

**ACTIONS REQUIRED:**

Boards must ensure that appropriate staff are apprised of and comply with the requirements in this WD Letter.

**INQUIRIES:**

Direct inquiries regarding this WD Letter to the assigned contract manager for your local workforce development area.

Rescissions: None	Expiration: September 2, 2004
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