

**AN ORDER OF THE TEXAS WORKFORCE COMMISSION REGARDING A WAIVER OF
CHILD CARE SERVICES RULE 40 TAC §808.133(d)(1) AND 40 TAC §809.131(a)(1)**

WHEREAS, 40 Texas Administrative Code (TAC) §809.3(a) authorizes the Commission to grant a waiver of one or more of the requirements of 40 TAC Chapter 809 if it determines that the waiver benefits a parent, child care contractor, or provider, and the Commission determines that the waiver does not harm child care or violate state or federal statutes or regulations; and

WHEREAS, the 87th Texas Legislature made the previously voluntary Texas Rising Star (TRS) program mandatory for all child care providers participating in the Commission's subsidized child care program and required the Commission to use a single entity to oversee a statewide roster of qualified assessors to evaluate child care providers participating in the TRS program; and

WHEREAS, The Children's Learning Institute (CLI) at the University of Texas Health Science Center recently became TWC's Centralized Assessor Entity (CAE) and has notified Child Care and Early Learning (CC&EL) staff that they are facing some initial implementation challenges associated with the new mandatory Texas Rising Star requirement; and

WHEREAS, compliance with 40 TAC §809.133(d)(1) would require CLI to conduct more than 2,600 annual reviews of existing TRS certified programs, while also conducting over 4,300 on-site assessments for new TRS applicants; and

WHEREAS, the Commission has determined that a waiver of the requirements of 40 TAC §809.133(d)(1) will permit CLI to focus on the required on-site assessments, benefits a parent, child care contractor, or provider, and does not harm child care or violate state or federal statutes or regulations; and

WHEREAS, CC&EL staff have identified that 40 TAC 809.131(a)(1) is creating an unintended barrier to home-based providers who wish to expand their capacity by transitioning from a registered home to a licensed home permit due to a mismatch in rule and the manner that Child Care Regulation (CCR) handles these providers' permitting; and

WHEREAS, the Commission has determined that a waiver of the requirements of 40 TAC §809.131(a)(1) will eliminate the barrier and result in increased capacity to serve children in the program, will benefit a parent, child care contractor, or provider, and does not harm child care or violate state or federal statutes or regulations; and

WHEREAS, CC&EL has recommended that 40 TAC §809.133(d)(1) and 40 TAC 809.131(a)(1) should be waived through September 30, 2024, to achieve the desired results. CC&EL also recommends that the waiver of 40 TAC 809.131(a)(1) be granted only to affected home based providers and should last for six months from the date CCR issues the affected provider an initial permit as a licensed home.

NOW THEREFORE, the Commission finds good cause exists to grant the waivers, and specifically finds as follows:

Enforcing the requirements of 40 TAC §809.133(d)(1) will prevent CLI from completing the required on-site assessments for new TRS applicants; and

Enforcing the requirements of 40 TAC §809.131(a)(1) will reduce the number of home-based providers seeking to expand their capacity; and

Granting the waivers will benefit a parent, child care contractor, or provider, and does not harm child care or violate state or federal statutes or regulations.

IT IS ORDERED THAT THE WAIVER of 40 TAC §809.133(d)(1) **IS GRANTED** through September 30, 2024.

FURTHER, IT IS ORDERED THAT THE WAIVER of 40 TAC §809.131(a)(1) is granted only to TRS certified home-based providers transitioning from a registered home permit to a licensed home permit at the same location.

FURTHER, IT IS ORDERED THAT A WAIVER of 40 TAC §809.131(a)(1) may be applied to a home-based provider and is effective for six months from the date CCR issues the home-based provider their initial permit as a licensed home; an initial permit must be issued by CCR no later than September 30, 2024, for the waiver to be applied.

Signed this 7th day of November 2023, upon the affirmative vote of a majority of the Commission present and voting.

Bryan Daniel, Chairman and Commissioner Representing the Public

Alberto Treviño, III, Commissioner Representing Labor