

Chapter 809. Child Care.

§§809.1 et seq. Prior rules repealed and new rules adopted.

PART XX. Texas Workforce Commission

CHAPTER 809. Child Care and Development

The Texas Workforce Commission (Commission) adopts the repeal of §§809.1-809.20, 809.22-809.39, 809.41-809.53, 809.55, 809.57-809.58, 809.60-809.65, 809.67-809.88, and new §§ 809.1-809.4, 809.21-809.33, 809.41-809.48, 809.61-809.78, 809.81-809.92, 809.101-809.111, 809.121-809.124, and 809.141-809.155, concerning Child Care and Development rules. Sections §§809.2-809.3, 809.21, 809.26, 809.41, 809.44, 809.47, 809.61, 809.64-809.66, 809.68, 809.70-809.78, 809.81-809.82, 809.84, 809.89, 809.108-809.109, 809.122, 809.124, 809.141, 809.149, 809.152, and 809.154-809.155 and the title to Subchapter E. are adopted with non-substantive changes to the proposed text as published in the June 20, 1997, issue of the Texas Register (22 TexReg 5895). Sections 809.1, 809.4, 809.22-809.25, 809.27-809.33, 809.42, 809.43, 809.45, 809.46, 809.48, 809.62, 809.63, 809.67, 809.69, 809.83, 809.85-88, 809.90-809.92, 809.101-809.107, 809.110, 809.111, 809.121, 809.123, 809.142-809.148, 809.150, 809.151, and 809.153, are adopted without changes and will not be republished.

Explanation: The Commission is adopting these child care rules due to changes made to the federal law governing child care funding at 42 U.S.C.A.

§§9858, et seq. to reflect that the Child Care and Development Program transferred from the Texas Department of Human Services to the Texas Workforce Commission on June 1, 1996. To this end, the promulgation of these rules was necessary to accomplish repealing some sections; renumbering remaining sections into new subchapters; revising sections to reflect technical and substantive changes; and creating new sections not previously in existence. Note: Several of the new rules contain only minor changes from the previous language of the subject rules. However, due to the renumbering of some of these rules, the Texas Register requires the Commission to repeal and replace as new the previous rules. Specifically, the Commission repeals and adopts the following:

Rules Repealed: The repeal of §§809.1, 809.10, 809.57, 809.63, 809.64, 809.79, and 809.80 reflects a reduction in the number of eligibility rules and significant changes in the federal law at 42 U.S.C. §418(a) (relating to the Social Security Act), 42 U.S.C. §9858 (relating to the Child Care and Development Block Grant Act of 1990), as amended, and proposed changes to 45 C.F.R. Parts 98 and 99. The eligibility criteria for child care services funded by Child Care and Development Block Grant, Food Stamp Employment and Training and Title XX were combined into one rule which deals with all child care funding sources, §809.13. In addition, the section on allowable services during interruptions to education or training activities was combined with another section, §809.73, that addresses interruptions to employment activities. The determination of family members for child care services has been added to definitions at §809.2. The repeal of §809.1 concerns the documentation of client eligibility required by a contractor in order to receive payment for services. This requirement is covered in §§809.28, 809.84 and 809.111. The repeal of §809.10 concerns the requirements for insurance coverage for Child Care Management System (CCMS) contractors. The requirement for insurance will be added to the language of the CCMS contracts, eliminating the necessity of a rule, (repealed rule §809.10).

The adopted rules are explained as follows:

Renumbering of the Remaining Rules. See Figure 1: 40 TAC §§809.1-809.155

Adoption Preamble.

New Subchapters--The new sections regroup rules and incorporate new rules into the following subchapters: A. General Provisions, B. Contractor Requirements, C. Child Care Provider Requirements, D. Client Eligibility Requirements, E. Client Eligibility Process Requirements, F. Billing and Payment Requirements, G.

Program Monitoring and Compliance Requirements, H. Corrective and Adverse Actions.

Rules Containing Technical Changes: The renumbered rules incorporate technical changes to §§809.22-809.31, 809.33, 809.43-809.47, 809.61-809.63, 809.66, 809.69-809.71, 809.81-809.83, 809.85-809.86, 809.88, 809.90-809.92, 809.101-809.109, 809.111, 809.121-809.124, 809.141-809.142, 809.144-809.147, 809.149-809.150, and 809.154. The technical changes include changing references from the "Texas Department of Human Services (DHS)" to "the Commission"; from "Aid to Families with Dependent Children (AFDC)" to "Temporary Assistance for Needy Families (TANF)"; from "JOBS funded child care" to "Temporary Assistance for Needy Families (TANF) Employment Services;" and from "the JOBS program" to "the Commission's Employment Program for Temporary Assistance for Needy Families (TANF) Recipients." The change incorporated into new §809.109 uses plainer language to discuss payments to parents who arrange child care outside of the CCMS system of vendors. The renumbering also incorporates cross-references to section numbers and section titles and the use of the term "title" or "chapter" in place of "title" or "chapter" where appropriate.

Rules Containing changes: The new rules incorporate changes to §§809.21, 809.41, 809.42, 809.48, 809.64, 809.65, 809.67, 809.68, 809.72, 809.73, 809.74, 809.75, 809.76, 809.84, 809.87, 809.89, 809.110, 809.151, 809.152, and 809.155. These modifications reflect changes in the federal law (the "Personal Responsibility and Work Opportunity Act of 1996", P.L. 104-193) regarding funding sources, changes in eligibility criteria, and the consolidation of former eligibility rules into fewer sections (§809.65). The eligibility changes also include new income limits (§809.67); clarification of income inclusions (§809.68); eligibility of children in care when a local workforce development board assumes management responsibilities of child care services (§809.87); and time limits for education or training-related child care (§809.73). The change to §809.73 distinguishes between education and training time limits and allows clients the option of obtaining the limit for education hours over a longer period of time. Education entities allow individuals to enroll part time in pursuing an education. Training entities only offer full-time programs. CCMS contractors are now able to find part time care. The changes to §809.72 concern child care allowed during interruptions to employment, education, or training activities. The modifications reflect changes in federal law, the "Personal Responsibility and Work Opportunity Act of 1996." Section 809.89 puts current policy into the rule base concerning the assessment of parent fees for pre-kindergarten extended day child care programs. A change at §809.42 adds military-operated facilities as eligible providers of care and clarifies current policies about transportation insurance. A change at §809.48 emphasizes that the criteria used in the Designated Vendor Program are voluntary. Changes at §§809.41, 809.151 and 809.152 add other relatives now allowed by the federal government as care providers. A change at §809.75 adjusts the time limit for appealing decisions to reflect the Commission's policies and procedures regarding appeals. The change at §809.76 notes changes in education that must be reported. A change at §809.106 allows the Commission to adjust local market rates to reflect the actual cost of care in a geographic area in which a substantial number of child care providers charge a rate that is less than the actual cost of providing care. A change at §809.155 introduces new language concerning the hearing process at the Commission.

New Rules: The renumbered rules incorporate new subsections in §§809.1, 809.2, 809.3, 809.4, 809.32, 809.77, 809.78, 809.143, 809.148, and 809.153. New §809.2 incorporates the Commission's rule policies and defines terms used in the sections in Chapter 809. New §809.3 and §809.4 specify the role that Local Workforce Development Boards have in providing planning, oversight and evaluation of the child care program based on the child care recommendations

approved by the Commission and the process Boards must use in establishing new child care eligibility criteria. New §809.32 addresses the child care training program and the Commission's commitment to incorporate in that program materials developed as part of the proposed career development system. New §809.77 establishes what is meant by "receipt" of a document. New §809.143 better enables the Commission to prevent entities cited in serious non-compliance with other programs from doing business with the Commission, its contractors, or its subcontractors. New §809.148 defines those situations that warrant recovery of overpayment of funds. New §809.153 establishes the consequences to parents, caretakers, vendors and providers considered to have committed fraud as defined in current §809.151 and §809.152. New §809.78 requires that parents sign a parent responsibility agreement, if they have not signed one as a requirement to receive TANF benefits, as part of the child care enrollment process. This agreement references cooperation with child support enforcement, and consequences of parental substance or alcohol abuse and non-regular school attendance of the parents' children under 18 years of age. The Commission also seeks comments concerning appropriate sanctions for parents who do not comply with the parent responsibility agreement.

The following comments were received concerning the proposed rules. Following each comment is the Commission's response.

The Commission held four public hearings at the following dates and places: Fort Worth on June 20, 1997, Beaumont and El Paso on June 23, 1997, and Lockhart on June 24, 1997. Sixteen oral and/or written comments were received that addressed the rules. The hearings were held to discuss both the proposed rules and the Child Care State Plan. Only comments on the rules are included in this preamble. Based on comments received during the four public hearings and the 30-day comment period, there will be non-substantive changes to the proposed text as published in the June 20, 1997, issue of the Texas Register (22 TexReg 5895). Specifically, the changes are as follows. The title of Subchapter E "Client Process Requirements," was changed to "Client Eligibility Process Requirements" as indicated in the preamble to the proposed rules. The reference to the federal regulations at §809.2, Definitions, Seriously deficient, was changed from "Title II" to "Chapter II." The word "another" in §809.41(c) and (d)(1), Self-Arranged Child Care, was replaced with "any other." The words "employment or training related" in §809.78(a), Parent Responsibility Agreement, were added. The word "appealing" in § 809.155(a), Local Reviews and Hearings, was replaced with "to appeal." The reference in the last sentence of the subsection regarding "Chapter 823" in §809.155(c) was eliminated because the proposed hearing rules have not yet been published and the word "formal appeals" was changed to "hearings." The sentence will now read "The Commission conducts hearings in accordance with Commission policies and procedures applicable to the appeal."

Based on a review of the proposed new rules, the following non-substantive changes were made. The word "to" in the phrase Temporary Assistance for Needy Families in §§809.2, 809.61, 809.65, 809.66, 809.68, 809.70-809.76, 809.82, 809.89, and 809.154 was changed to "for." The word "title" in §§809.21, 809.78(b)(2), and 809.3(d)(2) was changed to "chapter." The phrase "the Commission's policies and procedures" was changed to "Commission policies and procedures" in §809.76(1), and §809.81. The word "the" was deleted before the phrase "Commission funds" in §809.47(a). The word "the" was added before Commission in §§809.75(3), 809.122(b), and 809.149(c). The punctuation "'s" was added after "Commission" in §809.149(c). The word "vender" was changed to "vendor" in §§809.108, 809.109(b)(1), and 809.152. The first letters of the phrase "Service Improvement Agreements" were capitalized in §809.44. The word "eligibility" was deleted from the title §809.61 and as this section is referenced throughout this chapter. The acronym "(CCMS)" was deleted from §§809.64, 809.77 and the acronym "CCMS"

was added to §809.84. The word "Child Care Management Services" was spelled out in §809.64 and §809.141. The words "as set out in (b) (1) and (2) of this section" were added to §809.124. The acronym "CPS" was substituted for "Child Protective Services" in §809.64(c). The word "of" was deleted and "are" was replaced with "as" in §809.65. The word "relation" was changed to "relating" in §809.68. The reference "(a)" was added to the reference to §809.65 in §809.66(d). The reference "(1) and (5)" was added to the reference to §809.65 in §809.84(a). The reference "(2) (A)-(C) and (4)" was added to the reference to §809.65 (c) in §809.84. The punctuation ";" was changed to "," in §809.89(c) (1). The punctuation ";" was changed to "." in §809.89(c) (2). The punctuation "'s" was added to "Commission," the word "the" was added before "vendor," and the punctuation "'s" was added to the word "vendor" in §809.76(4).

The following parties submitted written and/or oral comments on the proposed Child Care and Development rules: Sandra Anderson was neither for, nor against §§809.3, 809.68, 809.89, and 809.154. Patrick Bresette, Center for Public Policy Priorities (Center) opposed §809.78. Margarita Caballero supported §809.106. Mary Hull Caballero supported §809.106. Myrna Deckert, YWCA El Paso Del Norte Region supported §809.106, was neither for, nor against §809.4, and opposed §§809.42, 809.73, and 809.78(b) (3) but was neither for, nor against the rule in general. Jon Engel, Head Start Agency of Hays, Bastrop and Blanco Counties opposed §809.78. Mary Evans, North Central Texas Local Workforce Development Board (North Central LWDB) was neither for, nor against §809.2 and §809.4. Mellaney Guillory, Stepping Stones Registered Family Home was neither for, nor against §809.106 and opposed §809.103 and §809.107. Nancy Hard, Texas Association of Child Care Resource and Referral Agencies was against §809.78(b) (3) but was neither for, nor against the rule in general, and neither for, nor against §809.4 and §809.106. James Hine, Texas Department of Protective and Regulatory Services opposed §809.78. State Senator Eliot Shapleigh supported §809.106 and was neither for nor against §809.78. Rosa Sanchez, Professional Home Child Care Association was opposed to §809.106. Rene Solis, Child Care Management Services/El Paso supported §809.106 and opposed §809.78(b) (3) but was neither for, nor against the rule in general. Steve Thibodeaux, The Kids Safari and Wee Care Child Care was neither for, nor against §809.106. A group of El Paso providers at the meeting held July 16, 1997 at 7:00 p.m. at the YWCA located at 1600 N. Brown, El Paso were neither for, nor against §809.106. Linda B. Turk, Southeast Texas Workforce Development Board (Southeast LWDB) supported the sections. Scott Williams, Child Care Management Services/Athens opposed §809.78(b) (3) but was neither for, nor against the rule in general.

Comment: Concerning §809.78 (relating to Parent Responsibility Agreement), two commenters expressed concern about the statutory authority to require this agreement. One commenter was also concerned that the basis for requiring TANF clients to sign a similar agreement was to require that individuals receiving public assistance be responsible and that clients receiving child care services are being responsible by participating in work or training activities. Further, one commenter believed that this new requirement would add administrative costs in order to implement and monitor.

Response: The Commission responds that the Legislature conferred upon the Texas Workforce Commission the power to administer a "day care program established by federal law" as well as the power to promulgate rules to carry out that responsibility (Texas Human Resources Code, §44.001). Among the powers of the Texas Workforce Commission is the power to determine "eligibility" (Texas Human Resources Code, §44.002 (d)). Likewise, federal regulations (45 C.F.R. §98.20) provide authority for the state to set eligibility. The Commission, in enacting eligibility standards, is concerned that the underlying purposes behind the program are accomplished. It is to help people "through self-help and

mobilization of the community at large, with appropriate federal assistance, improve the quality" of people's lives and help them to rise from poverty. This policy is set out in federal law at 42 U.S.C.A. §9801. Section 809.78 requires clients to endeavor to live a lifestyle that would help people escape poverty and become self-supporting. The provisions of §809.78 call upon clients to refrain from abuse of alcohol and drugs, keep their children in school, and cooperate with the State in obtaining child support. If persons who wish to take advantage of the child care program meet the standards set out in the Parent Responsibility Agreement, the Commission believes their chances of lifting themselves out of poverty will be much improved. The Commission also believes that obstacles to completing training activities and maintaining employment will be reduced. For all of these reasons, the Commission believes the Parent Responsibility Agreement is a reasonable and useful eligibility requirement and is as appropriate for the child care program as it is for the TANF program. The Commission is of the opinion that additional administrative costs, if any, in relation to the subject provisions, will be minimal, particularly when the benefit to be derived therefrom is taken into account. Comment: Concerning §809.78(b) (3) relating to school attendance of teens, four commenters believed younger siblings and their parents would be penalized for the behavior of truant, acting out adolescents and overall, expressed the opinions that such a requirement would increase the stress and problems the clients face.

Response: The Commission disagrees and reiterates its response to comments regarding §809.78. While the Commission believes that the additional stress, if any, on program clients will be more than offset by the positive overall effect such requirements will have on the program, the Commission states that it will not impose any sanctions pending the consideration and promulgation of an applicable rule dealing with sanctions and will consider this matter at that time. The Commission intends to publish such a rule for public comment during the month of September, 1997.

Comment: Concerning §809.78, one commenter indicated that parents with children in protective services must be exempt from the requirement to sign a Parent Responsibility Agreement. Child Protective Services (CPS) families are not voluntary clients and frequently cannot/do not want to establish paternity (i.e., incest situations). Such a requirement will prevent the use of protective day care for these families and would be detrimental to these families. Such a requirement would interfere with the TDPRS's ability to ensure the safety of some CPS children. There was also concern about the role of CPS caseworkers who may have information related to the requirements of this agreement and what the consequences would be for families who are not in compliance with the agreement. Ending child care services would place many CPS children at greater risk.

Response: The Commission states that it is not the intent of the Commission to have TDPRS/CPS parents sign this agreement and the Commission has changed the language in §809.78(a) to clarify that these clients do not have to sign such agreements.

Comment: Concerning §809.78, one commenter believed there should be good cause exceptions for the various requirements of §809.78.

Response: The Commission believes the rule is sufficient to promulgate at this time; however, it agrees that there is a need for exceptions to the requirements and will not impose any sanctions on clients pending the consideration and promulgation of an applicable rule dealing with exceptions. The Commission intends to publish such a rule for public comment during the month of September, 1997.

Comment: Concerning §809.78, one commenter expressed a concern about requiring single parents to establish paternity when domestic violence is involved and about the State interfering in an individual's personal decision about pursuing child support.

Response: The Commission believes the rule is sufficient to promulgate at this time; however, it will consider developing a rule on good cause exceptions that may include domestic violence/paternity issues. The Commission will not impose any sanctions on clients in this situation pending the consideration and promulgation of an applicable rule dealing with exceptions. The Commission intends to publish such a rule for public comment during the month of September, 1997.

Comment: Concerning §809.78, one commenter was concerned that sanctions should not include losing child care services and should be time limited.

Response: The Commission states that it will not impose any sanctions pending the consideration and promulgation of an applicable rule dealing with sanctions and will consider this matter at that time. The Commission intends to publish such a rule for public comment during the month of September, 1997.

Comment: Concerning §809.106 (relating to Establishment of Individual Child Care Management Services (CCMS) Vendor Reimbursement Rates), five commenters supported the additional language regarding geographic areas with a preponderance of subsidized child care providers who charge low rates and the ability of the Commission to consider the cost of care in determining maximum rates in those areas. One of the commenters wanted the Commission to add language to the rule that the market rate surveys be conducted every two years, and that Boards be required to implement the results but limit any decreases that would go below current rates. One commenter on §809.106(b) and (c) indicated that a statewide maximum rate should be used instead of geographic areas in determining maximum rates. One commenter believed in having reimbursement rates support or reflect quality efforts. Three commenters believed that rates should cover or reflect the cost of providing quality child care. Two commenters also believed the rates should cover the cost of paperwork required to be a vendor. Another commenter recommended using other criteria in evaluating local rates during a market rate survey than what is currently used (i.e., licensed capacity).

Response: The Commission responds that the proposed federal regulations, published in the July 23, 1997, issue of the Federal Register, 62 Fed.Reg. 39,609(1997), for the Child Care and Development Fund, will amend 45 C.F.R. Part 98. Section 98.43 entitled Equal Access provides that the Lead agency will have to conduct a local market rate survey "no earlier than two years prior to the effective date of the currently approved Plan." Additionally, the preamble to the federal regulations found at 45 CFR Parts 98 and 99 provides that "the Lead Agency (shall have) the flexibility to recognize and compensate higher quality child care facilities and providers, including those that have obtained nationally recognized accreditation or special credentials." The Commission has concluded that it is bound by federal regulations applicable to the child care program. Therefore, depending upon finalization of applicable federal regulations, the Commission may revisit this subject in the future. However, for the present the Commission is satisfied that the pertinent rate setting rules used in the past are appropriate because such rules were based on previously applicable federal regulations and statutes.

Comment: Concerning §809.42(4) (relating to Vendor Requirements), one commenter wanted to know if Registered Family Homes and Group Day Homes were included in the requirements of the section to carry commercial transportation insurance and will only support this requirement if these facilities are also mandated to carry such insurance.

Response: The Commission states that commercial transportation insurance is not readily available to registered or group homes; however, the Commission encourages these facilities to obtain appropriate general liability insurance to cover those instances when they are transporting children.

Comment: Concerning §809.4 (relating to Board Procedures for Developing Additional Requirements for Child Care Services), one commenter believed the

rule should specify each activity for which the Boards may develop requirements in addition to the Commission's requirements. Two commenters were concerned about the requirement to publish the changes in the newspaper. One commenter believed that publishing the text in at least two newspapers would be costly and another commenter believed that it was important to inform individuals/entities affected by the changes and the need to be user friendly in the process. One commenter also indicated concern about having to obtain approval from the Commission prior to the implementation of the changes.

Response: The Commission would point out that the issue of activities and additional requirements are, or will be, addressed in the appropriate contracts with Local Workforce Development Boards. As to notification in newspapers, the Commission believes any additional cost will be minimal in comparison to the benefit to be derived from providing notice to the public of related activities. The Commission believes at the present time that prior approval by the Commission is essential since this is a new process for which the Commission is ultimately responsible.

Comment: Concerning §809.3 (Board Planning, Oversight and Evaluation of Child Care Services), two commenters indicated that the specific activities over which the Boards will have authority should be clearly stated.

Response: The Commission would point out that the issue of activities and additional requirements are, or will be, addressed in the appropriate contracts with Local Workforce Development Boards.

Comment: Concerning §809.68 (relating to Income Inclusions for Child Care Services), one commenter expressed a concern regarding whether child support income referenced in the section means that which is decreed or actually received.

Response: The Commission states that the reference means child support income actually received.

Comment: Concerning §809.73 (relating to Time Limits for Education and Training-Related Child Care), one commenter opposed restricting post-secondary education to 65 semester hours and supported allowing individuals to obtain a four-year degree.

Response: The Commission believes that clients can obtain jobs that will allow them to become self-sufficient with a two-year degree. In addition, with limited funds available for the program, the Commission believes the provision for 65 semester hours of education is reasonable.

Comment: Concerning §809.89 (relating to Assessing Required Parent Fees), one commenter believed that teen parents should not be considered as a separate unit when determining parent fees.

Response: The Commission states that this is not new policy and believes that the rule incorporates past practice that has proved adequate and appropriate. It is the experience of the Commission that the majority of teen parents are not supported by their families for the child care expenses of the teens' children.

Comment: Concerning §809.103 (relating to Units of Service in Child Care), one commenter believed that a unit should not consist of up to 12 hours and also suggested that day and evening care should be defined as two separate units of care.

Response: The Commission states that the definition of a unit as 6-12 hours represents the most common definition used by child care providers across the State. Due to automation problems and feedback from vendors about how complicated determining CCMS reimbursement rates had become, the Commission revised and simplified the process for determining rates to reflect one rate for a part-time unit and one rate for a full-time unit per CCMS vendor, without differentiating between day and evening units. The reimbursement rates as set out in the rule provide that CCMS clients are not charged more than the general public.

Comment: Concerning §809.107 (relating to Vendor Reimbursement for

Transportation), one commenter believed that reimbursement for transportation should not be limited by the local maximum rates.

Response: The Commission notes that the rule restates past and current practice/policy. The Commission also notes that such an approach has proved reasonable and fair and reflects compliance with previous federal regulations. Therefore, the Commission sees no reason to change the rule at this time.

Comment: Concerning §809.154 (relating to Provision of Child Care Services During an Appeal), one commenter recommended adding non-return of paperwork as a criterion for not receiving child care services during an appeal.

Response: The Commission states that the non-return of paperwork is not always due to a client's inaction but due to circumstances beyond their control. Such a requirement would not afford clients with appropriate due process. The Commission will not add this criterion to the rule.

40 TAC §§809.1-809.20, 809.22-809.39, 809.41-809.53, 809.55, 809.57, 809.58, 809.60-809.65, 809.67-809.88

The repeals are adopted under Texas Labor Code, §301.061 and §302.021 which provides that the Texas Workforce Commission shall administer child care services provided in the Texas Human Resources Code, Chapter 44, and will authorize the Commission to adopt, amend or rescind such rules as it deems necessary for the effective administration of the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 5, 1997.

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

SUBCHAPTER A.General Provisions

40 TAC §§809.1-809.4

The new rules are adopted under Texas Labor Code, §301.061 and §302.021 which provides that the Texas Workforce Commission shall administer child care services provided in the Texas Human Resources Code, Chapter 44, and will authorize the Commission to adopt, amend or rescind such rules as it deems necessary for the effective administration of the Act.

§809.2.Definitions.

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

Board -- Board refers to the Local Workforce Development Board as detailed in §801.1(b) of this title (relating to Requirements for Formation of Local Workforce Development Boards).

CCMS -- CCMS refers to Child Care Management Services.

CCT -- CCT refers to Child Care Training.

Child Care Management Services (CCMS) system -- The CCMS is a service delivery system used by the Commission to manage purchased child care services for eligible clients. The primary functions of a CCMS contractor are to provide client services, vendor management and financial management in a local workforce development area as defined by the Commission. The CCMS contractor also manages specific Commission quality improvement initiatives and coordinates with the Commission's Child Care Training contractor to provide training needed by CCMS vendors.

Commission -- Commission refers to the Texas Workforce Commission.

Debarment -- In accordance with Federal Executive Order 12549, an action taken by a debarment official in accordance with 45 CFR Part 76 (or comparable federal regulations) to exclude a person from participating in a covered contract. A person so excluded is "debarred."

Family Members -- Family Members include one or more of the individuals as indicated in subparagraphs (A)-(E) of this definition when determining family membership for child care services.

(A) Parent or caretaker--an adult responsible for the care and supervision of the child identified as the child's natural parent, adoptive parent, or stepparent or legal guardian.

(B) Second parent or caretaker--a second adult responsible for the care and supervision of the child identified as the child's natural parent, adoptive parent, or stepparent, or parent's spouse including common-law spouse or legal guardian.

(C) Children--children must be under 18 years of age or age 18, regularly attend high school or its equivalent full time and expect to graduate before or during the month of their 19th birthday. Children include:

(i) natural children of either or both parents or caretakers;

(ii) adopted children of either or both parents or caretakers;

(iii) children for whom either or both parents or caretakers have legal responsibility granted by the court;

(iv) children for whom either or both parents or caretakers physically provide supervision and care;

(v) children of a teen parent for whom either or both of the teen's parent are the legal guardian, or caretaker; and

(vi) children who are the siblings of either parent or caretaker and for whom either or both are legal guardian or caretaker.

(D) Teen parents or caretakers are considered as a separate family unit in the following situations:

(i) the teen is under 18 years of age and has children or siblings and as a group they live alone or with people who are not their parents, legal guardians, or caretakers;

(ii) the teen lives with her parent but is 18 years of age and has children; or

(iii) the teen lives with her parent but is under 18 years of age, is or has been married and has children.

(E) Other adults in the household are included in the household only if considered as a dependent for income tax purposes.

Local workforce development area--The geographic area for which a Board, CCMS or CCT contractor provides services funded through the Commission.

Seriously deficient -- See 7 Code of Federal Regulations, Chapter II, Food and Consumer Service, USDA, §226.6(c).

Serious non-compliance -- Serious non-compliance used in this chapter may include but not limited to one or more of the items indicated in subparagraphs (A)-(E) of this definition.

(A) Children in care -- Children exposed to serious physical harm or injury or to substantial risk of exposure to harm or injury or children who sustained physical harm or injury.

(B) Financial -- The failure to return any advance payment owed to the contracting entity, state or federal program which exceeded the amount earned for allowable activities; overpayments owed to the state or federal program/failure to return disallowed payments; claims for services not rendered; misuse of appropriated funds; or, history of administrative or financial mismanagement. These may be found during an audit or a monitoring visit by a regulatory agency.

(C) Record keeping -- The submission of false information to any state or federal program or contracting entity; failure to keep or maintain required documentation or records; irregular or false billing statements or financial

records. See §809.151 of this title (relating to Parent or Caretaker Fraud) and §809.152 of this title (relating to Provider or Vendor Fraud).

(D) Regulations -- The failure to maintain compliance with or to be in corrective or adverse action with the registration, licensing, regulatory or approval criteria and standards regarding Child Care as set forth by the following agencies: The Texas Department of Protective and Regulatory Services (TDPRS) Child Care Licensing's "Minimum Licensing Standards for Child Care Centers," "Minimum Licensing Standards for Group Day Homes," and "Minimum Registration Standards;" the Texas Department of Health's standards for youth (day) camps; and, the United States Military's standards for operating a military child care center or family day home.

(E) Other -- Such other wrongdoing or improper acts that are a violation of the laws, regulations, policies or procedures governing the conduct of a CCMS contractor, a child care provider or other party subject to this chapter.

TANF -- Temporary Assistance for Needy Families (formerly referred to as AFDC). Texas Early Care and Education Professional (Career) Development System -- This is a proposed system sponsored by the Head Start Collaboration Project (a federally funded initiative) to create a professional training and certification program for all early care and education staff in the State of Texas. Early care and education includes Head Start, public school and child care programs. The key components of the proposed system include professional standards for career roles and training; coordinated and articulated training across educational and instructional systems; and, a personnel registry and credentialing system for practitioners and trainers.

Vendor -- Vendor refers to child care providers who sign an agreement with the CCMS contractor to care for CCMS referred children.

§809.3. Board Planning, Oversight and Evaluation of Child Care Services.

(a) In implementing the provisions of House Bill 1863, 74th Legislature, 1995, the Commission has given Boards specific options regarding the planning, oversight and evaluation of the child care services program. In partnership with the Commission, the options allow the Boards to procure, renew and/or manage both the Child Care Management Services (CCMS) contracts and Child Care Training (CCT) contracts in their local workforce development area.

(b) The parameters of these options are spelled out in the Commission Board Planning Guidelines and the Commission contract with each individual Board.

(c) The Boards must have qualified staff as defined by the Commission in the Commission Board Planning Guidelines and Commission contract to conduct these activities and to ensure that the CCMS and CCT contractors are complying with the terms of their contracts, Commission rules, policies and procedures.

(d) The Board may be:

(1) substituted for the Commission in sections contained in chapter that address activities for which the Board has assumed full responsibility; and/or

(2) included with the Commission in this chapter that address activities for which the Board has assumed partial and/or joint responsibility with the Commission.

(e) The Board may not be substituted for or included with the Commission in this chapter that address activities for which the Commission has sole responsibility.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Esther L. Hajdar

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Texas Workforce Commission

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SUBCHAPTER B. Contractor Requirements

40 TAC §§809.21-809.33

The new rules are adopted under Texas Labor Code, §301.061 and §302.021 which provides that the Texas Workforce Commission shall administer child care services provided in the Texas Human Resources Code, Chapter 44, and will authorize the Commission to adopt, amend or rescind such rules as it deems necessary for the effective administration of the Act.

§809.21. Child Care Management Services (CCMS) Contractor.

(a) CCMS contractors must be stable, efficient, financially sound entities whose staff exhibit an understanding of child care including its purchase from other vendors.

(b) Criteria for these requirements are stated in the competitive procurement packages provided by the Commission.

(c) Policy for competitive procurement is as specified in Chapter 15, Procurement, in the Texas Workforce Commission Financial Manual for Contracts and Grants.

§809.26. Child Care Management Services (CCMS) Recruitment of Vendors.

(a) The CCMS contractor contracts with vendors to meet the child care needs for persons eligible to receive services listed in §809.61 of this title (relating to Basic Requirements To Obtain Child Care Services from the Child Care Management Services (CCMS) System).

(b) CCMS contractors recruit vendors, when necessary, to establish or maintain a vendor base to meet the needs of eligible families according to Commission policies and procedures in the CCMS Contractor Manual.

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SUBCHAPTER C. Child Care Provider Requirements

40 TAC §§809.41-809.48

The new rules are adopted under Texas Labor Code, §301.061 and §302.021 which provides that the Texas Workforce Commission shall administer child care services provided in the Texas Human Resources Code, Chapter 44, and will authorize the Commission to adopt, amend or rescind such rules as it deems necessary for the effective administration of the Act.

§809.41. Self-Arranged Child Care.

(a) The Commission uses all available funding sources, except those used for Texas Department of Protective and Regulatory Services (TDPRS) in-home Child Protective Services (CPS) cases, to reimburse eligible parents for payments made to an eligible provider for self-arranged child care.

(b) Eligibility for self-arranged child care (SACC) must be determined and authorized according to §809.84 of this title (relating to Verification and Determination of Client Eligibility for Child Care Services) and §809.87 of this title (relating to Authorization of Child Care Services) and with the

exception of clients in open in-home CPS cases, who are not eligible for SACC, and are managed by the TDPRS CPS caseworkers.

(c) Clients who use foster care child care are only eligible for SACC with providers who are licensed or registered by TDPRS child care licensing or any other state regulating body that conducts routine monitoring and has been approved by CPS.

(d) All other clients are eligible for care with a provider of self-arranged child care who is at least 18 years of age and satisfies either of the requirements stated in paragraphs (1) or (2) of this subsection.

(1) A provider qualifies who complies with §809.42 of this title (relating to Vendor Requirements) or any other Commission approved federal, state or local governmental entity.

(2) A provider qualifies who is one of the following relatives of the eligible child:

(A) grandparent;

(B) great-grandparent;

(C) aunt;

(D) uncle; or

(E) sibling who is not living in the same household as the eligible child.

§809.44. Amendments and Renewal of Vendor Agreements.

(a) Vendor agreements are limited to one year and end on the date shown on the vendor agreement form.

(b) The Child Care Management Services (CCMS) contractor must renew vendor agreements if the vendor:

(1) continues to meet all requirements as stated in §809.42 of this title (relating to Vendor Requirements);

(2) has satisfied the requirements of the Vendor Agreement;

(3) has no unresolved Service Improvement Agreements with the CCMS contractor;

(4) is willing to renew the Vendor Agreement; and

(5) has maintained a satisfactory compliance record with minimum licensing standards as defined by the Texas Department of Protective and Regulatory Services (TDPRS).

(c) The vendor must inform the CCMS contractor immediately upon knowledge of and prior to:

(1) moving the facility;

(2) selling the facility;

(3) changing the governing body; or

(4) making any other changes in the child care services delivered which could modify either the license or the Vendor Agreement.

(d) The vendor must also inform the CCMS contractor whenever the TDPRS Child Care Licensing Division (CCL) has issued a new license for the facility or placed any conditions on the license.

(e) The requirement to inform the CCMS contractors of changes set forth in subsection (c) of this section does not release the vendor from liability to inform TDPRS CCL of these changes.

(f) Failure to inform the CCMS contractor of changes could result in sanctions against the vendor as set forth in §809.142 of this title (relating to Vendor Agreement Violations and Service Improvement Agreements (SIA)).

(g) The CCMS contractor must amend or complete a new Vendor Agreement based on the type of change reported by the vendor.

(h) Failure to amend or complete a new Vendor Agreement could result in sanctions against the CCMS contractor as set forth in §809.141 of this title (relating to Contract Violations and Service Improvement Agreements).

§809.47. Parent Advisory Groups.

(a) If Commission funds are used to purchase more than 30% of a vendor's

licensed capacity, the vendor must establish and maintain a Parent Advisory Group.

(b) Vendors required to set up a parent advisory group must develop and implement written policies that describe the membership and functions of the Parent Advisory Groups. The Commission must approve the policies.

(c) The vendor must ensure that the Parent Advisory Group meets at least twice a year to address the concerns of the parents of enrolled children.

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SUBCHAPTER D. Client Eligibility Requirements

40 TAC §§809.61-809.78

The new rules are adopted under Texas Labor Code, §301.061 and §302.021 which provides that the Texas Workforce Commission shall administer child care services provided in the Texas Human Resources Code, Chapter 44, and will authorize the Commission to adopt, amend or rescind such rules as it deems necessary for the effective administration of the Act.

§809.61. Basic Requirements To Obtain Child Care Services from the Child Care Management Services (CCMS) System.

(a) CCMS contractors purchase child care services for individuals described in this subsection.

(1) Purchased child care applies to parents or caretakers who need child care for children under age 13 in order to participate in training, education, or employment activities.

(2) Purchased child care also applies to children under age 13 referred by the Texas Department of Protective and Regulatory Services (TDPRS) Child Protective Services (CPS) program.

(3) Purchased child care also applies to older children who are mentally or physically incapable of caring for themselves if they are:

(A) under age 18; or

(B) age 18, regularly attending high school or its equivalent, and are expected to graduate before or during the month of their 19th birthday.

(b) Parents or caretakers who are recipients of Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), or Transitional Child Care benefits or who are participating in the Commission funded pre-kindergarten program as stated in §809.65(3) of this title (relating to Eligibility Criteria for Commission Funded Child Care Services) or who have been referred by the Food Stamp Employment and Training (FS E & T) Program or the TDPRS CPS program are served without regard to income.

(c) Families whose children are recipients of TANF or SSI benefits must meet the income requirements listed in §809.67 of this title (relating to Income Limits for Child Care Services).

(d) Parents or caretakers who receive food stamps but are not participating in the FS E & T program must meet the income requirements listed in §809.67 of this title.

(e) All other parents or families must meet the income requirements listed in §809.67 of this title.

§809.64. Child Care for Abused and Neglected Children.

(a) The Texas Department of Protective and Regulatory Services (TDPRS) purchases child care from the Commission for abused and neglected children or children determined to be at risk of abuse or neglect by a TDPRS caseworker who are in either:

(1) protective cases managed by a TDPRS Child Protective Services (CPS) caseworker; or

(2) CPS cases managed by a CPS Family Preservation contract provider.

(b) TDPRS CPS caseworkers or CPS Family Preservation contract providers must authorize child care for these clients. They must use the forms and procedures required by the TDPRS and the Commission.

(c) CPS clients receive child care for the following reasons:

(1) to enable the child to remain in the home while the parent pursues rehabilitation;

(2) to reduce the detrimental effects of abuse and neglect by providing the child with developmentally appropriate experiences in the areas of physical, social, emotional, cognitive, and language development;

(3) to allow foster parents to work; or

(4) to prevent disruption or relocation of a foster care or adoption placement.

(d) In-home CPS clients must be enrolled with a Child Care Management Services vendor who meets the Voluntary Program Criteria; CPS clients in foster care may be enrolled in vendor facilities or may self-arrange child care in regulated facilities.

§809.65. Eligibility Criteria for Commission Funded Child Care Services.

The Commission uses the Child Care and Development Fund, Social Services Block Grant, Child Care and Development Block Grant, Food Stamp Employment and Training (FS E & T) funds and General Revenue funds to purchase child care for clients who meet the requirements stated in paragraphs (1)-(5) of this section and who meet basic eligibility requirements in §809.2 of this title (relating to Definitions), §809.61 of this title (relating to Basic Requirements To Obtain Child Care Services from the Child Care Management Services (CCMS) System), §809.66 of this title (relating to Additional Transitional Child Care Eligibility Criteria), §809.67 of this title (relating to Income Limits For Child Care Services) and §809.68 of this title (relating to Income Inclusions For Child Care Eligibility Determination).

(1) Child care is purchased for families who meet the eligibility requirements stated in the Texas Human Resources Code, Chapter 31 for clients participating in the Commission's Employment Program for Temporary Assistance for Needy Families Recipients and the Transitional Child Care Program.

(2) Child care is also purchased for children in families who are at risk of becoming dependent upon government assistance as indicated in subparagraphs (A)-(D) of this paragraph.

(A) Children in families who are at risk of becoming dependent upon government assistance include children in families who meet the income requirements in §809.67(a)(1) and whose parents are either working, or in training, or school. These children will continue to receive child care according to the criteria specified in §809.67(b).

(B) Children in families who are at risk of becoming dependent upon government assistance also include children whose teen parents need child care in order to complete high school or the equivalent and whose family income meets the criteria specified in §809.67(a)(2) and whose family members are determined by §809.2.

(C) Children in families who are at risk of becoming dependent upon government assistance also include children with disabilities in families whose income meets the criteria specified in subsection §809.67(a)(1) and whose parents are working, or are in training, or school. The cost of children's ongoing

medical expenses must be deducted from the family's income before determining the family's eligibility status.

(D) Children in families who are at risk of becoming dependent upon government assistance also include children receiving child care as specified in §809.64 of this title (relating to Child Care for Abused and Neglected Children). This group may receive Commission funded child care services without regard to income on a case by case basis for up to six months after they are no longer eligible to receive child care purchased by the Texas Department of Protective and Regulatory Services (TDPRS) Child Protective Services (CPS). TDPRS CPS caseworkers or CPS Family Preservation contract providers required by TDPRS must authorize child care services for these clients. They must use the forms and procedures required by the TDPRS and the Commission's child care program.

(3) Child care is also purchased for parents who are working, or in training, or school, and have children enrolled in a state pre-kindergarten program offered by a school district participating in at-risk child care certification. This eligibility category is served without regard to income according to §809.61(b) of this title.

(4) Child care is also purchased for children in families whose parents are either working, or are in training, or school, and whose families meet additional eligibility criteria established and presented in the Commission Board Planning Guidelines. These families must also meet the income criteria specified in §809.67(c) of this title.

(5) Child care is also purchased for children in families participating in the FS E & T program according to 7 Code of Federal Regulations, Part 273, and according to §809.61(a) and (b) of this title.

§809.66. Additional Transitional Child Care Eligibility Criteria.

(a) In addition to clients guaranteed child care under §809.65(1) of this title (relating to Eligibility Criteria for Commission Funded Child Care Services), clients who meet the requirements specified in, Human Resources Code, Subchapter A, Chapter 31, §31.0035(a)(2) and §31.012(c) are also guaranteed child care to accept employment or remain employed.

(b) Except as described in paragraphs (1) and (2) of this subsection, the client must be employed to receive these benefits.

(1) If the client is not employed at the time the client loses Temporary Assistance for Needy Families (TANF) benefits, the client can receive child care for up to the first four weeks of the Transitional Child Care eligibility period, as needed, to seek employment.

(2) If the client is enrolled in and attending an education or training program that is not yet completed at the time the client loses TANF benefits, the client can receive child care for up to the first eight weeks of the Transitional Child Care eligibility period, as needed, to continue attending the education or training program. At the end of the eight weeks or when the client completes the education or training program, whichever occurs earlier, the client can receive up to the next four weeks of the Transitional Child Care eligibility period to seek employment.

(c) Clients receiving child care benefits according to subsections (a) and (b) of this section, must comply with parent fee requirements as specified in §809.89 and §809.91 of this title (relating to Assessing Required Parent Fees and Parent Payments of Assessed Parent Fees and Child Care Subsidies).

(d) Clients receiving child care benefits according to subsections (a) and (b) of this section must also comply with all rules that apply to clients receiving child care benefits under §809.65(a) of this title.

§809.68. Income Inclusions for Child Care Eligibility Determination.

(a) The family's monthly gross income is the total of the items listed in paragraphs (1)-(19) of this subsection.

(1) The family's monthly gross income includes the family's total gross earnings before deductions are made for taxes. These earnings include money, earnings of a child between 14 and 18 years old who is not in school, wages, or salary the family member receives for work performed as an employee. Wages or salary include armed forces pay (including allotments from any armed forces received by a family group from a person not living in the household), commissions, tips, piece-rate payments, and cash bonuses earned. Overtime pay is estimated based on the person's history of receiving this pay.

(2) The family's monthly gross income also includes net income from non-farm self-employment. These earnings include gross receipts minus business-related expenses from a person's own business, professional enterprise, or partnership, which result in the person's net income. Gross receipts include the value of all goods sold and services given. Expenses include costs of purchased goods, rent, heat, light, power, depreciation charges, wages and salaries paid, business taxes (not personal income taxes or self-employment Social Security tax), and similar costs. The value of salable merchandise used by the owners of retail stores is not included as part of net income.

(3) The family's monthly gross income also includes net income from farm self-employment. These earnings include gross receipts minus operating expenses from operation of a farm by the client or the client and his partners. Gross receipts include the value of products sold; governmental crop loans; and incidental receipts from the sale of wood, sand, mineral royalties, gravel, and similar items. Operating expenses include the cost of feed, fertilizer, seed and other farming supplies, cash wages paid to farm workers, depreciation, cash rent, interest on farm mortgages, repairs of farm buildings, farm-related taxes (not personal income taxes or self-employment Social Security tax), and similar expenses. The value of fuel, food, or other farm-related products used for the family's living expenses is not included as part of net income.

(4) The family's monthly gross income also includes social security and railroad retirement benefits. These benefits include Social Security pensions and survivor's benefits, permanent disability insurance payments made by the Social Security Administration (before deductions for medical insurance), and railroad retirement insurance checks from the federal government. Gross benefits from these sources are the amounts before deductions for Medicare insurance.

(5) The family's monthly gross income also includes dividends and interest. These earnings include dividends from stock holdings or membership in associations, interest on savings or bonds, and periodic receipts from estates or trust funds, and net royalties. These earnings are averaged for a 12-month period.

(6) The family's monthly gross income also includes net income from rental of a house, homestead, store, or other property, or rental income from boarders or lodgers. These earnings include net income from rental property which is calculated by prorating and subtracting the following from gross receipts:

- (A) prorated property taxes;
- (B) insurance payments;
- (C) bills for repair and upkeep of property; and
- (D) interest on mortgage payments on the property. Capital expenditures and depreciation are not deductible.

(7) The family's monthly gross income also includes interest income from mortgages or contracts. These payments include interest income the buyer promises to pay in fixed amounts over a period of time until the principal of the note is paid.

(8) The family's monthly gross income also includes public assistance payments. These payments include Temporary Assistance for Needy Families (TANF), refugee assistance, SSI, and general assistance (cash payments from a county or city).

(9) The family's monthly gross income also includes pensions, annuities, and irrevocable trust funds. These payments include pensions or retirement benefits

paid to a retired person or his survivors by a former employer or by a union, either directly or through an insurance company. Also included are periodic payments from annuities, insurance, or irrevocable trust funds. Gross benefits from civil service pensions are benefits before deductions for health insurance.

(10) The family's monthly gross income also includes veterans' pensions, compensation checks, and G.I. benefits. These benefits include money paid periodically by the Veterans Administration to disabled veterans of the armed forces or to survivors of deceased veterans, subsistence allowances paid to veterans for education and on-the-job training and refunds paid to ex-servicemen as G.I. insurance premiums. The Commission or the contracted provider includes only that part of the educational allowance that is used for current living costs.

(11) The family's monthly gross income also includes educational loans and grants. These payments include money received by students as scholarships for educational purposes. The Commission includes only that portion of the money actually used for current living costs.

(12) The family's monthly gross income also includes unemployment compensation. This includes unemployment payments from governmental unemployment insurance agencies or private companies and strike benefits from union funds paid to people while they are unemployed or on strike.

(13) The family's monthly gross income also includes worker's compensation and disability payments. These payments include compensation received periodically from private or public insurance companies for on-the-job injuries.

(14) The family's monthly gross income also includes alimony. These payments are support paid to a divorced person by a former spouse.

(15) The family's monthly gross income also includes child support. These payments include court-ordered child support, any maintenance or allowance used for current living costs provided by parents to a minor child who is a student, or any informal child support payments made by an absent parent for the maintenance of a minor.

(16) The family's monthly gross income also includes cash support payments. These payments are regular cash support payments from friends or relatives received on a periodic basis more than three times a year.

(17) The family's monthly gross income also includes inheritance. This is net income from the client's share of an inheritance.

(18) The family's monthly gross income also includes foster care payments. The total payment made to a client on behalf of a legally assigned foster child or foster adult is counted as income.

(19) The family's monthly gross income also includes sale of property. This includes capital gains from sale of property.

(b) Income to the family that is not included in subsection (a)(1)-(19) of this section is excluded in determining monthly gross income. Do not include monthly Food Stamp benefits as income.

§809.70. Temporary Assistance for Needy Families (TANF) Employment Services Related Child Care During On-the-Job Training (OJT).

The Commission allows eligible parents to receive TANF Employment Services related child care during OJT unless the parent's OJT earnings cause the denial of a TANF grant.

§809.71. Temporary Assistance for Needy Families (TANF) Employment Services Related Child Care While Waiting To Enter an Approved Initial Component of the Commission's Employment Program for TANF Recipients.

The Commission provides TANF Employment Services related child care for up to two weeks for children whose parent is waiting to enter an approved initial component of the Commission's Employment Program for TANF Recipients. The two weeks of child care is allowed when:

- (1) child care is available that meets the needs of the child and the parent; and
- (2) enrollment will prevent loss of the placement.

§809.72. Child Care During Employment, Education or Training Interruptions.

(a) If the employment, education or training of a parent receiving Commission funded child care is interrupted, the Commission allows child care to continue beginning on the first day of the interruption for up to:

- (1) four weeks while the parent seeks or awaits employment or is waiting to begin an education or training activity; or
- (2) two months if the parent becomes temporarily incapacitated.

(b) For Food Stamp Employment and Training clients and clients participating in the Commission's Employment Services Program for Temporary Assistance for Needy Families Recipients, the Child Care Management Services contractor must have authorization from the caseworker to continue care during interruptions in employment, education, and training.

§809.73. Time Limits for Education or Training-Related Child Care.

The Commission limits the time a parent is permitted to receive child care related to education or training as indicated in this section.

(1) Parents whose eligibility is determined by the Commission or employment services contractor as stated in §809.84(a) of this title (relating to Verification and Determination of Client Eligibility for Purchased Child Care Services) and who are participating in the Commission's Employment Program for Temporary Assistance for Needy Families Recipients case plan receive education and training-related child care until their case plan is closed; or

(2) Parents whose eligibility is determined by the Child Care Management Services contractor according to §809.84(c) of this title may receive education and training-related child care until they have completed one of the following:

- (A) an associate degree or no more than 65 semester hours of college credit; or
- (B) a maximum of two years of post high school technical training.

§809.74. Sanctions and Penalties.

Participants in the Commission's Employment Program for Temporary Assistance for Needy Families Recipients who have been penalized for non-participation are only eligible to receive child care supportive services during the penalty if they re-enter the program and participate satisfactorily in program services.

§809.75. Rights Of People Applying For And Receiving Child Care Services Through The Child Care Management Services (CCMS) System.

Parents or caretakers have the right to:

- (1) have persons represent them when applying for child care services;
- (2) receive notification of their eligibility to receive child care services within 20 calendar days from the day the CCMS contractor receives all necessary documentation required to determine eligibility for child care services;
- (3) be notified in writing by the CCMS contractor at least 12 calendar days before the denial, delay, reduction, or termination of services, except in cases where the child care has been authorized to end immediately because the client is no longer participating in Commission's Employment Program for Temporary Assistance for Needy Families Recipients education or training services and in cases where the child care has been authorized to end immediately for Texas Department of Protective and Regulatory Services (TDPRS) Child Protective Services (CPS) clients. The Commission's Employment Program for Temporary Assistance for Needy Families Recipients and CPS clients are notified of denial, delay, reduction, or termination of services and the effective date of such actions by their respective Commission and TDPRS CPS case workers;

- (4) request a hearing within 60 days of the receipt of the notice of denied, delayed, reduced, or terminated child care services. The exception is a parent who has a child in a TDPRS CPS in-home case and has not requested the child care services. The CCMS contractor must inform parents how to request a hearing. The parent or caretaker may have someone represent them during this process. Provisions for child care to continue while awaiting a hearing are found in §809.154 of this title (relating to Provision of Child Care Services During an Appeal);
- (5) receive child care services regardless of race, color, national origin, age, sex, disability, political beliefs, or religion;
- (6) have the CCMS contractor treat information that is used to determine eligibility for child care services as confidential;
- (7) reject an offer of child care services or voluntarily withdraw their child from child care services unless the child is in a CPS in-home protective case;
- (8) be informed by the CCMS contractor of the possible consequences of rejecting or ending child care that is offered;
- (9) be informed of all child care options available to them and choose the arrangement they desire from these options including information about the various standards that facilities may or must follow;
- (10) visit available child care facilities before making their choice of a child care option and visit the facility during the time their child is enrolled; and
- (11) receive assistance in choosing initial or additional child care referrals, including information about the Commission's policies regarding transferring children from one facility to another.

§809.76. Responsibilities of People Applying for and Receiving Child Care Services Through the Child Care Management Services (CCMS) System.

Parents or caretakers must meet the requirements contained in this section.

- (1) Parents or caretakers are responsible for providing the CCMS contractor with all information considered necessary to establish eligibility according to Commission policies and procedures.
- (2) Parents or caretakers must submit required documentation to the CCMS contractor within the time limits required by the Commission including, but not limited to:
 - (A) eligibility documentation;
 - (B) CCMS forms; and
 - (C) submission of Self-arranged Child Care (SACC) claims for services.
- (3) Parents or caretakers must meet the time limits required by the Commission or:
 - (A) have child care services denied or terminated; or
 - (B) not receive payment for SACC claims.
- (4) Parents or caretakers must comply with the Commission's and the vendor's enrollment requirements or have child services denied or terminated.
- (5) Parents or caretakers must report changes in income, family size, loss of Temporary Assistance for Needy Families or Supplemental Security Income assistance grants, change in work, education, or training, or any other change that might affect the parent's eligibility for services.
- (6) Parents or caretakers must report a change to the CCMS contractor within 12 calendar days of the occurrence of the change. Failure to report changes may result in termination of services or recovery of payments made for services provided during a period of ineligibility caused by the changes listed in paragraph (5) of this section. The receipt of services for which the parent is no longer eligible may constitute fraud.

§809.77. Return of Eligibility Documents From Parents or Caretakers.

If an eligible parent's or caretaker's required documentation is received at the Child Care Management Services contractor after the due date, but the envelope

is postmarked on or before the due date, eligibility for child care services must continue.

§809.78. Parent Responsibility Agreement.

(a) The parent or caretaker of a child receiving Commission-funded employment or training related child care services is required to sign a parent responsibility agreement as part of the child care enrollment process, unless covered by the provisions of Human Resources Code, §31.0031. The parent's compliance with the provisions of the agreement shall be reviewed at each eligibility re-determination.

(b) The parent responsibility agreement requires that:

- (1) each parent shall cooperate with the Title IV-D agency if necessary to establish paternity of the parent's children or enforce child support;
- (2) each parent shall not use, sell, or possess marijuana or a controlled substance in violation of Health and Safety Code, Chapter 481, or abuse alcohol;
- (3) each child in the family younger than 18 years of age attend school regularly, unless the child has a high school diploma or a high school equivalency certificate or is specifically exempted from school attendance by Education Code, §21.033.

(c) Failure to comply with the provisions of the parent responsibility agreement may result in sanctions.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. Client Eligibility Process Requirements

40 TAC §§809.81-809.92

The new rules are adopted under Texas Labor Code, §301.061 and §302.021 which provides that the Texas Workforce Commission shall administer child care services provided in the Texas Human Resources Code, Chapter 44, and will authorize the Commission to adopt, amend or rescind such rules as it deems necessary for the effective administration of the Act.

§809.81. Intake.

The Child Care Management Services (CCMS) contractor provides intake according to Commission policies and procedures in the CCMS Contractor Manual for clients requesting child care services that includes:

- (1) informing parents about all types of child care available to them;
- (2) helping parents locate child care that meets the needs of both the parents and the children; and
- (3) ensuring that parents are allowed to choose child care arrangements.

§809.82. Priority for Intake Services.

The Child Care Management Services contractor must allocate intake staff resources proportionately among all client groups so that priority for intake services is assured for the following clients: Texas Department of Protective and Regulatory Services (TDPRS) Child Protective Services cases, Temporary Assistance for Needy Families (TANF) Employment Services and other TANF cases, Food Stamp Employment and Training cases, and Transitional Child Care cases.

§809.84.Verification and Determination of Client Eligibility for Child Care Services.

(a) The Commission or an employment services contractor determines client eligibility for clients who meet the requirements stated in §809.65 (1) and (5) of this title (relating to Eligibility Criteria for Commission Funded Child Care Services).

(b) The Texas Department of Protective and Regulatory Services (TDPRS) determines client eligibility for clients who meet the requirements stated in §809.64 of this title (relating to Child Care for Abused and Neglected Children) and §809.65(2)(D) of this title (relating Eligibility Criteria for Commission Funded Child Care Services).

(c) The Child Care Management Services (CCMS) contractor determines and documents client eligibility for clients who meet the requirements stated in §809.2 of this title (relating to Definitions), §§809.65 (2) (A) - (C) and (4), 809.67, and 809.68 of this title (relating to Eligibility Criteria for Commission Funded Child Care Services, Income Limits for Child Care Services, and Income Inclusions for Child Care Eligibility Determination).

(d) The CCMS contractor must verify and document the client's eligibility status before authorizing services for clients whose eligibility was determined by the Commission or employment services contractors and TDPRS as specified in subsections (a) and (b) of this section.

(e) The CCMS contractor must determine, verify, and document client eligibility as specified in subsections (c) and (d) of this section using the forms and procedures required by the Commission in the CCMS Contractor Manual.

§809.89.Assessing Required Parent Fees.

(a) The Child Care Management Services (CCMS) contractor must assess parent fees to all parents or caretakers based on the family's gross monthly income, with the following exceptions:

(1) parents or caretakers who receive Temporary Assistance for Needy Families (TANF). In families where the child is the only TANF recipient, a parent fee is assessed;

(2) parents or caretakers who receive Supplemental Security Income (SSI). In families where the child, rather than the parent or caretaker, is the SSI recipient, a parent fee is assessed;

(3) parents or caretakers who participate in the Food Stamp Employment and Training program; and

(4) parents or caretakers who receive Child Protective Services (CPS) unless the Texas Department of Protective and Regulatory Services (TDPRS) CPS caseworker or the CPS Family Preservation contract provider authorizes the CCMS contractor to assess fees to a parent.

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

(c) Parent fees are assessed using the following formulas:

(1) the parent fee must be 9.0% of the family's gross monthly income (the amount recorded on the most recent eligibility certification), if there is one child receiving Commission paid child care;

(2) if there are two or more children receiving Commission paid child care, the parent fee is 11% of the family's gross monthly income (the amount recorded on the most recent eligibility certification).

(d) Parent fees for children enrolled in Independent School District pre-kindergarten extended day programs are reduced to reflect no charge to the parent for the portion of the day that is core pre-kindergarten. The parent fee is assessed at 65% of the usual fee if the core pre-kindergarten program is three hours per day. The fee is assessed at 33% of the usual fee if the core pre-kindergarten program is more than three hours per day.

(e) The CCMS 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 Job Training Partnership Act must pay that amount in addition to the assessed parent fee. The CCMS contractor must request documentation of child care subsidies from the parent.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. Issued in Austin, Texas, on August 5, 1997.

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Texas Workforce Commission

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SUBCHAPTER F. Billing and Payment Requirements

40 TAC §§809.101-809.111

The new rules are adopted under Texas Labor Code, §301.061 and §302.021 which provides that the Texas Workforce Commission shall administer child care services provided in the Texas Human Resources Code, Chapter 44, and will authorize the Commission to adopt, amend or rescind such rules as it deems necessary for the effective administration of the Act.

§809.108. Deduction of Parent Fees and Child Care Subsidies from Child Care Management Services (CCMS) Vendor Reimbursements.

The CCMS reimbursement to the vendor is adjusted as provided in this section.

(1) The CCMS reimbursement to the vendor is reduced by an amount equal to the parent fees assessed by the CCMS contractor according to §809.89 of this title (relating to Assessing Required Parent Fees).

(2) The CCMS reimbursement to the vendor is reduced by an amount equal to any child care subsidy received by the parent from other state or federal programs according to §809.89 of this title. The vendor reports the amount of the subsidies collected to the CCMS contractor.

(3) The CCMS reimbursement to the vendor is adjusted when parent fees are reduced.

(4) The CCMS reimbursement to the vendor is paid in full, if the vendor notifies the CCMS contractor:

(A) that a parent has not paid a parent fee as required by §809.45(d) of this title (relating to Collection of Assessed Parent Fees and Child Care Subsidies); and

(B) makes the notification within three days beginning the day the fees were due.

§809.109. Payment for Child Care Arranged by Parents.

(a) The Child Care Management Services (CCMS) contractor must authorize and issue payments as specified by the Commission to eligible parents who choose to arrange child care outside the CCMS system of vendors.

(b) The CCMS contractor must not pay parents for child care arranged outside of the CCMS system of vendors if the CCMS contractor discovers that the provider chosen is not eligible according to requirements listed in §809.41(d) of this title (relating to Self-Arranged Child Care).

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SUBCHAPTER G. Program Monitoring and Compliance Requirements
40 TAC §§809.121-809.124

The new rules are adopted under Texas Labor Code, §301.061 and §302.021 which provides that the Texas Workforce Commission shall administer child care services provided in the Texas Human Resources Code, Chapter 44, and will authorize the Commission to adopt, amend or rescind such rules as it deems necessary for the effective administration of the Act.

§809.122. Audits of Child Care Management Services (CCMS) Contractors.

(a) All CCMS contractors are subject to audit or review by the Commission. The Commission may audit or review all relevant records or statistically sample records and project findings, including overpayments, based on that sample. The Commission may also audit cost or rate study data submitted by the CCMS contractor.

(b) CCMS contractors subject to the Single Audit Act must have an independent audit performed in compliance with either the Office of Management and Budget Circular A-128 or A-133. The audit must be approved by the cognizant agency for the CCMS contractor, with a copy provided by the CCMS contractor to the Commission for review by the Commission. The CCMS contractor may be reimbursed by the Commission for the CCMS share of audit expenses if funding is available, the audit is found to be acceptable upon review by the Commission, and the audit and reimbursement request follow Commission policies and procedures specified in the CCMS Contractor Manual.

(c) Operations expense is subject to additional review as part of the CCMS contractor's organization-wide single audit or audit by the Commission or other authorized agencies, as determined and approved by the Commission.

§809.124. Quality Assurance (QA) Performance Indicators and Standards.

(a) The Commission establishes the following QA performance indicators and standards for Child Care Management Services (CCMS) contractors.

(1) Accurate and timely determinations or re-determinations of client eligibility. The CCMS contractor must comply with a 95% standard for the performance indicator of accurate and timely determinations or re-determinations of client eligibility.

(2) Correct assessment of parent fees. The CCMS contractor must comply with a 95% standard for the performance indicator of correct assessment of parent fees.

(3) Appropriate documentation of client enrollment activities. The CCMS contractor must comply with a 95% standard for the performance indicator of appropriate documentation of client enrollment activities.

(4) Maintenance of valid vendor agreements. The CCMS contractor must comply with a 95% standard for the performance indicator of maintaining valid vendor agreements.

(5) Appropriate monitoring of vendors. The CCMS contractor must comply with a 95% standard for the performance indicator of appropriate monitoring of vendors.

(6) Appropriate documentation of vendor rates. The CCMS contractor must comply with a 95% standard for the performance indicator of appropriate documentation of vendor rates.

(b) The CCMS contractor's failure to perform within the standards specified in subsection (a) (1)-(6) of this section will result in the implementation of corrective action and/or recoupment as set out in (b) (1) and (2) of this

section.

(1) Corrective action. The CCMS contractor is required to implement corrective action for failure to perform within the standard for each performance indicator in subsection (a)(1)-(6) of this section. Additional corrective actions that may be imposed are specified in §809.141 of this title (relating to Contract Violations and Service Improvement Agreements).

(2) Recoupment. In addition to corrective action, the CCMS contractor may be subject to recoupment for failure to perform within the standard for accurate and timely determinations or re-determinations of client eligibility as specified in subsection (a)(1) of this section; and for failure to perform within the standard for maintenance of valid vendor agreements as specified in subsection (a)(4) of this section. Guidelines regarding recoupment methodology are specified in §809.149 of this title (relating to Recoupment Methodology for Administrative Costs Based on Quality Assurance (QA) Findings).

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SUBCHAPTER H. Corrective and Adverse Actions

40 TAC §§809.141-809.155

The new rules are adopted under Texas Labor Code, §301.061 and §302.021 which provides that the Texas Workforce Commission shall administer child care services provided in the Texas Human Resources Code, Chapter 44, and will authorize the Commission to adopt, amend or rescind such rules as it deems necessary for the effective administration of the Act.

§809.141. Contract Violations and Service Improvement Agreements.

(a) The Child Care Management Services (CCMS) contractor must comply with all terms of the contract, Commission rules, and the policies and procedures in the CCMS Contractor Manual.

(b) The Commission pursues resolution of contract violations in accordance with the terms of the contract and the CCMS Contractor Manual.

(c) The Commission may consider a non-compliance as a breach of the contract. Sanctions the Commission may take as a response to a contract breach include, but are not limited to:

- (1) requiring the CCMS contractor to enter into a Service Improvement Agreement (SIA) as set forth in subsection (e) of this section;
- (2) suspension, nonrenewal, or termination of the CCMS contract;
- (3) temporarily withholding payments to the CCMS contractor;
- (4) nonpayment of costs incurred; and/or
- (5) recoupment of funds from the CCMS contractor.

(d) The determination of which sanction or sanctions is appropriate is based upon:

- (1) the scope of the violation;
- (2) the severity of the violation;
- (3) the contractor's history of compliance; or
- (4) the contractor's failure to meet performance standards referenced in §809.123 of this title (relating to Responsibility of the Commission for Establishing Procedures for Quality Assurance Monitoring of Child Care Management Services (CCMS) Contractors and Recoupment Based on Quality Assurance

Monitoring Findings).

(e) When contract violations are documented, a written SIA may be negotiated. The SIA establishes at a minimum:

- (1) the basis for the agreement;
 - (2) the steps required to reach compliance including technical assistance to be provided by the Commission;
 - (3) the time limits for implementing the improvements; and
 - (4) the consequences of not complying with the agreement.
- (f) A failure to fully comply with the terms of the SIA may result in the application of one or more of the sanctions set forth in subsection (c) of this section.

§809.149.Recoupment Methodology for Administrative Costs Based on Quality Assurance (QA) Findings.

(a) Child Care Management Services (CCMS) contractors are subject to recoupment when they fail to meet standards for the performance indicators specified in §809.124(a) (1) and (4) of this title (relating to Quality Assurance (QA) Performance Indicators and Standards). The Commission may recoup for administrative costs when the CCMS contractor's annual compliance rate is less than the 95% standard.

(b) The Commission uses the following methodology to determine the amount to be recouped for a compliance rate that is less than the 95% standard for accurate and timely determinations and re-determinations of client eligibility.

(1) The Commission determines the average cost per client for client services.

(2) The Commission determines the administrative costs of client services for clients in a CCMS contractor's QA monitoring sample, based on the number of clients in the CCMS contractor's QA monitoring sample and the average costs per client for client services.

(3) Based on the results of Commission monitoring of client eligibility determination and re-determination, if a CCMS contractor's compliance is:

(A) below the 95% standard but at or above 85%, the Commission recoups administrative costs in an amount equal to 1.5 times the percentage of noncompliance below 95% applied to the administrative costs of client services for clients in the QA monitoring sample; and

(B) below 85% of the standard, the Commission recoups administrative costs in an amount equal to the percentage of noncompliance below 100% applied to the administrative costs of client services for clients in the QA monitoring sample.

(c) The Commission uses the following methodology to determine the amount to be recouped for a compliance rate that is less than the 95% standard for maintenance of valid vendor agreements.

(1) The Commission determines the average cost per client for vendor services.

(2) The Commission determines the costs of vendor services for vendors in a CCMS contractor's QA monitoring sample, based on the number of vendors in the CCMS contractor's sample and the average costs per vendor for vendor services.

(3) Based on the results of the Commission's monitoring of maintenance of valid vendor agreements, if a CCMS contractor's compliance is:

(A) below the 95% standard but at or above 85%, the Commission recoups administrative costs in an amount equal to 1.5 times the percentage of noncompliance below 95% applied to the administrative costs of vendor services for vendors in the monitoring sample; and

(B) below 85% of the standard, the Commission recoups administrative costs in an amount equal to the percentage of noncompliance below 100% applied to the administrative costs of vendor services for vendors in the monitoring sample.

(d) If a CCMS contractor's compliance for accurate and timely determinations and re-determinations of client eligibility or maintenance of valid vendor agreements is below 85%, the Commission may recoup child care costs related to the errors in the sample in addition to recouping administrative costs. The

Commission may also base recoupment on QA findings projected to the CCMS contractor's administrative and/or child care costs for all client services or all vendor services during the period of the QA monitoring sample.

§809.152.Provider or Vendor Fraud.

The Commission considers a provider or vendor may have committed fraud if the provider or vendor presents or causes to be presented to the Child Care Management Services (CCMS) contractor either of the items as described in paragraphs (1) or (2) of this subsection.

(1) A provider or vendor may commit fraud if the provider or vendor presents or causes to be presented to the CCMS contractor a claim for child care under the conditions in subparagraphs (A)-(C) of this paragraph.

(A) Provider or vendor fraud may occur when the provider or vendor knows, or should know, that child care services were not provided as claimed.

(B) Provider or vendor fraud may also occur when the provider or vendor knows, or should know, that information is false or fraudulent.

(C) Provider or vendor fraud may also occur when the provider or vendor knows, or should know, that child care services were provided by a person who is not a regulated provider; is not 18 years of age; and is not one of the following relatives of the eligible child:

(i) aunt;

(ii) uncle;

(iii) grandparent;

(iv) great grandparent; or

(v) sibling who is not living in the same household as the eligible child.

(2) A provider or vendor may commit fraud if the provider or vendor presents or causes to be presented to the CCMS contractor a request for reimbursement that is in excess of the amount charged by the provider to other parents for the child care services.

§809.154.Provision of Child Care Services During an Appeal.

(a) Child care services continue during the appeal process until a decision is reached if the parent requests a hearing within the 12-day notification period, as noted in §809.75(3) of this title (relating to Rights of People Applying for Child Care Services Through the Child Care Management Services (CCMS) System). Child care services will not continue during the appeal process if the child's enrollment is denied, delayed, reduced, or terminated because of:

(1) excessive absences;

(2) voluntary withdrawal from child care services as stated in §809.86 of this title (relating to Termination of Enrollment Due to Excessive Absences);

(3) change in federal or state laws or regulations;

(4) lack of funding;

(5) Clients participating in the Commission's Employment Program for Temporary Assistance for Needy Families (TANF) Recipients who are recommended for sanctioning; or

(6) voluntary withdrawal of a client from the Commission's Employment Program for TANF Recipients.

(b) The cost of providing services during the appeal process is subject to recovery from the parent by the CCMS contractor, if the appeal decision is against the client.

§809.155.Local Reviews and Hearings.

(a) A Child Care Management Services (CCMS) contractor or vendor against whom an adverse action, as defined in §§809.2, 809.141, 809.142, 809.144, or 809.146 of this title (relating to Definitions, Contract Violations and Service Improvement Agreements, Vendor Agreement Violations and Service Improvement Agreements, Vendors Violating Minimum Licensing Standards, and Reapplication for

Vendor Status After Termination or Non-renewal of the Vendor Agreement), is taken, may request a local review of the adverse action. A CCMS contractor or vendor who is dissatisfied with the outcome of a local review may request a hearing to appeal the results of the local review.

(b) A CCMS contractor or vendor must request a local review in writing and deliver the request to the Commission Contract Management or Board staff. A request for a local review must be filed within 15 calendar days of the date of the Commission, Board, or CCMS contractor staff's written notification of the adverse action and must contain a concise statement of the disputed adverse action, a recommended resolution, and any supporting documentation the CCMS contractor or vendor deems relevant to the dispute.

(1) On receipt of a request for local review, the Commission Contract Manager or Board coordinates a review by appropriate Commission or Board staff. Additional information may be requested from the CCMS contractor or vendor and must be provided within 15 calendar days of the request for additional information.

(2) Within 30 calendar days of the date the request for local review is received or the date additional requested information is received by the Commission or the Board, the Commission or the Board staff member conducting the local review must send the CCMS contractor or vendor written notification of the results of the review.

(c) A CCMS contractor or vendor who disagrees with the results of a local review conducted under subsection (b) of this section may file an appeal of the review and request a hearing. The CCMS vendor or contractor must file a written request for a hearing with the Appeals Department, Texas Workforce Commission, 101 East 15th Street, Room 410; Austin, Texas 78778-0001, within 15 calendar days after receiving written notification of the results of the local review. The hearing is limited to the issues and the information submitted by the provider that were considered in the local review process. The Commission conducts hearings in accordance with Commission policies and procedures applicable to the appeal. This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. Issued in Austin, Texas, on August 5, 1997.

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