

Chapter 809. CHILD CARE AND DEVELOPMENT

Subchapter C. REQUIREMENTS TO PROVIDE CHILD CARE

40 TAC §809.46

The Texas Workforce Commission (Commission) proposes an amendment to §809.46 concerning assessing parent fees for child care.

The purpose of the amendment is to provide conformity with federal regulations requiring that a sliding fee scale used to assess parent fees for child care be based on family income and family size, and also allowing other applicable factors to be included. The amendment revises the method of determining the parent fee for child care services. The amount of the parent fee is often a determining factor in a parent's ability to obtain and retain employment. By including family size in the methodology for assessing parent fees, the amendment will help ensure that a low-income working parent can become and remain self-sufficient. The amendment also helps ensure that low-income families have equal access to child care. This amendment does not relieve the local workforce development boards (Boards) from meeting Commission-approved performance targets.

The preamble to the federal regulations makes it clear that state agencies have the flexibility to take elements other than family size and gross monthly income, such as the number of children in care, into consideration when designing their fee scales. The amendment requires that Boards vary the fee based on the number of family members and family gross monthly income, and also allows the Boards to consider the number of children in care.

Specifically, the amendment provides that in areas where the Commission administers the program, the parent fee is 9% of the family's gross monthly income if there is one child receiving care, and 11% of the family's gross monthly income if there are two or more children receiving care. For families with seven or more members, the fee is 65% of the amount calculated at either 9% or 11%. Where Boards directly manage the program, they are required to vary the parent fee based on the number of members in the family and the family's gross monthly income, and they are allowed to also consider the number of children the family has in care.

Background. The current rule requires Boards to ensure that parent fees are assessed to all parents or caretakers based on the family's gross monthly income with a few exceptions. A family is required by federal law to share in the cost of subsidized child care, unless the lead agency waives the fee pursuant to the federal regulations. The federal regulations give the states flexibility in deciding the amount of fee to charge parents and whether to waive the fee. The federal regulations also suggest that a parent fee of 10% of family gross monthly income would ensure parent access. The preamble makes it clear that the 10% is offered as a benchmark and not a limit on the state's flexibility in deciding the amount of fee to charge parents.

The Commission intends that the proposed amendment will recognize that high parent fees limit parental choice by encouraging parents to choose less expensive and lower quality child care or to not accept the subsidy. It is the intent of the Commission to ensure that any co-payment or fee paid by the parent is affordable for the family and that the sliding fee scale does not limit parental choice. The Commission intends that this amendment will help prevent disruptions of a child's care that may adversely affect the child's development.

Child care services are provided under Texas Human Resources Code, Chapter 44.

If a Board fails to comply with the provisions contained in the rule, the Board shall be subject to the sanctions as detailed in Chapter 800, Subchapter E of this title relating to Sanctions.

Randy Townsend, Director of Finance, has determined that for each year of the first five years the amendment will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the amendment;

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the amendment;

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the amendment;

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the amendment; and

There are no anticipated economic costs to persons required to comply with the amendment.

Mr. Townsend has also determined that there is no anticipated adverse impact on small businesses as a result of enforcing or administering the rule because small businesses are not regulated by or required to do anything by the amendment.

Mark Hughes, Director of Labor Market Information, has determined that there is no significant negative impact upon employment conditions in this state as a result of the proposed amendment.

Jean Mitchell, Director of Workforce and Development, has determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be to help ensure a more effective use of child care funds to assist Boards in supporting employment, training, and education.

Comments on the proposal may be submitted to Gary Frederick, Texas Workforce Commission Building, 101 East 15th Street, Room 434T, Austin, Texas 78778, (512) 305-9672. Comments may also be submitted via fax to (512) 463-7379 or e-mailed to: Gary.Frederick@twc.state.tx.us. Comments must be received by the Commission within thirty (30) days from the date of the publication in the *Texas Register*.

The amendment to the rule is proposed under Texas Labor Code §§301.061 & 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission's programs.

The amendment to the rule affects Texas Labor Code, Chapter 302, and Texas Human Resources Code, Chapters 31 and 44.

§809.46. Assessing Parent Fees.

(a) A Board shall assess parent fees to all parents or caretakers based on the family's size and gross monthly income, with the following exceptions.

(1) Parents or caretakers who receive TANF are assessed no fee.

(2) Parents or caretakers who receive Supplemental Security Income (SSI) are assessed no fee.

(3) Parents who participate in the Food Stamp Employment and Training program are assessed no fee. Children of parents or caretakers who receive protective services are assessed no fee unless the Texas Department of Protective and Regulatory Services assesses a fee to a parent.

(b) In families where the child is the only TANF or SSI recipient, the parent fee is assessed according to subsection (d) of this section.

(c) Teen parents who live with their parents and who are not covered under exceptions outlined under subsection (a) of this section shall be assessed a parent fee. The parent fee is based solely on the teen parent's income.

(d) Parent fees for all parents not covered under exceptions outlined under subsection (a) of this section are assessed using the following formulas:

(1) In areas where the Commission manages child care service delivery contracts, the parent fee shall be 9% of the family's gross monthly income if there is one child receiving Commission paid child care and 11% of the family's gross monthly income if there are two or more children receiving Commission paid child care. For families with 7 or more members, the fee is 65% of the 9% or 11%.

(2) In areas where the Board directly manages child care service delivery contracts, it is recommended that the parent fee should be no less than 9% and no more than 15% of the family's gross monthly income. The Board shall vary the parent fee based on the number of members in the family and the family's gross monthly income and may also vary the fee based on the number of children the family has in care. The Board shall set the actual fee policy in accordance with the requirements set forth in §809.12 of this chapter (relating to Board Policies and Plans for Child Care Services).

(e) The Board's contractor is not permitted to assess a parent fee that exceeds the cost of care.

(f) Parents who receive a child care subsidy from other state or federal programs such as the Workforce Investment [Job Training Partnership] Act shall pay that amount in addition to the assessed parent fee. The Board's contractor shall request documentation of child care subsidies from the parent.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 23, 1999.

TRD-9908019

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: January 9, 2000

For further information, please call: (512) 463-8812