

1 **CHAPTER 809. CHILD CARE SERVICES**

2
3 **PROPOSED RULES WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS**
4 **REGISTER. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS**
5 **SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE TEXAS REGISTER.**
6

7 **ON FEBRUARY 4, 2020,** THE TEXAS WORKFORCE COMMISSION PROPOSED THE
8 RULES BELOW WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

9
10 Estimated Publication Date of the Proposal in the *Texas Register*: **February 21, 2020**
11 Estimated End of Comment Period: **March 23, 2020**
12

13 The Texas Workforce Commission (TWC) proposes amendments to the following sections of
14 Chapter 809, relating to Child Care Services:
15

- 16 Subchapter B. General Management, §809.15 and §809.20
- 17 Subchapter D. Parent Rights and Responsibilities, §809.71
- 18 Subchapter E. Requirements to Provide Child Care, §§809.91, 809.93, and 809.94
- 19 Subchapter G. Texas Rising Star Program, §809.132

- 20
- 21 PART I. PURPOSE, BACKGROUND, AND AUTHORITY
- 22 PART II. EXPLANATION OF INDIVIDUAL PROVISIONS
- 23 PART III. IMPACT STATEMENTS
- 24 PART IV. COORDINATION ACTIVITIES
- 25

26 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

27 Senate Bill (SB) 781, 86th Texas Legislature, Regular Session (2019), amended §42.071 of the
28 Human Resources Code to discontinue evaluation as a corrective action for the Texas Health and
29 Human Services Commission’s (HHSC) Child Care Licensing (CCL) staff to impose on a
30 licensed child care facility or family home. Effective September 1, 2019, CCL will either
31 recommend a voluntary plan of action or place a facility on probation as corrective action when
32 needed.
33

34 The amendments to TWC Chapter 809 Child Care Services rules remove references to
35 evaluation as a corrective action to align with Chapter 42 of the Human Resources Code as
36 amended by SB 781.
37

38 Additionally, House Bill (HB) 5, 85th Texas Legislature, Regular Session (2017), reorganized
39 several functions within the HHSC umbrella. Included in this reorganization was the transfer of
40 CCL from the Texas Department of Family and Protective Services (DFPS) to HHSC. These rule
41 amendments change references throughout Chapter 809 to reflect the transfer of CCL from
42 DFPS to HHSC.
43

44 Finally, §658E(c)(4) of the Child Care and Development Block Grant Act (2014) and 45 Code of
45 Federal Regulations (CFR) §98.45 require state Child Care and Development Fund (CCDF) lead
46 agencies to conduct a market rate survey (MRS) of child care rates and to use market rate data to

1 set direct care reimbursement rates. States must ensure equal access to child care services for
2 children participating in child care subsidies by setting direct care reimbursement rates that are
3 sufficient to provide comparable services to those received by families that do not receive
4 assistance.

5
6 As the CCDF lead agency for Texas, TWC conducts an annual MRS to analyze and summarize
7 child care market rate data for the state and for the 28 Local Workforce Development Boards
8 (Boards). Section 809.20, Maximum Provider Reimbursement Rates, authorizes Boards to set
9 reimbursement rates for their local workforce development areas (workforce areas) based on
10 local factors, including the MRS, and to ensure that the rates provide equal access to child care.

11
12 The US Department of Health and Human Services Office of Inspector General (OIG) recently
13 released a report--*States' Payment Rates Under the Child Care and Development Fund Program*
14 *Could Limit Access to Child Care Providers*--in which OIG found that many states were not
15 setting their child care reimbursement rates at a level sufficient to ensure that eligible children
16 have equal access to child care services that are comparable to services available to children
17 whose parents are not eligible to receive child care assistance. OIG recommended that Office of
18 Child Care (OCC) evaluate whether states are ensuring equal access for families in the CCDF
19 program, as required by statute.

20
21 OCC concurred with OIG's recommendation and prioritized review of equal access requirements
22 in its review of CCDF State Plans. Based on the review, OCC placed 33 states on Corrective
23 Action Plans (CAPs) for not achieving equal access requirements, with 21 of those based
24 specifically on inadequate rates.

25
26 OCC notified states at the 2019 State and Territories Administrators Meeting that CAPs were
27 implemented for states whose rates were at or below the 25th percentile of the market rate, as
28 determined by a statistically valid MRS. OCC also notified states that it would be reevaluating
29 the 25th percentile "floor" on an ongoing basis, and states can expect OCC to raise the floor over
30 time to improve equal access to child care services.

31
32 Based on OCC's actions to place states on CAPs for equal access if they fail to meet a minimum
33 floor for their rates, on September 24, 2019, TWC's three-member Commission (Commission)
34 took action to ensure that Boards' maximum reimbursement rates are set at a level adequate to
35 ensure equal access as set forth in the CCDF regulations at 45 CFR §98.45 Equal Access.
36 Specifically, the Commission directed staff to develop guidance--subsequently issued through
37 Workforce Development Letter 23-19, issued on October 15, 2019, and titled "Child Care
38 Provider Maximum Reimbursement Rate Increases"--requiring Boards to set their maximum
39 reimbursement rate at or above the 30th percentile of the 2019 MRS, in compliance with
40 §809.20(a), which requires that rates provide equal access to child care.

41
42 Section 809.20 authorizes Boards to establish maximum provider reimbursement rates and to
43 ensure that the rates provide equal access to child care. To further support the federal
44 requirement of equal access, §809.20 is amended to require Boards to establish maximum
45 reimbursement rates at or above a level established by the Commission.

1 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

2 (Note: Minor editorial changes are made that do not change the meaning of the rules and,
3 therefore, are not discussed in the Explanation of Individual Provisions.)

4 **SUBCHAPTER B. GENERAL MANAGEMENT**

5 **TWC proposes the following amendments to Subchapter B:**

6
7 **§809.15. Promoting Consumer Education**

8 Section 809.15 is amended to change "DFPS" to "CCL" to reflect the transfer of CCL from
9 DFPS to HHSC.

10
11 **§809.20. Maximum Provider Reimbursement Rates**

12 Section 809.20(a) is amended to require Boards to establish maximum reimbursement rates for
13 child care subsidies at or above a level established by the Commission. The purpose of the rule
14 amendment is to ensure that Boards' maximum reimbursement rates are set at a level adequate to
15 enable equal access to subsidized child care services as set forth in the CCDF regulations at 45
16 CFR §98.45 Equal Access.

17
18 Section 809.20 is also amended to change "DFPS" to "CCL" to reflect the transfer of CCL from
19 DFPS to HHSC.

20 **SUBCHAPTER D. PARENT RIGHTS AND RESPONSIBILITIES**

21 **TWC proposes the following amendments to Subchapter D:**

22
23 **§809.71. Parent Rights**

24 Section 809.71 is amended to change "DFPS" to "CCL" to reflect the transfer of CCL from
25 DFPS to HHSC.

26
27 **SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE**

28 **TWC proposes the following amendments to Subchapter E:**

29
30 **§809.91. Minimum Requirements for Providers**

31 Section 809.91 is amended to change "DFPS" to "CCL" to reflect the transfer of CCL from
32 DFPS to HHSC.

33
34 **§809.93. Provider Reimbursement**

35 Section 809.93 is amended to change "DFPS" to "CCL" to reflect the transfer of CCL from
36 DFPS to HHSC.

37
38 **§809.94. Providers Placed on Corrective or Adverse Action by the Texas Department of**
39 **Family and Protective Services**

40 Section 809.94 is amended to remove references to evaluation as a corrective action to align with
41 Chapter 42 of the Human Resources Code as amended by SB 781. Specifically, §809.94(a),
42 regarding providers placed on evaluation by CCL, is removed and subsequent subsections are
43 relettered accordingly.

1 Section 809.94 is also amended to change "DFPS" to "CCL" to reflect the transfer of CCL from
2 DFPS to HHSC.

3 **SUBCHAPTER G. TEXAS RISING STAR PROGRAM**

4 **TWC proposes the following amendments to Subchapter G:**

5
6 **§809.132. Impact of Certain Deficiencies on TRS Certification**

7 Section 809.132 is amended to change "DFPS" to "CCL" to reflect the transfer of CCL from
8 DFPS to HHSC.

9
10 **PART III. IMPACT STATEMENTS**

11 Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years
12 that the rules will be in effect, the following statements will apply:

13
14 There are no additional estimated costs to the state and to local governments expected as a result
15 of enforcing or administering the rules.

16
17 There are no estimated cost reductions to the state and to local governments as a result of
18 enforcing or administering the rules.

19
20 There are no estimated losses or increases in revenue to the state or to local governments as a
21 result of enforcing or administering the rules.

22
23 There are no foreseeable implications relating to costs or revenue of the state or local
24 governments as a result of enforcing or administering the rules.

25
26 There are no anticipated economic costs to individuals required to comply with the rules.

27
28 There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural
29 communities as a result of enforcing or administering the rules.

30
31 Based on the analyses required by Texas Government Code §2001.024, TWC has determined
32 that the requirement to repeal or amend a rule, as required by House Bill 1290, 85th Texas
33 Legislature, Regular Session (2017)--to be codified at Texas Government Code §2001.0045--
34 does not apply to this rulemaking.

35
36 **Takings Impact Assessment**

37 Under Texas Government Code, §2007.002(5), "taking" means a governmental action that
38 affects private real property, in whole or in part or temporarily or permanently, in a manner that
39 requires the governmental entity to compensate the private real property owner as provided by
40 the Fifth and Fourteenth Amendments to the United States Constitution or the Texas
41 Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that
42 would otherwise exist in the absence of the governmental action, and is the producing cause of a
43 reduction of at least 25 percent in the market value of the affected private real property,
44 determined by comparing the market value of the property as if the governmental action is not in
45 effect and the market value of the property determined as if the governmental action is in
46 effect. The Commission completed a Takings Impact Analysis for the proposed rulemaking

1 action under Texas Government Code, §2007.043. The primary purpose of this proposed
2 rulemaking action, as discussed elsewhere in this preamble, is to:

- 3
- 4 --ensure that Boards' maximum reimbursement rates are set at a level adequate to enable
- 5 equal access to subsidized child care services as set forth in the CCDF regulations at 45 CFR
- 6 §98.45 Equal Access;
- 7 --remove references to evaluation as a corrective action to align with Chapter 42 of the
- 8 Human Resources Code as amended by SB 781; and
- 9 --change references throughout Chapter 809 to reflect the transfer of CCL from DFPS to
- 10 HHSC.

11

12 The proposed rulemaking action will not create any additional burden on private real property.
13 The proposed rulemaking action will not affect private real property in a manner that would
14 require compensation to private real property owners under the United States Constitution or the
15 Texas Constitution. The proposal also will not affect private real property in a manner that
16 restricts or limits an owner's right to the property that would otherwise exist in the absence of the
17 governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas
18 Government Code, Chapter 2007.

19

20 Government Growth Impact Statement

21 TWC has determined that during the first five years that the proposed amendments will be in
22 effect:

- 23 --the proposed amendments will not create or eliminate a government program;
- 24 --implementation of the proposed amendments will not require the creation or elimination of
- 25 employee positions;
- 26 --implementation of the proposed amendments will not require an increase or decrease in future
- 27 legislative appropriations to TWC;
- 28 --the proposed amendments will not require an increase or decrease in fees paid to TWC;
- 29 --the proposed amendments will not create a new regulation;
- 30 --the proposed amendments will not expand, limit, or eliminate an existing regulation;
- 31 --the proposed amendments will not change the number of individuals subject to the rules; and
- 32 --the proposed amendments will not positively or adversely affect the state's economy.

33

34 Economic Impact Statement and Regulatory Flexibility Analysis

35 TWC has determined that the proposed rule will not have an adverse economic impact on small
36 businesses or rural communities, as these proposed rules place no requirements on small
37 businesses or rural communities.

38

39 Mariana Vega, Director of Labor Market and Career Information, has determined that there is no
40 significant negative impact upon employment conditions in the state as a result of the rules.

41

42 Reagan Miller, Director, Division of Child Care & Early Learning, has determined that for each
43 year of the first five years the rules are in effect, the public benefit anticipated as a result of
44 enforcing the proposed rules will be to ensure that Boards' maximum child care reimbursement
45 rates are set at a level adequate to enable equal access to subsidized child care services as set
46 forth in the CCDF regulations at 45 CFR §98.45 Equal Access.

1
2 TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be
3 within TWC's legal authority to adopt.

4
5 **PART IV. COORDINATION ACTIVITIES**

6 In the development of these rules for publication and public comment, TWC sought the
7 involvement of Texas' 28 Boards. TWC provided the concept paper regarding these rule
8 amendments to the Boards for consideration and review on October 30, 2019. During the
9 rulemaking process, TWC considered all information gathered in order to develop rules that
10 provide clear and concise direction to all parties involved.

11
12 Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce
13 Program Policy, Attn.: Workforce Editing, 101 East 15th Street, Room 459T, Austin, Texas
14 78778; faxed to (512) 475-3577; or emailed to TWCPolicyComments@twc.state.tx.us.
15 Comments must be received or postmarked no later than 30 days from the date this proposal is
16 published in the *Texas Register*.

17
18 The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide
19 TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the
20 effective administration of TWC services and activities.

21
22 The proposed rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well
23 as Texas Government Code, Chapter 2308.

1 **CHAPTER 809. CHILD CARE SERVICES**

2
3 **SUBCHAPTER B. GENERAL MANAGEMENT**

4
5 **§809.15. Promoting Consumer Education.**

- 6
7 (a) A Board shall promote informed child care choices by providing consumer education
8 information to:

 - 9
 - 10 (1) parents who are eligible for child care services;
 - 11
 - 12 (2) parents who are placed on a Board's waiting list;
 - 13
 - 14 (3) parents who are no longer eligible for child care services; and
 - 15
 - 16 (4) applicants who are not eligible for child care services.

- 17
- 18 (b) The consumer education information, including consumer education information
19 provided through a Board's website, shall contain, at a minimum:

 - 20
 - 21 (1) information about the Texas Information and Referral Network/2-1-1 Texas
22 (2-1-1 Texas) information and referral system;
 - 23
 - 24 (2) the website and telephone number of CCL-DFPS, so parents may obtain health
25 and safety requirements including information on:

 - 26
 - 27 (A) the prevention and control of infectious diseases (including
28 immunizations);
 - 29
 - 30 (B) building and physical premises safety;
 - 31
 - 32 (C) minimum health and safety training appropriate to the provider setting;
33 and
 - 34
 - 35 (D) the regulatory compliance history of child care providers;

 - 36
 - 37 (3) a description of the full range of eligible child care providers set forth in
38 §809.91; and
 - 39
 - 40 (4) a description of programs available in the workforce area relating to school
41 readiness and quality rating systems, including:

 - 42
 - 43 (A) Texas Rising Star (TRS) Provider criteria, pursuant to Texas
44 Government Code §2308.315; and
 - 45

- (B) integrated school readiness models, pursuant to Texas Education Code §29.160;
 - (5) a list of child care providers that meet quality indicators, pursuant to Texas Government Code §2308.3171;
 - (6) information on existing resources and services available in the workforce area for conducting developmental screenings and providing referrals to services when appropriate for children eligible for child care services, including the use of:
 - (A) the Early and Periodic Screening, Diagnosis, and Treatment program under 42 ~~USC~~~~U.S.C.~~ 1396 et seq.; and
 - (B) developmental screening services available under Part B and Part C of the Individuals with Disabilities Education Act (20 ~~USC~~~~U.S.C.~~ 1419, 1431 et seq.; and
 - (7) a link to the Agency's designated child care consumer education website.
- (c) A Board shall cooperate with ~~the Texas Health and Human Services Commission (HHSC)~~ to provide 2-1-1 Texas with information, as determined by HHSC, for inclusion in the statewide information and referral network.

§809.20. Maximum Provider Reimbursement Rates.

- (a) Based on local factors, including a market rate survey provided by the Commission, a Board shall establish maximum reimbursement rates for child care subsidies at or above a level established by the Commission to ensure that the rates provide equal access to child care in the local market and in a manner consistent with state and federal statutes and regulations governing child care. At a minimum, Boards shall establish reimbursement rates for full-day and part-day units of service, as described in §809.93(f), for the following:
 - (1) Provider types:
 - (A) Licensed child care centers, including before- or after-school programs and school-age programs, as defined by ~~CCL~~~~DFPS~~;
 - (B) Licensed child care homes as defined by ~~CCL~~~~DFPS~~;
 - (C) Registered child care homes as defined by ~~CCL~~~~DFPS~~; and
 - (D) Relative child care providers as defined in §809.2.
 - (2) Age groups in each provider type:

- (A) Infants age 0 to 17 months;
- (B) Toddlers age 18 to 35 months;
- (C) Preschool age children from 36 to 71 months; and
- (D) School-age children 72 months and over.

(b) A Board shall establish enhanced reimbursement rates:

- (1) for all age groups at TRS provider facilities; and
- (2) only for preschool-age children at child care providers that participate in integrated school readiness models pursuant to Texas Education Code §29.160.

(c) The minimum enhanced reimbursement rates established under subsection (b) of this section shall be greater than the maximum rate established for providers not meeting the requirements of subsection (b) of this section for the same category of care up to, but not to exceed, the provider's published rate. The maximum rate must be at least:

- (1) 5 percent greater for a:
 - (A) 2-Star Program Provider; or
 - (B) child care provider meeting the requirements of subsection (b)(2) of this section;
- (2) 7 percent greater for a 3-Star Program Provider; and
- (3) 9 percent greater for a 4-Star Program Provider.

(d) Boards may establish a higher enhanced reimbursement rate than those specified in subsection (c) of this section for TRS providers, as long as there is a minimum 2 percentage point difference between each star level.

(e) A Board or its child care contractor shall ensure that providers that are reimbursed for additional staff or equipment needed to assist in the care of a child with disabilities are paid a rate up to 190 percent of the provider's reimbursement rate for a child of that same age. The higher rate shall take into consideration the estimated cost of the additional staff or equipment needed by a child with disabilities. The Board shall ensure that a professional, who is familiar with assessing the needs of children with disabilities, certifies the need for the higher reimbursement rate described in this subsection.

1 (f) The Board shall determine whether to reimburse providers that offer transportation as
2 long as the combined total of the provider's published rate, plus the transportation
3 rate, is subject to the maximum reimbursement rate established in subsection (a) of
4 this section.

5
6
7 **—SUBCHAPTER D. PARENT RIGHTS AND RESPONSIBILITIES**

8
9 **§809.71. Parent Rights.**

10
11 A Board shall ensure that the Board's child care contractor informs the parent in writing
12 that the parent has the right to:

- 13
14 (1) choose the type of child care provider that best suits their needs and to be
15 informed of all child care options available to them as included in the
16 consumer education information described in §809.15;
17
18 (2) visit available child care providers before making their choice of a child care
19 option;
20
21 (3) receive assistance in choosing initial or additional child care referrals including
22 information about the Board's policies regarding transferring children from one
23 provider to another;
24
25 (4) be informed of the Commission rules and Board policies related to providers
26 charging parents the difference between the Board's reimbursement and the
27 provider's published rate as described in §809.92(c) - (d);
28
29 (5) be represented when applying for child care services;
30
31 (6) be notified of their eligibility to receive child care services within 20 calendar
32 days from the day the Board's child care contractor receives all necessary
33 documentation required to initially determine eligibility for child care;
34
35 (7) receive child care services regardless of race, color, national origin, age, sex,
36 disability, political beliefs, or religion;
37
38 (8) have the Board and the Board's child care contractor treat information used to
39 determine eligibility for child care services as confidential;
40
41 (9) receive written notification at least 15 calendar days before termination of
42 child care services;
43
44 (10) reject an offer of child care services or voluntarily withdraw their child from
45 child care, unless the child is in protective services;
46

- 1 (11) be informed of the possible consequences of rejecting or ending the child care
2 that is offered;
3
- 4 (12) be informed of the eligibility documentation and reporting requirements
5 described in §809.72 and §809.73;
6
- 7 (13) be informed of the parent appeal rights described in §809.74;
8
- 9 (14) be informed of required background and criminal history checks for relative
10 child care providers through the listing process with ~~CCLDFPS~~, as described
11 in §809.91(e); before the parent or guardian selects the relative child care
12 provider;
13
- 14 (15) receive written notification pursuant to §809.78(d) of the possible termination
15 of child care services for excessive absences, as described in §809.78(a)(1);
16 and
17
- 18 (16) receive written notification of possible termination of child care services for
19 failure to pay the parent share of cost, pursuant to §809.19(d).
20

21 **—SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE**

22
23 **§809.91. Minimum Requirements for Providers.**

- 24 (a) A Board shall ensure that child care subsidies are paid only to:
 - 25 (1) regulated child care providers as described in §809.2;
26
 - 27 (2) relative child care providers as described in §809.2, subject to the requirements
28 in subsection (e) of this section; or
29
 - 30 (3) at the Board's option, child care providers licensed in a neighboring state,
31 subject to the following requirements:
 - 32 (A) Boards shall ensure that the Board's child care contractor reviews the
33 licensing status of the out-of-state provider every month, at a minimum,
34 to confirm the provider is meeting the minimum licensing standards of
35 the state;
36
 - 37 (B) Boards shall ensure that the out-of-state provider meets the requirements
38 of the neighboring state to serve CCDF-subsidized children; and
39
 - 40 (C) The provider shall agree to comply with the requirements of this chapter
41 and all Board policies and Board child care contractor procedures.
42

- 1 (b) A Board shall not prohibit a relative child care provider who is listed with
2 CCLDFPS and who meets the minimum requirements of this section from being an
3 eligible relative child care provider.
4
- 5 (c) Except as provided by the criteria for TRS Provider certification, a Board or the
6 Board's child care contractor shall not place requirements on regulated providers
7 that:
8
- 9 (1) exceed the state licensing requirements stipulated in Texas Human Resources
10 Code, Chapter 42; or
11
- 12 (2) have the effect of monitoring the provider for compliance with state licensing
13 requirements stipulated in Texas Human Resources Code, Chapter 42.
14
- 15 (d) When a Board or the Board's child care contractor, in the course of fulfilling its
16 responsibilities, gains knowledge of any possible violation regarding regulatory
17 standards, the Board or its child care contractor shall report the information to the
18 appropriate regulatory agency.
19
- 20 (e) For relative child care providers to be eligible for reimbursement for Commission-
21 funded child care services, the following applies:
22
- 23 (1) Relative child care providers shall list with CCLDFPS; however, pursuant to
24 45 CFR §98.41(e), relative child care providers listed with CCLDFPS shall be
25 exempt from the health and safety requirements of 45 CFR §98.41(a).
26
- 27 (2) A Board shall allow relative child care providers to care for a child in the
28 child's home (in-home child care) only for the following:
29
- 30 (A) A child with disabilities as defined in §809.2, and his or her siblings;
31
- 32 (B) A child under 18 months of age, and his or her siblings;
33
- 34 (C) A child of a teen parent; and
35
- 36 (D) When the parent's work schedule requires evening, overnight, or
37 weekend child care in which taking the child outside of the child's home
38 would be disruptive to the child.
39
- 40 (3) A Board may allow relative in-home child care for circumstances in which the
41 Board's child care contractor determines and documents that other child care
42 provider arrangements are not available in the community.
43
- 44 (f) Boards shall ensure that subsidies are not paid for a child at the following child care
45 providers:
46

- 1 (1) Except for foster parents authorized by DFPS pursuant to §809.49, licensed
2 child care centers, including before- or after-school programs and school-age
3 programs, in which the parent or his or her spouse, including the child's parent
4 or stepparent, is the director or assistant director, or has an ownership interest;
5 or
6
7 (2) Licensed, registered, or listed child care homes where the parent also works
8 during the hours his or her child is in care.
9

10 **§809.93. Provider Reimbursement.**
11

- 12 (a) A Board shall ensure that reimbursement for child care is paid only to the provider.
13
14 (b) A Board or its child care contractor shall reimburse a regulated provider based on a
15 child's monthly enrollment authorization, excluding periods of suspension at the
16 concurrence of the parent as described in §809.51(d).
17
18 (c) A Board shall ensure that a relative child care provider is not reimbursed for days on
19 which the child is absent.
20
21 (d) A relative child care provider shall not be reimbursed for more children than
22 permitted by the ~~CCL~~DFPS minimum regulatory standards for Registered Child
23 Care Homes. A Board may permit more children to be cared for by a relative child
24 care provider on a case-by-case basis as determined by the Board.
25
26 (e) A Board shall not reimburse providers that are debarred from other state or federal
27 programs unless and until the debarment is removed.
28
29 (f) Unless otherwise determined by the Board and approved by the Commission for
30 automated reporting purposes, the monthly enrollment authorization described in
31 subsection (b) of this section is based on the unit of service authorized, as follows:
32
33 (1) A full-day unit of service is 6 to 12 hours of care provided within a 24-hour
34 period; and
35
36 (2) A part-day unit of service is fewer than 6 hours of care provided within a 24-
37 hour period.
38
39 (g) A Board or its child care contractor shall ensure that providers are not paid for
40 holding spaces open.
41
42 (h) A Board or the Board's child care contractor shall not pay providers:
43
44 (1) less, when a child enrolled full time occasionally attends for a part day; or
45
46 (2) more, when a child enrolled part time occasionally attends for a full day.

- 1
2 (i) The Board or its child care contractor shall not reimburse a provider retroactively for
3 new Board maximum reimbursement rates or new provider published rates.
4
5 (j) A Board or its child care contractor shall ensure that the parent's travel time to and
6 from the child care facility and the parent's work, school, or job training site is
7 included in determining whether to authorize reimbursement for full-day or part-day
8 care under subsection (f) of this section.
9

10 **§809.94. Providers Placed on Corrective or Adverse Action by the Texas Department**
11 **of Family and Protective Services.**
12

13 ~~(a) For a provider placed on evaluation corrective action (evaluation status) by DFPS,~~
14 ~~Boards shall ensure that:~~
15 -

16 ~~(1) parents with children enrolled in Commission-funded child care are notified in~~
17 ~~writing of the provider's evaluation status no later than five business days after~~
18 ~~receiving notification from the Agency of DFPS' decision to place the provider~~
19 ~~on evaluation status; and~~
20 -

21 ~~(2) parents choosing to enroll children in Commission-funded child care with the~~
22 ~~provider are notified in writing of the provider's evaluation status prior to~~
23 ~~enrolling the children with the provider.~~
24

25 ~~(a)(b)~~ For a provider placed on probation corrective action (probationary status) by
26 CCL~~DFPS~~, Boards shall ensure that:
27

28 (1) parents with children in Commission-funded child care are notified in writing
29 of the provider's probationary status no later than five business days after
30 receiving notification from the Agency of CCL's~~DFPS'~~ decision to place the
31 provider on probationary status; and
32

33 (2) no new referrals are made to the provider while on probationary status.
34

35 ~~(b)(e)~~ A parent receiving notification of a provider's ~~evaluation or~~ probationary status
36 with CCL~~DFPS~~ pursuant to subsections (a) ~~and (b)~~ of this section may transfer the
37 child to another eligible provider without being subject to the Board transfer policies
38 described in §809.71(3) if the parent requests the transfer within 14 calendar days of
39 receiving such notification.
40

41 ~~(c)(d)~~ For a provider placed on ~~evaluation or~~ probationary status by CCL~~DFPS~~, Boards
42 shall ensure that the provider is not reimbursed at the Boards' enhanced
43 reimbursement rates described in §809.20 while on ~~evaluation or~~ probationary status.
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45 ~~(d)(e)~~ For a provider against whom CCL~~DFPS~~ is taking adverse action, Boards shall
46 ensure that:

- (1) parents with children enrolled in Commission-funded child care are notified no later than two business days after receiving notification from the Agency that CCL~~DFPS~~ intends to take adverse action against the provider;
 - (2) children enrolled in Commission-funded child care with the provider are transferred to another eligible provider no later than five business days after receiving notification from the Agency that CCL~~DFPS~~ intends to take adverse action against the provider; and
 - (3) no new referrals for Commission-funded child care are made to the provider while CCL~~DFPS~~ is taking adverse action.
- (e)~~(f)~~ For adverse actions in which CCL~~DFPS~~ has determined that the provider poses an immediate risk to the health or safety of children and cannot operate pending appeal of the adverse action, but for which there is a valid court order that overturns CCL's~~DFPS'~~ determination and allows the provider to operate pending administrative review or appeal, Boards shall take action consistent with subsection (d)~~(e)~~ of this section.

—SUBCHAPTER G. TEXAS RISING STAR PROGRAM

§809.132. Impact of Certain Deficiencies on TRS Certification.

- (a) A TRS provider shall lose TRS certification if the provider:
 - (1) is placed on corrective action with a Board pursuant to Subchapter F of this chapter;
 - (2) is under a "Notice of Freeze" with the Commission pursuant to Chapter 213 of the Texas Labor Code (Enforcement of the Texas Unemployment Compensation Act) or Chapter 61 of the Texas Labor Code (Payment of Wages);
 - (3) is placed on corrective or adverse action by CCL; or
 - (4) had 15 or more total licensing deficiencies of any type during the most recent 12-month licensing history.
- (b) TRS providers with any of the critical licensing deficiencies listed in the TRS guidelines during the most recent 12-month CCL licensing history shall have the following consequences:
 - (1) reduction of one-star level, so a 4-Star Program Provider is reduced to a 3-Star Program Provider, a 3-Star Program Provider is reduced to a 2-Star Program Provider; or

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- (2) a 2-Star Program Provider loses certification.
- (c) TRS providers with five or more of the high or medium-high deficiencies listed in the TRS guidelines during the most recent 12-month CCL licensing history shall lose a star level with a 2-Star Program Provider losing certification.
- (d) TRS providers with 10 to 14 total licensing deficiencies of any type during the most recent 12-month CCL licensing history shall be placed on a six-month TRS program probationary period. Further:
 - (1) TRS providers on a six-month probationary period that are re-cited by CCL within the probationary period for any of the same deficiencies shall lose a star level with a 2-Star Program Provider losing certification;
 - (2) if any new deficiencies--not to exceed 14 total deficiencies--are cited by CCL during the first probationary period, a second six-month probationary period shall be established effective upon the date of final CCL~~DEPS~~ determination of the deficiencies; and
 - (3) if any new deficiencies--not to exceed 14 total deficiencies--are cited by CCL during the second six-month probationary period, a provider shall lose TRS certification.
- (e) Providers losing a star level due to licensing deficiencies shall be reinstated at the former star level if no citations described in §809.132(b) - (d) occur within the six-month reduction time frame.
- (f) Providers losing TRS certification shall be eligible to reapply for certification after six months following the loss of the certification, as long as no current deficiencies are re-cited and no additional licensing deficiencies are cited during the disqualification period.