

Provider Manual
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Child Care Rules

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Child Care Rules

§809.2. Definitions

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

- (1) Attending a job training or educational program -- An individual is considered to be attending a job training or educational program if the individual:
 - (A) is considered by the program to be officially enrolled;
 - (B) meets all attendance requirements established by the program; and
 - (C) is making progress toward successful completion of the program as determined by the Board.
- (2) Child -- An individual who meets the general eligibility requirements contained in this chapter for receiving child care services.
- (3) Child care contractor -- The entity or entities under contract with the Board to manage child care services. This includes contractors involved in determining eligibility for child care services, contractors involved in the billing and reimbursement process related to child care subsidies, as well as contractors involved in the funding of quality improvement activities as described in §809.16.
- (4) Child care services -- Child care subsidies and quality improvement activities funded by the Commission.
- (5) Child care subsidies -- Commission-funded child care reimbursements to an eligible child care provider for the direct care of an eligible child.
- (6) Child with disabilities -- A child who is mentally or physically incapable of performing routine activities of daily living within the child's typical chronological range of development. A child is considered mentally or physically incapable of performing routine activities of daily living if the child requires assistance in performing tasks (major life activity) that are within the typical chronological range of development, including but not limited to, caring for oneself; performing manual tasks; walking; hearing; seeing, speaking, breathing; learning; and working.
- (7) Educational program -- A program that leads to:
 - (A) a high school diploma;
 - (B) a General Educational Development (GED) credential; or
 - (C) a postsecondary degree from an institution of higher education.
- (8) Family -- The unit composed of a child eligible to receive child care services, the parents of that child, and household dependents.
- (9) Household dependent -- An individual living in the household who is one of the following:
 - (A) An adult considered as a dependent of the parent for income tax purposes;
 - (B) A child of a teen parent; or
 - (C) A child or other minor living in the household who is the responsibility of the parent.
- (10) Improper payments -- Payments to a provider or Board's child care contractor for goods or services that are not in compliance with federal or state requirements or applicable contracts.

- (11) Job training program -- A program that provides training or instruction leading to:
- (A) basic literacy;
 - (B) English proficiency;
 - (C) an occupational or professional certification or license; or
 - (D) the acquisition of technical skills, knowledge, and abilities specific to an occupation.
- (12) Listed family home -- A family home, other than the eligible child's own residence, that is listed, but not licensed or registered with, the Texas Department of Family and Protective Services (DFPS) pursuant to Texas Human Resources Code §42.052(c).
- (13) Military deployment -- The temporary duty assignment away from the permanent military installation or place of residence for reserve components of the single military parent or the dual military parents of a child enrolled in child care services. This includes deployed parents in the regular military, military reserves, or National Guard.
- (14) Parent -- An individual who is responsible for the care and supervision of a child and is identified as the child's natural parent, adoptive parent, stepparent, legal guardian, or person standing in loco parentis (as determined in accordance with Commission policies and procedures). Unless otherwise indicated, the term applies to a single parent or both parents.
- (15) Protective services -- Services provided when:
- (A) a child is at risk of abuse or neglect in the immediate or short-term future and the child's family cannot or will not protect the child without DFPS Child Protective Services (CPS) intervention;
 - (B) a child is in the managing conservatorship of DFPS and residing with a relative or a foster parent; or
 - (C) a child has been provided with protective services by DFPS within the prior six months and requires services to ensure the stability of the family.
- (16) Provider -- A provider is defined as:
- (A) a regulated child care provider as defined in §809.2(17);
 - (B) a relative child care provider as defined in §809.2(18); or
 - (C) a listed family home as defined in §809.2(12), subject to the requirements in §809.91(b).
- (17) Regulated child care provider -- A provider caring for an eligible child in a location other than the eligible child's own residence that is:
- (A) licensed by DFPS;
 - (B) registered with DFPS;
 - (C) licensed by the Texas Department of State Health Services as a youth day camp; or
 - (D) operated and monitored by the United States military services.
- (18) Relative child care provider -- An individual who is at least 18 years of age, and is, by marriage, blood relationship, or court decree, one of the following:
- (A) The child's grandparent;
 - (B) The child's great-grandparent;
 - (C) The child's aunt;
 - (D) The child's uncle; or

- (E) The child's sibling (if the sibling does not reside in the same household as the eligible child).
- (19) Residing with -- A child is considered to be residing with the parent when the child's primary place of residence is the same as the parent's primary place of residence.
- (20) Teen parent -- A teen parent (teen) is an individual 18 years of age or younger, or 19 years of age and attending high school or the equivalent, who has a child.
- (21) Working -- Working is defined as:
 - (A) activities for which one receives monetary compensation such as a salary, wages, tips, and commissions;
 - (B) job search activities (subject to the requirements in §809.41(d)); or
 - (C) participation in Choices or Food Stamp Employment and Training (FSE&T) activities.

The provisions of this new §809.2 adopted to be effective January 29, 2007, as published in the Texas Register, January 26, 2007, 32 TexReg 336.

§809.3. Waiver Request

- (a) The Commission may waive child care rules upon request from a person directly affected by the rules, 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.
- (b) Prior to submitting a waiver request to the Commission, the child must have been determined by the Board's child care contractor to meet the minimum qualifications set forth in §809.41(a).

The provisions of this new §809.3 adopted to be effective January 29, 2007, as published in the Texas Register, January 26, 2007, 32 TexReg 336.

§809.13. Board Policies for Child Care Services

- (a) A Board shall develop, adopt, and modify its policies for the design and management of the delivery of child care services in a public process in accordance with Chapter 801 of this title.
- (b) A Board shall maintain written copies of the policies that are required by federal and state law, or as requested by the Commission, and make such policies available to the Commission and the public upon request.
- (c) A Board shall also submit any modifications, amendments, or new policies to the Commission no later than two weeks after adoption of the policy by the Board.
- (d) At a minimum, a Board shall develop policies related to:
 - (1) how the Board determines that the parent is making progress toward successful completion of a job training or educational program as described in §809.2(1);
 - (2) maintenance of a waiting list as described in §809.18(b);
 - (3) assessment of a parent share of cost as described in §809.19, including the reimbursement of providers when a parent fails to pay the parent share of cost;
 - (4) maximum reimbursement rates as provided in §809.20, including policies related to reimbursement of providers who offer transportation;
 - (5) family income limits as described in Subchapter C of this chapter (relating to Eligibility for Child Care Services);

- (6) provision of child care services to a child with disabilities up to the age of 19 as described in §809.41(a)(1)(B);
- (7) minimum activity requirements for parents as described in §§809.48, 809.50, and 809.51;
- (8) time limits for the provision of child care while the parent is attending an educational program as described in §809.41(b);
- (9) frequency of eligibility redetermination as described in §809.42(b)(2);
- (10) Board priority groups as described in §809.43(a);
- (11) transfer of a child from one provider to another as described in §809.71(b)(2);
- (12) provider eligibility for listed family homes as provided in §809.91(b), if the Board chooses to include listed family homes as eligible providers;
- (13) attendance standards and procedures as provided in §809.92(b)(3), including provisions consistent with §809.54(f) (relating to Continuity of Care for custody and visitation arrangements);
- (14) providers charging the difference between their published rate and the Board's reimbursement rate as provided in §809.92(d); and
- (15) procedures for investigating fraud as provided in §809.111.

The provisions of this new §809.13 adopted to be effective January 29, 2007, as published in the Texas Register, January 26, 2007, 32 TexReg 336.

§809.16. Quality Improvement Activities

- (a) Child care funds allocated by the Commission pursuant to its allocation rules (generally, Chapter 800, General Administration, Subchapter B, Allocation and Funding, and specifically §800.58, Child Care), including local public transferred funds and local private donated funds, as provided in §809.17, to the extent they are used for nondirect care quality improvement activities, shall be used only for the following:
 - (1) Collaborative reading initiatives;
 - (2) School readiness, early learning, and literacy; or
 - (3) Local-level support to promote child care consumer education provided by 2-1-1 Texas.
- (b) Allowable activities to support the quality improvement activities described in subsection (a) of this section may include the following:
 - (1) Professional development and training for child care providers; or
 - (2) Purchase of curriculum and curriculum-related support resources for child care providers.
- (c) Activities in subsection (a) of this section may be designed to meet the needs of children in any age group eligible for Commission-funded child care, as well as children with disabilities.
- (d) In funding quality improvement activities allowable under this section, a Board may give priority to child care facilities:
 - (1) participating in the integrated school readiness models developed by the State Center;
 - (2) implementing components of school readiness curricula as approved by the State Center; or
 - (3) participating in or voluntarily pursuing participation in Texas Rising Star Provider Certification, pursuant to Texas Government Code §2308.316.

- (e) Expenditures certified by a public entity, as provided in §809.17(b)(3), may include expenditures for any quality improvement activity described in 45 C.F.R. §98.51.

The provisions of this new §809.16 adopted to be effective January 29, 2007, as published in the Texas Register, January 26, 2007, 32 TexReg 336.

§809.19. Assessing the Parent Share of Cost

- (a) For child care funds allocated by the Commission pursuant to its allocation rules (generally, Chapter 800, General Administration, Subchapter B, Allocation and Funding, and specifically, §800.58, Child Care), including local public transferred funds and local private donated funds, as provided in §809.17, the following shall apply.
 - (1) A Board shall set a parent share of cost policy that assesses the parent share of cost in a manner that results in the parent share of cost:
 - (A) being assessed to all parents, except in instances when an exemption under paragraph (2) of this subsection applies;
 - (B) being an amount determined by a sliding fee scale based on the family's size and gross monthly income, and also may consider the number of children in care; and
 - (C) not exceeding the cost of care.
 - (2) Parents who are one or more of the following are exempt from paying the parent share of cost:
 - (A) Parents who are participating in Choices;
 - (B) Parents who are participating in FSE&T services; or
 - (C) Parents who have children who are receiving protective services, unless DFPS assesses the parent share of cost.
 - (3) Teen parents who are not covered under exemptions listed in paragraph (2) of this subsection shall be assessed a parent share of cost. The teen parent's share of cost is based solely on the teen parent's income and size of the teen's family as defined in §809.2(8).
- (b) For child care services funded from sources other than those specified in subsection (a) of this section, a Board shall set a parent share of cost policy based on a sliding fee scale. The sliding fee scale may be the same as or different from the provisions contained in subsection (a) of this section.
- (c) A Board shall establish a policy regarding reimbursement of providers when parents fail to pay the parent share of cost.
- (d) The Board or its child care contractor may review the assessed parent share of cost for possible reduction if there are extenuating circumstances that jeopardize a family's self-sufficiency. The Board or its child care contractor may reduce the assessed parent share of cost if warranted by these circumstances.
- (e) If the parent is not covered by an exemption as specified in subsection (a)(2) of this section, then the Board or its child care contractor shall not waive the assessed parent share of cost under any circumstances.
- (f) If the parent share of cost, based on family income and family size, is calculated to be zero, then the Board or its child care contractor shall not charge the parent a minimum share of cost amount.

The provisions of this new §809.19 adopted to be effective January 29, 2007, as published in the Texas Register, January 26, 2007, 32 TexReg 336.

§809.20. Maximum Provider Reimbursement Rates

- (a) Based on local factors, including a market rate survey provided by the Commission, a Board shall establish maximum reimbursement rates for child care subsidies to ensure that the rates provide equal access to child care in the local market and in a manner consistent with state and federal statutes and regulations governing child care.
- (b) A Board shall establish graduated reimbursement rates for:
 - (1) child care providers participating in integrated school readiness models developed by the State Center; and
 - (2) Texas Rising Star Providers pursuant to Texas Government Code §2308.315.
- (c) The minimum reimbursement rates established under subsection (b) of this section shall be at least five percent greater than the maximum rate established for providers not meeting the requirements of subsection (b) of this section for the same category of care up to, but not to exceed, the provider's published rate.
- (d) A Board or its child care contractor shall ensure that providers who are reimbursed for additional staff or equipment needed to assist in the care of a child with disabilities are paid a rate up to 190% of the provider's reimbursement rate for a child of that same age. The higher rate shall take into consideration the estimated cost of the additional staff needed by a child with disabilities. The Board shall ensure that a professional, who is familiar with assessing the needs of children with disabilities, certifies the need for the higher reimbursement rate described in subsection (b) of this section.
- (e) The Board shall determine whether to reimburse providers who offer transportation as long as the combined total of the provider's published rate, plus the transportation rate, is subject to the maximum reimbursement rate established in subsection (a) of this section.

The provisions of this new §809.20 adopted to be effective January 29, 2007, as published in the Texas Register, January 26, 2007, 32 TexReg 336.

§809.21. Determining the Amount of the Provider Reimbursement

The actual reimbursement that the Board or the Board's child care contractor pays to the provider shall be the Board's maximum rate or the provider's published rate, whichever is lower, less the following amounts:

- (1) The parent share of cost assessed and adjusted when the parent share of cost is reduced; and
- (2) Any child care funds received by the parent from other public or private entities.

The provisions of this new §809.21 adopted to be effective January 29, 2007, as published in the Texas Register, January 26, 2007, 32 TexReg 336.

§809.41. A Child's General Eligibility for Child Care Services

- (a) Except for a child receiving or needing protective services as described in §809.49, for a child to be eligible to receive child care services, the child shall:
 - (1) meet one of the following age requirements:
 - (A) be under 13 years of age; or
 - (B) at the option of the Board, be a child with disabilities under 19 years of age; and
 - (2) reside with:
 - (A) a family whose income does not exceed the income limit established by the Board, which income limit must not exceed 85% of the state median income for a family of the same size; and

- (B) parents who require child care in order to work or attend a job training or educational program.
- (b) Notwithstanding the requirements set forth in subsection (c) of this section, a Board shall establish policies, including time limits, for the provision of child care services while the parent is attending an educational program.
- (c) Time limits pursuant to subsection (b) of this section shall ensure the provision of child care services for four years, if the eligible child's parent is enrolled in an associate's degree program that will prepare the parent for a job in a high-growth, high-demand occupation as determined by the Board.
- (d) Unless otherwise subject to job search limitations as stipulated in this title, the following shall apply:
 - (1) For child care funds allocated by the Commission pursuant to its allocation rules (generally, Chapter 800, General Administration, Subchapter B, Allocation and Funding, and specifically, §800.58 Child Care), an enrolled child may be eligible for child care services for four weeks within a federal fiscal year in order for the child's parent to search for work because of interruptions in the parent's employment.
 - (2) For child care services funded by the Commission from sources other than those specified in paragraph (1) of this subsection, child care services during job search activities are limited to four weeks within a federal fiscal year.

The provisions of this new §809.41 adopted to be effective January 29, 2007, as published in the Texas Register, January 26, 2007, 32 TexReg 336.

§809.49. Child Care for Children Receiving or Needing Protective Services

- (a) A Board shall ensure that determinations of eligibility for children needing protective services are performed by DFPS.
 - (1) Child care will continue as long as authorized and funded by DFPS.
 - (2) DFPS may authorize child care for a child under court supervision up to age 19.
- (b) A Board shall ensure that requests made by DFPS for specific eligible providers are enforced for children in protective services.

The provisions of this new §809.49 adopted to be effective January 29, 2007, as published in the Texas Register, January 26, 2007, 32 TexReg 336.

§809.51. Child Care for Children with Disabilities

- (a) A child with disabilities is eligible for child care services if:
 - (1) the child resides with a family whose income, after deducting the cost of the child's ongoing medical expenses, does not exceed the income limit established by the Board; and
 - (2) child care is required for the child's parents to work or attend a job training or educational program for a minimum of 25 hours per week for a single-parent family or 50 hours per week for a two-parent family, or a higher number of hours per week as established by a Board.
- (b) A Board may allow a reduction to the requirements in subsection (a)(2) of this section if the need to care for a child with disabilities prevents the parent from participating in the activities for the required hours per week.
- (c) For purposes of meeting the education requirements stipulated in subsection (b)(2) of this section, each credit hour of postsecondary education will count as three hours of

education activity per week and each credit hour of a postsecondary education condensed course will count as six education activity hours per week.

The provisions of this new §809.51 adopted to be effective January 29, 2007, as published in the Texas Register, January 26, 2007, 32 TexReg 336.

§809.54. Continuity of Care

- (a) Enrolled children, including children whose eligibility for Transitional child care has expired, shall receive child care as long as the family remains eligible for any available source of Commission-funded child care except as otherwise provided under subsection (b) of this section.
- (b) Except as provided by §809.76(b) relating to child care during appeal, nothing in this chapter shall be interpreted in a manner as to result in a child being removed from care, except when removal from care is required for child care to be provided to a child of parents eligible for the first priority group as provided in §809.43.
- (c) In closed DFPS Child Protective Services cases (DFPS cases) where child care is no longer funded by DFPS, the following shall apply:
 - (1) Former DFPS Children Needing Protective Services Child Care. Regardless of whether the family meets the income eligibility requirements of the Board or is working or attending a job training or educational program, if DFPS determines on a case-by-case basis that the child continues to need protective services and child care is integral to that need, then the Board shall continue the child care by using other funds, including funds received through the Commission, for child care services for up to six months after DFPS case is closed.
 - (2) Former DFPS Children Not Needing Protective Services Child Care. If the family meets the income eligibility requirements of the Board and if DFPS does not state on a case-by-case basis that the child continues to need protective services or child care is not integral to that need, then the Board may provide care subject to the availability of funds. To receive care under this paragraph, the parents must be working or attending a job training or an educational program.
- (d) A Board shall ensure that no children of military parents in military deployment have a disruption of child care services or eligibility because of the military deployment.
- (e) A Board shall ensure that a child who is required by a court-ordered custody or visitation arrangement to leave a provider's care is permitted to continue receiving child care by the same provider, or another provider if agreed to by the parent in advance of the leave, upon return from the court-ordered custody or visitation arrangement.
- (f) A Board may encourage parents of other children to temporarily utilize the space the child under court-ordered custody or visitation arrangement has vacated until the child returns so he or she can return to the same provider.
- (g) A Board shall ensure that parents who choose to accept temporary child care to fill a position opened because of court-ordered custody or visitation shall not lose their place on the waiting list.
- (h) A Board shall ensure that parents who choose not to accept temporary child care to fill a position opened because of court-ordered custody or visitation shall not lose their place on the waiting list.

The provisions of this new §809.54 adopted to be effective January 29, 2007, as published in the Texas Register, January 26, 2007, 32 TexReg 336.

§809.71. Parent Rights

A Board shall ensure that the Board's child care contractor informs the parent in writing that the parent has the right to:

- (1) choose the type of child care provider that best suits their needs and to be informed of all child care options available to them as included in the consumer education information described in §809.15;
- (2) visit available child care providers before making their choice of a child care option;
- (3) receive assistance in choosing initial or additional child care referrals including information about the Board's policies regarding transferring children from one provider to another;
- (4) be informed of the Commission rules and Board policies related to providers charging parents the difference between the Board's reimbursement and the provider's published rate as described in §809.92(c)-(d);
- (5) be represented when applying for child care services;
- (6) be notified of their eligibility to receive child care services within 20 days from the day the Board's child care contractor receives all necessary documentation required to determine eligibility for child care;
- (7) receive child care services regardless of race, color, national origin, age, sex, disability, political beliefs, or religion;
- (8) have the Board and the Board's child care contractor treat information used to determine eligibility for child care services as confidential;
- (9) receive written notification, except as provided by paragraph (10) of this section, from the Board's child care contractor at least 15 days before the denial, delay, reduction, or termination of child care services unless the following exceptions apply:
 - (A) Notification of denial, delay, reduction, or termination of child care services is not required when the services are authorized to cease immediately because either the parent is no longer participating in the Choices program or services are authorized to end immediately for children in protective services child care; or
 - (B) The Choices program participants and children in protective services child care are notified of denial, delay, reduction, or termination of child care and the effective date of such actions by the Choices caseworker or DFPS;
- (10) receive 30-day written notification from the Board's child care contractor if child care is to be terminated in order to make room for a priority group described in §809.43(a)(1), as follows:
 - (A) Written notification of denial, delay, reduction or termination shall include information regarding other child care options for which the recipient may be eligible.
 - (B) If the notice on or before the 30th day before denial, delay, reduction, or termination in child care would interfere with the ability of the Board to comply with its duties regarding the number of children served or would require the expenditure of funds in excess of the amount allocated to the Board, notice may be provided on the earliest date on which it is practicable for the Board to provide notice;
- (11) reject an offer of child care services or voluntarily withdraw their child from child care unless the child is in protective services;

(12) be informed of the possible consequences of rejecting or ending the child care that is offered;

(13) be informed of the eligibility documentation and reporting requirements described in §809.72 and §809.73;

(14) be informed of the parent appeal rights described in §809.74; and

(15) be informed of the Board's attendance policy as required in §809.13(d)(13).

The provisions of this new §809.71 adopted to be effective January 29, 2007, as published in the Texas Register, January 26, 2007, 32 TexReg 336.

§809.73. Parent Reporting Requirements

(a) Parents shall report to the child care contractor, within 10 days of the occurrence, the following:

(1) Changes in family income;

(2) Changes in family size;

(3) Changes in work or attendance in a job training or educational program;

(4) The receipt or the awarding of any child care funds from other public or private entities; or

(5) Any other changes that may affect the child's eligibility or parent share of cost for child care.

(b) Failure to report changes may result in:

(1) termination of child care;

(2) recovery of payments by the Board, the Board's child care contractor, or the Commission; or

(3) fact-finding for suspected fraud as described in Subchapter F of this chapter.

(c) The receipt of child care services for which the parent is no longer eligible constitutes grounds on which to suspect fraud.

The provisions of this new §809.73 adopted to be effective January 29, 2007, as published in the Texas Register, January 26, 2007, 32 TexReg 336.

§809.74. Parent Appeal Rights

(a) Unless otherwise stated in this section, a parent may request a hearing pursuant to Chapter 823 of this title, if the parent's eligibility or child's enrollment is denied, delayed, reduced, or terminated by the Board's child care contractor.

(b) A parent may have an individual represent him or her during this process.

(c) A parent of a child in protective services may not appeal pursuant to Chapter 823 of this title, but shall follow the procedures established by DFPS.

(d) If the parent's eligibility or child's enrollment is denied, delayed, reduced, or terminated by a Choices caseworker, the parent may appeal pursuant to Chapter 823 of this title.

(e) If the parent's eligibility or child's enrollment is denied, delayed, reduced, or terminated by an FSE&T caseworker, the parent may appeal pursuant to Chapter 823 of this title.

The provisions of this new §809.74 adopted to be effective November 26, 2007, as published in the Texas Register, November 23, 2007, 32 TexReg 8543.

§809.91. Minimum Requirements for Providers

(a) A Board shall ensure that child care subsidies are paid only to:

(1) regulated child care providers as described in §809.2(17);

- (2) relative child care providers as described in §809.2(18), subject to the requirements in subsections (e) and (f) of this section; or
 - (3) at the Board option, listed family homes as defined in §809.2(12), subject to the requirements in paragraph (b)(2) of this section.
- (b) For providers listed with DFPS, the following applies:
- (1) A Board shall not prohibit a relative child care provider who is listed with DFPS and who meets the minimum requirements of this section from being an eligible relative child care provider.
 - (2) If a Board chooses to include listed family homes, as defined in §809.2(12), that provide care for children unrelated to the provider, a Board shall ensure that there are in effect, under local law, requirements applicable to the listed family homes designated to protect the health and safety of children. Pursuant to 45 C.F.R. §98.41, the requirements shall include:
 - (A) the prevention and control of infectious diseases (including immunizations);
 - (B) building and physical premises safety; and
 - (C) minimum health and safety training appropriate to the child care setting.
- (c) Except as provided by the criteria for Texas Rising Star Provider Certification, a Board or the Board's child care contractor shall not place requirements on regulated providers that:
- (1) exceed the state licensing requirements stipulated in Texas Human Resources Code, Chapter 42; or
 - (2) have the effect of monitoring the provider for compliance with state licensing requirements stipulated in Texas Human Resources Code, Chapter 42.
- (d) When a Board or the Board's child care contractor, in the course of fulfilling its responsibilities, gains knowledge of any possible violation regarding regulatory standards, the Board or its child care contractor shall report the information to the appropriate regulatory agency.
- (e) Relative child care providers shall not reside in the same household as the eligible child unless:
- (1) the eligible child is a child of a teen parent; or
 - (2) the Board's child care contractor determines and documents that other child care provider arrangements are not reasonably available. Factors used to determine the reasonable availability of child care may include, but are not limited to:
 - (A) the parent's work schedule;
 - (B) the availability of adequate transportation; or
 - (C) the age of the child.
- (f) For relative child care providers to be eligible for reimbursement for Commission-funded child care services, the following applies:
- (1) Relative child care providers caring for a child in the relative's own residence shall list with DFPS; however, pursuant to 45 C.F.R. §98.41(e), relative child care providers listed with DFPS shall be exempt from the health and safety requirements of 45 C.F.R. §98.41(a);
 - (2) For relative child care providers caring for a child in the child's own residence, Boards shall ensure that the relative child care provider does not appear on the Texas Department of Public Safety's Sex Offender Registry, pursuant to Chapter 62 of the Texas Code of Criminal Procedure.

The provisions of this new §809.91 adopted to be effective June 24, 2007, as published in the Texas Register, June 15, 2007, 32 TexReg 3698.

§809.92. Provider Responsibilities and Reporting Requirements

- (a) A Board shall ensure that providers are given written notice of and agree to their responsibilities, reporting requirements, and requirements for reimbursement under this subchapter prior to enrolling a child.
- (b) Providers shall:
 - (1) be responsible for collecting the parent share of cost as assessed under §809.19 before child care services are delivered;
 - (2) be responsible for collecting other child care funds received by the parent as described in §809.21(2);
 - (3) report to the Board or the Board's child care contractor instances in which the parent fails to pay the parent share of cost; and
 - (4) follow attendance reporting and tracking procedures required by the Commission, Board, or, if applicable, the Board's child care contractor. At a minimum, the provider shall:
 - (A) document and maintain a record of each child's attendance and submit attendance records to the Board's child care contractor upon request;
 - (B) inform the Board's child care contractor when an enrolled child is absent; and
 - (C) inform the Board's child care contractor that the child has not attended the first three days of scheduled care. The provider has until the close of the third day of scheduled attendance to contact the Board's child care contractor regarding the child's absence.
- (c) Providers shall not charge the difference between the provider's published rate and the amount of the Board's reimbursement rate as determined under §809.21 to parents:
 - (1) who are exempt from the parent share of cost assessment under §809.19(a)(2); or
 - (2) whose parent share of cost is calculated to be zero pursuant to §809.19(f).
- (d) A Board may develop a policy that prohibits providers from charging the difference between the provider's published rate and the amount of the Board's reimbursement rate (including the assessed parent share of cost) to all parents eligible for child care services.

The provisions of this new §809.92 adopted to be effective January 29, 2007, as published in the Texas Register, January 26, 2007, 32 TexReg 336.

§809.93. Provider Reimbursement

- (a) A Board shall ensure that reimbursement for child care is paid:
 - (1) to the provider only; and
 - (2) after the Board or its child care contractor receives a complete Declaration of Services Statement from the provider verifying that services were rendered.
- (b) The Declaration of Services Statement shall contain:
 - (1) name, age, and identifying information of the child;
 - (2) amount of care provided in terms of units of care;
 - (3) rate of payment;
 - (4) dates services were provided;
 - (5) name and identifying information of the provider, including the location where care is provided;

- (6) verification by the provider that the information submitted in the Declaration of Services Statement is correct; and
- (7) additional information as may be required by the Boards.
- (c) A relative child care provider shall not be reimbursed for more children than permitted by the DFPS minimum regulatory standards for Registered Child Care Homes. A Board may permit more children to be cared for by a relative child care provider on a case-by-case basis as determined by the Board.
- (d) A Board shall not reimburse providers that are debarred from other state or federal programs unless and until the debarment is removed.
- (e) Unless otherwise determined by the Board and approved by the Commission for automated reporting purposes, reimbursement for child care is based on the unit of service delivered, as follows:
 - (1) A full-day unit of service is 6 to 12 hours of care provided within a 24-hour period; and
 - (2) A part-day unit of service is fewer than 6 hours of care provided within a 24-hour period.
- (f) A Board or its child care contractor shall ensure that providers are not paid for holding spaces open except as consistent with attendance policies as established by the Board.
- (g) A Board or the Board's child care contractor shall not pay providers:
 - (1) less, when a child enrolled full time occasionally attends for a part day; or
 - (2) more, when a child enrolled part time occasionally attends for a full day.
- (h) The Board or its child care contractor shall not reimburse a provider retroactively for new Board maximum reimbursement rates or new provider published rates.

The provisions of this new §809.93 adopted to be effective January 29, 2007, as published in the Texas Register, January 26, 2007, 32 TexReg 336.

§809.112. Suspected Fraud

A parent, provider, or any other person in a position to commit fraud may be suspected of fraud if the person presents or causes to be presented to the Board or its child care contractor one or more of the following items:

- (1) A request for reimbursement in excess of the amount charged by the provider for the child care; or
- (2) A claim for child care services if evidence indicates that the person may have:
 - (A) known, or should have known, that child care services were not provided as claimed;
 - (B) known, or should have known, that information provided is false or fraudulent;
 - (C) received child care services during a period in which the parent or child was not eligible for services;
 - (D) known, or should have known, that child care subsidies were provided to a person not eligible to be a provider; or
 - (E) otherwise indicated that the person knew or should have known that the actions were in violation of this chapter or state or federal statute or regulations relating to child care services.

The provisions of this new §809.112 adopted to be effective January 29, 2007, as published in the Texas Register, January 26, 2007, 32 TexReg 336.

§809.113. Action to Prevent or Correct Suspected Fraud

- (a) The Commission, Board, or Board's child care contractor may take the following actions if the Commission finds that a provider has committed fraud:
 - (1) Temporary withholding of payments to the provider for child care services delivered;
 - (2) Nonpayment of child care services delivered;
 - (3) Recoupment of funds from the provider;
 - (4) Stop authorizing care at the provider's facility or location; or
 - (5) Any other action consistent with the intent of the governing statutes or regulations to investigate, prevent, or stop suspected fraud.
- (b) The Commission, Board, or Board's child care contractor may take the following actions if the Commission finds that a parent has committed fraud:
 - (1) recouping funds from the parent;
 - (2) prohibiting future child care eligibility, provided that the prohibition does not result in a Choices or FSE&T participant becoming ineligible for child care;
 - (3) limiting the enrollment of the parent's child to a regulated child care provider; or
 - (4) any other action consistent with the intent of the governing statutes or regulations to investigate, prevent, or stop suspected fraud.

The provisions of this new §809.113 adopted to be effective January 29, 2007, as published in the Texas Register, January 26, 2007, 32 TexReg 336.

§809.114. Failure to Comply with Commission Rules and Board Policies

- (a) The Board shall ensure that parents and providers comply with Commission rules.
- (b) The Commission, Board or Board's child care contractor may consider failure by a provider or parent to comply with this chapter as an act that may warrant corrective and adverse action as detailed in §809.115 (relating to Corrective Adverse Actions).
- (c) Failure by a provider or parent to comply with this chapter shall also be considered a breach of contract, which may also result in corrective action as detailed in this subchapter.

The provisions of this new §809.114 adopted to be effective January 29, 2007, as published in the Texas Register, January 26, 2007, 32 TexReg 336.

§809.115. Corrective Adverse Actions

- (a) When determining appropriate corrective actions, the Board or Board's child care contractor shall consider:
 - (1) the scope of the violation;
 - (2) the severity of the violation; and
 - (3) the compliance history of the person or entity.
- (b) Corrective actions may include, but are not limited to, the following:
 - (1) Closing intake;
 - (2) Moving children to another provider selected by the parent;
 - (3) Withholding provider payments or reimbursement of costs incurred;
 - (4) Termination of child care services; and
 - (5) Recoupment of funds.

- (c) When a provider violates a provision of Subchapter E of this chapter, a written Service Improvement Agreement may be negotiated between the provider and the Board or the Board's child care contractor. At the least, the Service Improvement Agreement shall include the following:
 - (1) The basis for the Service Improvement Agreement;
 - (2) The steps required to reach compliance including, if applicable, technical assistance;
 - (3) The time limits for implementing the improvements; and
 - (4) The consequences of noncompliance with the Service Improvement Agreement.

The provisions of this new §809.115 adopted to be effective January 29, 2007, as published in the Texas Register, January 26, 2007, 32 TexReg 336.

§809.117. Recovery of Improper Payments to a Provider or Parent

- (a) The provider shall repay improper payments for child care services received in the following circumstances:
 - (1) Instances involving fraud;
 - (2) Instances in which the provider did not meet the provider eligibility requirements in this chapter;
 - (3) Instances in which the provider was paid for the child care services from another source;
 - (4) Instances in which the provider did not deliver the child care services;
 - (5) Instances in which referred children have been moved from one facility to another without authorization from the child care contractor; and
 - (6) Other instances when repayment is deemed an appropriate action.
- (b) A parent shall repay improper payments for child care in the following circumstances:
 - (1) Instances involving fraud as defined in this chapter;
 - (2) Instances in which the parent has received child care services while awaiting an appeal and the determination is affirmed by the hearing officer; or
 - (3) Other instances in which repayment is deemed an appropriate corrective action.

The provisions of this new §809.117 adopted to be effective January 29, 2007, as published in the Texas Register, January 26, 2007, 32 TexReg 336.