

TEXAS WORKFORCE COMMISSION LETTER

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

From:  for Laurence M. Jones
Laurence M. Jones, Director, Workforce Development Division

Subject: **Implementation of the New Child Care Services Rules**

PURPOSE:

To provide Local Workforce Development Boards (Boards) with information and time frames for implementing the Texas Workforce Commission's (Commission) new Chapter 809, Child Care Services rules.

REFERENCE:

United States Department of Health and Human Services, Child Care and Development Fund, 45 C.F.R. Chapter 98
Texas Workforce Commission Child Care Services Rules: 40 TAC, Chapter 809
Texas Workforce Commission General Administration Rules: 40 TAC §800.58
Texas Workforce Commission Choices Rules: 40 TAC §811.27(b)
Texas Workforce Commission Food Stamp Employment and Training Rules: 40 TAC §813.31(1)(B)

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 “recommend.”

Boards are not subject to corrective action for failure to comply with guidance or recommended practices with a “Local Flexibility” rating.

BACKGROUND:

On January 9, 2007, the Commission adopted the repeal of Chapter 809, Child Care and Development rules, in its entirety and adopted new Chapter 809, Child Care Services rules.

On January 25, 2007, state office staff conducted a teleconference with Boards to discuss the adopted rules and the time frames for their implementation.

The new rules became effective January 29, 2007, and may be accessed at: <http://www.twc.state.tx.us/twcinfo/rules/twcrules.html>.

This WD Letter provides Boards with information and time frames for the implementation of the Commission’s new Child Care Services rules.

PROCEDURES:

Boards must ensure that appropriate staff is aware of and abides by the requirements and time frames set forth in the new Chapter 809, Child Care Services rules, and in this WD Letter.

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Subchapter A: General Provisions

§809.2(17)—Definition of a Regulated Child Care Provider

The §809.2(17) definition of a regulated child care provider—i.e., child care facilities licensed or registered by the Department of Family and Protective Services (DFPS); facilities licensed by the Texas Department of State Health Services as a youth day camp; and facilities operated and monitored by the U.S. military—requires that the regulated facility be a separate location from the eligible child’s own residence.

Effective immediately, for new child care referrals to regulated child care providers, Boards must ensure that care provided by a regulated provider is provided in a separate location from the eligible child’s own residence.

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Boards must ensure that:

- if a regulated provider is caring for an eligible child in the child’s own residence, *no later than March 15, 2007*, both the regulated provider and the child’s parents are notified of this Commission rule; and
- *no later than June 1, 2007*, all regulated child care providers deliver services in a separate location from the eligible child’s own residence.

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Note: Boards must be aware that there are similar restrictions for relative providers residing with the eligible child, which are set forth under §809.91(e) of this WD Letter.

Subchapter B: General Management

§809.13—Board Policies for Child Care Services

Section 809.13 requires that Boards maintain written copies of policies that are required by federal and state law, or as requested by the Commission, and make such policies available to the Commission upon request.

Boards must continue to submit any modifications, amendments, or new policies to the Commission no later than two weeks after Board adoption.

Section 809.13(d) provides a list of policies required by the Commission’s new Child Care Services rules.

No later than June 1, 2007, Boards must submit the required policies listed in §809.13(d) to the Commission.

Subchapter C: Eligibility for Child Care Services

§809.41(d)—Child Care during Job Search

Section 809.41(d) sets forth time limits for child care during job search activities as described below.

For child care services using Commission funds allocated to the Boards pursuant to the child care allocation rules in §800.58 (i.e., Child Care and Development Fund [CCDF]), Boards must be aware that the following applies:

- For parents participating in Choices, time limits for child care during job search are provided in §811.27(b) of the Commission’s Choices rules and child care continues as long as authorized by the Choices case manager;
- For parents participating in Food Stamp Employment and Training (FSE&T), time limits for child care during job search are provided in §813.31(1)(B) of the Commission’s FSE&T rules and child care continues as long as authorized by the FSE&T case manager;
- Former Temporary Assistance for Needy Families (TANF) recipients who are not employed when their TANF benefits expire receive up to four weeks of Transitional child care to allow them to search for work, as required in §809.48(d) of the Commission’s Child Care Services rules; and
- Parents of children currently enrolled in child care may be eligible for continued services for four weeks within a federal fiscal year in order for the parents to search for work when there have been interruptions in their employment.

Boards must be aware of the following:

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- For child care services funded by the Commission with non-CCDF funds (i.e., funds not allotted to the Boards pursuant to §800.58), child care services during job search activities are limited to four weeks within a federal fiscal year.
- For all new eligibility determinations for child care services, the job search time limits set forth in §809.41(d) are *effective immediately*.
- For parents with children currently enrolled in child care services, the job search time limits are *effective at the parents' recertification date*.

Note: Boards must be aware that the federal fiscal year runs from October 1 through September 30.

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§809.44—Calculating Family Income

Section 809.44 provides the list of income inclusions and exclusions.

Boards must be aware of the following:

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- For all new eligibility determinations, the income calculation rule in §809.44 is *effective immediately*.
- For parents with children currently enrolled in child care services, the income calculation rule is *effective at the parents' recertification date*.

§809.48(a)(3)—Minimum Activity Hours for Transitional Child Care

Section 809.48(a)(3) requires that parents with children receiving Transitional child care work or attend job training or educational programs for a combination of at least 25 hours per work for a single-parent family or 50 hours per week for a two-parent family, or for a higher number of hours per week as established by the Board.

Boards must be aware of the following:

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- For all new applicants for Transitional child care, the minimum activity requirements in §809.48(a)(3) are *effective immediately*.
- For parents with children currently enrolled in Transitional child care, the minimum activity requirements in §809.48(a)(3) will be *effective at the parents' recertification date*.

§809.52—Child Care for Children of Teen Parents

Section 809.52(b) requires that the teen parent's family income must be based solely on the teen parent's income and family size.

Boards must be aware that:

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- the income of a teen parent's parents (i.e., the child's grandparents, or other household members) must not be included when determining eligibility;
- the requirements for determining income eligibility for all new eligibility determinations for teen parents applying for child care services are *effective immediately*; and
- the new family income calculation for teen parents with children currently enrolled in child care services is *effective at the teen parents' recertification date*.

Subchapter E: Requirements to Provide Child Care

§809.91(e)—Relative Providers Residing with the Eligible Child

Boards must be aware that the Commission limits child care services provided in the child's own home to relatives who do not reside with the eligible child, *unless*:

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- the eligible child is a child of a teen parent; or
- appropriate staff determines and documents that other child care provider arrangements are not reasonably available.

Factors that Boards may consider to determine whether other child care arrangements are not reasonably available include:

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- the parent's work schedule;
- the availability of adequate transportation; or
- the availability of child care specific to the age of the child.

For relative providers currently residing in the same location as the eligible child, *no later than March 15, 2007*, Boards must ensure that appropriate staff:

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- verifies that the child is a child of a teen parent; or
- determines and documents that other child care provider arrangements are not reasonably available.

By April 1, 2007, Boards must ensure that appropriate staff provides notification of Commission rule §809.91(e) to relative child care providers:

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- who are not caring for the child of a teen parent; or
- who appropriate staff has determined and documented that other child care arrangements are reasonably available.

Boards must ensure that all relative providers have complied with this rule *by June 1, 2007*.

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§809.91(f)—Sex Offender Registry

Commission-funded child care must not be used to subsidize child care provided by registered sex offenders. Therefore, §809.91(f) requires Boards to ensure that no individual appearing on the Texas Department of Public Safety's (DPS) Sex Offender Registry (https://records.txdps.state.tx.us/DPS_WEB/Sor/index.aspx) is eligible to be a relative child care provider.

Boards must ensure that:

- *effective immediately*, no individual appearing on the DPS Sex Offender Registry is authorized or reauthorized as an eligible relative child care provider; and
- *no later than April 1, 2007*, no currently authorized relative child care provider appears on the DPS Sex Offender Registry.

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§809.92(c)(d)—Providers Charging Parents the Difference

Boards must be aware that the Commission prohibits providers from charging the difference between the provider's published rate and the amount of the Board's reimbursement rate to parents participating in Choices and FSE&T. This rule also applies to parents who have children receiving protective services, unless DFPS assesses and authorizes a parent share of cost.

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Boards must:

- notify providers of this rule *no later than March 15, 2007*; and
- ensure that all providers are complying with this rule *by June 1, 2007*.

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In addition, Boards may adopt a policy that prohibits providers from charging *any* parent the difference between the provider's published rate and the amount of the Board's reimbursement rate.

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ACTIONS REQUIRED:

Boards must ensure that appropriate staff is apprised of and complies 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: Continuing
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