

**Policy Concept**  
**Chapter 809, Child Care Services**  
**Rule Project #2021-07-809 - 87th Legislative Implementation and Program Improvements**

**Introduction and Background**

The 87th Texas Legislature, Regular Session (2021), enacted several bills related to the Texas Workforce Commission's (TWC's) child care program requiring amendments to 40 Texas Administrative Code (TAC) Chapter 809 Child Care Services. Additionally, TWC staff identified several potential rule amendments to improve program service delivery, consistency, and efficiency.

**House Bill 2607**

*Requiring Texas Rising Star Entry Level Rating for Providers of TWC-Funded Child Care Services*

House Bill (HB) 2607 amended Texas Government Code, [§2308.3155](#) to require providers of TWC-funded child care services (CCS) be included in the Texas Rising Star program. Amended Texas Government Code, [§2308.3155\(b-1\)](#) requires TWC to amend its Texas Rising Star rules to include an Entry Level rating for child care providers. The Entry Level rating must include a maximum length of time a child care provider can participate at the Entry Level rating. Amended Texas Government Code, [§2308.3155\(b-2\)](#) requires TWC to develop a process to allow a child care provider to request a waiver to extend the length of time, which cannot exceed 36 months, that the child care provider may participate at the Entry Level rating.

*Prekindergarten Partnerships*

HB 2607 also amended Texas Labor Code, [§302.00436](#) to require Local Workforce Development Boards (Boards) to inform the school districts and open-enrollment charter schools in the local workforce development area (workforce area) of opportunities to partner with child care providers in the Board's workforce area to expand access to and provide facilities for prekindergarten programs.

*Contracted Slots Reporting Requirements*

Finally, HB 2607 amended Texas Labor Code, [§302.0461\(d\)](#) to change Board reporting requirements for contracted providers from every six months to every twelve months.

**House Bill 1792**

*Statewide Texas Rising Star Assessors*

HB 1792 amended Texas Government Code, [§2308.3155](#) to require TWC to competitively procure a single entity to oversee a statewide roster of qualified assessors to evaluate child care providers participating in the Texas Rising Star program during the initial certification process and at any other time during the child care provider's participation in the program.

**Senate Bill 1555**

*Age Groups for Reimbursement*

1 Senate Bill (SB) 1555 amended Texas Government Code, [§2308.315](#) to require Boards to establish  
2 graduated reimbursement rates that align TWC's age groups with the Texas Health and Human Services'  
3 Child Care Regulation's (CCR) ratios and group sizes and to require higher rates in age groups with the  
4 lowest child-to-caregiver ratios. SB 1555 stipulates that the reimbursement rates must be in place no  
5 later than December 1, 2023.

## 6 **Program Improvements**

7 Additionally, staff and stakeholders have identified potential amendments to Chapter 809 for program  
8 improvements that will:

- 9 • standardize statewide policies currently developed by Boards;
- 10 • streamline the list of Board policy requirements;
- 11 • codify the current TWC waiver to allow job search at initial eligibility;
- 12 • update language regarding automated attendance reporting;
- 13 • strengthen child care provider payment requirements to align with industry practices;
- 14 • include federal reporting requirements for providers charging parents above the parent share of  
15 cost (PSoC); and
- 16 • make technical changes and clarifications.

## 17 **Purpose for the Proposed Rule**

18 The purpose for the proposed rule amendments is to implement the requirements of HB 2706, HB 1792,  
19 SB 1555, and other identified rule amendments for program improvement. The proposed rule  
20 amendments will affect the following subchapters of Chapter 809:

- 21 Subchapter A. General Provisions
- 22 Subchapter B. General Management
- 23 Subchapter C. Eligibility for Child Care Services
- 24 Subchapter D. Parent Rights and Responsibilities
- 25 Subchapter E. Requirements to Provide Child Care
- 26 Subchapter F. Fraud Fact-Finding and Improper Payments
- 27 Subchapter G. Texas Rising Star Program

## 28 **Rule Revisions Required by Federal Regulation or State Statute**

### 29 Issue #1: HB 2607 - Texas Rising Star Entry Level Rating

30 HB 2607 amended Texas Government Code, [§2308.3155](#) to require all CCS child care providers to be  
31 included in the Texas Rising Star program and requires TWC to amend its Texas Rising Star program  
32 rules to include an Entry Level rating and a maximum length of time a child care provider can  
33 participate at the Entry Level rating. Amended Texas Government Code, [§2308.3155\(b-2\)](#) requires  
34 TWC to develop a process to allow a child care provider to request a waiver to extend the length of time,  
35 which cannot exceed 36 months, the child care provider may participate at the Entry Level rating.  
36 Amended Texas Government Code, [§2308.3155\(b-1\)](#) specifies that an Entry Level child care provider is  
37 not eligible for enhanced reimbursement rates available to Two-, Three-, and Four-Star certified child  
38 care providers.

1 Prior to the enactment of HB 2607, TWC's three-member Commission (Commission) amended Chapter  
2 809 in January 2021 to adopt a new Pre-Star child care provider designation and a requirement that all  
3 regulated CCS child care providers achieve designation as Pre-Star and established a five-year timeline  
4 for all CCS child care providers to achieve at least a Pre-Star designation. The Pre-Star designation is  
5 based on a child care provider's demonstration that it does not have significant licensing findings. The  
6 new Texas Rising Star Entry Level designation will replace the previously established Pre-Star  
7 designation.

8 *Mandatory Texas Rising Star Participation and Enhanced Reimbursement Rates*

9 Because amended Texas Government Code, [§2308.3155\(a\)](#) makes Texas Rising Star mandatory for  
10 regulated CCS providers, the new statutory language requires the definition of the Texas Rising Star  
11 program in [§809.2](#) be amended to reflect that the program is required for CCS providers; and [§809.91](#) be  
12 amended to require all regulated providers participate in Texas Rising Star program.

13 Additionally, because the Entry Level rating is intended to be a temporary designation and not eligible  
14 for enhanced reimbursement rates, the definition of a Texas Rising Star provider in [§809.2](#) could be  
15 amended to distinguish Entry Level child care providers from "certified" child care providers, reserving  
16 Texas Rising Star "certification" only for certifications at the Two-, Three-, and Four-Star level.

17 Also, amended Texas Government Code, [§2308.3155\(b-1\)](#) clarifies that providers at the Entry Level  
18 designation are not eligible for the enhanced rate; thus requiring that [§809.20](#) be amended to include that  
19 only "certified" Texas Rising Star providers receive the enhanced reimbursement rate.

20 *Amend Subchapter G. Texas Rising Star Program*

21 To implement the requirements of HB 2607, the Commission could amend [Subchapter G, Texas Rising](#)  
22 [Star Program](#) to include an Entry Level designation within the Texas Rising Star program. The amended  
23 Subchapter G would include the requirements to be considered for Entry Level designation based upon a  
24 child care provider's demonstration that it does not have excessive licensing findings.

25 *Eligibility to be Considered for Entry Level Rating*

26 Amended Texas Government Code, [§2308.3155\(b-1\)](#) stipulates that to qualify for the Entry Level rating,  
27 a child care provider must meet the minimum quality standards that qualify the child care provider to  
28 receive technical assistance and support under the Texas Rising Star program.

29 Under current rules, regulated child care providers (that is, providers licensed or registered with CCR  
30 (including an initial permit) or regulated by the US Military) are eligible to be considered for "Pre-Star"  
31 designation if the child care provider is not currently on Corrective or Adverse Action with CCR.

32 Amended Subchapter G could adopt the current basic requirements for "Pre-Star" designation as the  
33 requirements to be considered for the Entry Level rating and be eligible for technical assistance as  
34 required by amended Texas Government Code, [§2308.3155\(b-1\)](#). If the child care provider is eligible to  
35 be considered for the Entry Level rating, the child care provider will then need to meet the new proposed  
36 points threshold for high and medium-high CCR deficiencies required for the Entry Level designation.

37 *Points Threshold for Meeting Entry Level Rating*

1 The Commission must establish criteria for Entry Level designation, which will be set forth in the Texas  
2 Rising Star Guidelines. To be designated as Entry Level, the Commission could consider establishing a  
3 points threshold of 75, based on:

- 4 • points being assigned to CCR-weighted high- and medium-high deficiencies received; and
- 5 • High-weighted deficiencies receiving a higher number of points (5 points each) than medium-  
6 high-weighted deficiencies (3 points each)

7  
8 A child care provider's most recent 12-month CCR licensing history will be reviewed. Providers with  
9 initial permits or providers with fewer than 12 months of licensing history will be reviewed based on all  
10 available CCR licensing history.

### 11 *Time Limits for Entry Level Rating*

12 Amended Texas Government Code, [§2308.3155\(b-1\)](#) requires the Commission to establish, by rule, the  
13 maximum length of time a provider can be at the Entry Level rating. The Commission could establish a  
14 24-month maximum time a provider could be at the Entry Level designation. The provider must achieve  
15 Texas Rising Star certification of at least the Two-Star level within the 24-month period, unless the  
16 provider requests and TWC approves a waiver extension as allowed by amended Texas Government  
17 Code, [§2308.3155\(b-2\)](#).

18  
19 All providers must meet Entry Level requirements, and, once designated as Entry Level, will have a  
20 maximum of 24 months to attain star-level certification in Texas Rising Star. Entry Level providers will  
21 be reviewed for Texas Rising Star certification after their first 12 months. If a provider is not certified as  
22 Texas Rising Star at that time, the provider will receive up to two six-month extensions as follows:

- 23 • During the first six months, providers will continue to receive CCS referrals.
- 24 • If a provider requires a second six-month extension, the provider may not receive any new CCS  
25 referrals.

26 For providers that have existing agreements with Boards to provide child care services during the initial  
27 implementation of the rules, but do not meet the points threshold for Entry Level designation, TWC will  
28 provide a period of six months in order for these providers to meet Entry Level requirements.

### 29 *Criteria for the Extension Waiver*

30 To implement the 36-month waiver requirement of amended Texas Government Code, [§2308.3155\(b-2\)](#),  
31 the Commission could establish the criteria for the Agency to approve an extension waiver, which could  
32 include providers that are:

- 33 • located in a child care desert or underserved area described in [§809.96\(e\)\(1\)](#) (regarding contracted  
34 slots);
- 35 • unable to meet the certification requirements due to a declared emergency/disaster; or
- 36 • unable to meet the certification requirements due to conditions that are outside the provider's control.

37 Amended Texas Government Code, [§2308.3155\(b-2\)](#) requires that the rules specify that approved  
38 waivers must not exceed 36 months.

1 *Texas Rising Star Providers Losing Certification*

2 Section [809.132](#) provides specific conditions and CCR deficiencies that result in a Texas Rising Star  
3 certified provider losing certification. Under the current rules, there is no requirement that the provider  
4 seek or become certified following the loss of certification. However, with the requirement in amended  
5 Texas Government Code, [§2308.3155\(b-1\)](#) that subsidized providers must meet Texas Rising Star  
6 certification, the Commission could amend [§809.132](#) to require that certified providers losing  
7 certification must continue to meet Entry Level standards, and be recertified within 12 months of the  
8 loss of certification. The provider will not be able to receive referrals from a new family during the 12-  
9 month period. Failure to achieve recertification will result in the provider's ineligibility to provide  
10 subsidized child care services. Providers losing TRS certification and not achieving recertification  
11 within the 12-month period are not eligible for Entry Level designation and must meet TRS certification  
12 in order to provide subsidized child care services.

13 *Issue #2: Statewide Entity for Texas Rising Star Assessors*

14 HB 1792 amended Texas Government Code, [§2308.3155](#) to require TWC to competitively procure a  
15 single entity to oversee a statewide roster of qualified assessors to evaluate child care providers  
16 participating in the Texas Rising Star program during the initial certification process and at any other  
17 time during the child care provider's participation in the program.

18 Amended Texas Government Code, [§2308.3155\(d\)](#) requires amendments to [Chapter 809, Subchapter G](#)  
19 to separate the roles and responsibilities of Texas Rising Star assessments provided by the single  
20 statewide entity and mentoring services provided by Boards, as well as qualifications specific to  
21 assessors and mentors.

22 Specifically, [§809.134](#) can be amended to include the current Texas Rising Star staff requirements and  
23 specifying that both the Boards and TWC's designated assessment entity shall ensure that Texas Rising  
24 Star staff:

- 25 • meet the background check requirements; and
- 26 • complete the Texas Rising Star standards training, as described in the Texas Rising Star  
27 Guidelines.

28  
29 The rules could also specify that Boards ensure mentoring staff meet requirements for:

- 30 • minimum education;
- 31 • work experience requirements; and
- 32 • attaining mentor micro-credentialing, as described in the Texas Rising Star Guidelines.

33  
34 The rules could specify that TWC's designated Texas Rising Star assessment entity ensure that assessors  
35 attain and maintain the Texas Rising Star Assessor Certification, which will replace the current  
36 minimum education requirements.

37 Under current rules, Boards are allowed to have staff members who act as both mentors and assessors,  
38 as long as the staff does not mentor and assess the same child care provider. With the separation of  
39 assessors into a single entity, the rules could continue this separation of duties to address situations in  
40 which an individual may be under contract with a Board for mentoring services as well as under contract

1 by the single entity to conduct Texas Rising Star assessments, to ensure that no conflict of interest exists  
2 during the assessment process.

3 Additionally, current rule language places the responsibility on Boards regarding child care provider  
4 requests for a reconsideration of the child care provider's Texas Rising Star assessment. The rules could  
5 continue this reconsideration practice and be amended to require TWC's designated Texas Rising Star  
6 assessment entity have a procedure for child care providers that request a reconsideration of their  
7 certification based on an assessment.

8 Issue #3: Age Group Reimbursement Rates

9 SB 1555 amended Texas Government Code, [§2308.315](#) to require Boards to establish graduated  
10 reimbursement rates that align TWC's age groups with CCR ratios and group sizes and to require higher  
11 rates in age groups with the lowest child-to-caregiver ratios. SB 1555 stipulates that the reimbursement  
12 rates must be in place no later than December 1, 2023.

13 Currently, [§809.20](#) requires Boards to have maximum reimbursement rates for the following age groups:

- 14 • Infants ages 0 through 17 months;
- 15 • Toddlers ages 18 through 35 months;
- 16 • Preschool ages 36 through 71 months; and
- 17 • School ages 72 months and older.

18 CCR age groups, with group sizes and ratios for licensed child care centers (LCCC) as defined in 40  
19 TAC [§746.1601](#) and [§746.1609](#) are:

- 20 • Infants ages 0 through 11 months: 4:1 child-to-caregiver ratio (10 maximum group size)
- 21 • Infants ages 12 through 17 months: 5:1 child-to-caregiver ratio (13 maximum group size)
- 22 • Toddlers ages 18 through 23 months: 9:1 child-to-caregiver ratio (18 maximum group size)
- 23 • Toddlers age 2 years: 11:1 child-to-caregiver ratio (22 maximum group size)
- 24 • Preschool age 3 years: 15:1 child-to-caregiver ratio (30 maximum group size)
- 25 • Preschool age 4 years: 18:1 child-to-caregiver ratio (35 maximum group size)
- 26 • Preschool age 5 years: 22:1 child-to-caregiver ratio (35 maximum group size)
- 27 • School ages 6 through 13 years: 26:1 child-to-caregiver ratio (35 maximum group size)

28 CCR age groups and ratios for licensed child care homes (LCCH), as defined in 40 TAC [§747.1801](#) and  
29 [§747.1803](#), are as follows:

- 30 • Infants ages 0 through 17 months, 4:1 child-to-caregiver ratio (10 maximum group size)
- 31 • Toddlers ages 18 through 3 years: 8:1 child-to-caregiver ratio (12 maximum group size)
- 32 • Preschool/School-age ages 4 to 13 years: 12:1 (12 maximum group size)

33 CCR age groups and ratios for registered child care homes (RCCH), as defined in 40 TAC [§747.1701](#),  
34 are as follows:

- 35 • Infants ages 0 through 17 months: 4:1 child-to-caregiver ratio (10 maximum group size)
- 36 • Toddlers/Preschool/School-age ages 18 months and older: 6:1 child-to-caregiver ratio (12  
37 maximum group size)

- Preschool/School-age ages 5 to 13 years afterschool hours: 12:1 (12 maximum group size)

The Commission could amend [§809.20](#) (Maximum Provider Reimbursement Rates) to require Boards to have maximum reimbursement rates that align with the CCR age groups for LCCCs described earlier. The Commission can also use the LCCC age groups for home-based care (LCCH and RCCH).

In accordance with [§809.20\(a\)](#), which requires Boards to establish maximum reimbursement rates at or above a level established by the Commission and in accordance with state regulations, TWC will issue guidance to require Boards to establish graduated rates that must be higher in age groups with the lowest child-to-caregiver ratios, pursuant to amended Texas Government Code, [§2308.315](#). Amended Texas Government Code, [§2308.315](#) requires TWC to supply any demographic data needed by the Board to establish the rates. TWC supplies market rates, through the annual Market Rate Survey (MRS), for the currently defined age groups as a benchmark to assist Boards in establishing maximum reimbursement rates. TWC is working with the MRS contractor to ensure that the MRS can collect and analyze market rates based on the CCR age groups, and these rates will be included in the next MRS due in June 2022.

Additionally, implementing SB 1555 will require TWC's child care information system to:

- align the age groups used for reimbursing child care providers to CCR age groups;
- allow Boards to enter maximum reimbursement rates (full-day and part-day) for the new age groups, for each child care provider type, age group, the three Texas Rising Star certification levels (Two-Star, Three-Star, and Four-Star), and the Texas School Ready (TSR) designation;
- require that reimbursement rates are higher for age groups with the lowest child-to-caregiver ratios; and
- calculate the child care provider reimbursement (full-day or part-day) based on the new age groups, provider type, including the Texas Rising Star certification level.

TWC is currently planning to replace the current child care information system, The Workforce Information System of Texas (TWIST), with a new Child Care Case Management System (CCCMS). TWC will include the changes to implement SB 1555 in the requirements for the new CCCMS, scheduled to be completed in spring of 2023.

The authors of SB 1555 recognized that implementation would require time for TWC to collect and analyze market rates data and make necessary information technology changes. As such, SB 1555 stipulates that implementation of the bill should be no later than December 1, 2023.

The Commission could adopt changes to Chapter 809 during the rulemaking timeline established, but make the provisions of the rule effective on October 1, 2023, to align with the Board Contract Year 2024.

#### Issue #4: Board Information on Prekindergarten Partnerships

HB 2607 amended Texas Labor Code, [§302.00436](#) to require Boards to inform the local school districts and open-enrollment charter schools in the local workforce area regarding opportunities to partner with child care providers in the Boards' workforce areas to expand access to and provide facilities for prekindergarten programs.

1 The Commission could amend [§809.14](#) (Coordination of Child Care Services) to require Boards to  
 2 inform the local school districts/open-enrollment charter schools of opportunities to partner with child  
 3 care providers to expand access to and provide facilities for prekindergarten programs.

4 Issue #5: Contracted Slots Reporting Requirements

5 HB 2607 amended Texas Labor Code, [§302.0461\(d\)](#) to change the Board reporting requirements for  
 6 contracted providers from every six months to every 12 months. On September 9, 2021, TWC issued  
 7 [Workforce Development \(WD\) Letter 19-21](#), which included the new 12-month reporting requirement.  
 8 The Commission could amend [§809.96](#) (Contracted Slots Agreements) to change the Board reporting  
 9 requirements for contracted providers from every 6 months to every 12 months.

10 **Other Rule Revisions**

11 Issue #6: Develop Statewide Policies for Service Delivery Consistency

12 Chapter 809 allows Boards to establish policies for various aspects of the Child Care Services program,  
 13 and those policies vary greatly among the 28 Boards. The following chart shows the policy options  
 14 available to Boards:

Required Board Policy	Policy Options	Board Policies
<b>Subchapter B. General Management</b>		
Waiting List Management - <a href="#">§809.18</a>	Frequency of purging the waiting list	5 - monthly 6 - 60 days 7 - 90 days 4 - 180 days
Parent Share of Cost (PSoC) - <a href="#">§809.19</a>	Amount of PSoC for one child and amount added for each additional child	28 different Board policies
<b>Subchapter C. Eligibility for Child Care Services</b>		
Income Limits - <a href="#">§809.41(a) and (e)</a> <a href="#">§809.48(b)</a> <a href="#">§809.50(e) and (g)</a>	Cannot exceed, but can be lower than, 85% of the state median income (SMI)	85% SMI - 23 Boards 75% SMI - 2 Boards 80% SMI - 1 Board 200% federal poverty guidelines (FPG) - 1 Board 185% FPG - 1 Board
Parent Activity Hours <a href="#">§809.50</a>	Must be at least, but can be more than, 25 hours per week for single-parent family and 50 hours per week for a dual-parent family	27 Boards have 25/50
Child Care for Education - <a href="#">§809.41(b) and (c)</a>	Types of education degrees, courses, time limits at Board policy discretion (except	Five Boards allow Master's degrees. Time limits by education type vary by Board.



	associate degrees must allow for four years of care).	
Determining Progress Toward Successful Completion of Training/Education Activities - <a href="#">§809.41(b)</a>	Board policy discretion	Multiple Board Policies: 15 Boards - Training/Education entity determines progress 13 Boards - Board-established GPA (education program) 7 Boards - Board-established attendance
Maximum Age of Children with Disabilities - <a href="#">§809.41(a)</a>	Allowed, but not required, to go to age 19	28 Boards allow up to age 19

1 To provide greater consistency in child care service delivery throughout the state, particularly with  
2 management of waiting lists, assessing the PSoC, and general eligibility requirements, the Commission  
3 could consider amending Chapter 809 to provide standard eligibility requirements statewide and ensure  
4 greater efficiency in service delivery for the following policy areas.

5 *Statewide Waiting List Management*

6 [Section 809.18](#) requires Boards to maintain a list of parents waiting for child care services due to the  
7 lack of funding or lack of providers. The section requires Boards to have a policy that sets the frequency  
8 in which the parent information is updated and maintained on the waiting list. Board policies for  
9 requiring a parent to contact the Board to keep the child on the waiting list varies by Board and ranges  
10 from 30 to 180 days. This wide range in waiting list maintenance creates statewide inconsistencies in the  
11 accuracy of the number of children currently waiting for child care services.

12 The Commission could amend [§809.18](#) to require Boards to review the child's information on the  
13 waiting list every three months and to remove the child from the waiting list if the parent no longer  
14 requests child care services or does not respond to the Board regarding the continued need for child care  
15 services.

16 *Statewide Parent Share of Cost Assessment*

17 Federal Child Care Development Fund (CCDF) regulations at [45 CFR §98.45\(k\)](#) require Lead Agencies  
18 to "establish, and periodically revise, by rule, a sliding fee scale(s) for families that receive CCDF."  
19 Regulations also require that the sliding fee scales must be based on income and family size, affordable,  
20 and not be a barrier to a family receiving assistance. The sliding fee scale should be designed in a  
21 manner that gradually increases the percent of family income the parent pays as the income increases.  
22 Although not a regulatory requirement, federal guidance suggests that the sliding fee scale not exceed 7  
23 percent of the family income.

24 [Section 809.19](#) requires Boards to establish PSoC amounts based on the federal requirements. The PSoC  
25 is established based upon family income and family size.

26  
27 Board sliding fee scales vary greatly among the workforce areas. For example:

- 1 • For a family at the lowest income range (10 percent SMI/33 percent FPG) with a family size of  
2 three and \$600 monthly income, Board sliding scales range from 1.6 percent to 8.2 percent of the  
3 family income.
- 4 • For a family at the highest income range (85 percent SMI) with a family size of three and \$5,081  
5 monthly income, Board scales range of 2.3 percent to 9.8 percent
- 6 • For a family in the mid-income range (55 percent SMI/150 FPG) with a family size of three and  
7 \$3,288 monthly income, Board scales range from 4.3 percent to 9.5 percent.

8 Board policies also vary greatly on additional amounts that may be added to the PSoC for each  
9 additional child in care.

10 Additionally, TWC's current standard sliding scale requires Boards to have a static PSoC amount within  
11 nine established income ranges. If the family income changes, but remains within the income range, then  
12 the PSoC will not change. This methodology was established prior to the requirement for the PSoC to  
13 remain stable within the 12-month eligibility period and was designed to minimize the impact on the  
14 PSoC of relatively small changes in income.

15  
16 However, the disadvantage of this methodology is that once the family income crosses an income range,  
17 the increased PSoC could be greater than the income amount increase, resulting "mini-cliffs" that create  
18 relatively substantial increases in the percent of income a family pays if a family experiences small  
19 increases in income.

20 The Commission could consider creating a consistent statewide policy on PSoC assessments that would  
21 allow for greater consistency in ensuring that the PSoC amount is affordable and would be aligned more  
22 closely with the percentage of the family income. The policy:

- 23 • could standardize the PSoC assessment to provide a sliding-fee scale that could start from 2  
24 percent to 3.5 percent of family income and gradually increase as the family income increases  
25 but does not exceed 7 percent of the family income for one child in care; and
- 26 • allow for a lower incremental increased percentage of the family income for families and for  
27 each additional child in care.

## 28 *Statewide Income and Activity Eligibility Requirements*

29 [Chapter 809, Subchapter C \(Eligibility for Child Care Services\)](#) establishes general statewide eligibility  
30 requirements that reflect the eligibility requirements in the CCDF regulations. However, within the  
31 general requirements, Boards have some flexibility to place additional requirements for eligibility. For  
32 example, the rules require that family income cannot exceed the federal income limits of 85 percent of  
33 the SMI. However, the rules also allow Boards to have lower income limits. Currently, five Boards have  
34 income limits lower than 85 percent of the SMI. Similarly, TWC rules require that parents must  
35 participate in work, job training, or education activities for 25 hours a week (50 hours for a dual-parent  
36 family), but Boards are allowed to place higher hourly activity requirements on families. Currently, only  
37 one Board has activity requirements greater than the minimum requirements in rule.

38 The Commission could consider creating a consistent statewide policy to:

- 39 • implement a standard income eligibility limit of 85 percent of the SMI; and

- require that parents must participate in work, job training, or education activities for 25 hours a week (50 hours for a dual-parent family).

### *Statewide Policy on Child Care during Education*

Boards place varying restrictions on providing child care for parents pursuing certain types of education and degrees, and how Boards determine a parent is making progress in achieving education and job training completions. For example, five Boards specifically allow child care services while a parent is pursuing postgraduate degrees, while five other Boards do not specify if advanced degrees are allowed, and 16 Boards specifically state that child care services while pursuing a postgraduate degree are not allowed.

Additionally, the time limits for receiving child care services while participating in education activities vary greatly by Board. Time limits range from 48 months, to a maximum of 96 months for all postsecondary education. Time limits also vary according to the type of education pursued. For example, Boards allow from 60 months to 72 months for a bachelor's degree, and from 24 months to 48 months for a certification program.

Finally, [§809.2\(1\)](#) requires Boards to establish a policy to determine how a parent is making progress toward successful completion of an education program or job training program. Currently, Board policy varies, with some Boards having multiple policies:

- 15 Boards – The training/education entity determines progress toward completion.
- 13 Boards – Boards establish GPA for education programs.
- 7 Boards – Boards establish attendance requirements.

The Commission could consider creating a consistent statewide policy regarding the following:

- Time limits for education, set at a cumulative total of 60 months, for child care during education only (without employment), which includes full-time enrollment (as determined by the educational institution) in high school, a Certificate of High School Equivalency, or an undergraduate degree program.
- Determining progress toward successful completion of training and education activities, as determined by the training entity or educational institution.

### *Statewide Policies on Children with Disabilities*

CCDF regulations at [45 CFR §98.20\(a\)\(1\)\(ii\)](#) allows Lead Agencies to serve children with disabilities up to the age of 19 and [§809.41\(a\)\(1\)\(B\)](#) gives this flexibility to Boards. Currently, 27 Boards provide child care services for children with disabilities up to age 19.

The Commission could consider creating a consistent statewide policy to have children with disabilities up to age 19 eligible for child care services.

### *Issue #7: Streamline Board-Required Policies to Remove Procedures and Policies Required in Rule*

Chapter 802, Integrity of the Workforce System, [§802.1\(f\)](#) requires that "all public business or public policy over which the Board has supervision or control is discussed, considered, or acted upon during a

1 properly and convened open meeting. Section [809.13\(c\)](#) is a comprehensive list of required Board  
2 policies that are referenced in other Chapter 809 sections. Section [809.13\(c\)](#) was created to assist Boards  
3 in identifying in one place their required policies. However, the section predated the issuance of the  
4 Child Care Services Guide, which also provides the same comprehensive list of required Board policies.  
5 With the issuance of the Child Care Services Guide, [§809.13\(c\)](#) may no longer be required.

6 Additionally, several required Board polices in [§809.13\(c\)](#) are actually operational procedures that do  
7 not require action in an open meeting. These include procedures for fact-finding and taking corrective  
8 actions.

9 The Commission could consider amending [§809.13\(c\)](#) to remove the list of required Board procedures  
10 and policies as the required Board policies are described in other Chapter 809 sections. A  
11 comprehensive list of policies required in Chapter 809 as well as procedural requirements for Boards  
12 will be included in the Child Care Services Guide and updated with any subsequent rule amendments  
13 that require Board policies.

14 Issue #8: Allowing Job Search for Initial Eligibility

15 Under federal Child Care Development Block Grant (CCDBG) regulation [45 CFR §98.21\(a\)\(2\)\(iii\)](#),  
16 states may initially qualify a family for assistance if the parent is seeking employment or engaging in job  
17 search, and may end assistance after a minimum of three months if the parent has not found  
18 employment.

19 However, unemployed parents who are looking for work are not initially qualified to receive CCS under  
20 current [§809.41\(a\)\(3\)\(B\)](#). On June 15, 2021, the Commission approved a temporary waiver for  
21 [§809.41\(a\)\(3\)\(B\)](#) to provide additional flexibility, allowable under federal CCDBG law and regulations,  
22 to support parents who do not meet the activity requirements when eligibility is determined. This waiver  
23 allows up to three months of child care for parents to search for work. The waiver expires on October 1,  
24 2022.

25 On June 30, 2021, TWC issued guidance to the Boards in [WD Letter 13-21](#) regarding eligibility for  
26 child care during the initial job search period.

27 The Commission could consider amending [§809.2](#) to include job search in the definition of working,  
28 adding a new section in [Subchapter C \(Eligibility for Child Care Services\)](#) for job search child care with  
29 provisions consistent with the guidance issued in [WD Letter 13-21](#), specifically:

- 30 • A parent, including a parent in a dual-parent family, is eligible for child care services if at initial  
31 eligibility determination the family does not meet the minimum participation requirements for  
32 At-Risk Child Care. (Note: Parents who are unemployed at the time of eligibility redetermination  
33 are provided three months of continued care under [§809.51\(b\)](#) regarding child care during  
34 interruptions in work.)
- 35 • Boards must allow parents to self-attest that the family meets the requirements for job search  
36 child care, and that the family income does not exceed 85 percent of the state median income.
- 37 • Child care is limited to three months (with the clarification in guidance that a Board may extend  
38 an initial job search period for a maximum of 30 calendar days to ensure continuity of care in  
39 order to verify and determine eligibility requirements for continued care.

- 1 • If activity participation of at least 25 hours for a single-parent family or 50 hours per week for a  
2 dual-parent family, with at least 12 hours in employment for a single-parent family and 25 hours  
3 in employment for a dual-parent family, is met within three months, eligibility will continue for a  
4 total of 12 months, inclusive of the three-month initial job search period.
- 5 • If the family does not meet minimum activity requirements under the new section, care must be  
6 terminated.
- 7 • The PSoC at the highest amount based on the family size and number of children in care.
- 8 • The initially assessed amount will immediately be reduced to zero, which includes two-parent  
9 families in which one parent is working but the participation requirements are not met.
- 10 • If the parent begins to meet participation requirements within or by the end of the job search  
11 period, the PSoC must be reinstated at the initially assessed amount or the amount based on the  
12 actual family income, whichever is lower.

13 The new section could also state that eligibility for job search child care is limited to one 3-month job  
14 search period within a 12-month period.

15 TWC currently has a Board Incentive Award that provides an incentive for Boards, through their one-  
16 stop service delivery network, to assist parents in child care job search to obtain employment. To  
17 emphasize this connection with the workforce delivery network, the Commission could consider  
18 including a requirement that a Board ensures that the parent in child care for job search is registered in  
19 the state's labor exchange system and has access to appropriate services available through the one-stop  
20 service delivery network.

#### 21 Issue #9: Automated Attendance and Attendance Standards

22 As of April 1, 2021, TWC discontinued use of the designated automated attendance system and  
23 temporarily stopped collecting attendance through an automated system. Also, at that time, TWC issued  
24 guidance to Boards through [WD Letter 08-21](#) regarding the temporary use of manual attendance  
25 tracking while TWC is conducting procurement and implementation of a new automated system.  
26 Current Chapter 809 rules; however, include several requirements that are specific to the previous  
27 automated system, particularly regarding the use of attendance cards for point of service devices. The  
28 type of automated system and the process for recording attendance, including the use of attendance  
29 cards, has not been determined.

30 The Commission could amend the attendance reporting language in [§809.78](#) (regarding parent reporting  
31 requirements), [§809.95](#) (regarding provider reporting requirements), and [§809.115](#) (regarding corrective  
32 actions) related to using attendance cards or other language specific to the previous system, which would  
33 allow flexibility for future automated attendance systems.

#### 34 Issue #10: Provider Payments

35 CCDF regulations at [45 CFR §98.45\(l\)](#) requires Lead Agencies to establish payment practices that  
36 ensure timeliness of payment and reflect generally accepted payment practices of child care providers  
37 that do receive CCDF. The regulations cite paying based on a child's enrollment rather than attendance  
38 and paying prospectively prior to the delivery of services.

39 Section [809.93\(b\)](#) requires Boards to reimburse providers based on the child's enrollment rather than  
40 attendance; however, current rules do not allow for providers to be paid prospectively. Because

1 payments are based on the enrollment authorization and not attendance, the Commission could amend  
2 Chapter 809 to require Boards to pay providers on that enrollment every two weeks prior to the delivery  
3 of services, pursuant to [45 CFR §98.45\(l\)](#).

4 Currently, 24 Boards reimburse providers either weekly or every two weeks. Additionally, the two-week  
5 prospective payment aligns with current Commission policy regarding transfers that includes a waiting  
6 period of two weeks before the effective date of a transfer, except in cases in which the provider is  
7 subject to a CCL corrective action, or on a case-by-case basis as determined by the Board.

8 *Issue #11: Providers Charging Parents the Difference between the Board Rate and the Provider*  
9 *Published Rate*

10 Current TWC rules at [§809.92\(c\)](#) prohibit providers from charging the difference to parents who are  
11 exempt from the PSoC (parents participating in Choices, Supplemental Assistance Program  
12 Employment and Training, parents of children experiencing homelessness, and parents of children in  
13 protective services) and whose PSoC is calculated to be zero. However, [§809.92\(d\)](#) allows Boards to  
14 prohibit providers from charging the difference to all parents. Currently four Boards allow providers to  
15 charge the difference to parents not exempt from the PSoC.

16 CCDF regulations at [45 CFR §98.45\(b\)](#) requires Lead Agencies to ensure that their payment rates ensure  
17 equal access to the full range of providers that are available to parents not receiving CCDF services, and  
18 that the rates are adequate without additional amounts above the assessed PSoC for instances in which  
19 the provider's published rate exceeds the subsidy amount.

20 CCDF regulations at [45 CFR §98.45\(b\)\(5\)](#) requires a rationale for the policy on whether child care  
21 providers may charge additional amounts to families above the PSoC, including:

- 22 • a demonstration that the policy promotes affordability and access; and
- 23 • an analysis of the interaction between any such additional amounts with the required family  
24 copayments, and of the ability of subsidy payment rates to provide access to care without  
25 additional fees.

26 Additionally, [45 CFR §98.45\(d\)\(2\)](#) requires Lead Agencies to track the extent to which "CCDF child  
27 care providers charge amounts to families more than the required family co-payment...in instances  
28 where the provider's price exceeds the subsidy payment, including data on the size and frequency of any  
29 such payments."

30 To align with federal CCDF requirements, the Commission could amend [§809.92](#) to require Boards that  
31 develop a policy to allow providers to charge parents amounts above assessed PSoC to:

- 33 • provide the rationale for the Board's policy to allow providers to charge families additional  
34 amounts above the required copayment, including a demonstration of how the policy promotes  
35 affordability and access for families;
- 36 • describe the Board's analysis of the interaction between the additional amounts charged to  
37 families with the required PSoC and the ability of current subsidy payment rates to provide  
38 access to care without additional fees; and
- 39 • require that each month the provider report to the Board instances of charging a parent and the  
40 amount of the additional charge.

1 According to the most recent Market Rate Survey, 5.2 percent of centers and 6.5 percent of homes  
2 charge parents the difference between the reimbursement rate and the provider published rate. Further,  
3 on August 31, 2021, the Commission approved substantial rate increases for all providers designed to  
4 ensure that the payment rates ensure equal access required by [45 CFR §98.45](#). This rate action could  
5 also reduce instances in which the provider's published rates are higher than Board reimbursement rates.

6 Issue #12: Rule Clarifications

- 7 • [§809.1](#) - Specify which sections do not apply to Board child care services funded through non-  
8 CCDF sources.
- 9 • [§809.16](#) - Clarify that Board quality activities must be in accordance with the CCDF State Plan.  
10 Remove language regarding compliance with federal and state regulations as these requirements  
11 are reflected in the CCDF State Plan.
- 12 • [§809.20](#) - Include enhanced rate for infants/toddlers at a TSR provider, as TSR has expanded to  
13 include infant and toddler classrooms.
- 14 • [§809.20](#) - Codify the current practice of Boards establishing a higher enhanced reimbursement  
15 rate for nontraditional hours, as defined by the Board.
- 16 • [§809.48](#) and [§809.50](#) - Specify that dual-parent activity hours include a combination of work,  
17 training, or education.
- 18 • [§809.78](#) - Clarify the process regarding the 15- and 30-day threshold for Boards notifying  
19 parents of potential excessive absences.
- 20 • [§809.93](#) - Include "blended-day" as an enrollment type.
- 21 • [§809.93](#) - Revise outdated language regarding payments for "occasional" part-day/full-day  
22 attendance.
- 23 • [§809.131](#) - Clarify that at minimum, a center director account is required to be created within the  
24 Texas Early Childhood Professional Development System's Workforce Registry to meet Texas  
25 Rising Star eligibility requirements.
- 26 • [§809.134](#) - Clarify that Texas Rising Star mentor staff with allowable associate degrees have two  
27 years of suitable experience in early childhood education as determined by the Board. This  
28 clarification will support the alignment of the shift in category weighting to emphasize child  
29 interaction.

30 Issue #13: Technical Amendments

- 31 • Throughout Chapter 809 - Change Child Care Licensing (CCL) to Child Care Regulation (CCR).
- 32 • [§809.44](#) - Separate exclusions for one-time cash payments from tax credits and refunds from the  
33 income calculation.
- 34 • [§809.94](#) - Remove the language prohibiting subsidy eligibility for providers that are on Adverse  
35 Action with CCR but are appealing the action as this language is not necessary, due to HB 755  
36 (87th Texas Legislature, Regular Session (2021)), which prohibited these providers from  
37 operating.

38 **PC Decision Points**

39 Staff seeks direction on amending Chapter 809 Child Care Services Rules to implement the following  
40 statutory changes enacted by the 87th Texas Legislature, Regular Session (2021):

- 1 • Texas Rising Star Entry Level Rating (HB 2607)
- 2 • Statewide entity for Texas Rising Star assessors (HB 1792)
- 3 • Age group reimbursement rates (SB 1555)
- 4 • Board information on prekindergarten partnerships (HB 2607)
- 5 • Contracted slots reporting requirement (HB 2607).

6 Staff also seeks direction on amending Chapter 809 related to program improvements, including:

- 7 • Standardize statewide policies currently developed by Boards.
- 8 • Streamline the list of Board policy requirements.
- 9 • Codify the current waiver to allow job search at initial eligibility.
- 10 • Update language regarding automated attendance reporting.
- 11 • Strengthen child care provider payment requirements to align with industry practices.
- 12 • Include federal reporting requirements for providers charging parents above the PSoC.
- 13 • Make technical changes and clarifications.