

**TEXAS WORKFORCE COMMISSION LETTER**

<b>ID/No:</b>	WD 04-18
<b>Date:</b>	June 21, 2018
<b>Keyword:</b>	Child Care
<b>Effective:</b>	August 1, 2018

**To:** Local Workforce Development Board Executive Directors  
Commission Executive Offices  
Integrated Service Area Managers

**From:** *Courtney Arbour*  
Courtney Arbour, Director, Workforce Development Division

**Subject:** **Child Care Early Terminations Due to Program Violations—  
Implementation and Actions**

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**PURPOSE:**

To provide Local Workforce Development Boards (Boards) with information on implementing amendments to the Texas Workforce Commission (TWC) Chapter 809 Child Care Services rules regarding early termination of child care due to program violations.

**RESCISSIONS:**

None

**BACKGROUND:**

The Child Care and Development Block Grant Act and accompanying guidance required states to demonstrate compliance with the 12-month eligibility requirements by October 1, 2016. TWC adopted rules on September 6, 2016, effective October 1, 2016, to comply with the federally required deadline. Subsequently, in the Child Care and Development Fund (CCDF) final rules, published September 30, 2016, the US Department of Health and Human Services Administration for Children and Families (ACF) revised its initial position in response to comments, adding new limited circumstances in which a lead agency may discontinue assistance before the next scheduled redetermination. This position was further clarified in ACF's CCDF Final Rule Frequently Asked Questions document published December 14, 2016.

Given that TWC's rules predated the CCDF final rules, ACF's new limited circumstances for ending care during a 12-month eligibility period were not included in current Chapter 809 rules. To be consistent with federal law and to ensure that Texas receives the benefits of any additional federal flexibility, TWC is adding the new criteria for ending care during a 12-month eligibility period in Chapter 809 rules.

On June 14, 2018, TWC's three-member Commission adopted amendments to Chapter 809 Child Care Services rules, to be operationally effective August 1,

2018. The adopted rules and preamble are located at <https://www.twc.texas.gov/sites/default/files/ogc/docs/rules-chapter-809-child-care-services-twc.pdf>.

As described in amended Child Care Services rule §809.71(15)–(16), Boards may terminate child care services during an eligibility period due to the following program violations:

- Unexplained absences in excess of 40 days
- Nonpayment of parent share of cost (PSOC) when the provider has reported the nonpayment to the Board

#### **PROCEDURES:**

**No Local Flexibility (NLF):** This rating indicates that Boards must comply with the federal and state laws, rules, policies, and required procedures set forth in this WD Letter and have no local flexibility in determining whether and/or how to comply. All information with an NLF rating is indicated by “must” or “shall.”

**Local Flexibility (LF):** This rating indicates that Boards have local flexibility in determining whether and/or how to implement guidance or recommended practices set forth in this WD Letter. All information with an LF rating is indicated by “may” or “recommend.”

**NLF:** Boards must be aware of the following requirements related to early terminations due to Child Care Services program violations:

#### **Excessive Unexplained Absences**

- Excessive unexplained absences will result in a finding of a program violation for At-Risk, Choices, Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T), and former Texas Department of Family and Protective Services (DFPS) child care cases.
- Excessive unexplained absences are unexplained absences in excess of 40 days within a 12-month eligibility period.
- Boards must provide written notice to parents when a child reaches 15 and 30 general absences cumulatively within a 12-month eligibility period (§809.78(d)(1)).
- Before terminating care for excessive unexplained absences, Boards must document multiple attempts to provide notice of each child’s general absences and the potential for termination of child care services (§809.78(d)(2)).
- If care is terminated due to excessive unexplained absences, a mandatory waiting period of 60 calendar days must be observed before the parents of the child who was terminated from child care services can reapply or be placed on a waiting list (§809.55(a)(1)).

Boards must ensure that early terminations due to excessive unexplained absences are reported in The Workforce Information System of Texas (TWIST) with the termination reason *Excessive Unexplained Absences*.

### **Unpaid Parent Share of Cost**

- Nonpayment of PSOC reported by a provider will result in a finding of a program violation for At-Risk child care cases.
- Boards must evaluate a family's financial circumstances for possible reduction of PSOC before an early termination for nonpayment occurs.
- If care is terminated due to nonpayment of PSOC, a mandatory waiting period of 60 calendar days must be observed before a family can reapply or be placed on a waiting list for child care services (§809.55(a)(2)).
- Boards must ensure that early terminations due to nonpayment of PSOC are reported in TWIST with the termination reason *Non-payment of PSOC*.

**NLF:** Boards must be aware that termination of child care services due to program violations applies to all eligibility periods that begin on or after August 1, 2018.

As with all terminations of child care services, any termination due to program violations requires timely notification and access to the appeals process, as described in Child Care Services Guide Sections E-100 and E-400.

**NLF:** Under the revised rules, Boards must ensure that they do not pay for child care services during an appeal when services have been terminated due to excessive unexplained absences or nonpayment of PSOC (§809.75(b)).

**NLF:** Boards must be aware that for children determined eligible for child care before August 1, 2018, unless the care is DFPS-funded, the following provisions are effective beginning August 1, 2018, and until the family's next scheduled eligibility redetermination:

If a child has accumulated more than 65 total absences:

- care must not be terminated before the end of the eligibility period; and
- at the time of eligibility redetermination, the child's case is subject to the mandatory 60-day waiting period under revised rule §809.55(a)(1).

**NLF:** Boards must be aware that any parent whose eligibility period begins before August 1, 2018, and who fails to pay PSOC must continue to be eligible and receive care for the duration of the eligibility period. At the time of eligibility redetermination, the parent's case is subject to the mandatory 60-day waiting period under revised rule §809.55(a)(1).

**NLF:** Boards must ensure that families and providers are notified of the new program violation rules and the consequences of those violations.

**LF:** Boards may determine the method of communication by which to inform families and providers of the new program violation rules. Sample notification letters are attached for adaptation by Boards.

**LF:** Boards may determine the reporting time frame in which they will require a provider to report a nonpayment of PSOC as an applicable program violation.

**INQUIRIES:**

Send inquiries regarding this WD Letter to [wfpolicy.clarifications@twc.texas.gov](mailto:wfpolicy.clarifications@twc.texas.gov).

**ATTACHMENTS:**

1. Sample Program Violations Parent Notification Letter
2. Sample Program Violations Provider Notification Letter

**REFERENCES:**

Texas Workforce Commission Child Care Services Rules: 40 TAC, Chapter 809  
Texas Workforce Commission Child Care Services Guide