

Section 809.1 Child Care Services

The following rule amendments will be effective January 25, 2000.

The Texas Workforce Commission (Commission) adopts an amendment to §809.1 concerning child care services, without changes to the proposed text as published in the November 5, 1999, issue of the *Texas Register* (24 TexReg 9817).

The purpose of the amendment is to modify the language in §809.1(c) to incorporate an implementation date of no later than December 1, 1999 for §809.62(a)(1). The Commission's intent is that the new implementation date provide the local workforce development boards (Boards) and their respective child care contractors (contractors) with the necessary time to fully implement the automation systems and related programmatic changes necessary to facilitate payments directly to self-arranged providers.

Background: On February 11, 1999, the Commission published the adopted child care rules in the Texas Register (24 TexReg 826). Specifically, §809.1 provided that Boards would be required to implement the new rules on September 1, 1999.

The Child Care and Development Fund (CCDF) regulations require that parents have the ability to select self-arranged providers pursuant to 45 CFR 98.30. The Commission firmly believes in parents exercising parental choice among the full range of child care providers, including self-arranged child care providers, and in parent responsibility in the selection. Self-arranged providers are of two types: (1) certain relatives: grandparents, great-grandparents, aunts and uncles, and siblings if the sibling is over 18 and does not reside in the residence of the child, and (2) certain entities: typically licensed centers and registered family homes that, in the past, chose not to engage in a contract directly with the contractor for the delivery of child care services, but chose to be paid directly by the parents. The self-arranged providers are typically sought by parents to meet the need for nontraditional hours of child care, including weekends, evenings and night shifts. The self-arranged providers are also typically sought by parents in rural or remote locations.

In an effort to reduce fraud, the Commission adopted a change to the payment method for self-arranged care. In the past, parents were paid directly for the self-arranged care and the parents were charged with making the payment to the self-arranged providers for the child care services rendered. Effective February 11, 1999 for implementation on September 1, 1999, Boards and contractors are required to pay all providers of child care directly, including self-arranged providers.

Several Boards and contractors have requested additional time to fully implement the automation and programmatic changes necessary to pay self-arranged providers directly as specified in §809.62(a)(1) for several reasons. As an example, one contractor in one Board area has indicated that more than 1,400 self-arranged providers and 3,100 self-arranged children are impacted in that area alone. Boards and contractors also have indicated that it is anticipated that some families and providers will choose to stop utilizing self-arrangement because of concerns over the payment method. For these reasons, several contractors and Boards expressed that they were not able to fully implement the necessary automation changes by September 1, 1999.

Boards are challenged with implementing extensive integration, automation, and program design changes that are needed. Boards have demonstrated good faith efforts in moving forward to design the seamless workforce delivery system to address the needs of working families. The Commission understands that all Boards did not have the systems in place to implement this provision. The Commission believes that the requested short-term extension is necessary for the undisrupted and continuous delivery of child care services. If the September 1, 1999 implementation date is not modified, this situation could result in a disruption of services because there would be no authorized method of paying for services.

In turn, parents engaged in employment would be forced to leave employment to care for their children or leave their children unsupervised or in unregulated or unsafe care situations in order to maintain employment. The endangerment of the children in unsupervised or unsafe care arrangements would present an imminent peril to the children of the state. For this reason, the amendment is necessary to authorize a method of paying providers. Without the amendment, the breakdown in service delivery would present an imminent peril to the public health, safety or welfare of the children of the state.

The Commission received no comments on the proposed amendment.

The amendment is proposed under Texas Labor Code, §301.061 and §302.021, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission's programs.

§809.1. Short Title and Purpose.

(a) The rules contained in this chapter may be cited as the Child Care and Development Rules. The purpose of these rules is to interpret and implement the requirements of state and federal statutes and regulations governing child care and quality improvement activities funded through the Commission, fully integrating child

care services with other workforce training and services under the jurisdiction of local workforce development boards.

(b) For local workforce development areas where there is no certified local workforce development board with an approved plan and the Commission continues to administer the delivery of child care services, the rules contained in this chapter shall apply to the Commission, its contractors, and its providers of services.

(c) The effective date of the rules in this Chapter 809 relating to Child Care and Development shall be twenty days after the date of filing the adoption in the Office of the Secretary of State; however, until September 1, 1999, the Boards shall continue to comply with the rules in effect on January 1, 1999 with the following exception. If a Board is unable to implement the provisions of §809.62(a)(1) by September 1, 1999, due to inability to complete automation or programmatic changes as needed, the Board shall implement the provisions of §809.62(a)(1) as soon thereafter as possible but not later than December 1, 1999. Pending implementation of §809.62(a)(1), not later than December 1, 1999, the Board may continue to make payments for child care services directly to eligible parents who choose to self-arrange child care.